

<p><b>SPECIAL PROCESSES &amp; PROCEDURES</b></p> <p><b>PROTECTION ORDERS &amp; PROTECTION ORDER REGISTRY</b></p>	<p>CONTACT:  Jeffrey Bercovitz  <a href="mailto:jeff.bercovitz@courts.IN.gov">jeff.bercovitz@courts.IN.gov</a></p> <p>Melissa Arvin  <a href="mailto:Melissa.Arvin@courts.IN.gov">Melissa.Arvin@courts.IN.gov</a></p>
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The Indiana General Assembly charged the Division of State Court Administration (now the Office of Judicial Administration’s Indiana Office of Court Services, or the Office) with the responsibility of designing and updating the forms used in protection order proceedings. To fulfill this duty, the Office has been working closely since 2000 with the Protection Order Committee established by the Indiana Supreme Court within the Judicial Conference of Indiana. The Committee explores and considers ways to improve the protection order process. Trial court judges, magistrates, and trial court clerks comprise the membership of the Committee with the Indiana Office of Court Services providing staff support.

The Protection Order Committee created and distributed a Protection Order Deskbook to trial court clerks, judges, and magistrates. Clerks should consult Chapter 2 in the Protection Order Deskbook for a very thorough discussion of the duties of a clerk with respect to protection orders.

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## Forms

The Protection Order Committee has developed a comprehensive set of forms divided into four main categories: (1) protection orders, (2) no-contact orders, (3) workplace violence restraining orders and (4) child protection orders. The Protection Order Committee conducts a yearly update and provides newly approved forms in July of each year. Under Ind. Code 34-26-5-3(e)(2) and 34-26-6-13, the use of the official state forms is mandatory.

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## Protection Order Registry

The Indiana Supreme Court partnered with the Indiana Criminal Justice Institute and the Indiana State Police to receive two federal grants to create and implement the statewide Protection Order Registry (POR) which makes judicial orders available, without cost, to local, state, and national law enforcement agencies within minutes. There is also a public search function for the Registry that provides information on the Respondent.

The Indiana Protection Order Registry links Indiana courts issuing protection and no-contact orders to the State Police's Indiana Data and Communication System (IDACS) and the FBI's National Crime Information Center (NCIC).

When orders are issued, two things happen immediately:

1. The order is entered into the system and electronically shared with IDACS and NCIC within minutes; and,
2. A notification of the order is emailed to local law enforcement agencies where the parties live and work.

This notification process ensures all appropriate law enforcement agencies are immediately notified when a protection, no-contact, or workplace violence restraining order is issued, modified, or terminated.

System benefits:

- Automatically enters and deletes orders in IDACS as well as validates hit confirmations;
- Minimizes data entry by maintaining both parties' information for future use;
- Allows orders to be modified instead of recreated;
- Allows authorized users to view the conditions of an order from any computer with Internet access; and
- Allows law enforcement agencies to verify service information immediately.

In 2009, the Indiana General Assembly enacted legislation to make participation in the Protection Order Registry mandatory for all courts.

## Frequently Asked Questions

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### **Is the language found on the prescribed forms mandatory or is it discretionary?**

The language contained in the orders is mandatory and not discretionary, although some parts of the language may be used or omitted at the court's discretion. **The cover sheet must be included as the first page of every order of protection, workplace violence restraining order, no-contact order, and child protection order.** The cover sheet contains information to meet federal requirements and ensure Indiana orders receive full faith and credit in every state. These orders should be issued in the form provided.

[I.C. 34-26-5-3\(c\)](#) requires the inclusion of certain language regarding firearm disqualifiers and warnings of criminal penalties. The order forms include findings which must be made to make the order effective and enforceable. Accordingly, the Protection Order Committee strongly encourages the use of the order forms provided so that the orders issued are in compliance with state and federal law.

### **What sort of assistance should the Clerk provide to a person seeking a protection order?**

Assistance the Clerk or a person under contract may provide under I.C. 34-26-5-3(d) includes:

- Distributing protection order forms.
- Giving information about court procedures in hearing protection order cases.
- Referring petitioners to victim services, including victim advocates, which may in turn assist in completion of the forms or in representation of the petitioner.
- Answering nonlegal questions about completion of the forms.
- Assisting the petitioner in reading or completing the forms, including checking the forms to ensure they are not blank
- Referring parties to a law library if appropriate materials are available.
- Referring parties to emergency assistance.
- Referring petitioners to the Attorney General Address Confidentiality Program under [Ind. Code 5-26.5](#).

### **Who may petition for a protection order?**

A Petitioner needs to have been a victim of:

- Domestic or family violence;
- Stalking;
- A sex offense, including child grooming, or
- Harassment.

A person may also file a petition for a protection order on behalf of a child who has been a victim of domestic or family violence, stalking, a sex offense, harassment, or a victim of sex grooming.

### **What is “domestic or family violence?”**

Domestic or family violence means, except for an act of self-defense, the occurrence of at least one (1) of the following acts committed by a family or household member:

- (1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member.
- (2) Placing a family or household member in fear of physical harm.
- (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.
- (4) Abusing, torturing, mutilating, or killing a vertebrate animal without justification with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

For purposes of the protection orders, domestic or family violence also includes stalking or a sex offense, regardless of whether the stalking or sex offense is committed by a family or household member. I.C. 34-6-2-34.5.

## **Against whom may a protection order be issued?**

The Respondent must be either a:

- Family or household member of the Petitioner;
- A person who has committed stalking or a sex offense against the Petitioner;
- A person who engaged in repeated contact with a child Petitioner that is intended to prepare the child for sexual activity; or,
- A person who has committed repeated acts of harassment against the Petitioner.

## **Who is a family or household member?**

Under I.C. 34-6-2-44.8, a “Family or household member” of an individual means:

- (1) a person who is a current or former spouse;
- (2) a person who is dating or has dated;
- (3) a person who is engaged or was engaged in a sexual relationship;
- (4) a person who is related by blood or adoption;
- (5) a person who is related or was related by marriage;
- (6) a person who has or previously had an established legal relationship:
  - (a) as a guardian,
  - (b) as a ward;
  - (c) as a custodian;
  - (d) as a foster parent; or
  - (e) in a capacity similar to those listed in (a) through (d);
- (7) a person who has a child in common; or,
- (8) a person who has adopted a child of the individual.

## **What is “stalking” under Indiana law?**

“Stalk” is defined by I.C. 35-45-10-1 as: “A knowing or intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.” Courts typically define “course of conduct” to involve two or more incidents.

## **What is a “sex offense” under Indiana law?**

A “sex offense” means one of the following crimes under Indiana law (Ind. Code 35-42-4):

- Rape;
- Child molesting;
- Child exploitation;

- Possession of child pornography;
- Vicarious sexual gratification;
- Sexual conduct in the presence of a minor
- Child solicitation;
- Child seduction;
- Sexual battery;
- Sexual misconduct with a minor;
- Unlawful employment of a sex offender near children;
- Violation of sex offender residency restrictions;
- Sex offender Internet offenses;
- Inappropriate communication with a child; or,
- Unlawful entry of school property by a serious sex offender.

**NOTE:** For a person to ask for an order of protection because he or she was a victim of stalking or a sex offense, it is not necessary for criminal charges to be filed. However, we encourage all victims of sex offenses to seek medical treatment, report to law enforcement or speak to a therapist or other mental health professional.

### **What is harassment under Indiana law?**

Under I.C. 34-6-2-51.5, “harassment” for purposes of civil protection orders, means conduct directed toward a victim that includes, but is not limited to, repeated, or continuing impermissible contact:

- (1) That would cause a reasonable person to suffer emotional distress; and
- (2) That actually causes the victim to suffer emotional distress.

Harassment does not include statutorily or constitutionally protected activity.

“Impermissible contact” (under I.C. 35-45-10-3) includes, but is not limited to, the following:

- (1) Following or pursuing the victim.
- (2) Communicating with the victim in person, in writing, by telephone, by telegraph, or through electronic means.
- (3) Posting on social media, if the post is directed to the victim or refers to the victim directly or indirectly.

### **What relief may be granted *ex parte* and without ever holding a hearing unless the Respondent asks for one?**

- (A) Prohibit the Respondent from committing or threatening acts of domestic or family violence, stalking, or sex offenses against the Petitioner and each designated family or household member.
- (B) Prohibit the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the Petitioner.

- (C) Order the Respondent to stay away from the Petitioner’s residence, school, employment and/or other specified places.
- (D) Order the Respondent to stay away from places where the Petitioner’s family or household members regularly go. See I.C. 34-26-5-9(b)(1), (2) & (4)
- (E) If, after a court has granted *ex parte* relief, the Respondent desires a hearing to contest the *ex parte* order, he or she may request one. See I. C. 34-26-5-10(a).

**NOTE:** If a petition for protection order is based solely on allegations of harassment, an order may NOT be granted *ex parte*. A court must hold a hearing within 30 days of the petition for an order for protection based solely on harassment or a petition to modify an order for protection based solely on harassment. See I.C. 34-26-5-9(b).

**What relief may be granted *ex parte*, but requires a hearing within 30 days?**

- (A) Ordering that a Petitioner has the exclusive possession, care, custody, or control of any animal owned, possessed, kept, or cared for by the Petitioner, Respondent, minor child of either party, or any other family or household member.
- (B) Preventing a Respondent from removing, transferring, injuring, concealing, harming, attacking, mistreating, threatening to harm, or otherwise disposing of an animal described above.
- (C) Evicting the Respondent from the Petitioner’s residence, regardless of ownership.
- (D) Regardless of ownership, ordering the Respondent to give the Petitioner possession or use of:
  - (1) A residence they both share;
  - (2) An automobile; and,
  - (3) Other essential personal effects, including an animal described above.
- (E) Ordering other relief necessary to provide for the safety and welfare of a Petitioner and each designated or household member.
- (F) In a situation involving an eviction or writ of assistance, the court should order a law enforcement officer to supervise the transfer of the property to ensure the Petitioner/Respondent receives the possession of the property ordered, and to keep peace between the parties. See I.C. 34-26-5-9(c) (3), (5), (7), and (8) and I.C. 34-26-5-10(b).

In this context, "property" refers to personal property, and can include family pets/household animals.

**What relief may be ordered only after notice to Respondent and a hearing?**

- (A) Specifying parenting time arrangements, including supervision by a third party or a denial of parenting time.
- (B) Ordering the Respondent to pay money to the Petitioner, or on the behalf of the Petitioner, for:
  - (1) Attorney fees;
  - (2) Rent or mortgage payments;
  - (3) Child support, if a duty exists;
  - (4) Other expenses related to domestic or family violence such as medical bills, counseling, shelter, or repair fees.
- (C) The court may also place the Respondent on a GPS tracking device and order the Respondent to pay fees associated with the monitoring; and,
- (D) The court may order the Respondent to pay costs and fees incurred by the Petitioner in bringing the action.
- (E) Prohibiting the Respondent from possessing firearms, ammunition, or deadly weapons and requiring the Respondent to surrender firearms, ammunition, or deadly weapons.
- (F) Permit the respondent and petitioner to occupy the same location for any purpose that the court determines is legitimate or necessary. The court may impose terms and conditions upon a respondent when granting this permission.
- (G) An order for protection based on a petition alleging harassment only.

See I.C. 34-26-5-9(d)(2), (3) (4) & (5).

**Is there other relief available to a Petitioner?**

Yes. A protection order court can order a mobile cellular service provider (such as Verizon or AT & T) to transfer a telephone number used by a Petitioner, or a minor child in the Petitioner’s custody, to the Petitioner alone, even if the number and account are held in the Respondent’s name. Note that the financial responsibility for that phone number will also be transferred to the Petitioner. This law allows the court to nullify a consumer contract (a power it would not otherwise have) and allow the Petitioner (and minor child(ren) to keep the same phone number(s), and permit the wireless service provider to enter into a new contract for the phone number(s) with just the Petitioner alone, provided the Petitioner meets the eligibility requirements.

**Which court should review the petition?**

People seeking protection orders are in crisis and the parties’ safety should always be the court’s first priority. A judge should review each petition immediately considering local rules, consult with the clerk, and decide whether it should be transferred to either another court in the same county or even to a court in a different Indiana county.

Except for petitions based solely on harassment, the judge in the county where the protection order case is filed should promptly rule on the petition and issue an *ex parte* order for protection if one is necessary to ensure the protected person’s safety prior to ordering a transfer of the petition to another court.

If there are minor children, a protection order may affect parenting time and support. Ideally, the court which issued the order establishing parenting time and support should consider the petition if that can be done on the same day that the petition is filed. If the court with jurisdiction over the minor children is in another county, a judge in the county where the protection order case is filed should promptly review the petition and issue an *ex parte* order if necessary. Then, the case can be transferred to the other county for a hearing.

If a petitioner files for a protection order against a juvenile respondent, any court of record may process the *ex parte* petition. However, when a hearing is set, the court may transfer the case to a court with juvenile jurisdiction. See Ind. Code 34-26-5-2(d).

The courts in the county should adopt a local rule defining “pending,” and specifying when and how cases will be transferred to the court in which a case involving the parties or their children is pending. See I.C. 34-26-5-6(4), 31-14-16-1, 31-15-4-1(b), 31-15-5-1.

### **Are petitions for harassment handled differently?**

Yes. Petitions based on harassment have unique court procedures:

- (A) There are no *ex parte* orders for protection based on harassment. The court is required to hold a hearing within 30 days after the petition is filed. (I.C. 34-26-5-9(b)).
- (B) An address for Respondent is necessary to serve a copy of the petition and notice for hearing.
- (C) If a court has jurisdiction over an action that relates to the alleged harassment, either because of an action pending in that court or in the exercise of the court’s continuing jurisdiction, the petitioner must file the petition for protection order in that court. I.C. 34-26-5-4(d).

### **What if, after reviewing the petition, the court is not inclined to grant an *ex parte* order?**

If the court believes the facts as alleged in the petition do not satisfy the statutory requirements of domestic or family violence, sexual assault, or stalking by a preponderance of the evidence, then the court should not issue an *ex parte* order for protection. **Do not simply dismiss the case or disallow the filing of the petition**



**altogether but schedule the matter for an evidentiary hearing, with notice to both parties, to determine whether an order should be issued.**

### **How should the parenting time issue be handled in a protection order proceeding?**

Orders involving parenting time require a hearing and that hearing should be held in the court having jurisdiction of the parties' children.

If a court order establishing paternity has not been entered, the putative father should not be granted parenting time as part of the terms of the protection order. The Protection Order Deskbook discusses parenting time issues in protection order cases in Chapter 5.

### **May a court grant a mutual order for protection to opposing parties?**

A court **may not** grant a mutual order of protection to opposing parties. If both parties allege injury, they must file separate petitions under separate cases. The court should review each petition separately in an individual or a consolidated hearing and grant or deny each petition on the petition's individual merits. If the trial court finds cause to grant both petitions, the court must do so by separate orders with specific findings. See I.C. 34-26-5-14 and Ind. Trial Rule 65(E).

### **What should a court do if a Petitioner requests that the court dismiss an order of protection?**

A Petitioner may file a written request that the court dismiss and terminate an order for protection. The Petitioner may also make an oral request, on the record, for the dismissal or termination of an order for protection. If such a request is made, the court shall, without delay or any conditions, dismiss the case without prejudice.  
[I.C. 34-26-5-12.](#)

### **What procedures should be followed if a person brings in a foreign protection order and wants to register it in Indiana?**

A "foreign" protection order refers to an order for protection issued in another state or tribal court. Although Indiana does not have any federally recognized tribes, our neighboring state of Michigan does have tribal courts.

Under both federal and state law, courts in Indiana must enforce valid protection, no-contact, and workplace violence restraining orders from other jurisdictions as if they were issued by our own courts. This recognition and enforcement is known as full faith and credit. See I.C. 34-26-5-17 and 18 U.S. Code 2265. The Protection Order Deskbook, Chapter 11, discusses full faith and credit and offers guidance on how to recognize

whether a foreign order for protection is facially valid and thus entitled to full faith and credit.

Understanding full faith and credit is important because many other states' protection order laws allow their courts to determine custody matters, while Indiana's protection order statute does not. Even though our statutes differ, Indiana courts are required by law to enforce all the terms of another jurisdiction's order—even if they include custody provisions.

Although registration of foreign protection orders is not required for enforcement, I. C. 34-26-5-17 provides a way for protected persons to register their orders here in Indiana. A protected person might want to register a foreign order with an Indiana court for a variety of reasons. For example, even though there is a national protection order database, it does not contain every single order that is issued everywhere in the U.S. When protected persons travel to a new state, their attorney may advise them to take their order to the county courthouse and register it so that it is entered in both the state and national databases and is enforceable. For this reason, a protected person may come to the court wishing to register the order.

When a protected person presents a foreign protection order for registration, use form PO-119 and PO-120. ***Do not require the protected person to file a completely new petition.*** Form PO-119 has two sections: use Section A if the protected person is registering a foreign order for the first time; use Section B if the person is wishing to make a record of the fact that the foreign order has been modified or extended. Form PO-120 is a confidential data entry form for the foreign protection order that contains information for the Indiana POR and for local law enforcement. Once a protected person has filled out both PO-119 and PO-120, take the original copies of both, along with a copy of the foreign protection order, and place them in a Confidential Court file and give the matter a "PO" case number designation. Make sure that the protected person has been given a certified copy of PO-119 by the Clerk before the protected person leaves the court office. The court staff is responsible for registering the foreign protection order within the Indiana POR so that it can be submitted to IDACS and NCIC, the state and national databases. This should be done on the same business day that the protected person completes the registration form (PO-119). If the protected person desires, the court should also forward copies of the foreign order, PO-119, and PO-120 to local law enforcement. ***Do not serve the respondent/defendant with any type of notice concerning this registration.***