



March 18, 2021

ENGROSSED
SENATE BILL No. 79

DIGEST OF SB 79 (Updated March 17, 2021 10:51 am - DI 131)

Citations Affected: IC 34-26; IC 35-42.

Synopsis: Protection orders and domestic battery. Provides that if a petition for an order for protection is filed by a person or on behalf of an unemancipated minor, the court shall determine, after reviewing the petition or making an inquiry, whether issuing the order for protection may impact a school corporation's ability to provide in-person instruction for the person or the unemancipated minor. Creates a procedure that requires a school corporation to receive notice if the court determines that issuing the order for protection may impact the
(Continued next page)

Effective: July 1, 2021.

**Crider, Young M, Walker K, Bassler,
Sandlin, Taylor G, Bohacek**
(HOUSE SPONSOR — MCNAMARA)

January 5, 2021, read first time and referred to Committee on Corrections and Criminal Law.

January 26, 2021, reported favorably — Do Pass.

January 28, 2021, read second time, ordered engrossed. Engrossed.

February 1, 2021, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 1, 2021, read first time and referred to Committee on Courts and Criminal Code.

March 18, 2021, amended, reported — Do Pass.

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Digest Continued

school corporation's ability to provide in-person instruction for the person or the unemancipated minor. Enhances the penalty for domestic battery to a Level 6 felony if the offense is committed against a family or household member: (1) who has been issued a protection order that protects the family or household member from the person and the protection order was in effect at the time the person committed the offense; or (2) while a no contact order issued by the court directing the person to refrain from having any direct or indirect contact with the family or household member was in effect at the time the person committed the offense. Enhances the penalty for domestic battery to a Level 5 felony when the offender has a prior conviction for strangulation against the same family or household member.



March 18, 2021

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 79

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-26-5-2, AS AMENDED BY P.L.156-2020,
2 SECTION 126, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) A person who is or has been
4 a victim of domestic or family violence may file a petition for an order
5 for protection against a:
6 (1) family or household member who commits an act of domestic
7 or family violence; or
8 (2) person who has committed stalking under IC 35-45-10-5 or a
9 sex offense under IC 35-42-4 against the petitioner.
10 (b) A person who is or has been subjected to harassment may file a
11 petition for an order for protection against a person who has committed
12 repeated acts of harassment against the petitioner.
13 (c) A parent, a guardian, or another representative may file a
14 petition for an order for protection on behalf of a child against a:
15 (1) family or household member who commits an act of domestic
16 or family violence;
17 (2) person who has committed stalking under IC 35-45-10-5 or a

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1 sex offense under IC 35-42-4 against the child;

2 (3) person who has committed repeated acts of harassment against
3 the child; or

4 (4) person who engaged in a course of conduct involving repeated
5 or continuing contact with a child that is intended to prepare or
6 condition a child for sexual activity (as defined in IC 35-42-4-13).

7 (d) A court may issue only one (1) order for each respondent. If a
8 petitioner files a petition against more than one (1) respondent, the
9 court shall:

10 (1) assign a new case number; and

11 (2) maintain a separate court file;

12 for each respondent.

13 (e) If a petitioner seeks relief against an unemancipated minor, the
14 case may originate in any court of record and, if it is an emergency
15 matter, be processed the same as an ex parte petition. When a hearing
16 is set, the matter may be transferred to a court with juvenile
17 jurisdiction.

18 **(f) If a petition for an order for protection is filed by a person or**
19 **on behalf of an unemancipated minor, the court shall determine,**
20 **after reviewing the petition or making an inquiry, whether issuing**
21 **the order for protection may impact a school corporation's ability**
22 **to provide in-person instruction for the person or the**
23 **unemancipated minor. If the court determines that issuing the**
24 **order for protection may impact a school corporation's ability to**
25 **provide in-person instruction for the person or the unemancipated**
26 **minor, then the court may not issue the order for protection until**
27 **the following requirements are met:**

28 (1) Notice is provided to the school corporation, by registered
29 mail or certified mail, that includes:

30 (A) notice of the petition for the order for protection; and

31 (B) the date for the hearing on the petition for the order
32 for protection, if applicable.

33 (2) Upon receipt of the notice, the school corporation is
34 allowed to:

35 (A) respond to the notice not later than three (3) business
36 days after receipt of the notice; and

37 (B) testify at the hearing on the petition for the order for
38 protection.

39 **If the school corporation fails to respond to the notice of the**
40 **petition for the order for protection as described in subdivision (2),**
41 **then the court may issue the order for protection described in this**
42 **subsection.**



1 SECTION 2. IC 35-42-2-1.3, AS AMENDED BY P.L.142-2020,
2 SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 1.3. (a) Except as provided in subsections (b)
4 through (f), a person who knowingly or intentionally:

5 (1) touches a family or household member in a rude, insolent, or
6 angry manner; or

7 (2) in a rude, insolent, or angry manner places any bodily fluid or
8 waste on a family or household member;

9 commits domestic battery, a Class A misdemeanor.

10 (b) The offense under subsection (a)(1) or (a)(2) is a Level 6 felony
11 if one (1) or more of the following apply:

12 (1) The person who committed the offense has a previous,
13 unrelated conviction:

14 (A) for a battery offense included in this chapter; or

15 (B) for a strangulation offense under IC 35-42-2-9.

16 (2) The person who committed the offense is at least eighteen (18)
17 years of age and committed the offense against a family or
18 household member in the physical presence of a child less than
19 sixteen (16) years of age, knowing that the child was present and
20 might be able to see or hear the offense.

21 (3) The offense results in moderate bodily injury to a family or
22 household member.

23 (4) The offense is committed against a family or household
24 member who is less than fourteen (14) years of age and is
25 committed by a person at least eighteen (18) years of age.

26 (5) The offense is committed against a family or household
27 member of any age who has a mental or physical disability and is
28 committed by a person having the care of the family or household
29 member with the mental or physical disability, whether the care
30 is assumed voluntarily or because of a legal obligation.

31 (6) The offense is committed against a family or household
32 member who is an endangered adult (as defined in IC 12-10-3-2).

33 **(7) The offense is committed against a family or household**
34 **member:**

35 **(A) who has been issued a protection order (as defined in**
36 **IC 34-26-7.5-2) that protects the family or household**
37 **member from the person and the protection order was in**
38 **effect at the time the person committed the offense; or**

39 **(B) while a no contact order issued by the court directing**
40 **the person to refrain from having any direct or indirect**
41 **contact with the family or household member was in effect**
42 **at the time the person committed the offense.**



1 (c) The offense described in subsection (a)(1) or (a)(2) is a Level 5
2 felony if one (1) or more of the following apply:

3 (1) The offense results in serious bodily injury to a family or
4 household member.

5 (2) The offense is committed with a deadly weapon against a
6 family or household member.

7 (3) The offense results in bodily injury to a pregnant family or
8 household member if the person knew of the pregnancy.

9 (4) The person has a previous conviction for a battery offense **or**
10 **strangulation (as defined in section 9 of this chapter)** included
11 in this chapter against the same family or household member.

12 (5) The offense results in bodily injury to one (1) or more of the
13 following:

14 (A) A family or household member who is less than fourteen
15 (14) years of age if the offense is committed by a person at
16 least eighteen (18) years of age.

17 (B) A family or household member who has a mental or
18 physical disability if the offense is committed by an individual
19 having care of the family or household member with the
20 disability, regardless of whether the care is assumed
21 voluntarily or because of a legal obligation.

22 (C) A family or household member who is an endangered
23 adult (as defined in IC 12-10-3-2).

24 (d) The offense described in subsection (a)(1) or (a)(2) is a Level 4
25 felony if it results in serious bodily injury to a family or household
26 member who is an endangered adult (as defined in IC 12-10-3-2).

27 (e) The offense described in subsection (a)(1) or (a)(2) is a Level 3
28 felony if it results in serious bodily injury to a family or household
29 member who is less than fourteen (14) years of age if the offense is
30 committed by a person at least eighteen (18) years of age.

31 (f) The offense described in subsection (a)(1) or (a)(2) is a Level 2
32 felony if it results in the death of one (1) or more of the following:

33 (1) A family or household member who is less than fourteen (14)
34 years of age if the offense is committed by a person at least
35 eighteen (18) years of age.

36 (2) A family or household member who is an endangered adult (as
37 defined in IC 12-10-3-2).



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 79, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 79 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 8, Nays 0

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 79, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 34-26-5-2, AS AMENDED BY P.L.156-2020, SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a:

- (1) family or household member who commits an act of domestic or family violence; or
- (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the petitioner.

(b) A person who is or has been subjected to harassment may file a petition for an order for protection against a person who has committed repeated acts of harassment against the petitioner.

(c) A parent, a guardian, or another representative may file a petition for an order for protection on behalf of a child against a:

- (1) family or household member who commits an act of domestic or family violence;
- (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the child;
- (3) person who has committed repeated acts of harassment against the child; or
- (4) person who engaged in a course of conduct involving repeated

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or continuing contact with a child that is intended to prepare or condition a child for sexual activity (as defined in IC 35-42-4-13).

(d) A court may issue only one (1) order for each respondent. If a petitioner files a petition against more than one (1) respondent, the court shall:

- (1) assign a new case number; and
- (2) maintain a separate court file;

for each respondent.

(e) If a petitioner seeks relief against an unemancipated minor, the case may originate in any court of record and, if it is an emergency matter, be processed the same as an ex parte petition. When a hearing is set, the matter may be transferred to a court with juvenile jurisdiction.

(f) If a petition for an order for protection is filed by a person or on behalf of an unemancipated minor, the court shall determine, after reviewing the petition or making an inquiry, whether issuing the order for protection may impact a school corporation's ability to provide in-person instruction for the person or the unemancipated minor. If the court determines that issuing the order for protection may impact a school corporation's ability to provide in-person instruction for the person or the unemancipated minor, then the court may not issue the order for protection until the following requirements are met:

(1) Notice is provided to the school corporation, by registered mail or certified mail, that includes:

- (A) notice of the petition for the order for protection; and**
- (B) the date for the hearing on the petition for the order for protection, if applicable.**

(2) Upon receipt of the notice, the school corporation is allowed to:

- (A) respond to the notice not later than three (3) business days after receipt of the notice; and**
- (B) testify at the hearing on the petition for the order for protection.**

If the school corporation fails to respond to the notice of the petition for the order for protection as described in subdivision (2), then the court may issue the order for protection described in this subsection."

Page 2, between lines 15 and 16, begin a new line block indented and insert:

"(7) The offense is committed against a family or household member:



**(A) who has been issued a protection order (as defined in IC 34-26-7.5-2) that protects the family or household member from the person and the protection order was in effect at the time the person committed the offense; or
(B) while a no contact order issued by the court directing the person to refrain from having any direct or indirect contact with the family or household member was in effect at the time the person committed the offense."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 79 as printed January 27, 2021.)

MCNAMARA

Committee Vote: yeas 11, nays 0.

