

SENATE BILL No. 127

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-26-5-9.

Synopsis: Protective orders. Provides that, after notice and a hearing, including a hearing at which the respondent does not appear, a court may order the petitioner for an order for protection or a modification of an order for protection to refrain from being at a specific location at a specific time. Provides that a respondent may seek to have the protective order modified if the respondent reasonably believes the petitioner is acting in bad faith under the terms of the protective order.

Effective: July 1, 2018.

Head

January 3, 2018, read first time and referred to Committee on Civil Law.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 127

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

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

- 1 SECTION 1. IC 34-26-5-9, AS AMENDED BY P.L.112-2017,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 9. (a) If it appears from a petition for an order for
4 protection or from a petition to modify an order for protection that
5 domestic or family violence has occurred or that a modification of an
6 order for protection is required, a court may:
7 (1) without notice or hearing, immediately issue an order for
8 protection ex parte or modify an order for protection ex parte; or
9 (2) upon notice and after a hearing, whether or not a respondent
10 appears, issue or modify an order for protection.
11 (b) A court may grant the following relief without notice and
12 hearing in an ex parte order for protection or in an ex parte order for
13 protection modification:
14 (1) Enjoin a respondent from threatening to commit or
15 committing acts of domestic or family violence against a
16 petitioner and each designated family or household member.
17 (2) Prohibit a respondent from harassing, annoying, telephoning,



- 1 contacting, or directly or indirectly communicating with a
2 petitioner.
- 3 (3) Remove and exclude a respondent from the residence of a
4 petitioner, regardless of ownership of the residence.
- 5 (4) Order a respondent to stay away from the residence, school, or
6 place of employment of a petitioner or a specified place
7 frequented by a petitioner and each designated family or
8 household member.
- 9 (5) Order that a petitioner has the exclusive possession, care,
10 custody, or control of any animal owned, possessed, kept, or cared
11 for by the petitioner, respondent, minor child of either the
12 petitioner or respondent, or any other family or household
13 member.
- 14 (6) Prohibit a respondent from removing, transferring, injuring,
15 concealing, harming, attacking, mistreating, threatening to harm,
16 or otherwise disposing of an animal described in subdivision (5).
- 17 (7) Order possession and use of the residence, an automobile, and
18 other essential personal effects, regardless of the ownership of the
19 residence, automobile, and essential personal effects. If
20 possession is ordered under this subdivision or subdivision (5),
21 the court may direct a law enforcement officer to accompany a
22 petitioner to the residence of the parties to:
- 23 (A) ensure that a petitioner is safely restored to possession of
24 the residence, automobile, animal, and other essential personal
25 effects; or
- 26 (B) supervise a petitioner's or respondent's removal of personal
27 belongings and animal.
- 28 (8) Order other relief necessary to provide for the safety and
29 welfare of a petitioner and each designated family or household
30 member.
- 31 (c) A court may grant the following relief after notice and a hearing,
32 whether or not a respondent appears, in an order for protection or in a
33 modification of an order for protection:
- 34 (1) Grant the relief under subsection (b).
- 35 (2) Specify arrangements for parenting time of a minor child by
36 a respondent and:
- 37 (A) require supervision by a third party; or
38 (B) deny parenting time;
39 if necessary to protect the safety of a petitioner or child.
- 40 (3) Order a respondent to:
- 41 (A) pay attorney's fees;
42 (B) pay rent or make payment on a mortgage on a petitioner's



- 1 residence;
- 2 (C) if the respondent is found to have a duty of support, pay
- 3 for the support of a petitioner and each minor child;
- 4 (D) reimburse a petitioner or other person for expenses related
- 5 to the domestic or family violence, including:
- 6 (i) medical expenses;
- 7 (ii) counseling;
- 8 (iii) shelter; and
- 9 (iv) repair or replacement of damaged property;
- 10 (E) pay the costs and expenses incurred in connection with the
- 11 use of a GPS tracking device under subsection (i); or
- 12 (F) pay the costs and fees incurred by a petitioner in bringing
- 13 the action.
- 14 (4) Prohibit a respondent from using or possessing a firearm,
- 15 ammunition, or a deadly weapon specified by the court, and direct
- 16 the respondent to surrender to a specified law enforcement agency
- 17 the firearm, ammunition, or deadly weapon for the duration of the
- 18 order for protection unless another date is ordered by the court.
- 19 **(5) Order a petitioner to refrain from being at a specific**
- 20 **location at a specific time.**
- 21 An order issued under subdivision (4) does not apply to a person who
- 22 is exempt under 18 U.S.C. 925.
- 23 (d) The court shall:
- 24 (1) cause the order for protection to be delivered to the county
- 25 sheriff for service;
- 26 (2) make reasonable efforts to ensure that the order for protection
- 27 is understood by a petitioner and a respondent if present;
- 28 (3) electronically notify each law enforcement agency:
- 29 (A) required to receive notification under IC 5-2-9-6; or
- 30 (B) designated by the petitioner;
- 31 (4) transmit a copy of the order to the clerk for processing under
- 32 IC 5-2-9;
- 33 (5) indicate in the order if the order and the parties meet the
- 34 criteria under 18 U.S.C. 922(g)(8); and
- 35 (6) require the clerk of court to enter or provide a copy of the
- 36 order to the Indiana protective order registry established by
- 37 IC 5-2-9-5.5.
- 38 (e) An order for protection issued ex parte or upon notice and a
- 39 hearing, or a modification of an order for protection issued ex parte or
- 40 upon notice and a hearing, is effective for two (2) years after the date
- 41 of issuance unless another date is ordered by the court. The sheriff of
- 42 each county shall provide expedited service for an order for protection.



1 (f) A finding that domestic or family violence has occurred
2 sufficient to justify the issuance of an order under this section means
3 that a respondent represents a credible threat to the safety of a
4 petitioner or a member of a petitioner's household. Upon a showing of
5 domestic or family violence by a preponderance of the evidence, the
6 court shall grant relief necessary to bring about a cessation of the
7 violence or the threat of violence. The relief may include an order
8 directing a respondent to surrender to a law enforcement officer or
9 agency all firearms, ammunition, and deadly weapons:

10 (1) in the control, ownership, or possession of a respondent; or

11 (2) in the control or possession of another person on behalf of a
12 respondent;

13 for the duration of the order for protection unless another date is
14 ordered by the court.

15 (g) An order for custody, parenting time, or possession or control of
16 property issued under this chapter is superseded by an order issued
17 from a court exercising dissolution, legal separation, paternity, or
18 guardianship jurisdiction over the parties.

19 (h) The fact that an order for protection is issued under this chapter
20 does not raise an inference or presumption in a subsequent case or
21 hearings between the parties.

22 (i) Upon a finding of a violation of an order for protection, the court
23 may:

24 (1) require a respondent to wear a GPS tracking device; and

25 (2) prohibit the respondent from approaching or entering certain
26 locations where the petitioner may be found.

27 If the court requires a respondent to wear a GPS tracking device under
28 subdivision (1), the court shall, if available, require the respondent to
29 wear a GPS tracking device with victim notification capabilities.

30 (j) The court may permit a victim, a petitioner, another person, an
31 organization, or an agency to pay the costs and expenses incurred in
32 connection with the use of a GPS tracking device under subsection (i).

33 **(k) A respondent may seek to modify an order for protection**
34 **issued under subsection (c) if the respondent has a reasonable**
35 **belief that the petitioner is acting in bad faith under the terms of**
36 **the order for protection.**

