

SENATE BILL No. 130

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-26-5.

Synopsis: Deadline to grant or deny an order for protection. Requires a court to issue an ex parte order either granting or denying an order for protection not later than one day after a petition for an order for protection is filed. Requires a court to consider certain factors when issuing an order to grant or deny an ex parte order for protection. Makes conforming changes and a technical correction.

Effective: July 1, 2024.

Becker

January 8, 2024, read first time and referred to Committee on Judiciary.



Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

SENATE BILL No. 130

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 34-26-5-6, AS AMENDED BY P.L.159-2022,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2024]: Sec. 6. The following rules apply to an order for
4 protection issued under this chapter:
5 (1) An order for protection is in addition to, and not instead of,
6 another available civil or criminal proceeding.
7 (2) A petitioner is not barred from seeking an order because of
8 another pending proceeding.
9 (3) A court may not delay granting relief because of the existence
10 of a pending action between the petitioner and respondent.
11 (4) If a person who petitions for an ex parte order for protection
12 also has a pending case involving:
13 (A) the respondent; or
14 (B) a child of the petitioner and respondent;
15 the court that has been petitioned for relief shall immediately
16 consider the ex parte petition and then transfer that matter to the
17 court in which the other case is pending.



1 (5) If a person files a petition for an order of protection requesting
2 relief that:

3 (A) does not require a hearing under sections ~~9(c)~~ **9(d)** and
4 10(a) through 10(b) of this chapter; and

5 (B) requires a hearing under sections ~~9(d)~~ **9(e)** and 10(c) of
6 this chapter;

7 the court may issue an ex parte order for protection providing
8 relief under clause (A) **at any time before the required hearing**
9 **under clause (B); in accordance with section 9(b) of this**
10 **chapter.**

11 SECTION 2. IC 34-26-5-9, AS AMENDED BY THE TECHNICAL
12 CORRECTIONS BILL OF THE 2024 GENERAL ASSEMBLY, IS
13 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:
14 Sec. 9. (a) If it appears from a petition for an order for protection or
15 from a petition to modify an order for protection that domestic or
16 family violence has occurred or that a modification of an order for
17 protection is required, a court may:

18 (1) without notice or hearing, immediately issue an order for
19 protection ex parte or modify an order for protection ex parte; or

20 (2) upon notice and after a hearing, whether or not a respondent
21 appears, issue or modify an order for protection.

22 **(b) This subsection applies to a petition for an order for**
23 **protection described in subsection (a)(1). A court must issue an**
24 **order granting or denying a petition to which this subsection**
25 **applies not later than one (1) day after the petition is filed. In**
26 **determining whether to grant or deny a petition, the court shall**
27 **consider:**

28 **(1) the seriousness of the allegations contained in the petition,**
29 **including safety concerns for the petitioner;**

30 **(2) any history of violence or harassment between the**
31 **petitioner and the respondent; and**

32 **(3) any other relevant factors.**

33 ~~(b)~~ (c) If it appears **from the sole basis of** a petition for an order for
34 protection or ~~from~~ **of** a petition to modify an order for protection **is** that
35 harassment has occurred, a court:

36 (1) may not, without notice and a hearing, issue an order for
37 protection ex parte or modify an order for protection ex parte; but

38 (2) may, upon notice and after a hearing, whether or not a
39 respondent appears, issue or modify an order for protection.

40 A court must hold a hearing under this subsection not later than thirty
41 (30) days after the petition for an order for protection or the petition to
42 modify an order for protection is filed.



1 (e) (d) A court may grant the following relief without notice and
 2 hearing in an ex parte order for protection or in an ex parte order for
 3 protection modification under subsection (a):

4 (1) Enjoin a respondent from threatening to commit or
 5 committing acts of domestic or family violence against a
 6 petitioner and each designated family or household member.

7 (2) Prohibit a respondent from harassing, annoying, telephoning,
 8 contacting, or directly or indirectly communicating with a
 9 petitioner.

10 (3) Prohibit a respondent from using a tracking device (as defined
 11 by ~~IC 35-31.5-2-337.5~~ **IC 35-31.5-2-337.6**) to determine the
 12 location of:

13 (A) the petitioner or property owned or used by the petitioner;
 14 and

15 (B) any other family or household member or property owned
 16 or used by the family or household member.

17 (4) Remove and exclude a respondent from the residence of a
 18 petitioner, regardless of ownership of the residence.

19 (5) Order a respondent to stay away from the residence, school, or
 20 place of employment of a petitioner or a specified place
 21 frequented by a petitioner and each designated family or
 22 household member.

23 (6) Order that a petitioner has the exclusive possession, care,
 24 custody, or control of any animal owned, possessed, kept, or cared
 25 for by the petitioner, respondent, minor child of either the
 26 petitioner or respondent, or any other family or household
 27 member.

28 (7) Prohibit a respondent from removing, transferring, injuring,
 29 concealing, harming, attacking, mistreating, threatening to harm,
 30 or otherwise disposing of an animal described in subdivision (6).

31 (8) Order possession and use of the residence, an automobile, and
 32 other essential personal effects, regardless of the ownership of the
 33 residence, automobile, and essential personal effects. If
 34 possession is ordered under this subdivision or subdivision (6),
 35 the court may direct a law enforcement officer to accompany a
 36 petitioner to the residence of the parties to:

37 (A) ensure that a petitioner is safely restored to possession of
 38 the residence, automobile, animal, and other essential personal
 39 effects; or

40 (B) supervise a petitioner's or respondent's removal of personal
 41 belongings and animal.

42 (9) Order other relief necessary to provide for the safety and



- 1 welfare of a petitioner and each designated family or household
 2 member.
- 3 ~~(d)~~ **(e)** A court may grant the following relief after notice and a
 4 hearing, whether or not a respondent appears, in an order for protection
 5 or in a modification of an order for protection:
- 6 (1) Grant the relief under subsection ~~(c)~~ **(d)**.
- 7 (2) Specify arrangements for parenting time of a minor child by
 8 a respondent and:
 9 (A) require supervision by a third party; or
 10 (B) deny parenting time;
 11 if necessary to protect the safety of a petitioner or child.
- 12 (3) Order a respondent to:
 13 (A) pay attorney's fees;
 14 (B) pay rent or make payment on a mortgage on a petitioner's
 15 residence;
 16 (C) if the respondent is found to have a duty of support, pay
 17 for the support of a petitioner and each minor child;
 18 (D) reimburse a petitioner or other person for expenses related
 19 to the domestic or family violence or harassment, including:
 20 (i) medical expenses;
 21 (ii) counseling;
 22 (iii) shelter; and
 23 (iv) repair or replacement of damaged property;
 24 (E) pay the costs and expenses incurred in connection with the
 25 use of a GPS tracking device under subsection ~~(k)~~ **(l)**; or
 26 (F) pay the costs and fees incurred by a petitioner in bringing
 27 the action.
- 28 (4) Prohibit a respondent from using or possessing a firearm,
 29 ammunition, or a deadly weapon specified by the court, and direct
 30 the respondent to surrender to a specified law enforcement agency
 31 the firearm, ammunition, or deadly weapon for the duration of the
 32 order for protection unless another date is ordered by the court.
- 33 (5) Permit the respondent and petitioner to occupy the same
 34 location for any purpose that the court determines is legitimate or
 35 necessary. The court may impose terms and conditions upon a
 36 respondent when granting permission under this subdivision.
- 37 An order issued under subdivision (4) does not apply to a person who
 38 is exempt under 18 U.S.C. 925.
- 39 ~~(e)~~ **(f)** The court shall:
 40 (1) cause the order for protection to be delivered to the county
 41 sheriff for service;
 42 (2) make reasonable efforts to ensure that the order for protection



- 1 is understood by a petitioner and a respondent if present;
 2 (3) electronically notify each law enforcement agency:
 3 (A) required to receive notification under IC 5-2-9-6; or
 4 (B) designated by the petitioner;
 5 (4) transmit a copy of the order to the clerk for processing under
 6 IC 5-2-9;
 7 (5) indicate in the order if the order and the parties meet the
 8 criteria under 18 U.S.C. 922(g)(8); and
 9 (6) require the clerk of court to enter or provide a copy of the
 10 order to the Indiana protective order registry established by
 11 IC 5-2-9-5.5.

12 ~~(f)~~ **(g)** Except as provided in subsection ~~(g)~~; **(h)**, an order for
 13 protection issued ex parte or upon notice and a hearing, or a
 14 modification of an order for protection issued ex parte or upon notice
 15 and a hearing, is effective for two (2) years after the date of issuance
 16 unless another date is ordered by the court. The sheriff of each county
 17 shall provide expedited service for an order for protection.

18 ~~(g)~~ **(h)** This subsection applies to an order for protection issued ex
 19 parte or upon notice and a hearing, or to a modification of an order for
 20 protection issued ex parte or upon notice and a hearing, if:

- 21 (1) the respondent named in the order is a sex or violent offender
 22 (as defined in IC 11-8-8-5) and is required to register as a lifetime
 23 sex or violent offender under IC 11-8-8-19; and
 24 (2) the petitioner was the victim of the crime that resulted in the
 25 requirement that the respondent register as a lifetime sex or
 26 violent offender under IC 11-8-8-19.

27 An order for protection to which this subsection applies is effective
 28 indefinitely after the date of issuance unless another date is ordered by
 29 the court. The sheriff of each county shall provide expedited service for
 30 an order for protection.

31 ~~(h)~~ **(i)** A finding that domestic or family violence or harassment has
 32 occurred sufficient to justify the issuance of an order under this section
 33 means that a respondent represents a credible threat to the safety of a
 34 petitioner or a member of a petitioner's household. Upon a showing of
 35 domestic or family violence or harassment by a preponderance of the
 36 evidence, the court shall grant relief necessary to bring about a
 37 cessation of the violence or the threat of violence. The relief may
 38 include an order directing a respondent to surrender to a law
 39 enforcement officer or agency all firearms, ammunition, and deadly
 40 weapons:

- 41 (1) in the control, ownership, or possession of a respondent; or
 42 (2) in the control or possession of another person on behalf of a



- 1 respondent;
 2 for the duration of the order for protection unless another date is
 3 ordered by the court.
- 4 ~~(j)~~ **(j)** An order for custody, parenting time, or possession or control
 5 of property issued under this chapter is superseded by an order issued
 6 from a court exercising dissolution, legal separation, paternity, or
 7 guardianship jurisdiction over the parties.
- 8 ~~(k)~~ **(k)** The fact that an order for protection is issued under this
 9 chapter does not raise an inference or presumption in a subsequent case
 10 or hearings between the parties.
- 11 ~~(l)~~ **(l)** Upon a finding of a violation of an order for protection, the
 12 court may:
- 13 (1) require a respondent to wear a GPS tracking device; and
 14 (2) prohibit the respondent from approaching or entering certain
 15 locations where the petitioner may be found.
- 16 If the court requires a respondent to wear a GPS tracking device under
 17 subdivision (1), the court shall, if available, require the respondent to
 18 wear a GPS tracking device with victim notification capabilities.
- 19 ~~(m)~~ **(m)** The court may permit a victim, a petitioner, another person,
 20 an organization, or an agency to pay the costs and expenses incurred in
 21 connection with the use of a GPS tracking device under subsection ~~(k)~~
 22 **(l)**.
- 23 SECTION 3. IC 34-26-5-10, AS AMENDED BY P.L.172-2023,
 24 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2024]: Sec. 10. (a) If a court issues:
- 26 (1) an order for protection ex parte effective for a period
 27 described under section ~~9(f)~~ **9(g)** of this chapter; or
 28 (2) a modification of an order for protection ex parte effective for
 29 a period described under section ~~9(f)~~ **9(g)** of this chapter;
 30 and provides relief under section ~~9(e)~~ **9(d)** of this chapter, upon a
 31 request by either party at any time after service of the order or
 32 modification, the court shall set a date for a hearing on the petition.
 33 Except as provided in subsection (c), the hearing must be held not more
 34 than thirty (30) days after the request for a hearing is filed unless
 35 continued by the court for good cause shown. The court shall notify
 36 both parties by first class mail of the date and time of the hearing. A
 37 party may only request one (1) hearing on a petition under this
 38 subsection.
- 39 (b) If a court issues:
- 40 (1) an order for protection ex parte effective for a period
 41 described under section ~~9(g)~~ **9(h)** of this chapter; or
 42 (2) a modification of an order for protection ex parte effective for



1 a period described under section ~~9(g)~~ **9(h)** of this chapter;
 2 and provides relief under section ~~9(e)~~ **9(d)** of this chapter, upon a
 3 request by either party not more than thirty (30) days after service of
 4 the order or modification, the court shall set a date for a hearing on the
 5 petition. Except as provided in subsection (c), the hearing must be held
 6 not more than thirty (30) days after the request for a hearing is filed
 7 unless continued by the court for good cause shown. The court shall
 8 notify both parties by first class mail of the date and time of the
 9 hearing. A party may only request one (1) hearing on a petition under
 10 this subsection.

11 (c) A court shall set a date for a hearing on the petition not more
 12 than thirty (30) days after the filing of the petition if a court issues an
 13 order for protection ex parte or a modification of an order of protection
 14 ex parte and:

15 (1) a petitioner requests or the court provides relief under section
 16 ~~9(c)(4), 9(d)(4), 9(e)(6), 9(d)(6), 9(e)(7), 9(d)(7), 9(e)(8), 9(d)(8),~~
 17 or ~~9(e)(9)~~ **9(d)(9)** of this chapter; or

18 (2) a petitioner requests relief under section ~~9(d)(2), 9(e)(2),~~
 19 ~~9(d)(3), 9(e)(3), or 9(d)(4)~~ **9(e)(4)** of this chapter.

20 The hearing must be given precedence over all matters pending in the
 21 court except older matters of the same character.

22 (d) In a hearing under this section:

23 (1) relief under section 9 of this chapter is available; and

24 (2) if a respondent seeks relief concerning an issue not raised by
 25 a petitioner, the court may continue the hearing at the petitioner's
 26 request.

