

NEW LEGISLATION

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DOMESTIC OR FAMILY VIOLENCE

IC 35-33-1-1.5 (P.L. 133, §60)

RESPONDING TO SCENE

In responding to scene of alleged crime involving “domestic or family violence”:

- ▶ Requires law enforcement to “use all reasonable means to prevent further violence,” including transporting the victim, assisting victim in removing toiletries, medication, and necessary clothing, and giving immediate written notice of rights under IC 35-40.
- ▶ Allows law enforcement to remove deadly weapons and ammunition from scene if observed by officer and officer has reasonable belief that it exposes victim to immediate risk of serious bodily injury. Requires that they be kept in “safe storage.”

IC 35-41-1-6.5 (P.L. 133, §62)

DEFINITION OF DOMESTIC OR FAMILY VIOLENCE

- ▶ Must be committed by “family or household member” against another “family or household member.”
- ▶ Includes attempts and conspiracies.
- ▶ Must be either homicide, battery, kidnapping, confinement, sex crime, robbery, arson, mischief, burglary, trespass, disorderly conduct, intimidation, harassment, voyeurism, stalking, bigamy, incest, neglect of a dependent, nonsupport of a child, spouse or parent, exploitation of a dependent or endangered adult, or invasion of privacy.

IC 35-41-1-10.7 (P.L. 133, §63)

DEFINITION OF FAMILY OR HOUSEHOLD MEMBER

- ▶ Victim and defendant must be current or former spouse, date, or sexual partner, or
- ▶ have a child in common, or
- ▶ related by blood, adoption, or marriage, or
- ▶ guardian, ward, custodian, foster parent, or similar capacity, or
- ▶ a minor child of a person in a relationship described above.

IC 35-45-2-5 (P.L. 71, §1)**INTERFERENCE WITH THE REPORTING OF A CRIME**

Establishes NEW CRIME of Interference With the Reporting of a Crime:

- ▶ With intent to commit, conceal or aid in commission of a crime,
- ▶ Knowingly or intentionally interferes with or prevents another from,
- ▶ Using 911, obtaining medical assistance, or making report to law enforcement.
- ▶ Class A Misdemeanor.

IC 34-26-5 (P.L. 133, §56)**ORDERS FOR PROTECTION**

Indiana Civil Order Protection Act

- ▶ Can only be obtained by victims of domestic or family violence. No longer available for property line disputes, etc.
- ▶ Domestic or family violence definition here is a little different, and includes threatening or attempting to cause physical harm to family or household member, placing them in fear of physical harm, or causing them to involuntarily engage in sexual activity. (Includes stalking or any sex crime)
- ▶ Fees for filing, service of process, and subpoenas may not be charged.
- ▶ Upon a showing of domestic or family violence by a preponderance of evidence, the court shall grant necessary relief.
- ▶ Requires Division of State Court Administration to adopt forms for Petition, Order, Confidential Sheet, Notice of Modification, Notice of Termination, and distribute to Clerks.
- ▶ Clerk required to provide forms and clerical assistance.
- ▶ Any court of record has jurisdiction.
- ▶ Petition may be filed in county where violence occurred, or in the county of residence of Petitioner or Respondent.
- ▶ Order may be in addition to any other civil or criminal proceeding
- ▶ Petitioner's address must be submitted on confidential forms, but court may reveal after a hearing if in the interest of justice.
- ▶ Without notice or hearing, the Court may issue ex parte order:
 - ▶ prohibiting contact or communication with Petitioner,
 - ▶ ordering respondent to stay away from specified locations frequented by Petitioner and family,
 - ▶ removing Respondent from residence, regardless of ownership
 - ▶ giving possession and use of residence, automobile, or other personal effects to Petitioner.
- ▶ "THE COURT MAY DIRECT A LAW ENFORCEMENT OFFICER TO ACCOMPANY A PETITIONER TO THE RESIDENCE OF THE PARTIES TO ENSURE THAT A PETITIONER IS SAFELY RESTORED TO POSSESSION OF THE RESIDENCE, AUTOMOBILE, OR OTHER PERSONAL EFFECTS, OR SUPERVISE A PETITIONER'S OR RESPONDENT'S REMOVAL OF PERSONAL BELONGINGS."
- ▶ If ex parte order entered, a hearing date is required within 30 days, in almost all cases. Hearing is to be given precedence over all other cases.

- ▶ After a hearing, the Court may also award costs and attorney fees, require Respondent to pay rent or mortgage on residence, pay child support, pay medical expenses, pay counseling or shelter expenses, and pay for damaged property. The Court may also order surrender of firearms and deadly weapons, and prohibit possession during order. Court may not order parties into mediation.
- ▶ Order for Protection must give notice that any possession of a firearm while subject to order constitutes a federal crime.
- ▶ An invitation by Petitioner to violate order does not waive or nullify order for protection.
- ▶ Orders relating to custody, visitation, or control of property may be superseded by an order issued in action for dissolution, paternity, or guardianship.
- ▶ Order for Protection effective for 2 years, unless other date specified.
- ▶ Sheriff required to provide expedited service.
- ▶ Out-of-State Protection Orders are enforceable without registration in Indiana. A certified copy of the Order is not required. However, the Order on its face must show notice to Respondent. If not, officer must serve Order on respondent and give reasonable opportunity to comply.
- ▶ Violation of any orders of protection punishable as Invasion of Privacy (A Misdemeanor).
- ▶ Protective Orders issues before July 1, 2002 remain in effect for the period indicated in the Order.

IC 34-26-6 (P.L. 133, §57)

WORKPLACE VIOLENCE RESTRAINING ORDERS

- ▶ Employee may petition for injunction against another who engages in violence or who poses a “credible threat of violence.”
- ▶ Credible threat of violence means a knowing or willful statement or course of conduct that does not serve a legitimate purpose and that causes a reasonable person to fear for safety of employee or family.
- ▶ Injunction shall issue if shown by clear and convincing evidence.
- ▶ Employer may petition on behalf of employee.
- ▶ Injunction effective for 3 years.
- ▶ Intentional violation of injunction punishable as Invasion of Privacy (A Misdemeanor).

IC 35-45-10-5 (P.L. 133, §66)

NO CONTACT ORDERS

- ▶ No contact orders may still be issued as a condition of bail, or as a condition of probation, or as part of juvenile dispositional decree, the violation of which is punishable as Invasion of Privacy (A Misdemeanor).

IC 35-45-10-5 (P.L. 133, §66)

INVASION OF PRIVACY

- ▶ Increases penalty from Class B Misdemeanor to Class A Misdemeanor for violation of No Contact Order, Protective Order, or Workplace Violence Restraining Order.
- ▶ Increases penalty for second offense from Class A Misdemeanor to Class D Felony.

DEATH PENALTY

IC 35-50-2-3(b) (P.L. 117, §1)

MINIMUM AGE

- ▶ Increases the minimum age for death penalty eligibility from 16 to 18 at the time of the murder. May still be sentenced to Life Without Parole if 16 at the time of the murder.

IC 35-50-2-9(e) (P.L. 117, §2)

JUDICIAL OVERRIDE

- ▶ Judicial override eliminated. Trial court SHALL sentence in accordance with jury recommendation. If jury hung, trial court retains power to impose death sentence.
- ▶ This amendment must be interpreted in light of recent U.S. Supreme Court opinion in Ring v. Arizona, which essentially holds that a jury, not a judge, must make finding of aggravating circumstances necessary to impose death sentence.

IC 35-50-2-9(d) (P.L. 117, §2)

JUDICIAL OVERRIDE

- ▶ Requires that in death penalty cases that jury be given a special verdict form for each aggravating circumstance alleged.

IC 35-50-2-9(e) (P.L. 80, §1)

VICTIM IMPACT STATEMENTS

- ▶ Allows a victim's family and friends to present impact testimony AFTER a court pronounces sentence and in the presence of the defendant.

IC 35-38-6-6 (P.L. 20, §5)

EXECUTION PROCEDURES

- ▶ ISP Superintendent may exclude execution witnesses if they threaten the safety or security of the state prison.
- ▶ Department of Correction shall keep confidential the names of persons who assist in the execution.

CRIMES OF VIOLENCE

IC 35-42-2-6 (P.L. 88, §1)

BATTERY BY BODILY WASTE

- ▶ No longer required that victim must be law enforcement or corrections officer
- ▶ A person who knowingly or intentionally in a rude, insolent, or angry manner places human blood, semen, urine, or fecal waste on another person commits a Class A Misdemeanor. (Class D Felony if victim is law enforcement or corrections officer engaged in official duties)
- ▶ Increased penalties if infected with hepatitis B, HIV, or tuberculosis and/or transmitted.

IC 35-45-16 (P.L. 88, §2)**MALICIOUS MISCHIEF**

Establishes NEW CRIME of Malicious Mischief.

- ▶ Recklessly, knowingly or intentionally,
- ▶ Places human blood, semen, urine, fecal waste in a location,
- ▶ With intent that another person touch it, commits a Class B Misdemeanor.
- ▶ Class A Misdemeanor if intent is for another to ingest it.
- ▶ Increased penalties if infected with hepatitis B, HIV, or tuberculosis and/or transmitted.

IC 35-42-1-4 (P.L. 133, §64)**INVOLUNTARY MANSLAUGHTER**

- ▶ A licensed or unlicensed child care provider who recklessly supervises a child, and the child dies as a result of the reckless supervision, commits involuntary manslaughter, a Class D Felony.

CONTROLLED SUBSTANCES

IC 12-23-14.5 (P.L. 168)**DRUG COURTS**

- ▶ Allows for the establishment of drug courts by any court with criminal or juvenile jurisdiction.
- ▶ Requires highly structured judicial intervention process for substance abuse treatment, including clinical assessment, education, counseling, treatment, drug testing, and more.
- ▶ Must be certified and follow regulations of Indiana Judicial Center.
- ▶ Eligible defendants are those who plead guilty to a crime in which alcohol or drugs was a contributing factor or material element of the crime. Upon the guilty plea, the Court may defer or withhold judgment upon condition of fulfilling the requirements of Drug Court. If successful, the charge is dismissed. If unsuccessful, the Court may enter judgment of conviction and sentence.
- ▶ To be eligible, defendant must be approved by the Judge and must fulfill established criteria of the Drug Court.
- ▶ Automatically excluded are those defendants who have committed a dealing offense under IC 35-48, a forcible felony, or any other offense designated by a local drug court committee composed of at least the Judge, the Prosecutor, and a Defense Attorney.
- ▶ Prosecuting Attorney must consent to the referral to Drug Court on a guilty plea.
- ▶ Even without approval of the Prosecuting Attorney, Court may refer a defendant to Drug Court as a term of probation, or upon a violation of probation.

ANIMALS

IC 35-46-3-12 (P.L. 132)**CRUELTY TO AN ANIMAL**

- ▶ Amends statute to increase the penalty for knowingly or intentionally torturing or mutilating a vertebrate animal from a Class A Misdemeanor to a Class D Felony. Knowingly or intentionally beating a vertebrate animal remains a Class A Misdemeanor.
- ▶ Adds exclusion for animal control workers who euthanize an injured, sick, homeless, or unwanted domestic animal.

IC 35-46-3-8.5 (P.L. 76, §4) POSSESSION OF ANIMAL FIGHTING PARAPHERNALIA
IC 35-46-3-4.3 (P.L. 76, §2) DEFINITION OF ANIMAL FIGHTING PARAPHERNALIA

Establishes NEW CRIME of Possession of Animal Fighting Paraphernalia

- ▶ Knowingly or intentionally possesses
- ▶ Animal fighting paraphernalia
- ▶ With intent to violate IC 35-46-3-9 (Animal Fighting Contest)
- ▶ Class A Misdemeanor for first offense, Class D Felony for 2nd offense.
- ▶ “Animal Fighting Paraphernalia” is defined as equipment used to train or condition animals for participation in an animal fighting contest.

IC 35-46-3-9.5 (P.L. 76, §5) PROMOTING AN ANIMAL FIGHTING CONTEST

Establishes NEW CRIME of Promoting an Animal Fighting Contest.

- ▶ Knowingly or intentionally,
- ▶ Possesses animal fighting paraphernalia with intent to violate IC 35-46-9 (Animal Fighting Contest),
- ▶ Possesses, harbors, or trains a dog or bird with a scar or injury consistent with participation in or training for an animal fighting contest.
- ▶ Class D Felony.

IC 35-46-3-13 (P.L. 76, §7) CRUELTY TO AN ANIMAL

Establishes NEW CRIME of Cruelty to an Animal (Class A Misdemeanor).

- ▶ Knowingly or intentionally,
- ▶ Removes vocal cords,
- ▶ Of trained attack dog.

TRAFFIC

IC 14-15-4-4 (P.L. 97, §7) LEAVING SCENE OF BOATING “ACCIDENT”

- ▶ Amends statute to increase penalties for leaving the scene of a boating accident.
- ▶ Basic crime is a Class C Misdemeanor.
- ▶ Class A Misdemeanor if accident results in bodily injury.
- ▶ Class D Felony if accident results in serious bodily injury.
- ▶ Class D Felony if prior conviction within 5 years for leaving scene of traffic or boat accident.
- ▶ Class C Felony if accident results in death.

IC 35-45-3-3 (P.L. 35, §1) THROWING CIGARETTE

- ▶ A person who throws from a moving motor vehicle a lighted cigarette, cigar, or match, or other burning material, commits a Class A Infraction. (Up to \$10,000 fine)

IC 9-13-2-49.3 (P.L. 143, §1)

WHEELCHAIR OWI

- ▶ “Electric Personal Assistive Mobility Device” removed from definition of vehicle for purposes of prosecutions for Operating a Vehicle while Intoxicated.
- ▶ Assumedly, this removes electric wheelchairs from the definition, but apparently does not remove from the definition wheelchairs that are manually powered. (Any device for transportation by land or air)
- ▶ “Electric Personal Assistive Mobility Device” means a self-balancing, two nontandem wheeled device that is designed to transport only one person and that has an average of 750 watts of power and a maximum speed of 20 miles per hour on a paved level surface when operated by a 170 pound person.

IC 9-21-1-2 (P.L. 128, §1)

TRAFFIC ENFORCEMENT ON PRIVATE ROADS

- ▶ A local authority (county, city, or town) may enforce traffic regulations on private roads if requested by the owner, an ordinance is passed, and a contract is entered into and recorded.
- ▶ “Private Road” is a way or place in private ownership that is used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons. (IC 9-13-2-137)

SEX OFFENSES

IC 35-42-4-6 (P.L. 118, §2)

CHILD SOLICITATION

- ▶ Amends Child Solicitation statute to include the solicitation of a person who the defendant “believes to be a child under 14 years of age.”
- ▶ Includes the use of a computer network to solicit.
- ▶ Makes clear that solicitation need not be at some “immediate time.”
- ▶ Amendment in response to State v. Kemp

IC 35-42-4-5 (P.L. 118, §1)

VICARIOUS SEXUAL GRATIFICATION

Establishes NEW CRIME of Fondling in the Presence of a Minor (Class D Felony)

- ▶ Knowingly or intentionally,
- ▶ Touches or fondles himself
- ▶ In presence of child less than 14,
- ▶ With intent to arouse or satisfy sexual desires.
- ▶ Closes loophole - no touching, no public place required.

IC 35-42-4-4 (P.L. 3, §2)

CHILD PORNOGRAPHY

- ▶ Amends Possession of Child Pornography statute to include the possession of a “digitized image” depicting sexual conduct by a child less than 16 years old.

IC 35-42-4-4 (P.L. 3, §2)
IC 35-24-1-1(a)(10) (P.L. 3, §1)

**CHILD EXPLOITATION
FORFEITURE**

- ▶ Amends Child Exploitation statute to include knowingly or intentionally making “available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than 18 years of age.”
- ▶ Increases the penalty from a Class D Felony to a Class C Felony.
- ▶ Amends forfeiture statute to allow for seizure and forfeiture of equipment used to photograph or disseminate matter in violation of child exploitation statute. (Innocent owner defense)

IC 5-2-12 (P.L. 116)

SEX AND VIOLENT OFFENDER DIRECTORY

- ▶ Renames Sex and Violent Offender Registry as Sex and Violent Offender Directory.
- ▶ Eliminates requirement of registration with each law enforcement agency. Now must register only with Sheriff of county of residence.
- ▶ Residence in Indiana if offender “spends or intends to spend at least 7 days in Indiana during a 180 day period, or owns real property in Indiana and returns to Indiana at any time.
- ▶ Requires Indiana Sheriffs to jointly establish and maintain a sex offender web site. The web site must include a recent photograph and home address arranged by county.
- ▶ Upon registration, individual Sheriffs required to notify all law enforcement agencies having jurisdiction of offender's residence.
- ▶ Upon registration, individual Sheriffs are responsible for obtaining photograph and transmitting to Indiana Sheriffs sex offender web site.

IC 11-13-3-4 (P.L. 116, §18)

SEX OFFENDER PAROLE

- ▶ Prohibits convicted sex offender from residing within 1 mile of victim while on parole. (May be waived upon a showing of “good cause’)

IC 35-38-2-2.5 (P.L. 116, §23)

SEX OFFENDER PROBATION

- ▶ Prohibits convicted sex offender from residing within 1 mile of victim while on probation. (May be waived upon a showing of “good cause’)

TERRORISM

(P.L. 123)

DESTRUCTIVE DEVICES

- ▶ Adds a multitude of new statutes relating to terrorism, from destructive devices and weapons of mass destruction to money laundering and terroristic mischief. The vast majority of such crimes will be prosecuted in federal court, not state court.

MISCELLANEOUS

IC 7.1-3-6.5 (P.L. 63, §1)

BEER KEGS

- ▶ A person who possesses a keg of beer without an identification tag, or with an altered identification tag, or who provides false information on a beer keg receipt, commits a Class B Infraction. (Up to \$1000 fine)

* This is a summary and should not be relied upon. Please refer to text of statute.

* All statutes are effective July 1, 2002 unless otherwise indicated.

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