

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 7919
BILL NUMBER: HB 1874

DATE PREPARED: Mar 13, 2001
BILL AMENDED: Mar 13, 2001

SUBJECT: Domestic Protection Orders.

FISCAL ANALYST: Mark Goodpaster
PHONE NUMBER: 232-9852

FUNDS AFFECTED: <u>X</u>	GENERAL	IMPACT: State & Local
	DEDICATED	
<u>X</u>	FEDERAL	

Summary of Legislation: (Amended) This bill has the following provisions:

- (A) It provides for the registration and enforcement in Indiana of protection orders issued by another state or an Indian tribe.
- (B) It eliminates prepayment of filing fees and witness fees for proceedings filed solely to obtain a protective order to prevent domestic violence or enforce a foreign domestic violence protection order.
- (C) It grants immunity to a governmental entity or employee, including a law enforcement officer, that registers or enforces a court order in good faith without malice.
- (D) It provides that commission of an offense in the presence or within hearing of a child is an aggravating factor that would justify an increased term of imprisonment or consecutive sentences.
- (E) It expands the types of protective orders to which the crime of stalking applies.
- (F) It provides that violation of a protective order issued by an Indian tribe or other related tribal government constitutes invasion of privacy.

Effective Date: (Amended) Upon passage; July 1, 2001; July 1, 2002.

Explanation of State Expenditures: (Revised) *Provision A:* Any added protection orders issued by another state or Indian tribe would be absorbed by the budget of the Indiana State Police.

Provision D: Under current law, the court may consider any of 13 factors as aggravating circumstances to determine whether a criminal defendant's sentence should either be increased to the maximum term allowed under law or to impose consecutive terms of imprisonment. Adding this 14th circumstance may increase the prison terms of some criminal defendants.

The following table shows the minimum sentence, presumptive sentence, and the maximum sentence that an offender can receive under current law.

Felony Class	Minimum	Presumptive	Maximum
A	20 years	30 years	50 years
B	6 years	10 years	20 years
C	2 years	4 years	8 years
D	six months	1.5 years	3 years

Provision E would add a series of violations of protection orders to offenses that are punishable as Class C felonies. A Class C felony is punishable by a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances.

The average expenditure to house an adult offender was \$20,700 in FY 1999. Individual facility expenditures ranged from \$14,936 to \$37,807. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class C felony offenders is approximately two years.

Explanation of State Revenues: *Provision B:* This bill would result in a revenue loss to the state General Fund ranging between \$25,000 and \$50,000. However, if legislation prohibiting the payment of filing fees to have a protective order issued in the case of domestic violence charges is not implemented, the state may lose as much as \$7 M in grants from federal sources.

Background: Current statute, IC 33-19-5-4, treats petitions for protective orders as civil filings and charges a \$100 filing fee. Of this fee, a petitioner may pay \$35 upon filing and pay the balance at a later time. This same section also allows the court to waive the fee and require the responding party to pay either the entire fee of \$100 or the \$65 balance. By another section of the statute (IC 34-26-2-4), the court may waive filing fees for protective orders if the petitioner can document an inability to pay the fee. If the fee is waived, the court may order the filing fee to be paid by the responding party.

In practice, counties may treat filing fees for domestic violence cases in one of three ways. They may waive the entire filing fee, charge an initial \$35 and waive the remaining balance of \$65 for a protective order, or allow the petition to be filed in small claims court and charge a \$35 fee. Consequently, the specific revenue loss from this bill is difficult to estimate.

Estimated Number of Cases Affected: In 1999, 21,066 protective orders were reported to be filed in Indiana's courts. Of these, the Marion County Clerk's Office estimates that about 60% of these filings are for domestic violence-related cases. The Marion County Clerk also reports that Marion County no longer collects the filing fee for protective orders in domestic violence cases. Consequently, the number of estimated filings that could be affected by this bill is 10,332 after subtracting the number of Marion County filings (2,300) from the statewide total.

Estimating the Potential Revenue Loss: It is assumed that the revenue loss from this bill would be from the reduction in the number of filers who would no longer pay the initial \$35 filing fee. This is because this bill does not change the current provision in statute that allows the court to order the responding party to pay either the entire fee or the \$65 balance. The low and high estimates, based upon information received from

county clerks, assume that under current practice between 10% and 20% of the filers will pay the initial \$35 fee in domestic violence cases.

Because 70% of the filing fee is deposited in the state General Fund, the revenue loss will range between \$25,000 and \$50,000, as described in the following table.

	Low	High
Protective Order Filings in 1999	21,066	21,066
Percent Domestic (Based on Marion County Estimates)	60%	60%
Estimated Number of Protective Order Filings for Domestic Violence Cases	12,640	12,640
Adjusted Number Paying Filing Fees Excluding Marion County Filings:	10,332	10,332
Fee Paid	\$35	\$35
Assumed Percent Paying	10%	20%
Estimated Loss of Court Fee Revenue	\$36,162	\$72,324
Loss of State Share of Court Fee Revenue at 70%	\$25,313	\$50,627
Loss of Local Share of Court Fee Revenue at 30%	\$10,849	\$21,697

Federal Funding: If the current statute is not amended to automatically waive filing fees and other charges when a protective order has been requested, the state and local programs would no longer be eligible for funding through the Office for Victims of Crime (OVC) under the Victims of Crime Act (VOCA). Between 1997 and 2000, Indiana received the following funds. These funds were used for providing financial assistance to local programs that assist victims of domestic abuse.

Year	1997	1998	1999	2000
Revenue Received	\$8,546,000	\$5,889,000	\$5,053,000	\$7,873,000

Provision E: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C felony is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Provision F: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$1,000.

Explanation of Local Expenditures: *Provision A* would add new protection orders that the local law enforcement agencies would have to enter. In addition, clerks of the circuit court would have to establish and maintain a file with protection orders issued by other states and Indian tribes. The added responsibilities for these offices will vary by county. Counties that border other states and perhaps urban counties will more likely have added protection orders from other states and Indian tribes.

Provision F: A Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Provision B:* Counties and municipal governments receive 30% of court fees. Consequently, the revenue loss to these entities would range between \$10,800 and \$21,700, as described in the table above. However, this bill would also prevent the potential revenue loss that local governments would experience if federal assistance for local programs which assist victims of domestic violence (described under state revenues) is eliminated.

The Marion County Small Claims Court has not issued protective orders in over 10 years. Consequently, repealing this fee for protective orders would cause no revenue loss to the Marion County Small Claims Court.

Provision E and F: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Criminal Justice Institute; Department of Correction; Indiana State Police, Division of State Court Administration; Legislative Services Agency.

Local Agencies Affected: Programs providing assistance to domestic abuse victims. Trial courts, local law enforcement agencies.

Information Sources: 1999 Indiana Judicial Report, Indiana Code, Criminal Justice Institute, Marion County Clerk of the Circuit Court, Indiana Sheriffs Association, Department of Correction.