

Adopted	Rejected
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# COMMITTEE REPORT

<b>YES:</b>	<b>11</b>
<b>NO:</b>	<b>0</b>

**MR. SPEAKER:**

*Your Committee on Courts and Criminal Code, to which was referred House Bill 1874, 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:*

- 1           Page 7, line 18, after "order" insert "**, if reasonably ascertainable**
- 2           **from the information received**".
- 3           Page 7, line 20, strike "and".
- 4           Page 7, between lines 21 and 22, begin a new line double block
- 5           indented and insert:
- 6           **"(E) the name of the petitioner and any other protected**
- 7           **parties;**
- 8           **(F) the Social Security number, date of birth, and physical**
- 9           **description of each person who is the subject of the Indiana**
- 10          **protection order, if reasonably ascertainable from the**
- 11          **information received;**
- 12          **(G) the date the Indiana protection order expires;**
- 13          **(H) a caution indicator stating whether a person who is the**
- 14          **subject of the Indiana protection order is believed to be**

1           **armed and dangerous, if reasonably ascertainable from the**  
 2           **information received; and**  
 3           **(I) if furnished, a Brady record indicator stating whether**  
 4           **a person who is the subject of the Indiana protection order**  
 5           **is prohibited from purchasing or possessing a firearm**  
 6           **under federal law, if reasonably ascertainable from the**  
 7           **information received;".**

8           Page 7, line 33, after "terminated" insert ",".

9           Page 7, line 33, strike "or expires,".

10          Page 9, line 24, delete "and".

11          Page 9, line 26, delete "whether",

12          Page 9, between lines 29 and 30, begin a new line double block  
 13 indented and insert:

14               **"(I) the name and identification number of the officer who**  
 15               **serves a foreign protection order, if reasonably**  
 16               **ascertainable from the information received; and**  
 17               **(J) the manner in which the foreign protection order is**  
 18               **served, if reasonably ascertainable from the information**  
 19               **received;".**

20          Page 10, line 3, after "terminated" delete "or expires".

21          Page 10, line 29, after "person" delete ",".

22          Page 10, line 29, after "person;" insert ", **except the**  
 23          **nonconfidential part of a petition for a protective order that is**  
 24          **prescribed or approved by the division of state court**  
 25          **administration under IC 34-26-2-2(2);".**

26          Page 11, delete lines 1 through 19, begin a new paragraph and  
 27 insert:

28               "SECTION 12. IC 33-11.6-4-15 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15. (a) **Subject to**  
 30 **subsection (c)**, the costs consist of:

31               (1) a township docket fee equal to five dollars (\$5) plus forty-five  
 32 percent (45%) of the infraction or ordinance violation costs fee  
 33 under IC 33-19-5-2;

34               (2) bailiff's service of process by registered or certified mail fee  
 35 of six dollars (\$6) for each service;

36               (3) the cost for the personal service of process by the bailiff or  
 37 other process server in the amount of eight dollars (\$8) for each  
 38 service, with the exception that:

- 1           (A) personal service to execute a warrant for a protective order  
 2           under IC 34-26-2 (or IC 34-4-5.1 before its repeal) shall cost  
 3           a fee of twelve dollars (\$12); and  
 4           (B) writs of restitution and writs of replevin shall cost a fee of  
 5           twelve dollars (\$12);  
 6           (4) witness fees, if any, in the amount provided by IC 33-19-1-6  
 7           to be taxed and charged in the circuit court of the county; and  
 8           (5) a redocketing fee, if any, of five dollars (\$5).

9           **Subject to subsection (c)**, the docket fee and the cost for the initial  
 10          service of process shall be paid upon the institution of each case.

11          **Subject to subsection (c)**, the cost of service rendered subsequent to  
 12          the initial service shall be assessed and paid after such service has been  
 13          made, and the cost of witness fees shall be paid before the witnesses  
 14          are called.

15          (b) If the amount of the township docket fee computed under  
 16          subsection (a)(1) is not equal to a whole number, the amount shall be  
 17          rounded to the next highest whole number.

18          **(c) The provisions of IC 33-19-4.5 (costs related to domestic  
 19          violence offenses) apply to a small claims court, bailiff, sheriff, and  
 20          witnesses to the same extent as if the small claims court were a  
 21          court listed in IC 33-19-1-1.**

22          SECTION 13. IC 33-17-1-11 IS AMENDED TO READ AS  
 23          FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) The clerk shall  
 24          provide each person filing a petition for the issuance of a protective  
 25          order under IC 34-26-2 without the assistance of an attorney the  
 26          following information:

- 27               (1) The procedure for obtaining a protective order.  
 28               (2) When a protective order becomes effective.  
 29               (3) Procedures to follow when a protective order is violated.  
 30               **(4) Information concerning the waiver of fees under  
 31               IC 33-19-2-6.**

32          (b) The information required under subsection (a) must be printed  
 33          in a manner that can be easily understood by a person who is not an  
 34          attorney.

35          (c) The attorney general shall develop an appropriate form to  
 36          provide the information referred to in subsection (a).

37          SECTION 14. IC 33-19-4.5 IS ADDED TO THE INDIANA CODE  
 38          AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE

1 JULY 1, 2001]:

2 **Chapter 4.5. Costs Related to Domestic Violence Offenses**

3 **Sec. 1. This chapter applies to a person who files a motion,**  
 4 **petition, or complaint with a court seeking a protective order or an**  
 5 **order to enforce a foreign protection order to protect the person**  
 6 **from any of the following:**

- 7 (1) Domestic violence.  
 8 (2) Sexual assault.  
 9 (3) Stalking.

10 **Sec. 2. (a) As used in this chapter, "domestic violence" means**  
 11 **conduct against a person who is a family or household member**  
 12 **that is prohibited by:**

- 13 (1) a misdemeanor or felony under the laws of the United  
 14 States, a state, or an Indian tribe that has as an element the  
 15 use, attempted use, or threatened use of physical force against  
 16 the person or property of another; or  
 17 (2) any other misdemeanor or felony under the laws of the  
 18 United States, a state, or an Indian tribe that, by its nature,  
 19 involves a substantial risk that physical force against the  
 20 person or property of another may be used in the course of  
 21 committing the offense;

22 **regardless of whether the conduct results in criminal prosecution**  
 23 **or the person who engages in the conduct is an adult.**

24 (b) The term does not include an act of self-defense.

25 **Sec. 3. For purposes of this chapter, a person is a family or**  
 26 **household member of another person if the person is any of the**  
 27 **following:**

- 28 (1) A spouse or former spouse of the other person.  
 29 (2) A person who has a child in common with the other  
 30 person.  
 31 (3) A person who is living or was living with the other person.  
 32 (4) A person who is dating or was dating the other person.  
 33 (5) A person who is having a sexual relationship or was having  
 34 a sexual relationship with the other person.  
 35 (6) The natural or adopted child of the other person.  
 36 (7) A person less than eighteen (18) years of age who is related  
 37 to a person described in subdivisions (1) through (6).

38 **Sec. 4. As used in this chapter, "foreign protection order" has**

1 the meaning set forth in IC 34-6-2-48.5.

2 Sec. 5. As used in this chapter, "Indian tribe" has the meaning  
3 set forth in IC 34-6-2-66.7.

4 Sec. 6. As used in this chapter, "protective order" has the  
5 meaning set forth for "protection order" in IC 34-6-2-121.6.

6 Sec. 7. As used in this chapter, "sexual assault" means conduct  
7 that is:

8 (1) prohibited by IC 35-42-4 (sex crimes), IC 35-44-7 (sexual  
9 misconduct by a service provider with a detainee), or  
10 IC 35-46-1-3 (incest);

11 (2) prohibited by a misdemeanor or felony under the laws of  
12 the United State, a state, or an Indian tribe that is  
13 substantially similar to an offense described in subdivision  
14 (1); or

15 (3) an attempt to engage in conduct described in subdivision  
16 (1) or (2);

17 regardless of whether the conduct results in criminal prosecution  
18 or the person who engages in the conduct is an adult.

19 Sec. 8. As used in this chapter, "stalking" means conduct that is:

20 (1) prohibited by IC 35-45-10-5 (stalking);

21 (2) prohibited by a misdemeanor or felony under the laws of  
22 the United State, a state, or an Indian tribe that is  
23 substantially similar to an offense described in subdivision  
24 (1); or

25 (3) an attempt to engage in conduct described in subdivision  
26 (1) or (2);

27 regardless of whether the conduct results in criminal prosecution  
28 or the person who engages in the conduct is an adult.

29 Sec. 9. Notwithstanding any other law, the clerk may not collect  
30 a fee or other reimbursement for the filing, issuance, registration,  
31 or service of any of the following:

32 (1) A warrant related to an action for a protective order or to  
33 enforce a foreign protection order.

34 (2) A motion, petition, or complaint for a protective order or  
35 to enforce a foreign protection order.

36 (3) A protective order or an order enforcing a foreign  
37 protection order.

38 (4) A witness subpoena related to an action for a protective

1           **order or to enforce a foreign protection order.**  
 2       **If a person seeks a protective order or an order enforcing a foreign**  
 3       **protection order as part of another proceeding, the clerk may not**  
 4       **collect a separate fee or reimbursement for the filing, issuance,**  
 5       **registration, or service of the papers described in subdivisions (1)**  
 6       **through (4).**

7           **Sec. 10. Prepayment of costs described in section 9 of this**  
 8       **chapter are not required if the person, or a person acting on the**  
 9       **person's behalf, alleges under oath or affirmation in the motion,**  
 10       **petition, or complaint seeking the protective order or order**  
 11       **enforcing a foreign protection order that the person is or fears that**  
 12       **the person will be a victim of domestic violence, sexual assault, or**  
 13       **stalking.**

14           **Sec. 11. Unless the court finds evidence of fraud, the court shall**  
 15       **waive the obligation that the person seeking the protective order or**  
 16       **order enforcing a foreign protection order would otherwise have**  
 17       **to pay the costs described in section 9 of this chapter if:**

18           **(1) the person, or another person acting on the person's**  
 19           **behalf, makes the allegations described in section 10 of this**  
 20           **chapter; or**

21           **(2) the court otherwise determines that the person is a person**  
 22           **seeking protection from domestic violence, sexual assault, or**  
 23           **stalking.**

24           **Sec. 12. This section does not prevent the collecting of costs from**  
 25       **a party against whom a protective order or order enforcing a**  
 26       **foreign protection order is sought."**

27           Page 11, line 32, after "\$100" delete "," and insert ".".

28           Page 11, line 32, strike "except as provided in subsection".

29           Page 11, line 32, delete "(b)," and insert "~~(b)~~".

30           Page 11, delete line 33.

31           Page 11, line 34, strike "(b)".

32           Page 11, line 34, delete "Subject to IC 34-26-2-4, for" and insert  
 33       **"For".**

34           Page 11, line 34, strike "each proceeding for the issuance".

35           Page 11, strike lines 35 through 42.

36           Page 12, strike lines 1 through 7.

37           Page 12, line 8, strike "(c)" and insert "**(b)**".

38           Page 12, delete lines 19 through 35.

- 1 Page 13, line 18, after "48.5" delete "and" and insert ",".
- 2 Page 13, line 18, after "71.7" insert ", and 121.6".
- 3 Page 14, line 12, after "121.6." insert "(a)".
- 4 Page 14, line 15, delete "under the domestic violence laws".
- 5 Page 14, line 16, after "in" insert ":".
- 6 Page 14, line 16, delete "violent or", begin new line block indented  
7 and insert:
- 8 **"(1) violent or threatening acts against;**
- 9 **(2) harassment of;**
- 10 **(3) contact or communication with; or**
- 11 **(4) physical proximity to;**
- 12 **another person, including temporary and final orders issued by**  
13 **civil and criminal courts.**
- 14 **(b) The term does not include a support or child custody order**  
15 **issued under the dissolution and child custody laws of a state or**  
16 **Indian tribe, except to the extent that the order is entitled to full**  
17 **faith and credit under a federal law other than 18 U.S.C. 2265.**
- 18 **(c) The term applies to an order regardless of whether the order**  
19 **is obtained by filing an independent action or as a pendente lite**  
20 **order in another proceeding if any civil order was issued in**  
21 **response to a complaint, petition, or motion filed by or on behalf of**  
22 **a person seeking protection."**
- 23 Page 14, delete lines 17 through 18.
- 24 Page 17, between lines 12 and 13, begin a new paragraph and insert:
- 25 "SECTION 36. IC 34-26-2-1 IS AMENDED TO READ AS  
26 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A person may  
27 petition any court of record **or a small claims court established under**  
28 **IC 33-11.6-1-3** for a protective order on behalf of that person or a  
29 member of the petitioner's household.
- 30 SECTION 3. IC 34-26-2-2 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. The petition:
- 32 (1) must include the name of the petitioner and the name and  
33 address (if known) of the respondent;
- 34 (2) must include, **on a separate or detachable nonconfidential**  
35 **form prescribed or approved by the division of state court**  
36 **administration:**
- 37 (A) any allegation concerning the date or manner of specific  
38 acts or feared acts of abuse, harassment, or disruption of the

- 1 peace of the petitioner or members of the petitioner's  
 2 household or any allegations concerning specific damage to or  
 3 the fear of damage to any property of the petitioner; **and**  
 4 **(B) if the petitioner is requesting that the respondent**  
 5 **refrain from entering or damaging real property, an**  
 6 **indication of whether the petitioner knows or believes that**  
 7 **the petitioner and the respondent are disputing who owns,**  
 8 **or has a lease or easement to use, the real property;**  
 9 (3) must include a request that, if the court grants the protective  
 10 order, the court shall order the respondent:  
 11 (A) to refrain from abusing, harassing, or disturbing the peace  
 12 of the petitioner, by either direct or indirect contact;  
 13 (B) to refrain from abusing, harassing, or disturbing the peace  
 14 of a member of the petitioner's household, by either direct or  
 15 indirect contact;  
 16 (C) to refrain from entering the property of the petitioner,  
 17 jointly owned or leased property of the petitioner and  
 18 respondent if the respondent is not the sole owner or lessee, or  
 19 any other property as specifically described in the petition;  
 20 (D) to refrain from damaging any property of the petitioner;  
 21 (E) if the petitioner and respondent are married and if a  
 22 proceeding for dissolution of marriage or legal separation is  
 23 not pending:  
 24 (i) to be evicted from the dwelling of the petitioner if the  
 25 respondent is not the sole owner or lessee of the petitioner's  
 26 dwelling;  
 27 (ii) to not transfer, encumber, damage, conceal, or otherwise  
 28 dispose of property jointly owned with the petitioner or that  
 29 is an asset of the marriage;  
 30 (iii) to pay child support to the custodian of any minor  
 31 children of the parties alone or with the other party;  
 32 (iv) to pay maintenance to the other party; or  
 33 (v) to perform a combination of acts listed in items (i)  
 34 through (iv);  
 35 (4) must be sworn to by the petitioner;  
 36 (5) must include a request that the court set a date for a protective  
 37 order hearing under this chapter;  
 38 (6) must be accompanied by a confidential form concerning



1 protective orders prescribed or approved by the division of state  
2 court administration; and  
3 (7) may include a request that the court order counseling or other  
4 social services, including domestic violence education, for the  
5 petitioner, the respondent, or both."

6 Page 17, line 14, delete "A petitioner is" and insert "**The court:**  
7 **(1) shall order the clerk of the court to waive any filing fees**  
8 **required for a proceeding under this chapter if IC 33-19-4.5**  
9 **applies; and**  
10 **(2) may order filing fees to be paid by the respondent after a**  
11 **hearing held under this chapter."**

12 Page 17, delete lines 15 through 27.

13 Page 17, delete lines 35 through 42.

14 Page 18, delete lines 1 through 16.

15 Page 18, between lines 16 and 17, begin a new paragraph and insert:  
16 "SECTION 33. IC 34-26-2-6 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. **(a)** The emergency  
18 protective order issued under section 5 of this chapter may direct the  
19 respondent to refrain from:

- 20 (1) abusing, harassing, or disturbing the peace of the petitioner by
- 21 either direct or indirect contact;
- 22 (2) abusing, harassing, or disturbing the peace of a member of the
- 23 petitioner's household, by either direct or indirect contact;
- 24 (3) entering the property of the petitioner or any other property as
- 25 specifically described in the petition; or
- 26 (4) damaging any property of the petitioner.

27 **(b) If the court determines on the face of the petition that the**  
28 **petition for a protective order arises out of a dispute over who**  
29 **owns, or has a lease or an easement to use, real property, the court**  
30 **may:**

- 31 **(1) issue an emergency protective order under subsection (a)**
- 32 **without an order under subsection (a)(3); or**
- 33 **(2) deny the emergency protective order, if the likelihood of**
- 34 **future abuse or harassment is insubstantial.**

35 SECTION 34. IC 34-26-2-11 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) When a petition  
37 is filed, the clerk shall issue a summons to appear at a hearing to the  
38 respondent that:

- 1 (1) gives notice of the date, time, and place of the hearing; and
- 2 (2) informs the respondent that the respondent must appear before
- 3 the court to answer the petition.

4 (b) The clerk shall serve the respondent with:

- 5 (1) the summons to appear; **and**
- 6 **(2) a copy of the nonconfidential for submitted as part of the**
- 7 **petition under section 2(2) of this chapter;**

8 in accordance with Rule 4.1 of the Rules of Trial Procedure.

9 **(c) Before complying with subsection (b)(2), the clerk shall**  
10 **separate the nonconfidential form submitted under section 2(2) of**  
11 **this chapter from the remainder of the petition.**

12 SECTION 35. IC 34-26-2-12, AS AMENDED BY P.L.14-2000,  
13 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14 JULY 1, 2002]: Sec. 12. (a) A court shall set a date for a hearing  
15 concerning a petition described in section 2 of this chapter not more  
16 than thirty (30) days after the date the petition is filed with the court.  
17 At the hearing, if at least one (1) of the allegations described in the  
18 petition is proved by a preponderance of the evidence, the court:

- 19 (1) shall order the respondent:
  - 20 (A) to refrain from abusing, harassing, or disturbing the peace
  - 21 of the petitioner, by either direct or indirect contact;
  - 22 (B) to refrain from abusing, harassing, or disturbing the peace
  - 23 of a member of the petitioner's household, by either direct or
  - 24 indirect contact;
  - 25 (C) to refrain from entering the property of the petitioner,
  - 26 jointly owned or leased property of the petitioner and the
  - 27 respondent if the respondent is not the sole owner or lessee, or
  - 28 any other property as specifically described in the petition;
  - 29 (D) to refrain from damaging any property of the petitioner;
  - 30 and
  - 31 (E) if the petitioner and respondent are married and if a
  - 32 proceeding for dissolution of marriage or legal separation is
  - 33 not pending:
    - 34 (i) to be evicted from the dwelling of the petitioner if the
    - 35 respondent is not the sole owner or lessee of the petitioner's
    - 36 dwelling;
    - 37 (ii) to not transfer, encumber, damage, conceal, or otherwise
    - 38 dispose of property jointly owned with the petitioner or that

- 1 is an asset of the marriage;
- 2 (iii) to pay child support to the custodian of any minor
- 3 children of the parties alone or with the other party;
- 4 (iv) to pay maintenance to the other party; or
- 5 (v) to perform a combination of the acts described in items
- 6 (i) through (iv);

7 (2) may order the respondent to refrain from possessing a firearm  
 8 (as defined in IC 35-47-1-5) during a period not longer than the  
 9 period that the respondent is under the protective order if the  
 10 court finds by clear and convincing evidence that the respondent  
 11 poses a significant threat of inflicting serious bodily injury to the  
 12 petitioner or a member of the petitioner's household or family; and  
 13 (3) may order counseling or other social services, including  
 14 domestic violence education, for the petitioner or the respondent,  
 15 or both, and may order the respondent to pay the costs of  
 16 obtaining counseling or other social services for the petitioner or  
 17 the respondent, or both.

18 If the court prohibits the respondent from possessing a firearm under  
 19 subdivision (2), the court shall notify the state police department of the  
 20 restriction. The court may also order the confiscation under IC 35-47-3  
 21 of any firearms that the court finds the respondent to possess during the  
 22 period that the protective order is in effect.

23 **(b) If the court determines that the petition for a protective**  
 24 **order arises out of a dispute over who owns, or has a lease or an**  
 25 **easement to use, real property, the court may:**

- 26 **(1) issue a protective order under subsection (a) without an**
- 27 **order under subsection (a)(1)(C) or (a)(1)(D), or both; or**
- 28 **(2) deny the petition for a protective order, if the likelihood of**
- 29 **future abuse or harassment against a petitioner is**
- 30 **insubstantial.**

31 SECTION 36. IC 34-26-2-18 IS ADDED TO THE INDIANA  
 32 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 33 [EFFECTIVE JULY 1, 2001]: **Sec. 18. If a respondent is ordered to**  
 34 **stay away from a petitioner, an invitation by a petitioner to a**  
 35 **petitioner's residence or other place where a petitioner is located,**  
 36 **does not:**

- 37 **(1) allow the respondent to go to the residence or other place**
- 38 **where a petitioner is located; or**

1           **(2) waive or nullify any relief provided by the court in the**  
2           **order of protection."**

3           Page 19, line 27, delete "No" and insert "**If IC 33-19-4.5 applies to**  
4           **the protected individual, no"**.

5           Page 29, line 25, after "clerks;" insert "**and**

6           **(3) approve or prescribe nonconfidential forms required**  
7           **under IC 34-26-2-2(2), as amended by this act;"**.

8           Page 29 line 26, after "2001." insert "**The forms described in**  
9           **subdivision (3) must be designed with a format that allows for the**  
10          **easy separation of confidential information concerning the**  
11          **petitioner from information that a respondent needs to prepare a**  
12          **defense to the allegations raised by the petition."**

13          Page 29, between lines 26 and 27, and begin a new paragraph and  
14          insert:

15          **"(b) IC 5-2-9-7, IC 34-26-2-2, IC 34-26-2-6, IC 34-26-2-11, and**  
16          **IC 34-26-2-12, all as amended by this act, apply only to petitions**  
17          **for issuance of a protective order filed with a court after June 30,**  
18          **2001.**

19          **(c) The legislative council shall appoint an interim study**  
20          **commission on criminal law to make a study of the protective**  
21          **orders issued for crimes of domestic and family violence.**

22          **(d) The legislative council is urged to assign the study of**  
23          **protective orders issued for crimes of domestic and family violence**  
24          **to the interim study commission on criminal law. The study shall**  
25          **be completed before the commencement of the 2002 legislative**  
26          **session.**

27          **(e) The interim study commission on criminal law shall operate**  
28          **under the direction of the legislative council, and shall issue a final**  
29          **report when directed to do so by the council.**

30          **(f) The affirmative votes of a majority of the members**  
31          **appointed to the commission are required for the commission to**  
32          **take any official action, including final reports.**

33          **(g) Notwithstanding IC 5-2-5-12(a)(5), the state police**  
34          **department has until January 1, 2002 to modify its computer**  
35          **system to allow for the entry of foreign protection orders into the**

- 1 **Indiana data and communication system (IDACS).".**
- 2 Page 29, line 27, delete "(b)" and insert "(g)".
- 3 Renumber all SECTIONS consecutively.  
(Reference is to HB 1874 as introduced.)

**and when so amended that said bill do pass.**

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Representative Dvorak