
SENATE BILL No. 479

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-9; IC 31-9-2; IC 31-14-16-1; IC 31-15; IC 34-6-2; IC 34-26; IC 35-38-1-7.1; IC 35-41-1-10.6.

Synopsis: Protective orders. Requires the clerk of a court that issues a workplace violence restraining order to provide a copy of the order and the confidential sheet to the employer. Requires the division of state court administration to develop and adopt forms for no contact orders and workplace violence restraining orders. Amends the definitions of: (1) domestic or family violence; (2) family or household member; (3) employee; and (4) employer. Requires certain language to appear on a protective order, no contact order, and workplace violence restraining order. Provides that a parent in a paternity or divorce proceeding may request a protective order against the other parent from the court in which the paternity or divorce matter is pending. Provides that a court may issue certain types of relief in a protective order before a hearing. Provides that a court may consider violation of a no contact order or a workplace violence restraining order in determining the sentence to impose for a crime.

Effective: July 1, 2003.

Clark

January 21, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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SENATE BILL No. 479



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 5-2-9-1.7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 1.7. As used in this chapter, "protected person"**
4 **means a person or an employer (as defined in IC 34-26-6-4)**
5 **protected under a protective order, a no contact order, or a**
6 **workplace violence restraining order.**

7 SECTION 2. IC 5-2-9-6, AS AMENDED BY P.L.133-2002,
8 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2003]: Sec. 6. (a) The clerk of a court that issues a protective
10 order, no contact order, or workplace violence restraining order shall
11 provide a copy of the order to the following:

- 12 (1) Each party.
- 13 (2) A law enforcement agency of the municipality in which the
14 **protected person protected by the protective order, no contact**
15 **order, or workplace violence restraining order resides. If a person**
16 **and employer are:**
17 (A) **both protected by an order under this section; and**



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**(B) domiciled in different municipalities;
the clerk shall send a copy of the order to the law enforcement
agency of the municipality in which the person resides and the
employer is located.**

~~(3) If the protected person, protected by the protective order, no
contact order, or workplace violence restraining order does
including an employer, is not reside domiciled in a municipality,
the sheriff of the county in which the protected person resides.~~

(b) The clerk of a court that issues a protective order, no contact
order, or workplace violence restraining order or the clerk of a court in
which a petition is filed shall:

(1) maintain a confidential file to secure any confidential
information about a protected person designated on a uniform
statewide form prescribed by the division of state court
administration; ~~and~~

(2) provide a copy of the confidential form that accompanies the
protective order, no contact order, or workplace violence
restraining order to the following:

(A) The sheriff of the county in which the protective order, no
contact order, or workplace violence restraining order was
issued.

(B) The law enforcement agency of the municipality, if any, in
which the protected person, ~~resides:~~ **including an employer,
is domiciled.**

(C) Any other sheriff or law enforcement agency designated in
the protective order, no contact order, or workplace violence
restraining order that has jurisdiction over the area in which a
protected person, **including an employer,** may be located or
protected; **and**

**(3) after receiving the return of service information, transmit
all return of service information to each sheriff and law
enforcement agency required under subsection (b)(2).**

(c) A sheriff or law enforcement agency that receives a protective
order, no contact order, or workplace violence restraining order under
subsection (a) and a confidential form under subsection (b) shall:

(1) maintain a copy of the protective order, no contact order, or
workplace violence restraining order in the depository established
under this chapter;

(2) enter:

(A) the date and time the sheriff or law enforcement agency
receives the protective order, no contact order, or workplace
violence restraining order;

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- 1 (B) the location of the person who is subject to the protective
 2 order, no contact order, or workplace violence restraining
 3 order, if reasonably ascertainable from the information
 4 received;
- 5 (C) the name and identification number of the officer who
 6 serves the protective order, no contact order, or workplace
 7 violence restraining order;
- 8 (D) the manner in which the protective order, no contact order,
 9 or workplace violence restraining order is served;
- 10 (E) the name of the petitioner and any other protected parties;
- 11 (F) the name, Social Security number, date of birth, and
 12 physical description of the person who is the subject of the
 13 protective order, no contact order, or workplace violence
 14 restraining order, if reasonably ascertainable from the
 15 information received;
- 16 (G) the date the protective order, no contact order, or
 17 workplace violence restraining order expires;
- 18 (H) a caution indicator stating whether a person who is the
 19 subject of the protective order, no contact order, or workplace
 20 violence restraining order is believed to be armed and
 21 dangerous, if reasonably ascertainable from the information
 22 received; and
- 23 (I) if furnished, a Brady record indicator stating whether a
 24 person who is the subject of the protective order, no contact
 25 order, or workplace violence restraining order is prohibited
 26 from purchasing or possessing a firearm or ammunition under
 27 federal law, if reasonably ascertainable from the information
 28 received;
- 29 on the copy of the protective order, no contact order, or workplace
 30 violence restraining order or the confidential form; and
- 31 (3) establish a confidential file in which a confidential form that
 32 contains information concerning a protected person is kept.
- 33 (d) A protective order, no contact order, or workplace violence
 34 restraining order may be removed from the depository established
 35 under this chapter only if the sheriff or law enforcement agency that
 36 administers the depository receives:
- 37 (1) a notice of termination on a form prescribed or approved by
 38 the division of state court administration;
- 39 (2) an order of the court; or
- 40 (3) a notice of termination and an order of the court.
- 41 (e) If a protective order, no contact order, or workplace violence
 42 restraining order in a depository established under this chapter is

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1 terminated, the person who obtained the order must file a notice of
 2 termination on a form prescribed or approved by the division of state
 3 court administration with the clerk of the court. The clerk of the court
 4 shall provide a copy of the notice of termination of a protective order,
 5 no contact order, or workplace violence restraining order to each of the
 6 depositories to which the protective order, no contact order, or
 7 workplace violence restraining order and a confidential form were sent.
 8 The clerk of the court shall maintain the notice of termination in the
 9 court's file.

10 (f) If a protective order, no contact order, or workplace violence
 11 restraining order or form in a depository established under this chapter
 12 is extended or modified, the person who obtained the extension or
 13 modification must file a notice of extension or modification on a form
 14 prescribed or approved by the division of state court administration
 15 with the clerk of the court. The clerk of the court shall provide a copy
 16 of the notice of extension or modification of a protective order, no
 17 contact order, or workplace violence restraining order to each of the
 18 depositories to which the order and a confidential form were sent. The
 19 clerk of the court shall maintain the notice of extension or modification
 20 of a protective order, no contact order, or workplace violence
 21 restraining order in the court's file.

22 (g) The clerk of a court that issued an order terminating a protective
 23 order, no contact order, or workplace violence restraining order that is
 24 an ex parte order shall provide a copy of the order to the following:

25 (1) Each party.

26 (2) The law enforcement agency provided with a copy of a
 27 protective order, no contact order, or workplace violence
 28 restraining order under subsection (a).

29 SECTION 3. IC 31-9-2-42, AS AMENDED BY P.L.133-2002,
 30 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2003]: Sec. 42. "Domestic or family violence" means, except
 32 for an act of self defense, the occurrence of one (1) or more of the
 33 following acts committed by a family or household member:

34 (1) Attempting to cause, threatening to cause, or causing physical
 35 harm to another family or household member without legal
 36 justification.

37 (2) Placing a family or household member in fear of physical
 38 harm without legal justification.

39 (3) Causing a family or household member to involuntarily
 40 engage in sexual activity by force, threat of force, or duress.

41 For purposes of IC 34-26-5, domestic and family violence also includes
 42 stalking (as defined in IC 35-45-10-1) or a sex offense under

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1 IC 35-42-4 **whether or not the stalking or sex offense is committed**
 2 **by a family or household member.**

3 SECTION 4. IC 31-9-2-44.5, AS ADDED BY P.L.133-2002,
 4 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2003]: Sec. 44.5. "Family or household member" means:

- 6 (1) a person who is a current or former spouse;
 7 (2) a person who is dating or has dated;
 8 (3) a person who is engaged or was engaged in a sexual
 9 relationship;
 10 (4) **a person who cohabits or previously cohabited with**
 11 **another person;**
 12 (5) a person who is related by blood or adoption;
 13 ~~(5)~~ (6) a person who is related or was related by marriage;
 14 ~~(6)~~ (7) a person who has an established legal relationship or
 15 previously established a legal relationship:
 16 (A) as a guardian;
 17 (B) as a ward;
 18 (C) as a custodian;
 19 (D) as a foster parent; or
 20 (E) in a capacity similar to those listed in clauses (A) through
 21 (D);
 22 ~~(7)~~ (8) a person who has a child in common; and
 23 ~~(8)~~ (9) a minor child of a person in a relationship described in
 24 subdivisions (1) through ~~(7)~~: (8).

25 SECTION 5. IC 31-14-16-1, AS AMENDED BY P.L.133-2002,
 26 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2003]: Sec. 1. A parent may request a court to issue a
 28 protective order against the other parent to prevent domestic or family
 29 violence at any time after a final decree of paternity is issued under this
 30 article (or IC 31-6-6.1 before its repeal) if the parties have an
 31 unemancipated child. The parent must file a petition under IC 34-26-5
 32 in a ~~pending case~~, **the court in which the case is pending**, and the
 33 court may not require the moving party to give security. If the petitioner
 34 requests an ex parte protective order, the court shall immediately:

- 35 (1) review the request; and
 36 (2) if required, set a hearing;

37 under IC 34-26-5. The procedure and law for a proceeding under this
 38 section are controlled by IC 34-26-5.

39 SECTION 6. IC 31-15-4-1, AS AMENDED BY P.L.133-2002,
 40 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2003]: Sec. 1. (a) In an action for dissolution of marriage
 42 under IC 31-15-2 or legal separation under IC 31-15-3, either party



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1 may file a motion for any of the following:

- 2 (1) Temporary maintenance.
 3 (2) Temporary support or custody of a child of the marriage
 4 entitled to support.
 5 (3) Possession of property.
 6 (4) Counseling.
 7 (5) A protective order under IC 34-26-5.

8 (b) If a party desires a protective order under subsection (a)(5), the
 9 party must file a petition under IC 34-26-5 in a ~~pending case~~, **the court**
 10 **in which the case is pending**, and the court may not require the
 11 moving party to give security. If the petitioner requests an ex parte
 12 protective order, the court shall immediately:

- 13 (1) review the request; and
 14 (2) if required, set a hearing;

15 under IC 34-26-5. The procedure and law for a proceeding under this
 16 subsection are controlled by IC 34-26-5.

17 SECTION 7. IC 31-15-5-1, AS AMENDED BY P.L.133-2002,
 18 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2003]: Sec. 1. Either party may request a protective order to
 20 prevent domestic or family violence at any time during the dissolution
 21 of marriage or legal separation action by filing a petition under
 22 IC 34-26-5 ~~with in~~ the court in **which the case is pending**. ~~case~~. The
 23 court may not require the moving party to give security. If the petitioner
 24 requests an ex parte protective order, the court shall immediately:

- 25 (1) review the request; and
 26 (2) if required, set a hearing;

27 under IC 34-26-5. The procedure and law for a proceeding under this
 28 section are controlled by IC 34-26-5.

29 SECTION 8. IC 34-6-2-34.5, AS ADDED BY P.L.133-2002,
 30 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2003]: Sec. 34.5. "Domestic or family violence" means,
 32 except for an act of self-defense, the occurrence of at least one (1) of
 33 the following acts committed by a family or household member:

- 34 (1) Attempting to cause, threatening to cause, or causing physical
 35 harm to another family or household member.
 36 (2) Placing a family or household member in fear of physical
 37 harm.
 38 (3) Causing a family or household member to involuntarily
 39 engage in sexual activity by force, threat of force, or duress.

40 For purposes of IC 34-26-5, domestic and family violence also includes
 41 stalking (as defined in IC 35-45-10-1) or a sex offense under
 42 IC 35-42-4 **whether or not the stalking or sex offense is committed**

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1 **by a family or household member.**

2 SECTION 9. IC 34-6-2-44.8, AS ADDED BY P.L.133-2002,
3 SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2003]: Sec. 44.8. "Family or household member" means:

- 5 (1) a person who is a current or former spouse;
6 (2) a person who is dating or has dated;
7 (3) a person who is engaged or was engaged in a sexual
8 relationship;

9 **(4) a person who cohabits or previously cohabited with
10 another person;**

11 ~~(4)~~ **(5)** a person who is related by blood or adoption;

12 ~~(5)~~ **(6)** a person who is related or was related by marriage;

13 ~~(6)~~ **(7)** a person who has an established legal relationship or
14 previously established a legal relationship:

15 (A) as a guardian;

16 (B) as a ward;

17 (C) as a custodian;

18 (D) as a foster parent; or

19 (E) in a capacity similar to those listed in clauses (A) through
20 (D);

21 ~~(7)~~ **(8)** a person who has a child in common; and

22 ~~(8)~~ **(9)** a minor child of a person in a relationship described in
23 subdivisions (1) through ~~(7)~~: **(8)**.

24 SECTION 10. IC 34-26-5-3, AS ADDED BY P.L.133-2002,
25 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2003]: Sec. 3. (a) The division of state court administration
27 shall:

28 (1) develop and adopt:

29 (A) a petition for an order for protection;

30 (B) an order for protection, including:

31 (i) orders issued under this chapter;

32 (ii) ex parte orders; ~~and~~

33 (iii) no contact orders under IC 31 and IC 35; ~~and~~

34 **(iv) forms relating to workplace violence restraining
35 orders under IC 34-26-6;**

36 (C) a confidential ~~sheet~~; ~~form~~;

37 (D) a notice of modification or extension for an order for
38 protection, ~~a no contact order, or a workplace violence
39 restraining order;~~

40 (E) a notice of termination for an order for protection, ~~a no
41 contact order, or a workplace violence restraining order;~~
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(F) any other uniform statewide forms necessary to maintain an accurate registry of orders; and
(2) provide the forms under subdivision (1) to the clerk of each court authorized to issue the orders.

(b) In addition to any other required information, a petition for an order for protection must contain a statement listing each civil or criminal action involving:

- (1) either party; or
- (2) a child of either party.

(c) The following statements must be printed in boldface type or in capital letters on an order for protection, **a no contact order, or a workplace violence restraining order:**

VIOLATION OF THIS ORDER IS PUNISHABLE BY CONFINEMENT IN JAIL, PRISON, AND/OR A FINE. IF SO ORDERED BY THE COURT, THE RESPONDENT IS FORBIDDEN TO ENTER OR STAY AT THE PETITIONER'S RESIDENCE, EVEN IF INVITED TO DO SO BY THE PETITIONER OR ANY OTHER PERSON. IN NO EVENT IS THE ORDER FOR PROTECTION VOIDED. PURSUANT TO 18 U.S.C. 2265, THIS ORDER FOR PROTECTION SHALL BE GIVEN FULL FAITH AND CREDIT IN ANY OTHER STATE OR TRIBAL LAND AND SHALL BE ENFORCED AS IF IT WERE AN ORDER ISSUED IN THAT STATE OR TRIBAL LAND. PURSUANT TO 18 U.S.C. 922(g), ONCE A RESPONDENT HAS RECEIVED NOTICE OF THIS ORDER AND AN OPPORTUNITY TO BE HEARD, IT IS A FEDERAL VIOLATION TO PURCHASE, RECEIVE, OR POSSESS A FIREARM WHILE SUBJECT TO THIS ORDER IF THE PROTECTED PERSON IS:

- (A) THE RESPONDENT'S CURRENT OR FORMER SPOUSE;**
- (B) A CURRENT OR FORMER PERSON WITH WHOM THE RESPONDENT RESIDED WHILE IN AN INTIMATE RELATIONSHIP; OR**
- (C) A PERSON WITH WHOM THE RESPONDENT HAS A CHILD.**

INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES UNDER 18 U.S.C. 2261 AND 18 U.S.C. 2262.

(d) The clerk of the circuit court, or a person or entity designated by the clerk of the circuit court, shall provide to a person requesting an order for protection:

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- 1 (1) the forms adopted under subsection (a);
 2 (2) all other forms required to petition for an order for protection,
 3 including forms:
 4 (A) necessary for service; and
 5 (B) required under IC 31-17-3; and
 6 (3) clerical assistance in reading or completing the forms and
 7 filing the petition.

8 Clerical assistance provided by the clerk or court personnel under this
 9 section does not constitute the practice of law. The clerk of the circuit
 10 court may enter into a contract with a person or another entity to
 11 provide this assistance.

12 (e) A petition for an order for protection must be:

- 13 (1) verified or under oath under Trial Rule 11; and
 14 (2) issued on the forms adopted under subsection (a).

15 (f) If an order for protection is issued under this chapter, the clerk
 16 shall comply with IC 5-2-9.

17 SECTION 11. IC 34-26-5-6, AS ADDED BY P.L.133-2002,
 18 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2003]: Sec. 6. The following rules apply to an order for
 20 protection issued under this chapter:

- 21 (1) An order for protection is in addition to, and not instead of,
 22 another available civil or criminal proceeding.
 23 (2) A petitioner is not barred from seeking an order because of
 24 another pending proceeding.
 25 (3) A court may not delay granting relief because of the existence
 26 of a pending action between the petitioner and respondent.
 27 (4) If a person who petitions for an ex parte order for protection
 28 also has a pending case involving:

- 29 (A) the respondent; or
 30 (B) a child of the petitioner and respondent;

31 the court that has been petitioned for relief shall immediately
 32 consider the ex parte petition and then transfer that matter to the
 33 court in which the other case is pending.

34 **(5) If a person files a petition for an order of protection**
 35 **requesting relief that:**

- 36 **(A) does not require a hearing under sections 9(b) and**
 37 **10(a) of this chapter; and**
 38 **(B) requires a hearing under sections 9(c) and 10(b) of this**
 39 **chapter;**

40 **the court may issue an ex parte order for protection providing**
 41 **relief under clause (A) at any time before the required**
 42 **hearing under clause (B).**

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1 SECTION 12. IC 34-26-5-7, AS ADDED BY P.L.133-2002,
 2 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2003]: Sec. 7. A petitioner may omit the petitioner's address
 4 from all nonconfidential documents filed with a court. However, a
 5 petitioner must provide the court with complete information concerning
 6 the protected address on the uniform statewide confidential ~~sheet form~~
 7 and on other confidential forms developed by the division of state court
 8 administration under section 3 of this chapter. A petitioner shall also
 9 provide the clerk with a public mailing address for purposes of serving
 10 pleadings, notices, and court orders. The petitioner may use the address
 11 confidentiality program under IC 5-26.5. If disclosure of a petitioner's
 12 address is necessary to determine jurisdiction or to consider venue, the
 13 court may order the disclosure to be made:

- 14 (1) after receiving a petitioner's consent;
- 15 (2) orally in the judge's chambers and out of the presence of a
 16 respondent with a sealed record made; or
- 17 (3) after a hearing in which the court considers the safety of a
 18 petitioner and finds that disclosure of the address is in the interest
 19 of justice.

20 SECTION 13. IC 34-26-6-3, AS ADDED BY P.L.133-2002,
 21 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2003]: Sec. 3. As used in this chapter, "employee" means:

- 23 (1) **an employee (as defined in IC 22-2-2-3); a person employed**
 24 **or permitted to work or perform a service for remuneration;**
- 25 (2) a member of a board of directors for a private, public, or
 26 quasi-public corporation;
- 27 (3) an elected or appointed public officer; and
- 28 (4) a volunteer or an independent contractor who performs
 29 services for an employer at the employer's place of work.

30 SECTION 14. IC 34-26-6-4, AS ADDED BY P.L.133-2002,
 31 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2003]: Sec. 4. As used in this chapter, "employer" means:

- 33 (1) a person (~~as defined as an employer under IC 22-2-2-3; in~~
 34 **IC 33-2.1-8-1) that has two (2) or more employees during any**
 35 **work week;**
- 36 (2) a federal agency;
- 37 (3) the state;
- 38 ~~(4) a state agency;~~
- 39 ~~(5) a city;~~
- 40 ~~(6) a county;~~
- 41 ~~(7) (4) a private, public, or quasi-public corporation or a public~~
 42 ~~agency; and~~

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1 ~~(8)~~ **(5)** a public agency operating wholly within or as part of a
 2 public or quasi-public corporation.
 3 SECTION 15. IC 34-26-6-14, AS ADDED BY P.L.133-2002,
 4 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2003]: Sec. 14. A filing fee may not be charged for a petition
 6 that alleges that a person has:
 7 (1) inflicted or threatened violence against an employee of the
 8 ~~petitioner;~~ **plaintiff;**
 9 (2) stalked an employee of the ~~petitioner;~~ **plaintiff;** or
 10 (3) spoken in a manner that has placed an employee in reasonable
 11 fear of violence;
 12 and that seeks a temporary restraining order or an injunction to restrain
 13 future violence or threats of violence. A filing fee may not be charged
 14 for a responsive pleading described under section 8 of this chapter.
 15 SECTION 16. IC 35-38-1-7.1, AS AMENDED BY P.L.133-2002,
 16 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2003]: Sec. 7.1. (a) In determining what sentence to impose
 18 for a crime, the court shall consider:
 19 (1) the risk that the person will commit another crime;
 20 (2) the nature and circumstances of the crime committed;
 21 (3) the person's:
 22 (A) prior criminal record;
 23 (B) character; and
 24 (C) condition;
 25 (4) whether the victim of the crime was less than twelve (12)
 26 years of age or at least sixty-five (65) years of age;
 27 (5) whether the person committed the offense in the presence or
 28 within hearing of a person who is less than eighteen (18) years of
 29 age who was not the victim of the offense;
 30 (6) whether the person violated a protective order issued against
 31 the person under ~~IC 31-15, IC 31-16, or~~ IC 34-26-5 (or
 32 IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), **a**
 33 **workplace violence restraining order issued against the**
 34 **person under IC 34-26-6, or a no contact order issued against**
 35 **the person;** and
 36 (7) any oral or written statement made by a victim of the crime.
 37 (b) The court may consider the following factors as aggravating
 38 circumstances or as favoring imposing consecutive terms of
 39 imprisonment:
 40 (1) The person has recently violated the conditions of any
 41 probation, parole, or pardon granted to the person.
 42 (2) The person has a history of criminal or delinquent activity.

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- 1 (3) The person is in need of correctional or rehabilitative
- 2 treatment that can best be provided by commitment of the person
- 3 to a penal facility.
- 4 (4) Imposition of a reduced sentence or suspension of the
- 5 sentence and imposition of probation would depreciate the
- 6 seriousness of the crime.
- 7 (5) The victim of the crime was less than twelve (12) years of age
- 8 or at least sixty-five (65) years of age.
- 9 (6) The victim of the crime was mentally or physically infirm.
- 10 (7) The person committed a forcible felony while wearing a
- 11 garment designed to resist the penetration of a bullet.
- 12 (8) The person committed a sex crime listed in subsection (e) and:
- 13 (A) the crime created an epidemiologically demonstrated risk
- 14 of transmission of the human immunodeficiency virus (HIV)
- 15 and involved the sex organ of one (1) person and the mouth,
- 16 anus, or sex organ of another person;
- 17 (B) the person had knowledge that the person was a carrier of
- 18 HIV; and
- 19 (C) the person had received risk counseling as described in
- 20 subsection (g).
- 21 (9) The person committed an offense related to controlled
- 22 substances listed in subsection (f) if:
- 23 (A) the offense involved:
- 24 (i) the delivery by any person to another person; or
- 25 (ii) the use by any person on another person;
- 26 of a contaminated sharp (as defined in IC 16-41-16-2) or other
- 27 paraphernalia that creates an epidemiologically demonstrated
- 28 risk of transmission of HIV by involving percutaneous contact;
- 29 (B) the person had knowledge that the person was a carrier of
- 30 the human immunodeficiency virus (HIV); and
- 31 (C) the person had received risk counseling as described in
- 32 subsection (g).
- 33 (10) The person committed the offense in an area of a
- 34 consolidated or second class city that is designated as a public
- 35 safety improvement area by the Indiana criminal justice institute
- 36 under IC 36-8-19.5.
- 37 (11) The injury to or death of the victim of the crime was the
- 38 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 39 (12) Before the commission of the crime, the person administered
- 40 to the victim of the crime, without the victim's knowledge, a
- 41 sedating drug or a drug that had a hypnotic effect on the victim,
- 42 or the person had knowledge that such a drug had been

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1 administered to the victim without the victim's knowledge.
 2 (13) The person:
 3 (A) committed trafficking with an inmate under IC 35-44-3-9;
 4 and
 5 (B) is an employee of the penal facility.
 6 (14) The person committed the offense in the presence or within
 7 hearing of a person who is less than eighteen (18) years of age
 8 who was not the victim of the offense.
 9 (c) The court may consider the following factors as mitigating
 10 circumstances or as favoring suspending the sentence and imposing
 11 probation:
 12 (1) The crime neither caused nor threatened serious harm to
 13 persons or property, or the person did not contemplate that it
 14 would do so.
 15 (2) The crime was the result of circumstances unlikely to recur.
 16 (3) The victim of the crime induced or facilitated the offense.
 17 (4) There are substantial grounds tending to excuse or justify the
 18 crime, though failing to establish a defense.
 19 (5) The person acted under strong provocation.
 20 (6) The person has no history of delinquency or criminal activity,
 21 or the person has led a law-abiding life for a substantial period
 22 before commission of the crime.
 23 (7) The person is likely to respond affirmatively to probation or
 24 short term imprisonment.
 25 (8) The character and attitudes of the person indicate that the
 26 person is unlikely to commit another crime.
 27 (9) The person has made or will make restitution to the victim of
 28 the crime for the injury, damage, or loss sustained.
 29 (10) Imprisonment of the person will result in undue hardship to
 30 the person or the dependents of the person.
 31 (11) The person was convicted of a crime involving the use of
 32 force against a person who had repeatedly inflicted physical or
 33 sexual abuse upon the convicted person and evidence shows that
 34 the convicted person suffered from the effects of battery as a
 35 result of the past course of conduct of the individual who is the
 36 victim of the crime for which the person was convicted.
 37 (d) The criteria listed in subsections (b) and (c) do not limit the
 38 matters that the court may consider in determining the sentence.
 39 (e) For the purposes of this article, the following crimes are
 40 considered sex crimes:
 41 (1) Rape (IC 35-42-4-1).
 42 (2) Criminal deviate conduct (IC 35-42-4-2).

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- 1 (3) Child molesting (IC 35-42-4-3).
- 2 (4) Child seduction (IC 35-42-4-7).
- 3 (5) Prostitution (IC 35-45-4-2).
- 4 (6) Patronizing a prostitute (IC 35-45-4-3).
- 5 (7) Incest (IC 35-46-1-3).
- 6 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).
- 7 (f) For the purposes of this article, the following crimes are
- 8 considered offenses related to controlled substances:
- 9 (1) Dealing in or manufacturing cocaine, a narcotic drug, or
- 10 methamphetamine (IC 35-48-4-1).
- 11 (2) Dealing in a schedule I, II, or III controlled substance
- 12 (IC 35-48-4-2).
- 13 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- 14 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 15 (5) Possession of cocaine, a narcotic drug, or methamphetamine
- 16 (IC 35-48-4-6).
- 17 (6) Possession of a controlled substance (IC 35-48-4-7).
- 18 (7) Dealing in paraphernalia (IC 35-48-4-8.5).
- 19 (8) Possession of paraphernalia (IC 35-48-4-8.3).
- 20 (9) Offenses relating to registration (IC 35-48-4-14).
- 21 (g) For the purposes of this section, a person received risk
- 22 counseling if the person had been:
- 23 (1) notified in person or in writing that tests have confirmed the
- 24 presence of antibodies to the human immunodeficiency virus
- 25 (HIV) in the person's blood; and
- 26 (2) warned of the behavior that can transmit HIV.
- 27 SECTION 17. IC 35-41-1-10.6, IS ADDED TO THE INDIANA
- 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 29 [EFFECTIVE JULY 1, 2003]: **Sec. 10.6. "Family or household**
- 30 **member" means:**
- 31 **(1) a person who is a current or former spouse;**
- 32 **(2) a person who is dating or has dated;**
- 33 **(3) a person who is engaged or was engaged in a sexual**
- 34 **relationship;**
- 35 **(4) a person who cohabits or previously cohabited with**
- 36 **another person;**
- 37 **(5) a person who is related by blood or adoption;**
- 38 **(6) a person who is related or was related by marriage;**
- 39 **(7) a person who has an established legal relationship or**
- 40 **previously established a legal relationship:**
- 41 **(A) as a guardian;**
- 42 **(B) as a ward;**

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- 1 **(C) as a custodian;**
- 2 **(D) as a foster parent; or**
- 3 **(E) in a capacity similar to those listed in clauses (A)**
- 4 **through (D);**
- 5 **(8) a person who has a child in common; and**
- 6 **(9) a minor child of a person in a relationship described in**
- 7 **subdivisions (1) through (8).**

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