



Reprinted
March 28, 2023

ENGROSSED SENATE BILL No. 161

DIGEST OF SB 161 (Updated March 27, 2023 2:08 pm - DI 106)

Citations Affected: IC 34-26; IC 35-31.5; IC 35-45; IC 35-46;
IC 35-50.

Synopsis: Unlawful surveillance. Adds a prohibition against using a tracking device to the list of conditions a court may impose when issuing a protection order. Increases the penalty for stalking to a Level 5 felony if the offense is committed by means of a tracking device. Provides that a person who knowingly or intentionally places a tracking device on an individual or the individual's property without the individual's knowledge or consent commits unlawful surveillance, a Class A misdemeanor, unless certain exceptions apply, and increases the penalty to a Level 6 felony if the person is the subject of a protective order or has certain prior convictions. Establishes a sentence enhancement if a person uses a tracking device to commit or facilitate the commission of a crime.

Effective: July 1, 2023.

Crider, Charbonneau, Young M, Becker, Crane

(HOUSE SPONSORS — MCNAMARA, TORR, GORE)

January 9, 2023, read first time and referred to Committee on Corrections and Criminal Law.

February 23, 2023, amended, reported favorably — Do Pass.
February 27, 2023, read second time, amended, ordered engrossed.
February 28, 2023, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 6, 2023, read first time and referred to Committee on Courts and Criminal Code.
March 23, 2023, amended, reported — Do Pass.
March 27, 2023, read second time, amended, ordered engrossed.

ES 161—LS 6532/DI 149



Reprinted
March 28, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 161

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-26-5-9, AS AMENDED BY P.L.159-2022,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 9. (a) If it appears from a petition for an order for
4 protection or from a petition to modify an order for protection that
5 domestic or family violence has occurred or that a modification of an
6 order for protection is required, a court may:
7 (1) without notice or hearing, immediately issue an order for
8 protection ex parte or modify an order for protection ex parte; or
9 (2) upon notice and after a hearing, whether or not a respondent
10 appears, issue or modify an order for protection.
11 (b) If it appears from a petition for an order for protection or from
12 a petition to modify an order for protection that harassment has
13 occurred, a court:
14 (1) may not, without notice and a hearing, issue an order for
15 protection ex parte or modify an order for protection ex parte; but
16 (2) may, upon notice and after a hearing, whether or not a
17 respondent appears, issue or modify an order for protection.

ES 161—LS 6532/DI 149



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

4 (c) A court may grant the following relief without notice and
 5 hearing in an ex parte order for protection or in an ex parte order for
 6 protection modification under subsection (a):

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

10 (2) Prohibit a respondent from harassing, annoying, telephoning,
 11 contacting, or directly or indirectly communicating with a
 12 petitioner.

13 **(3) Prohibit a respondent from using a tracking device (as**
 14 **defined by IC 35-31.5-2-337.5) to determine the location of:**

15 **(A) the petitioner or property owned or used by the**
 16 **petitioner; and**

17 **(B) any other family or household member or property**
 18 **owned or used by the family or household member.**

19 ~~(3)~~ **(4)** Remove and exclude a respondent from the residence of a
 20 petitioner, regardless of ownership of the residence.

21 ~~(4)~~ **(5)** Order a respondent to stay away from the residence,
 22 school, or place of employment of a petitioner or a specified place
 23 frequented by a petitioner and each designated family or
 24 household member.

25 ~~(5)~~ **(6)** Order that a petitioner has the exclusive possession, care,
 26 custody, or control of any animal owned, possessed, kept, or cared
 27 for by the petitioner, respondent, minor child of either the
 28 petitioner or respondent, or any other family or household
 29 member.

30 ~~(6)~~ **(7)** Prohibit a respondent from removing, transferring,
 31 injuring, concealing, harming, attacking, mistreating, threatening
 32 to harm, or otherwise disposing of an animal described in
 33 ~~subdivision (5);~~ **subdivision (6).**

34 ~~(7)~~ **(8)** Order possession and use of the residence, an automobile,
 35 and other essential personal effects, regardless of the ownership
 36 of the residence, automobile, and essential personal effects. If
 37 possession is ordered under this subdivision or ~~subdivision (5);~~
 38 **subdivision (6)**, the court may direct a law enforcement officer to
 39 accompany a petitioner to the residence of the parties to:

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



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



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

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

21 (g) This subsection applies to an order for protection issued ex parte
22 or upon notice and a hearing, or to a modification of an order for
23 protection issued ex parte or upon notice and a hearing, if:

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

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

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



- 1 weapons:
- 2 (1) in the control, ownership, or possession of a respondent; or
- 3 (2) in the control or possession of another person on behalf of a
- 4 respondent;
- 5 for the duration of the order for protection unless another date is
- 6 ordered by the court.
- 7 (i) An order for custody, parenting time, or possession or control of
- 8 property issued under this chapter is superseded by an order issued
- 9 from a court exercising dissolution, legal separation, paternity, or
- 10 guardianship jurisdiction over the parties.
- 11 (j) The fact that an order for protection is issued under this chapter
- 12 does not raise an inference or presumption in a subsequent case or
- 13 hearings between the parties.
- 14 (k) Upon a finding of a violation of an order for protection, the court
- 15 may:
- 16 (1) require a respondent to wear a GPS tracking device; and
- 17 (2) prohibit the respondent from approaching or entering certain
- 18 locations where the petitioner may be found.
- 19 If the court requires a respondent to wear a GPS tracking device under
- 20 subdivision (1), the court shall, if available, require the respondent to
- 21 wear a GPS tracking device with victim notification capabilities.
- 22 (l) The court may permit a victim, a petitioner, another person, an
- 23 organization, or an agency to pay the costs and expenses incurred in
- 24 connection with the use of a GPS tracking device under subsection (k).
- 25 SECTION 2. IC 34-26-5-10, AS AMENDED BY P.L.178-2022(ts),
- 26 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 27 JULY 1, 2023]: Sec. 10. (a) If a court issues:
- 28 (1) an order for protection ex parte effective for a period
- 29 described under section 9(f) of this chapter; or
- 30 (2) a modification of an order for protection ex parte effective for
- 31 a period described under section 9(f) of this chapter;
- 32 and provides relief under section 9(c) of this chapter, upon a request by
- 33 either party at any time after service of the order or modification, the
- 34 court shall set a date for a hearing on the petition. Except as provided
- 35 in subsection (c), the hearing must be held not more than thirty (30)
- 36 days after the request for a hearing is filed unless continued by the
- 37 court for good cause shown. The court shall notify both parties by first
- 38 class mail of the date and time of the hearing. A party may only request
- 39 one (1) hearing on a petition under this subsection.
- 40 (b) If a court issues:
- 41 (1) an order for protection ex parte effective for a period
- 42 described under section 9(g) of this chapter; or



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

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

16 (1) a petitioner requests or the court provides relief under section
 17 ~~9(c)(3)~~, **9(c)(4)**, ~~9(c)(5)~~; 9(c)(6), 9(c)(7), ~~or 9(c)(8)~~, **or 9(c)(9)** of
 18 this chapter; or

19 (2) a petitioner requests relief under section 9(d)(2), 9(d)(3), or
 20 9(d)(4) of this chapter.

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

23 (d) In a hearing under this section:

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

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

28 SECTION 3. IC 35-31.5-2-255.3 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2023]: **Sec. 255.3. "Protective order", for**
 31 **purposes of IC 35-46-8.5-1, has the meaning set forth in**
 32 **IC 35-46-8.5-1.**

33 SECTION 4. IC 35-31.5-2-337.5, AS ADDED BY P.L.170-2014,
 34 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2023]: Sec. 337.5. "Tracking device", for purposes of
 36 IC 35-33-5, **IC 35-45-10, IC 35-46-8.5-1, IC 35-50-2-19**, and this
 37 chapter, means an electronic or mechanical device that allows a person
 38 to remotely determine or track the position or movement of another
 39 person or an object. The term includes the following:

40 (1) A device that stores geographic data for subsequent access or
 41 analysis.

42 (2) A device that allows real-time monitoring or movement.



1 (3) An unmanned aerial vehicle.

2 (4) A cellular telephone or other wireless or cellular
3 communications device, **or an electronic device that**
4 **communicates with a cellular telephone or other wireless or**
5 **cellular communications device, including by means of an**
6 **application installed on or accessed through a cellular**
7 **telephone or other wireless or cellular communications device.**

8 SECTION 5. IC 35-45-10-5, AS AMENDED BY P.L.158-2013,
9 SECTION 541, IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) A person who stalks another
11 person commits stalking, a Level 6 felony.

12 (b) The offense is a Level 5 felony if at least one (1) of the following
13 applies:

14 (1) A person:

15 (A) stalks a victim; and

16 (B) makes an explicit or an implicit threat with the intent to
17 place the victim in reasonable fear of:

18 (i) sexual battery (as defined in IC 35-42-4-8);

19 (ii) serious bodily injury; or

20 (iii) death.

21 (2) A protective order to prevent domestic or family violence, a
22 no contact order, or other judicial order under any of the
23 following statutes has been issued by the court to protect the same
24 victim or victims from the person and the person has been given
25 actual notice of the order:

26 (A) IC 31-15 and IC 34-26-5 or IC 31-1-11.5 before its repeal
27 (dissolution of marriage and legal separation).

28 (B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal
29 (delinquent children and children in need of services).

30 (C) IC 31-32 or IC 31-6-7 before its repeal (procedure in
31 juvenile court).

32 (D) IC 34-26-5 or IC 34-26-2 and IC 34-4-5.1 before their
33 repeal (protective order to prevent abuse).

34 (E) IC 34-26-6 (workplace violence restraining orders).

35 (3) The person's stalking of another person violates an order
36 issued as a condition of pretrial release, including release on bail
37 or personal recognizance, or pretrial diversion if the person has
38 been given actual notice of the order.

39 (4) The person's stalking of another person violates a no contact
40 order issued as a condition of probation if the person has been
41 given actual notice of the order.

42 (5) The person's stalking of another person violates a protective



1 order issued under IC 31-14-16-1 and IC 34-26-5 in a paternity
2 action if the person has been given actual notice of the order.

3 (6) The person's stalking of another person violates an order
4 issued in another state that is substantially similar to an order
5 described in subdivisions (2) through (5) if the person has been
6 given actual notice of the order.

7 (7) The person's stalking of another person violates an order that
8 is substantially similar to an order described in subdivisions (2)
9 through (5) and is issued by an Indian:

10 (A) tribe;

11 (B) band;

12 (C) pueblo;

13 (D) nation; or

14 (E) organized group or community, including an Alaska
15 Native village or regional or village corporation as defined in
16 or established under the Alaska Native Claims Settlement Act
17 (43 U.S.C. 1601 et seq.);

18 that is recognized as eligible for the special programs and services
19 provided by the United States to Indians because of their special
20 status as Indians if the person has been given actual notice of the
21 order.

22 (8) A criminal complaint of stalking that concerns an act by the
23 person against the same victim or victims is pending in a court
24 and the person has been given actual notice of the complaint.

25 **(9) The offense was committed or facilitated by the use of a**
26 **tracking device.**

27 (c) The offense is a Level 4 felony if:

28 (1) the act or acts were committed while the person was armed
29 with a deadly weapon; or

30 (2) the person has an unrelated conviction for an offense under
31 this section against the same victim or victims.

32 SECTION 6. IC 35-46-8.5-1, AS AMENDED BY P.L.58-2016,
33 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2023]: Sec. 1. (a) This section does not apply to any of the
35 following:

36 (1) Electronic or video toll collection facilities or activities
37 authorized under any of the following:

38 (A) IC 8-15-2.

39 (B) IC 8-15-3.

40 (C) IC 8-15.5.

41 (D) IC 8-15.7.

42 (E) IC 8-16.



- 1 (F) IC 9-21-3.5.
- 2 (2) A law enforcement officer who has obtained:
- 3 (A) a search warrant; or
- 4 (B) the consent of the owner or private property;
- 5 to place a camera, ~~or~~ electronic surveillance equipment, **or**
- 6 **tracking device** on private property, **with respect to the**
- 7 **placement of a camera, electronic surveillance equipment, or**
- 8 **tracking device.**
- 9 (3) A law enforcement officer who uses a law enforcement
- 10 recording device in performance of the officer's duties, **with**
- 11 **respect to the use of the law enforcement recording device.**
- 12 (4) A person who uses a tracking device to determine the
- 13 location of a family member (as defined in IC 35-44.1-3-1),
- 14 unless the person is the subject of a protective order obtained
- 15 by the family member.
- 16 (5) A person who places a tracking device on property in
- 17 which the person has an ownership or contractual interest,
- 18 unless the person is the subject of a protective order and the
- 19 property is likely to be used by the person who obtained the
- 20 protective order.
- 21 (6) A tracking device placed on a person or the property of a
- 22 person:
- 23 (A) who is incarcerated;
- 24 (B) as a condition of probation, parole, home detention,
- 25 community corrections, bail, prosecutorial diversion, or
- 26 supervised release; or
- 27 (C) pursuant to a court order.
- 28 (7) A device installed as original equipment by the
- 29 manufacturer of a motor vehicle.
- 30 (8) A provider of electronic communications services with
- 31 respect to a tracking device, if the installation, placement, or
- 32 use of the tracking device is disclosed to the consumer in the
- 33 provider's terms of use, privacy policy, or similar document
- 34 available to the consumer.
- 35 (b) As used in this section, "protective order" refers to an order
- 36 described in IC 35-45-10-5(b)(2) or IC 35-46-1-15.1(a).
- 37 ~~(b)~~ (c) A person who knowingly or intentionally places a:
- 38 (1) camera or electronic surveillance equipment that records
- 39 images or data of any kind while unattended on the private
- 40 property of another person without the consent of the owner or
- 41 tenant of the private property; **or**
- 42 (2) tracking device on an individual or on property owned or



- 1 **used by an individual, without the knowledge or consent of the**
 2 **individual;**
 3 commits **unlawful surveillance**, a Class A misdemeanor, **except as**
 4 **provided in subsection (d).**
 5 **(d) Unlawful surveillance under subsection (c) is a Level 6 felony**
 6 **if:**
 7 **(1) the person has a prior unrelated conviction for**
 8 **(A) an offense under this section;**
 9 **(B) a crime of domestic violence under 35-38-1-7.7;**
 10 **(C) stalking (IC 35-45-10-5); or**
 11 **(D) invasion of privacy (IC 35-46-1-15.1); or**
 12 **(2) the person is the subject of a protective order.**
 13 SECTION 7. IC 35-50-2-19 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2023]: **Sec. 19. (a) The state may seek, on a page separate from**
 16 **the rest of a charging instrument, to have a person who allegedly**
 17 **committed an offense sentenced to an additional fixed term of**
 18 **imprisonment if the state can show beyond a reasonable doubt that**
 19 **the person knowingly or intentionally used a tracking device:**
 20 **(1) in the commission of the offense; or**
 21 **(2) to facilitate the commission of the offense.**
 22 **(b) If the person was convicted of the offense in a jury trial, the**
 23 **jury shall reconvene to hear evidence in the enhancement hearing.**
 24 **If the trial was to the court, or the judgment was entered on a**
 25 **guilty plea, the court alone shall hear evidence in the enhancement**
 26 **hearing.**
 27 **(c) If the jury (if the hearing is by jury) or the court (if the**
 28 **hearing is to the court alone) finds that the state has proven beyond**
 29 **a reasonable doubt that the person knowingly or intentionally used**
 30 **a tracking device in the commission of the offense, or to facilitate**
 31 **the commission of the offense, the court may sentence the person**
 32 **to an additional fixed term of imprisonment of:**
 33 **(1) if the felony did not result in serious bodily injury to**
 34 **another person, between six (6) months and two and one-half**
 35 **(2 1/2) years; or**
 36 **(2) if the felony resulted in serious bodily injury to another**
 37 **person, between one (1) and six (6) years.**
 38 **(d) A person who commits more than one (1) offense comprising**
 39 **a single episode of criminal conduct may be sentenced to only one**
 40 **(1) additional fixed term under this section.**



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 161, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 13, delete "protection" and insert "**protective**".

Page 2, between lines 23 and 24, begin a new line block indented and insert:

"(5) A device installed as original equipment by the manufacturer of a motor vehicle."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 161 as introduced.)

FREEMAN, Chairperson

Committee Vote: Yeas 8, Nays 0.

 SENATE MOTION

Madam President: I move that Senate Bill 161 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 34-26-5-9, AS AMENDED BY P.L.159-2022, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. (a) If it appears from a petition for an order for protection or from a petition to modify an order for protection that domestic or family violence has occurred or that a modification of an order for protection is required, a court may:

- (1) without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte; or
- (2) upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection.

(b) If it appears from a petition for an order for protection or from a petition to modify an order for protection that harassment has occurred, a court:

- (1) may not, without notice and a hearing, issue an order for

ES 161—LS 6532/DI 149



protection ex parte or modify an order for protection ex parte; but
 (2) may, upon notice and after a hearing, whether or not a
 respondent appears, issue or modify an order for protection.

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

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

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

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

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

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

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

~~(3)~~ **(4)** Remove and exclude a respondent from the residence of a
 petitioner, regardless of ownership of the residence.

~~(4)~~ **(5)** Order a respondent to stay away from the residence,
 school, or place of employment of a petitioner or a specified place
 frequented by a petitioner and each designated family or
 household member.

~~(5)~~ **(6)** Order that a petitioner has the exclusive possession, care,
 custody, or control of any animal owned, possessed, kept, or cared
 for by the petitioner, respondent, minor child of either the
 petitioner or respondent, or any other family or household
 member.

~~(6)~~ **(7)** Prohibit a respondent from removing, transferring,
 injuring, concealing, harming, attacking, mistreating, threatening
 to harm, or otherwise disposing of an animal described in
~~subdivision (5);~~ **subdivision (6).**

~~(7)~~ **(8)** Order possession and use of the residence, an automobile,
 and other essential personal effects, regardless of the ownership
 of the residence, automobile, and essential personal effects. If
 possession is ordered under this subdivision or ~~subdivision (5);~~
subdivision (6), the court may direct a law enforcement officer to
 accompany a petitioner to the residence of the parties to:



- (A) ensure that a petitioner is safely restored to possession of the residence, automobile, animal, and other essential personal effects; or
 - (B) supervise a petitioner's or respondent's removal of personal belongings and animal.
- ~~(8)~~ **(9)** Order other relief necessary to provide for the safety and welfare of a petitioner and each designated family or household member.
- (d) A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:
- (1) Grant the relief under subsection (c).
 - (2) Specify arrangements for parenting time of a minor child by a respondent and:
 - (A) require supervision by a third party; or
 - (B) deny parenting time;
 if necessary to protect the safety of a petitioner or child.
 - (3) Order a respondent to:
 - (A) pay attorney's fees;
 - (B) pay rent or make payment on a mortgage on a petitioner's residence;
 - (C) if the respondent is found to have a duty of support, pay for the support of a petitioner and each minor child;
 - (D) reimburse a petitioner or other person for expenses related to the domestic or family violence or harassment, including:
 - (i) medical expenses;
 - (ii) counseling;
 - (iii) shelter; and
 - (iv) repair or replacement of damaged property;
 - (E) pay the costs and expenses incurred in connection with the use of a GPS tracking device under subsection (k); or
 - (F) pay the costs and fees incurred by a petitioner in bringing the action.
 - (4) Prohibit a respondent from using or possessing a firearm, ammunition, or a deadly weapon specified by the court, and direct the respondent to surrender to a specified law enforcement agency the firearm, ammunition, or deadly weapon for the duration of the order for protection unless another date is ordered by the court.
 - (5) Permit the respondent and petitioner to occupy the same location for any purpose that the court determines is legitimate or necessary. The court may impose terms and conditions upon a respondent when granting permission under this subdivision.



An order issued under subdivision (4) does not apply to a person who is exempt under 18 U.S.C. 925.

(e) The court shall:

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

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

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

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

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

(h) A finding that domestic or family violence or harassment has occurred sufficient to justify the issuance of an order under this section means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household. Upon a showing of domestic or family violence or harassment by a preponderance of the evidence, the court shall grant relief necessary to bring about a



cessation of the violence or the threat of violence. The relief may include an order directing a respondent to surrender to a law enforcement officer or agency all firearms, ammunition, and deadly weapons:

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

for the duration of the order for protection unless another date is ordered by the court.

(i) An order for custody, parenting time, or possession or control of property issued under this chapter is superseded by an order issued from a court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties.

(j) The fact that an order for protection is issued under this chapter does not raise an inference or presumption in a subsequent case or hearings between the parties.

(k) Upon a finding of a violation of an order for protection, the court may:

- (1) require a respondent to wear a GPS tracking device; and
- (2) prohibit the respondent from approaching or entering certain locations where the petitioner may be found.

If the court requires a respondent to wear a GPS tracking device under subdivision (1), the court shall, if available, require the respondent to wear a GPS tracking device with victim notification capabilities.

(l) The court may permit a victim, a petitioner, another person, an organization, or an agency to pay the costs and expenses incurred in connection with the use of a GPS tracking device under subsection (k).

SECTION 2. IC 34-26-5-10, AS AMENDED BY P.L.178-2022(ts), SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 10. (a) If a court issues:

- (1) an order for protection ex parte effective for a period described under section 9(f) of this chapter; or
- (2) a modification of an order for protection ex parte effective for a period described under section 9(f) of this chapter;

and provides relief under section 9(c) of this chapter, upon a request by either party at any time after service of the order or modification, the court shall set a date for a hearing on the petition. Except as provided in subsection (c), the hearing must be held not more than thirty (30) days after the request for a hearing is filed unless continued by the court for good cause shown. The court shall notify both parties by first class mail of the date and time of the hearing. A party may only request one (1) hearing on a petition under this subsection.



(b) If a court issues:

- (1) an order for protection ex parte effective for a period described under section 9(g) of this chapter; or
- (2) a modification of an order for protection ex parte effective for a period described under section 9(g) of this chapter;

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

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

- (1) a petitioner requests or the court provides relief under section ~~9(c)(3)~~, **9(c)(4)**, ~~9(c)(5)~~, 9(c)(6), 9(c)(7), ~~or~~ 9(c)(8), **or 9(c)(9)** of this chapter; or
- (2) a petitioner requests relief under section 9(d)(2), 9(d)(3), or 9(d)(4) of this chapter.

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

(d) In a hearing under this section:

- (1) relief under section 9 of this chapter is available; and
- (2) if a respondent seeks relief concerning an issue not raised by a petitioner, the court may continue the hearing at the petitioner's request."

Page 1, line 9, delete "IC 35-45-10-7," and insert "**IC 35-45-10**,".

Page 2, delete lines 6 through 36, begin a new paragraph and insert:

"SECTION 3. IC 35-45-10-5, AS AMENDED BY P.L.158-2013, SECTION 541, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) A person who stalks another person commits stalking, a Level 6 felony.

(b) The offense is a Level 5 felony if at least one (1) of the following applies:

- (1) A person:
 - (A) stalks a victim; and
 - (B) makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of:



- (i) sexual battery (as defined in IC 35-42-4-8);
 - (ii) serious bodily injury; or
 - (iii) death.
- (2) A protective order to prevent domestic or family violence, a no contact order, or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:
- (A) IC 31-15 and IC 34-26-5 or IC 31-1-11.5 before its repeal (dissolution of marriage and legal separation).
 - (B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal (delinquent children and children in need of services).
 - (C) IC 31-32 or IC 31-6-7 before its repeal (procedure in juvenile court).
 - (D) IC 34-26-5 or IC 34-26-2 and IC 34-4-5.1 before their repeal (protective order to prevent abuse).
 - (E) IC 34-26-6 (workplace violence restraining orders).
- (3) The person's stalking of another person violates an order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion if the person has been given actual notice of the order.
- (4) The person's stalking of another person violates a no contact order issued as a condition of probation if the person has been given actual notice of the order.
- (5) The person's stalking of another person violates a protective order issued under IC 31-14-16-1 and IC 34-26-5 in a paternity action if the person has been given actual notice of the order.
- (6) The person's stalking of another person violates an order issued in another state that is substantially similar to an order described in subdivisions (2) through (5) if the person has been given actual notice of the order.
- (7) The person's stalking of another person violates an order that is substantially similar to an order described in subdivisions (2) through (5) and is issued by an Indian:
- (A) tribe;
 - (B) band;
 - (C) pueblo;
 - (D) nation; or
 - (E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);



that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians if the person has been given actual notice of the order.

(8) A criminal complaint of stalking that concerns an act by the person against the same victim or victims is pending in a court and the person has been given actual notice of the complaint.

(9) The offense was committed or facilitated by the use of a tracking device.

(c) The offense is a Level 4 felony if:

(1) the act or acts were committed while the person was armed with a deadly weapon; or

(2) the person has an unrelated conviction for an offense under this section against the same victim or victims.

SECTION 4. IC 35-45-10-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 7. (a) Subsection (b) does not apply to the following:**

(1) A person who uses a tracking device to determine the location of a family member (as defined in IC 35-44.1-3-1).

(2) A person who places a tracking device on property in which the person has an ownership or contractual interest.

(3) A tracking device placed on a person or the property of a person:

(A) who is incarcerated;

(B) as a condition of probation, parole, home detention, community corrections, bail, prosecutorial diversion, or supervised release; or

(C) pursuant to a court order.

(4) A law enforcement officer lawfully engaged in the execution of the officer's duties.

(5) A device installed as original equipment by the manufacturer of a motor vehicle.

(6) A provider of electronic communications services if the installation, placement, or use of the tracking device is disclosed to the consumer in the provider's terms of use, privacy policy, or similar document available to the consumer.

(b) A person who:

(1) with the intent to remotely determine or track the position or movement of an individual; and

(2) without the knowledge of the individual;

places a tracking device on the individual or on property owned or



used by the individual, commits remote criminal tracking, a Level 6 felony.

(c) As used in this section, "protective order" means an order described in IC 35-46-1-15.1(a). A person who is the subject of a protective order who:

(1) with the intent to remotely determine or track the position or movement of the individual protected by the protective order; and

(2) without the knowledge of the individual;

places a tracking device on the individual or on property owned or used by the individual, commits remote criminal tracking of a person protected by a protective order, a Level 5 felony."

Page 2, line 41, delete "a felony" and insert "an offense".

Page 3, line 2, delete "felony" and insert "offense".

Page 3, line 3, delete "felony" and insert "offense".

Page 3, line 4, delete "felony" and insert "offense".

Page 3, line 12, delete "felony" and insert "offense".

Page 3, line 13, delete "felony" and insert "offense".

Page 3, line 20, delete "felony" and insert "offense".

Re-number all SECTIONS consecutively.

(Reference is to SB 161 as printed February 24, 2023.)

FREEMAN

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 161, 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:

Page 6, line 31, delete "IC 35-45-10-7," and insert "IC 35-46-8.5-1,".

Page 6, line 32, delete "IC 35-45-10-7." and insert "IC 35-46-8.5-1.".

Page 6, line 36, after "IC 35-45-10," insert "IC 35-46-8.5-1,".

Page 8, delete lines 32 through 42, begin a new paragraph, and insert:

"SECTION 6. IC 35-46-8.5-1, AS AMENDED BY P.L.58-2016, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

ES 161—LS 6532/DI 149



JULY 1, 2023]: Sec. 1. (a) This section does not apply to any of the following:

(1) Electronic or video toll collection facilities or activities authorized under any of the following:

- (A) IC 8-15-2.
- (B) IC 8-15-3.
- (C) IC 8-15.5.
- (D) IC 8-15.7.
- (E) IC 8-16.
- (F) IC 9-21-3.5.

(2) A law enforcement officer who has obtained:

- (A) a search warrant; or
- (B) the consent of the owner or private property;

to place a camera, or electronic surveillance equipment, or **tracking device** on private property, **with respect to the placement of a camera, electronic surveillance equipment, or tracking device.**

(3) A law enforcement officer who uses a law enforcement recording device in performance of the officer's duties, **with respect to the use of the law enforcement recording device.**

(4) A person who uses a tracking device to determine the location of a family member (as defined in IC 35-44.1-3-1), unless the person is the subject of a protective order obtained by the family member.

(5) A person who places a tracking device on property in which the person has an ownership or contractual interest, unless the person is the subject of a protective order and the property is likely to be used by the person who obtained the protective order.

(6) A tracking device placed on a person or the property of a person:

- (A) who is incarcerated;
- (B) as a condition of probation, parole, home detention, community corrections, bail, prosecutorial diversion, or supervised release; or
- (C) pursuant to a court order.

(7) A device installed as original equipment by the manufacturer of a motor vehicle.

(8) A provider of electronic communications services with respect to a tracking device, if the installation, placement, or use of the tracking device is disclosed to the consumer in the provider's terms of use, privacy policy, or similar document



available to the consumer.

(b) As used in this section, "protective order" refers to an order described in IC 35-45-10-5(b)(2) or IC 35-46-1-15.1(a).

(c) A person who knowingly or intentionally places a:

(1) camera or electronic surveillance equipment that records images or data of any kind while unattended on the private property of another person without the consent of the owner or tenant of the private property; or

(2) tracking device on an individual or on property owned or used by an individual;

commits unlawful surveillance, a Class A misdemeanor, except as provided in subsection (d).

(d) Unlawful surveillance under subsection (c) is a Level 6 felony if:

(1) the person has a prior unrelated conviction for

(A) an offense under this section;

(B) a crime of domestic violence under 35-38-1-7.7;

(C) stalking (IC 35-45-10-5); or

(D) invasion of privacy (IC 35-46-1-15.1); or

(2) the person is the subject of a protective order."

Page 9, delete lines 1 through 29.

and when so amended that said bill do pass.

(Reference is to SB 161 as reprinted February 28, 2023.)

MCNAMARA

Committee Vote: yeas 10, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 161 be amended to read as follows:

Page 10, line 1, delete "individual;" and insert "**individual, without the knowledge or consent of the individual;**".

(Reference is to ESB 161 as printed March 23, 2023.)

MCNAMARA

