

INDIANA CRIMINAL STATUTES AND CASES OF NOTE

- A. Compensation for Victims of Violent Crimes**
 - 1. IC 5-2-6.1-1

- B. Law Enforcement Officers**
 - 1. Continuing education re: family violence
 - a. IC 5-2-8-1
 - 2. Continuing education re: human & sexual trafficking
 - a. IC 5-2-1-9

- C. Public Records Law**
 - 1. IC 5-14-3-4(b)(23) prohibits an incarcerated person from obtaining records from a public agency that contain personal information relating to a victim of a crime, or a family member of the victim of a crime.

- D. Address Confidentiality Program for Victims of Family Violence**
 - 1. IC 5-26.5 *et seq.*

- E. Aggressive Driving**
 - 1. IC 9-21-8-55
 - 2. Class A misdemeanor
 - 3. Describes behavior we often see in family violence cases.

- F. Registration for “Sex or Violent Offenders”**
 - 1. The list of crimes for which a convicted person must register includes crimes we could see in a family violence context (rape, sexual battery, human trafficking, criminal confinement, etc.).
 - 2. The list of crimes appears in IC 11-8-8-5.
 - 3. People to whom this law applies must now also register their e-mail addresses, IM usernames, etc. in addition to their residential address and contact information.

- G. Inheritance Laws Relating to a Parent Who Kills the Other Parent**
 - 1. IC 29-1-2-1(e) prohibits the parent who killed the other parent from receiving any share of the victim’s estate.
 - 2. IC 27-8-5-22 (c)(2) also prohibits the offending parent from receiving a refund on life insurance premiums in that situation.

- H. Rebuttable Presumption of Supervised Visitation as a Result of Conviction for a Crime Involving Family/Domestic Violence**
 - 1. IC 31-14-14-5
 - 2. IC 31-17-2-8.3
 - 3. Definition/what kinds of crimes qualify: IC 35-41-1-6.5

4. Definition of “family or household member”: IC 35-41-1-10.6

I. Compensation for Witnesses in Criminal Cases

1. IC 33-37-10-2

J. Testimonial Privilege Between Spouses

1. Rubalcada v. State, 731 N.E.2d 1015 (Ind. 2000)

2. IC 34-46-3-1

3. Ind. Rules Evid. 501

K. Arrest/Duty of Law Enforcement Officers at Scene of Family/Domestic Violence Run

1. Probable cause arrest OK for: domestic battery; battery with injury; invasion of privacy; violating a “stay away” order issued as a condition of probation under IC 35-50-7; interference with the reporting of a crime; interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5); and, carrying a handgun without a license.

a. IC 35-33-1-1

2. Officers have certain duties to victim, children. Officers are empowered to confiscate firearms, ammunition, or deadly weapons from the scene.

a. IC 35-33-1-1.5

L. Bail

1. Can place conditions on bail (including no-contact orders)

a. IC 35-33-8-3.2

b. A judge can issue a no-contact order even if a defendant has not been released from pretrial detention. See IC 35-33-8-3.2(a)(4).

2. Can consider dangerousness to others/community

a. IC 35-33-8-3.2

b. IC 35-33-8-4

3. Revocation if new arrest, or if conditions of bail are violated

a. IC 35-33-8-5

b. IC 35-40-6-6

4. Crime victim’s right to have safety considered in judge’s bail decision

a. IC 35-40-5-4

5. Crime victim’s right to be notified of bond hearing

a. IC 35-40-7-2

6. Revocation of Bail/Dangerousness

a. Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App.1997)

b. Judge in Ray was reversed for altering bail.

7. Length of time an arrested person can be held before initial hearing/Right to bail generally

- a. Schmidt v. State, 746 N.E.2d 369 (Ind. Ct. App.2001)
- 8. “Cooling Off” Period/Automatic Hold
 - a. IC 35-33-1-1.7 requires the facility (jail) to keep a person arrested for a crime of domestic violence as defined in IC 35-41-1-6.3 in custody for at least 8 hours from the time the person was arrested.
 - b. IC 35-33-8-6.5 prohibits a court from releasing a person arrested for a crime of domestic violence as defined in IC 35-41-1-6.3 on bail until the person has been held at least 8 hours from the time of arrest.
 - c. NOTE: these laws refer to the narrower category of crimes (“domestic violence”) described in IC 35-41-1-6.3, as opposed to the broader category of crimes (“domestic or family violence”) listed in IC 35-41-1-6.5.

M. Victim Rights RE: Discussion of Plea Bargain/Presentence Report/Sentencing

- 1. IC 35-35-3-2
- 2. IC 35-35-3-5
- 3. IC 35-35-3-6
- 4. IC 35-35-3-7
- 5. IC 35-40-5-3
- 6. IC 35-40-5-6
- 7. IC 35-40-5-8
- 8. IC 35-40-6-7

N. Continuances in Child Abuse Cases—Discouraged; Record Necessary

- 1. IC 35-36-7-3

O. Child Hearsay (Including Closed Circuit Testimony)

- 1. Pierce v. State, 677 N.E.2d 39 (Ind. 1997)
- 2. Carpenter v. State, 786 N.E.2d 696 (Ind. 2003)
- 3. M.T. v. State, 787 N.E.2d 509 (Ind. Ct. App. 2003)
- 4. Crawford v. Washington, 124 S.Ct. 1354 (2004)
 - a. Applies to statements made to law enforcement personnel (not family, neighbors, friends, etc.).
- 5. Trujillo v. State, 806 N.E.2d 317 (Ind. Ct. App. 2004)
- 6. Hendricks v. State, 809 N.E.2d 865 (Ind. Ct. App. 2004)
- 7. Purvis v. State, 829 N.E.2d 572 (Ind. Ct. App. 2005)
- 8. Anderson v. State, 833 N.E.2d 119 (Ind. Ct. App. 2005)
- 9. Howard v. State, 853 N.E.2d 461 (Ind. 2006)
- 10. IC 35-37-4-6

a. This statute includes victims of human & sexual trafficking in list of “protected persons” who are eligible for this type of testimony.

11. IC 35-37-4-8

a. This statute includes victims of human & sexual trafficking in list of “protected persons” who are eligible for this type of testimony.

12. Ind. Rules Evid. 804

P. Rape Shield Statute

1. IC 35-37-4-4
2. Ind. Rules Evid. 412

Q. Keeping Victims Safe in the Courtroom/Waiting Area

1. IC 35-37-4-11

R. Victim’s Right Not to Disclose Home Address, Etc.

1. IC 35-37-4-12

S. Prior Battery on Same Victim (Evidence of Same)

1. IC 35-37-4-14
2. Ind. Rules Evid. 404(B)
3. There are many cases discussing the admissibility of prior “bad acts.”
4. One recent case is: Goldsberry v. State, 821 N.E.2d 447 (Ind. Ct. App. 2005).

T. Privileged Communications, Victim Advocates/Victim Service Providers

1. IC 35-37-6-1 *et seq.* (entire chapter)
 - a. The Indiana General Assembly significantly revised this statute in the 2008 session. The scope of the privilege is much broader. Note that employees of law enforcement agencies and prosecutors’ offices are not included in these laws.
2. Ind. Rules Evid. 501

U. Statutory Aggravator for Sentencing

1. IC 35-38-1-7.1(b)(14)
2. Triggered when a child witnesses a crime of family violence.

V. Victim’s Presence at Sentencing

1. IC 35-38-1-2
2. IC 35-38-1-8
3. IC 35-38-1-8.5
4. IC 35-38-1-9 (*Note also IC 35-40-5, above)

- W. Sentence Modification/Notice to Victim**
 - 1. IC 35-38-1-17

- X. Conditions of Probation**
 - 1. IC 35-38-2-2.3
 - 2. Victim’s right to be notified of VOP hearing/modification of probation conditions.
 - a. IC 35-40-8-1, -2

- Y. Community Transition Program**
 - 1. IC 35-38-1-24, -25

- Z. Mandatory Duties of Judge at Sentencing**
 - 1. IC 35-38-1-7.7
 - 2. Judge must determine if a crime of domestic violence.
 - 3. Web site for form: www.in.gov/judiciary/admin/forms/domviol.html
 - 4. Goldsberry v. State, 821 N.E.2d 447 (Ind. Ct. App. 2005)—judge’s determination was improper.
 - 5. Kazmier v. State, 863 N.E.2d 912 (Ind.Ct.App. 2007)—judge’s determination was proper.

- AA. Crime Victim Notification of Defendant’s Release from Jail**
 - 1. IC 35-40-5-2
 - 2. IC 35-40-7-2

- BB. Other Victim Rights Laws**
 - 1. See IC 35-40-1 *et seq.*
 - 2. Indiana Constitution, Article 1, Section 13

- CC. Important Definitions**
 - 1. “Crime of domestic violence” IC 35-41-1-6.3
 - 2. “Crime involving domestic or family violence” IC 35-41-1-6.5
 - a. Now includes human & sexual trafficking crimes.
 - 3. “Family or household member” IC 35-41-1-10.6

- DD. Serious Bodily Injury**
 - 1. Davis v. State, 813 N.E.2d 1176 (Ind. 2004)
 - 2. IC 35-41-1-25 (definition)

- EE. Battered Woman Syndrome Expert Testimony**
 - 1. Iqbal v. State, 805 N.E.2d 401 (Ind. Ct. App. 2004)
 - 2. Marley v. State, 747 N.E.2d 1123 (Ind. 2001)
 - 3. Carnahan v. State, 681 N.E.2d 1164 (Ind. Ct. App.1997)
 - 4. Barrett v. State, 675 N.E.2d 1112 (Ind. Ct. App.1996)

5. Isaacs v. State, 659 N.E. 2d 1036 (Ind.1995)
6. Dausch v. State, 616 N.E.2d 13 (Ind.1993)
7. Ind. Rules Evid. 702
8. IC 35-41-3-11

FF. Self-Defense Statute/BWS Statute

1. IC 35-41-3-2
 - a. Now includes a discussion of both the duty to retreat and defense of an occupied motor vehicle.
2. IC 35-41-3-11

GG. Battery & Domestic Battery

1. IC 35-42-2-1
2. IC 35-42-2-1.3
 - a. Vaughn v. State, 782 N.E.2d 417(Ind. Ct. App. 2003)
3. Davis v. State, 796 N.E.2d 798 (Ind. Ct. App.2003)
4. Williams v. State, 798 N.E.2d 457 (Ind. Ct. App. 2003)
5. Holeton v. State, 853 N.E. 2d 539 (Ind. Ct. App. 2006)
6. As of July 1, 2006, Domestic Battery can be a Class D felony if the defendant commits it in the presence of a child less than 16 years old.
7. As of July 1, 2007, Battery with injury can be a Class D felony if the victim is a family or household member and if the defendant commits in the presence of a child less than 16.
8. As of July 1, 2007, Battery can be a Class C felony if it results in injury to a pregnant woman and the defendant knows the victim is pregnant.

HH. Strangulation

1. IC 35-42-2-9
2. Class D felony

II. Criminal Recklessness

1. IC 35-42-2-2
2. Normally a Class B misdemeanor. Can be a Class A misdemeanor if committed with a motor vehicle. Can be a Class D felony if committed with a deadly weapon or if serious bodily injury results.
3. As of July 1, 2006, includes an enhanced charge for aggressive driving.

JJ. Human & Sexual Trafficking/Duties of Law Enforcement Agencies

1. IC 35-42-3.5
2. Basic crime is a Class B felony. Can also be an A felony if the trafficked person is under age 18.
3. “Consumers” of trafficked people commit a C felony.

4. Also creates a civil cause of action for victims.
5. IC 35-42-3.5-4 enumerates special rights to which victims of this crime are entitled. The law specifies that law enforcement agencies are to help facilitate these rights.
6. IC 35-42-3.5-4(b) also specifies duties of law enforcement agencies to victims re: LEA Declaration, Form I-914 Supplement B. This is the application for a special visa for victims of trafficking.

KK. Criminal Mischief

1. IC 35-43-1-2 (Class B misdemeanor and higher)
2. Common property
 - a. IC 35-41-1-23 (b)
3. Damage amount
 - a. Pepper v. State, 558 N.E. 2d 899 (Ind. Ct. App.1990)

LL. Residential Entry

1. IC 35-43-2-1.5 (Class D felony)
2. Ellyson v. State, 603 N.E. 2d 1369 (Ind. Ct. App.1992)
 - a. This is a burglary case; however, the principle that a spouse can burglarize the other spouse's home, even if it was once the marital residence, would appear to hold true in a residential entry case also.

MM. Disarming a Law Enforcement Officer

1. IC 35-44-3-3.5 (Class C felony and higher)

NN. Intimidation

1. IC 35-45-2-1 (Class A misdemeanor and higher)
2. Huber v. State, 805 N.E.2d 887 (Ind. Ct. App. 2004)

OO. Harassment

1. IC 35-45-2-2 (Class B misdemeanor)

PP. Interference With Reporting of Crime

1. IC 35-45-2-5 (Class A misdemeanor)

QQ. Stalking

1. IC 35-45-10-1 ("stalk")
2. IC 35-45-10-2 ("harassment")
3. IC 35-45-10-3 ("impermissible contact")
4. IC 35-45-10-4 ("victim")
5. IC 35-45-10-5 (defines the crime of stalking; Class D felony and higher)
6. Johnson v. State, 648 N.E. 2d 666 (Ind. Ct. App.1995)

7. Hendricks v. State, 649 N.E. 2d 1050 (Ind. Ct. App.1995)
8. Burton v. State, 665 N.E. 2d 924 (Ind. Ct. App.1996)
9. Waldon v. State, 684 N.E.2d 206 (Ind. Ct. App.1997)
10. Landis v. State, 704 N.E. 2d 113 (Ind. 1998)
11. Johnson v. State, 721 N.E.2d 327 (Ind. Ct. App.1999)
12. Garza v. State, 736 N.E.2d 323 (Ind. Ct. App.2000)
13. Peckinpugh v. State, 743 N.E.2d 1238 (Ind. Ct. App.2001)
14. Smith v. State, 802 N.E.2d 948 (Ind. Ct. App. 2004)
15. Smith v. State, 839 N.E.2d 780 (Ind. Ct. App. 2005)
16. Vanhorn v. State, 889 N.E.2d 908 (Ind. Ct. App. 2008)
 - a. The facts of this case may call into question the continuing validity of the Waldon case, above.
17. IC 35-38-2-2.6 allows judges to prohibit convicted stalkers from living within 1,000 feet of their victim's residence for up to 5 years (as a condition of probation or parole).
 - a. That law also states that the victim's address is confidential.

RR. Failure to Report a Dead Body

1. IC 35-45-19-3 (Class A misdemeanor)

SS. Invasion of Privacy

1. IC 35-46-1-15.1 (Class A misdemeanor and higher)
2. Webster v. State, 673 N.E. 2d 509 (Ind. Ct. App.1996)
 - a. double jeopardy issue
3. Huber v. State, 805 N.E.2d 887 (Ind. Ct. App. 2004)
4. Dixon v. State, 869 N.E.2d 516 (Ind. Ct. App. 2007)
 - a. Defendant alleged that victim invited him over.
 - b. Defendant also claimed he never knew about protection order.

TT. Unlawful Possession of a Firearm by a Domestic Batterer

1. IC 35-47-4-6 (Class A misdemeanor)

UU. Possession of a Handgun by a Domestic Batterer

1. IC 35-47-2-1

VV. Firearms and "Dangerous" People (Seizure & Retention)

1. IC 35-47-13-1 *et seq.*

WW. Restitution

1. Can order regardless of probation status.
2. IC 35-50-5-3

XX. No-Contact Orders During Incarceration/Executed Sentence (*Not Condition of Probation*)

1. IC 35-38-1-30 (2008) now empowers a judge to issue a no-contact order as a condition of a person's executed sentence.

YY. Excited Utterances

1. Ind. Rules Evid. 803(2)
2. Domestic Battery case—victim not present at trial: Cox v. State, 774 N.E.2d 1025 (Ind. Ct. App. 2002).
3. Murder case—victim's excited utterance used at trial: Taylor v. State, 697 N.E.2d 51 (Ind. 1998).
4. Domestic Battery case—victim present at trial, but refused to participate. This case discusses Crawford v. Washington, *supra*: Fowler v. State, 829 N.E.2d 459 (Ind. 2005) and unavailability.
5. Hammon v. State, 829 N.E.2d 444 (Ind. 2005)—*reversed* by the U.S. Supreme Court on June 19, 2006, Davis v. Washington and Hammon v. Indiana, 126 S. Ct. 2266, 165 L. Ed 2d 224.
6. Beach v. State, 816 N.E.2d 57 (Ind. Ct. App. 2004)—also discusses the issue of witness unavailability at the end of the opinion.
7. Recent (2006) U. S. Supreme Court opinions indicate that it is still permissible to use 911 calls in lieu of a victim's testimony, but other statements by victim to law enforcement are no longer necessarily admissible as substantive evidence.
8. Collins v. State, 873 N.E.2d 149 (Ind. Ct. App. 2007)—911 call admissible under Davis, *supra*. The Court of Appeals found that the dispatcher's questions were designed to enable the police handle an ongoing emergency.
9. Martin v. State, 885 N.E.2d 18 (Ind. Ct. App. 2008)—victim's responses to police officers' questions admissible under Davis, *supra*, because they were not testimonial. Court weighed the following 4 factors in determining whether the statements were testimonial: (1) relevant to establish whether defendant posed a present danger (especially to victim's children, whom defendant had taken); (2) made while victim experiencing an ongoing emergency in that she didn't know where her children were and she feared for their safety; (3) the officers' questions sought to resolve the ongoing emergency by establishing defendant's identity, type of car he was driving, and his state of mind; and, (4) the setting for the questioning by police was highly informal (victim sitting by side of road just minutes after watching her children being driven away by the man who had battered her; she was hysterical and had blood all over her face).

ZZ. Forcing Victims to Testify—Threats by Prosecution Inappropriate

1. Fowler v. State, 829 N.E.2d 459 (Ind. 2005)

AAA. Forfeiture of Defendant's Right of Confrontation Because of Wrongdoing by Defendant

1. Boyd v. State, 866 N.E.2d 855 (Ind. Ct. App. 2007)
 - a. Defendant killed victim; she couldn't testify in domestic battery case; trial court allowed her statements in under the forfeiture doctrine.

BBB. Interference With Custody

1. IC 35-42-3-2
2. Cases involving removal of child outside of the state of Indiana: Class D felony if child less than 18 years old; a Class C felony if defendant is not the parent *and* the child is under age 14; a Class B felony if committed while armed with a deadly weapon or serious bodily injury occurs.
3. Other cases (not involving removal out of state): Class C misdemeanor; Class B misdemeanor if it occurs in violation of a court order.
4. Defense: the accused (or the child) was threatened.

CCC. Domestic Violence Animal Cruelty

1. IC 35-46-3-12 and -12.5
2. Class D felonies
3. Defined as knowingly or intentionally beating (-12) or killing (-12.5) a vertebrate animal with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

Prepared by: Ruth D. Reichard
Last Updated: September 11, 2008