

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE ENROLLED ACT No. 1651

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

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

SECTION 1. IC 12-26-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) A commitment under this chapter may be begun by any of the following methods:

- (1) Upon request of the superintendent under IC 12-26-3-5.
 - (2) An order of the court:
 - (A) having jurisdiction over the individual following emergency detention; **or**
 - (B) referring an individual:**
 - (i) following a hearing under IC 35-47-14-6; and**
 - (ii) after a physicians written statement has been filed setting forth the requirements described in subsections (c)(1) and (c)(2) of this section.**
 - (3) Filing a petition with a court having jurisdiction in the county:
 - (A) of residence of the individual; or
 - (B) where the individual may be found.
- (b) A petitioner under subsection (a)(3) must be at least eighteen (18) years of age.
- (c) A petition under subsection (a)(3) must include a physician's written statement stating both of the following:

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(1) The physician has examined the individual within the past thirty (30) days.

(2) The physician believes the individual is:

(A) mentally ill and either dangerous or gravely disabled; and

(B) in need of custody, care, or treatment in an appropriate facility.

SECTION 2. IC 35-31.5-2-81.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 81.5. "Dangerous", for purposes of IC 35-47-4-6.5, IC 35-47-4-6.7, and IC 35-47-14, has the meaning set forth in IC 35-47-14-1.**

SECTION 3. IC 35-47-1-7, AS AMENDED BY P.L.126-2012, SECTION 57, IS AMENDED TO READ AS FOLLOWS [JULY 1, 2019] [EFFECTIVE JULY 1, 2019]: Sec. 7. "Proper person" means a person who:

(1) does not have a conviction for resisting law enforcement under IC 35-44.1-3-1 within five (5) years before the person applies for a license or permit under this chapter;

(2) does not have a conviction for a crime for which the person could have been sentenced for more than one (1) year;

(3) does not have a conviction for a crime of domestic violence (as defined in IC 35-31.5-2-78), unless a court has restored the person's right to possess a firearm under IC 35-47-4-7;

(4) is not prohibited by a court order from possessing a handgun;

(5) does not have a record of being an alcohol or drug abuser as defined in this chapter;

(6) does not have documented evidence which would give rise to a reasonable belief that the person has a propensity for violent or emotionally unstable conduct;

(7) does not make a false statement of material fact on the person's application;

(8) does not have a conviction for any crime involving an inability to safely handle a handgun;

(9) does not have a conviction for violation of the provisions of this article within five (5) years of the person's application;

(10) does not have an adjudication as a delinquent child for an act that would be a felony if committed by an adult, if the person applying for a license or permit under this chapter is less than twenty-three (23) years of age;

(11) has not been involuntarily committed, other than a temporary commitment for observation or evaluation, to a mental institution by a court, board, commission, or other lawful authority;



- (12) has not been the subject of a:
- (A) ninety (90) day commitment as a result of proceeding under IC 12-26-6; or
 - (B) regular commitment under IC 12-26-7; ~~or~~
- (13) has not been found by a court to be mentally incompetent, including being found:
- (A) not guilty by reason of insanity;
 - (B) guilty but mentally ill; or
 - (C) incompetent to stand trial; **or**
- (14) is not currently designated as dangerous (as defined in IC 35-47-14-1) by a court following a hearing under IC 35-47-14-6.**

SECTION 4. IC 35-47-4-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [JULY 1, 2019] [EFFECTIVE JULY 1, 2019]: **Sec. 6.5. A person who:**

- (1) has been found to be dangerous by a circuit or superior court having jurisdiction over the person following a hearing under IC 35-47-14-6; and**
- (2) knowingly or intentionally:**
 - (A) rents;
 - (B) purchases;
 - (C) receives transfer of;
 - (D) owns; or
 - (E) possesses;

a firearm commits unlawful possession of a firearm by a dangerous person, a Class A misdemeanor.

SECTION 5. IC 35-47-4-6.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [JULY 1, 2019] [EFFECTIVE JULY 1, 2019]: **Sec. 6.7. A person who knowingly or intentionally rents, transfers, sells, or offers for sale a firearm to another person who the person knows to be found dangerous by a circuit or superior court following a hearing under IC 35-47-14-6 commits unlawful transfer of a firearm to a dangerous person, a Level 5 felony.**

SECTION 6. IC 35-47-14-1, AS ADDED BY P.L.1-2006, SECTION 537, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1. (a) For the purposes of this chapter, an individual is "dangerous" if:**

- (1) the individual presents an imminent risk of personal injury to the individual or to another individual; or
- (2) It is probable that the individual ~~may~~ will present a risk of personal injury to the individual or to another individual in the**



future and the individual:

(A) has a mental illness (as defined in IC 12-7-2-130) that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking the individual's medication while not under supervision; or

(B) is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or ~~emotionally unstable~~ **suicidal** conduct.

(b) The fact that an individual has been released from a mental health facility or has a mental illness that is currently controlled by medication does not establish that the individual is dangerous for the purposes of this chapter.

SECTION 7. IC 35-47-14-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [JULY 1, 2019] [EFFECTIVE JULY 1, 2019]: **Sec. 1.5. For the purposes of this chapter, an individual is a "responsible third party" if:**

(1) the individual does not cohabit with the person found to be dangerous in the hearing conducted under section 6 of this chapter;

(2) the individual is a proper person (as defined under IC 35-47-1-7) who may lawfully possess a firearm; and

(3) the individual is willing to enter into a written court agreement to accept the transfer of the firearm as a responsible third party under section 10 of this chapter.

SECTION 8. IC 35-47-14-2, AS ADDED BY P.L.1-2006, SECTION 537, IS AMENDED TO READ AS FOLLOWS [JULY 1, 2019] [EFFECTIVE JULY 1, 2019]: Sec. 2. **(a)** A circuit or superior court may issue a warrant to search for and seize a firearm in the possession of an individual who is dangerous if:

(1) a law enforcement officer provides the court a sworn affidavit that:

(A) states why the law enforcement officer believes that the individual is dangerous and in possession of a firearm; and

(B) describes the law enforcement officer's interactions and conversations with:

(i) the individual who is alleged to be dangerous; or

(ii) another individual, if the law enforcement officer believes that information obtained from this individual is credible and reliable;

that have led the law enforcement officer to believe that the individual is dangerous and in possession of a firearm;

(2) the affidavit specifically describes the location of the firearm;



and

(3) the circuit or superior court determines that probable cause exists to believe that the individual is:

(A) dangerous; and

(B) in possession of a firearm.

(b) A law enforcement agency responsible for the seizure of the firearm under this section shall file a search warrant return with the court setting forth the:

(1) quantity; and

(2) type;

of each firearm seized from an individual under this section.

SECTION 9. IC 35-47-14-3, AS ADDED BY P.L.1-2006, SECTION 537, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) If a law enforcement officer seizes a firearm from an individual whom the law enforcement officer believes to be dangerous without obtaining a warrant, the law enforcement officer shall submit to the circuit or superior court having jurisdiction over the individual believed to be dangerous a ~~written statement an affidavit under oath or affirmation~~ describing the basis for the law enforcement officer's belief that the individual is dangerous.

(b) An affidavit described in subsection (a) shall be submitted to a circuit or superior court having jurisdiction over the individual believed to be dangerous not later than forty-eight (48) hours after the seizure of the firearm.

~~(b)~~ **(c) The court shall review the written statement submitted under subsection affidavit described in subsection (a) as soon as possible.**

(d) If the court finds that probable cause exists to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to retain the firearm.

(e) A law enforcement agency responsible for the seizure of the firearm under this section shall file a search warrant return with the court setting forth the:

(1) quantity; and

(2) type;

of each firearm seized from an individual under this section.

(f) If the court finds that there is no probable cause to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual as quickly as practicable, but not later than five (5) days after the date of the order.

~~(c) This section does not authorize a law enforcement officer to perform a warrantless search or seizure if a warrant would otherwise be~~



required:

SECTION 10. IC 35-47-14-5, AS ADDED BY P.L.1-2006, SECTION 537, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) ~~Not later than fourteen (14) days after a~~ **After the filing of a search warrant** return is filed under section ~~4~~ **2** of this chapter or ~~a~~ **the filing of an affidavit written statement is submitted** under section 3 of this chapter, the court shall conduct a hearing. ~~to determine whether the seized firearm should be:~~

- ~~(1) returned to the individual from whom the firearm was seized;~~
- ~~or~~
- ~~(2) retained by the law enforcement agency having custody of the firearm.~~

(b) The court shall ~~set~~ **make a good faith effort to conduct** the hearing ~~date as soon as possible not later than fourteen (14) days after the~~ **filing of a search warrant** return is filed under section ~~4~~ **2** of this chapter ~~or the filing of an affidavit under section 3 of this chapter. If the hearing cannot be conducted within fourteen (14) days after the filing of the search warrant return or affidavit, the court shall conduct the hearing as soon as possible. However, a request for a continuance of the hearing described in this subsection for a period of not more than sixty (60) days from the individual from whom the firearm was seized shall be liberally granted.~~ The court shall inform:

- (1) the prosecuting attorney; and
- (2) the individual from whom the firearm was seized;

of the date, time, and location of the hearing. The court may conduct the hearing at a facility or other suitable place not likely to have a harmful effect upon the individual's health or well-being.

SECTION 11. IC 35-47-14-6, AS ADDED BY P.L.1-2006, SECTION 537, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) ~~In a hearing conducted under section 5 of this chapter, the state has the burden of proving all material facts by clear and convincing evidence. The court shall conduct a hearing as required under this chapter.~~

(b) ~~If the court, in a hearing under section 5 of this chapter, determines that the state has proved~~ **The state has the burden of proving all material facts** by clear and convincing evidence. ~~that the individual is dangerous; the court may order that the law enforcement agency having custody of the seized firearm retain the firearm. In addition, if the individual has received a license to carry a handgun, the court shall suspend the individual's license to carry a handgun. If the court determines that the state has failed to prove that the individual is~~



dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual from whom it was seized.

(c) If the court determines that the state has proved by clear and convincing evidence that the individual is dangerous, the court shall issue a written order:

- (1) finding the individual is dangerous (as defined in section 1 of this chapter);**
 - (2) ordering the law enforcement agency having custody of the seized firearm to retain the firearm;**
 - (3) ordering the individual's license to carry a handgun, if applicable, suspended; and**
 - (4) enjoining the individual from:**
 - (A) renting;**
 - (B) receiving transfer of;**
 - (C) owning; or**
 - (D) possessing;**
- a firearm; and**

determine whether the individual should be referred to further proceedings to consider whether the individual should be involuntarily detained or committed under IC 12-26-6-2(a)(2)(B).

(d) If the court finds that the individual is dangerous under subsection (c), the clerk shall transmit the order of the court to the office of judicial administration for transmission to NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

~~(e) If the court in a hearing under section 5 of this chapter, orders a law enforcement agency to retain a firearm, the law enforcement agency shall retain the firearm until the court orders the firearm returned or otherwise disposed of.~~

(f) If the court determines that the state has failed to prove by clear and convincing evidence that the individual is dangerous, the court shall issue a written order that:

- (1) the individual is not dangerous (as defined in section 1 of this chapter); and**
- (2) the law enforcement agency having custody of the firearm shall return the firearm as quickly as practicable, but not later than five (5) days after the date of the order, to the individual from whom it was seized.**

SECTION 12. IC 35-47-14-8, AS ADDED BY P.L.1-2006, SECTION 537, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. (a) At least one hundred eighty (180) days after the date on which a court orders a law enforcement



agency to retain an individual's firearm under section ~~6(b)~~ **6(c)** of this chapter, the individual may petition the court for ~~return of the firearm.~~
a finding that the individual is no longer dangerous.

(b) Upon receipt of a petition described in subsection (a), the court shall:

- (1) enter an order setting a date for a hearing on the petition; and
- (2) inform the prosecuting attorney of the date, time, and location of the hearing.

(c) The prosecuting attorney shall represent the state at the hearing on a petition under this section.

- (d) In a hearing on a petition under this section, the individual
- ~~(1)~~ may be represented by an attorney. ~~and~~
 - ~~(2)~~ must prove by a preponderance of the evidence that the individual is not dangerous.

(e) In a hearing on a petition under this section filed:

- (1) not later than one (1) year after the date of the order issued under section 6(c) of this chapter, the individual must prove by a preponderance of the evidence that the individual is no longer dangerous; and**
- (2) later than one (1) year after the date of the order issued under section 6(c) of this chapter, the state must prove by clear and convincing evidence that the individual is still dangerous.**

~~(e)~~ **(f)** If, upon the completion of the hearing and consideration of the record, the court finds that the individual is ~~not~~ **no longer dangerous**, the court shall:

- (1) issue a court order that finds that the individual is no longer dangerous;**
- (2) order the law enforcement agency having custody of the any firearm to return the firearm as quickly as practicable, but not later than five (5) days after the date of the order, to the individual;**
- (3) terminate any injunction issued under section 6 of this chapter; and**
- (4) terminate the suspension of the individual's license to carry a handgun so that the individual may reapply for a license.**

~~(f)~~ **(g)** If the court denies an individual's petition under this section, the individual may not file a subsequent petition until at least one hundred eighty (180) days after the date on which the court denied the petition.

(h) If a court issues an order described under subsection (f), the



court's order shall be transmitted, as soon as practicable, to the office of judicial administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

SECTION 13. IC 35-47-14-10, AS ADDED BY P.L.157-2014, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) If a court has ordered a law enforcement agency to retain an individual's firearm under section 6 of this chapter, the individual **or the rightful owner of the firearm, as applicable,** may ~~request~~ **petition** the court to order the law enforcement agency to:

- (1) transfer the firearm to a responsible third party as described under section 1.5 of this chapter;**
- (2) transfer the firearm to an individual who possesses a valid federal firearms license issued under 18 U.S.C. 923 for storage or an eventual lawful sale whose terms are mutually agreed upon between the licensee and the individual or rightful owner, as applicable; or**
- (3) sell the firearm at auction under IC 35-47-3-2 and return the proceeds to the individual or the rightful owner of the firearm, as applicable.**

The responsible third party who accepts transfer of the firearm from the law enforcement agency under a court order under this section shall enter into a written court agreement that obligates the responsible third party to the reasonable care and storage of the firearm, including not providing access or transferring the firearm to the individual found to be dangerous in a hearing under section 6 of this chapter.

(b) An individual **or rightful owner of the firearm** may ~~make petition~~ **petition** the ~~request court~~ **as** described in subsection (a):

- (1) at the ~~retention~~ hearing described in section **6 or 9** of this chapter; or
- (2) at any time before the ~~retention~~ hearing described in section **6 or 9** of this chapter is held.

(c) If an individual **or rightful owner** timely requests a sale **or transfer** of a firearm under subsection (a), the court shall order the law enforcement agency having custody of the firearm to **transfer the firearm or** sell the firearm at auction under IC 35-47-3-2, unless:

- (1) the serial number of the firearm has been obliterated;**
- (2) the transfer of the firearm would be unlawful; or**
- (3) the requirements of subsection (a) have not been met.**

(d) If the court issues an order under subsection (c), the court's order must require:

- (1) that the firearm be sold not more than one (1) year after



receipt of the order; and

(2) that the proceeds of the sale be returned to the individual ~~who~~
owns or rightful owner of the firearm.

(e) ~~However, the~~ **A** law enforcement agency may retain not more than eight percent (8%) of the sale price to pay the costs of the sale, including administrative costs and the auctioneer's fee.

SECTION 14. IC 35-47-14-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 11. The sale, disposal, or transfer of a firearm retained under this chapter does not:**

(1) **alter or terminate an individual's designation as a dangerous person by a court; or**

(2) **constitute prima facie evidence that an individual is no longer dangerous.**

SECTION 15. IC 35-47-14-12 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 12. (a) A law enforcement agency storing a firearm seized under this chapter shall use reasonable care to ensure that the firearm is not lost or damaged, and the law enforcement agency is prohibited from marking the firearm for identification or other purposes.**

(b) A law enforcement agency shall be liable for any damage to or loss of the firearm that results from the law enforcement agency's negligence in the storage or handling of the firearm.

SECTION 16. IC 35-47-14-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 13. Nothing in this chapter may be construed to authorize a warrantless search or seizure by a law enforcement officer if a warrant would otherwise be required.**

SECTION 17. **An emergency is declared for this act.**



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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