

HOUSE BILL No. 1297

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2; IC 35-47-4.

Synopsis: Surrender of firearms for domestic violence crimes. Provides that a person who: (1) has been convicted of a crime of domestic violence; and (2) knowingly or intentionally possesses a firearm; commits possession of a firearm by a domestic batterer, a Class A misdemeanor. Provides certain defenses. Requires a court to issue an order, upon entry of a judgment of conviction for a crime of domestic battery or a crime of domestic violence, that: (1) prohibits ownership or possession of a firearm until the defendant's right to possess a firearm is restored; and (2) requires the defendant to surrender: (A) any firearm owned or possessed by the defendant; and (B) any license or permit to carry a handgun (license); to a law enforcement agency or law enforcement officer with jurisdiction over the area where the defendant's offense occurred, where the defendant resides, or where the defendant plans to reside. Requires a court to order an appropriate law enforcement agency or law enforcement officer to seize, within 72 hours, any firearm or license owned or possessed by a defendant convicted of domestic battery or a crime of domestic violence. Provides that a person who knowingly or intentionally fails to surrender: (1) all firearms owned or possessed by the person; or (2) any license possessed by the person; after being convicted of domestic battery or a crime of domestic violence commits unlawful retention of a firearm or license by a domestic batterer, a Class A misdemeanor. Enhances the offense to a Level 6 felony if the person has a prior unrelated conviction for the offense. Provides certain defenses. Specifies how a confiscated firearm or valid license shall be: (1) returned to the rightful owner; or (2) disposed of; if a defendant's right to possess a firearm is restored. Defines certain terms. Makes conforming amendments.

Effective: July 1, 2020.

Smith V

January 14, 2020, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1297

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 35-31.5-2-78, AS AMENDED BY P.L.40-2019,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 78. "Crime of domestic violence", for purposes of
4 IC 5-2-6.1, IC 35-38-9, and ~~IC 35-47-4-7~~, **IC 35-47-4**, means an
5 offense or the attempt to commit an offense that:

- 6 (1) has as an element the:
7 (A) use of physical force; or
8 (B) threatened use of a deadly weapon; and
9 (2) is committed against a family or household member, as
10 defined in section 128 of this chapter.

11 SECTION 2. IC 35-31.5-2-103.2 IS ADDED TO THE INDIANA
12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2020]: **Sec. 103.2. "Domestic batterer", for**
14 **purposes of IC 35-47-4-6.3 and IC 35-47-4-6.4, has the meaning set**
15 **forth in IC 35-47-4-6.3.**

16 SECTION 3. IC 35-31.5-2-183, AS AMENDED BY P.L.144-2018,
17 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2020]: Sec. 183. (a) "Law enforcement agency," for purposes
 2 of receiving information concerning a violation of IC 35-42-3.5-1
 3 through IC 35-42-3.5-1.4 (human trafficking), means:

4 (1) an agency or department of:

5 (A) the state; or

6 (B) a political subdivision of the state;

7 whose principal function is the apprehension of criminal
 8 offenders; and

9 (2) the attorney general.

10 (b) "Law enforcement agency", for purposes of **IC 35-47-4 and**
 11 **IC 35-47-15**, has the meaning set forth in IC 35-47-15-2.

12 SECTION 4. IC 35-31.5-2-187.4 IS ADDED TO THE INDIANA
 13 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 14 **[EFFECTIVE JULY 1, 2020]: Sec. 187.4. "License", for purposes of**
 15 **IC 35-47-4-6.3 and IC 35-47-4-6.4, has the meaning set forth in**
 16 **IC 35-47-4-6.3.**

17 SECTION 5. IC 35-31.5-2-319.5 IS ADDED TO THE INDIANA
 18 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 19 **[EFFECTIVE JULY 1, 2020]: Sec. 319.5. "Surrender", for purposes**
 20 **of IC 35-47-4-6.3 and IC 35-47-4-6.4, has the meaning set forth in**
 21 **IC 35-47-4-6.3.**

22 SECTION 6. IC 35-47-4-6, AS AMENDED BY P.L.118-2007,
 23 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2020]: Sec. 6. (a) A person who has been convicted of:

25 (1) domestic battery under IC 35-42-2-1.3; or

26 (2) **a crime of domestic violence (as defined in**
 27 **IC 35-31.5-2-78);**

28 and who knowingly or intentionally possesses a firearm commits
 29 unlawful possession of a firearm by a domestic batterer, a Class A
 30 misdemeanor.

31 (b) It is a defense to a prosecution under this section that:

32 (1) the person's right to possess a firearm has been restored under
 33 ~~IC 35-47-4-7.~~ **section 7 of this chapter; or**

34 (2) **the person, at the time of the commission of the offense,**
 35 **was:**

36 (A) **subject to a written court order under section 6.4 of**
 37 **this chapter; and**

38 (B) **awaiting confiscation of the firearm by an appropriate**
 39 **law enforcement agency or law enforcement officer as**
 40 **described in section 6.4(c) of this chapter.**

41 SECTION 7. IC 35-47-4-6.3 IS ADDED TO THE INDIANA CODE
 42 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**



1, 2020]: Sec. 6.3. (a) The following definitions apply throughout this section and section 6.4 of this chapter:

(1) "Crime of domestic violence" has the meaning set forth in IC 35-31.5-2-78.

(2) "Domestic batterer" means a person:

(A) who has been convicted of domestic battery (IC 35-42-2-1.3) or a crime of domestic violence; and

(B) whose right to possess a firearm has not been restored under section 7 of this chapter.

(3) "License" means any license or permit to carry a handgun.

(4) "Surrender" means to make available for confiscation by a law enforcement agency or law enforcement officer having jurisdiction over one (1) or more of the following:

(A) The location of the offense.

(B) The location of the defendant's residence.

(C) The location of the defendant's residence during the pendency of the defendant's sentence.

(b) A domestic batterer who knowingly or intentionally fails to surrender any:

(1) firearm; or

(2) license;

owned or possessed by the domestic batterer commits unlawful retention of a firearm or license by a domestic batterer, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction for an offense under this section.

(c) It is a defense to a prosecution under this section that:

(1) a court did not issue a written order described in section 6.4(b) of this chapter before the domestic batterer's failure to surrender any firearm or license owned or possessed by the domestic batterer; or

(2) the appropriate law enforcement agency or law enforcement officer failed to confiscate a firearm or license eligible for confiscation under this section in a timely manner.

(d) It is not a defense to a prosecution under this section that a firearm or license subject to confiscation by a law enforcement agency or a law enforcement officer under this section was in the possession of a third party not specified in the court order described in section 6.4(b) of this chapter.

(e) Nothing in this chapter shall be construed to prevent a person who is:

(1) the rightful owner of a firearm confiscated under this



1 **section; and**
 2 **(2) not otherwise disqualified or prohibited from owning or**
 3 **possessing a firearm under state or federal law;**
 4 **from reclaiming a confiscated firearm from the law enforcement**
 5 **agency or law enforcement officer responsible for originally**
 6 **confiscating the firearm.**

7 SECTION 8. IC 35-47-4-6.4 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 2020]: **Sec. 6.4. (a) The definitions in section 6.3 of this chapter**
 10 **apply throughout this section.**

11 **(b) A court, upon entering a judgment of conviction for**
 12 **domestic battery or a crime of domestic violence, shall issue a**
 13 **written order that does the following:**

14 **(1) Prohibits the defendant from owning or possessing a**
 15 **firearm.**

16 **(2) Requires the defendant to surrender all firearms and**
 17 **licenses owned or possessed by the defendant.**

18 **(3) Orders an appropriate law enforcement:**

19 **(A) agency; or**

20 **(B) officer;**

21 **to confiscate all firearms and all licenses owned or possessed**
 22 **by the defendant.**

23 **(4) Advises the defendant of the rights described in section 7**
 24 **of this chapter.**

25 **(c) A law enforcement agency or law enforcement officer**
 26 **subject to a written court order described in subsection (b) shall**
 27 **comply with subsection (b) not later than seventy-two (72) hours**
 28 **after receipt of the written court order described in subsection (b).**

29 SECTION 9. IC 35-47-4-7, AS AMENDED BY P.L.181-2014,
 30 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2020]: **Sec. 7. (a) Notwithstanding IC 35-47-2, IC 35-47-2.5,**
 32 **the restoration of the right to serve on a jury under IC 33-28-5-18, the**
 33 **restoration of the right to vote under IC 3-7-13-5, or the expungement**
 34 **of a crime of domestic violence under IC 35-38-9, and except as**
 35 **provided in subsections (b), (c), and (f), a person who has been**
 36 **convicted of a crime of domestic violence may not possess a firearm.**

37 **(b) Not earlier than five (5) years after the date of conviction, a**
 38 **person who has been convicted of a crime of domestic violence may**
 39 **petition the court for restoration of the person's right to possess a**
 40 **firearm. In determining whether to restore the person's right to possess a**
 41 **firearm, the court shall consider the following factors:**

42 **(1) Whether the person has been subject to:**



- 1 (A) a protective order;
 2 (B) a no contact order;
 3 (C) a workplace violence restraining order; or
 4 (D) any other court order that prohibits the person from
 5 possessing a firearm.
- 6 (2) Whether the person has successfully completed a substance
 7 abuse program, if applicable.
- 8 (3) Whether the person has successfully completed a parenting
 9 class, if applicable.
- 10 (4) Whether the person still presents a threat to the victim of the
 11 crime.
- 12 (5) Whether there is any other reason why the person should not
 13 possess a firearm, including whether the person failed to satisfy
 14 a specified condition under subsection (c) or whether the person
 15 has committed a subsequent offense.
- 16 (c) The court may condition the restoration of a person's right to
 17 possess a firearm upon the person's satisfaction of specified conditions.
- 18 (d) If the court denies a petition for restoration of the right to
 19 possess a firearm, the person may not file a second or subsequent
 20 petition until one (1) year has elapsed after the filing of the most recent
 21 petition.
- 22 (e) A person has not been convicted of a crime of domestic violence
 23 for purposes of subsection (a) if the person has been pardoned.
- 24 (f) The right to possess a firearm shall be restored to a person whose
 25 conviction is reversed on appeal or on postconviction review at the
 26 earlier of the following:
- 27 (1) At the time the prosecuting attorney states on the record that
 28 the charges that gave rise to the conviction will not be refiled.
- 29 (2) Ninety (90) days after the final disposition of the appeal or the
 30 postconviction proceeding.
- 31 **(g) If a defendant's right to possess a firearm is restored under**
 32 **this section, any:**
- 33 **(1) written court order issued under section 6.4 of this chapter**
 34 **shall be vacated;**
- 35 **(2) firearm confiscated under section 6.4 of this chapter shall**
 36 **be:**
- 37 **(A) disposed of; or**
- 38 **(B) returned to the rightful owner;**
- 39 **in the manner described in IC 35-47-3; and**
- 40 **(3) valid license confiscated under section 6.4 of this chapter**
 41 **shall be made available to the defendant not later than**
 42 **seventy-two (72) hours after the defendant's right to possess**



1 **a firearm has been restored.**

