



Reprinted
February 12, 2019

HOUSE BILL No. 1651

DIGEST OF HB 1651 (Updated February 11, 2019 6:24 pm - DI 131)

Citations Affected: IC 5-2; IC 12-26; IC 35-31.5; IC 35-47.

Synopsis: Judicial evaluation of dangerous individuals. Requires the office of judicial administration to collect, monitor, and publish certain statistics related to the confiscation and retention of firearms taken from dangerous individuals. Requires a court to wait until after the conclusion of certain hearings before providing findings related to a person's dangerousness to the office of judicial administration. Provides that a dangerous person is not a proper person for the purpose of: (1) applying for; or (2) receiving; a license to carry a handgun. Provides that a dangerous person who knowingly or intentionally: (1) rents; (2) purchases; (3) receives transfer of; (4) owns; or (5) possesses; a firearm commits dangerous possession of a firearm, a Class A misdemeanor. Provides that a person who knowingly or intentionally: (1) rents; (2)
(Continued next page)

Effective: Upon passage; July 1, 2019; July 1, 2020.

Schaibley, McNamara, Hamilton

January 24, 2019, read first time and referred to Committee on Courts and Criminal Code.
February 7, 2019, amended, reported — Do Pass.
February 11, 2019, read second time, amended, ordered engrossed.

HB 1651—LS 7550/DI 123



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transfers; (3) sells; or (4) offers for sale; a firearm to a person that a court has found to be dangerous or prohibited from owning or possessing a firearm commits dangerous transfer of a firearm, a Level 5 felony. Requires a law enforcement officer (officer) who seizes a firearm from a person believed to be dangerous without a warrant to provide an affidavit to a court with jurisdiction over the person at issue: (1) not later than 48 hours after the seizure or attempted seizure of the firearm; and (2) for each seizure or attempted seizure of a firearm from the person. Requires a court to review the affidavit of an officer as soon as possible. Requires a court to order the retention of a seized firearm by a law enforcement agency if the court: (1) finds; or (2) has previously found; the person to be dangerous. Requires a court to determine if a person is dangerous by conducting a hearing after: (1) the receipt of an officer's affidavit; or (2) authorizing a search warrant mandating the seizure of a firearm from a person believed to be dangerous. Provides that at a hearing to determine if an individual is dangerous, the court shall also determine whether a separate, concurrent hearing should be held to consider whether the individual may be involuntarily detained or committed. Requires a court to issue a written court order prohibiting a person from: (1) renting; (2) buying; (3) receiving transfer of; (4) owning; or (5) possessing a firearm; after finding a person to be dangerous. Requires a court to provide certain information to the office of judicial administration after issuing a finding concerning a person's dangerousness. Requires a court to issue a written order finding that a person is: (1) not dangerous; or (2) no longer dangerous; in certain instances. Provides that if a court finds that an individual is not dangerous or no longer dangerous, the court shall order the law enforcement agency having custody of the firearm confiscated, recovered, or seized from the individual to return the firearm to the individual as quickly as practicable, but not later than five days after the court's order. Provides that a dangerous person may petition a court for a court order vacating the person's designation as a dangerous individual 180 days after being found dangerous by a circuit or superior court. Specifies the process that a dangerous individual must follow when petitioning a court for the dissolution of a dangerous person designation. Allows the rightful owner of a firearm to petition a court for an order mandating the: (1) disposal; (2) sale; or (3) transfer; of a seized or retained firearm. Defines "responsible third party". Provides that the authorized disposal or authorized sale of a firearm retained by a law enforcement agency does not: (1) alter or terminate a person's designation as a dangerous individual; or (2) constitute prima facie evidence that a person is not dangerous. Defines certain terms. Makes conforming amendments.



Reprinted
February 12, 2019

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 BILL No. 1651

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 5-2-6-18.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2020]: **Sec. 18.5. (a) The following terms are defined for this**
4 **section:**
5 (1) "**Dangerous**" has the meaning set forth in IC 35-47-14-1.
6 (2) "**Firearm**" has the meaning set forth in IC 35-47-1-5.
7 (3) "**NFA regulated firearm**" means any firearm described
8 under 26 U.S.C. 5845(a) through 26 U.S.C. 5845(f).
9 (4) "**Office**" means the office of judicial administration
10 established under IC 33-24-6-1.
11 (b) **The office shall track and record the following information:**
12 (1) **The name of the law enforcement agency responsible for**
13 **each confiscation of a firearm under IC 35-47-14-2 and**
14 **IC 35-47-14-3.**
15 (2) **The number of:**

HB 1651—LS 7550/DI 123



- 1 (A) warrant based firearm confiscations under
 2 IC 35-47-14-2; and
 3 (B) warrantless firearm confiscations under IC 35-47-14-3;
 4 for each county, as applicable, each year.
 5 (3) The total number of:
 6 (A) handguns;
 7 (B) long guns; and
 8 (C) NFA regulated firearms;
 9 confiscated under IC 35-47-14 for each county, as applicable,
 10 each year.
 11 (4) The:
 12 (A) county;
 13 (B) court of origin; and
 14 (C) judge;
 15 responsible for each written court order that finds an
 16 individual to be dangerous under IC 35-47-14-5.
 17 (5) The:
 18 (A) county;
 19 (B) court of origin; and
 20 (C) judge;
 21 for each appeal of or reversal of a written court order that
 22 finds an individual to be dangerous under IC 35-47-14-5.
 23 (6) The:
 24 (A) county;
 25 (B) court of origin; and
 26 (C) judge;
 27 responsible for enacting or enforcing an agreed entry.
 28 (c) The office shall, not later than January 1 of each year,
 29 submit a report to the general assembly in an electronic format
 30 under IC 5-14-6 that consolidates and presents the information
 31 described in subsection (b).
 32 (d) Notwithstanding subsections (b) and (c), the office shall not
 33 collect, store, disclose, distribute, transfer, or provide the following
 34 information to any assembly, person, entity, agency, or
 35 department:
 36 (1) The:
 37 (A) name;
 38 (B) date of birth;
 39 (C) Social Security number;
 40 (D) address; or
 41 (E) other unique identifier;
 42 belonging to or associated with an individual alleged to be



1 **dangerous by a law enforcement officer or found to be**
 2 **dangerous by a circuit or superior court.**

3 **(2) The make, model, or serial number of any handgun, long**
 4 **gun, firearm, or NFA regulated firearm seized, confiscated,**
 5 **retained, disposed of, or sold under IC 35-47-14.**

6 **(e) Information:**

7 **(1) collected by the office; or**

8 **(2) used by the office;**

9 **to prepare the report described in subsection (c) is confidential and**
 10 **not subject to public inspection or copying under IC 5-14-3-3.**

11 **(f) The office shall make the report described in subsection (c)**
 12 **available to the public.**

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

16 (1) Upon request of the superintendent under IC 12-26-3-5.

17 (2) An order of the court:

18 (A) having jurisdiction over the individual following
 19 emergency detention; **or**

20 **(B) after having a hearing under IC 35-47-14-5.**

21 (3) Filing a petition with a court having jurisdiction in the county:

22 (A) of residence of the individual; or

23 (B) where the individual may be found.

24 (b) A petitioner under subsection (a)(3) must be at least eighteen
 25 (18) years of age.

26 (c) A petition under subsection (a)(3) must include a physician's
 27 written statement stating both of the following:

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

30 (2) The physician believes the individual is:

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

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

34 SECTION 3. IC 35-31.5-2-81.5 IS ADDED TO THE INDIANA
 35 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 36 [EFFECTIVE UPON PASSAGE]: **Sec. 81.5. "Dangerous", for**
 37 **purposes of IC 35-47-4-6.5, IC 35-47-4-6.7, and IC 35-47-14 has the**
 38 **meaning set forth in IC 35-47-14-1.**

39 SECTION 4. IC 35-47-1-7, AS AMENDED BY P.L.126-2012,
 40 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 UPON PASSAGE]: Sec. 7. "Proper person" means a person who:

42 (1) does not have a conviction for resisting law enforcement



- 1 under IC 35-44.1-3-1 within five (5) years before the person
 2 applies for a license or permit under this chapter;
 3 (2) does not have a conviction for a crime for which the person
 4 could have been sentenced for more than one (1) year;
 5 (3) does not have a conviction for a crime of domestic violence
 6 (as defined in IC 35-31.5-2-78), unless a court has restored the
 7 person's right to possess a firearm under IC 35-47-4-7;
 8 (4) is not prohibited by a court order from possessing a handgun;
 9 (5) does not have a record of being an alcohol or drug abuser as
 10 defined in this chapter;
 11 (6) does not have documented evidence which would give rise to
 12 a reasonable belief that the person has a propensity for violent or
 13 emotionally unstable conduct;
 14 (7) does not make a false statement of material fact on the
 15 person's application;
 16 (8) does not have a conviction for any crime involving an inability
 17 to safely handle a handgun;
 18 (9) does not have a conviction for violation of the provisions of
 19 this article within five (5) years of the person's application;
 20 (10) does not have an adjudication as a delinquent child for an act
 21 that would be a felony if committed by an adult, if the person
 22 applying for a license or permit under this chapter is less than
 23 twenty-three (23) years of age;
 24 (11) has not been involuntarily committed, other than a temporary
 25 commitment for observation or evaluation, to a mental institution
 26 by a court, board, commission, or other lawful authority;
 27 (12) has not been the subject of a:
 28 (A) ninety (90) day commitment as a result of proceeding
 29 under IC 12-26-6; or
 30 (B) regular commitment under IC 12-26-7; or
 31 (13) has not been found by a court to be mentally incompetent,
 32 including being found:
 33 (A) not guilty by reason of insanity;
 34 (B) guilty but mentally ill; or
 35 (C) incompetent to stand trial;
 36 **(14) is not currently designated as dangerous (as defined in**
 37 **IC 35-47-14-1) by a court following a hearing under**
 38 **IC 35-47-14-5; and**
 39 **(15) is not currently the subject of an injunction issued under**
 40 **IC 35-47-14-5.**

41 SECTION 5. IC 35-47-4-6.5 IS ADDED TO THE INDIANA CODE
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE

HB 1651—LS 7550/DI 123



1 UPON PASSAGE]: Sec. 6.5. (a) As used in this section, "dangerous"
2 has the meaning set forth in IC 35-47-14-1.

3 (b) A person who:

4 (1) has been found to be dangerous by a circuit or superior
5 court having jurisdiction over the person following a hearing
6 under IC 35-47-14-5; and

7 (2) knowingly or intentionally:

8 (A) rents;

9 (B) purchases;

10 (C) receives transfer of;

11 (D) owns; or

12 (E) possesses;

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

15 SECTION 6. IC 35-47-4-6.7 IS ADDED TO THE INDIANA CODE
16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
17 UPON PASSAGE]: Sec. 6.7. (a) As used in this section, "dangerous"
18 has the meaning set forth in IC 35-47-14-1.

19 (b) A person who knowingly or intentionally rents, transfers,
20 sells, or offers for sale a firearm to another person who the person
21 knows to be:

22 (1) found dangerous by a circuit or superior court following
23 a hearing under IC 35-47-14-5; or

24 (2) subject to a written court order issued under
25 IC 35-47-14-2;

26 commits unlawful transfer of a firearm to a dangerous person, a
27 Level 5 felony.

28 SECTION 7. IC 35-47-14-1, AS ADDED BY P.L.1-2006,
29 SECTION 537, IS AMENDED TO READ AS FOLLOWS
30 [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) For the purposes of this
31 chapter, an individual is "dangerous" if:

32 (1) the individual presents an imminent risk of personal injury to
33 the individual or to another individual; or

34 (2) **It is probable that** the individual ~~may~~ **will** present a risk of
35 personal injury to the individual or to another individual in the
36 future and the individual:

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

41 (B) is the subject of documented evidence that would give rise
42 to a reasonable belief that the individual has a propensity for



1 violent or ~~emotionally unstable~~ **suicidal** conduct.

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

6 SECTION 8. IC 35-47-14-1.5 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE UPON PASSAGE]: **Sec. 1.5. For the purposes of this**
9 **chapter, an individual is a "responsible third party" if:**

10 (1) **the individual does not cohabit with the person found**
11 **to be dangerous in the hearing conducted under section 5 of**
12 **this chapter;**

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

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

18 SECTION 9. IC 35-47-14-2, AS ADDED BY P.L.1-2006,
19 SECTION 537, IS AMENDED TO READ AS FOLLOWS
20 [EFFECTIVE UPON PASSAGE]: **Sec. 2. (a)** A circuit or superior
21 court may issue a warrant to search for and seize a firearm in the
22 possession of an individual who is dangerous if:

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

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

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

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

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

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

35 (2) the affidavit specifically describes the location of the firearm;
36 and

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

39 (A) dangerous; and

40 (B) in possession of a firearm.

41 **(b) A law enforcement agency responsible for the seizure of the**
42 **firearm under this section shall provide the court with the:**



1 (1) quantity; and
 2 (2) type;
 3 of each firearm seized from an individual under this section.
 4 Information described under this subsection shall be provided to
 5 the office of judicial administration by the court.

6 (c) A law enforcement agency storing a firearm seized under
 7 this section shall use reasonable care to ensure that the firearm is
 8 not lost or damaged, and the agency is prohibited from marking
 9 the firearm for identification or other purposes. A law enforcement
 10 agency shall be liable for any damage to or loss of the firearm that
 11 results from the agency's negligence in the storage or handling of
 12 the firearm.

13 SECTION 10. IC 35-47-14-3, AS ADDED BY P.L.1-2006,
 14 SECTION 537, IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) If a law enforcement
 16 officer seizes a firearm from an individual whom the law enforcement
 17 officer believes to be dangerous without obtaining a warrant, the law
 18 enforcement officer shall submit to the circuit or superior court having
 19 jurisdiction over the individual believed to be dangerous a ~~written~~
 20 ~~statement an affidavit under oath or affirmation~~ describing the basis
 21 for the law enforcement officer's belief that the individual is dangerous.

22 (b) An affidavit described in subsection (a) shall be submitted to
 23 a circuit or superior court having jurisdiction over the individual
 24 believed to be dangerous:

25 (1) not later than forty eight (48) hours after the seizure of the
 26 firearm; and

27 (2) for each incident involving the seizure of a firearm.

28 ~~(b)~~ (c) The court shall review the ~~written statement~~ submitted under
 29 subsection ~~affidavit~~ described in subsections (a) and (b) as soon as
 30 possible.

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

34 (e) A law enforcement agency responsible for the seizure of the
 35 firearm under this section shall provide the court with the:

36 (1) quantity; and

37 (2) type;

38 of each firearm seized from an individual under this section.
 39 Information described under this subsection shall be provided to
 40 the office of judicial administration by the court.

41 (f) If the court finds that there is no probable cause to believe that
 42 the individual is dangerous, the court shall order the law enforcement



1 agency having custody of the firearm to return the firearm to the
2 individual **as quickly as practicable, but not later than five (5) days.**

3 **(g) A law enforcement agency storing a firearm seized under**
4 **this section shall use reasonable care to ensure that the firearm is**
5 **not lost or damaged, and the agency is prohibited from marking**
6 **the firearm for identification or other purposes. A law enforcement**
7 **agency shall be liable for any damage to or loss of the firearm that**
8 **results from the agency's negligence in the storage or handling of**
9 **the firearm.**

10 (c) This section does not authorize a law enforcement officer to
11 perform a warrantless search or seizure if a warrant would otherwise be
12 required.

13 SECTION 11. IC 35-47-14-5, AS ADDED BY P.L.1-2006,
14 SECTION 537, IS AMENDED TO READ AS FOLLOWS
15 [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) ~~Not later than fourteen~~
16 ~~(14) days after a~~ **After the filing of a search warrant return is filed**
17 **under section 4 of this chapter or a the receipt of an affidavit written**
18 **statement is submitted under section 3 of this chapter, the court shall**
19 **conduct a hearing to determine whether:**

20 **(1) the individual at issue is dangerous; and**

21 **(2) whether the any seized firearm should be:**

22 ~~(1) (A)~~ returned to the individual from whom the firearm was
23 seized; or

24 ~~(2) (B)~~ retained by the law enforcement agency having custody
25 of the firearm.

26 (b) The court shall **make a good faith effort to set conduct** the
27 **hearing date as soon as possible not later than fourteen (14) days**
28 **after the receipt of a search warrant return is filed submitted under**
29 **section 4 of this chapter or an affidavit submitted under section 3 of**
30 **this chapter. If the hearing cannot be conducted within fourteen**
31 **(14) days of receiving a search warrant return submitted under**
32 **section 4 of this chapter or an affidavit submitted under section 3**
33 **of this chapter, the court shall conduct the hearing as soon as**
34 **possible. However, a request for a continuance of the hearing**
35 **described under this subsection for a period of not more than sixty**
36 **(60) days from the individual from whom the firearm was seized**
37 **shall be liberally granted.** The court shall inform:

38 (1) the prosecuting attorney; and

39 (2) the individual from whom the firearm was seized;

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



1 (c) A court shall determine at a hearing under this section
 2 whether a separate, concurrent hearing under IC 12-26-6 should
 3 be held to consider whether the individual may be involuntarily
 4 detained or committed under IC 12-26-6.

5 (d) If a court finds, by clear and convincing evidence, that an
 6 individual is dangerous at the conclusion of a hearing performed
 7 under this section, the court shall issue an injunction prohibiting
 8 the individual from:

- 9 (1) renting;
 10 (2) receiving transfer of;
 11 (3) owning; or
 12 (4) possessing;
 13 a firearm.

14 (e) If the court:

- 15 (1) finds that a person is dangerous; and
 16 (2) issues an injunction described in subsection (d);
 17 the court shall transmit, after the hearing, any information
 18 required by the office of judicial administration to the office of
 19 judicial administration for transmission to the NICS (as defined in
 20 IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

21 SECTION 12. IC 35-47-14-6, AS ADDED BY P.L.1-2006,
 22 SECTION 537, IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) In a hearing conducted
 24 under section 5 of this chapter, the state has the burden of proving all
 25 material facts by clear and convincing evidence.

26 (b) If the court, in a hearing under section 5 of this chapter,
 27 determines that the state has proved by clear and convincing evidence
 28 that the individual is dangerous, the court:

- 29 (1) may order ~~that~~ the law enforcement agency having custody of
 30 the seized firearm ~~to~~ retain the firearm;
 31 (2) ~~in addition, if the individual has received a license to carry a~~
 32 ~~handgun, the court shall suspend the individual's license to carry~~
 33 ~~a handgun if applicable; and~~
 34 (3) shall issue an injunction prohibiting the individual from:
 35 (A) renting;
 36 (B) receiving transfer of;
 37 (C) owning; or
 38 (D) possessing;
 39 a firearm.

40 If the court determines that the state has failed to prove that the
 41 individual is dangerous, the court shall order the law enforcement
 42 agency having custody of the firearm to return the firearm to the



1 individual from whom it was seized:

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

6 **(d) If the court, in a hearing conducted under section 5 of this
7 chapter:**

8 **(1) makes a finding that an individual is dangerous; and**

9 **(2) issues an injunction described in subsection (b);**

10 **the court shall transmit, after the hearing, any information**
11 **required by the office of judicial administration to the office of**
12 **judicial administration for transmission to the NICS (as defined in**
13 **IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.**

14 **(e) If the court, in a hearing conducted under section 5 of this**
15 **chapter, makes a finding that an individual is not dangerous, the**
16 **court shall:**

17 **(1) issue a written order finding that the individual is:**

18 **(A) not dangerous; or**

19 **(B) no longer dangerous;**

20 **as applicable;**

21 **(2) order the law enforcement agency having custody of the**
22 **firearm to return the firearm as quickly as practicable, but**
23 **not later than five (5) days, to the individual from whom it**
24 **was seized; and**

25 **(3) transmit, as quickly as practicable, the court's finding on**
26 **the issue of dangerousness to the office of judicial**
27 **administration for transmission to the NICS (as defined in**
28 **IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.**

29 SECTION 13. IC 35-47-14-8, AS ADDED BY P.L.1-2006,
30 SECTION 537, IS AMENDED TO READ AS FOLLOWS
31 [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) At least one hundred
32 eighty (180) days after the date on which a court orders a law
33 enforcement agency to retain an individual's firearm under section 6(b)
34 of this chapter, the individual may petition the court for **one (1) or**
35 **more of the following:**

36 **(1) The return of the any firearm belonging to the individual.**

37 **(2) A court order that:**

38 **(A) finds that the individual is:**

39 **(i) not dangerous; or**

40 **(ii) no longer dangerous;**

41 **as applicable; and**

42 **(B) terminates any injunction issued under section 5 of this**



- 1 **chapter.**
- 2 (b) Upon receipt of a petition described in subsection (a), the court
- 3 shall:
- 4 (1) enter an order setting a date for a hearing on the petition; and
- 5 (2) inform the prosecuting attorney of the date, time, and location
- 6 of the hearing.
- 7 (c) The prosecuting attorney shall represent the state at the hearing
- 8 on a petition under this section.
- 9 (d) In a hearing on a petition under this section, the individual:
- 10 (1) may be represented by an attorney; and
- 11 (2) must prove by a preponderance of the evidence that the
- 12 individual is **not no longer** dangerous.
- 13 (e) If, upon the completion of the hearing and consideration of the
- 14 record, the court finds that the individual is not dangerous, the court
- 15 shall:
- 16 (1) **issue a court order that finds that the individual is no**
- 17 **longer dangerous;**
- 18 (2) order the law enforcement agency having custody of ~~the any~~
- 19 firearm **confiscated, recovered, or seized from the individual**
- 20 to return the firearm **as quickly as practicable, but not later**
- 21 **than five (5) days, to the individual; and**
- 22 (3) **terminate any injunction issued under section 5 of this**
- 23 **chapter;**
- 24 **as applicable.**
- 25 (f) If the court denies an individual's petition under this section, the
- 26 individual may not file a subsequent petition until at least one hundred
- 27 eighty (180) days after the date on which the court denied the petition.
- 28 (g) **A court order described under subsection (a)(2) or (e)(1)**
- 29 **shall be transmitted, as soon as practicable, to the office of judicial**
- 30 **administration for transmission to the NICS (as defined in**
- 31 **IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.**
- 32 SECTION 14. IC 35-47-14-9, AS AMENDED BY P.L.157-2014,
- 33 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 34 UPON PASSAGE]: Sec. 9. (a) If at least five (5) years have passed
- 35 since a court conducted the first hearing to retain a firearm under this
- 36 chapter, the court, after giving notice to the parties and conducting a
- 37 hearing, may order the law enforcement agency having custody of the
- 38 firearm to dispose of the firearm in accordance with IC 35-47-3.
- 39 (b) **The disposal of a firearm retained under this chapter does**
- 40 **not:**
- 41 (1) **alter or terminate an individual's designation as a**
- 42 **dangerous person by a court; or**



1 **(2) constitute prima facie evidence that an individual is no**
 2 **longer dangerous.**
 3 SECTION 15. IC 35-47-14-10, AS ADDED BY P.L.157-2014,
 4 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 UPON PASSAGE]: Sec. 10. (a) If a court has ordered a law
 6 enforcement agency to retain an individual's firearm under section 6 of
 7 this chapter, the individual **or the rightful owner of the firearm, as**
 8 **applicable**, may request the court to order the law enforcement agency
 9 to to:
 10 **(1) transfer the firearm to a responsible third party as**
 11 **described under section 1.5 of this chapter;**
 12 **(2) transfer the firearm to an individual who possesses a valid**
 13 **federal firearms license issued under 18 U.S.C. 923 for storage**
 14 **or an eventual lawful sale whose terms are mutually agreed**
 15 **upon between the licensee and the individual or rightful**
 16 **owner, as applicable; or**
 17 **(3) sell the firearm at auction under IC 35-47-3-2 and return the**
 18 **proceeds to the individual or the rightful owner of the firearm,**
 19 **as applicable.**
 20 **The responsible third party who accepts transfer of the firearm**
 21 **from the law enforcement agency under a court order under this**
 22 **section shall enter into a written court agreement that obligates the**
 23 **responsible third party to the reasonable care and storage of the**
 24 **firearm, including not providing access or transferring the firearm**
 25 **to the individual found to be dangerous in a hearing under section**
 26 **5 of this chapter.**
 27 (b) An individual **or rightful owner of the firearm** may make the
 28 request described in subsection (a):
 29 (1) at the retention hearing described in section 9 of this chapter;
 30 or
 31 (2) at any time before the retention hearing described in section
 32 9 of this chapter is held.
 33 (c) If an individual **or rightful owner** timely requests a sale of a
 34 firearm under subsection (a), the court shall order the law enforcement
 35 agency having custody of the firearm to sell the firearm at auction
 36 under IC 35-47-3-2, unless the serial number of the firearm has been
 37 obliterated.
 38 (d) If the court issues an order under subsection (c), the court's order
 39 must require:
 40 (1) that the firearm be sold not more than one (1) year after
 41 receipt of the order; and
 42 (2) that the proceeds of the sale be returned to the individual ~~who~~



- 1 **owns or rightful owner of the firearm.**
- 2 **(e) However, the A law enforcement agency may retain not more**
- 3 **than eight percent (8%) of the sale price to pay the costs of the sale,**
- 4 **including administrative costs and the auctioneer's fee.**
- 5 **(f) The sale of a firearm retained under this chapter does not:**
- 6 **(1) alter or terminate an individual's designation as a**
- 7 **dangerous person by a court; or**
- 8 **(2) constitute prima facie evidence that an individual is no**
- 9 **longer dangerous.**
- 10 **(g) A law enforcement agency storing a firearm seized under**
- 11 **this section shall use reasonable care to ensure that the firearm is**
- 12 **not lost or damaged, and the agency is prohibited from marking**
- 13 **the firearm for identification or other purposes. A law enforcement**
- 14 **agency shall be liable for any damage to or loss of the firearm that**
- 15 **results from the agency's negligence in the storage or handling of**
- 16 **the firearm.**
- 17 SECTION 16. IC 35-47-14-11 IS ADDED TO THE INDIANA
- 18 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 19 [EFFECTIVE UPON PASSAGE]: **Sec. 11. Nothing in this chapter**
- 20 **may be construed to authorize a warrantless search or seizure by**
- 21 **a law enforcement officer if a warrant would otherwise be**
- 22 **required.**
- 23 SECTION 17. **An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1651, 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 1, delete lines 1 through 15, begin a new paragraph and insert:

"SECTION 1. IC 5-2-6-18.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 18.5. (a) The following terms are defined for this section:**

- (1) **"Dangerous"** has the meaning set forth in IC 35-47-14-1.
- (2) **"Firearm"** has the meaning set forth in IC 35-47-1-5.
- (3) **"NFA regulated firearm"** means any firearm described under 26 U.S.C. 5845(a) through 26 U.S.C. 5845(f).
- (4) **"Office"** means the office of judicial administration established under IC 33-24-6-1.

(b) The office shall track and record the following information:

- (1) **The name of the law enforcement agency responsible for each confiscation of a firearm under IC 35-47-14-2 and IC 35-47-14-3.**

(2) The number of:

(A) warrant based firearm confiscations under IC 35-47-14-2; and

(B) warrantless firearm confiscations under IC 35-47-14-3; for each county, as applicable, each year.

(3) The total number of:

(A) handguns;

(B) long guns; and

(C) NFA regulated firearms;

confiscated under IC 35-47-14 for each county, as applicable, each year.

(4) The:

(A) county;

(B) court of origin; and

(C) judge;

responsible for each written court order that finds an individual to be dangerous under IC 35-47-14-5.

(5) The:

(A) county;

(B) court of origin; and

(C) judge;

for each appeal of or reversal of a written court order that



finds an individual to be dangerous under IC 35-47-14-5.

(6) The:

- (A) county;**
- (B) court of origin; and**
- (C) judge;**

responsible for enacting or enforcing an agreed entry.

(c) The office shall, not later than January 1 of each year, submit a report to the general assembly in an electronic format under IC 5-14-6 that consolidates and presents the information described in subsection (b).

(d) Notwithstanding subsections (b) and (c), the office shall not collect, store, disclose, distribute, transfer, or provide the following information to any assembly, person, entity, agency, or department:

(1) The:

- (A) name;**
- (B) date of birth;**
- (C) Social Security number;**
- (D) address; or**
- (E) other unique identifier;**

belonging to or associated with an individual alleged to be dangerous by a law enforcement officer or found to be dangerous by a circuit or superior court.

(2) The make, model, or serial number of any handgun, long gun, firearm, or NFA regulated firearm seized, confiscated, retained, disposed of, or sold under IC 35-47-14.

(e) Information:

- (1) collected by the office; or**
- (2) used by the office;**

to prepare the report described in subsection (c) is confidential and not subject to public inspection or copying under IC 5-14-3-3.

(f) The office shall make the report described in subsection (c) available to the public."

Delete page 2.

Page 3, delete lines 1 through 16, begin a new paragraph and insert:

"SECTION 2. 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) after having a hearing under IC 35-47-14-5.

(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:

(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."

Page 6, delete lines 31 through 33.

Page 6, line 37, delete "finds, or has previously found under section 2 of" and insert "finds".

Page 6, line 38, delete "this chapter,".

Page 7, line 36, delete "alleged to be dangerous" and insert "**from whom the firearm was seized**".

Page 7, after line 42, begin a new paragraph and insert:

"(c) A court shall determine at a hearing under this section whether a separate, concurrent hearing under IC 12-26-6 should be held to consider whether the individual may be involuntarily detained or committed under IC 12-26-6."

Page 8, line 1, delete "(c)" and insert "**(d)**".

Page 8, delete lines 10 through 16.

Page 8, line 17, delete "(f)" and insert "**(e)**".

Page 8, line 19, delete "(c)" and insert "**(d)**".

Page 8, line 20, after "transmit" insert "**, after the hearing,**".

Page 9, strike lines 1 through 4.

Page 9, line 13, after "transmit" insert "**, after the hearing,**".

Page 9, line 23, delete "and".

Page 9, between lines 23 and 24, begin a new line block indented and insert:

"(2) order the law enforcement agency having custody of the firearm to return the firearm as quickly as practicable to the individual from whom it was seized; and"

Page 9, line 24, delete "(2)" and insert "**(3)**".

Page 10, line 11, strike "not" and insert "**no longer**".

Page 10, line 15, after "is" delete ":".

Page 10, delete line 16.



Page 10, line 17, delete "(B)".

Page 10, run in lines 15 through 17.

Page 10, delete line 18.

Page 10, line 21, after "firearm" insert "**as quickly as practicable**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1651 as introduced.)

MCNAMARA

Committee Vote: yeas 12, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1651 be amended to read as follows:

Page 4, line 37, delete "court;" and insert "**court following a hearing under IC 35-47-14-5;**".

Page 5, line 4, delete "person;" and insert "**person following a hearing under IC 35-47-14-5;**".

Page 5, line 12, delete "Level 6 felony" and insert "**Class A misdemeanor**".

Page 5, line 17, delete "knowing" and insert "**knowingly**".

Page 5, line 20, delete "court;" and insert "**court following a hearing under IC 35-47-14-5;**".

Page 6, between lines 2 and 3, begin a new paragraph and insert:

"SECTION 8. IC 35-47-14-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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 5 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."**

Page 6, between lines 32 and 33, begin a new paragraph and insert:

HB 1651—LS 7550/DI 123



"(c) A law enforcement agency storing a firearm seized under this section shall use reasonable care to ensure that the firearm is not lost or damaged, and the agency is prohibited from marking the firearm for identification or other purposes. A law enforcement agency shall be liable for any damage to or loss of the firearm that results from the agency's negligence in the storage or handling of the firearm."

Page 7, line 22, delete "individual." and insert "individual as quickly as practicable, but not later than five (5) days."

Page 7, between lines 22 and 23, begin a new paragraph and insert:

"(g) A law enforcement agency storing a firearm seized under this section shall use reasonable care to ensure that the firearm is not lost or damaged, and the agency is prohibited from marking the firearm for identification or other purposes. A LAW enforcement agency shall be liable for any damage to or loss of the firearm that results from the agency's negligence in the storage or handling of the firearm."

Page 9, line 35, delete "practicable" and insert "practicable, but not later than five (5) days,".

Page 10, line 32, delete "practicable" and insert "practicable, but not later than five (5) days,".

Page 11, line 21, strike "to" and insert "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)".**

Page 11, between lines 23 and 24, begin a new line blocked left and insert:

"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 5 of this chapter."

Page 12, between lines 6 and 7, begin a new paragraph and insert:

"(g) A law enforcement agency storing a firearm seized under this section shall use reasonable care to ensure that the firearm is



not lost or damaged, and the agency is prohibited from marking the firearm for identification or other purposes. A law enforcement agency shall be liable for any damage to or loss of the firearm that results from the agency's negligence in the storage or handling of the firearm."

Renumber all SECTIONS consecutively.

(Reference is to HB 1651 as printed February 8, 2019.)

SCHAIBLEY

