

# HOUSE BILL No. 1152

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-44.1-2-3; IC 35-47-14.

**Synopsis:** False informing and red flag law orders. Provides that a person who makes a false report that another person is dangerous, for purposes of seizure and retention of firearms proceedings, knowing the report or information to be false, commits false informing, a Class B misdemeanor. Enhances the penalty for false reporting under certain circumstances. Requires a law enforcement officer, a law enforcement agency, and the clerk of the court to serve certain orders concerning a proceeding for the seizure and retention of a firearm on the individual who is the subject of the order.

**Effective:** July 1, 2020.

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January 8, 2020, read first time and referred to Committee on Courts and Criminal Code.

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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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

# HOUSE BILL No. 1152

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 35-44.1-2-3, AS AMENDED BY P.L.107-2016,  
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2020]: Sec. 3. (a) As used in this section, "consumer product"  
4 has the meaning set forth in IC 35-45-8-1.  
5 (b) As used in this section, "misconduct" means a violation of a  
6 departmental rule or procedure of a law enforcement agency.  
7 (c) A person who reports, by telephone, telegraph, mail, or other  
8 written or oral communication, that:  
9 (1) the person or another person has placed or intends to place an  
10 explosive, a destructive device, or other destructive substance in  
11 a building or transportation facility;  
12 (2) there has been or there will be tampering with a consumer  
13 product introduced into commerce; or  
14 (3) there has been or will be placed or introduced a weapon of  
15 mass destruction in a building or a place of assembly;  
16 knowing the report to be false, commits false reporting, a Level 6  
17 felony.



- 1 (d) A person who:  
 2 (1) gives a false report of the commission of a crime or gives false  
 3 information in the official investigation of the commission of a  
 4 crime, knowing the report or information to be false;  
 5 (2) gives a false alarm of fire to the fire department of a  
 6 governmental entity, knowing the alarm to be false;  
 7 (3) makes a false request for ambulance service to an ambulance  
 8 service provider, knowing the request to be false;  
 9 (4) gives a false report concerning a missing child (as defined in  
 10 IC 10-13-5-4) or missing endangered adult (as defined in  
 11 IC 12-7-2-131.3) or gives false information in the official  
 12 investigation of a missing child or missing endangered adult  
 13 knowing the report or information to be false;  
 14 (5) makes a complaint against a law enforcement officer to the  
 15 state or municipality (as defined in IC 8-1-13-3(b)) that employs  
 16 the officer:  
 17 (A) alleging the officer engaged in misconduct while  
 18 performing the officer's duties; and  
 19 (B) knowing the complaint to be false;  
 20 (6) makes a false report of a missing person, knowing the report  
 21 or information is false; ~~or~~  
 22 (7) gives a false report of actions, behavior, or conditions  
 23 concerning:  
 24 (A) a septic tank soil absorption system under IC 8-1-2-125 or  
 25 IC 13-26-5-2.5; or  
 26 (B) a septic tank soil absorption system or constructed wetland  
 27 septic system under IC 36-9-23-30.1;  
 28 knowing the report or information to be false; **or**  
 29 **(8) makes a false report that a person is dangerous (as defined**  
 30 **in IC 35-47-14-1) knowing the report or information to be**  
 31 **false;**  
 32 commits false informing, a Class B misdemeanor.  
 33 (e) ~~However, the~~ An offense **described in subsection (d)** is a:  
 34 (1) Class A misdemeanor if it:  
 35 (A) substantially hinders any law enforcement process; or ~~if it~~  
 36 (B) results in **creating a substantial risk of bodily injury to**  
 37 **another person;**  
 38 (2) **Level 6 felony if it results in:**  
 39 (A) harm to another person; **or**  
 40 (B) **the seizure of a firearm from another person as**  
 41 **described in IC 35-47-14; and**  
 42 (3) **a Level 5 felony if it results in serious bodily injury or**



1           **death to another person.**

2           SECTION 2. IC 35-47-14-3, AS AMENDED BY P.L.289-2019,  
3 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2020]: Sec. 3. (a) If a law enforcement officer seizes a firearm  
5 from an individual whom the law enforcement officer believes to be  
6 dangerous without obtaining a warrant, the law enforcement officer  
7 shall submit to the circuit or superior court having jurisdiction over the  
8 individual believed to be dangerous an affidavit describing the basis for  
9 the law enforcement officer's belief that the individual is dangerous.  
10 **The law enforcement officer shall also serve a copy of the affidavit**  
11 **submitted to the court under this subsection on the individual**  
12 **whom the law enforcement officer believes to be dangerous.**

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

17           (c) The court shall review the affidavit described in subsection (a)  
18 as soon as possible.

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

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

- 25           (1) quantity; and  
26           (2) type;

27 of each firearm seized from an individual under this section. **The law**  
28 **enforcement agency shall also serve a copy of the search warrant**  
29 **return filed under this subsection on the individual from whom the**  
30 **firearm was seized.**

31           (f) If the court finds that there is no probable cause to believe that  
32 the individual is dangerous, the court shall order the law enforcement  
33 agency having custody of the firearm to return the firearm to the  
34 individual as quickly as practicable, but not later than five (5) days  
35 after the date of the order. **The clerk of the court shall serve a copy**  
36 **of the order described in this subsection on the individual from**  
37 **whom the firearm was seized.**

38           SECTION 3. IC 35-47-14-6, AS AMENDED BY P.L.289-2019,  
39 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
40 JULY 1, 2020]: Sec. 6. (a) The court shall conduct a hearing as  
41 required under this chapter.

42           (b) The state has the burden of proving all material facts by clear



- 1 and convincing evidence.
- 2 (c) If the court determines that the state has proved by clear and  
3 convincing evidence that the individual is dangerous, the court shall  
4 issue a written order:
- 5 (1) finding the individual is dangerous (as defined in section 1 of  
6 this chapter);
- 7 (2) ordering the law enforcement agency having custody of the  
8 seized firearm to retain the firearm;
- 9 (3) ordering the individual's license to carry a handgun, if  
10 applicable, suspended; and
- 11 (4) enjoining the individual from:
- 12 (A) renting;
- 13 (B) receiving transfer of;
- 14 (C) owning; or
- 15 (D) possessing;
- 16 a firearm; and
- 17 determine whether the individual should be referred to further  
18 proceedings to consider whether the individual should be involuntarily  
19 detained or committed under IC 12-26-6-2(a)(2)(B).
- 20 (d) If the court finds that the individual is dangerous under  
21 subsection (c), the clerk shall transmit the order of the court to the  
22 office of judicial administration for transmission to NICS (as defined  
23 in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.
- 24 (e) If the court orders a law enforcement agency to retain a firearm,  
25 the law enforcement agency shall retain the firearm until the court  
26 orders the firearm returned or otherwise disposed of.
- 27 (f) If the court determines that the state has failed to prove by clear  
28 and convincing evidence that the individual is dangerous, the court  
29 shall issue a written order that:
- 30 (1) the individual is not dangerous (as defined in section 1 of this  
31 chapter); and
- 32 (2) the law enforcement agency having custody of the firearm  
33 shall return the firearm as quickly as practicable, but not later  
34 than five (5) days after the date of the order, to the individual  
35 from whom it was seized.
- 36 **(g) The clerk shall serve a copy of an order described in**  
37 **subsections (c), (d), (e), and (f) on the individual who is the subject**  
38 **of the order.**
- 39 SECTION 4. IC 35-47-14-8, AS AMENDED BY P.L.289-2019,  
40 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
41 JULY 1, 2020]: Sec. 8. (a) At least one hundred eighty (180) days after  
42 the date on which a court orders a law enforcement agency to retain an



1 individual's firearm under section 6(c) of this chapter, the individual  
2 may petition the court for a finding that the individual is no longer  
3 dangerous.

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

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

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

11 (d) In a hearing on a petition under this section, the individual may  
12 be represented by an attorney.

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

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

21 (f) If, upon the completion of the hearing and consideration of the  
22 record, the court finds that the individual is no longer dangerous, the  
23 court shall:

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

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

37 (h) If a court issues an order described under subsection (f), the  
38 court's order shall be transmitted, as soon as practicable, to the office  
39 of judicial administration for transmission to the NICS (as defined in  
40 IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

41 (i) **The clerk shall serve a copy of an order described in**  
42 **subsections (f) and (h) on the individual.**



1 SECTION 5. IC 35-47-14-10, AS AMENDED BY P.L.289-2019,  
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2020]: Sec. 10. (a) If a court has ordered a law enforcement  
4 agency to retain an individual's firearm under section 6 of this chapter,  
5 the individual or the rightful owner of the firearm, as applicable, may  
6 petition the court to order the law enforcement agency to:

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

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

23 (b) An individual or rightful owner of the firearm may petition the  
24 court as described in subsection (a):

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

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

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

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

- 37 (1) that the firearm be sold not more than one (1) year after  
38 receipt of the order; and  
39 (2) that the proceeds of the sale be returned to the individual or  
40 rightful owner of the firearm.

41 (e) A law enforcement agency may retain not more than eight  
42 percent (8%) of the sale price to pay the costs of the sale, including



1 administrative costs and the auctioneer's fee.  
2 (f) The clerk shall serve a copy of an order issued under this  
3 section on the individual.

