

HOUSE BILL No. 1049

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 valid 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 valid license or permit to carry a handgun 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 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, 2019.

Jackson

January 3, 2019, read first time and referred to Committee on Courts and Criminal Code.



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. 1049

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.181-2014,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: 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:
10 (A) current or former spouse, parent, or guardian of the
11 defendant;
12 (B) person with whom the defendant shared a child in
13 common;
14 (C) person who was cohabiting with or had cohabited with the
15 defendant as a spouse, parent, or guardian; or
16 (D) person who was or had been similarly situated to a spouse,
17 parent, or guardian of the defendant.



1 SECTION 2. IC 35-31.5-2-183, AS AMENDED BY P.L.144-2018,
 2 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2019]: Sec. 183. (a) "Law enforcement agency," for purposes
 4 of receiving information concerning a violation of IC 35-42-3.5-1
 5 through IC 35-42-3.5-1.4 (human trafficking), means:

6 (1) an agency or department of:

7 (A) the state; or

8 (B) a political subdivision of the state;

9 whose principal function is the apprehension of criminal
 10 offenders; and

11 (2) the attorney general.

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

14 SECTION 3. IC 35-31.5-2-187.4 IS ADDED TO THE INDIANA
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2019]: **Sec. 187.4. "License", for purposes of**
 17 **IC 35-47-4-6.3 and IC 35-47-4-6.5, has the meaning set forth in**
 18 **IC 35-47-4-6.3(a)(3).**

19 SECTION 4. IC 35-31.5-2-319.5 IS ADDED TO THE INDIANA
 20 CODE AS A NEW SECTION TO READ AS FOLLOWS
 21 [EFFECTIVE JULY 1, 2019]: **Sec. 319.5. "Surrender", for purposes**
 22 **of IC 35-47-4-6.3 and IC 35-47-4-6.5, has the meaning set forth in**
 23 **IC 35-47-4-6.3(a)(4).**

24 SECTION 5. IC 35-47-4-6, AS AMENDED BY P.L.118-2007,
 25 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2019]: Sec. 6. (a) A person who has been convicted of:

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

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

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

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

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

36 (2) the person, at the time of the commission of the offense,
 37 was:

38 (A) subject to a written court order under section 6.5 of
 39 this chapter; and

40 (B) awaiting confiscation of the firearm by an appropriate
 41 law enforcement agency or law enforcement officer as
 42 described in section 6.5(c) of this chapter.



1 SECTION 6. IC 35-47-4-6.3 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2019]: **Sec. 6.3. (a) The following definitions apply throughout
 4 this section:**

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

7 (2) "Domestic batterer" means a person:

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

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

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

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

17 (A) The location of the offense.

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

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

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

23 (1) firearm; or

24 (2) license;

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

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

30 (1) a court did not issue a written order described in section
 31 6.5(b) of this chapter before the domestic batterer's failure to
 32 surrender any firearm or license owned or possessed by the
 33 domestic batterer; or

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

37 (d) It is not a defense to a prosecution under this section that a
 38 firearm or license subject to confiscation by a law enforcement
 39 agency or a law enforcement officer under this section was in the
 40 possession of a third party not specified in the court order
 41 described in section 6.5(b) of this chapter.

42 (e) Nothing in this chapter shall be construed to prevent a



1 **person who is:**

2 **(1) the rightful owner of a firearm confiscated under this**
3 **section; and**

4 **(2) not otherwise disqualified or prohibited from owning or**
5 **possessing a firearm under state or federal law;**

6 **from reclaiming a confiscated firearm from the law enforcement**
7 **agency or law enforcement officer responsible for originally**
8 **confiscating the firearm.**

9 SECTION 7. IC 35-47-4-6.5 IS ADDED TO THE INDIANA CODE
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2019]: **Sec. 6.5. (a) The definitions in section 6.3(a) of this chapter**
12 **apply throughout this section.**

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

16 **(1) Prohibits the defendant from owning or possessing a**
17 **firearm.**

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

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

21 **(A) agency; or**

22 **(B) officer;**

23 **to confiscate all firearms and all licenses owned or possessed**
24 **by the defendant.**

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

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

31 SECTION 8. IC 35-47-4-7, AS AMENDED BY P.L.181-2014,
32 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2019]: **Sec. 7. (a) Notwithstanding IC 35-47-2, IC 35-47-2.5,**
34 **the restoration of the right to serve on a jury under IC 33-28-5-18, the**
35 **restoration of the right to vote under IC 3-7-13-5, or the expungement**
36 **of a crime of domestic violence under IC 35-38-9, and except as**
37 **provided in subsections (b), (c), and (f), a person who has been**
38 **convicted of a crime of domestic violence may not possess a firearm.**

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



- 1 a firearm, the court shall consider the following factors:
- 2 (1) Whether the person has been subject to:
- 3 (A) a protective order;
- 4 (B) a no contact order;
- 5 (C) a workplace violence restraining order; or
- 6 (D) any other court order that prohibits the person from
- 7 possessing a firearm.
- 8 (2) Whether the person has successfully completed a substance
- 9 abuse program, if applicable.
- 10 (3) Whether the person has successfully completed a parenting
- 11 class, if applicable.
- 12 (4) Whether the person still presents a threat to the victim of the
- 13 crime.
- 14 (5) Whether there is any other reason why the person should not
- 15 possess a firearm, including whether the person failed to satisfy
- 16 a specified condition under subsection (c) or whether the person
- 17 has committed a subsequent offense.
- 18 (c) The court may condition the restoration of a person's right to
- 19 possess a firearm upon the person's satisfaction of specified conditions.
- 20 (d) If the court denies a petition for restoration of the right to
- 21 possess a firearm, the person may not file a second or subsequent
- 22 petition until one (1) year has elapsed after the filing of the most recent
- 23 petition.
- 24 (e) A person has not been convicted of a crime of domestic violence
- 25 for purposes of subsection (a) if the person has been pardoned.
- 26 (f) The right to possess a firearm shall be restored to a person whose
- 27 conviction is reversed on appeal or on postconviction review at the
- 28 earlier of the following:
- 29 (1) At the time the prosecuting attorney states on the record that
- 30 the charges that gave rise to the conviction will not be refiled.
- 31 (2) Ninety (90) days after the final disposition of the appeal or the
- 32 postconviction proceeding.
- 33 **(g) If a defendant's right to possess a firearm is restored under**
- 34 **this section, any:**
- 35 **(1) written court order issued under section 6.5 of this chapter**
- 36 **shall be vacated;**
- 37 **(2) firearm confiscated under section 6.5 of this chapter shall**
- 38 **be:**
- 39 **(A) disposed of; or**
- 40 **(B) returned to the rightful owner;**
- 41 **in the manner described in IC 35-47-3; and**
- 42 **(3) valid license confiscated under section 6.5 of this chapter**



1 **shall be made available to the defendant not later than**
2 **seventy-two (72) hours after the defendant's right to possess**
3 **a firearm has been restored.**

