

HOUSE BILL No. 1551

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, 2021.

Smith V

January 14, 2021, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1551

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, 2021]: 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 35-31.5-2-183, AS AMENDED BY P.L.144-2018,
12 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2021]: Sec. 183. (a) "Law enforcement agency," for purposes
14 of receiving information concerning a violation of IC 35-42-3.5-1
15 through IC 35-42-3.5-1.4 (human trafficking), means:
16 (1) an agency or department of:
17 (A) the state; or



- 1 (B) a political subdivision of the state;
 2 whose principal function is the apprehension of criminal
 3 offenders; and
 4 (2) the attorney general.
- 5 (b) "Law enforcement agency", for purposes of **IC 35-47-4 and**
 6 **IC 35-47-15**, has the meaning set forth in IC 35-47-15-2.
- 7 SECTION 3. IC 35-31.5-2-187.4 IS ADDED TO THE INDIANA
 8 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 9 **[EFFECTIVE JULY 1, 2021]: Sec. 187.4. "License", for purposes of**
 10 **IC 35-47-4-6.3 and IC 35-47-4-6.4, has the meaning set forth in**
 11 **IC 35-47-4-6.3(a)(3).**
- 12 SECTION 4. IC 35-31.5-2-319.5 IS ADDED TO THE INDIANA
 13 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 14 **[EFFECTIVE JULY 1, 2021]: Sec. 319.5. "Surrender", for purposes**
 15 **of 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(a)(4).**
- 17 SECTION 5. IC 35-47-4-6, AS AMENDED BY P.L.118-2007,
 18 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2021]: Sec. 6. (a) A person who has been convicted of:
 20 (1) domestic battery under IC 35-42-2-1.3; or
 21 (2) **a crime of domestic violence (as defined in**
 22 **IC 35-31.5-2-78);**
 23 and who knowingly or intentionally possesses a firearm commits
 24 unlawful possession of a firearm by a domestic batterer, a Class A
 25 misdemeanor.
- 26 (b) It is a defense to a prosecution under this section that:
 27 (1) the person's right to possess a firearm has been restored under
 28 ~~IC 35-47-4-7~~; **section 7 of this chapter; or**
 29 (2) **the person, at the time of the commission of the offense,**
 30 **was:**
 31 (A) **subject to a written court order under section 6.4 of**
 32 **this chapter; and**
 33 (B) **awaiting confiscation of the firearm by an appropriate**
 34 **law enforcement agency or law enforcement officer as**
 35 **described in section 6.4(b) of this chapter.**
- 36 SECTION 6. IC 35-47-4-6.3 IS ADDED TO THE INDIANA CODE
 37 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 38 **1, 2021]: Sec. 6.3. (a) The following definitions apply throughout**
 39 **this section:**
 40 (1) **"Crime of domestic violence" has the meaning set forth in**
 41 **IC 35-31.5-2-78.**
 42 (2) **"Domestic batterer" means a person:**



- 1 (A) who has been convicted of domestic battery (IC
2 35-42-2-1.3) or a crime of domestic violence; and
3 (B) whose right to possess a firearm has not been restored
4 under section 7 of this chapter.
- 5 (3) "License" means any license or permit to carry a
6 handgun.
- 7 (4) "Surrender" means to make available for confiscation by
8 a law enforcement agency or law enforcement officer having
9 jurisdiction over one (1) or more of the following:
- 10 (A) The location of the offense.
11 (B) The location of the defendant's residence.
12 (C) The location of the defendant's residence during the
13 pendency of the defendant's sentence.
- 14 (b) A domestic batterer who knowingly or intentionally fails to
15 surrender any:
- 16 (1) firearm; or
17 (2) license;
- 18 owned or possessed by the domestic batterer commits unlawful
19 retention of a firearm or license by a domestic batterer, a Class A
20 misdemeanor. However, the offense is a Level 6 felony if the person
21 has a prior unrelated conviction for an offense under this section.
- 22 (c) It is a defense to a prosecution under this section that:
- 23 (1) a court did not issue a written order described in section
24 6.4(a) of this chapter before the domestic batterer's failure to
25 surrender any firearm or license owned or possessed by the
26 domestic batterer; or
27 (2) the appropriate law enforcement agency or law
28 enforcement officer failed to confiscate a firearm or license
29 eligible for confiscation under this section in a timely manner.
- 30 (d) It is not a defense to a prosecution under this section that a
31 firearm or license subject to confiscation by a law enforcement
32 agency or a law enforcement officer under this section was in the
33 possession of a third party not specified in the court order
34 described in section 6.4(a) of this chapter.
- 35 (e) Nothing in this chapter shall be construed to prevent a
36 person who is:
- 37 (1) the rightful owner of a firearm confiscated under this
38 section; and
39 (2) not otherwise disqualified or prohibited from owning or
40 possessing a firearm under state or federal law;
41 from reclaiming a confiscated firearm from the law enforcement
42 agency or law enforcement officer responsible for originally



1 **confiscating the firearm.**

2 SECTION 7. IC 35-47-4-6.4 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2021]: **Sec. 6.4. (a) A court, upon entering a judgment of
5 conviction for domestic battery or a crime of domestic violence,
6 shall issue a written order that does the following:**

7 **(1) Prohibits the defendant from owning or possessing a
8 firearm.**

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

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

12 **(A) agency; or**

13 **(B) officer;**

14 **to confiscate all firearms and all licenses owned or possessed
15 by the defendant.**

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

18 **(b) A law enforcement agency or law enforcement officer
19 subject to a written court order described in subsection (a) shall
20 comply with subsection (a) not later than seventy-two (72) hours
21 after receipt of the written court order described in subsection (a).**

22 SECTION 8. IC 35-47-4-7, AS AMENDED BY P.L.181-2014,
23 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2021]: **Sec. 7. (a) Notwithstanding IC 35-47-2, IC 35-47-2.5,
25 the restoration of the right to serve on a jury under IC 33-28-5-18, the
26 restoration of the right to vote under IC 3-7-13-5, or the expungement
27 of a crime of domestic violence under IC 35-38-9, and except as
28 provided in subsections (b), (c), and (f), a person who has been
29 convicted of a crime of domestic violence may not possess a firearm.**

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

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

36 **(A) a protective order;**

37 **(B) a no contact order;**

38 **(C) a workplace violence restraining order; or**

39 **(D) any other court order that prohibits the person from
40 possessing a firearm.**

41 **(2) Whether the person has successfully completed a substance
42 abuse program, if applicable.**



- 1 (3) Whether the person has successfully completed a parenting
 2 class, if applicable.
 3 (4) Whether the person still presents a threat to the victim of the
 4 crime.
 5 (5) Whether there is any other reason why the person should not
 6 possess a firearm, including whether the person failed to satisfy
 7 a specified condition under subsection (c) or whether the person
 8 has committed a subsequent offense.
 9 (c) The court may condition the restoration of a person's right to
 10 possess a firearm upon the person's satisfaction of specified conditions.
 11 (d) If the court denies a petition for restoration of the right to
 12 possess a firearm, the person may not file a second or subsequent
 13 petition until one (1) year has elapsed after the filing of the most recent
 14 petition.
 15 (e) A person has not been convicted of a crime of domestic violence
 16 for purposes of subsection (a) if the person has been pardoned.
 17 (f) The right to possess a firearm shall be restored to a person whose
 18 conviction is reversed on appeal or on postconviction review at the
 19 earlier of the following:
 20 (1) At the time the prosecuting attorney states on the record that
 21 the charges that gave rise to the conviction will not be refiled.
 22 (2) Ninety (90) days after the final disposition of the appeal or the
 23 postconviction proceeding.
 24 **(g) If a defendant's right to possess a firearm is restored under**
 25 **this section, any:**
 26 **(1) written court order issued under section 6.4 of this chapter**
 27 **shall be vacated;**
 28 **(2) firearm confiscated under section 6.4 of this chapter shall**
 29 **be:**
 30 **(A) disposed of; or**
 31 **(B) returned to the rightful owner;**
 32 **in the manner described in IC 35-47-3; and**
 33 **(3) valid license confiscated under section 6.4 of this chapter**
 34 **shall be made available to the defendant not later than**
 35 **seventy-two (72) hours after the defendant's right to possess**
 36 **a firearm has been restored.**

