

SENATE BILL No. 295

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-39-3; IC 35-47-14.

Synopsis: Red flag laws. Specifies a process for the state to request, and a court to order, release of mental health records of an individual who is alleged to be dangerous. Provides that a court that: (1) issues a warrant to search for and seize a firearm in the possession of an individual who is dangerous; or (2) finds probable cause that an individual is dangerous; may issue an order enjoining the individual from possessing a firearm until a hearing may be held. Requires the prosecuting attorney for the judicial district to represent the state at a hearing concerning an individual alleged to be dangerous. Requires a court in certain circumstances to issue an order prohibiting the owner of a firearm from providing access to or possession of a firearm to an individual found to be dangerous. Allows the state to request a court order requiring a mental health evaluation of an individual alleged to be dangerous.

Effective: July 1, 2023.

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January 12, 2023, read first time and referred to Committee on Corrections and Criminal Law.



First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE BILL No. 295

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 16-39-3-3, AS AMENDED BY P.L.156-2020,
2 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 3. A person:

- 4 (1) seeking access to a patient's mental health record without the
- 5 patient's written consent in an investigation or prosecution
- 6 resulting from a report filed under IC 16-39-2-6(a)(10); or
- 7 (2) who has filed or is a party to a legal proceeding, **including a**
- 8 **proceeding under IC 35-47-14**, and who seeks access to a
- 9 patient's mental health record without the patient's written
- 10 consent;
- 11 may file a petition in a circuit or superior court requesting a release of
- 12 the patient's mental health record.

13 SECTION 2. IC 16-39-3-4 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. Except as provided
15 in ~~section~~ **sections 8 and 8.5** of this chapter, notice of a hearing to be
16 conducted under this chapter shall be served at least fifteen (15) days
17 in advance on the following:



1 (1) The patient.

2 (2) The guardian, guardian ad litem or court appointed special
3 advocate appointed for a minor, parent, or custodian of a patient
4 who is incompetent.

5 (3) The provider that maintains the record or the attorney general
6 if the provider is a state institution.

7 SECTION 3. IC 16-39-3-8.5 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2023]: **Sec. 8.5. (a) If a proceeding under IC 35-47-14-5 is filed
10 and the state files a petition for release of the mental health records
11 of the individual who is the subject of the action, the court shall
12 conduct a hearing.**

13 **(b) Notice of a hearing to be conducted under this section shall
14 be served at least twenty-four (24) hours before the hearing to all
15 persons entitled to receive notice.**

16 **(c) If actual notice cannot be given, the state shall file with the
17 court an affidavit stating that verbal notice or written notice left at
18 the last known address of the individual was attempted at least
19 twenty-four (24) hours before the hearing.**

20 **(d) A hearing under this section shall be held not later than
21 forty-eight (48) hours after the petition for release of mental health
22 records is filed.**

23 **(e) The court shall order the release of mental health records if
24 the court finds the following by a preponderance of the evidence:**

25 **(1) Other reasonable methods for obtaining the information
26 sought are not available or would not be effective.**

27 **(2) The need for disclosure outweighs the potential harm to
28 the patient caused by a necessary disclosure. In weighing the
29 potential harm to the patient, the court shall consider the
30 impact of disclosure on the provider-patient relationship and
31 the patient's rehabilitative process.**

32 **(f) An order releasing mental health records under subsection
33 (e) shall require the mental health provider to produce copies of
34 the records within three (3) business days.**

35 SECTION 4. IC 35-47-14-1.3 IS ADDED TO THE INDIANA
36 CODE AS A NEW SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2023]: **Sec. 1.3. For the purposes of this
38 chapter, "mental health assessor" means:**

39 **(1) a physician licensed under IC 25-22.5; or**

40 **(2) a psychologist licensed under IC 25-33;**

41 **who has experience in conducting mental health evaluations.**

42 SECTION 5. IC 35-47-14-2, AS AMENDED BY P.L.142-2020,



1 SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2023]: Sec. 2. (a) A circuit or superior court may issue a
3 warrant to search for and seize a firearm in the possession of an
4 individual who is dangerous if:

5 (1) a law enforcement officer provides the court a sworn affidavit
6 that:

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

9 (B) describes the law enforcement officer's interactions and
10 conversations with:

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

12 (ii) another individual, if the law enforcement officer
13 believes that information obtained from this individual is
14 credible and reliable;

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

17 (2) the affidavit specifically describes the location of the firearm;
18 and

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

21 (A) dangerous; and

22 (B) in possession of a firearm.

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

26 (1) quantity; and

27 (2) type;

28 of each firearm seized from an individual under this section. Beginning
29 July 1, 2021, the court shall provide information described under this
30 subsection to the office of judicial administration in a manner required
31 by the office.

32 **(c) A court issuing a warrant under this section may also issue**
33 **a court order enjoining the individual from possessing a firearm**
34 **until a hearing may be held under section 6 of this chapter. An**
35 **order under this subsection shall be personally served on the**
36 **individual by an officer executing the seizure order at, or as soon**
37 **as possible following, the execution of the order.**

38 SECTION 6. IC 35-47-14-3, AS AMENDED BY P.L.142-2020,
39 SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2023]: Sec. 3. (a) If a law enforcement officer seizes a firearm
41 from an individual whom the law enforcement officer believes to be
42 dangerous without obtaining a warrant, the law enforcement officer



1 shall submit to the circuit or superior court having jurisdiction over the
 2 individual believed to be dangerous an affidavit describing the basis for
 3 the law enforcement officer's belief that the individual is dangerous.

4 (b) An affidavit described in subsection (a) shall:

5 (1) set forth the quantity and type of each firearm seized from the
 6 individual under this section; and

7 (2) be submitted to a circuit or superior court having jurisdiction
 8 over the individual believed to be dangerous not later than
 9 forty-eight (48) hours after the seizure of the firearm.

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

12 (d) If the court finds that probable cause exists to believe that the
 13 individual is dangerous, the court shall order the law enforcement
 14 agency having custody of the firearm to retain the firearm. **The court's**
 15 **order may enjoin the individual from possessing a firearm until a**
 16 **hearing is held under section 6 of this chapter. An order under this**
 17 **subsection shall be personally served on the individual.** Beginning
 18 July 1, 2021, the court shall provide information described under this
 19 subsection and subsection (b)(1) to the office of judicial administration
 20 in a manner required by the office.

21 (e) If the court finds that there is no probable cause to believe that
 22 the individual is dangerous, the court shall order the law enforcement
 23 agency having custody of the firearm to return the firearm to the
 24 individual as quickly as practicable, but not later than five (5) days
 25 after the date of the order.

26 SECTION 7. IC 35-47-14-5, AS AMENDED BY P.L.289-2019,
 27 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2023]: Sec. 5. (a) After the filing of a search warrant return
 29 under section 2 of this chapter or the filing of an affidavit under section
 30 3 of this chapter, the court shall conduct a hearing. **The prosecuting**
 31 **attorney for the judicial district shall represent the state at the**
 32 **hearing.**

33 (b) The court shall make a good faith effort to conduct the hearing
 34 not later than fourteen (14) days after the filing of a search warrant
 35 return under section 2 of this chapter or the filing of an affidavit under
 36 section 3 of this chapter. If the hearing cannot be conducted within
 37 fourteen (14) days after the filing of the search warrant return or
 38 affidavit, the court shall conduct the hearing as soon as possible.
 39 ~~However, a request for a continuance of the hearing described in this~~
 40 ~~subsection for a period of not more than sixty (60) days from the~~
 41 ~~individual from whom the firearm was seized shall be liberally granted.~~

42 (c) The court shall inform:



1 (1) the prosecuting attorney; and
 2 (2) the individual from whom the firearm was seized;
 3 of the date, time, and location of the hearing. The court may conduct
 4 the hearing at a facility or other suitable place not likely to have a
 5 harmful effect upon the individual's health or well-being.

6 **(d) A court may grant a continuance, however the hearing**
 7 **conducted under subsection (b) must be held within sixty (60) days.**

8 **(e) The state may petition for the production of mental health**
 9 **records in the manner permitted by IC 16-39-3-8.5.**

10 **(f) The state may petition for a court order requiring a mental**
 11 **health evaluation of the individual to be completed by a mental**
 12 **health assessor to determine if the person is dangerous.**

13 **(g) Evidence:**

14 **(1) obtained in; or**

15 **(2) derived directly from;**

16 **an evaluation conducted under subsection (f) is not admissible in**
 17 **any criminal proceeding against the individual to prove guilt.**

18 **(h) Upon request by the individual, the state shall deliver to the**
 19 **individual a copy of a detailed written report of the mental health**
 20 **assessor who completes an evaluation under subsection (f),**
 21 **including:**

22 **(1) the findings of the evaluation;**

23 **(2) the results of all tests made;**

24 **(3) any diagnoses and conclusions; and**

25 **(4) reports of all earlier evaluations of the same condition.**

26 SECTION 8. IC 35-47-14-7, AS ADDED BY P.L.1-2006,
 27 SECTION 537, IS AMENDED TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2023]: Sec. 7. If the court, in a hearing
 29 conducted under section 5 of this chapter, determines that:

30 (1) the individual from whom a firearm was seized is dangerous;
 31 and

32 (2) the firearm seized from the individual is owned by another
 33 individual;

34 the court may order the law enforcement agency having custody of the
 35 firearm to return the firearm to the owner of the firearm. **The court**
 36 **shall issue an order prohibiting the owner from providing access**
 37 **to or possession of the firearm to the individual found to be**
 38 **dangerous in a hearing under section 6 of this chapter.**

39 SECTION 9. IC 35-47-14-8, AS AMENDED BY P.L.142-2020,
 40 SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2023]: 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 of the date, time, and location
 8 of the hearing.

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

11 **(d) The state may petition for the production of mental health**
 12 **records in the manner permitted by IC 16-39-3-8.5.**

13 **(e) The state may petition for a court order requiring a mental**
 14 **health evaluation of the individual by a mental health assessor to**
 15 **determine if the person is dangerous.**

16 **(f) Evidence:**

- 17 **(1) obtained in; or**
 18 **(2) derived directly from;**

19 **an evaluation conducted under subsection (e) is not admissible in**
 20 **any criminal proceeding against the individual to prove guilt.**

21 **(g) Upon request by the individual, the state shall deliver to the**
 22 **individual a copy of a detailed written report of the mental health**
 23 **assessor who completes an evaluation under subsection (e),**
 24 **including:**

- 25 **(1) the findings of the evaluation;**
 26 **(2) the results of all tests made;**
 27 **(3) any diagnoses and conclusions; and**
 28 **(4) reports of all earlier evaluations of the same condition.**

29 ~~(h)~~ **(h)** In a hearing on a petition under this section, the individual
 30 may be represented by an attorney.

31 ~~(e)~~ **(i)** In a hearing on a petition under this section filed:

- 32 (1) not later than one (1) year after the date of the order issued
 33 under section 6(c) of this chapter, the individual must prove by a
 34 preponderance of the evidence that the individual is no longer
 35 dangerous; and
 36 (2) later than one (1) year after the date of the order issued under
 37 section 6(c) of this chapter, the state must prove by clear and
 38 convincing evidence that the individual is still dangerous.

39 ~~(f)~~ **(j)** If, upon the completion of the hearing and consideration of
 40 the record, the court finds that the individual is no longer dangerous,
 41 the court shall:

- 42 (1) issue a court order that finds that the individual is no longer



- 1 dangerous;
- 2 (2) order the law enforcement agency having custody of any
- 3 firearm to return the firearm as quickly as practicable, but not
- 4 later than five (5) days after the date of the order, to the
- 5 individual;
- 6 (3) terminate any injunction issued under ~~section 6~~ of this
- 7 chapter; and
- 8 (4) terminate the suspension of the individual's license to carry a
- 9 handgun so that the individual may reapply for a license.
- 10 ~~(g)~~ **(k)** If the court denies an individual's petition under this section,
- 11 the individual may not file a subsequent petition until at least one
- 12 hundred eighty (180) days after the date on which the court denied the
- 13 petition.
- 14 ~~(h)~~ **(l)** If a court issues an order described under subsection ~~(f)~~; **(j)**,
- 15 the court's order shall be transmitted, as soon as practicable, to the
- 16 office of judicial administration for transmission to the NICS (as
- 17 defined in IC 35-47-2.5-2.5) and, beginning July 1, 2021, for the
- 18 collection of certain data related to the confiscation and retention of
- 19 firearms taken from dangerous individuals in accordance with
- 20 IC 33-24-6-3.
- 21 **(m) A hearing on a petition filed under this section must be held**
- 22 **not later than sixty (60) days after the individual files the petition.**

