

HOUSE BILL No. 1159

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-37-13-5; IC 31-39-8-3; IC 35-31.5-2-294; IC 35-47.

Synopsis: Juvenile expungements and firearms matters. Requires a juvenile court to transmit certain findings to the office of judicial administration for transmission to the National Instant Criminal Background Check System (NICS) upon a finding of delinquency for an act that would be a serious violent felony if committed by an adult. Allows a court to consider the following factors when evaluating a petition to expunge certain juvenile adjudications: (1) Whether a person has been charged with or convicted of murder or another felony offense as an adult. (2) Whether a person has ever been waived to adult court for an offense. (3) Whether a person has ever received a nonsuspendable sentence as a juvenile. (4) Whether the person has been adjudicated a delinquent child for committing an act while armed with a firearm that would be a serious violent felony if committed by an adult. (5) Whether the person: (A) is currently suffering from a mental health issue; (B) has an ongoing or chronic mental health issue; (C) has received or is receiving treatment for a mental health issue; or (D) is complying with a treatment regimen recommended by a mental health professional, if applicable. Prohibits a court from expunging certain records in the absence of a petition requesting the expungement. Requires a court to transmit certain court orders to the office of judicial administration when granting a petition requesting the expungement of certain juvenile records. Provides that a person who: (1) has been adjudicated a delinquent child for the commission of an act while armed with a firearm that would be a serious violent felony if committed by an adult; (2) has not had the juvenile adjudication expunged; and (3) knowingly or intentionally possesses a firearm;
(Continued next page)

Effective: July 1, 2020.

Schaibley, Torr

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



Digest Continued

commits unlawful possession of a firearm by a dangerous person, a Class A misdemeanor. Specifies that the offense is enhanced to a Level 4 felony if the person has a prior unrelated conviction for the offense. Provides that a person who has been adjudicated a delinquent child for committing an act while armed with a firearm that would be a serious violent felony if committed by an adult is not a proper person for the purpose of receiving a license to carry a handgun. Makes conforming amendments.



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 a statute 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. 1159

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 31-37-13-5, AS AMENDED BY P.L.168-2014,
2 SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 5. **(a)** If a finding of delinquency is based on a
4 delinquent act that would be a felony if committed by an adult, the
5 juvenile court shall state in the findings the following:
6 (1) The specific statute that was violated.
7 (2) The class or level of the felony had the violation been
8 committed by an adult.
9 **(b) If a finding of delinquency is based on a delinquent act that:**
10 **(1) was committed while armed with a firearm; and**
11 **(2) would be a serious violent felony (as defined in**
12 **IC 35-47-4-5) if committed by an adult;**
13 **the juvenile court shall, notwithstanding IC 31-39-1, transmit the**
14 **finding to the office of judicial administration for transmission to**
15 **NICS (as defined in IC 35-47-2.5-2.5) in accordance with**



1 **IC 33-24-6-3.**

2 SECTION 2. IC 31-39-8-3, AS AMENDED BY P.L.86-2017,
 3 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2020]: Sec. 3. (a) A person may initiate a petition for the
 5 expungement of records of a child alleged to be a delinquent child or
 6 a child in need of services by filing a verified petition in the juvenile
 7 court in the county of the original action. The petition must set forth the
 8 following:

- 9 (1) The allegations and date of adjudication, if applicable, of the
 10 juvenile delinquency or child in need of services adjudications.
 11 (2) The court in which juvenile delinquency or child in need of
 12 services allegations or petitions were filed.
 13 (3) The law enforcement agency that employs the charging
 14 officer, if known.
 15 (4) The case number or court cause number.
 16 (5) Date of birth of the petitioner.
 17 (6) Petitioner's Social Security number.
 18 (7) All juvenile delinquency or child in need of services
 19 adjudications and criminal convictions occurring after the
 20 adjudication of the action sought to be expunged.
 21 (8) All pending actions under IC 31-34 or IC 31-37 or criminal
 22 charges.
- 23 (b) A petition described in subsection (a) shall be served on:
 24 (1) the prosecuting attorney; or
 25 (2) in the case of a child in need of services case, the department
 26 of child services.
- 27 (c) The prosecuting attorney or department of child services has
 28 thirty (30) days in which to reply or otherwise object to the petition.
 29 The court may reduce the time in which a response must be filed for a
 30 show of good cause or within its discretion after a hearing is held.
- 31 (d) If the prosecuting attorney or department of child services timely
 32 files an objection to the petition, the matter shall be set for a hearing.
 33 If no objection is filed, the court may set the petition for a hearing or
 34 rule on the petition without a hearing.
- 35 (e) In considering whether to grant the petition, the juvenile court
 36 may review:
 37 (1) the best interests of the child;
 38 (2) the age of the person during the person's contact with the
 39 juvenile court or law enforcement agency;
 40 (3) the nature of any allegations;
 41 (4) whether there was an informal adjustment or an adjudication;
 42 (5) the disposition of the case;



- 1 (6) the manner in which the person participated in any court
 2 ordered or supervised services;
 3 (7) the time during which the person has been without contact
 4 with the juvenile court or with any law enforcement agency;
 5 (8) whether the person acquired a criminal record; ~~and~~
 6 (9) the person's current status;
 7 **(10) whether the person has been:**
 8 **(A) charged with; or**
 9 **(B) convicted of;**
 10 **murder or another felony offense as an adult;**
 11 **(11) whether the person was waived to an adult criminal court**
 12 **for a reason described in IC 31-30-3;**
 13 **(12) whether an adult sentence for the person was not**
 14 **suspended for a reason described in IC 35-50-2-2.1;**
 15 **(13) whether the person has been adjudicated a delinquent**
 16 **child for committing an act that would be a serious violent**
 17 **felony (as defined in IC 35-47-4-5) if committed by an adult;**
 18 **and**
 19 **(14) whether:**
 20 **(A) the person is currently suffering from a mental health**
 21 **issue;**
 22 **(B) the mental health issue described in clause (A) is**
 23 **chronic or ongoing;**
 24 **(C) the person has received, or is receiving, treatment for**
 25 **a current or chronic mental health issue; or**
 26 **(D) the person is compliant with a treatment regimen**
 27 **recommended by a mental health professional, if**
 28 **applicable.**
 29 **(f) If a court issues an order requiring the expungement of**
 30 **records for a child found to be a delinquent child for an offense**
 31 **that:**
 32 **(1) was committed while armed with a firearm; and**
 33 **(2) would be a serious violent felony (as defined in**
 34 **IC 35-47-4-5) if committed by an adult;**
 35 **the court shall transmit the order of the court to the office of**
 36 **judicial administration for transmission to NICS (as defined in**
 37 **IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.**
 38 SECTION 3. IC 35-31.5-2-294, AS ADDED BY P.L.114-2012,
 39 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2020]: Sec. 294. "Serious violent felony", for purposes of
 41 IC 35-47-4-5 ~~and IC 35-47-4-9~~, has the meaning set forth in
 42 ~~IC 35-47-4-5(b)~~: **IC 35-47-4-5.**



1 SECTION 4. IC 35-47-1-7, AS AMENDED BY P.L.289-2019,
 2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2020]: Sec. 7. "Proper person" means a person who:

4 (1) does not have a conviction for resisting law enforcement
 5 under IC 35-44.1-3-1 within five (5) years before the person
 6 applies for a license or permit under this chapter;

7 (2) does not have a conviction for a crime for which the person
 8 could have been sentenced for more than one (1) year;

9 (3) does not have a conviction for a crime of domestic violence
 10 (as defined in IC 35-31.5-2-78), unless a court has restored the
 11 person's right to possess a firearm under IC 35-47-4-7;

12 (4) is not prohibited by a court order from possessing a handgun;

13 (5) does not have a record of being an alcohol or drug abuser as
 14 defined in this chapter;

15 (6) does not have documented evidence which would give rise to
 16 a reasonable belief that the person has a propensity for violent or
 17 emotionally unstable conduct;

18 (7) does not make a false statement of material fact on the
 19 person's application;

20 (8) does not have a conviction for any crime involving an inability
 21 to safely handle a handgun;

22 (9) does not have a conviction for violation of the provisions of
 23 this article within five (5) years of the person's application;

24 (10) does not have an adjudication as a delinquent child for an act
 25 that:

26 (A) would be a felony if committed by an adult, if the person
 27 applying for a license or permit under this chapter is less than
 28 twenty-three (23) years of age; **or**

29 **(B) was committed:**

30 **(i) on or after July 1, 2020; and**

31 **(ii) while armed with a firearm and that would be a**
 32 **serious violent felony (as defined in IC 35-47-4-5) if**
 33 **committed by an adult;**

34 (11) has not been involuntarily committed, other than a temporary
 35 commitment for observation or evaluation, to a mental institution
 36 by a court, board, commission, or other lawful authority;

37 (12) has not been the subject of a:

38 (A) ninety (90) day commitment as a result of proceeding
 39 under IC 12-26-6; or

40 (B) regular commitment under IC 12-26-7;

41 (13) has not been found by a court to be mentally incompetent,
 42 including being found:



1 (A) not guilty by reason of insanity;
 2 (B) guilty but mentally ill; or
 3 (C) incompetent to stand trial; or
 4 (14) is not currently designated as dangerous (as defined in
 5 IC 35-47-14-1) by a court following a hearing under
 6 IC 35-47-14-6.

7 SECTION 5. IC 35-47-4-9 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 2020]: **Sec. 9. A person who:**

10 **(1) has been adjudicated a delinquent child for committing an**
 11 **act while armed with a firearm that:**

12 **(A) occurred on or after July 1, 2020; and**
 13 **(B) would be a serious violent felony (as defined in**
 14 **IC 35-47-4-5) if committed by an adult;**

15 **(2) has not had the adjudication described in subdivision (1)**
 16 **expunged; and**

17 **(3) knowingly or intentionally possesses a firearm;**
 18 **commits unlawful possession of a firearm by a dangerous person,**
 19 **a Class A misdemeanor. However, the offense is a Level 4 felony if**
 20 **the person has a prior unrelated conviction under this section.**

