
SENATE BILL No. 487

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-47.

Synopsis: Handgun background checks. Provides that a dishonorably discharged veteran, a person who uses or is addicted to unlawful drugs, a person who has been charged with or convicted of certain crimes, a person subject to a restraining order related to domestic violence, a person suffering from a mental disease or defect, and certain aliens may not receive a handgun license. Specifies that a dealer may not sell a handgun to a prospective purchaser if a state police background investigation is pending. (The introduced version of this bill was prepared by the criminal law study commission).

Effective: July 1, 2003.

Bray

January 21, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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SENATE BILL No. 487



A BILL FOR AN ACT to amend the Indiana Code concerning state police, civil defense and military affairs.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-47-1-4 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. "Drug abuser" means
 3 an individual who:
 4 (1) has had two (2) or more violations of IC 35-48-1, IC 35-48-2,
 5 IC 35-48-3, or IC 35-48-4, any one (1) of which resulted in
 6 conviction by a court or treatment in a drug abuse facility within
 7 five (5) years prior to the date of application; **or**
 8 **(2) is an unlawful user of or addicted to a controlled substance**
 9 **(as defined in IC 35-48-1-9).**
 10 SECTION 2. IC 35-47-1-6.5 IS ADDED TO THE INDIANA CODE
 11 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 12 1, 2003]: **Sec. 6.5. As used in this article, "mental disease or defect"**
 13 **means a severely abnormal mental condition that grossly and**
 14 **demonstrably impairs a person's perception.**
 15 SECTION 3. IC 35-47-1-7 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. "Proper person"
 17 means a person who: ~~does not:~~



- 1 (1) **does not** have a conviction for resisting law enforcement
 2 under IC 35-44-3-3 within five (5) years before the person applies
 3 for a license or permit under this chapter;
 4 (2) **does not** have a conviction for a crime for which ~~he~~ **the**
 5 **person** could have been sentenced **to imprisonment** for more
 6 than one (1) year;
 7 (3) **is not currently charged with a crime punishable by a**
 8 **sentence of imprisonment exceeding one (1) year;**
 9 (4) **does not have a conviction for a crime involving domestic**
 10 **violence (as defined in IC 5-26.5-1-3);**
 11 (5) **is not subject to a court order that prohibits the person**
 12 **from stalking, harassing, or threatening a person described in**
 13 **IC 5-26.5-1-3(1) through IC 5-26.5-1-3(5), if:**
 14 (A) **the court order was issued after a hearing of which the**
 15 **person received actual notice, and at which the person had**
 16 **the opportunity to participate; and**
 17 (B) **the court order:**
 18 (i) **includes a finding that the person represents a**
 19 **credible threat to the physical safety of a person**
 20 **described in IC 5-26.5-1-3(1) through IC 5-26.5-1-3(5);**
 21 **or**
 22 (ii) **by its terms explicitly prohibits the use, attempted**
 23 **use, or threatened use of physical force that would**
 24 **reasonably be expected to cause bodily injury against a**
 25 **person described in IC 5-26.5-1-3(1) through**
 26 **IC 5-26.5-1-3(5);**
 27 (6) **is not a fugitive from justice;**
 28 (7) **does not suffer from a mental disease or defect;**
 29 (8) **does not** have a record of being an alcohol or drug abuser, as
 30 defined in this chapter;
 31 (9) **has not been committed to a mental institution;**
 32 (10) **has not been dishonorably discharged from the armed**
 33 **forces of the United States;**
 34 (11) **is not an alien:**
 35 (A) **who is present in the United States unlawfully; or**
 36 (B) **who has been admitted to the United States under a**
 37 **nonimmigrant visa (as defined in 8 U.S.C. 1101(a)(26)),**
 38 **unless the alien is:**
 39 (i) **admitted to the United States for lawful hunting or**
 40 **sporting purposes or possesses a hunting license or**
 41 **permit lawfully issued in the United States;**
 42 (ii) **an official representative of a foreign government**

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1 who is accredited to the United States government or the
 2 government's mission to an international organization
 3 having its headquarters in the United States or who is en
 4 route to or from another country to which that alien is
 5 accredited;

6 (iii) an official of a foreign government or a distinguished
 7 foreign visitor who has been so designated by the United
 8 States Department of State;

9 (iv) a foreign law enforcement officer of a friendly
 10 foreign government entering the United States on official
 11 law enforcement business;

12 (v) a person who has received a waiver from the
 13 Attorney General of the United States; or

14 (vi) a person who is otherwise permitted to possess a
 15 firearm under 8 U.S.C. 922(y)(2);

16 ~~(4)~~ (12) ~~have is not the subject of~~ documented evidence which
 17 that would give rise to a reasonable belief that ~~he~~ the person has
 18 a propensity for violent or emotionally unstable conduct;

19 ~~(5)~~ (13) **does not** make a false statement of material fact on his
 20 the person's application;

21 ~~(6)~~ (14) **does not** have a conviction for any crime involving an
 22 inability to safely handle a handgun;

23 ~~(7)~~ (15) **does not** have a conviction for violation of the provisions
 24 of this article within five (5) years of his the person's application;
 25 or

26 ~~(8)~~ (16) **does not** have an adjudication as a delinquent child for
 27 an act that would be a felony if committed by an adult, if the
 28 person applying for a license or permit under this chapter is less
 29 than twenty-three (23) years of age.

30 SECTION 4. IC 35-47-1-12.5 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2003]: **Sec. 12.5. (a) As used in this chapter,**
 33 **"unlawful user of or addicted to a controlled substance" means:**

34 (1) a person who uses a controlled substance and has lost the
 35 power of self-control with reference to the use of controlled
 36 substance; or

37 (2) any person who is a current user of a controlled substance
 38 in a manner other than as prescribed by a licensed physician.

39 (b) For purposes of this section, an inference of current use may
 40 be drawn from:

41 (1) evidence of a recent use or possession of a controlled
 42 substance;

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1 (2) a pattern of use or possession that reasonably covers the
 2 present time, including a conviction for use or possession of a
 3 controlled substance within the past year;

4 (3) multiple arrests for controlled substance offenses within
 5 the past five (5) years, if the most recent arrest occurred
 6 within the past year;

7 (4) a drug test administered in the past year through which a
 8 person was found to use a controlled substance unlawfully; or

9 (5) a recent disciplinary or administrative action based on
 10 confirmed drug use.

11 SECTION 5. IC 35-47-2.5-7 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) The state police
 13 department shall provide its response to a requesting dealer under
 14 section 6 of this chapter during the dealer's call, or by return call
 15 without delay.

16 (b) If a criminal history check indicates that a prospective purchaser
 17 or transferee has a disqualifying criminal record or has been acquitted
 18 by reason of insanity and committed to the custody of the division of
 19 mental health, the state police department has until the end of the next
 20 business day of the state police department to advise the dealer that the
 21 records indicate the buyer or transferee is prohibited from possessing
 22 or transporting a firearm by state or federal law.

23 (c) If a dealer:

24 (1) is not advised of a prohibition before the end of the next
 25 business day of the state police department; ~~and~~

26 (2) is not advised by the state police department that an
 27 investigation into the prospective purchaser's or transferee's:

28 (A) criminal history record; or

29 (B) eligibility to purchase a firearm under state or federal
 30 law;

31 is pending; and

32 (3) has fulfilled the requirements of section 4 of this chapter;

33 the dealer may immediately complete the sale or transfer and may not
 34 be considered in violation of this chapter with respect to the sale or
 35 transfer. **However, a pending investigation must be completed
 36 within sixty (60) days, unless the state police board extends this
 37 time period.**

38 (d) In case of electronic failure or other circumstances beyond the
 39 control of the state police department, the dealer shall be advised
 40 immediately of the reason for the delay and be given an estimate of the
 41 length of the delay. However, after a notification under this subsection,
 42 the state police department shall inform the requesting dealer whether

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1 state police department records indicate the buyer or transferee is
2 prohibited from possessing or transporting a firearm by state or federal
3 law not later than:
4 (1) the end of the next business day of the state police department
5 following correction of the problem that caused the delay; or
6 (2) three (3) business days of the state police department;
7 whichever is earlier, **unless an investigation into the prospective**
8 **purchaser's or transferee's criminal history record or eligibility to**
9 **purchase a firearm under state or federal law is still pending at the**
10 **expiration of the time described in subdivision (1) or (2).**
11 (e) A dealer that fulfills the requirements of section 4 of this chapter
12 and is told by the state police department that a response will not be
13 available under subsection (d) may immediately complete the sale or
14 transfer and may not be considered in violation of this chapter with
15 respect to the sale or transfer.

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