



March 11, 2011

**ENGROSSED
HOUSE BILL No. 1318**

DIGEST OF HB 1318 (Updated March 9, 2011 11:20 am - DI 106)

Citations Affected: IC 10-13; IC 33-23; IC 35-47.

Synopsis: National fingerprint based criminal history checks. Provides that on request of an individual who has applied for employment with a noncriminal justice organization or individual, the state police shall process a request for a national fingerprint based criminal history check of the individual from the Federal Bureau of Investigation's National Crime Information Center. (Current law provides that on request of an individual who has applied for employment with a noncriminal justice organization or individual, the state police shall process a request for a limited criminal history check of the individual.) Prohibits certain individuals with mental illnesses from possessing a firearm, and establishes a procedure to remove this prohibition after the person is released from commitment or has completed treatment.

Effective: July 1, 2011.

Borders

(SENATE SPONSORS — WATERMAN, TOMES, RANDOLPH)

January 13, 2011, read first time and referred to Committee on Veterans Affairs and Public Safety.

January 25, 2011, amended, reported — Do Pass.

January 27, 2011, read second time, ordered engrossed. Engrossed.

January 31, 2011, read third time, passed. Yeas 99, nays 0.

SENATE ACTION

February 17, 2011, read first time and referred to Committee on Judiciary.

March 10, 2011, amended, reported favorably — Do Pass.

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EH 1318—LS 7432/DI 106+



March 11, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1318

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A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

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

1 SECTION 1. IC 10-13-3-28 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 28. On request of an
3 individual who has applied for employment with a noncriminal justice
4 organization or individual, the Indiana central repository for criminal
5 history information shall process a request for a ~~limited national~~
6 **fingerprint based** criminal history check of the individual making the
7 request from the Federal Bureau of Investigation's National Crime
8 Information Center upon:

- 9 (1) the submission of fingerprints of the individual making the
10 request; and
- 11 (2) the payment of a fifteen dollar (\$15) fee.

12 SECTION 2. IC 33-23-15-2, AS ADDED BY P.L.110-2009,
13 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2011]: Sec. 2. (a) If a person described in section 1 of this
15 chapter:

- 16 (1) has been released from commitment; or
- 17 (2) successfully completes a treatment or rehabilitation program;

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1 the person may petition the court (if the adjudication leading to the
2 person's commitment, rehabilitation, or treatment program was from a
3 court) or the department of correction (if the determination leading to
4 the person's rehabilitation or treatment program was from a psychiatrist
5 employed by or retained by the department of correction) to determine
6 whether the person is prohibited from possessing a **handgun firearm**
7 because the person is not a proper person under ~~IC 35-47-1-7(5) or~~
8 ~~IC 35-47-1-7(6)~~; **IC 35-47-1-7(11) through IC 35-47-1-7(13)**.

9 (b) In determining whether the person is prohibited from possessing
10 a **handgun firearm** because the person is not a proper person under
11 ~~IC 35-47-1-7(5) or IC 35-47-1-7(6)~~; **IC 35-47-1-7(11) through**
12 **IC 35-47-1-7(13)**, the court or department of correction shall consider
13 the following evidence:

- 14 (1) The facts and circumstances leading to the person being
- 15 included in the category of persons to whom this chapter applies.
- 16 (2) The person's mental health and criminal history records.
- 17 (3) Evidence concerning the person's reputation, including the
- 18 testimony of character witnesses.
- 19 (4) A recent mental health evaluation by a psychiatrist or
- 20 psychologist licensed to practice in Indiana.

21 (c) If the court or the department of correction, after considering the
22 evidence described in subsection (b), finds by clear and convincing
23 evidence that:

- 24 (1) the person is not a danger to the person or to others;
 - 25 (2) the person is not likely to act in a manner dangerous to public
 - 26 safety; and
 - 27 (3) the requested relief would not be contrary to public interest;
- 28 the court or department of correction shall transmit its findings to the
29 department of state court administration, and any other information
30 required by the division of state court administration, for transmission
31 to the NICS in accordance with IC 33-24-6-3.

32 (d) A determination under this section may be appealed only in
33 accordance with section 3 of this chapter.

34 SECTION 3. IC 35-47-1-7, AS AMENDED BY P.L.118-2007,
35 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2011]: Sec. 7. "Proper person" means a person who:

- 37 (1) does not have a conviction for resisting law enforcement
- 38 under IC 35-44-3-3 within five (5) years before the person applies
- 39 for a license or permit under this chapter;
- 40 (2) does not have a conviction for a crime for which the person
- 41 could have been sentenced for more than one (1) year;
- 42 (3) does not have a conviction for a crime of domestic violence

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1 (as defined in IC 35-41-1-6.3), unless a court has restored the
 2 person's right to possess a firearm under IC 35-47-4-7;
 3 (4) is not prohibited by a court order from possessing a handgun;
 4 (5) does not have a record of being an alcohol or drug abuser as
 5 defined in this chapter;
 6 (6) does not have documented evidence which would give rise to
 7 a reasonable belief that the person has a propensity for violent or
 8 emotionally unstable conduct;
 9 (7) does not make a false statement of material fact on the
 10 person's application;
 11 (8) does not have a conviction for any crime involving an inability
 12 to safely handle a handgun;
 13 (9) does not have a conviction for violation of the provisions of
 14 this article within five (5) years of the person's application; or
 15 (10) does not have an adjudication as a delinquent child for an act
 16 that would be a felony if committed by an adult, if the person
 17 applying for a license or permit under this chapter is less than
 18 twenty-three (23) years of age;
 19 **(11) has not been involuntarily committed, other than a**
 20 **temporary commitment for observation or evaluation, to a**
 21 **mental institution by a court, board, commission, or other**
 22 **lawful authority;**
 23 **(12) has not been the subject of a:**
 24 **(A) ninety (90) day commitment as a result of proceeding**
 25 **under IC 12-26-6; or**
 26 **(B) regular commitment under IC 12-26-7; or**
 27 **(13) has not been found by a court to be mentally**
 28 **incompetent, including being found:**
 29 **(A) not guilty by reason of insanity;**
 30 **(B) guilty but mentally ill; or**
 31 **(C) incompetent to stand trial.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Veterans Affairs and Public Safety, to which was referred House Bill 1318, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

- Page 1, line 2, delete "(a)".
- Page 1, delete lines 12 through 17.
- Delete pages 2 through 3.

and when so amended that said bill do pass.

(Reference is to HB 1318 as introduced.)

BORDERS, Chair

Committee Vote: yeas 10, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1318, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, after line 11, begin a new paragraph and insert:
 "SECTION 2. IC 33-23-15-2, AS ADDED BY P.L.110-2009, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) If a person described in section 1 of this chapter:

- (1) has been released from commitment; or
- (2) successfully completes a treatment or rehabilitation program; the person may petition the court (if the adjudication leading to the person's commitment, rehabilitation, or treatment program was from a court) or the department of correction (if the determination leading to the person's rehabilitation or treatment program was from a psychiatrist employed by or retained by the department of correction) to determine whether the person is prohibited from possessing a **handgun firearm** because the person is not a proper person under ~~IC 35-47-1-7(5) or IC 35-47-1-7(6)~~; **IC 35-47-1-7(11) through IC 35-47-1-7(13)**.

(b) In determining whether the person is prohibited from possessing a **handgun firearm** because the person is not a proper person under ~~IC 35-47-1-7(5) or IC 35-47-1-7(6)~~; **IC 35-47-1-7(11) through IC 35-47-1-7(13)**, the court or department of correction shall consider



the following evidence:

- (1) The facts and circumstances leading to the person being included in the category of persons to whom this chapter applies.
- (2) The person's mental health and criminal history records.
- (3) Evidence concerning the person's reputation, including the testimony of character witnesses.
- (4) A recent mental health evaluation by a psychiatrist or psychologist licensed to practice in Indiana.

(c) If the court or the department of correction, after considering the evidence described in subsection (b), finds by clear and convincing evidence that:

- (1) the person is not a danger to the person or to others;
- (2) the person is not likely to act in a manner dangerous to public safety; and
- (3) the requested relief would not be contrary to public interest;

the court or department of correction shall transmit its findings to the department of state court administration, and any other information required by the division of state court administration, for transmission to the NICS in accordance with IC 33-24-6-3.

(d) A determination under this section may be appealed only in accordance with section 3 of this chapter.

SECTION 3. IC 35-47-1-7, AS AMENDED BY P.L.118-2007, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. "Proper person" means a person who:

- (1) does not have a conviction for resisting law enforcement under IC 35-44-3-3 within five (5) years before the person applies for a license or permit under this chapter;
- (2) does not have a conviction for a crime for which the person could have been sentenced for more than one (1) year;
- (3) does not have a conviction for a crime of domestic violence (as defined in IC 35-41-1-6.3), unless a court has restored the person's right to possess a firearm under IC 35-47-4-7;
- (4) is not prohibited by a court order from possessing a handgun;
- (5) does not have a record of being an alcohol or drug abuser as defined in this chapter;
- (6) does not have documented evidence which would give rise to a reasonable belief that the person has a propensity for violent or emotionally unstable conduct;
- (7) does not make a false statement of material fact on the person's application;
- (8) does not have a conviction for any crime involving an inability to safely handle a handgun;

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(9) does not have a conviction for violation of the provisions of this article within five (5) years of the person's application; or
(10) does not have an adjudication as a delinquent child for an act that would be a felony if committed by an adult, if the person applying for a license or permit under this chapter is less than twenty-three (23) years of age;

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

(12) has not been the subject of a:

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

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

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

(A) not guilty by reason of insanity;

(B) guilty but mentally ill; or

(C) incompetent to stand trial."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1318 as printed January 25, 2011.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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