

SENATE BILL No. 289

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-47-14.

Synopsis: Sealing of red flag records. Requires the sealing of certain records concerning a proceeding under the red flag law if a person is found: (1) not to be dangerous; or (2) no longer to be dangerous.

Effective: July 1, 2024.

Freeman

January 16, 2024, read first time and referred to Committee on Corrections and Criminal Law.



Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

SENATE BILL No. 289

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 35-47-14-6, AS AMENDED BY P.L.142-2020,
- 2 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2024]: Sec. 6. (a) The court shall conduct a hearing as
- 4 required under this chapter.
- 5 (b) The state has the burden of proving all material facts by clear
- 6 and convincing evidence.
- 7 (c) If the court determines that the state has proved by clear and
- 8 convincing evidence that the individual is dangerous, the court shall
- 9 issue a written order:
- 10 (1) finding the individual is dangerous (as defined in section 1 of
- 11 this chapter);
- 12 (2) ordering the law enforcement agency having custody of the
- 13 seized firearm to retain the firearm;
- 14 (3) ordering the individual's license to carry a handgun, if
- 15 applicable, suspended; and
- 16 (4) enjoining the individual from:
- 17 (A) renting;



- 1 (B) receiving transfer of;
 2 (C) owning; or
 3 (D) possessing;
 4 a firearm; and
 5 determine whether the individual should be referred to further
 6 proceedings to consider whether the individual should be involuntarily
 7 detained or committed under IC 12-26-6-2(a)(2)(B).
 8 (d) If the court finds that the individual is dangerous under
 9 subsection (c), the clerk shall transmit the order of the court to the
 10 office of judicial administration:
 11 (1) for transmission to NICS (as defined in IC 35-47-2.5-2.5); and
 12 (2) beginning July 1, 2021, for the collection of certain data
 13 related to the confiscation and retention of firearms taken from
 14 dangerous individuals;
 15 in accordance with IC 33-24-6-3.
 16 (e) If the court orders a law enforcement agency to retain a firearm,
 17 the law enforcement agency shall retain the firearm until the court
 18 orders the firearm returned or otherwise disposed of.
 19 (f) If the court determines that the state has failed to prove by clear
 20 and convincing evidence that the individual is dangerous, the court
 21 shall issue a written order that:
 22 (1) the individual is not dangerous (as defined in section 1 of this
 23 chapter); ~~and~~
 24 (2) the law enforcement agency having custody of the firearm
 25 shall return the firearm as quickly as practicable, but not later
 26 than five (5) days after the date of the order, to the individual
 27 from whom it was seized; ~~and~~
 28 **(3) the following records shall be sealed:**
 29 **(A) The court's file.**
 30 **(B) The records of any law enforcement agency or other**
 31 **person involved in:**
 32 **(i) the investigation of the individual under this chapter;**
 33 **(ii) the filing of a search warrant and search warrant**
 34 **return under sections 2 and 4 of this chapter; and**
 35 **(iii) the filing of an affidavit under section 3 of this**
 36 **chapter.**
 37 **(C) Records relating to the proceeding under this chapter**
 38 **contained in any central repository for criminal history or**
 39 **civil litigation information, including the repository**
 40 **maintained by the state police department. This clause**
 41 **does not require the state police department to seal any**
 42 **record the state police department does not have legal**



1 **authority to seal.**
2 **Records ordered sealed under this subdivision may not be**
3 **disclosed to any individual or be accessible to any person**
4 **unless authorized by a court order.**
5 **(g) If:**
6 **(1) a court issued an order under subsection (f) before July 1,**
7 **2024; and**
8 **(2) a person subsequently files a motion to amend the order to**
9 **include the provisions of subsection (f)(3);**
10 **the court shall grant the motion and issue an amended order**
11 **including the provisions of subsection (f)(3).**
12 SECTION 2. IC 35-47-14-8, AS AMENDED BY P.L.142-2020,
13 SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2024]: Sec. 8. (a) At least one hundred eighty (180) days after
15 the date on which a court orders a law enforcement agency to retain an
16 individual's firearm under section 6(c) of this chapter, the individual
17 may petition the court for a finding that the individual is no longer
18 dangerous.
19 (b) Upon receipt of a petition described in subsection (a), the court
20 shall:
21 (1) enter an order setting a date for a hearing on the petition; and
22 (2) inform the prosecuting attorney of the date, time, and location
23 of the hearing.
24 (c) The prosecuting attorney shall represent the state at the hearing
25 on a petition under this section.
26 (d) In a hearing on a petition under this section, the individual may
27 be represented by an attorney.
28 (e) In a hearing on a petition under this section filed:
29 (1) not later than one (1) year after the date of the order issued
30 under section 6(c) of this chapter, the individual must prove by a
31 preponderance of the evidence that the individual is no longer
32 dangerous; and
33 (2) later than one (1) year after the date of the order issued under
34 section 6(c) of this chapter, the state must prove by clear and
35 convincing evidence that the individual is still dangerous.
36 (f) If, upon the completion of the hearing and consideration of the
37 record, the court finds that the individual is no longer dangerous, the
38 court shall:
39 (1) issue a court order that finds that the individual is no longer
40 dangerous;
41 (2) order the law enforcement agency having custody of any
42 firearm to return the firearm as quickly as practicable, but not



1 later than five (5) days after the date of the order, to the
2 individual;

3 (3) terminate any injunction issued under section 6 of this
4 chapter; ~~and~~

5 (4) terminate the suspension of the individual's license to carry a
6 handgun so that the individual may reapply for a license; **and**

7 **(5) order that the following records be sealed:**

8 **(A) The court's file.**

9 **(B) The records of any law enforcement agency or other
10 person involved in:**

11 **(i) the investigation of the individual under this chapter;**

12 **(ii) the filing of a search warrant and search warrant
13 return under sections 2 and 4 of this chapter; and**

14 **(iii) the filing of an affidavit under section 3 of this
15 chapter.**

16 **(C) Records relating to the proceeding under this chapter
17 contained in any central repository for criminal history or
18 civil litigation information, including the repository
19 maintained by the state police department. This clause
20 does not require the state police department to seal any
21 record the state police department does not have legal
22 authority to seal.**

23 **Records ordered sealed under this subdivision may not be
24 disclosed to any individual or be accessible to any person
25 unless authorized by a court order.**

26 **(g) If:**

27 **(1) a court issued an order under subsection (f) before July 1,
28 2024; and**

29 **(2) a person subsequently files a motion to amend the order to
30 include the provisions of subsection (f)(5);**

31 **the court shall grant the motion and issue an amended order
32 including the provisions of subsection (f)(5).**

33 ~~(g)~~ **(h)** If the court denies an individual's petition under this section,
34 the individual may not file a subsequent petition until at least one
35 hundred eighty (180) days after the date on which the court denied the
36 petition.

37 ~~(h)~~ **(i)** If a court issues an order described under subsection (f), **or**
38 **an amended order described under subsection (g),** the court's order
39 shall be transmitted, as soon as practicable, to the office of judicial
40 administration for transmission to the NICS (as defined in
41 IC 35-47-2.5-2.5) and, beginning July 1, 2021, for the collection of
42 certain data related to the confiscation and retention of firearms taken



1 from dangerous individuals in accordance with IC 33-24-6-3.

