

IC 35-47-14

Chapter 14. Proceedings for the Seizure and Retention of a Firearm

IC 35-47-14-1

"Dangerous"

Sec. 1. (a) For the purposes of this chapter, an individual is "dangerous" if:

(1) the individual presents an imminent risk of personal injury to the individual or to another individual; or

(2) the individual may present a risk of personal injury to the individual or to another individual in the future and the individual:

(A) has a mental illness (as defined in IC 12-7-2-130) that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking the individual's medication while not under supervision; or

(B) is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or emotionally unstable conduct.

(b) The fact that an individual has been released from a mental health facility or has a mental illness that is currently controlled by medication does not establish that the individual is dangerous for the purposes of this chapter.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-2

Warrant to search for firearm in possession of dangerous individual

Sec. 2. A circuit or superior court may issue a warrant to search for and seize a firearm in the possession of an individual who is dangerous if:

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

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

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

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

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

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

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

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

(A) dangerous; and

(B) in possession of a firearm.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-3

Warrantless seizure of firearm from individual believed to be dangerous

Sec. 3. (a) If a law enforcement officer seizes a firearm from an individual whom the law enforcement officer believes to be dangerous without obtaining a warrant, the law enforcement officer shall submit to the circuit or superior court having jurisdiction over the individual believed to be dangerous a written statement under oath or affirmation describing the basis for the law enforcement officer's belief that the individual is dangerous.

(b) The court shall review the written statement submitted under subsection (a). If the court finds that probable cause exists to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to retain the firearm. If the court finds that there is no probable cause to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual.

(c) This section does not authorize a law enforcement officer to perform a warrantless search or seizure if a warrant would otherwise be required.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-4

Filing of return after warrant is served

Sec. 4. If a court issued a warrant to seize a firearm under this chapter, the law enforcement officer who served the warrant shall, not later than forty-eight (48) hours after the warrant was served, file a return with the court that:

- (1) states that the warrant was served; and
- (2) sets forth:
 - (A) the time and date on which the warrant was served;
 - (B) the name and address of the individual named in the warrant; and
 - (C) the quantity and identity of any firearms seized by the law enforcement officer.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-5

Requirement of hearing on whether firearm should be returned or retained

Sec. 5. (a) Not later than fourteen (14) days after a return is filed under section 4 of this chapter or a written statement is submitted under section 3 of this chapter, the court shall conduct a hearing to determine whether the seized firearm should be:

- (1) returned to the individual from whom the firearm was seized; or
- (2) retained by the law enforcement agency having custody of

the firearm.

(b) The court shall set the hearing date as soon as possible after the return is filed under section 4 of this chapter. The court shall inform:

(1) the prosecuting attorney; and

(2) the individual from whom the firearm was seized;

of the date, time, and location of the hearing. The court may conduct the hearing at a facility or other suitable place not likely to have a harmful effect upon the individual's health or well-being.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-6

Burden of proof at hearing; court orders

Sec. 6. (a) In a hearing conducted under section 5 of this chapter, the state has the burden of proving all material facts by clear and convincing evidence.

(b) If the court, in a hearing under section 5 of this chapter, determines that the state has proved by clear and convincing evidence that the individual is dangerous, the court may order that the law enforcement agency having custody of the seized firearm retain the firearm. In addition, if the individual has received a license to carry a handgun, the court shall suspend the individual's license to carry a handgun. If the court determines that the state has failed to prove that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual from whom it was seized.

(c) If the court, in a hearing under section 5 of this chapter, orders a law enforcement agency to retain a firearm, the law enforcement agency shall retain the firearm until the court orders the firearm returned or otherwise disposed of.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-7

If firearm seized is owned by another individual

Sec. 7. If the court, in a hearing conducted under section 5 of this chapter, determines that:

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

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

the court may order the law enforcement agency having custody of the firearm to return the firearm to the owner of the firearm.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-8

Petition for return of a firearm

Sec. 8. (a) At least one hundred eighty (180) days after the date on which a court orders a law enforcement agency to retain an individual's firearm under section 6(b) of this chapter, the individual may petition the court for return of the firearm.

(b) Upon receipt of a petition described in subsection (a), the court

shall:

- (1) enter an order setting a date for a hearing on the petition; and
- (2) inform the prosecuting attorney of the date, time, and location of the hearing.

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

(d) In a hearing on a petition under this section, the individual:

- (1) may be represented by an attorney; and
- (2) must prove by a preponderance of the evidence that the individual is not dangerous.

(e) If, upon the completion of the hearing and consideration of the record, the court finds that the individual is not dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual.

(f) If the court denies an individual's petition under this section, the individual may not file a subsequent petition until at least one hundred eighty (180) days after the date on which the court denied the petition.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-9

When law enforcement agency may be ordered to dispose of firearm

Sec. 9. If at least five (5) years have passed since a court conducted the first hearing to retain a firearm under this chapter, the court, after giving notice to the parties and conducting a hearing, may order the law enforcement agency having custody of the firearm to dispose of the firearm in accordance with IC 35-47-3.

As added by P.L.1-2006, SEC.537. Amended by P.L.157-2014, SEC.6.

IC 35-47-14-10

Request to sell retained firearm

Sec. 10. (a) If a court has ordered a law enforcement agency to retain an individual's firearm under section 6 of this chapter, the individual may request the court to order the law enforcement agency to sell the firearm at auction under IC 35-47-3-2 and return the proceeds to the individual.

(b) An individual may make the request described in subsection (a):

- (1) at the retention hearing described in section 9 of this chapter;
- or
- (2) at any time before the retention hearing described in section 9 of this chapter is held.

(c) If an individual timely requests a sale of a firearm under subsection (a), the court shall order the law enforcement agency having custody of the firearm to sell the firearm at auction under IC 35-47-3-2, unless the serial number of the firearm has been obliterated.

(d) If the court issues an order under subsection (c), the court's

order must require:

- (1) that the firearm be sold not more than one (1) year after receipt of the order; and
- (2) that the proceeds of the sale be returned to the individual who owns the firearm. However, the law enforcement agency may retain not more than eight percent (8%) of the sale price to pay the costs of the sale, including administrative costs and the auctioneer's fee.

As added by P.L.157-2014, SEC.7.