

# HOUSE BILL No. 1264

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-31.5-2; IC 35-47-4.

**Synopsis:** Surrender of firearms for domestic violence crimes. Provides that a person who: (1) has been convicted of a crime of domestic violence; and (2) knowingly or intentionally possesses a firearm; commits a Class A misdemeanor. Specifies certain defenses. Requires a court to issue an order, upon entry of a judgment of conviction for domestic battery or a crime of domestic violence, that: (1) prohibits ownership or possession of a firearm; (2) requires the defendant to surrender: (A) any firearm owned or possessed by the defendant; and (B) any license or permit to carry a handgun (license); and (3) requires confiscation, within 72 hours, of any firearm or license owned or possessed by the defendant. Provides that a domestic batterer who knowingly or intentionally fails to surrender a certain firearm or license commits a Class A misdemeanor, enhanced to a Level 6 felony in specific instances. Provides certain defenses. Specifies how a confiscated firearm or license shall be returned or disposed of if a defendant's right to possess a firearm is restored. Defines certain terms. Makes conforming amendments.

**Effective:** July 1, 2022.

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## Smith V

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January 10, 2022, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

# HOUSE BILL No. 1264

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 35-31.5-2-78, AS AMENDED BY P.L.40-2019,  
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2022]: Sec. 78. "Crime of domestic violence", for purposes of  
4 IC 5-2-6.1, IC 35-38-9, and ~~IC 35-47-4-7~~, **IC 35-47-4**, means an  
5 offense or the attempt to commit an offense that:

- 6 (1) has as an element the:
  - 7 (A) use of physical force; or
  - 8 (B) threatened use of a deadly weapon; and
- 9 (2) is committed against a family or household member, as  
10 defined in section 128 of this chapter.

11 SECTION 2. IC 35-31.5-2-183, AS AMENDED BY P.L.144-2018,  
12 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2022]: Sec. 183. (a) "Law enforcement agency," for purposes  
14 of receiving information concerning a violation of IC 35-42-3.5-1  
15 through IC 35-42-3.5-1.4 (human trafficking), means:

- 16 (1) an agency or department of:
  - 17 (A) the state; or



- 1 (B) a political subdivision of the state;  
 2 whose principal function is the apprehension of criminal  
 3 offenders; and  
 4 (2) the attorney general.
- 5 (b) "Law enforcement agency", for purposes of **IC 35-47-4 and**  
 6 **IC 35-47-15**, has the meaning set forth in IC 35-47-15-2.
- 7 SECTION 3. IC 35-31.5-2-187.4 IS ADDED TO THE INDIANA  
 8 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
 9 **[EFFECTIVE JULY 1, 2022]: Sec. 187.4. "License", for purposes of**  
 10 **IC 35-47-4-6.3 and IC 35-47-4-6.4, has the meaning set forth in**  
 11 **IC 35-47-4-6.3(a)(3).**
- 12 SECTION 4. IC 35-31.5-2-275.5 IS ADDED TO THE INDIANA  
 13 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
 14 **[EFFECTIVE JULY 1, 2022]: Sec. 275.5. "Residence", for purposes**  
 15 **of IC 35-47-4-6.3, has the meaning set forth in IC 35-47-4-6.3(a)(4).**
- 16 SECTION 5. IC 35-31.5-2-319.5 IS ADDED TO THE INDIANA  
 17 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
 18 **[EFFECTIVE JULY 1, 2022]: Sec. 319.5. "Surrender", for purposes**  
 19 **of IC 35-47-4-6.3 and IC 35-47-4-6.4, has the meaning set forth in**  
 20 **IC 35-47-4-6.3(a)(5).**
- 21 SECTION 6. IC 35-47-4-6, AS AMENDED BY P.L.118-2007,  
 22 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 2022]: Sec. 6. (a) A person who has been convicted of:  
 24 (1) domestic battery under IC 35-42-2-1.3; or  
 25 (2) **a crime of domestic violence (as defined in**  
 26 **IC 35-31.5-2-78);**  
 27 and who knowingly or intentionally possesses a firearm commits  
 28 unlawful possession of a firearm by a domestic batterer, a Class A  
 29 misdemeanor.
- 30 (b) It is a defense to a prosecution under this section that:  
 31 (1) the person's right to possess a firearm has been restored under  
 32 ~~IC 35-47-4-7~~ **section 7 of this chapter; or**  
 33 (2) **the person, at the time of the commission of the offense,**  
 34 **was:**  
 35 (A) **subject to a written court order under section 6.4 of**  
 36 **this chapter; and**  
 37 (B) **awaiting confiscation of the firearm by an appropriate**  
 38 **law enforcement agency or law enforcement officer as**  
 39 **described in section 6.4(b) of this chapter.**
- 40 SECTION 7. IC 35-47-4-6.3 IS ADDED TO THE INDIANA CODE  
 41 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**  
 42 **1, 2022]: Sec. 6.3. (a) The following definitions apply throughout**



- 1       **this section:**  
2       (1) **"Crime of domestic violence"** has the meaning set forth in  
3       **IC 35-31.5-2-78.**  
4       (2) **"Domestic batterer"** means a person:  
5       (A) who has been convicted of domestic battery  
6       (IC 35-42-2-1.3) or a crime of domestic violence; and  
7       (B) whose right to possess a firearm has not been restored  
8       under section 7 of this chapter.  
9       (3) **"License"** means any license or permit to carry a  
10       handgun.  
11       (4) **"Residence"** means one (1) or more of the following:  
12       (A) The location where a person spends most of the time,  
13       including a residence owned or leased by another person  
14       if the person:  
15       (i) does not own or lease a residence; or  
16       (ii) spends more time at the residence owned or leased by  
17       the other person than at the residence owned or leased  
18       by the person.  
19       (B) A particular location where a person spends more than  
20       three (3) nights in a thirty (30) day period.  
21       (5) **"Surrender"** means to make available for confiscation by  
22       a law enforcement agency or law enforcement officer having  
23       jurisdiction over one (1) or more of the following:  
24       (A) The location of the offense.  
25       (B) The location of the defendant's residence at any time  
26       between the defendant's arrest and the conclusion of the  
27       defendant's sentence.  
28       (b) A domestic batterer who knowingly or intentionally fails to  
29       surrender any:  
30       (1) firearm; or  
31       (2) license;  
32       owned or possessed by the domestic batterer commits unlawful  
33       retention of a firearm or license by a domestic batterer, a Class A  
34       misdemeanor. However, the offense is a Level 6 felony if the person  
35       has a prior unrelated conviction for an offense under this section.  
36       (c) It is a defense to a prosecution under this section that:  
37       (1) a court did not issue a written order described in section  
38       6.4(a) of this chapter before the domestic batterer's failure to  
39       surrender any firearm or license owned or possessed by the  
40       domestic batterer; or  
41       (2) the appropriate law enforcement agency or law  
42       enforcement officer failed to confiscate a firearm or license



1 eligible for confiscation under this section in a timely manner.

2 (d) It is not a defense to a prosecution under this section that a  
3 firearm or license subject to confiscation by a law enforcement  
4 agency or a law enforcement officer under this section was in the  
5 possession of a third party not specified in the court order  
6 described in section 6.4(a) of this chapter.

7 (e) Nothing in this chapter shall be construed to prevent a  
8 person who is:

9 (1) the rightful owner of a firearm confiscated under this  
10 section; and

11 (2) not otherwise disqualified or prohibited from owning or  
12 possessing a firearm under state or federal law;  
13 from reclaiming a confiscated firearm from the law enforcement  
14 agency or law enforcement officer responsible for originally  
15 confiscating the firearm.

16 SECTION 8. IC 35-47-4-6.4 IS ADDED TO THE INDIANA CODE  
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
18 1, 2022]: Sec. 6.4. (a) A court, upon entering a judgment of  
19 conviction for domestic battery or a crime of domestic violence,  
20 shall issue a written order that does the following:

21 (1) Prohibits the defendant from owning or possessing a  
22 firearm.

23 (2) Requires the defendant to surrender all firearms and  
24 licenses owned or possessed by the defendant.

25 (3) Orders an appropriate law enforcement:

26 (A) agency; or

27 (B) officer;

28 to confiscate all firearms and all licenses owned or possessed  
29 by the defendant.

30 (4) Advises the defendant of the rights described in section 7  
31 of this chapter.

32 (b) A law enforcement agency or law enforcement officer  
33 subject to a written court order described in subsection (a) shall  
34 comply with subsection (a) not later than seventy-two (72) hours  
35 after receipt of the written court order described in subsection (a).

36 SECTION 9. IC 35-47-4-7, AS AMENDED BY P.L.181-2014,  
37 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
38 JULY 1, 2022]: Sec. 7. (a) Notwithstanding IC 35-47-2, IC 35-47-2.5,  
39 the restoration of the right to serve on a jury under IC 33-28-5-18, the  
40 restoration of the right to vote under IC 3-7-13-5, or the expungement  
41 of a crime of domestic violence under IC 35-38-9, and except as  
42 provided in subsections (b), (c), and (f), a person who has been



1 convicted of a crime of domestic violence may not possess a firearm.

2 (b) Not earlier than five (5) years after the date of conviction, a  
3 person who has been convicted of a crime of domestic violence may  
4 petition the court for restoration of the person's right to possess a  
5 firearm. In determining whether to restore the person's right to possess  
6 a firearm, the court shall consider the following factors:

7 (1) Whether the person has been subject to:

8 (A) a protective order;

9 (B) a no contact order;

10 (C) a workplace violence restraining order; or

11 (D) any other court order that prohibits the person from  
12 possessing a firearm.

13 (2) Whether the person has successfully completed a substance  
14 abuse program, if applicable.

15 (3) Whether the person has successfully completed a parenting  
16 class, if applicable.

17 (4) Whether the person still presents a threat to the victim of the  
18 crime.

19 (5) Whether there is any other reason why the person should not  
20 possess a firearm, including whether the person failed to satisfy  
21 a specified condition under subsection (c) or whether the person  
22 has committed a subsequent offense.

23 (c) The court may condition the restoration of a person's right to  
24 possess a firearm upon the person's satisfaction of specified conditions.

25 (d) If the court denies a petition for restoration of the right to  
26 possess a firearm, the person may not file a second or subsequent  
27 petition until one (1) year has elapsed after the filing of the most recent  
28 petition.

29 (e) A person has not been convicted of a crime of domestic violence  
30 for purposes of subsection (a) if the person has been pardoned.

31 (f) The right to possess a firearm shall be restored to a person whose  
32 conviction is reversed on appeal or on postconviction review at the  
33 earlier of the following:

34 (1) At the time the prosecuting attorney states on the record that  
35 the charges that gave rise to the conviction will not be refiled.

36 (2) Ninety (90) days after the final disposition of the appeal or the  
37 postconviction proceeding.

38 **(g) If a defendant's right to possess a firearm is restored under  
39 this section, any:**

40 **(1) written court order issued under section 6.4 of this chapter  
41 shall be vacated;**

42 **(2) firearm confiscated under section 6.4 of this chapter shall**



1           **be:**  
2                 **(A) disposed of; or**  
3                 **(B) returned to the rightful owner;**  
4           **in the manner described in IC 35-47-3; and**  
5           **(3) valid license confiscated under section 6.4 of this chapter**  
6           **shall be made available to the defendant not later than**  
7           **seventy-two (72) hours after the defendant's right to possess**  
8           **a firearm has been restored.**

