



January 17, 2019

SENATE BILL No. 279

DIGEST OF SB 279 (Updated January 15, 2019 12:32 pm - DI 106)

Citations Affected: IC 31-30; IC 31-39; IC 35-31.5; IC 35-47.

Synopsis: Waiver to adult court for attempted murder. Provides that the juvenile court shall waive jurisdiction if it finds that: (1) the child is charged with an act that would be murder or attempted murder if committed by an adult; (2) there is probable cause to believe that the child has committed the act; and (3) the child was at least 12 years of age when the act charged was allegedly committed; unless it would be in the best interests of the child and of the safety and welfare of the community for the child to remain within the juvenile justice system. Prohibits a person who has been adjudicated a delinquent child for committing an act while armed with a firearm that would be a serious violent felony if committed by an adult (serious delinquent) from possessing a firearm unless the person is at least: (1) 26 years of age, in the case of less serious acts; or (2) 28 years of age, in the case of more serious acts. Makes possession of a firearm by a serious delinquent a Class A misdemeanor, and increases the penalty to a Level 6 felony for a second or subsequent offense. Prohibits the expungement of the juvenile records of a serious delinquent unless the person is at least 26 or 28 years of age, depending on the seriousness of the underlying delinquent acts.

Effective: July 1, 2019.

Houchin

January 7, 2019, read first time and referred to Committee on Corrections and Criminal Law.
January 16, 2019, amended, reported favorably — Do Pass.

SB 279—LS 6605/DI 131



January 17, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 279

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 31-30-3-4, AS AMENDED BY P.L.187-2015,
2 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 4. Upon motion of the prosecuting attorney and
4 after full investigation and hearing, the juvenile court shall waive
5 jurisdiction if it finds that:
6 (1) the child is charged with an act that would be murder **or**
7 **attempted murder** if committed by an adult;
8 (2) there is probable cause to believe that the child has committed
9 the act; and
10 (3) the child was at least twelve (12) years of age when the act
11 charged was allegedly committed;
12 unless it would be in the best interests of the child and of the safety and
13 welfare of the community for the child to remain within the juvenile
14 justice system.
15 SECTION 2. IC 31-39-8-3, AS AMENDED BY P.L.86-2017,
16 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2019]: Sec. 3. (a) **Except as provided in subsection (f), a**

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1 person may initiate a petition for the expungement of records of a child
2 alleged to be a delinquent child or a child in need of services by filing
3 a verified petition in the juvenile court in the county of the original
4 action. The petition must set forth the following:

5 (1) The allegations and date of adjudication, if applicable, of the
6 juvenile delinquency or child in need of services adjudications.

7 (2) The court in which juvenile delinquency or child in need of
8 services allegations or petitions were filed.

9 (3) The law enforcement agency that employs the charging
10 officer, if known.

11 (4) The case number or court cause number.

12 (5) Date of birth of the petitioner.

13 (6) Petitioner's Social Security number.

14 (7) All juvenile delinquency or child in need of services
15 adjudications and criminal convictions occurring after the
16 adjudication of the action sought to be expunged.

17 (8) All pending actions under IC 31-34 or IC 31-37 or criminal
18 charges.

19 (b) A petition described in subsection (a) shall be served on:

20 (1) the prosecuting attorney; or

21 (2) in the case of a child in need of services case, the department
22 of child services.

23 (c) The prosecuting attorney or department of child services has
24 thirty (30) days in which to reply or otherwise object to the petition.
25 The court may reduce the time in which a response must be filed for a
26 show of good cause or within its discretion after a hearing is held.

27 (d) If the prosecuting attorney or department of child services timely
28 files an objection to the petition, the matter shall be set for a hearing.
29 If no objection is filed, the court may set the petition for a hearing or
30 rule on the petition without a hearing.

31 (e) In considering whether to grant the petition, the juvenile court
32 may review:

33 (1) the best interests of the child;

34 (2) the age of the person during the person's contact with the
35 juvenile court or law enforcement agency;

36 (3) the nature of any allegations;

37 (4) whether there was an informal adjustment or an adjudication;

38 (5) the disposition of the case;

39 (6) the manner in which the person participated in any court
40 ordered or supervised services;

41 (7) the time during which the person has been without contact
42 with the juvenile court or with any law enforcement agency;



1 (8) whether the person acquired a criminal record; and

2 (9) the person's current status.

3 **(f) A person may not seek expungement of the records of a**
 4 **person adjudicated a delinquent child for committing an act while**
 5 **armed with a firearm that would be a serious violent felony (as**
 6 **defined in IC 35-47-4-5) if committed by an adult, unless the person**
 7 **is at least:**

8 **(1) twenty-six (26) years of age, if the delinquent act, if**
 9 **committed by an adult, would have been a:**

10 **(A) Level 6 felony;**

11 **(B) Level 5 felony;**

12 **(C) Level 4 felony; or**

13 **(D) Level 3 felony; or**

14 **(2) twenty-eight (28) years of age, if the delinquent act, if**
 15 **committed by an adult, would have been:**

16 **(A) a Level 2 felony;**

17 **(B) a Level 1 felony; or**

18 **(C) murder.**

19 SECTION 3. IC 35-31.5-2-294, AS ADDED BY P.L.114-2012,
 20 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2019]: Sec. 294. "Serious violent felony", for purposes of
 22 IC 35-47-4-5 and IC 35-47-4-9, has the meaning set forth in
 23 ~~IC 35-47-4-5(b)~~: IC 35-47-4-5.

24 SECTION 4. IC 35-47-4-9 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 26 1, 2019]: Sec. 9. (a) As used in this section, "serious violent felony"
 27 has the meaning set forth in IC 35-47-4-5.

28 **(b) A person who:**

29 **(1) has been adjudicated a delinquent child for committing an**
 30 **act while armed with a firearm that would be a serious violent**
 31 **felony if committed by an adult;**

32 **(2) is less than:**

33 **(A) twenty-six (26) years of age, if the delinquent act, if**
 34 **committed by an adult, would have been a:**

35 **(i) Level 6 felony;**

36 **(ii) Level 5 felony;**

37 **(iii) Level 4 felony; or**

38 **(iv) Level 3 felony; or**

39 **(B) twenty-eight (28) years of age, if the delinquent act, if**
 40 **committed by an adult, would have been:**

41 **(i) a Level 2 felony;**

42 **(ii) a Level 1 felony; or**



1 **(iii) murder; and**
2 **(3) knowingly or intentionally possesses a firearm;**
3 **commits unlawful possession of a firearm by a dangerous person,**
4 **a Class A misdemeanor. However, the offense is a Level 6 felony if**
5 **the person has a prior unrelated conviction under this section.**



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 279, 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 14, begin a new paragraph and insert:

"SECTION 2. IC 31-39-8-3, AS AMENDED BY P.L.86-2017, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) **Except as provided in subsection (f)**, a person may initiate a petition for the expungement of records of a child alleged to be a delinquent child or a child in need of services by filing a verified petition in the juvenile court in the county of the original action. The petition must set forth the following:

- (1) The allegations and date of adjudication, if applicable, of the juvenile delinquency or child in need of services adjudications.
 - (2) The court in which juvenile delinquency or child in need of services allegations or petitions were filed.
 - (3) The law enforcement agency that employs the charging officer, if known.
 - (4) The case number or court cause number.
 - (5) Date of birth of the petitioner.
 - (6) Petitioner's Social Security number.
 - (7) All juvenile delinquency or child in need of services adjudications and criminal convictions occurring after the adjudication of the action sought to be expunged.
 - (8) All pending actions under IC 31-34 or IC 31-37 or criminal charges.
- (b) A petition described in subsection (a) shall be served on:
- (1) the prosecuting attorney; or
 - (2) in the case of a child in need of services case, the department of child services.

(c) The prosecuting attorney or department of child services has thirty (30) days in which to reply or otherwise object to the petition. The court may reduce the time in which a response must be filed for a show of good cause or within its discretion after a hearing is held.

(d) If the prosecuting attorney or department of child services timely files an objection to the petition, the matter shall be set for a hearing. If no objection is filed, the court may set the petition for a hearing or rule on the petition without a hearing.

(e) In considering whether to grant the petition, the juvenile court



may review:

- (1) the best interests of the child;
- (2) the age of the person during the person's contact with the juvenile court or law enforcement agency;
- (3) the nature of any allegations;
- (4) whether there was an informal adjustment or an adjudication;
- (5) the disposition of the case;
- (6) the manner in which the person participated in any court ordered or supervised services;
- (7) the time during which the person has been without contact with the juvenile court or with any law enforcement agency;
- (8) whether the person acquired a criminal record; and
- (9) the person's current status.

(f) A person may not seek expungement of the records of a person adjudicated a delinquent child for committing an act while armed with a firearm that would be a serious violent felony (as defined in IC 35-47-4-5) if committed by an adult, unless the person is at least:

- (1) twenty-six (26) years of age, if the delinquent act, if committed by an adult, would have been a:**
 - (A) Level 6 felony;**
 - (B) Level 5 felony;**
 - (C) Level 4 felony; or**
 - (D) Level 3 felony; or**
- (2) twenty-eight (28) years of age, if the delinquent act, if committed by an adult, would have been:**
 - (A) a Level 2 felony;**
 - (B) a Level 1 felony; or**
 - (C) murder.**

SECTION 3. IC 35-31.5-2-294, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 294. "Serious violent felony", for purposes of IC 35-47-4-5 and IC 35-47-4-9, has the meaning set forth in ~~IC 35-47-4-5(b)~~; IC 35-47-4-5.

SECTION 5. IC 35-47-4-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) As used in this section, "serious violent felony" has the meaning set forth in IC 35-47-4-5.

(b) A person who:

- (1) has been adjudicated a delinquent child for committing an act while armed with a firearm that would be a serious violent felony if committed by an adult;**



(2) is less than:

(A) twenty-six (26) years of age, if the delinquent act, if committed by an adult, would have been a:

- (i) Level 6 felony;**
- (ii) Level 5 felony;**
- (iii) Level 4 felony; or**
- (iv) Level 3 felony; or**

(B) twenty-eight (28) years of age, if the delinquent act, if committed by an adult, would have been:

- (i) a Level 2 felony;**
- (ii) a Level 1 felony; or**
- (iii) murder; and**

(3) knowingly or intentionally possesses a firearm; commits unlawful possession of a firearm by a dangerous person, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction under this section."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 279 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 9, Nays 0.

