



Jake Laird Law

Indiana's "Red Flag" Statute

Proceedings for the Seizure and Retention of Firearms

Indiana State Police Legal Office

August 2012
Updated May 2019



History and Background



- ❑ The Indiana Constitution and the U.S. Bill of Rights both recognize an individual's right to keep and bear arms.
 - ❑ Second Amendment to the U.S. Constitution
 - ❑ Article 1, Section 32 of the Indiana Constitution



History and Background



- ❑ Language in the Supreme Court's *Heller* opinion affirmed that firearms ownership is an individual right.
- ❑ However, the right to keep and bear arms, like any other right, is subject to reasonable regulation.



History and Background



- Under Indiana Law, a law enforcement officer may seize and keep firearms from mentally unstable or dangerous individuals.
- This is known as the “Jake Laird” law.
- **IC 35-47-14**



History and Background



- August 18, 2004 – Kenneth Anderson goes on a rampage armed with an SKS rifle and two handguns.



History and Background



- ❑ Anderson first murdered his mother, then began firing shots in his neighborhood
- ❑ Indianapolis Police Dept. responded and the first Officer on scene was shot and injured before exiting his vehicle, but was able to retreat
- ❑ Anderson evaded police and shot four additional officers who responded



History and Background



- ❑ Jake Laird was the most seriously injured after being shot above his body armor in the chest
- ❑ IPD eventually found and stopped Anderson.



History and Background



- ❑ After Anderson's death it comes to light that months earlier, in January 2004, Anderson had been taken to St. Francis Hospital for an emergency detention.
- ❑ During the January investigation, officers removed a number of weapons from Anderson's home.



History and Background



- ❑ Anderson was evaluated and released from St. Francis.
- ❑ Upon his release, Anderson demanded the return of his seized firearms held by IPD.
- ❑ Lacking any legal authority to keep Anderson's weapons, IPD reluctantly returned the firearms in March 2004.



Legislation

- ❑ In response, the Indiana General Assembly passed H.E.A. 1776 in 2005.
- ❑ Vote was 48-1 in the Senate and 91-0 in the House.
- ❑ Amended in 2019 under H.E.A. 1651.



Jake Laird Law



- ❑ The “Jake Laird Law,” allows the seizure and retention of firearms from dangerous and mentally ill persons.
- ❑ Created Chapter, IC 35-47-14, “Proceedings for the Seizure and Retention of a Firearm”



“Dangerous” Person



- Defines “dangerous” person for purposes of the Jake Laird Law:
 - The individual presents an imminent risk of personal injury to himself/herself or to another individual; OR



“Dangerous” Person



- ❑ It is probable that the individual will present a risk of personal injury to himself or to another individual in the future,
AND:
- ❑ He or she has a mental illness 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



“Dangerous” Person



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



“Dangerous” Person



- The person must meet one of those definitions of “dangerous” person before firearms can be seized.



Jake Laird Law



- ❑ Seizures can be made:
 - ❑ With a warrant based on probable cause; or
 - ❑ Without a warrant, with later court approval.



Seizure with a Warrant



- ❑ The affidavit must include:
 - ❑ Why the officer believes the person is dangerous and in possession of a firearm; and
 - ❑ Describe the officer's interactions and conversations with:
 - ❑ The dangerous individual or
 - ❑ Other persons who provided credible information that the individual was dangerous



Seizure with a Warrant



- ❑ Affiant shall request
 - ❑ Seizure of the firearms
 - ❑ Law Enforcement retention of the firearms
 - ❑ Suspension of the individual's license to carry handgun, if he or she has one; and
 - ❑ Prohibition of the individual from renting, receiving transfer of, owning, or possessing firearms.



Seizure with a Warrant



- ❑ The affidavit must also specifically describe the location of the firearms(s).
- ❑ If the Court finds probable cause, the court may issue the warrant authorizing the search for and seizure of the firearms.



Seizure with a Warrant



- ❑ Once the warrant is served, the officer has 48 hours to file the return with the Court.

- ❑ Return must include:
 - ❑ Date and time served;
 - ❑ Where and who served upon; and
 - ❑ Quantity and description of firearms seized.



Seizure without a Warrant



- ❑ If the officer believes the person is dangerous, he or she can seize the firearms ***without a warrant*** —
- ❑ ***IF*** the officer can otherwise legally take the weapons, including but not limited to:
 - ❑ Probable Cause of a Crime which would allow the weapons to be seized as EVIDENCE;
 - ❑ Applicable Exceptions to the Warrant Requirement
 - ❑ Weapons voluntarily relinquished;
 - ❑ Plain view;
 - ❑ Exigent circumstances allowing entry.



Seizure without a Warrant



- However, the Jake Laird Law provides no additional authority to search for weapons or otherwise enter any person's property.



Seizure without a Warrant



- ❑ If firearms are seized without a warrant, the officer must file an affidavit with the court:
 - ❑ The affidavit must state the basis for the belief the person is dangerous.
 - ❑ Must include information on quantity and type of firearms seized



Seizure without a Warrant



- The court will then review the filing and determine if probable cause exists for the seizure.
 - If court finds no probable cause, law enforcement agency must return firearms as soon as practicable, but not later than five (5) days



Court Hearing



- ❑ If court finds probable cause, within 14 days of the seizure, the court must hold a hearing.
- ❑ The hearing will determine whether the firearms will be seized or retained.
- ❑ Prosecutor represents the state at this hearing.



Court Hearing

- ❑ If the court finds the person is “dangerous”:
 - ❑ Shall order the law enforcement agency to retain the firearms;
 - ❑ Shall order the suspension of the individual’s license to carry handgun, if he or she has one;
 - ❑ Shall enjoin the individual from renting, receiving transfer of, owning, or possessing firearms; and
 - ❑ Determine whether the individual should be referred to further proceedings to consider an involuntary detention or commitment under IC 12-26-6-2(a)(2)(B).



Court Hearing



- ❑ If the court finds the person is NOT “dangerous”:
 - ❑ Law Enforcement agency shall return the firearms as soon as practicable, but not later than five (5) days after the date of the order



Petition for Finding of “No Longer Dangerous”



- ❑ If the court orders the firearms held, the individual may file a petition after 180 days seeking a finding that they are no longer dangerous.
 - ❑ If not later than one (1) year, individual must prove by a preponderance that he or she is no longer dangerous.
 - ❑ If later than one (1) year, state must prove by clear and convincing evidence the individual is still dangerous



Petition for Finding of “No Longer Dangerous”



- ❑ If the court finds that the individual is no longer dangerous, the law enforcement agency shall return firearms as quickly as practicable, but not later than five (5) days.
- ❑ Shall also terminate suspension of license to carry handgun



Order for Destruction



- If the law enforcement agency has kept the firearms for at least five years, the court may order the firearms destroyed or otherwise “permanently” disposed of in accordance with I.C. 35-47-3 *et seq.*



Order to Sell

- ❑ The individual may petition the Court
 - ❑ Transfer the firearm to a responsible third party, as defined in I.C. 35-47-14-1.5, with written agreement with the court.
 - ❑ Transfer the firearms to an FFL for storage or eventual sale
 - ❑ Order the Law Enforcement Agency to sell the firearm under I.C. 35-47-3-2 and return the proceeds to the individual or rightful owner.



Responsible Third Party



- ❑ Responsible third party:
 - ❑ (1) the individual does not cohabit with the person found to be dangerous;
 - ❑ (2) the individual is a proper person under IC 35-47-1-7 and may lawfully possess a firearm; and
 - ❑ (3) the individual is willing to enter into a written court agreement to accept the transfer of the firearm.



Criminal Penalties



- ❑ **Unlawful possession of a firearm by a dangerous person:**
 - ❑ A person who has been found to be dangerous following a hearing under IC 35-47-14-6 who knowingly or intentionally (A) rents; (B) purchases; (C) receives transfer of; (D) owns; or (E) possess a firearm
 - ❑ **Class A misdemeanor**



Criminal Penalties



- ❑ **Unlawful transfer of a firearm to a dangerous person:**
 - ❑ A person who knowingly or intentionally rents, transfers, sells, or offers for sale a firearm to another person who the person knows to be found dangerous under IC 35-47-14-6
 - ❑ **Level 5 felony**



Handgun License



- ❑ If the court orders the person's License to Carry Handgun, it is important to notify the Indiana State Police Firearms Section in Records Division
 - ❑ 317-232-8264
 - ❑ Email FirearmsQuestions@isp.IN.gov
- ❑ Originating agency/court should insure entry for disqualification is submitted through IDACS into NICS index



Storage of Retained Firearms



- ❑ Law enforcement agency shall use reasonable care to ensure the firearm is not lost or damaged
- ❑ Prohibits marking the firearm for identification or other purposes
- ❑ Law Enforcement agency shall be liable for any damage or loss resulting from agency's negligence in storage or handling



Summary

- ❑ If the person is dangerous-
 - ❑ Exhibits danger to self or others; or
 - ❑ Is mentally ill and exhibits clear evidence of potential future dangerousness to self or others;
- ❑ The officer may seek a warrant to seize firearms in the person's possession OR



Summary



- ❑ The officer may seize the individual's firearms without a warrant, if the seizure can be accomplished legally without a warrant.



Summary

- If the seizure is done without a warrant, the officer must file an affidavit with the court.

United States District Court
SOUTHERN DISTRICT OF INDIANA

In the Matter of the Search of
(Name, address or brief description of person, property or premises to be searched)

██████████
Bloomington, Indiana 47408

is a wooden residential structure divided into apartments with two apartments on the first level marked # 1 and # 2 with both accessible from the porch and # 2 is located in the southeast portion of the structure

SEARCH WARRANT
(UNDER SEAL)

CASE NUMBER: IP 06-0217 M-01

To: Special Agent Dorian Deligeorges, Federal Bureau of Investigation, and any Authorized Officer of the United States

Affidavit(s) having been made before me by Dorian Deligeorges, Federal Bureau of Investigation, who has reason to believe that on the property or premises known as (Name, description and/or location) ██████████ Bloomington, Indiana 47408, is a wooden residential structure divided into apartments with two apartments on the first level marked # 1 and # 2 with both accessible from the porch and # 2 is located in the southeast portion of the structure in the Southern District of Indiana there is now concealed a certain person or property, namely (Describe the person or property to be seized)

See Attachment A, and any other property that constitutes evidence of the commission of a criminal offense, contraband, the fruits of crime or things otherwise criminally possessed or property designed or intended for use or which is or has been used as the means of committing a criminal offense, specifically, the conspiracy to commit, or the commission of knowingly presenting a false and fictitious claim upon or against the United States, or any department or agency thereof in violation of Title 18, United States Code, Sections 2, 371, 1036, 1343, 2318 and Title 49, United States Code, Sections 46314 and 46316 (incorporating 49 CFR 1540.103 & 105).

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before November 6, 2006 (not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 6:00 P.M.) ~~at any time in the day or night~~ as I find reasonable cause has been established and if the person or property be found there to seize same, leaving copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to Kenneth P. Foster, U.S. Magistrate Judge or any other United States Magistrate Judge as required by law.

October 28, 2006 at ^{2:01 PM} ██████████ at ██████████/Indianapolis, Indiana
Date and Time Issued City and State

KENNARD P. FOSTER, U.S. Magistrate Judge
Name and Title of Judicial Officer

██████████
Signature of Judicial Officer



Summary

- ❑ After the seizure, the court must hold a hearing within fourteen days.
- ❑ The court will then determine whether to retain or release the firearms.



Summary

- ❑ If the firearms are retained, the agency must keep the firearms until further order of the court.
- ❑ The owner can petition for return of retained firearms every 180 days.
- ❑ Owner may also petition for transfer to responsible third party, transfer to FFL, or for sale of the firearm



Summary



- If the firearms remain in police custody for at least five years, the court may order the weapons destroyed or otherwise disposed of.



Questions



ISP Firearms Section:

- ❑ 317-232-8264
- ❑ Email FirearmsQuestions@isp.IN.gov