



Proceedings for the Seizure  
and Retention of Firearms

Lieutenant Pete Wood  
Indiana State Police Legal Office  
June 2013

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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

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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.

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 **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**

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 **History and Background** 

Officer Timothy Jacob "Jake" Laird



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 **History and Background** 

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



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## History and Background



- ❑ Anderson's rampage begins with the murder of his 66 year old mother, killed by Anderson for no apparent reason.
  
- ❑ Anderson then calls his brother over to the house and shows him their mother's body. The brother leaves and calls authorities.

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## History and Background



- ❑ On August 18, 2004, at about 2:00 AM in an Indianapolis near-southside neighborhood, Anderson goes out into the street and begins firing.
  
- ❑ Indianapolis Police Department officers are dispatched.

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## History and Background



- ❑ Anderson then begins walking through the dark neighborhood, firing randomly.
  
- ❑ Officer Tim Conley is the first to arrive in the area.

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 **History and Background** 

- ❑ Conley is shot and injured before he even exits his vehicle.
- ❑ He escapes the kill zone by backing away rapidly.



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 **History and Background** 

- ❑ Officers cannot find Anderson; he is shooting and moving, taking advantage of the dark.
- ❑ Officers Peter Koe, Andrew Troxell, Leon Essig, and Jake Laird enter the area, looking for the shooter.
- ❑ All four officers are shot, receiving various injuries.

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 **History and Background** 

- ❑ Laird received the most serious injury.
- ❑ He was shot in his chest, above his body armor.
- ❑ Koe eventually finds and stops Anderson.

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 **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.

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 **History and Background** 

- ❑ Anderson was evaluated and released from St. Francis.
- ❑ Anderson demanded the return of his seized firearms held by I.P.D.

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 **History and Background** 

- ❑ Lacking any legal authority to keep Anderson's weapons, I.P.D. reluctantly returns the firearms in March 2004.



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## New Law



- ❑ 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.

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## Jake Laird Law



- ❑ The new law, dubbed the "Jake Laird Law," allows the seizure and retention of firearms from dangerous and mentally ill persons.
- ❑ Created a new Chapter, IC 34-47-14, "Proceedings for the Seizure and Retention of a Firearm"

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## Jake Laird Law



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

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### Jake Laird Law



- Two basic “elements”:

  - Proof that a person is dangerous
  - Possession of firearms

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### “Dangerous” Person



- Creates a new definition of “dangerous” person for purposes of the Jake Laird Law (I.C. 35-47-14-1):

  - The individual presents an imminent risk of personal injury to himself/herself or to another individual; OR

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### “Dangerous” Person



- The person MAY 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

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 **“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 emotionally unstable conduct.

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 **“Dangerous” Person** 

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




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 **Seizure** 

- Once the individual is determined to be dangerous, seizure can occur **with a warrant** (I.C. 35-47-14-2):
- Officer files a sworn affidavit with a Circuit or Superior Court with jurisdiction

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 **Seizure with 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

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 **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.

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 **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.

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### 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.

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### Seizure without a Warrant



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

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### Seizure without a Warrant



- If firearms are seized without a warrant, the officer must file a written statement with the court:
  - The statement, under oath, must state the basis for the belief the person is dangerous.
- The court will then review the filing and determine if probable cause exists for the seizure.

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### Court Hearing



- ❑ Within 14 days of the seizure, the court must hold a hearing. (I.C. 35-47-14-5)
- ❑ The hearing will determine whether the firearms will be seized or retained.
- ❑ Prosecutor represents the state at this hearing.

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### Court Hearing



- ❑ Standard at this retention hearing:  
"Clear and Convincing Evidence"
- ❑ If the court finds that ***probable cause exists to believe the individual is dangerous***, the court shall order the law enforcement agency to retain the firearms
  - ❑ **The court may still order the firearms to be seized even if no crime has taken place, or it is determined there is not sufficient probable cause to charge with a crime.**

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### Court Hearing



- ❑ If the court finds the person is "dangerous":
  - ❑ Shall order the law enforcement agency to retain the firearms; and
  - ❑ Shall suspend the individual's license to carry handgun, if he or she has one.

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### Court Hearing



- Provides for return to original owner if hearing determines that the seized firearm is owned by someone other than the dangerous person (I.C. 35-47-14-7).

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### Petition for Return I.C. 35-47-14-8



- If the court orders the firearms held, the individual may file a petition after 180 days seeking return.
- Upon receipt of petition, court sets hearing date and notifies prosecutor
- Individual must prove by a preponderance that he or she is no longer dangerous.

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### Petition for Return I.C. 35-47-14-8



- If petitioner is successful (in showing that they are no longer dangerous), court orders law enforcement to return firearms
- If petitioner is not successful, may not file subsequent petition for another 180 days

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 **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.

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 **Handgun License** 

If the court orders the person's License to Carry Handgun, it is important to notify Lt. Pete Wood and/or the Firearms Section in Records Division.

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 **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

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 **Summary** 

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

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 **Summary** 

If the seizure is done without a warrant, the officer must file a notice with the court.

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 **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.

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## 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.

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## Summary



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

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## Questions



Indiana State Police Legal Office:

Lt. Mark Carnell	317-234-4217
Lt. Susan Dean	317-232-2305
Lt. Pete Wood	219-690-0026
Tpr. Brad Hoffeditz	317-232-8204

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## Curriculum Vitae

### Peter B. Wood

Lieutenant

Indiana State Police

1550 E. 181<sup>st</sup> Avenue, Lowell, IN 46356

219-696-6242

800-552-8917



### Duty Assignment

Indiana State Police, North Zone Legal Advisor

### Profile

- Five years experience as a Department attorney
- Eighteen years experience with the Indiana State Police
- Responsible for conducting and preparing investigations in preparation of civil litigation.
- Represent the Indiana State Police in administrative law hearings for suspension/revocation of Firearms Permits, as well as conduct all legal firearms issues
- Instruct current troopers and recruits in legal issues, specifically those related to the Fourth Amendment. Indiana State Police Law Enforcement Academy Instructor.
- Provide legal interpretation and guidance for civil and criminal issues
- Administrative coordinator of the Lake County HIDTA Domestic Highway Enforcement interdiction team

### Employment

- |  |                |
|--|----------------|
| • North Zone Legal Advisor, General Headquarters | 2007 - Present |
| • Sergeant, Squad Leader, Lowell District        | 2004 – 2007    |
| • Indiana State Trooper                          | 2003 – 2004    |
| • Canine Handler, Lowell District                | 1998 – 2003    |
| • Detective, Gaming Enforcement Division         | 1996 – 1998    |
| • Indiana State Trooper                          | 1995 – 1996    |

### Education

- |   |      |
|---|------|
| Federal Bureau of Investigations National Academy<br>Quantico, Virginia | 2009 |
| Juris Doctor<br>Valparaiso School of Law, Valparaiso, Indiana           | 2007 |

Indiana State Police Academy, Plainfield, Indiana 1995

Bachelor of Arts, Politics, Philosophy, and Law 1995  
Binghamton University, Binghamton, New York

### **Advanced Training**

- Canine Legal Issues, Anderson, Indiana
- Sobriety Checkpoint Legal Issues, Indianapolis, Indiana
- Passenger Vehicle Interdiction, Indianapolis, Indiana
- Commercial Motor Vehicle Interdiction, Wisconsin
- Department of Homeland Security Civil Disorder Training, Camp Atterbury, Indiana
- Basic Dive Support and River Rescue, South Bend, Indiana
- Pursuit Liability Training, Lowell, Indiana
- Internal Investigation Training, Lowell, Indiana
- National Incident Management Instructor, Indianapolis, Indiana
- Commercial Motor Vehicle Enforcement Training, Indianapolis, Indiana
- Field Training Officer

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### **Additional Information**

Admitted to the Bar of the State of Indiana 2007

Admitted to practice in the Federal Courts of the Northern District of Indiana 2007

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