

January 30, 1998

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## HOUSE BILL No. 1409

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DIGEST OF HB 1409 (Updated January 28, 1998 7:08 pm - DI 02)

**Citations Affected:** IC 35-47; IC 35-48; IC 35-50.

**Synopsis:** Handguns and firearms. Allows the state police department to maintain a record for not more than 12 months indicating that the fee collected by a firearms dealer to offset the cost of conducting a criminal history check on a person acquiring a handgun has been transferred to the state police department by the dealer. Makes a possession of a firearm by a serious violent felon a Class B felony for which a court may not suspend the minimum sentence. Makes possession of cocaine or narcotic drug along with possession of a firearm a Class C felony for which a court may not suspend the term of imprisonment. Repeals current law pertaining to possession of a firearm by a person convicted of a felony.

**Effective:** July 1, 1998.

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### Sturtz

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January 13, 1998, read first time and referred to Committee on Natural Resources.  
January 29, 1998, amended, reported — Do Pass.

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HB 1409—LS 6385/DI 13



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January 30, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

## HOUSE BILL No. 1409

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 35-47-2.5-8, AS ADDED BY P.L.17-1997,  
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 NOVEMBER 30, 1998]: Sec. 8. (a) Except as otherwise provided in  
4 this section, the state police department may not maintain records in  
5 any form, including a computer data base, longer than thirty (30) days  
6 after a dealer's request for a criminal history check concerning a buyer  
7 or transferee who is not found to be prohibited from possessing and  
8 transporting a firearm under state or federal law.  
9 (b) A log of requests made to the state police department may be  
10 maintained for not more than twelve (12) months, if the log consists  
11 only of:  
12 (1) the name of the purchaser;  
13 (2) the dealer identification number;  
14 (3) the unique approval number; ~~and~~  
15 (4) the transaction date; **and**  
16 (5) **a record indicating that the fee collected by the dealer**  
17 **under section 11 of this chapter has been transferred to the**

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1 state police department.

2 SECTION 2. IC 35-47-4-5 IS ADDED TO THE INDIANA CODE  
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 1998]: Sec. 5. (a) As used in this section, "serious violent felon"  
5 means a person who has been convicted of:

- 6 (1) committing a serious violent felony in:
- 7 (A) Indiana; or
- 8 (B) any other jurisdiction in which the elements of the  
9 crime for which the conviction was entered are  
10 substantially similar to the elements of a serious violent  
11 felony; or
- 12 (2) attempting to commit or conspiring to commit a serious  
13 violent felony in:
- 14 (A) Indiana as provided under IC 35-41-5-1 or  
15 IC 35-45-5-2; or
- 16 (B) any other jurisdiction in which the elements of the  
17 crime for which the conviction was entered are  
18 substantially similar to the elements of attempting to  
19 commit or conspiring to commit a serious violent felony.
- 20 (b) As used in this section, "serious violent felony" means:
- 21 (1) murder (IC 35-42-1-1);
- 22 (2) voluntary manslaughter (IC 35-42-1-3);
- 23 (3) reckless homicide (IC 35-42-1-5);
- 24 (4) battery as a Class B felony (IC 35-42-2-1(a)(4)) or Class C  
25 felony (IC 35-42-2-1(a)(3));
- 26 (5) aggravated battery (IC 35-42-2-1.5);
- 27 (6) kidnapping (IC 35-42-3-2);
- 28 (7) criminal confinement (IC 35-42-3-3);
- 29 (8) rape (IC 35-42-4-1);
- 30 (9) criminal deviate conduct (IC 35-42-4-2);
- 31 (10) child molesting (IC 35-42-4-3);
- 32 (11) sexual battery as a Class C felony (IC 35-42-4-8);
- 33 (12) robbery (IC 35-42-5-1);
- 34 (13) carjacking (IC 35-42-5-2);
- 35 (14) arson as a Class A felony or Class B felony (IC  
36 35-43-1-1(a));
- 37 (15) burglary as a Class A felony or Class B felony (IC  
38 35-43-2-1);
- 39 (16) assisting a criminal as a Class C felony (IC 35-44-3-2);
- 40 (17) resisting law enforcement as a Class B felony or Class C  
41 felony (IC 35-44-3-3);
- 42 (18) escape as a Class C felony (IC 35-44-3-5);



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- 1 (19) trafficking with an inmate as a Class C felony (IC  
2 35-44-3-9);  
3 (20) criminal gang intimidation (IC 35-45-9-4);  
4 (21) stalking as a Class B felony or Class C felony (IC  
5 35-45-10-5);  
6 (22) incest (IC 35-46-1-3);  
7 (23) dealing in cocaine or a narcotic drug (IC 35-48-4-1);  
8 (24) dealing in a schedule I, II, or III controlled substance (IC  
9 35-48-4-2);  
10 (25) dealing in a schedule IV controlled substance (IC  
11 35-48-4-3); or  
12 (26) dealing in a schedule V controlled substance (IC  
13 35-48-4-4).

14 (c) A serious violent felon who knowingly or intentionally  
15 possesses a firearm commits unlawful possession of a firearm by a  
16 serious violent felon, a Class B felony.

17 SECTION 3. IC 35-48-4-6, AS AMENDED BY P.L.65-1996,  
18 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
19 JULY 1, 1998]: Sec. 6. (a) A person who, without a valid prescription  
20 or order of a practitioner acting in the course of his professional  
21 practice, knowingly or intentionally possesses cocaine (pure or  
22 adulterated) or a narcotic drug (pure or adulterated) classified in  
23 schedule I or II commits possession of cocaine or a narcotic drug, a  
24 Class D felony, except as provided in subsection (b).

25 (b) The offense is:

26 (1) a Class C felony if:

27 (A) the amount of the drug involved (pure or adulterated)  
28 weighs three (3) grams or more; or

29 (B) the person in possession of the cocaine or narcotic drug  
30 was also in possession of a firearm (as defined in  
31 IC 35-47-1-5);

32 (2) a Class B felony if the person in possession of the cocaine or  
33 narcotic drug possesses less than three (3) grams of pure or  
34 adulterated cocaine or narcotic drug:

35 (A) on a school bus; or

36 (B) in, on, or within one thousand (1,000) feet of:

37 (i) school property;

38 (ii) a public park; or

39 (iii) a family housing complex; and

40 (3) a Class A felony if the person possesses the cocaine or  
41 narcotic drug in an amount (pure or adulterated) weighing at least  
42 three (3) grams:

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- 1 (A) on a school bus; or  
 2 (B) in, on, or within one thousand (1,000) feet of:  
 3 (i) school property;  
 4 (ii) a public park; or  
 5 (iii) a family housing complex.

6 SECTION 4. IC 35-50-2-2, AS AMENDED BY P.L.220-1997,  
 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 1998]: Sec. 2. (a) The court may suspend any part of a  
 9 sentence for a felony, except as provided in this section or in section  
 10 2.1 of this chapter.

11 (b) With respect to the crimes listed in this subsection, the court  
 12 may suspend only that part of the sentence that is in excess of the  
 13 minimum sentence:

- 14 (1) The crime committed was a Class A or Class B felony and the  
 15 person has a prior unrelated felony conviction.  
 16 (2) The crime committed was a Class C felony and less than seven  
 17 (7) years have elapsed between the date the person was  
 18 discharged from probation, imprisonment, or parole, whichever  
 19 is later, for a prior unrelated felony conviction and the date the  
 20 person committed the Class C felony for which the person is  
 21 being sentenced.  
 22 (3) The crime committed was a Class D felony and less than three  
 23 (3) years have elapsed between the date the person was  
 24 discharged from probation, imprisonment, or parole, whichever  
 25 is later, for a prior unrelated felony conviction and the date the  
 26 person committed the Class D felony for which the person is  
 27 being sentenced. However, the court may suspend the minimum  
 28 sentence for the crime only if the court orders home detention  
 29 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum  
 30 sentence specified for the crime under this chapter.  
 31 (4) The felony committed was:  
 32 (A) murder ( IC 35-42-1-1);  
 33 (B) battery ( IC 35-42-2-1) with a deadly weapon;  
 34 (C) sexual battery ( IC 35-42-4-8) with a deadly weapon;  
 35 (D) kidnapping ( IC 35-42-3-2);  
 36 (E) confinement ( IC 35-42-3-3) with a deadly weapon;  
 37 (F) rape ( IC 35-42-4-1) as a Class A felony;  
 38 (G) criminal deviate conduct ( IC 35-42-4-2) as a Class A  
 39 felony;  
 40 (H) child molesting ( IC 35-42-4-3) as a Class A or Class B  
 41 felony;  
 42 (I) robbery ( IC 35-42-5-1) resulting in serious bodily injury or

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- 1 with a deadly weapon;  
 2 (J) arson ( IC 35-43-1-1) for hire or resulting in serious bodily  
 3 injury;  
 4 (K) burglary ( IC 35-43-2-1) resulting in serious bodily injury  
 5 or with a deadly weapon;  
 6 (L) resisting law enforcement ( IC 35-44-3-3) with a deadly  
 7 weapon;  
 8 (M) escape ( IC 35-44-3-5) with a deadly weapon;  
 9 (N) rioting ( IC 35-45-1-2) with a deadly weapon;  
 10 **(O) unlawful possession of a firearm by a serious violent**  
 11 **felon (IC 35-47-4-5);**  
 12 ~~(P)~~ **(P)** dealing in cocaine or a narcotic drug (IC 35-48-4-1) as  
 13 a Class A felony;  
 14 ~~(Q)~~ **(Q)** dealing in a schedule I, II, or III controlled substance  
 15 (IC 35-48-4-2) if the amount of controlled substance involved  
 16 has an aggregate weight of three (3) grams or more;  
 17 ~~(R)~~ **(R)** an offense under IC 9-30-5 (operating a vehicle while  
 18 intoxicated) and the person who committed the offense has  
 19 accumulated at least two (2) prior unrelated convictions under  
 20 IC 9-30-5; or  
 21 ~~(S)~~ **(S)** aggravated battery (IC 35-42-2-1.5).  
 22 (c) Except as provided in subsection (e), whenever the court  
 23 suspends a sentence for a felony, it shall place the person on probation  
 24 under IC 35-38-2 for a fixed period to end not later than the date that  
 25 the maximum sentence that may be imposed for the felony will expire.  
 26 (d) The minimum sentence for a person convicted of voluntary  
 27 manslaughter may not be suspended unless the court finds at the  
 28 sentencing hearing that the crime was not committed by means of a  
 29 deadly weapon.  
 30 (e) Whenever the court suspends that part of an offender's (as  
 31 defined in IC 5-2-12-4) sentence that is suspendible under subsection  
 32 (b), the court shall place the offender on probation under IC 35-38-2 for  
 33 not more than ten (10) years.  
 34 (f) An additional term of imprisonment imposed under  
 35 IC 35-50-2-11 may not be suspended.  
 36 (g) A term of imprisonment imposed under IC 35-47-10-6 or  
 37 IC 35-47-10-7 may not be suspended if the commission of the offense  
 38 was knowing or intentional.  
 39 **(h) A term of imprisonment imposed under**  
 40 **IC 35-48-4-6(b)(1)(B) may not be suspended.**  
 41 SECTION 5. IC 35-47-4-4 IS REPEALED [EFFECTIVE JULY 1,  
 42 1998].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred House Bill 1409, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to House Bill 1409 as introduced.)

LYTLE, Chair

Committee Vote: yeas 15, nays 0.

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