



February 11, 2005

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## HOUSE BILL No. 1776

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DIGEST OF HB 1776 (Updated February 8, 2005 12:03 pm - DI 103)

**Citations Affected:** IC 35-33; IC 35-47.

**Synopsis:** Seizing weapons from a dangerous individual. Permits a law enforcement officer to seize a firearm possessed by an individual whom the officer reasonably believes to be dangerous. Requires the firearm to be returned to the individual within 14 days unless a court finds that the individual is dangerous and that retention of the firearm by the law enforcement agency is appropriate. Permits a court to issue a search warrant for a firearm possessed by an individual believed to be dangerous. Authorizes a court to order a firearm retained by a law enforcement agency to be destroyed or otherwise disposed of after five years. Makes conforming amendments.

**Effective:** July 1, 2005.

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### Buell, Brown C, Ruppel, Mahern

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January 19, 2005, read first time and referred to Committee on Public Safety and Homeland Security.  
February 10, 2005, amended, reported — Do Pass.

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HB 1776—LS 7546/DI 106+



February 11, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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## HOUSE BILL No. 1776

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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 35-33-5-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A court may issue  
3 warrants only upon probable cause, supported by oath or affirmation,  
4 to search any place for any of the following:  
5 (1) Property which is obtained unlawfully.  
6 (2) Property, the possession of which is unlawful.  
7 (3) Property used or possessed with intent to be used as the means  
8 of committing an offense or concealed to prevent an offense from  
9 being discovered.  
10 (4) Property constituting evidence of an offense or tending to  
11 show that a particular person committed an offense.  
12 (5) Any person.  
13 (6) Evidence necessary to enforce statutes enacted to prevent  
14 cruelty to or neglect of children.  
15 (7) **A firearm possessed by a person who is dangerous (as**  
16 **defined in IC 35-47-13-1).**  
17 (b) As used in this section, "place" includes any location where

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1 property might be secreted or hidden, including buildings, persons, or  
2 vehicles.

3 SECTION 2. IC 35-33-5-5 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) All items of  
5 property seized by any law enforcement agency as a result of an arrest,  
6 search warrant, or warrantless search, shall be securely held by the law  
7 enforcement agency under the order of the court trying the cause,  
8 except as provided in this section.

9 (b) Evidence that consists of property obtained unlawfully from its  
10 owner may be returned by the law enforcement agency to the owner  
11 before trial, in accordance with IC 35-43-4-4(h).

12 (c) Following the final disposition of the cause at trial level or any  
13 other final disposition the following shall be done:

14 (1) Property which may be lawfully possessed shall be returned  
15 to its rightful owner, if known. If ownership is unknown, a  
16 reasonable attempt shall be made by the law enforcement agency  
17 holding the property to ascertain ownership of the property. After  
18 ninety (90) days from the time:

19 (A) the rightful owner has been notified to take possession of  
20 the property; or

21 (B) a reasonable effort has been made to ascertain ownership  
22 of the property;

23 the law enforcement agency holding the property shall, at such  
24 time as it is convenient, dispose of this property at a public  
25 auction. The proceeds of this property shall be paid into the  
26 county general fund.

27 (2) Except as provided in subsection (e), property, the possession  
28 of which is unlawful, shall be destroyed by the law enforcement  
29 agency holding it sixty (60) days after final disposition of the  
30 cause.

31 **(3) A firearm that has been seized from a person who is**  
32 **dangerous (as defined in IC 35-47-13-1) shall be retained,**  
33 **returned, or disposed of in accordance with IC 35-47-13.**

34 (d) If any property described in subsection (c) was admitted into  
35 evidence in the cause, the property shall be disposed of in accordance  
36 with an order of the court trying the cause.

37 (e) A law enforcement agency may destroy or cause to be destroyed  
38 chemicals or controlled substances associated with the illegal  
39 manufacture of drugs or controlled substances without a court order if  
40 all the following conditions are met:

41 (1) The law enforcement agency collects and preserves a  
42 sufficient quantity of the chemicals or controlled substances to

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1 demonstrate that the chemicals or controlled substances were  
2 associated with the illegal manufacture of drugs or controlled  
3 substances.

4 (2) The law enforcement agency takes photographs of the illegal  
5 drug manufacturing site that accurately depict the presence and  
6 quantity of chemicals and controlled substances.

7 (3) The law enforcement agency completes a chemical inventory  
8 report that describes the type and quantities of chemicals and  
9 controlled substances present at the illegal manufacturing site.

10 The photographs and description of the property shall be admissible  
11 into evidence in place of the actual physical evidence.

12 (f) For purposes of preserving the record of any conviction on  
13 appeal, a photograph demonstrating the nature of the property, and an  
14 adequate description of the property must be obtained before the  
15 disposition of it. In the event of a retrial, the photograph and  
16 description of the property shall be admissible into evidence in place  
17 of the actual physical evidence. All other rules of law governing the  
18 admissibility of evidence shall apply to the photographs.

19 (g) The law enforcement agency disposing of property in any  
20 manner provided in subsection (b), (c), or (e) shall maintain certified  
21 records of any such disposition. Disposition by destruction of property  
22 shall be witnessed by two (2) persons who shall also attest to the  
23 destruction.

24 (h) This section does not affect the procedure for the disposition of  
25 firearms seized by a law enforcement agency.

26 (i) A law enforcement agency that disposes of property by auction  
27 under this section shall permanently stamp or otherwise permanently  
28 identify the property as property sold by the law enforcement agency.

29 (j) Upon motion of the prosecuting attorney, the court shall order  
30 property seized under IC 34-24-1 transferred, subject to the perfected  
31 liens or other security interests of any person in the property, to the  
32 appropriate federal authority for disposition under 18 U.S.C. 981(e), 19  
33 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted  
34 by the United States Department of Justice.

35 SECTION 3. IC 35-47-2-3 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A person desiring  
37 a license to carry a handgun shall apply:

38 (1) to the chief of police or corresponding law enforcement officer  
39 of the municipality in which the applicant resides;

40 (2) if that municipality has no such officer, or if the applicant does  
41 not reside in a municipality, to the sheriff of the county in which  
42 the applicant resides after the applicant has obtained an

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1 application form prescribed by the superintendent; or  
2 (3) if the applicant is a resident of another state and has a regular  
3 place of business or employment in Indiana, to the sheriff of the  
4 county in which the applicant has a regular place of business or  
5 employment.

6 (b) The law enforcement agency which accepts an application for a  
7 handgun license shall collect a ten dollar (\$10) application fee, five  
8 dollars (\$5) of which shall be refunded if the license is not issued.  
9 Except as provided in subsection (h), the fee shall be:

- 10 (1) deposited into the law enforcement agency's firearms training
- 11 fund or other appropriate training activities fund; and
- 12 (2) used by the agency for the purpose of:
  - 13 (A) training law enforcement officers in the proper use of
  - 14 firearms or other law enforcement duties; or
  - 15 (B) purchasing for the law enforcement officers employed by
  - 16 the law enforcement agency firearms, or firearm related
  - 17 equipment, or both.

18 The state board of accounts shall establish rules for the proper  
19 accounting and expenditure of funds collected under this subsection.

20 (c) The officer to whom the application is made shall ascertain the  
21 applicant's name, full address, length of residence in the community,  
22 whether the applicant's residence is located within the limits of any city  
23 or town, the applicant's occupation, place of business or employment,  
24 criminal record, if any, and convictions (minor traffic offenses  
25 excepted), age, race, sex, nationality, date of birth, citizenship, height,  
26 weight, build, color of hair, color of eyes, scars and marks, whether the  
27 applicant has previously held an Indiana license to carry a handgun  
28 and, if so, the serial number of the license and year issued, whether the  
29 applicant's license has ever been suspended or revoked, and if so, the  
30 year and reason for the suspension or revocation, and the applicant's  
31 reason for desiring a license. The officer to whom the application is  
32 made shall conduct an investigation into the applicant's official records  
33 and verify thereby the applicant's character and reputation, and shall in  
34 addition verify for accuracy the information contained in the  
35 application, and shall forward this information together with his  
36 recommendation for approval or disapproval and one (1) set of legible  
37 and classifiable fingerprints of the applicant to the superintendent.

38 (d) The superintendent may make whatever further investigation the  
39 superintendent deems necessary. Whenever disapproval is  
40 recommended, the officer to whom the application is made shall  
41 provide the superintendent and the applicant with the officer's complete  
42 and specific reasons, in writing, for the recommendation of

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disapproval.

(e) If it appears to the superintendent that the applicant has a proper reason for carrying a handgun and is of good character and reputation and a proper person to be so licensed, the superintendent shall issue to the applicant a qualified or an unlimited license to carry any handgun lawfully possessed by the applicant. The original license shall be delivered to the licensee. A copy shall be delivered to the officer to whom the application for license was made. A copy shall be retained by the superintendent for at least four (4) years. This license shall be valid for a period of four (4) years from the date of issue. The license of police officers, sheriffs or their deputies, and law enforcement officers of the United States government who have been honorably retired by a lawfully created pension board or its equivalent after twenty (20) or more years of service, shall be valid for the life of such individuals. However, such lifetime licenses are automatically revoked if the license holder does not remain a proper person.

(f) At the time a license is issued and delivered to a licensee under subsection (e), the superintendent shall include with the license information concerning handgun safety rules that:

- (1) neither opposes nor supports an individual's right to bear arms; and
- (2) is:
  - (A) recommended by a nonprofit educational organization that is dedicated to providing education on safe handling and use of firearms;
  - (B) prepared by the state police department; and
  - (C) approved by the superintendent.

The superintendent may not deny a license under this section because the information required under this subsection is unavailable at the time the superintendent would otherwise issue a license. The state police department may accept private donations or grants to defray the cost of printing and mailing the information required under this subsection.

(g) A license to carry a handgun shall not be issued to any person who:

- (1) has been convicted of a felony;
- (2) has had a license to carry a handgun suspended, unless the person's license has been reinstated;**
- ~~(2)~~ **(3)** is under eighteen (18) years of age;
- ~~(3)~~ **(4)** is under twenty-three (23) years of age if the person has been adjudicated a delinquent child for an act that would be a felony if committed by an adult; or

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1           ~~(4)~~ (5) has been arrested for a Class A or Class B felony, or any  
2           other felony that was committed while armed with a deadly  
3           weapon or that involved the use of violence, if a court has found  
4           probable cause to believe that the person committed the offense  
5           charged.

6           In the case of an arrest under subdivision ~~(4)~~; (5), a license to carry a  
7           handgun may be issued to a person who has been acquitted of the  
8           specific offense charged or if the charges for the specific offense are  
9           dismissed. The superintendent shall prescribe all forms to be used in  
10          connection with the administration of this chapter.

11          (h) If the law enforcement agency that charges a fee under  
12          subsection (b) is a city or town law enforcement agency, the fee shall  
13          be deposited in the law enforcement continuing education fund  
14          established under IC 5-2-8-2.

15          (i) If a person who holds a valid license to carry a handgun issued  
16          under this chapter:

- 17                 (1) changes the person's name; or
  - 18                 (2) changes the person's address;
- 19          the person shall, not later than sixty (60) days after the date of the  
20          change, notify the superintendent, in writing, of the person's new name  
21          or new address.

22          (j) The state police shall indicate on the form for a license to carry  
23          a handgun the notification requirements of subsection (i).

24          SECTION 4. IC 35-47-13 IS ADDED TO THE INDIANA CODE  
25          AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
26          JULY 1, 2005]:

27          **Chapter 13. Proceedings for the Seizure and Retention of a**  
28          **Firearm**

29          **Sec. 1. As used in this chapter, "dangerous" means:**

- 30                 **(1) a person presents an imminent risk of personal injury to**  
31                 **the person or to another person;**
- 32                 **(2) a person may present a risk of personal injury to the**  
33                 **person or to another person in the future; or**
- 34                 **(3) if the person has a mental illness that may be controlled by**  
35                 **medication, the person has not demonstrated a pattern of**  
36                 **voluntarily and consistently taking the person's medication**  
37                 **while not under supervision.**

38          **The fact that a person has been released from a mental health**  
39          **facility or has a mental illness that is currently controlled by**  
40          **medication does not establish that the person is dangerous.**

41          **Sec. 2. A circuit or superior court may issue a warrant to search**  
42          **for and seize a firearm in possession of a person who is dangerous**

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- 1       **if:**
- 2           **(1) a law enforcement officer states under oath or affirmation**
- 3           **that the law enforcement officer has probable cause to believe**
- 4           **that the person is:**
- 5               **(A) dangerous; and**
- 6               **(B) in possession of a firearm;**
- 7           **(2) the statement specifically describes the location of the**
- 8           **firearm; and**
- 9           **(3) the circuit or superior court determines that probable**
- 10          **cause exists to believe that the person is:**
- 11               **(A) dangerous; and**
- 12               **(B) in possession of a firearm.**
- 13          **Sec. 3. (a) If a law enforcement officer seizes a firearm from a**
- 14          **person whom the law enforcement officer believes to be dangerous**
- 15          **without obtaining a warrant, the law enforcement officer shall**
- 16          **submit to the circuit or superior court having jurisdiction over the**
- 17          **person believed to be dangerous a written statement under oath or**
- 18          **affirmation describing the basis for the law enforcement officer's**
- 19          **belief that the person is dangerous.**
- 20          **(b) The court shall review the written statement described in**
- 21          **subsection (a). If the court finds that probable cause exists to**
- 22          **believe that the person is dangerous, the court shall order the law**
- 23          **enforcement agency having custody of the firearm to retain the**
- 24          **firearm. If the court finds that there is no probable cause to believe**
- 25          **that the person is dangerous, the court shall order the law**
- 26          **enforcement agency having custody of the firearm to return the**
- 27          **firearm to the person.**
- 28          **(c) This section does not authorize a law enforcement officer to**
- 29          **perform a warrantless search or seizure if a warrant would**
- 30          **otherwise be required.**
- 31          **Sec. 4. (a) Unless a court orders the return of the firearm under**
- 32          **section 3(b) of this chapter, the law enforcement agency that seized**
- 33          **the firearm shall retain custody of the firearm.**
- 34          **(b) If a court issued a warrant to seize a firearm under this**
- 35          **chapter, the law enforcement officer who served the warrant shall,**
- 36          **not later than forty-eight (48) hours after the warrant was served,**
- 37          **file a return with the court, stating:**
- 38               **(1) that the warrant was served;**
- 39               **(2) the time and date on which the warrant was served;**
- 40               **(3) the name and address of the person named in the warrant;**
- 41               **and**
- 42               **(4) the quantity and identity of any firearms seized by the law**

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enforcement officer.  
Sec. 5. (a) Not later than fourteen (14) days after a return is filed under section 4 of this chapter, or a written statement is filed under section 3 of this chapter, the court shall conduct a hearing to determine whether the seized firearm should be:

- (1) returned to the person from whom the firearm was seized;
- or
- (2) retained by the law enforcement agency having custody of the firearm.

(b) The court shall set the hearing date as soon as possible after the return is filed under section 4 of this chapter. The court shall inform the:

- (1) prosecuting attorney; and
- (2) person from whom the firearm was seized;

of the date, time, and location of the hearing. The court may conduct the hearing at a facility or other suitable place not likely to have a harmful effect upon the person's health or well-being.

Sec. 6. (a) At a hearing conducted under section 5 of this chapter, the state has the burden of proving all material facts by clear and convincing evidence.

(b) If the court determines that the state has proved by clear and convincing evidence that the person is dangerous, the court may order that the law enforcement agency having custody of the seized firearm retain the firearm for not more than one (1) year. In addition, if the person has received a license to carry a handgun, the court shall suspend the person's license to carry a handgun. If the court determines that the state has failed to prove that the person is dangerous, the court shall order the law enforcement agency having custody of the firearm to return it to the person from whom it was seized.

(c) If a court orders a law enforcement agency to retain a firearm, the court shall establish a date certain upon which the firearm is to be returned to the person from whom it was seized, unless the firearm retention period is extended under section 8 of this chapter.

Sec. 7. If the court determines that:

- (1) a person is dangerous; and
- (2) a firearm seized from the person is owned by another person;

the court may order the law enforcement agency having custody of the firearm to return the firearm to the owner.

Sec. 8. (a) If the court has ordered the law enforcement agency

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1 having custody of a firearm to retain the firearm under section 6  
 2 of this chapter, the state may seek to extend the firearm retention  
 3 period by filing a petition to extend the firearm retention period.  
 4 (b) A petition to extend the firearm retention period:  
 5 (1) must be filed at least thirty (30) days before the date  
 6 certain described in section 6(c) of this chapter; and  
 7 (2) may not request that the court order the law enforcement  
 8 agency to retain a firearm for a period longer than the  
 9 duration of the original retention period established by the  
 10 court under section 6 of this chapter.  
 11 (c) Upon receipt of a petition to extend the firearm retention  
 12 period, the court shall:  
 13 (1) set a date for the hearing; and  
 14 (2) inform all parties to the hearing of the date, time, and  
 15 location of the hearing.  
 16 (d) A hearing under this section shall be conducted according to  
 17 the same standards and in the same manner as set forth in sections  
 18 5 and 6 of this chapter.  
 19 (e) If:  
 20 (1) the court finds that the state has failed to prove that the  
 21 person is still dangerous; or  
 22 (2) the state has not timely filed a petition to extend the  
 23 firearm retention period;  
 24 the court shall order the law enforcement agency having custody  
 25 of the firearm to return the firearm to the person on the date  
 26 certain described in section 6(c) of this chapter. In addition, if the  
 27 court suspended the person's license to carry a handgun under  
 28 section 6(b) of this chapter, the court shall reinstate the person's  
 29 license to carry a handgun, unless it appears that the person is no  
 30 longer a proper person.  
 31 Sec. 9. If at least five (5) years have passed since the court  
 32 conducted the first hearing to retain a firearm under this chapter,  
 33 after giving notice to the parties and conducting a hearing, the  
 34 court may order the law enforcement agency having custody of the  
 35 firearm to destroy or otherwise permanently dispose of the  
 36 firearm.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Safety and Homeland Security, to which was referred House Bill 1776, 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 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 HB 1776 as introduced.)

RUPPEL, Chair

Committee Vote: yeas 10, nays 0.

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