

# NEW LEGISLATION

# 2006



Steve Stewart  
Clark County  
Prosecuting Attorney  
[www.clarkprosecutor.org](http://www.clarkprosecutor.org)  
[prosatty@aye.net](mailto:prosatty@aye.net)  
285-6264 / FAX 285-6259

## SEX OFFENSES

- ▶ **IC 35-38-1-7.5 (P.L. 173, § 21)** **SEXUALLY VIOLENT PREDATOR**
- ▶ Defines “Sexually Violent Predator” as “a person who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in any of the offenses described in IC 11-8-8-5.” (Sex offenses)”
  - ▶ Includes those designated in other states who are in Indiana to live, work or go to school.
  - ▶ Includes those who commit Rape, Criminal Deviate Conduct, Child Molesting as a Class A or B Felony, or Child Exploitation as a Class A, B, or C Felony, or who commit any sex offense after having a previous unrelated sex offense conviction.
  - ▶ Allows a defendant to file petition to remove designation 10 years after release from incarceration and every year thereafter.

**IC 11-13-3-4(i) (P.L. 140, § 15)** **GPS 24/7 MONITORING OF PAROLEES**

- ▶ As a condition of parole, the Parole Board:
  - (1) SHALL require a parolee who is a sexually violent predator; and
  - (2) MAY require a parolee who is a sex offender to wear a 24/7 GPS monitoring device.

**IC 35-44-3-13 (P.L. 173, § 35)** **VIOLATION OF LIFETIME PAROLE**

- ▶ Creates NEW CRIME of Violation of Lifetime Parole (Class D Felony)
  - ▶ Knowingly or intentionally
  - ▶ violates lifetime parole condition
  - ▶ involving contact with victim or any child under 16 years old
  - ▶ if defendant has been revoked twice previously, or has already served out sentence.
  - ▶ Class C Felony for second offense.

## IC 11-8-8 (P.L. 173, § 13)

## SEX OFFENDER REGISTRATION

- ▶ Defines “principal residence” as the residence where a sex offender spends most of his time, even if owned or leased by another person. Includes shelter or temporary residence.
- ▶ Defines “sex offender” as a person convicted of:
  - ▶ Any felony sex offense under IC 35-42-4, or Incest under IC 25-46-1-3.
  - ▶ Kidnapping or Confinement of victim less than 18 years old.
  - ▶ Includes attempts and conspiracies for sex offenses.
  - ▶ Includes substantially equivalent convictions in other jurisdictions
  - ▶ Includes juveniles at least 14 years old with delinquent adjudications for sex offenses, if found by clear and convincing evidence to be “likely to repeat.”
  - ▶ Exception: Does not include Sexual Misconduct With Minor (D Felony), involving 18, 19, or 20 year old fondling a 14 or 15 year old.
  - ▶ Exception: Does not include Possession of Child Pornography (D Felony) as a first offense.
- ▶ A “sex offender” must register if
  - ▶ Spends 7 days in Indiana during a 180 day period, or
  - ▶ Owns property in Indiana and returns at any time, or
  - ▶ Enrolled full or part time in any school in Indiana, or
  - ▶ Works or volunteers for 14 consecutive days, or 30 days at any time, in a calendar year.
- ▶ Must register with County Sheriff in each county within 72 hours after arrival.
- ▶ County sheriff must then notify all other law enforcement agencies in county.
- ▶ If in prison, must register with the Indiana DOC before release. (Forwarded to County Sheriff)
- ▶ If in county jail, must register with County sheriff within 7 days after release.
- ▶ If placed on probation/community corrections, must register with probation office within 7 days after placement. Probation Office required to notify offender of duty to register.
- ▶ Must notify County sheriff within 72 hours of change of address, school, or employment.
- ▶ County Sheriff shall make and publish a photo of sex offender at least once a year to Indiana Sex Offender Registry website established by IC 36-2-13-5.5.
- ▶ County Sheriff shall verify residence of “sex offender” by:
  - ▶ mailing reply form to sex offender, AND
  - ▶ personally visiting each sex offender at their residenceat least once per year, beginning 7 days after initial registration or change of address.
- ▶ County Sheriff shall verify residence of “sexually violent predator” by: offender” by:
  - ▶ mailing reply form to sexually violent predator, AND
  - ▶ personally visiting each “sexually violent predator” at their residence

at least once per year, beginning 7 days after initial registration or change of address.

- ▶ If sex offender fails to return reply form, County Sheriff must immediately notify Prosecutor.
- ▶ County Sheriff shall make and publish a photo of sex offender at least once a year to Indiana
- ▶ At least once per calendar year, sex offender must report in person to County Sheriff and submit to photo.
- ▶ **IC 11-8-8-15** Creates NEW crime of Failure of a Sex Offender to Possess Identification (Class A Misdemeanor). Sex offender must keep in his possession driver's license or state issued ID card.
  - ▶ It is a defense that sex offender has been unable to obtain ID from BMV, or that ID is merely expired for less than 30 days.
  - ▶ Class D Felony if prior unrelated conviction under registration statute.
  - ▶ Applies only to crimes committed after June 30, 2006.
- ▶ A sex offender required to register is not eligible for name change under IC 34-28-2. If changed due to marriage, must notify County Sheriff within 7 days.
- ▶ **IC 11-8-8-17** Failure to register when required in every location, Making material misstatement or omission in registration, Failure to be photographed once per year - is a Class D Felony.
  - ▶ Class D Felony if prior unrelated conviction under registration statute.
  - ▶ Applies only to crimes committed after June 30, 2006.
- ▶ "Sexually Violent Predator" who will spend more than 72 hours away from residence must notify County Sheriff of whereabouts and if outside county, must notify out of county Sheriff.
  - ▶ Creates NEW crime of Failure to Notify (Class A Misdemeanor) for violation.
  - ▶ Class D Felony if prior unrelated conviction under registration statute.
- ▶ Sex Offender required to register for 10 years.
  - ▶ Except if victim under 12, sex offender must register for life.
  - ▶ Except if sex offender used threat of force or knockout drug, or caused serious bodily injury, sex offender must register for life.
  - ▶ Except if the sex offender has two unrelated sex offenses, must register for life.
- ▶ Sexually Violent Predator is required to register for life.
- ▶ Authorizes Governor to enter into interstate compact concerning sex offenders moving to or from Indiana.
- ▶ Applies only to crimes committed after June 30, 2006.

**IC 35-38-2-2.5 (P.L. 173, § 26)                      SEX OFFENDER RESIDENCE WHILE ON PROBATION**

- ▶ While on probation or parole, sex offender may not establish a new residence within one mile of victim's residence.
  - ▶ May be waived by Court or Parole Board if notice to Prosecutor, good cause shown, and sex offender has completed treatment and in compliance with all terms of probation.
  - ▶ Cannot be waived for sexually violent predator.

**IC 35-42-4-11 (P.L. 173, § 32, § 57)                      SEX OFFENDER RESIDENCY OFFENSE**

- ▶ Creates NEW CRIME of Sex Offender Residency Offense. (Class D Felony)
  - ▶ "Offender Against Children" who
    - ▶ knowingly or intentionally
    - ▶ resides within 1,000 feet from school property, youth program center, or public park, or
    - ▶ establishes residence within 1 mile from victim's residence.
- ▶ Applies only to crimes committed after June 30, 2006.
  
- ▶ "Offender Against Children" means a sexually violent predator OR any person convicted of Child Molesting, Child Exploitation, Child Solicitation, Child Seduction, Kidnapping of child less than 18 years, or a substantially similar crime in another jurisdiction.
  
- ▶ "Reside" means spending 2 or more nights in a 30 day period.

**IC 35-42-4-10 (P.L. 173, § 31)                      SEXUAL PREDATOR / EMPLOYMENT NEAR CHILDREN**

- ▶ Creates NEW CRIME of Unlawful Employment Near Children by Sexual Predator (Class D Felony)
  - ▶ Knowingly or intentionally works or volunteers
  - ▶ On school property, at a youth program center, or at a public park.
  - ▶ Class C Felony if prior unrelated conviction under IC 35-42-4. (Sex Crimes)
- ▶ Applies only to crimes committed after June 30, 2006.

**IC 35-43-1-2 (P.L. 173, § 33)                      CRIMINAL MISCHIEF / SEX OFFENDER DATA**

- ▶ Recklessly, knowingly, or intentionally
- ▶ Damages or defaces property of another without consent.
- ▶ Ordinarily \$0 to \$250 is B Misd; \$250 to \$2500 is A Misd; Over \$2,500 is D Felony
- ▶ Class A Misdemeanor if "property" is data relating to sex offense registration and defendant is NOT a "sex offender," regardless of pecuniary loss.
- ▶ Class D Felony if "property" is data relating to sex offense registration and defendant is a "sex offender," regardless of pecuniary loss.

**IC 35-49-3-3 (P.L. 140, § 35, § 42)      DISSEMINATION OF MATTER HARMFUL TO MINORS**

- ▶ Expands definitions to include rental as well as sale of matter harmful to minors within 500 feet of school or church. (Class D Felony)
- ▶ Applies only to crimes committed after June 30, 2006.

**IC 35-50-2-14 (P.L. 173, § 37)      REPEAT SEXUAL OFFENDER**

- ▶ For any sex offense under IC 35-42-4 or Incest (IC 35-46-1-3), the State may seek an additional sentence of 10 years imprisonment as a repeat sexual offender if he has a prior unrelated conviction for a sex offense under IC 35-42-4 or Incest (IC 35-46-1-3), or “substantially similar” conviction in any jurisdiction.

**IC 35-50-6-1 (P.L. 173, § 38, § 59)      PAROLE FOR SEXUAL OFFENDERS**

- ▶ Upon release from prison, a sex offender shall be placed on parole for up to 10 years.
- ▶ Upon release from prison, a sexually violent predator shall be placed on parole for life.
- ▶ Upon release from prison, other felons shall be placed on parole for up to 2 years.
- ▶ Applies only to crimes committed after June 30, 2006.

**IC 35-50-6-5 (P.L. 173, § 39)      DEPRIVATION OF CREDIT TIME**

- ▶ The IDOC may deprive a sex offender of earned credit time if he:
  - ▶ refuses to register as sex offender, or
  - ▶ refuses to participate in a sex offender treatment program offered by the IDOC.

## **HUMAN AND SEXUAL TRAFFICKING**

**IC 35-42-3.5 (P.L. 173, § 52, § 54)      HUMAN AND SEXUAL TRAFFICKING**

- ▶ Creates NEW CRIME of Human Trafficking (Class C Felony):  
Knowingly or intentionally  
Offers or agrees to pay for a person  
Knowing they have been forced into slavery or prostitution
- ▶ Creates NEW CRIME of Promotion of Human Trafficking (Class B Felony):  
Knowingly or intentionally  
Recruits, harbors, or transports a person  
By force, threat of force, or fraud  
To engage in slavery, marriage, or prostitution

- ▶ Creates NEW CRIME of Sexual Trafficking of a Minor (Class A Felony):  
Parent/Guardian of child under 18 who  
Knowingly or intentionally  
Sells or transfers custody of child  
For purpose of prostitution
- ▶ Upon conviction, allows a victim to sue defendant civilly within 2 years and recover punitive damages, costs, and attorney fees, in addition to actual damages. Also allows suit for value of labor.
- ▶ Mandates that an alleged victim shall be provided with protection from threats, and their name and other identifying information shall not be disclosed to public.

**IC 35-41-1-6.5 (P.L. 173, § 50)**

**DOMESTIC VIOLENCE**

- ▶ Adds Human and Sexual Trafficking Crimes to list of crimes included within definition of “Crime involving domestic or family violence.”

**IC 35-42-1-1 (P.L. 173, § 51)**

**FELONY MURDER**

- ▶ Adds Human Trafficking, Promotion of Human Trafficking, and Sexual Trafficking of a Minor to list of crimes that can serve as foundation of Felony Murder charge.

**IC 35-45-6-1 (P.L. 173, § 53)**

**RACKETEERING**

- ▶ Adds Human and Sexual Trafficking Crimes to list of crimes included within definition of “Racketeering Activity.”

**IC 35-37-4 (P.L. 173, § 48, § 49)**

**CLOSED CIRCUIT TESTIMONY**

- ▶ Human and sexual trafficking may serve as foundation for “closed circuit” in lieu of “live” testimony of protected person, if special requirements are met.

**TRAFFIC**

**IC 9-19-11-1 (P.L. 24, § 3)**

**SEATBELTS**

- ▶ Child passenger restraint laws do not apply to operator of motor vehicle used in funeral procession and return to funeral home.

**IC 34-24-1-1 (P.L. 94, § 11)**  
**IC 9-30-6-4.3 (P.L. 94, § 6)**

**FORFEITURE**

- ▶ Allows for forfeiture of motor vehicle used by defendant:
  - ▶ On 3rd unrelated OWI offense in last 5 years, or
  - ▶ On 1st Driving While Suspended misdemeanor offense, where he/she has two prior unrelated OWI convictions in last 5 years.
- ▶ “Substantially similar” conviction in any jurisdiction qualifies as prior unrelated conviction.
- ▶ If Court orders seizure of vehicle, BMV shall not to permit registration of a vehicle in the name of defendant until he/she possesses a current driver’s license.
- ▶ If defendant is not owner of vehicle, or spouse of owner, vehicle cannot be seized, unless it is proven by a preponderance of the evidence that the owner knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure.

**IC 9-24-7-4 (P.L. 156, § 8)**

**LEARNER’S PERMITS**

- ▶ Current law allows holder of learner’s permit under 18 years old to practice driving as long as front passenger seat is occupied by a licensed driver who is a relative. Change requires relative to be at least 21 years old.

**IC 9-30-5-10 (P.L. 172, § 1)**  
**IC 9-30-8-1 (P.L. 172, § 3)**

**SUSPENSION / IGNITION INTERLOCK**

- ▶ Upon OWI conviction:
  - ▶ If no prior OWI convictions in last 10 years, then driving privileges suspended for at least 90 days up to 2 years.
  - ▶ If prior conviction of OWI more than 5 years old, but less than 10 years old, then driving privileges suspended for at least 180 days up to 2 years.
  - ▶ If prior conviction of OWI less than 5 years old, then driving privileges suspended for at least 1 year up to 2 years.
  - ▶ Court may stay further suspension and allow probationary privileges after minimum 1 year suspension. To do so, Court must order antabus treatment or ignition interlock for at least 6 months at defendant’s expense, unless indigent.

**IC 9-30-6-9 (P.L. 94, § 8-9)**

**OWI REFUSAL**

- ▶ Increases the mandatory license suspension penalty for OWI Refusal from 1 year to 2 years.
- ▶ In cases of serious bodily injury or death, increases penalty for OWI Refusal from Class C Infraction (\$500) to Class A Infraction (\$10,000) if he/she has a prior OWI conviction in the last two years.

**IC 9-30-6-6 (P.L. 94, § 7)****OWI BLOOD TEST**

- ▶ Eliminates requirement that blood sample be taken at hospital or medical facility.
- ▶ Allows blood to be drawn by certified phlebotomist, in addition to doctor, nurse, or EMT.

Hospital Blood Draw forms  
Implied Consent Forms

**IC 9-13-2-22 (P.L. 94, § 1)****OWI CHEMICAL TEST**

- ▶ “Chemical test” means an analysis of a person’s blood, breath, urine, or other bodily substance for the determination of the presence of alcohol, a controlled substance *or its metabolite*, or a drug *or its metabolite*.
- ▶ Important for urine tests and “drugged driving.”

**IC 9-26-1-0.5 (P.L. 94, § 4)****LEAVING THE SCENE OF AN “ACCIDENT”**

- ▶ “For purposes of this chapter, an accident does not require proof of a collision between a driver’s vehicle and another vehicle or another person if the accident involves serious bodily injury to or the death of a person.”
- ▶ See, Nelson v. State, 848 N.E.2d 1095 (Ind. June 15, 2006) (causing another vehicle to avoid collision and crash); Honeycutt v. State, 760 N.E.2d 648 (Ind. Ct. App. 2001) (passenger falling out); Armstrong v. State, 848 N.E.2d 1088 (Ind. June 15, 2006) (passenger jumping out). See also, Allen v. State, 844 N.E.2d 534 (Ind. Ct. App. 2006) (“should have known” of collision).

**IC 9-21-8-55 (P.L. 75, § 2)****AGGRESSIVE DRIVING**

- ▶ Creates NEW CRIME of Aggressive Driving (Class A Misdemeanor)
  - ▶ With intent to harass or intimidate a person in another vehicle
  - ▶ knowingly or intentionally
  - ▶ engages in aggressive driving
  - ▶ “Aggressive Driving” is committing 3 of the following traffic offenses during one episode of continuous driving:
    - (1) Following a vehicle too closely in violation of IC 9-21-8-14.
    - (2) Unsafe operation of a vehicle in violation of IC 9-21-8-24.
    - (3) Overtaking another vehicle on the right by driving off roadway in violation of IC 9-21-8-6.
    - (4) Unsafe stopping or slowing a vehicle in violation of IC 9-21-8-26.
    - (5) Unnecessary sounding of the horn in violation of IC 9-19-5-2.
    - (6) Failure to yield in violation of IC 9-21-8-29 through IC 9-21-8-34.
    - (7) Failure to obey a traffic control device in violation of IC 9-21-8-41.
    - (8) Driving at an unsafe speed in violation of IC 9-21-5.

(9) Repeatedly flashing the vehicles headlights.

- ▶ Does not apply to law enforcement official duties.

**IC 35-42-2-2 (P.L. 75, § 3)**

**CRIMINAL RECKLESSNESS / AGGRESSIVE DRIVING**

- ▶ Amends statute to add commission of aggressive driving resulting in serious bodily injury as a Class D Felony; Resulting in death as a Class C Felony.

## **LAW ENFORCEMENT / CORRECTIONS**

**IC 5-2-1-9 (P.L. 173, § 44)**

**LAW ENFORCEMENT TRAINING**

- ▶ Officer may exercise police powers for 1 year before basic training completed if he/she has completed a 40 hour pre-basic course.
- ▶ Pre-basic course must include training on arrest, search and seizure, the lawful use of force, and the *operation of an emergency vehicle*.
- ▶ In order to continue exercising police powers after 1 year, the Officer must complete basic training and must complete mandatory in-service training requirements adopted by Law Enforcement Training Board.
- ▶ A Police Chief must complete Executive Training Program within 6 months of taking office. Does not include Town Marshals. Executive training must include liability, media relations, administration, discipline, department policymaking, *lawful use of force*, department programs, *emergency vehicle operation*, and *cultural diversity*.

**IC 5-2-1-9 (P.L. 173, § 44)**

**LAW ENFORCEMENT TRAINING**

- ▶ Mandatory training for law enforcement shall include human and sexual trafficking.

**IC 35-44-3-3 (P.L. 143, § 2)**

**RESISTING LAW ENFORCEMENT / FLEEING**

- ▶ Makes clear that “by visual or audible means” includes siren or lights.
- ▶ “(3) flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer’s siren or emergency lights, identified himself or herself and ordered the person to stop.”

**IC 35-44-3-3 (P.L. 143, § 2)**

**RESISTING LAW ENFORCEMENT / PENALTY**

- ▶ Penalty enhanced to a Class D Felony for Resisting Law Enforcement not only when person “inflicts bodily injury,” but when person “otherwise causes bodily injury.”
- ▶ If in commission of Resisting Law Enforcement, a person
  - ▶ uses a vehicle in a manner that creates a substantial risk of bodily injury to another, OR
  - ▶ uses a vehicle that inflicts or causes bodily injury, OR
  - ▶ draws or uses a deadly weapon

the Court SHALL impose a minimum executed sentence of 30 days imprisonment; If one prior conviction under this section, then minimum executed sentence of 180 days imprisonment; If two prior convictions under this section, then minimum executed sentence of 1 year.

- ▶ These are mandatory minimum sentences which cannot be suspended/probated.

But see:

Patrick v. Miresso, 848 N.E.2d 1083 (Ind. June 14, 2006)

Governmental immunity for loss sustained in course of enforcing law did not immunize police officer and city from liability for officer's alleged negligent operation of vehicle while pursuing fleeing burglary suspect.

City of Indianapolis v. Garman, 848 N.E.2d 1087 (Ind. June 14, 2006)

Tort Claims Act did not shield defendants from liability resulting from a breach of the statutory duty to operate emergency vehicles with due regard for the safety of all persons.

**IC 9-13-2-92 (P.L. 94, § 2)**  
**IC 9-13-2-127 (P.L. 94, § 3)**

**DEFINITION / LAW ENFORCEMENT OFFICER**  
**DEFINITION / POLICE OFFICER**

- ▶ Amends definitions of “law enforcement officer” and “police officer” to include Excise Officers of the Alcohol and Tobacco Commission, and Motor Carrier Inspectors.
- ▶ Permits enforcement of traffic laws, including OWI.

**IC 35-44-3-9.3(P.L. 173, § 34)**

**TRAFFICKING WITH AN INMATE**

- ▶ Creates NEW CRIME of Trafficking With an Inmate Outside a Facility. (Class A Misdemeanor)
  - ▶ A person with intent to provide contraband
  - ▶ delivers contraband or places contraband in place where inmate can obtain.
  - ▶ Class D Felony if drugs, Class C Felony if weapon.
- ▶ Applies only to inmates serving time, who are being transported to a judicial proceeding.
- ▶ Does not apply to pretrial detainee, weekend inmate, work release, or probationer.
- ▶ Applies only to crimes committed after June 30, 2006.

## **DNA**

**IC 35-38-1-27 (P.L. 173, § 22, § 58)**  
**IC 10-13-6-10 (P.L. 173, § 8)**

**DNA SAMPLES BY FELONY PROBATIONERS**

- ▶ Person convicted of any felony must provide DNA sample for “convicted offender database.”
- ▶ If in prison, collected by Indiana DOC.
- ▶ If in County Jail, or on Probation or Community Corrections, collected by County Sheriff.
- ▶ If not sent to Indiana DOC:
  - ▶ Court shall include requirement for DNA sample as condition of sentence. Failure to

provide sample is grounds for revocation of probation or conditional release.

- ▶ If confined at sentencing, Court shall require DNA sample immediately after sentencing.
- ▶ If not confined at sentencing, probation agency shall set time of taking DNA sample within 7 days of sentencing.
- ▶ Probation agency not required to collect before October 1, 2006.

**IC 35-41-4-2 (P.L. 173, § 30)**

**STATUTE OF LIMITATIONS / DNA HIT**

- ▶ Cleans up language extending statute of limitations for a DNA hit.
- ▶ (b) A prosecution for a Class B or Class C felony that would otherwise be barred under this section may be commenced within on (1) year after the earlier of the date on which the state:
  - (1) first discovers ~~the identity of~~ *evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) evidence analysis*; or
  - (2) could have discovered ~~the identity of~~ *evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) evidence analysis* by the exercise of due diligence.
- ▶ General limitations is 2 years for Misdemeanor, 5 years for Class B, C, D Felony, None for Murder or Class A Felony.
- ▶ Meant to overrule Marshall v. State, 832 N.E.2d 615 (Ind. App. 2005)
  - ▶ Reversing Burglary conviction where State matched fingerprints of defendant after 5 years, 2 months, but did not get DNA hit until 17 months later. The extra year after “discovery” of defendant had expired 5 months earlier.

## **CONTROLLED SUBSTANCES**

**IC 35-46-6-2 (P.L. 151, § 20)**

**TOXIC VAPORS / HUFFING**

**IC 9-13-2-86 (P.L. 151, § 4)**

- ▶ Already a Class B Misdemeanor to inhale toluene, benzine, and butane and other toxic vapors. Amended to add the increasingly popular freon, ether, chloroform, amyl butrate, isobutyl nitrate, chlorinated hydrocarbons, methylene chloride, hexane, and halothane. (“huffing”)
- ▶ Definition of “intoxication” changed to include under the influence of toxic vapors above. (Note Madison Regatta case)

**IC 35-46-1-4 (P.L. 26, § 2)**

**NEGLECT OF DEPENDENT / METH**

- ▶ Increases penalty for Neglect of a Dependent from Class D Felony to Class C Felony, if committed in a location, where Dealing in Cocaine, Methamphetamine, or Narcotic committed, or is the result of Dealing in Cocaine, Methamphetamine, or Narcotic being committed.

**IC 35-48-4 (P.L. 151, § 2)**

**DRUG LABS**

- ▶ A law enforcement agency that discovers a child less than 18 year old at a site used for the illegal manufacture of a controlled substance must notify the Department of Child Services. (Existing law applies only to methamphetamine labs and to children under 14)

**IC 5-2-16 (P.L. 151, § 3)**

**METHAMPHETAMINE / REPORTING TO ICJI**

- ▶ A law enforcement agency that discovers evidence of methamphetamine abuse shall report the abuse to the Indiana Criminal Justice Institute.

**IC 35-41-1-10.5 (P.L. 26, § 1)**

**DEFINITION / FAMILY HOUSING COMPLEX**

- ▶ Expands definition of “family housing complex”
  - ▶ A building or series of buildings:
    - (1) that contains at least twelve (12) dwelling units
      - (A) where children are domiciled or likely to be domiciled; and
      - (B) that are owned by a governmental unit or political subdivision;
    - (2) that is operated as a hotel
    - (3) that is operated as an apartment complex, or
    - (4) that contains subsidized housing
- ▶ Meant to deal with meth labs (penalty enhancement if near school, park, housing complex, or youth program center), but has much broader impact.

**IC 35-48-4 (P.L. 151)**

**METHAMPHETAMINE**

- ▶ Creates new statutes separating possession and dealing methamphetamine from other controlled substances, allowing for easier reporting and tracking.
- ▶ Current law groups cocaine, narcotics, and methamphetamine together for similar treatment and penalties. Amendments create separate mirror statutes for methamphetamine.

**IC 35-48-4-14.7(c)(3) (P.L. 151, § 27)**

**METHAMPHETAMINE / EPHEDRINE LOG BOOKS**

- ▶ Amends statute which requires retailers to keep log books of sale of ephedrine and pseudoephedrine products, to make it “crystal” clear that law enforcement officers have the “right to inspect and copy” the logs.

**IC 35-35-5-5 (P.L. 151, § 14)**

**METHAMPHETAMINE LABS**

- ▶ Allows for the destruction of “chemically contaminated equipment” (including paraphernalia) without a court order under same procedures presently in place for destroying chemicals or controlled substances.

# CRIMES AGAINST PERSONS

## IC 35-41-1-8 (P.L. 143, § 1)

## DEFINITION / DEADLY WEAPON

- ▶ Excludes stun guns, tasers, and mace from the definition of “deadly weapon,” as long as used by law enforcement officer in accordance with training with the device, and while lawfully engaged in the execution of official duties.

## IC 35-42-2-9 (P.L. 129, § 2)

## STRAGULATION

- ▶ Creates NEW CRIME of Strangulation (Class D Felony).
  - ▶ Rude, insolent, or angry manner
  - ▶ Knowingly or intentionally
  - ▶ Applies pressure to the throat or neck of another person, or
  - ▶ Obstructs the nose or mouth of another person
  - ▶ In a manner that impedes the normal breathing or blood circulation of the other person.
- ▶ Does not apply to medical procedure.

## IC 35-42-2-1.3 (P.L. 129, § 1)

## DOMESTIC BATTERY

- ▶ Increases penalty for Domestic Battery from Class A Misdemeanor to Class D Felony if:
  - ▶ (1) Prior conviction of “substantially similar” crime in any jurisdiction, or
  - ▶ (2) Committed the crime in the physical presence of a child less than 16 years old, knowing that the child was present and might be able to see or hear the crime.

## IC 35-42-3-3 (P.L. 70, § 1)

## CRIMINAL CONFINEMENT

- ▶ Increases penalty for Criminal Confinement from Class D Felony to Class C Felony if
  - ▶ (B) Committed by using a vehicle, or
  - ▶ (C) Results in bodily injury

(Current law also makes it Class C Felony if victim less than 14 years old, not defendant’s child. Also makes it a Class B Felony if armed with deadly weapon, results in serious bodily injury, or committed on an aircraft.)

# CRIMES AGAINST PUBLIC ORDER

## IC 35-45-1-3 (P.L. 3, § 1)

## DISORDERLY CONDUCT

- ▶ Increases penalty for Disorderly Conduct from Class B Misdemeanor to Class D Felony if:
  - ▶ committed within 500 feet of funeral, burial, procession, memorial service, or viewing, AND
  - ▶ adversely affects the funeral, burial, viewing, funeral procession, or memorial service.”

- ▶ Must still prove elements of Disorderly Conduct:
  - ▶ engage in fighting or tumultuous conduct, or
  - ▶ continues making unreasonable noise after being asked to stop, or
  - ▶ disrupts a lawful assembly.

See Matter of J.D., 841 N.E.2d 204 (Ind. App. January 27, 2006) for most recent case. Where 17 year old housed at Marion County Guardian Home was called to office by Officer to discuss breaking rules, including keeping her door closed. Juvenile screamed repeatedly that she was not going to follow rules because she could not breathe, and continued to do so despite being asked to stop. Conviction reversed because it was “political” speech. - REVERSED

**IC 35-45-2-1 (P.L. 3, § 2)**

**INTIMIDATION**

- ▶ Adds to the list of victims it is a Class D felony to intimidate:
  - ▶ court employee
  - ▶ probation department employee
  - ▶ community corrections employee

**IDENTITY DECEPTION**

**IC 35-32-2-6 (P.L. 125, § 7)**

**IDENTITY DECEPTION / VENUE**

- ▶ Allows Identity Deception defendant to be tried in county where victim resides, or in county where defendant obtains or uses identity information.

**IC 35-41-1-1 (P.L. 125, § 7)**

**IDENTITY DECEPTION / JURISDICTION**

- ▶ (d) If the offense is identity deception, the lack of the victim’s consent constitutes conduct that is an element of the offense under subsection (b)(1). If a victim of identity deception resides in Indiana when a person knowingly or intentionally obtains, possesses, transfers, or uses the victim’s identifying information, it is presumed that the conduct that is the lack of the victim’s consent occurred in Indiana.

**IC 35-43-5-3.5 (P.L. 125, § 9)**

**IDENTITY DECEPTION**

- ▶ Amends Identity Deception statute to add “including the identifying information of a person who is deceased.”
- ▶ Increases penalty for Identity Deception from Class D Felony to Class C Felony if:
  - ▶ (1) Possesses, transfers or uses identifying information of more than 100 persons, or
  - ▶ (2) Fair market value of fraud or harm was at least \$50,000

**IC 35-43-5-4.3 (P.L. 125, § 10)****IDENTITY DECEPTION / CARD SKIMMING**

- ▶ Creates NEW CRIME of Unlawful Possession of Card Skimming Device (Class D Felony).
  - ▶ •Defines “card skimming device” as device designed to read encoded info on credit card.
  - ▶ A person who possesses a card skimming device
  - ▶ With intent to commit identity deception or fraud.
- ▶ Class C Felony if with intent to commit terroristic deception.

**IC 35-50-5-3 (P.L. 125, § 11-12)****IDENTITY DECEPTION / RESTITUTION**

- ▶ Allows restitution in Identity Deception cases to include amount of harm or fraud, and other reasonable expenses, including lost wages incurred by victim in correcting credit report and other issues.
- ▶ May order restitution to victim’s family or victim’s estate.
- ▶ Court may make additional restitution orders after sentencing and maintains continuing jurisdiction for 5 years after sentencing.

**IC 35-43-5-2.5 (P.L. 109, § 1)****GOVERNMENT IDENTIFICATION**

- ▶ Creates NEW CRIME of Government Identification Fraud (Class A Misdemeanor)
  - ▶ Knowingly or intentionally
  - ▶ possesses, produces, or distributes
  - ▶ document not issued by government entity
  - ▶ that purports to be government issued identification

**IC 35-43-5-2 (P.L. 106, § 3)****BMV APPLICATION FRAUD****IC 9-24-18-2 (P.L. 106, § 2)**

- ▶ Amends Forgery statute to create NEW CRIME of Application Fraud (Class D Felony)
  - ▶ Knowingly or intentionally
  - ▶ uses false name or address or makes false statement or conceals material fact
  - ▶ in Applying for Driver’s License or State Identification Card
- ▶ Also amends IC 9-24-18-2 to add similar statute to Traffic Code.

**IC 24-4-14 (P.L. 125, § 5)****“DUMPSTER DIVING” – DESTRUCTION OF RECORDS**

- ▶ Creates NEW STATUTE making it a Class C Infraction to
  - ▶ dispose of unencrypted, unredacted personal information of “customer”
  - ▶ without shredding, incinerating, mutilating, erasing, or otherwise rendering information unusable.
- ▶ Class A infraction if more than 100 customers, or prior unrelated judgment of this section.
- ▶ Does not apply to “executive, judicial or legislative department of state government.”

## MISCELLANEOUS

### IC 33-28-4 (P.L. 4 § 1-9) (P.L. 80 § 7-10)

### JURY SERVICE

- ▶ Requires county jury commissioners to use only lists approved by the Supreme Court for prospective jurors.
- ▶ Eliminates automatic exemptions from jury service.
  
- ▶ Permits a person called for jury service to receive deferral for up to 1 year if juror selects alternate date and deferral is necessary due to hardship, extreme inconvenience or necessity.
  
- ▶ Protects person called to jury service from being subjected to adverse employment actions.
- ▶ Prohibits employers from requiring or requesting employees to use annual vacation or sick leave for jury service.

### IC 33-28-6-17 (P.L. 4 § 1-9) (P.L. 80 § 7-10)

### JURY SERVICE

- ▶ (d) The court shall determine whether a prospective juror is qualified to serve, or, if disabled but otherwise qualified, whether the prospective juror could serve with reasonable accommodation. A person who is not eligible for jury service may not serve. To serve as a juror, a person must state under oath or affirmation that the person meets all the following requirements:
  - (1) The person is a citizen of the United States.
  - (2) The person is at least eighteen (18) years of age.
  - (3) The person is a resident of the summoning county.
  - (4) The person is able to read, speak, and understand the English language.
  - (5) The person is not suffering from a physical or mental disability that prevents the person from rendering satisfactory jury service.
  - (6) The person is not under a guardianship because of mental incapacity.
  - (7) The person has not had the right to vote revoked by reason of a felony conviction (unless the right to vote has been restored).
  - (8) If the trial is for a criminal case, the person is not a law enforcement officer.
- ▶ (e) A person who has completed a term of jury service in the year preceding the date of the person's summons may claim exemption from jury service.
- ▶ (f) The facts supporting juror disqualification or exemption shall be recorded under oath or affirmation. A disqualification or an exemption is not authorized unless supported by the facts.

### IC 35-38-6-6 (P.L. 56 § 1-2)

### EXECUTION WITNESSES

- ▶ Reduces from 10 to 5 the number of friends and relatives of the convicted murderer who may witness execution
- ▶ Permits up to 8 adult members of immediate family of victim to be present at execution, no longer requiring convicted murderer's consent.

**IC 22-11-14 (P.L. 187 § 1-22)**

**FIREWORKS**

Conduct That Creates Criminal Liability

- ▶ Fireworks can be purchased only by persons 18 years of age or older.
- ▶ Children may only possess or use any kind of fireworks when an adult is present.
  
- ▶ Fireworks may be used only:
  - ▶ on the user's property; or
  - ▶ on the property of someone who has consented to use of fireworks on the property, or
  - ▶ at a special discharge location approved by state Fire Marshal
  
- ▶ Fireworks may be used only between 9:00 a.m. and 11:00 p.m., unless Memorial Day, July 4, Labor Day and New Year's Eve.
  
- ▶ Penalties for Violating the Fireworks Law
  - ▶ If a person uses *consumer fireworks* at an unauthorized place or unauthorized time, they commit a Class C infraction (\$500).
  - ▶ If a person uses *consumer fireworks* illegally more than 1 time in 5 years, they commit a Class C misdemeanor (up to 60 days and \$500) (IC 22-11-14-6(b); IC 22-11-14-6(d))
  - ▶ If a person recklessly, knowingly, or intentionally uses *consumer fireworks* and damages someone else's property, the person commits a Class A misdemeanor, (up to 1 year and \$5,000). (IC 22-11-14-6(e))
  - ▶ Causing serious bodily injury is Class D felony, (1/2 to 3 years and \$10,000) (IC 22-11-14-6(f))
  - ▶ Causing death is a Class C felony, (2 to 8 years and \$10,000) (IC 22-11-14-6(f)).

**IC 35-47-5-2.5 (P.L. 72 § 9-10)**

**SCHOOLS / WEAPONS**

- ▶ Creates NEW CRIME of Class B Misdemeanor to:
  - ▶ Recklessly, knowingly, or intentionally possesses knife on school property, school bus, special purpose bus
  
- ▶ Class A misdemeanor if prior unrelated conviction under this section.
- ▶ Class D felony if offense results in bodily injury.
- ▶ Does not apply if knife secured in vehicle, or provided by school for authorized purpose.

**IC 35-47-6-6 (P.L. 190 § 1-11)****HANDGUN LICENSE**

- ▶ Permits a person to apply for and receive a lifetime handgun license
  - ▶ \$125 for a lifetime unlimited license if presently no handgun license
  - ▶ \$100 if presently has handgun license
  - ▶ \$75 for lifetime qualified license if presently no handgun license
  - ▶ \$60 if presently has handgun license
- ▶ Increases fees to 30 for four-year license; 20 for replacement license.
- ▶ Local agency that possess lifetime license application keeps
  - ▶ \$50 if no present license; \$40 if present license.
- ▶ Person who changes name, or address is required to notify superintendent in writing within 60 days. Person who is no longer a “proper person” to possess permit (as described in IC 35-47-1-7) has 30 days to notify superintendent.

**IC 35-41-3-2 (P.L. 189 § 1)****SELF DEFENSE**

- ▶ “Make My Day” “Stand Your Ground” “No Duty to Retreat” “John Wayne Defense”
- ▶ Amends the self-defense statute to add language in subsection (a)-(d), making clear that a person using force in self-defense “does not have a duty to retreat.”
- ▶ Amends subsections (b) and (c) to add that a person may use reasonable, including deadly force, to prevent or terminate unlawful entry or attack upon “an occupied motor vehicle.” Puts it on same footing as dwelling.
- ▶ Current law already has a strong caution that “No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.” See, Loza v. State, 325 N.E.2d 173 (Ind. 1975).

**IC 35-33-8-3.2 (P.L. 97, § 1)****BAIL RETAINED TO PAY COSTS / RESTITUTION**

- ▶ Allows court when setting bail to require the person who puts up bail money, to agree that the money may be retained to pay restitution, public defender costs, court costs, and fees.

**IC 35-38-2-2.6 (P.L. 173, § 27, § 59)****STALKING / RESIDENCE WHILE ON PROBATION**

- ▶ While on probation or parole, a defendant convicted of stalking may not reside within 1,000 feet of the victim’s residence.
- ▶ May be waived by Court or Parole Board if notice to Prosecutor, good cause shown, and stalking defendant in compliance with all terms of probation.

**IC 35-50-2-1.4 (P.L. 109, § 2)**  
**IC 35-50-2-15 (P.L. 109, § 3)**

**CRIMINAL GANGS**

- ▶ Creates new definition of “criminal gangs”: A group with at least 5 members that specifically either promotes, sponsors, assists, participates in, or requires as a condition of membership, the commission of a felony or act that would be a felony if committed by adult, or a Battery.
- ▶ Creates a new sentencing enhancement for any felony, charged on a separate page of the Information and tried in a bifurcated hearing, the same as Habitual Offender.
  - ▶ Court or jury must find that State has proved beyond reasonable doubt that defendant:
    - ▶ knowingly or intentionally
    - ▶ was member of criminal gang
    - ▶ while committing felony offense and
    - ▶ committed felony offense at direction of, or in affiliation with a criminal gang
- ▶ Court shall sentence to additional fixed term of imprisonment equal to sentence imposed for underlying felony if person sentenced for only one felony OR sentence to additional fixed term of imprisonment equal to longest sentence imposed for underlying felonies if sentence to more than one felony.
- ▶ Additional term must run consecutive to underlying sentence and is non-suspendable.
- ▶ Expert testimony may be permitted pursuant to the Indiana Rules of Evidence to show that particular conduct, status, or customs are indicative of criminal gang activity.

**IC 35-43-6 (P.L. 81 § 1-2)**

**HOME IMPROVEMENT FRAUD**

- ▶ Amends IC 35-43-6-12(a)(1) to include material misrepresentations concerning threat of fire, or structural damage if property not repaired.
- ▶ Amends IC 35-43-6-12(a)(6) to include a home improvement supplier who misrepresents or conceals their physical or mailing business address, or telephone number.
- ▶ Adds IC 35-43-6-12(a)(7) to include a home improvement supplier who fails to provide the consumer with any copy of a written warranty or guarantee.
- ▶ Adds I.C. 35-43-6-12(a)(8) to include a home improvement supplier’s use of diluted or altered products without notifying consumer.
- ▶ Adds I.C. 35-43-6-12(a)(9) to include a home improvement supplier’s false claims of job referral, licensing, or securing of permits.
- ▶ Penalties can be elevated for a variety of factors, including age of victim, amount of contract, more than one violation.

\* This is a summary and should not be relied upon. Please refer to text of statute.

\* All statutes are effective July 1, 2006 unless otherwise indicated.

*This is a publication of the Clark County Prosecuting Attorney, covering various topics of interest to police and prosecutors. It is directed solely toward issues of evidence, criminal law and procedure. Please consult your city, town or county attorney for legal advice relating to civil liability.*