

NEW LEGISLATION

1999

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FIREARMS

IC 35-47-4-5 (P.L. 247, § 1)

- ▶ CREATES A NEW CRIME OF Unlawful Possession of a Firearm by a Serious Violent Felon. (Class B Felony).
- ▶ A person convicted in any jurisdiction of committing, attempting to commit, or conspiring to commit, a "serious violent felony" may not possess a firearm.
- ▶ "Serious Violent Felony" is limited to any of 26 specifically designated felonies, which generally includes any Class A or Class B Felony. Also includes Class C Felonies of Reckless Homicide (non-auto), Battery, Sexual Battery, Incest, Assisting a Criminal, Resisting Law Enforcement, Escape, Trafficking With an Inmate, Gang Intimidation, and Stalking. Also includes Class D Felony of Confinement.
- ▶ Penalty for Unlawful Possession is a Class B Felony.
- ▶ Note current statute makes it a Class C Felony for any convicted felon to carry a "handgun." This statute increases the penalty and includes all firearms.

IC 35-47-4.4 (P.L. 247, § 2)

- ▶ Eliminates the exception for "black powder" and antique handguns.

SEX CRIMES

IC 35-50-2-14 (P.L. 214, § 4)

- ▶ CREATES A NEW SENTENCING STATUTE for Repeat Sexual Offenders.
- ▶ A person convicted of a sex crime under IC 35-42-4-1 to IC 35-42-4-9 or IC 35-46-1-3, may have their sentence enhanced by the Court by an additional fixed term that is the presumptive sentence for the underlying offense, but no more than 10 years, IF he has been previously convicted of an unrelated sex offense.

- ▶ The State must charge the defendant as a Repeat Sexual Offender in the same manner as a Habitual Offender, but the sentencing hearing is conducted by the Court alone.
- ▶ This statute applies if the defendant has only one prior conviction. If the defendant has two prior convictions, the Habitual Offender statute under IC 35-50-2-8 would apply, giving the Court discretion to impose an additional fixed term of 1-3 times the presumptive sentence on the underlying offense, up to a maximum of 30 years.
- ▶ Note that all of the sex offenses described above are felonies except Possession of Child Pornography (Class A Misdemeanor) under IC 35-42-4-4 (c).

IC 5-2-12-11 (P.L. 214, § 1)

- ▶ Requires the Indiana Criminal Justice Institute to publish the Sex and Violent Offender Registry on the Internet, except the home address of the offender.
(See <http://www.state.in.us/cji/html/sexoffender.html>)
- ▶ Note current law requires a person, including juveniles over 13, convicted of a felony sex crime, or Kidnapping or Confinement of a victim less than 18, to register with local law enforcement nearest their residence upon release from prison, or upon beginning probation.

IC 11-13-3-4 (P.L. 214, § 2)

IC 35-38-2-2.2 (P.L. 214, § 3)

- ▶ Prohibits convicted sex offender on probation or parole from living within 1 000 feet of school property, unless written permission is obtained from Court or Parole Board. If permission is given, Court or Parole Board must notify schools.

DOMESTIC VIOLENCE

IC 35-42-2-1 / IC 35-42-2-1.3 / IC 35-50-2-7 (P.L. 188, § 5-7)

- ▶ REPEALS provisions in Battery statute relating to domestic violence.
- ▶ CREATES A NEW CRIME OF DOMESTIC BATTERY.
A person who knowingly or intentionally touches another person in a rude, insolent or angry manner, resulting in bodily injury to a victim who is or was a spouse, living as if a spouse, or has a child in common with the defendant.
- ▶ Penalty is a Class A Misdemeanor, increased to Class D Felony upon a second offense. Upon sentencing as a Class D Felony, judgment cannot be entered as a misdemeanor.
- ▶ Note this new statute makes everyone feel good by creating a new crime, but makes very little change in existing Battery law. If anything, the new statute is more restrictive by requiring the prior conviction to be "under this section."

IC 31-14-14-5 (P.L. 188, § 1)

- ▶ Where a noncustodial parent has visitation with a child, and is convicted of Domestic Battery, the Court must make visitation SUPERVISED ONLY for 1-2 years following the conviction.

IC 34-26-2-12 (P.L. 188, § 4)

- ▶ As part of a Protective Order, the Court may order the defendant to refrain from possessing a firearm, or may order the confiscation of firearms from the defendant, if it is shown by clear and convincing evidence that they pose a significant threat of inflicting serious bodily injury upon the Petitioner or family.

IC 35-46-1-4 / IC 31-34-21-5.6 (P.L. 197, § 5-6)

- ▶ Increases the penalty for Neglect of a Dependent from a Class D Felony to a Class C Felony, if it results in bodily injury, except for educational neglect, which remains a Class D Felony.
- ▶ Increases the penalty for Neglect of a Dependent from a Class D Felony to a Class C Felony, even if it does not result in bodily injury, if the neglect is a result of cruel or unusual confinement or abandonment.
- ▶ Retains the penalty for Neglect of a Dependent as a Class B Felony, if it results in serious bodily injury, except for educational neglect, which remains a Class D Felony.
- ▶ There is no need for Child Protective Services to make reasonable attempts to "reunify" parent and child, if the parent has been convicted of Neglect of a Dependent (Class B Felony).

JUVENILE COURT

IC 31-37-6-6 / IC 31-37-11-2 (P.L. 188, § 2-3)

- ▶ A Juvenile Court may release a child from secure detention under reasonable conditions, including house arrest, no contact orders, and curfew, and in doing so, the child is no longer being "detained" for purposes of requiring a factfinding hearing within 20 days.

PROPERTY CRIMES

IC 35-43-1-1 (P.L. 88, § 1)

- ▶ Amends Arson statute to include fire or explosive damage to a CHURCH as a Class B Felony, regardless of the amount of pecuniary damage. (Current statute only includes fire or explosive to a dwelling, endangering human life, or \$5,000 pecuniary loss)

IC 35-43-1-1 (P.L. 88, § 2)

- ▶ Amends Burglary statute to include breaking and entering a CHURCH with intent to commit a felony as a Class B Felony. (Current statute only includes breaking and entering a dwelling, or armed with a deadly weapon as a Class B Felony)

IC 14-21-2-4 (P.L. 100, § 4)

(Cemetery Preservation)

- ▶ Requires a person who lawfully removes a grave marker to file a description and photograph with the County Recorder.
- ▶ Prohibits buying or selling grave artifacts or memorials.
- ▶ Exempts grave owners and cemetery owners.
- ▶ Makes it a Class C Misdemeanor to violate Cemetery Preservation Chapter.

IC 35-43-1-2 / IC 35-43-1-2.1 (P.L. 100, § 2-3)

(Cemetery Mischief)

- ▶ CREATES A NEW CRIME OF CEMETERY MISCHIEF.
- ▶ A person who recklessly, knowingly, or intentionally damages a grave marker, cemetery, a facility, or the grounds used for memorializing the dead, commits a Class A Misdemeanor.
- ▶ Penalty is increased to a Class D Felony if the pecuniary loss is at least \$2,500.

IC 35-42-2-5.5 (P.L. 259, § 2) **(Railroad Mischief)**

- ▶ CREATES A NEW CRIME OF RAILROAD MISCHIEF.
- ▶ Makes it a Class D Felony to remove an "appurtenance from a railroad signal system," or to tamper with various items of railroad equipment or property, without consent.
- ▶ Penalty is increased to a Class C Felony if it results in serious bodily injury, and a Class B Felony if it results in a death.

IC 35-43-2-2 (P.L. 259, § 3) **(Railroad Trespass)**

- ▶ Amends Trespass statute to include traveling by train as a passenger or riding outside on car without consent.

CONTROLLED SUBSTANCES

IC 35-48-4-6 (P.L. 188, § 7)

IC 35-50-2-2 (P.L. 188, § 8)

- ▶ Increases the penalty for the crime of Possession of Cocaine or Narcotic from a Class D Felony to a Class C Felony if the person was also in possession of a firearm.
- ▶ Makes the minimum sentence of 2 years nonsuspendable.

IC 34-24-1-9 (P.L. 174, § 1) **(Adoptive Forfeiture/Turnover Orders)**

IC 35-33-5-5 (P.L. 174, § 2)

- ▶ Amends Forfeiture and Disposition of Property statutes to authorize a federal "adoptive" forfeiture by the Department of Justice, upon motion of the Prosecutor, in cases where cash and/or property is seized along with drugs by state or local law enforcement. Empowers the Court to "turnover" the seized assets to the federal government for proceedings in federal court.
- ▶ Note if property is seized and forfeited through state statutes, all money except direct expenses goes to the Indiana Common School Fund. If forfeited through federal proceedings, a large percentage of the proceeds may be returned and used by the local law enforcement agency who seized the assets. A recent policy change by the Department of Justice caused a refusal of all Indiana requests for federal forfeiture since there was no specific statutory authorization for the "turnover." This legislation followed.

CRIMES AGAINST PERSONS

IC 35-44-2-1 (P.L. 56, § 1) **(Battery of School Employee)**

- ▶ Amends Battery statute. Current statute provides for an increased penalty (Class D Felony) when the victim suffers bodily injury and is a school employee engaged in official duty within 1000 feet of school property. This amendment removes the requirement that the battery take place within 1000 feet of school property.

IC 35-42-4-7 (P.L. 166, § 2) **(Body Piercing)**

- ▶ CREATES NEW CRIME OF BODY PIERCING A MINOR.
- ▶ Makes body piercing a person under 18 a Class A Misdemeanor unless parent or guardian is present and provides written permission. (Same restrictions on tattooing passed in 1997)

TRAFFIC

IC 9-21-8-35 (P.L. 18, § 1)

IC 9-21-8-54 (P.L. 18, § 3)

(Failure to Yield to Emergency Vehicle)

- ▶ Amends infraction offense of Failure to Yield to Emergency Vehicle, requiring the driver of a vehicle approaching a stationary authorized emergency vehicle on a 4-lane highway, to change lanes away from emergency vehicle if it can be done safely, and in any event, to reduce speed and proceed with caution.
- ▶ Increases the penalty for the offense to a Class A Infraction (up to \$10,000), and authorizes a license suspension of from 90 days to one year for property damage, from 180 days to two years for bodily injury, and two years when a death results.

IC 9-30-5-1 (P.L. 266, § 2) (effective 7-1-2000)

(OVWI)

- ▶ CREATES A NEW CRIME of Operating a Vehicle With at Least 0.15% BAC.
- ▶ It is a Class A Misdemeanor for a person to operate a vehicle with at least 0.15% of alcohol by weight in grams in 100 milliliters of blood or 210 liters of breath.
- ▶ Retains current statute that makes it a Class C Misdemeanor to operate a vehicle with at least 0.10% BAC. Same penalty enhancements for resulting death, serious bodily injury, or prior conviction apply to both.

IC 9-30-5-15 (P.L. 266, § 3)

(OVWI)

- ▶ Amends OVWI statute to provide that if a person has a prior conviction of OVWI, the Court SHALL order at least 5 days nonsuspendable imprisonment or 30 days community service, and an alcohol assessment, with treatment if appropriate. Current statute provides only for 5 days or 80 hours of community service.
- ▶ If a person has two prior convictions, the Court SHALL order at least 10 days nonsuspendable imprisonment or 60 days community service, and an alcohol assessment, with treatment if appropriate.
- ▶ Eliminates the requirement that the prior conviction(s) occur within 5 years for purposes of these sentencing requirements.

DOC / CORRECTIONS

IC 11-8-1-5.4 to IC 11-8-1-5.6 (P.L. 273, § 204-206)

(Community Transition Program)

IC 11-8-1-8.5 / IC 11-10-11.5 / IC 11-12-10 (P.L. 273, § 207-209)

IC 35-38-1-24 to IC 35-38-1-26 (P.L. 273, § 210-212)

- ▶ Establishes Mandatory Community Transition Program for all DOC inmates except for those convicted of Murder, authorizing early release back to supervised probation or to a community corrections program in the sentencing county.
- ▶ Defines "Expected Release Date" generally as the date that the inmate will most likely be released, considering the term of the sentence, and the good time and educational credits earned.
- ▶ For Class D Felons, the DOC shall release the inmate back to the sentencing county 60 days prior to the expected release date, unless the Court makes a finding that the defendant represents a substantial threat to the safety of others, and sends notice to the DOC. Written findings are required, but no hearing is necessary.

- ▶ For Class C Felons, the DOC shall release the inmate back to the sentencing county 90 days prior to the expected release date, unless the Court makes a finding that the defendant represents a substantial threat to the safety of others, and sends notice to the DOC. Written findings are required, but no hearing is necessary.
- ▶ For Class A and Class B Felons, the DOC shall release the inmate back to the sentencing county 120 days prior to the expected release date, but only if the Court makes a finding that it is in the best interests of justice to do so. Written findings are required, but no hearing is necessary.
- ▶ The DOC is required to send notice to the Court and the Prosecutor 45-60 days before the inmate becomes eligible for Community Transition.
- ▶ The DOC is required to reimburse the counties no less than \$7 per diem.

IC 35-44-3-9 (P.L. 243, § 2)

(Trafficking With an Inmate)

IC 35-44-3-9 (P.L. 183, §1-2)

- ▶ Amends the statute for Trafficking With an Inmate, increasing the penalty from a Class A Misdemeanor to a Class C Felony if the article is a controlled substance or a deadly weapon.
- ▶ Expands statute to Include Juvenile Detention Centers and Shelter Care Facilities along with other “penal facilities.”
- ▶ Expands statute to include delivery of alcoholic beverages to a jail or community work crew.
- ▶ Allows the Court at sentencing to consider as an aggravating circumstance that the defendant is an employee of the penal facility.

IC 35-50-6-3.3 (P.L. 243, § 3)

(DOC Credit Time)

- ▶ In effect doubles the amount of credit the inmate can earn off his sentence for completion of GED (6 mo), High School Diploma (1 yr), College Degree (2 yr), Vocational Program (6 mo), or Substance Abuse Program (6 mo) while incarcerated. This time is now subtracted from “serve” time, instead of the actual sentence imposed.
- ▶ A defendant sentenced to 20 years for manslaughter would ordinarily have to serve 10 years. If he completes all these programs while incarcerated, he will earn 4.5 years and be released after serving 5.5 years.

IC 11-12-5-6 (P.L. 141, § 1)

(Medical Expenses for Jail Inmate)

- ▶ Provides that the medical and health care expenses of a county jail inmate are the responsibility of the committing county, or the DOC if committed by the DOC.

MISCELLANEOUS

IC 33-4-1-10 (P.L. 196, § 10)

(Clark County Magistrate)

- ▶ Establishes a Magistrate for Clark County with almost the same powers and duties as the Circuit and Superior Court Judges.
- ▶ Appointed by the Circuit and Superior Court Judges, and to serve indefinitely unless removed by those same Judges.

IC 33-14-1-1.5 (P.L. 26, § 5) (P.L. 254, § 7)

(Prosecutor Residency)

IC 5-6-4 (P.L. 176, § 124)

- ▶ The elected Prosecuting Attorney must be a resident of the Judicial Circuit (county) to be eligible to hold office. However, this requirement does not apply to Deputy Prosecutors or to Special Prosecutors.
- ▶ For purposes of interpreting the Constitutional prohibition against holding two lucrative offices under Article 2, Section 9, the position of appointed Deputy of an officer of a judicial circuit is NOT a lucrative office.
- ▶ Note that office policy may nevertheless prohibit residence outside the county, or holding another lucrative office.

IC 12-17-2-26 (P.L. 213, § 6)

(Child Support Incentive Funds)

- ▶ Requires that child support incentive funds received by the Prosecutor, Clerk, and the County General Fund no longer be spent at the total discretion of the officeholder. “The amounts received as incentive payments must be used to supplement, rather than take the place of, other funds used for Title IV-D Program activities.”

IC 25-17.6-8-2 (P.L. 17, § 33)

(Practice of Geology)

- ▶ CREATES A NEW CRIME OF Practicing Geology Without a License.

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

* All statutes are effective July 1, 1999 unless otherwise indicated.

This is a publication of the Clark County Prosecuting Attorney, covering various topics of interest

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