

NEW LEGISLATION

2001



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CONTROLLED SUBSTANCES

IC 35-48-4-1 (P.L. 17, §19)

METHAMPHETAMINE

- ▶ Upgrades penalties for possession and dealing methamphetamine. Now the same as Cocaine and Narcotics.

IC 35-41-1-29 (P.L. 17, §14)

YOUTH PROGRAM CENTERS

IC 35-41-4 (P.L. 17, §19-28)

- ▶ Defines “Youth Program Center” as building and property where programs are regularly provided to children under 18 years old.
- ▶ Amends drug penalty statutes to add to the list of enhancements. Now reads: “within 1000 feet of school property, a public park, a family housing complex, or a youth program center.”

IC 22-11-20-6(b) (P.L. 17, §4)

METHAMPHETAMINE LABS

- ▶ CREATES NEW CRIME of Improper Storage, Handling, Use, or Transportation of Anhydrous Ammonia or Ammonia Solution as a Class A Misdemeanor.

IC 35-48-4-14.5 (P.L. 17, §28)

METHAMPHETAMINE LABS

- ▶ Amends existing “Illegal Drug Lab” statute, increasing penalty from Class D Felony to Class C Felony where a firearm is possessed or the possession of chemicals with intent to manufacture methamphetamine is within 1000 feet of school property, a public park, a family housing complex, or a youth program center.”

IC 35-48-4-4.1 (P.L. 17, §23)

METHAMPHETAMINE LABS

- ▶ CREATES NEW CRIME of Dumping Controlled Substance Waste, making it a Class D Felony to discard chemicals or waste from the illegal manufacture of a controlled substance.

IC 31-30-1-4 (P.L. 17, §7)

JUVENILE COURT JURISDICTION

- ▶ Eliminates all drug dealing crimes from the list of those that can be direct filed in adult court against 16 year old, unless the defendant has a prior conviction or juvenile adjudication for Dealing in Schedule I-IV (except marijuana).

IC 35-50-2-2(b) (P.L. 17, §30)

NONSUSPENDABILITY

- ▶ Eliminates all drug dealing crimes from the list of those where the minimum sentence cannot be suspended and probated, unless (1) the person possessed a firearm, or (2) intended to deliver to a juvenile within 1000 feet of school property, a public park, a family housing complex, or a youth program center.

IC 35-48-4-16 (P.L. 17, §29)

SENTENCING ENTRAPMENT DEFENSE

- ▶ Creates a new defense to drug possession/dealing enhancements “within 1000 feet of school property, a public park, a family housing complex, or a youth program center,” if it can be shown that the location is “at the request or suggestion” of a law enforcement officer or agent.

IC 35-48-4-16 (P.L. 17, §29)

ABSENCE OF CHILDREN DEFENSE

- ▶ Creates a new defense to drug possession/dealing enhancements “within 1000 feet of school property, a public park, a family housing complex, or a youth program center,” if it can be shown that the defendant was only “briefly” at location and no juvenile was within 1000 feet.

IC 35-33-5-5 (P.L. 17, §11, 31)

DISPOSAL OF CHEMICALS BY LAW ENFORCEMENT

- ▶ Amends Disposition of Property statute to allow law enforcement to dispose of chemicals or controlled substances used in illegal manufacturing if (1) a sufficient quantity is preserved to demonstrate manufacture, (2) photographs taken, and (3) chemical inventory taken. Photographs and description can then be admitted in court instead of actual chemicals. (Applies to all law enforcement action after taken after June 30, 2001)

IC 35-50-2-8 (P.L. 291, §226)**HABITUAL OFFENDERS**

- ▶ Cannot seek sentencing as a Habitual (Felony) Offender for a drug crime unless (1) the drug crime is nonsuspendable under IC 35-50-2-2(b)(4), or (2) defendant has at least 2 total unrelated dealing convictions. (To be nonsuspendable, the defendant must possess gun or intend to deliver cocaine/narcotic/methamphetamine to a juvenile within 1000 feet of school property, a public park, a family housing complex, or a youth program center)
- ▶ Cannot use a drug conviction as a prior unrelated conviction in Habitual (Felony) Offender prosecution, unless the same requirements above are met.

Absurd results may follow these changes:

Murder + Armed Robbery + Dealing in Cocaine ≠ Habitual Offender

Murder + Dealing in Cocaine + Armed Robbery ≠ Habitual Offender

Theft + Theft + Dealing in Cocaine = Habitual Offender

IC 35-50-2-8 (P.L. 291, §227)**HABITUAL SUBSTANCE OFFENDERS**

- ▶ Gives the Court discretion to reduce the mandatory 3-8 year sentence enhancement down to 1 year, where all three offenses are drug crimes, none of the three are nonsuspendable under IC 35-50-2-2(b)(4), and only one of three are for dealing.

IC 11-8-1-5.6 (P.L. 291, §223)**COMMUNITY TRANSITIONING**

- ▶ Current law allows for early release from prison back to supervised probation/community corrections as follows: Class D Felons are released 30 days early, and Class C Felons are released 90 days early. Release is automatic, unless the sentencing court objects. Class A and Class B Felons are released 120 days early. Release is NOT automatic but only if the Court makes a specific finding that it is in the best interests of justice to do so. 2001 changes increase the early release time for a Class C Felon to 120 days where the commitment is for a drug crime not listed as nonsuspendable under IC 35-50-2-2(b)(4); for Class A and Class B Felons to 180 days where the commitment is for a drug crime not listed as nonsuspendable under IC 35-50-2-2(b)(4).

IC 35-48-2-4 (P.L. 288, §15)**GHB****IC 35-48-2-8 (P.L. 288, §16)**

- ▶ Adds Gamma-Hydroxybutyric Acid (GHB) to the list of Schedule I Depressants. Only Schedule III if an application is approved by federal Food, Drug, and Cosmetic Act.

IC 35-48-2-10 (P.L. 288, §17)**ZOLPIDEM**

- ▶ Adds Zolpidem (Ambien) to the list of Schedule IV Depressants.

(P.L. 39)

METHADONE CLINICS

- ▶ Extends state-imposed moratorium on methadone clinics through July 1, 2003.

IC 35-48-3-3 (P.L. 136)

KETAMINE

- ▶ Allows for the lawful use of Ketamine and similar products by animal control agency for anesthesia and immobilization of animals.

SENTENCING

IC 35-50-2-8 (P.L. 291, §226)

HABITUAL OFFENDERS

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- ▶ Cannot use a drug conviction as a prior unrelated conviction in Habitual (Felony) Offender prosecution, unless the same requirements above are met.

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IC 35-50-2-8 (P.L. 166, §3)

HABITUAL OFFENDERS

- ▶ Cannot seek sentencing as a Habitual Offender if the instant crime is a felony Habitual Traffic Violator. A felony Habitual Traffic Violator conviction also CANNOT be used as a prior unrelated felony conviction to support a Habitual Offender finding.
- ▶ Cannot seek sentencing as a Habitual Offender if the instant crime is a misdemeanor that was enhanced to a felony based upon a prior conviction. (no double enhancement)
- ▶ However, a misdemeanor that was enhanced to a felony based upon a prior conviction CAN be used as a prior unrelated felony conviction to support a Habitual Offender finding.
- ▶ Examples of misdemeanors enhanced to a felony based upon a prior conviction include Possession of Handgun Without License, Possession of Marijuana, Battery, Auto Theft, Prostitution, and Criminal Trespass.

IC 35-50-2-8 (P.L. 291, §227)**HABITUAL SUBSTANCE OFFENDERS**

- ▶ Gives the Court discretion to reduce the mandatory 3-8 year sentence enhancement down to 1 year, where all three offenses are drug crimes, none of the three are nonsuspendable under IC 35-50-2-2(b)(4), and only one of three are for dealing.

IC 35-38-2.5 (P.L. 137)**HOME DETENTION OF VIOLENT OFFENDERS**

- ▶ Requires a Probation Department to maintain “constant supervision” of a “violent offender” who is placed on home detention.
- ▶ Defines “constant supervision” as 24/7 supervision by a monitoring device or surveillance equipment.
- ▶ Defines “violent offender” as a person charged with or convicted of any homicide, Battery, Kidnapping, Rape, Criminal Deviate Conduct, Child Molesting, Robbery as a Class A or B Felony, Burglary as a Class A or B Felony, OWI Causing Death, Arson, Escape, Stalking, or Possession of a Bomb. Also includes any attempted crime listed above. (Apparent conflict in statutes as to whether or not sex crimes are included)
- ▶ “Violent Offender” may also include any defendant who is a security risk as determined by written criteria established by Probation Department.
- ▶ Even if not on list, Probation Department and Court can still impose “constant supervision” restrictions on any defendant. However, if on the list it is mandatory.
- ▶ Probation Department must provide law enforcement with a list of all offenders on home detention, with specific information on name, alias, and residence of defendant; crime convicted; date of expiration of home detention; name, address, and telephone of Probation Officer; whether defendant is a “violent offender.”
- ▶ Upon a violation by a “violent offender,” the Probation Department shall notify a local law enforcement agency as the initial agency contacted.
- ▶ Probation Department shall set any home detention monitoring device so as to minimize the possibility that a defendant can enter another residence without a violation.
- ▶ CREATES A NEW CRIME OF Unauthorized Absence From Home Detention as a Class A Misdemeanor for leaving or remaining outside home, or traveling to an unauthorized location.

IC 35-44-3-5(b) (P.L. 137, §11)**ESCAPE / HOME DETENTION**

- ▶ Amends Escape (Class D Felony) statute. Formerly required violation of home detention order AND intentionally removing an electronic monitoring device. Changes AND to OR.

IC 35-50-2-1(b) (P.L. 243, §2-3) (Effective May 11, 2001)**MINIMUM SENTENCE**

- ▶ Amends “nonsuspendability” statute, which defines the minimum sentence which may not be suspended for certain crimes. Changing Murder from 30 to 45 years. Changing Class D Felony from 1 year to 1/2 year. These minimum penalties were changed in the general penalty statutes in the last decade, but through oversight never changed here.

IC 35-50-3-1(B) (P.L. 90)**MISDEMEANOR PROBATION**

- ▶ Allows for a one year term of probation when a misdemeanor sentence is suspended, regardless of the actual sentence imposed, and regardless of the class of misdemeanor. However, the combined term of imprisonment and term of probation may not exceed one year.

IC 35-50-1-2(a) (P.L. 228, §6)**CONSECUTIVE SENTENCING / CRIMES OF VIOLENCE**

- ▶ Adds Attempted Murder and Sexual Misconduct With a Minor (Class A Felony) to the list of “crimes of violence” which are not bound by the consecutive sentencing limitations.

IC 35-38-1-7.1(a) (P.L. 280, §51)**AGGRAVATING CIRCUMSTANCES**

- ▶ Allows the court to use as an aggravating circumstance that the crime was committed in the presence or hearing of a child under 18 who was not the victim of the crime.

DNA**IC 35-38-7 (P.L. 49)****POST-CONVICTION DNA TESTING**

- ▶ Allows convicted defendant to petition court for DNA testing of evidence, with notice to Prosecutor, who is given opportunity to respond.
- ▶ Applies only to Murder and Class A/B/C Felonies.
- ▶ Court may appoint indigent counsel.
- ▶ Upon filing of Petition, the Prosecutor shall prepare inventory of all evidence in control of State that “could be subjected to DNA testing” and provide copy to defense and court.
- ▶ Prosecutor must preserve evidence during pendency of proceeding.
- ▶ Both parties may be required to provide results of any previous DNA testing.
- ▶ Court shall order DNA testing of evidence where “a reasonable probability” exists that he would not have been convicted or would have received lesser sentence, if favorable DNA results were presented.
- ▶ If DNA testing ordered, Prosecutor shall notify victim.
- ▶ Regardless of whether Petition filed, if Prosecutor submits evidence for DNA testing which will consume the remaining biological evidence, defendant must be notified.
- ▶ Upon motion by Prosecutor and good cause shown, retesting may be ordered.
- ▶ Indiana has recognized the right to obtain post-conviction DNA testing since at least 1992. (Sewell v. State, 592 N.E.2d 705 (Ct. App. 1992).

IC 35-41-4-2 (P.L. 48, §1-2)**STATUTE OF LIMITATIONS**

- ▶ Existing statute bars prosecution for Class B and Class C Felonies unless brought within 5 years after the crime was committed. Prosecution can now be brought after 5 years, if within 1 year of date State discovers, or could have discovered with due diligence, the identity of offender with DNA evidence. (This new statute applies to all Class B and Class C Felony crimes regardless of when crime committed)

IC 10-1-9 (P.L. 60, §1-3) (Eff. May 1, 2001)**CONVICTED OFFENDER DNA DATABASE**

- ▶ Existing statutes require all persons convicted of a felony under IC 35-42 (crimes against persons), Burglary, or Child Solicitation, to provide a blood sample to the Department of Corrections for DNA testing and entry into a convicted offender database. This change requires that sample be given to County Sheriff by those who are committed to county jail or put on probation.
- ▶ Implementation of this new requirement may be delayed by DOC until guidelines are issued for collection and shipping of samples to DOC, and until grant money is available.

TRAFFIC

(P.L. 175) - IC 9-13-2-131; IC 9-13-2-151; IC 9-24-6-15; IC 9-30-5-1;
 IC 9-30-5-4; IC 9-30-5-5; IC 9-30-5-8.5; IC 9-30-6-15; IC 9-30-10-4;
 IC 9-30-10-9; IC 14-15-8-5; IC 14-15-8-6; IC 14-15-8-8

OWI

- ▶ Changes all references from 0.10 to 0.08 grams of alcohol per 100 milliliters of the person's blood, or 210 liters of the person's breath.

IC 9-13-2-131 (P.L. 175, §2)**OWI**

- ▶ Changes definition of *Prima Facie Evidence of Intoxication* from 0.10 to 0.08.

IC 9-13-2-131 (P.L. 175, §2)**OWI**

- ▶ Changes definition of *Relevant Evidence of Intoxication* from "0.05 but less than 0.10" to "0.05 but less than 0.08"

IC 9-13-2-86 (P.L. 175, §1)**OWI**

- ▶ Changes definition of *Intoxicated*, eliminating the requirement that a person is endangered. Now only requires that "there is an impaired condition of thought and action and the loss of normal control of a person's faculties."

IC 9-30-5-2 (P.L. 175, §6)**OWI**

- ▶ Changes penalty for Operating While Intoxicated to a Class C Misdemeanor, using new definition of *intoxicated* under IC 9-13-2-86 which eliminates the requirement that a person be endangered. (a/k/a Impaired Driving)
- ▶ Penalty enhancement for Operating While Intoxicated to a Class A Misdemeanor, where vehicle operated “in a manner that endangers a person.” (a/k/a Dangerous Driving)
- ▶ Maintains per se laws: at least 0.08 but less than 0.15 (Class C Misdemeanor);
at least 0.15 (Class A Misdemeanor);
any Schedule I or II Controlled Substance (Class C Misdemeanor).

IC 9-30-7 (P.L. 275, §1-4)**OWI CAUSING SBI / IMPLIED CONSENT**

- ▶ Implied consent includes portable breath tests (PBT) as well as chemical and blood tests.
- ▶ Law enforcement officer SHALL offer a PBT to any person the officer has reason to believe operated a vehicle that was “involved” in accident causing serious bodily injury. The officer SHALL then offer a chemical test to the driver if the results indicate the presence of alcohol, or if the driver refuses the PBT, or if the officer has probable cause to believe the driver is under the influence of a drug.
- ▶ A refusal to submit to either the PBT or the chemical test is a Class C Infraction.

IC 33-19-6-10 (P.L. 213, §4)**ALCOHOL AND DRUG COUNTERMEASURES FEE**

- ▶ Authorizes, but does not require, a \$200 Alcohol and Drug Countermeasures Fee where Operating While Intoxicated charges are amended to Reckless Driving or Public Intoxication.

IC 9-14-3 (P.L. 112, §1-7)**BMV DIGITAL SIGNATURES**

- ▶ An electronic record of the BMV that contains a digital signature “is admissible in a court proceeding as if the copy were the original.”
- ▶ BMV shall not charge copying fees and shall give precedence to requests from law enforcement and government agencies.

IC 9-21-5-13 (P.L. 116, §2)**SPEEDING**

- ▶ Sets penalty for speeding near worksite when workers are present as a Class B Infraction, maximum \$1000.

IC 14-15-4-2 (P.L. 210, §3)**BOATING ACCIDENTS**

- ▶ Increases the amount of apparent damage from \$200 to \$750 before a police report is required.

CHILDREN / SCHOOLS

IC 35-42-2-1 (P.L. 222, §1-6)

BATTERY ON CHILD

- ▶ Creates new penalty enhancement for Battery, making it a Class A Felony if it results in the death of a person less than 14 and committed by a person at least 18.
- ▶ Adds Battery (Class A Felony) to the list of “nonsuspendable” crimes in IC 35-50-2-2.
- ▶ Adds Battery (Class A Felony) to the list of crimes that are “serious violent felonies” under IC 35-47-4-5.

IC 31-37-3-2.5 (P.L. 79, §2) (Effective May 1, 2001)

CURFEW

- ▶ Reinstates juvenile curfew law. (15, 16, or 17 year olds: 1:00 am on Friday and Saturday nights, 11:00 pm on all other nights. 14 year olds and under: 11:00 on all nights)
- ▶ Hopefully overcomes constitutional problems by adding defenses, but the defenses may swallow the rule. New law has not been tested in court.
- ▶ *Old defenses retained:* Accompanied by parent or guardian, or an adult authorized by parent; Going to or coming from employment, school activity, or religious event;
- ▶ *New defenses:* Emancipated juvenile; Going to or coming from an emergency to protect from imminent serious bodily injury or substantial damage; Going to or coming from an exercise of the child’s rights such as Freedom of Speech or Assembly; Going to or coming from nonprofit or govt activity which provides recreation or education under adult supervision; Engaged in interstate travel and passing through state.
- ▶ After detention for curfew violation: Unless essential to protect a child or community, officer must make a good faith effort to release child to parent within a “reasonable time.”

IC 35-42-4-7 (P.L. 228, §5)

CHILD SEDUCTION

- ▶ Amends Child Seduction statute to make it clear that school teachers who engage in sexual intercourse or deviate sexual conduct with 16 or 17 year old student, commit a Class D Felony.

IC 35-45-2-1 (P.L. 241, §3)

INTIMIDATION

- ▶ Adds alternative method of committing Intimidation (Class A Misdemeanor), by communicating a threat causing evacuation of a building or vehicle. Also adds an enhancement to all forms of Intimidation, making it a Class D Felony if the threat is communicated using school property of a school or other government entity.

IC 31-30-1-4 (P.L. 17, §7)

JUVENILE COURT JURISDICTION

- ▶ Eliminates all drug dealing crimes from the list of those that can be direct filed in adult court against 16 year old, unless the defendant has a prior conviction or juvenile adjudication for Dealing in Schedule I-IV (except marijuana).

DOMESTIC VIOLENCE / SEX OFFENSES

IC 5-2-9 (P.L. 280, §2-10)

FOREIGN PROTECTIVE ORDERS

IC 34-26-2.5 (P.L. 280, §50)

- ▶ Provides for the registration and enforcement in Indiana of Protective Orders issued in another state. (Foreign Protection Orders)
- ▶ A foreign protection order valid on its face is prima facie evidence of its validity.
- ▶ A law enforcement officer, upon determining that: (1) there is probable cause to believe that a valid foreign protection order exists; and (2) the order has been violated; shall enforce the order as if it were the order of an Indiana court. The presentation of a foreign protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. Presentation of a certified copy of a protection order is not required for enforcement.
- ▶ If a foreign protection order is not presented, an Indiana law enforcement officer may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists, including information from the NCIC, IDACS, or the county depository for protective orders.
- ▶ If an Indiana law enforcement officer determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall: (1) inform the respondent of the order; (2) make a reasonable effort to serve the order upon the respondent; and (3) allow the respondent a reasonable opportunity to comply with the order before enforcing the order.
- ▶ Registration or filing of a foreign protection order in Indiana or in the NCIC protection order file is not required for the enforcement of a valid foreign protection order. The commencement of an action in Indiana is not required for the enforcement of a valid foreign protection order.
- ▶ A person may register a foreign protection order, without a fee, by filing with the Clerk a certified copy of the order. The person registering the order is required to notify clerk of any modifications or termination. Clerk shall send copies to municipal law enforcement/Sheriff. Sheriff shall remove from depository only if written notice of termination.

IC 33-19-4.5 (P.L. 280, §17)

PROTECTIVE ORDERS / FILING FEES

IC 33-19-5-4 (P.L. 280, §21)

- ▶ Eliminates prepayment of filing fees and witness fees for proceedings filed solely to obtain protective order if fearful that they may be a victim of dating violence, domestic violence, stalking, or sexual assault.

IC 34-26-2-1 (P.L. 280, §43)

PROTECTIVE ORDERS / EMPLOYERS

- ▶ Allows employers to seek protective orders to protect employees.

IC 34-6-2-64 (P.L. 280, §30)

GOOD FAITH IMMUNITY

IC 34-13-3-3 (P.L. 280, §42)

- ▶ A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from: an act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.
- ▶ Defines “Good Faith” as an act taken without malice, after a reasonable effort to obtain the facts of the matter, and in the reasonable belief that the action taken is warranted by the facts known.

IC 34-26-2-18 (P.L. 280, §49)

PROTECTIVE ORDERS / VICTIM’S FAULT

- ▶ Where the respondent is ordered to stay away from the protected person, an invitation by the protected person for respondent to violate the order DOES NOT waive or nullify any relief.

IC 34-26-2-11 (P.L. 280, §47)

PROTECTIVE ORDERS / CONFIDENTIAL FORM

- ▶ When the Clerk sends a summons to the Respondent in a Protective Order case, the Clerk must send a copy of the Petition which excludes confidential information.

IC 5-26.5 (P.L. 273)

ADDRESS CONFIDENTIALITY PROGRAM

- ▶ Establishes the Attorney General’s Address Confidentiality Program. Allows the protected person of a protective order to designate the Attorney General as an agent for service of process and receiving of mail, keeping home and work address and telephone confidential. Allows Voter Registration records to be confidential except to law enforcement or by court order.

IC 33-19-6-21 (P.L. 280, §24)

SEXUAL ASSAULT VICTIMS ASSISTANCE FEE

- ▶ Requires the court to assess a Sexual Assault Victims Assistance Fee of \$250-\$1000 in all cases where the defendant is convicted of a felony sex crime under IC 35-42-4. (Sexual Misconduct With a Minor limited only to Class A and Class B Felonies)

IC 35-45-10-5 (P.L. 280, §52)**STALKING**

- ▶ Increases penalty for Stalking to a Class C Felony where the stalking violates a no-contact order issued as a condition of bail, diversion, probation, or in paternity action, issued in Indiana or another state.

IC 5-2-12 (P.L. 238)**SEX OFFENDER REGISTRY**

- ▶ Changes name from “Sex Offender Registry” to Sex and Violent Offender Registry.”
- ▶ Current law includes as Sex and Violent Offenders with a duty to register, those who have been convicted of: Any sex crime under IC 35-42-4 except Sexual Misconduct With a Minor as a Class D Felony, Incest, and Kidnapping or Confinement where the victim is less than 18years old.
- ▶ New amendments added Sexual Misconduct With a Minor as a Class A, B, or C Felony.
- ▶ New amendments added convictions for Attempt and Conspiracy of the above crimes.
- ▶ Eliminates the date restrictions on duty to register. (Unknown whether this now requires those convicted before 1994 or 1998 to register, but it is doubtful)
- ▶ Makes clear that juveniles over 14 are subject to register upon release from any facility after adjudication for an act that would be a crime listed above if committed by an adult.
- ▶ Requires that all sex and violent offenders register if they reside or intend to reside for more than 7 days in Indiana.
- ▶ Requires that all sex and violent offenders register if they work in Indiana more than 14 consecutive days or more than 30 days per year. Requires registration with law enforcement agency where they are employed and where they reside.
- ▶ Requires that all sex and violent offenders register if they are enrolled as a full or part-time student. Requires registration with law enforcement agency where they are enrolled and where they reside.
- ▶ Department of Corrections is required to give oral and written notice of duty to register within 14 days of release. Probation Officer has duty to provide notice if person is placed on Probation.
- ▶ Requires Offender to notify law enforcement of a change in address or employment. Law enforcement shall verify within 7 days and notify law enforcement at new location.
- ▶ Extends 10 year duty to register to a lifetime duty to register where (1) the victim was less than 12 years old, (2) the victim was less than 18 and was threatened or suffered unconsciousness or serious bodily injury, or (3) the offender has 2 or more convictions crimes listed above.

CRIMES AGAINST PROPERTY

IC 35-43-5-3.5 (P.L. 280, §2)

IDENTITY DECEPTION

IC 35-43-5-1 (P.L. 280, §1)

- ▶ CREATES NEW CRIME OF Identity Deception as a Class D Felony.
- ▶ A person who knowingly or intentionally obtains, possesses, transfers, or uses the identifying information of another person: (1) without the other person's consent; and (2) with intent to harm or defraud another person; commits identity deception, a Class D felony.
- ▶ Identifying information may include name, Date of Birth, Social Security No., Account No., Serial No., PIN No., Fingerprint, or any other information that identifies an individual.
- ▶ Does not apply to a minor using another's ID to buy alcohol, cigarettes, or sex magazines/video. Does not apply to a minor using another's ID to gain admittance to live or video performance.
- ▶ While the statute specifically says that it is not a defense that no person was harmed or defrauded, it will be very difficult to show an intent to harm or defraud otherwise.

IC 35-43-5-14 to IC 35-43-5-17 (P.L. 84, §3-6)

FALSE SALES DOCUMENTS

- ▶ CREATES NEW CRIME OF Possession of a Fraudulent Sales Document (Class D Felony).
- ▶ A person who, with intent to defraud, possesses a retail sales receipt, a label or other item with a Universal Product Code (UPC), or other product identification.
- ▶ Penalty enhanced to a Class D Felony if 15 or more possessed.
- ▶ CREATES NEW CRIME OF Possession of a Fraudulent Sales Document Manufacturing Device (Class A Misdemeanor).
- ▶ A person who, with intent to defraud, possesses a device to make retail sales receipts, UPC Codes, or other product identification codes.
- ▶ CREATES NEW CRIME OF Making a False Sales Document (Class D Felony).
- ▶ A person who, with intent to defraud, makes a false sales receipt, or puts a false UPC Code on property offered for sale.
- ▶ CREATES NEW CRIME OF Delivery of a False Sales Document (Class D Felony)
- ▶ A person who, with intent to defraud, delivers to another person a false sales receipt, a duplicate sales receipt, or a label or other item with a false UPC Code.

IC 35-43-4-8 (P.L. 117, §6)

FUEL THEFT

IC 9-25-6-21 (P.L. 117, §3); IC 31-37-19-17.2 (P.L. 117, §5)

- ▶ In addition to other penalties, a mandatory 30 day license suspension shall be imposed upon a conviction for Theft or Conversion of gasoline by drive-off.

CHILD SUPPORT

IC 35-46-1-5 (P.L. 123, §4)

CLASS C FELONY NONSUPPORT

- ▶ Increases the arrearage amount from \$10,000 to \$15,000 in order to enhance penalty to a Class C Felony for Nonsupport of a Dependent Child. However, the arrearages for all children can be used to determine the amount.
- ▶ In response to Indiana Court of Appeals “per child” decision in State v. Moore, 688 N.E.2d 917 (Ct.App. 1997).

IC 31-14-12-3 (P.L. 123, §1) (Effective May 2, 2001)

CONTEMPT ON ARREARAGES

- ▶ A Court may find a parent in contempt of court in an action to enforce payment of child support arrearages, if the action was filed not later than 10 years after the child is 18 or emancipated. Party or “agency” entitled to the support may request contempt.

IC 12-17-2-18 (P.L. 138, §2)

ATTORNEY-CLIENT RELATIONSHIP

- ▶ Child Support Prosecutor DOES NOT represent custodial parent.
- ▶ “A prosecuting attorney or private attorney entering into an agreement or a contract with the bureau under this section enters into an attorney-client relationship with the state to represent the interests of the state in the effective administration of the plan and not the interests of any other person. An attorney-client relationship is not created with any other person by reason of an agreement or contract with the bureau.”
- ▶ At the time that an application for child support services is made, the applicant must be informed that: (1) an attorney who provides services for the child support bureau is the attorney for the state and is not providing legal representation to the applicant; and (2) communications made by the applicant to the attorney and the advice given by the attorney to the applicant are not confidential communications protected by the attorney-client privilege.

MISCELLANEOUS

IC 35-46-1-12 (P.L. 145)

ENDANGERED ADULT

- ▶ Amends Exploitation of an Endangered Adult statute to add penalty enhancement from a Class A Misdemeanor to a Class D Felony where the fair market value of the property or services is more than \$10,000 or the endangered adult is at least 60 years old.
- ▶ It is not a defense that the defendant reasonably believed that the victim was less than 60 years old.
- ▶ Adds a defense that the defendant has a durable power of attorney or is the legal guardian and was acting within scope of fiduciary responsibility.

IC 35-41-1-8 (P.L. 156, §8)

DEADLY WEAPON

- ▶ Amends definition of *deadly weapon* to include: "A biological disease, virus, or organism that is capable of causing serious bodily injury."

IC 5-14-3-4 (P.L. 271); IC 16-39-7.1 (P.L. 271)

DALE EARNHARDT

- ▶ Declares that photographs, video or audio recording of autopsies are NOT public records.
- ▶ The physician having custody of autopsy photographs, video or audio may permit family to inspect and copy, but otherwise confidential.
- ▶ Violation of confidentiality requirements is a Class D Felony.

**IC 11-13-1-3.5 (P.L. 45, §2)
IC 31-31-5-5 (P.L. 45, §4)**

ARMED PROBATION OFFICERS

- ▶ Probation Officer may not carry a handgun on duty unless authorized by Court, and unless a license is obtained and a certified handgun safety course is completed.
- ▶ Probation Officer does not have the powers of a law enforcement officer.

IC 35-47-2-3 (P.L. 27, §1)

HANDGUN LICENSE

- ▶ A person holding a valid handgun license must notify State Police within 60 days of any change of name or address. (Penalty at IC 35-47-2-23(a) as a Class B Misdemeanor)

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

* All statutes are effective July 1, 2001 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.