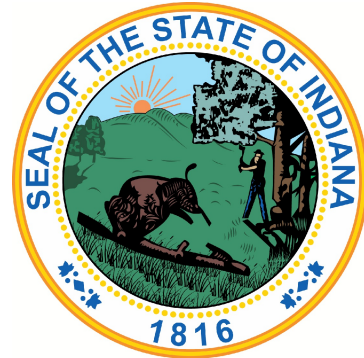


NEW LEGISLATION

2003



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SENTENCING

IC 35-50-6-3.3 (P.L. 164)

CREDIT TIME

- ▶ Allows 6 months credit for inmates who complete “literacy and basic life skills program approved by the Department of Corrections.” (In addition to educational credits)
- ▶ Retains 4 year cap for all credits. (Or 1/3 of sentence)
- ▶ Credit time earned is subtracted from release date (serve time), rather than from actual sentence (executed sentence), except for sex offenses.

IC 35-38-1-1.5 (P.L. 98, §2)

JUDGMENT WITHHELD

IC 35-50-2-7(b) (P.L. 98, §2)

- ▶ A Court may enter judgment as a Class D Felony (following a trial or guilty plea) with the understanding that it will be converted to a Class A Misdemeanor conviction if certain conditions are met.
- ▶ Not eligible for Class A Misdemeanor if underlying crime is Domestic Battery or Possession of Child Pornography. (Removes Auto Theft and Stolen Auto Parts from exclusions)
- ▶ Not eligible for Class A Misdemeanor if a prior felony, committed within 3 years, was previously converted to Class A Misdemeanor.

IC 35-50-2-9(K) (P.L. 1, §97)

DEATH PENALTY

- ▶ Following post-conviction review, allows a defendant to file an appeal directly to the Indiana Supreme Court asserting newly discovered evidence challenging guilt or the appropriateness of his death sentence.

- ▶ Sentencing Policy Study Committee established to evaluate Indiana sentencing laws and policies to assure that they protect public safety, are fair and uniform, maximize cost effectiveness, and to determine when alternative sanctions are appropriate.
- ▶ Designed to make recommendations to legislature, who will likely take seriously.
- ▶ IPAC Director is a member.
- ▶ TRANSLATION: We have too many people in prison and it is costing us too much money, so please find ways to keep people out of prison to reduce our costs.

SEX OFFENSES

IC 35-42-4-5 (P.L. 123, §1)

PERFORMING SEXUAL CONDUCT

- ▶ Adds sexual intercourse and deviate sexual conduct to list of prohibited acts under Performing Sexual Conduct in the Presence of a Minor (Class D Felony):

(c) A person eighteen (18) years of age or older who knowingly or intentionally: **(1) engages in sexual intercourse; (2) engages in deviate sexual conduct; or (3) touches or fondles himself; the person's own body;** in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits fondling **performing sexual conduct** in the presence of a minor, a Class D felony.

IC 35-45-4-1 (P.L. 123, §2)

PUBLIC INDECENCY

- ▶ Now requires “nudity” to be “with intent to arouse sexual desires,” or “with intent to be seen” by a child less than 16. Otherwise, it is not Public Indecency unless it involves fondling genitals or engaging in intercourse/deviate sexual conduct. (The object of this change was to exclude those who are caught merely urinating on side of the road. See Indecent Exposure)
 - (a) A person who knowingly or intentionally, in a public place:
 - (1) engages in sexual intercourse;
 - (2) engages in deviate sexual conduct;
 - (3) appears in a state of nudity **with the intent to arouse the sexual desires of the person or another person;** or
 - (4) fondles the person's genitals or the genitals of another person; commits public indecency, a Class A misdemeanor.
 - (b) **A person at least eighteen (18) years of age who knowingly or intentionally, in a public place, appears in a state of nudity with the intent to be seen by a child less than sixteen (16) years of age commits public indecency, a Class A misdemeanor.**
- ▶ Allows for enhancement to Class D Felony if prior unrelated conviction.

IC 35-45-4-1 (P.L. 123, §2)

INDECENT EXPOSURE

- ▶ Adds “nudity” to list of prohibited activities.

(e) A person who, in a place other than a public place, with the intent to be seen by persons other than invitees and occupants of that place: (1) engages in sexual intercourse; (2) engages in deviate sexual conduct; or (3) fondles the person's genitals or the genitals of another person; **or (4) appears in a state of nudity;** where the person can be seen by persons other than invitees and occupants of that place commits indecent exposure, a Class C misdemeanor.

IC 35-45-4-1.5 (P.L. 123, §3)

PUBLIC NUDITY

- ▶ CREATES A NEW CRIME OF PUBLIC NUDITY.
- ▶ “A person who knowingly or intentionally appears in a public place in a state of nudity commits public nudity, a Class C misdemeanor.”
- ▶ Class B Misdemeanor if “with the intent to be seen by another person.”
- ▶ Class A Misdemeanor if on school grounds, in public park, or with intent to arouse on DNR property.
- ▶ Class D Felony if prior unrelated conviction.

- ▶ "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.
 - ▶ Urinating on side of road
 - ▶ Streaking or flashing
 - ▶ Sex acts in public
 - ▶ Nude in front of picture window

IC 16-35-6-1 (P.L. 125, §1)

BREASTFEEDING

- ▶ “Notwithstanding any other law, a woman may breastfeed her child anywhere the woman has a right to be. (What if child is 27?)

IC 35-42-4-9 (P.L. 266, §1)

SEXUAL MISCONDUCT WITH A MINOR

- ▶ Eliminates defense of marriage and defense of “reasonable belief” under a(2) and b(2) where fondling, sexual intercourse, or deviate sexual conduct is committed by use or threat of deadly force, use of drugs, or serious bodily injury caused.

IC 35-50-1-2 (P.L. 266, §2)

SENTENCING / CRIMES OF VIOLENCE

- ▶ Adds Sexual Misconduct With a Minor to list of crimes of violence (so that consecutive sentencing limitations do not apply), under a(2) or b(2) committed by use or threat of deadly force, use of drugs, or serious bodily injury caused.

IC 35-42-4-7(f) (P.L. 161, §10)

CHILD SEDUCTION

- ▶ Expands crime of Child Seduction (Class D Felony) to include **fondling** of or by guardian, custodian or adoptive parent, grandparent or stepparent.

IC 20-6.1-3-7(b)(d) (P.L. 161, §2)

PROSECUTOR DUTY TO REPORT

- ▶ The Prosecuting Attorney is required to send notice to the state and local school superintendent, when a licensed school employee is **convicted** of: any felony sex offense, or any dealing offense, or Confinement or Kidnapping where the victim is less than 18.
- ▶ Note that Prosecuting Attorney under IC 33-14-1-8 already has the duty to report to a person's employer when a person is **charged** with any felony sex offense unless they do not work with children.

IC 35-38-2.5-7 (P.L. 55, §3)

HOME DETENTION FOR SEX OFFENDERS

- ▶ Allows for home detention of sex offenders as long as supervised 24 hours per day by a court-approved home detention program. (I assume HIP is 24 hour supervision)

IC 5-2-12-5 (P.L. 55, §1)

IC 5-2-12-9 (P.L. 154, §1-2)

IC 5-2-12-13 (P.L. 2, §20)

SEX AND VIOLENT OFFENDER REGISTRATION

- ▶ Makes clear that the duty to register begins upon release from penal facility, private facility, juvenile detention, or upon placement on probation, parole, home detention, or community transition.
- ▶ Closes loophole by providing missing penalty (Class D Felony) for failure to provide a new registration form upon a change of address.
- ▶ Provides for lifetime duty to register for "sexually violent predator."
- ▶ Requires statewide website maintained by the Indiana Sheriff's Association to be updated at least every 7 days. (<http://www.indianasheriffs.org/default.asp>) Note that expanded sex and Violent Offender Registry will include photograph and address of offender, but is awaiting go-ahead from Indiana Supreme Court.

CONTROLLED SUBSTANCES

IC 35-48-4-14.5(b) (P.L. 225, §5)

POSSESSION OF EPHEDRINE

- ▶ CREATES NEW CRIME OF POSSESSION OF EPHEDRINE.
(Precursor of methamphetamine)
- ▶ Possessing more than 10 grams of ephedrine, pseudoephedrine, phenylpropanolamine is a Class D Felony.
- ▶ Class C Felony if possessing firearm, or within 1000' of school, park, public housing complex, or youth program center.
- ▶ It is a defense that possession was consistent with "typical medicinal or household use."

IC 35-48-4-14.5(g) (P.L. 225, §5)

UNLAWFUL SALE OF PRECURSOR

- ▶ CREATES NEW CRIME OF UNLAWFUL SALE OF PRECURSOR.
- ▶ Transferring a chemical reagent or precursor (including ephedrine), with knowledge of recipient's intent to manufacture methamphetamine, amphetamine, methcathinone, or phentermine, is a Class D Felony.

IC 35-48-4-17 (P.L. 225, §6)

METHAMPHETAMINE CLEAN UP COSTS

- ▶ CREATES NEW SECTION - Upon conviction of manufacture or intent to manufacture methamphetamine, the court shall order restitution to law enforcement for environmental cleanup costs.

IC 35-48-4-13.3 (P.L. 225, §4)

TAKING CHILD TO DRUG NUISANCE

- ▶ CREATES NEW CRIME - Recklessly, knowingly, or intentionally taking a child under 18 or an endangered adult into a place used to possess, deliver, or manufacture drugs or a controlled substance, commits a Class A Misdemeanor.
- ▶ Enhanced to a Class D Felony if a prior unrelated conviction.

IC 35-48-1-9.3 (P.L. 225, §1)

IC 35-48-4-0.5 (P.L. 225, §2)

CONTROLLED SUBSTANCE ANALOGS

- ▶ Defines "analog" as a substance, not controlled, which is intended to have same effect as Schedule I or II controlled substance.
- ▶ Punishable the same as Schedule I.
- ▶ Mirrors similar federal statutes which have been used to prosecute possession of 1, 4 butanediol, an analog to GHB, a date rape drug.

IC 10-11-8 (P.L. 229, §2)**RETAILER EDUCATION AND SNITCH PROGRAM**

- ▶ Authorizes State Police to develop education program to inform retailers about methamphetamine production in Indiana, and to provide forms for retailers to report “suspicious purchases, thefts, or other transactions” involving any chemical reagents or precursors.
- ▶ Does NOT compel retailers to report, but provides civil immunity if they do.
- ▶ Note that in recent case of State v. Bulington, 783 N.E.2d 338 (Ind. App. 2003), Indiana Court of Appeals in a 2-1 opinion held that reasonable suspicion existed for police to pull over vehicle for investigatory stop after Meijer’s security called and reported that two men had purchased 3 packages each of ephedrine. Subsequent consent to search and uncovering of other meth lab items was upheld. However, Court used very strong cautionary language in upholding similar information in future.

IC 35-48-4-8.3 (P.L. 58 §1)**POSSESSION OF DRUG PARAPHERNALIA**

- ▶ Possession of raw material, instrument, device, or other object, intended to be used for introducing controlled substance into body (straw, pipe, papers), testing the strength or purity of a controlled substance (scales), or enhancing the effect of a controlled substance, commits Possession of Paraphernalia (Class A Infraction).
- ▶ Enhanced to Class B Misdemeanor if reckless possession.
- ▶ Enhanced to Class A Misdemeanor if knowing or intentional possession.
- ▶ Enhanced to Class D Felony on any of above if prior unrelated judgment or conviction.

IC 35-48-4-8.5 (P.L. 58 §2)**DEALING IN DRUG PARAPHERNALIA**

- ▶ Delivering or offering for sale raw material, instrument, device, or other object, intended designed or marketed to be used primarily for introducing controlled substance into body (straw, pipe, papers), testing the strength or purity of a controlled substance (scales), enhancing the effect of a controlled substance, diluting a controlled substance, commits Dealing in Paraphernalia (Class A Infraction).
- ▶ Enhanced to Class B Misdemeanor if reckless dealing.
- ▶ Enhanced to Class D Felony on any of above if prior unrelated judgment or conviction.

IC 31-32-16 (P.L. 196, §2)**JUVENILE COMMITMENT FOR DRUG TREATMENT**

- ▶ A parent or custodian may petition the Juvenile Court for the commitment of a juvenile for involuntary drug and alcohol treatment if he is incapable or unwilling to consent. Petition must contain affidavit of doctor who has examined juvenile within 30 days.
- ▶ Court may appoint doctor to perform another assessment, and after a hearing may order involuntary drug or alcohol treatment for 45 days, inpatient or outpatient, if it finds that juvenile is an drug or alcohol abuser.
- ▶ If inpatient, juvenile cannot be sent to state institution. Must be private and paid for by the parents or custodians.
- ▶ Court may order additional periods of commitment after a hearing.

DOMESTIC VIOLENCE

IC 35-47-2-1 (P.L. 195, §6-7) POSSESSION OF FIREARM BY DOMESTIC BATTERER

- ▶ CREATES NEW CRIME OF POSSESSION OF A FIREARM BY A DOMESTIC BATTERER.
- ▶ Knowingly or intentionally possessing a firearm by a person who has been convicted of Domestic Battery under IC 35-42-2-1.3 is a Class A Misdemeanor.
- ▶ It is a defense that the person's right to possess a firearm has been restored.
 - ▶ Note that in United States v. Brown, 235 F.Supp. 931 (S.D.Ind. 2002), the U.S.District Court held that federal law (U.S.C. 922g) was unenforceable against Indiana defendant who had been convicted of domestic violence, since Indiana had restored his right to vote and right to serve on jury.

IC 3-7-13-5 (P.L. 195, §1) RIGHT TO VOTE

- ▶ Provides that although a prisoner who is "imprisoned or otherwise subject to lawful detention" is not eligible to register or vote, and upon release may register and vote, a person convicted of a crime of domestic violence may not possess a firearm upon release.
- ▶ Permits restoration of right to possess firearm, if defendant petitions the court no sooner than 5 years after the date of conviction, and he is no longer a threat.

IC 33-4-5-7 (P.L. 195, §2) RIGHT TO SERVE ON JURY

- ▶ Provides that although a defendant who is "under a sentence imposed for an offense" may not serve on a jury, and upon completion of such sentence is again eligible to serve on a jury, a person convicted of a crime of domestic violence may not possess a firearm upon completion of the sentence.
- ▶ Permits restoration of right to possess firearm, if defendant petitions the court no sooner than 5 years after the date of conviction, and he is no longer a threat.

IC 35-35-1-2 (P.L. 195, §3-4) DOMESTIC BATTERY GUILTY PLEA

- ▶ In order for a guilty plea to the crime of Domestic Battery to be accepted by the Court, the defendant must first be informed that he will lose his right to possess a firearm.

IC 35-42-2-2.3 (P.L. 221 §18) DOMESTIC BATTERY DEFINITION

- ▶ Current law requires that domestic battery victim (1) is or was a spouse, (2) is or was living as if a spouse, or (3) has a child in common. This amendment provides detailed considerations for the court to determine "living as if a spouse."
- ▶ The court shall review the duration of the relationship, the frequency of contact, the financial interdependence, whether they are raising children together, whether they maintain a common household.

IC 35-33-1-1(a) (P.L. 221, §15)

WARRANTLESS ARRESTS

- ▶ Without a warrant, you can arrest on probable cause for a felony.
- ▶ Without a warrant, you can arrest for a misdemeanor only if committed in your presence.
- ▶ Exceptions for warrantless misdemeanor arrests: Probable cause to believe person has committed DUI, LSOA, Battery or Domestic Battery resulting in bodily injury, Invasion of Privacy, Carrying Handgun Without License, Violation of Probation Exclusion Order, and **Interference With Reporting of Crime.**

IC 35-38-1-7.1 (P.L. 221, §16)

SENTENCING AGGRAVATORS

- ▶ In determining the appropriate sentence for a crime, the Court shall consider whether the defendant violated a Protective Order, a No-Contact Order, or a Workplace Violence Restraining Order.

IC 31-9-2-42 (P.L. 221, §3)

IC 34-6-2-34.5 (P.L. 221, §7)

PROTECTIVE ORDERS

- ▶ Makes clear that although Protective Orders can now be issued only against family or household members, an exception is created for Stalking or a Sex Offense, even if not committed by a family member.

IC 34-26-5-3 (P.L. 39, §1)

PROTECTIVE ORDERS / CLERK OF COURT

- ▶ In 2002, legislation was enacted requiring the Court Clerk to provide forms and clerical assistance to those requesting a Protective Order. This year, they added a provision giving the Court Clerk civil immunity for such assistance.

LAW ENFORCEMENT OFFICERS

IC 35-44-2-2 (P.L. 232, §1)

FALSE REPORTING

- ▶ Amends existing statute to add “making a complaint against a law enforcement officer” alleging that the officer engaged in misconduct (violation of department rule or procedure), knowing the report to be false.

IC 9-21-16-5.5 (P.L. 8, §2)

FIRE LANES

- ▶ City, Town, or County can adopt fire lane restrictions by Local Ordinance, and may appoint volunteers who, after instruction, may issue citations to help enforce. Appointment must be sent to Prosecuting Attorney and can be revoked at any time.

PROPERTY CRIMES

IC 35-43-5-3.5 (P.L. 22, §2); IC 35-38-1-2.5 (P.L. 22, §3)

IC 35-43-5-1 (P.L. 22, §1)

IDENTITY DECEPTION

- ▶ Expands definition of “identifying information” used to commit Identity Deception to include address, place of employment, employee ID#, mother’s maiden name, and telephone number.
- ▶ Removes requirement that the defendant intended to “harm or defraud” in order to commit Identity Deception. Instead, now crime can be committed even if no harm, as long as the person uses the identifying information to assume another’s identity, or while professing to be another person.
- ▶ During or after the sentencing of a person convicted of a crime of deception, the court may issue an order on behalf of a victim that may be used to correct a credit history.

IC 24-4-13 (P.L. 97, §1)

USED JEWELRY / PAWN SHOPS

- ▶ ADDS NEW SECTION - A person engaged in the purchase and resale of jewelry must maintain records, including a Bill of Sale, the signature, date of birth, and address of the seller, a description of the jewelry, government issued ID used by seller, amount of consideration, and dates of sale.
- ▶ Records must be kept for 2 years after sale and must be made available upon the request of law enforcement.
- ▶ A person commits a Class A Misdemeanor if jewelry is purchased for resale: from a juvenile, or when the jeweler “believes or has reason to believe” that the jewelry was acquired as a result of a crime.

IC 35-43-5-5(c) (P.L. 85, §1)

CHECK DECEPTION

- ▶ Increases the permissible service fee on a bad check from \$20 to \$27.50.

TRAFFIC

IC 9-24-11 (P.L. 208, §10-13)

PRESCRIBED MEDICATION

- ▶ Permits BMV to have license restriction: “Requirement to take prescribed medication.”
- ▶ CREATES NEW CRIME - A person who violates license restriction by knowingly or intentionally failing to take required medication, and who causes serious bodily injury or death when operating a motor vehicle, commits a Class A Misdemeanor.
- ▶ Enhanced to a Class D Felony if prior unrelated conviction within 5 years.

IC 9-26-1-2 (P.L. 157, §3)

ACCIDENT REPORTS / LSOA

- ▶ Requires that person involved in traffic accident forward report to Indiana State Police within 10 days if apparent property damage of at least \$1,000. (Raised from \$750)

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

* All statutes are effective July 1, 2003 unless otherwise indicated.

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