

NEW LEGISLATION

2005



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SENTENCING

IC 35-50-2-1.3 (P.L. 71, §5)

ADVISORY / PRESUMPTIVE SENTENCE

- ▶ Eliminates "presumptive" sentence for all felony crimes. Replaced with "advisory sentence."
- ▶ Advisory Sentence is "a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence."

IC 35-50-2-3 to IC 35-50-2-7 (P.L. 71, §6-10)

FELONY PENALTIES

- ▶ A person who commits murder shall be imprisoned for a fixed term of ~~forty five (45) years, with not more than ten (10) years added for aggravating circumstances or not more than ten (10) years subtracted for mitigating circumstances~~ between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years.
- ▶ A person who commits a Class A felony shall be imprisoned for a fixed term of ~~thirty (30) years, with not more than twenty (20) years added for aggravating circumstances or not more than ten (10) years subtracted for mitigating circumstances~~ between twenty (20) and fifty (50) years, with the advisory sentence being fifty-five (30) years.
- ▶ A person who commits a Class B felony shall be imprisoned for a fixed term of ~~thirty (10) years, with not more than ten (10) years added for aggravating circumstances or not more than four (4) years subtracted for mitigating circumstances~~ between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.

- ▶ A person who commits a Class C felony shall be imprisoned for a fixed term of ~~four (4) years, with not more than four (4) years added for aggravating circumstances or not more than two (2) years subtracted for mitigating circumstances~~ between two (2) and eight (8) years, with the advisory sentence being four (4) years.
- ▶ A person who commits a Class D felony shall be imprisoned for a fixed term of ~~one and one half (1 1/2) years, with not more than one and one half (1 1/2) years added for aggravating circumstances or not more than one (1) year subtracted for mitigating circumstances~~ between six (6) months and three (3) years, with the advisory sentence being one and one half (1 1/2) years.

IC 35-38-1-7.1(d) (P.L. 71, §3)

AGGRAVATING CIRCUMSTANCES

- ▶ "A court may impose any sentence that is (1) authorized by statute; and (2) permissible under the Constitution of the State of Indiana; regardless of the presence or absence of aggravating circumstances or mitigating circumstances."
- ▶ These changes in Indiana sentencing laws were an effort to comply with the recent U.S. Supreme Court case of Blakely v. Washington, 124 S.Ct. 2531 (2004):

Petitioner pled guilty to kidnapping his estranged wife. The facts admitted, standing alone, supported a maximum sentence of 53 months, but the judge imposed a 90-month sentence after finding that petitioner had acted with deliberate cruelty, a statutorily enumerated ground for departing from the standard range. Because the facts supporting petitioner's exceptional sentence were neither admitted by petitioner nor found by a jury, the sentence violated his Sixth Amendment right to trial by jury.

This case requires the Court to apply the rule of Apprendi that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." The relevant statutory maximum for Apprendi purposes is the maximum a judge may impose based solely on the facts reflected in the jury verdict or admitted by the defendant.

- ▶ In other words, an Indiana sentence could not be more than the presumptive sentence, unless the defendant admitted the aggravating circumstance, or it was found by a jury. A finding by the Judge was not enough. After Blakely, Indiana could allow a second sentencing hearing after the guilty verdict for the State to prove aggravators, or change the statute so that the trial Judge is given specific authority to sentence up to maximum even without aggravators.
- ▶ Sentences are still subject to review under Indiana Appellate Rule 7(B), which allows the Indiana Court of Appeals or the Indiana Supreme Court to revise any sentence if they find it is "inappropriate" in light of the nature of the offense or the character of the offender. For this reason, it is suggested that the Trial Court still submit aggravating circumstances justifying any enhanced sentence.
- ▶ Statute effective April 25, 2005. Likely applicable only to cases COMMITTED after that date.

PROBATION

IC 35-38-2-3 (P.L. 13, §1)

REVOCACTION

- ▶ Upon finding a violation of probation, the Court is free to execute "all or part" of suspended sentence. (In response to Court of Appeals decisions which held that statute mandated all or none of sentence must be executed. In the meantime, the Indiana Supreme Court reversed the decisions anyway. See Pugh v. State, 819 N.E.2d 375 (Ind. 2004) and Stephens v. State, 818 N.E.2d 936 (Ind. 2004).

IC 35-38-2.5 (P.L. 31, §1-6)

ELECTRONIC MONITORING

- ▶ Specifically permits monitoring by Global Positioning Systems which monitor and record precise location 24/7. (In response to Court of Appeals decision which held that statute did not permit GPS monitoring. In the meantime, the Indiana Supreme Court reversed the decision anyway. See Chism v. State, 813 N.E.2d 402 (Ind.App. 2004), reversed at Chism v. State, 824 N.E.2d 334 (Ind. 2005).

IC 35-38-2-1.8 (P.L. 14, §1)

MODIFICATION OF PROBATION TERMS

- ▶ Permits Court to modify existing conditions of probation after notice and hearing, even without a showing of a violation.

CONTROLLED SUBSTANCES / DRUGS

IC 5-2-6 (P.L. 192, §1, 2)

METH WATCH PROGRAM

- Requires Indiana Criminal Justice Institute to develop and maintain "Meth Watch Program" in consultation with law enforcement, to inform retailers and the public of the dangers of methamphetamine.

IC 5-2-15 (P.L. 192, §3,4)

METH LAB REPORTING

- ▶ Upon termination of meth lab, requires law enforcement to report existence and location to Indiana State Police, local Fire Department, and County Health Department on ISP forms.
- ▶ Requires Indiana State Police to develop forms and guidelines, and to maintain accurate information on number and location of Indiana meth labs.
- ▶ Meth Lab defined as any "location or facility" used or intended to be used to produce methamphetamine.

IC 13-11-2-42; 13-14-1-15 (P.L. 192, §5, 6)

METH LAB CLEANUP

- ▶ Expands definition of "contaminate" to include chemicals used or waste produced from illegal manufacture of a controlled substance.
- ▶ Requires Department of Environmental Management to certify and maintain list of those qualified to inspect and clean property polluted by a contaminate.

IC 35-48-4-14.5 (P.L. 192, §8)

METH PRECURSORS

- ▶ Adds 21 new "chemical reagents or precursors" to meth statute. (Note: It is a Class D Felony to possess the following with intent to manufacture methamphetamine: (1) Two or more chemical reagents or precursors, (2) More than 10 grams of ephedrine, pseudoephedrine, or phenyl propanolamine, or (3) Any amount of anhydrous ammonia.)
- ▶ New list includes pseudoephedrine hydrochloride. (See Reemer v. State, 817 N.E.2d 626 (Ind.App. 2004) where the Court of Appeals held that since pseudoephedrine hydrochloride was not specifically designated in statute, the state needed to show by testimony that it was indeed a "salt" of pseudoephedrine)
- ▶ Eliminates salts/isomers language and replaces it with "pure or adulterated," so that 10 grams threshold can be reached even if ephedrine, pseudoephedrine, or phenylpropanolamine is mixed with other substances. (e.g. Tylenol)

IC 35-48-4-14.7 (P.L. 192, §9)

DISPLAY AND SALE OF METH PRECURSORS

- ▶ ADDS NEW STATUTE prohibiting purchase of drugs containing more than 3 grams of ephedrine or pseudoephedrine in one week. (Class C Misdemeanor/Class A Misdemeanor)
- ▶ ADDS NEW STATUTE prohibiting sale of drugs containing the active ingredient of ephedrine or pseudoephedrine. (Class C Misdemeanor/Class A Misdemeanor) UNLESS
 - (1) customer is 18 or over, gives name and address, and shows state or federal ID, AND
 - (2) log is kept by seller with clerk's signature, AND
 - (3) the drugs are stored behind the counter, or directly in front of the pharmacy counter if under constant video surveillance, AND
 - (4) the drugs in one transaction contain 3 grams or less of ephedrine or pseudoephedrine.
- ▶ Records of sale must be kept for 2 years and may be "inspected" by law enforcement "in accordance with state and federal law."
- ▶ Seller must report "suspicious order" to Indiana State Police in writing. (Suspicious if at least \$200 cash or money order, or otherwise required to report to DEA)
- ▶ Retailer must report "unusual theft" to Indiana State Police within 3 days. (Unusual if there is theft or unexplained disappearance of drugs containing 10 grams or more of ephedrine or pseudoephedrine in a 24 hour period)

- ▶ First violation of IC 35-48-4-14.7 is a Class C Misdemeanor. Subsequent violations are Class A Misdemeanors.
- ▶ IC 35-48-4-14.7 is not applicable to wholesale sales or dispensing by prescription.

ELECTIONS / OFFICES

IC 3-8-1-5; IC 3-8-1-37 (P.L. 113, §1-2)

CONVICTION OF FELONY

- ▶ Maintains provisions disqualifying a candidate for state or local office and removing a state or local officeholder upon conviction of a felony, but makes it effective upon guilty verdict or guilty plea, not at sentencing.
- ▶ Defines felony the same as for habitual purposes: a conviction in any jurisdiction for which the convicted person "might have been imprisoned for at least one year." (includes sentencing as misdemeanor as long as plea/verdict is to felony)

SEX CRIMES

IC 35-50-2-8.5 (P.L. 53, §1-2)

LWOP FOR REPEAT SEX OFFENDERS

- ▶ Allows for Life Without Parole sentence for a person convicted of a Class A Felony sex crime, who has previously been convicted of a Class A Felony sex crime. (Two Strikes and You're Out)
- ▶ Existing law allows for Life Without Parole sentence upon conviction of a serious felony listed in IC 35-50-2-2(b)(4) (usually involving deadly weapon or serious bodily injury), where the person has two prior convictions. (Three Strikes and You're Out)

IC 35-45-4-5 (P.L. 7, §1)

PEEPING / VOYEURISM

- ▶ Raises penalty for Voyeurism from Class B Misdemeanor to Class D Felony for a second offense.

IC 35-42-4-6 (P.L. 124, §1)

CHILD SOLICITATION

- ▶ Expands age brackets so that a person commits Child Solicitation if at least 21 years old and they solicit a child who is 14 or 15 years old.
- ▶ Current law applies if the person is at least 18 years old and the child is under 14 years old. Class D Felony on either. Class C Felony if committed by using computer network.

IC 5-2-6-3.5 (P.L. 64, §1)

SEX OFFENDER REGISTRY

- ▶ Requires the Indiana Criminal Justice Institute to send copy of Sex and Violent Offender Directory every 6 months to a registered neighborhood association. (In addition to schools and child care facilities)

TRAFFIC

IC 9-30-15-3 (P.L. 209, §1)

OPEN CONTAINER

- ▶ Eliminates requirement that driver be 0.04% BAC.
- ▶ Eliminates requirement that vehicle be in operation. Now applies if vehicle is in operation, or while vehicle is located on right-of-way on public highway.
- ▶ Now may be committed by any person in vehicle who possesses, not just driver.
- ▶ Penalty lowered from Class B Infraction to Class C Infraction. (Not considered a "moving traffic violation")
- ▶ Not applicable to bus, taxi, limo, RV, house trailers.
- ▶ Not applicable if locked in console or glove box.
- ▶ Not applicable if behind last upright seat in vehicle without trunk.

IC 9-19-11 (P.L. 67-2004)

SEAT BELT / CHILD RESTRAINT

- ▶ Old law required child 4-11 years old to be in child restraint system or seat belt.
- ▶ New law requires child less than 8 years old to be in child restraint system. If too big to reasonably fit, may be in seat belt. Child 8-15 years old must be in child restraint or seat belt. (Applies to Indiana Licensed Drivers only)
- ▶ If driver licensed out-of-state, child under 16 must be in child restraint or seat belt.
- ▶ New law applies to ALL MOTOR VEHICLES, including trucks and SUV.
- ▶ However, existing law (IC 9-19-10-2) which requires all front seat occupants to wear seat belt, and applies only to passenger motor vehicles (IC 9-13-2-123), exempts trucks and SUV. This loophole was NOT fixed by 2004 or 2005 legislation. Removes rental vehicles and out-of-state registered cars from exemption.
- ▶ No BMV points and no HTV predicate for violations under this chapter. All violations are Class D Infractions. (\$25)
- ▶ Fines sent to ICJI for grants to assist organizations who purchase and distribute child restraint systems to needy.
- ▶ Passed in 2004, but not effective until 07-01-05.

IC 9-21-5-2 (P.L. 151, §2)**SPEED LIMITS**

- ▶ Increases speed limits from 65/60 MPH to 65/70 MPH for cars/trucks on Interstate Highway outside urbanized area. Increases speed limit to 60 on non-Interstate Highway outside urbanized area with 4 lanes and median.
- ▶ Urbanized = 50,000+ population; trucks = 26,000+ lbs.

IC 9-29-10 (P.L. 153, §1-2)**LICENSE REINSTATEMENT FEE**

- ▶ Giving Court specific authority to waive BMV Drivers License Reinstatement Fee upon a finding that driver is indigent and shows proof of future financial responsibility.

WEAPONS / FIREARMS**IC 35-47-13 (P.L. 187, §4)****SEIZURE FROM DANGEROUS PERSON**

- ▶ ADDS NEW STATUTE authorizing the seizure of a firearm from the possession of a dangerous person.
- ▶ "Dangerous Person" is defined as one who presents an imminent risk to himself or another, OR presents a risk of injury to another and consistently fails to take medication to control mental illness, OR documented evidence gives rise to a reasonable belief that they have a propensity for violence or emotionally unstable conduct.
- ▶ Cannot conclude "dangerous" merely because they have mental illness or because they were just released from mental facility.
- ▶ Authorizes search warrant if probable cause affidavit shows person is dangerous and in possession of firearm. Officer shall file return in Court.
- ▶ Authorizes warrantless seizure by officer under same standard, additionally requiring officer to submit probable cause affidavit to Court after seizure.
- ▶ In either case, Court shall conduct hearing within 14 days of filing of return (search warrant) or filing of affidavit (warrantless). State must prove by clear and convincing evidence that person is dangerous and in possession of firearm. If proved, Court may order that law enforcement retain firearm and may suspend the person's license to carry firearm. If owned by a third person, the Court may order return to rightful owner.
- ▶ Person may petition for return of firearm every 180 days. After 5 years and a hearing, the Court may order law enforcement to permanently dispose of firearm.

IC 35-47-1-7; IC 35-47-2-3 (P.L. 49, §1-2)

HANDGUN LICENSE

- ▶ Amends definition of "proper person" to exclude those who have domestic violence convictions and those who are prohibited by court order from possessing a handgun. (Note: Only a "proper person" may be issued a handgun license)
- ▶ Handgun licenses may not be issued to non-citizens unless authorized by federal law.

IC 35-47-6-1.1; IC 35-33-1-1 (P.L. 50, §1-2)

TRANSPORT OF DANGEROUS DEVICE

- ▶ ADDS NEW STATUTE making it A Class A Misdemeanor to deliver luggage to a commercial airline, knowing it contains a firearm or dangerous device, without first making disclosure.
- ▶ Amends arrest statute to authorize warrantless arrest by law enforcement for Undisclosed Transport of a Dangerous Device.

DIVERSION / DEFERRAL PROGRAMS

IC 35-33-5-17 (P.L. 176, §10)

FEES / COSTS

IC 34-28-5-1(f)(4) (P.L. 176, §24)

- ▶ Amends IC 35-33-5-17 to increase court costs for pretrial diversion programs from \$50 to \$120.
- ▶ Amends IC 34-28-5-1(f)(4) to increase court costs for infraction deferral programs from \$25 to \$70.

IC 33-39-1-8 (P.L. 176, §21)

OWI / CDL OFFENSES

- ▶ Prohibits the pretrial diversion of CDL offenses, or offenses following an arrest or charge of OWI.

IC 33-37-8-4, IC 33-37-8-6 (P.L. 176, §20)

PERMISSIBLE USES

- ▶ Limits the purposes for which diversion/deferral funds maybe spent. Includes training, personnel expenses, victim assistance, electronic research, office equipment, investigations, or any other purpose which may benefit prosecutor or law enforcement, and which are agreed upon by County Council and Prosecutor. (Does not include Cadillacs for staff)

IC 33-39-1-8 (P.L. 176, §21)

GUIDELINES

- ▶ Prosecuting Attorneys Council is required to adopt guidelines for the expenditure of funds derived from diversion/deferral programs. Once adopted, funds can only be expended in compliance with guidelines.
- ▶ Individual Prosecutors are required to transmit information on diversion/deferral cases to the Prosecuting Attorneys Council.

INSPECTOR GENERAL

IC 4-2-7 (P.L. 222, §10)

ESTABLISHMENT OF OFFICE

- ▶ Inspector General appointed by Governor; Serves for term of Governor; Can be removed only for cause; Must be attorney; Has statewide jurisdiction.
- ▶ Can receive complaints of bribery, theft, conflict of interest, and other crimes relating to government service, and has a duty to investigate.
- ▶ If evidence of a crime is discovered, it must be referred to local Prosecutor, with relevant documents, and Inspector General must cooperate.
- ▶ Prosecutor may appoint Inspector General as a Special Deputy to assist in prosecution of case.
- ▶ If Prosecutor fails to act within 180 days, Inspector General may be appointed as a Special Prosecutor for the case by the Court of Appeals upon the recommendation by the Governor. Charges can only be filed by Grand Jury Indictment.

MISCELLANEOUS

IC 35-43-4-3 (P.L. 143, §2)

CONVERSION

- ▶ Amends Conversion statute, increasing penalty from Class A Misdemeanor to Class D Felony if exerted unauthorized control over motor vehicle with intent to use in the commission of a crime.
- ▶ Class C Felony if actually used in commission of a crime.

IC 35-43-4-2.7 (P.L. 143, §1)

UNAUTHORIZED ENTRY OF MOTOR VEHICLE

- ▶ CREATES NEW STATUTE: "A person who (1) enters a motor vehicle knowing that the person does not have the permission of an owner, a lessee, or an authorized operator of the motor vehicle to enter the motor vehicle, and (2) does not have a contractual interest in the motor vehicle, commits Unauthorized Entry of a Motor Vehicle, a Class B Misdemeanor."
- ▶ Class A Misdemeanor if "visible steering column damage" or "ignition switch alteration.
- ▶ Class D Felony if vehicle used in commission of crime.

IC 35-43-5-2(a) (P.L. 45, §2)

COUNTERFEITING

- ▶ Amends Forgery statute, creating new crime of Counterfeiting (Class D Felony): making or uttering, or possessing 2 or more written instruments, without authority. Only a knowing or intentional mental state is necessary. No need to show intent to defraud. (Similar to Kentucky Criminal Possession of Forged Instrument)
- ▶ Property used to commit Counterfeiting is subject to forfeiture under IC 35-24-1-1(a).

IC 35-44-1-2 (P.L. 222, §48)

OFFICIAL MISCONDUCT

- ▶ Increases penalty from Class A Misdemeanor to Class D Felony.

IC 35-44-1-7 (P.L. 222, §49)

PROFITEERING FROM PUBLIC SERVICE

- ▶ Increases penalty from Class A Infraction to Class D Felony.

IC 35-43-5-18,19 (P.L. 171, §2-3)

WHIZZINATOR

- ▶ **CREATES NEW CRIME:** Interfering With a Drug or Alcohol Screening Test. Interfering or attempting to interfere with test by use of a device/substance or by substituting or adulterating a substance is a Class B Misdemeanor.
- ▶ Mere possession of device or substance designed or with intent to interfere with a test is 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, 2005 unless otherwise indicated.

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