

NEW LEGISLATION 2007



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IC 35-36-9 (P.L. 99, § 200 to § 213)
IC 35-42-2-1; IC 35-47-4; IC 35-50-2

**MENTAL RETARDATION
MENTAL DISABILITY**

- ▶ In a move toward political correctness in several new statutes:
 - ▶ A “mentally retarded individual” is changed to an “individual with mental retardation.”
 - ▶ A “mentally disabled individual” is changed to an “individual with a mental disability.”

CRIMES AGAINST PERSONS

IC 35-42-2-1 (P.L. 164, § 1)

BATTERY

- ▶ Adds to the list of victims which increase the penalty for bodily injury battery from a Class A Misdemeanor to a Class D Felony: A family or household member, if committed in the physical presence of a child less than 16 years old, knowing that the child may be able to see or hear.
- ▶ Increases the penalty for bodily injury battery to a Class C Felony if committed upon a pregnant woman, knowing she was pregnant.

IC 35-42-2-6 (P.L. 178, § 3)

BATTERY BY BODY WASTE

- ▶ Includes Probation Department employees, Firefighters, and First Responders within list of victims for enhanced Class D Felony offense of Battery by Body Waste. (Already includes employees of law enforcement, jail, DOC, and Courts) Defines “firefighter” to include volunteers and paid. Defines “First Responder” to include state certified emergency responders.
- ▶ Adds Hepatitis C to existing list of HIV, TB, and Hepatitis B, authorizing increased penalty for offense of Battery by Body Waste.

- ▶ Placing blood, semen, urine, or fecal waste on another = Class A Misdemeanor
 - ▶ Knew or recklessly failed to know infected with Hepatitis B, Hepatitis C, HIV, or TB = Class D Felony
 - ▶ And results in transmission of Hepatitis B, Hepatitis C, or TB = Class C Felony
 - ▶ And results in transmission of HIV = Class B Felony

- ▶ Placing blood or other body fluid or waste on officer = Class D Felony.
 - ▶ Knew or recklessly failed to know infected with Hepatitis B, Hepatitis C, HIV, or TB = Class C Felony
 - ▶ And results in transmission of Hepatitis B, Hepatitis C, or TB = Class B Felony
 - ▶ And results in transmission of HIV = Class A Felony

DOMESTIC VIOLENCE

IC 35-47-4-7 (P.L. 118, § 37)
IC 35-41-1-6.3 (P.L. 118, § 33)

RIGHT TO POSSESS FIREARM
CRIME OF DOMESTIC VIOLENCE DEFINED

- ▶ A person convicted of a crime of domestic violence may not possess a firearm.
 - ▶ 5 years after conviction the defendant may petition for restoration.
 - ▶ Court may consider whether defendant completed substance abuse or parenting classes.
 - ▶ Court may condition restoration on specified conditions.
 - ▶ If Court denies, defendant must wait 1 year before filing again.

- ▶ “Crime of domestic violence” is a crime or attempt which has as an element the use of physical force or threatened use of a deadly weapon AND committed against a current or former spouse, parent, guardian, cohabiting partner, or person with whom he shared a child.

IC 35-46-1-4 (P.L. 15, § 1; P.L. 109, § 1)

NEGLECT OF A DEPENDENT

- ▶ In response to Poling v. State, 853 N.E.2d 1270 (Ind.App. September 20, 2006), where Indiana Court of Appeals held statute unconstitutional in violation of proportionality clause, since “cruel” confinement could be punished as either a Class C Felony or a Class D Felony.

- ▶ Makes it a Class C Felony if:
 - ▶ consists of cruel confinement or abandonment that:
 - (A) deprives a dependent of necessary food, water, or sanitary facilities;
 - (B) consists of confinement in an area not intended for human habitation; or
 - (C) involves the unlawful use of handcuffs, a rope, a cord, tape, or a similar device to physically restrain a dependent.

IC 35-42-3-4 (P.L. 164, § 2)

INTERFERENCE WITH CUSTODY

- ▶ Removes requirement that child be “concealed.”
(Former statute required that defendant “take and conceal” or “detain and conceal” child. Now, crime is committed if child is taken detained, or concealed)
- ▶ Adds a defense to the crime of Interference With Custody, if the defendant was threatened or reasonably believed the child was threatened.

SEX CRIMES

IC 35-47-4.5 (P.L. 41, § 20)

POLYGRAPH FOR VICTIMS

- ▶ Law enforcement may not require sex crime victim to submit to polygraph or other truth telling device .
- ▶ Law enforcement may not refuse to investigate or prosecute because the sex crime victim has not submitted to polygraph or other truth telling device .
- ▶ Sex crime victim may voluntarily submit to polygraph or other truth telling device .

IC 35-38-1-7.5 (P.L. 216, § 37 to § 40)

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.
- ▶ Generally 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 felony sex offense after having a previous unrelated sex offense conviction.
- ▶ Requires lifetime parole and 24/7 GPS monitoring device.
- ▶ 2007 changes allow attempts or conspiracy convictions for sex offenses to be used as predicate offenses.
- ▶ Makes clear that two-time offender becomes a sexual predator by operation of law and no new hearings or findings are required.
- ▶ Allows a defendant to file petition to remove designation 10 years after release from incarceration and every year thereafter, but does not allow such a petition if designation is based upon two unrelated convictions.
- ▶ Romeo and Juliet exception - If victim 12 years or older, defendant less than 5 years older than victim, there is an ongoing dating or personal relationship between them, there is no use of force, defendant has no prior unrelated conviction for sex offense, did not use “knockout” drug, and did not have position of authority over victim - the Court may find he is NOT a sexually violent predator.

IC 35-42-4-3 (P.L. 216, § 42)

STATUTORY RAPE

- ▶ It is a defense to Child Molesting that the defendant reasonably believed the child was 16 years old at the time of the conduct.
- ▶ 2007 changes restrict this defense, making it unavailable to the defendant when:
 - ▶ Using or threatening deadly force
 - ▶ Armed with deadly weapon
 - ▶ Results in serious bodily injury, or
 - ▶ Uses “knockout” drug.

IC 35-42-4-9 (P.L. 216, § 45)

STATUTORY RAPE

- ▶ Romeo and Juliet Defense to Sexual Misconduct With a Minor:
 - ▶ Defendant is less than 21 years old and not more than 4 years older than victim.
 - ▶ Defendant and victim had dating or ongoing personal relationship.
 - ▶ No use or threatened use of force
 - ▶ Not armed with a deadly weapon
 - ▶ No serious bodily injury
 - ▶ No use of “knockout” drug
 - ▶ No position of authority or substantial influence over victim
 - ▶ No prior sex offense conviction.
- ▶ that the defendant reasonably believed the child was 16 years old at the time of the conduct.

IC 35-44-1-5 (P.L. 69, § 1)

SEXUAL MISCONDUCT

- ▶ Increases penalty from Class D Felony to Class C Felony for service provider to engage in sexual intercourse or deviate sexual conduct with person in lawful detention. (Jailer/inmate)
- ▶ Class B Felony if person in lawful detention is under 18.

IC 35-50-2-2 (P.L. 216, § 50)

MANDATORY MINIMUM SENTENCE

- ▶ No longer requires mandatory minimum sentence for Class B Felony Child Molesting, unless
 - ▶ Victim is less than 12 years old,
 - ▶ Defendant is less than 5 years older than victim.
 - ▶ Defendant and victim had dating or ongoing personal relationship.
 - ▶ Defendant had no position of authority or substantial influence over victim
 - ▶ No prior sex offense committed.
- ▶ Class A Felony Child Molest still has 30 year mandatory minimum.

IC 35-38-1-28 (P.L. 216, § 35)

SEXUAL ASSAULT RESPONSE TEAMS (S.A.R.T.)

- ▶ If not already existing, the Prosecuting Attorney shall appoint a Sexual Assault Response Team (S.A.R.T.) In the county, or shall join with other counties.

- ▶ General responsibility of S.A.R.T. is to develop a plan establishing protocols for the collection, preservation, secure storage, and destruction of samples in sexual assault cases.
- ▶ Indiana Criminal Justice Institute shall administer “secure storage fund” and may delay implementation until funding becomes available.

ANIMALS

IC 35-46-3-0.5 (P.L. 171, § 5)

ANIMAL CRUELTY

- ▶ Existing law:
 - ▶ A person who knowingly or intentionally beats a vertebrate animal commits cruelty to an animal, a Class A misdemeanor. However, the offense is a Class D felony if:
 - (1) the person has a previous, unrelated conviction under this section;
 - (2) the person knowingly or intentionally tortures or mutilates a vertebrate animal; or
 - (3) the person committed the offense with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.
- ▶ 2007 changes for the first time gives definition of terms:
 - ▶ "Abandon" means to desert an animal or to leave the animal permanently in a place without making provision for adequate long term care of the animal. The term does not include leaving an animal in a place that is temporarily vacated for the protection of human life during a disaster.
 - ▶ "Beat" means to unnecessarily or cruelly strike an animal, or to throw the animal against an object causing the animal to suffer severe pain or injury. The term does not include reasonable training or disciplinary techniques.
 - ▶ "Mutilate" means to wound, injure, maim, or disfigure an animal by irreparably damaging the animal's body parts or to render any part of the animal's body useless. The term includes bodily injury involving: (A) serious permanent disfigurement; (B) serious temporary disfigurement; (C) permanent or protracted loss or impairment of the function of a bodily part or organ; or (D) a fracture.
 - ▶ "Neglect" means to: (A) endanger an animal's health by failing to provide the animal with food or drink, if the animal is dependent upon the person for the provision of food or drink; or (B) restrain an animal for more than a brief period by the use of a rope, chain, or tether that: (i) is less than three (3) times the length of the animal; (ii) is too heavy to permit the animal to move freely; or (iii) causes the animal to choke.
 - ▶ "Torture" means: (A) to inflict extreme physical pain or injury on an animal with the sole intent of increasing or prolonging the animal's pain; or (B) to administer poison to a cat or dog, or expose a cat or dog to a poisonous substance with the intent that the cat or dog ingest the substance and suffer harm, pain, or physical injury.
- ▶ Fish exempted from list of vertebrate animals.
- ▶ Exempted also are vertebrate animals endangering livestock or domestic animals, or damaging property.

IC 35-46-3-8 (P.L. 171, § 9)

ANIMAL FIGHTING

- ▶ Increases the penalty from a Class A Misdemeanor to a Class D Felony for possession of an animal for the purpose of using in animal contest.

IC 35-46-3-12 (P.L. 171, § 10)

ANIMAL CRUELTY

IC 35-46-3-12.5 (P.L. 171, § 11)

- ▶ **CREATES NEW CRIME:** A person who knowingly or intentionally beats or kills a vertebrate animal with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member commits domestic violence animal cruelty, a Class D felony.

IC 35-46-3-14 (P.L. 171, § 12)

BESTIALITY

- ▶ **CREATES NEW CRIME:** A person who knowingly or intentionally performs an act involving:
 - (1) a sex organ of a person and the mouth or anus of an animal;
 - (2) a sex organ of an animal and the mouth or anus of a person;
 - (3) any penetration of the human female sex organ by an animal's sex organ; or
 - (4) any penetration of an animal's sex organ by the human male sex organ;commits bestiality, a Class D felony.

IC 15-5-12-3 (P.L. 220, § 1)

STRAY DOGS / LEASH LAW

- ▶ “This subsection does not apply to a nonaggressive dog that goes beyond the owner's premises onto agricultural or forested land. An owner of a dog commits a Class D infraction if the owner of the dog allows the dog to stray beyond the owner's premises, unless the dog is under the reasonable control of an individual or the dog is engaged in lawful hunting and accompanied by the owner or a custodian of the dog. However, the offense is a Class C infraction if the owner has a prior unrelated judgment for a violation of this subsection.”

IC 15-5-12-3.5 (P.L. 220, § 2)

WOLF HYBRIDS / COYDOGS

- ▶ The owner of a wolf hybrid or coydog commits a Class B Infraction if not in a secure enclosure or on a leash less than 8 feet in length.
 - ▶ Class B Misdemeanor if it goes upon land of another and causes property damage.
 - ▶ Class A Misdemeanor if a second offense.
 - ▶ Class D Felony if third offense, or if causes serious bodily injury.
 - ▶ Class C Felony if results in death.
- ▶ County may adopt an ordinance prohibiting possession of wolf hybrid or coydog, or requiring more stringent conditions on possession.

CRIMES AGAINST PROPERTY

IC 35-43-1-5 (P.L. 137, § 35)

POISONING / TAMPERING WITH WATER SUPPLY

▶ **CREATES NEW CRIME:**

A person who, with the intent to cause serious bodily injury, tampers with a:

(1) water supply;

(2) water treatment plant (as defined in IC 13-11-2-264); or

(3) water distribution system (as defined in IC 13-11-2-259);

commits tampering with a water supply, a Class B felony. However, the offense is a Class A felony if it results in the death of any person.

(b) A person who recklessly, knowingly, or intentionally poisons a public water supply with the intent to cause serious bodily injury commits poisoning, a Class B felony.

IC 35-45-3-2 (P.L. 137, § 36)

LITTERING

- ▶ Increases the penalty for Littering (IC 35-45-3-2) from a Class B Infraction to a Class A Infraction if within 100 feet of a body of water. (Minimum \$1,000 to \$10,000 fine)

MISSING PERSONS

IC 5-2-17 (P.L. 92, § 1)

MISSING PERSONS

▶ **CREATES NEW CHAPTER INDIANA CODE 5-2-17**

- ▶ A law enforcement agency shall accept immediately a report made in person concerning a missing person, even if:

▶ (1) The missing person is an adult.

▶ (2) It does not appear that the person's disappearance is the result of a crime.

▶ (3) It does not appear that the missing person was within the jurisdiction served by the law enforcement agency at the time the person went missing. However, the law enforcement agency shall advise the person reporting the missing person to make the report to a law enforcement agency that has jurisdiction in the place that the missing person was last seen, or, if that place is unknown, to a law enforcement agency that has jurisdiction in the place where the missing person resides.

▶ (4) It appears that the missing person's disappearance may be voluntary.

▶ (5) The person reporting is unable to provide all necessary information.

▶ (6) The person reporting is not a family member.

- ▶ Law enforcement may accept a missing person report NOT made in person (telephone, mail, internet) if otherwise consistent with law enforcement policy.

- ▶ Upon receipt of a report of a missing person, a law enforcement agency shall attempt to gather relevant information that will assist in locating the missing person. This information must include the following, if available:
 - ▶ (1) The name of the missing person, including any aliases.
 - ▶ (2) The date of birth of the missing person.
 - ▶ (3) Any identifying marks, such as a birthmark, mole, tattoo, or scar.
 - ▶ (4) The height and weight of the missing person.
 - ▶ (5) The gender of the missing person.
 - ▶ (6) The race of the missing person.
 - ▶ (7) The color of the missing person's hair at the time of the disappearance, and, if applicable, the natural color of the missing person's hair.
 - ▶ (8) The eye color of the missing person.
 - ▶ (9) Any prosthetic devices or surgical or cosmetic implants of the missing person.
 - ▶ (10) Any physical anomalies of the missing person.
 - ▶ (11) The blood type of the missing person.
 - ▶ (12) The driver's license number of the missing person.
 - ▶ (13) A recent photograph of the missing person.
 - ▶ (14) A description of the clothing that the missing person was wearing when last seen.
 - ▶ (15) A description of any other items, including jewelry or other accessories, that the missing person may have possessed at the time of the disappearance.
 - ▶ (16) Contact information for the missing person, including electronic mail addresses and cellular telephone numbers.
 - ▶ (17) Why the person submitting the report believes that the missing person is missing.
 - ▶ (18) The name and location of the missing person's school or employer.
 - ▶ (19) The names and locations of the missing person's dentist and physician.
 - ▶ (20) Any reason to believe that the missing person's disappearance was not voluntary.
 - ▶ (21) Any reason to believe that the missing person may be in danger.
 - ▶ (22) A detailed description of the missing person's vehicle.
 - ▶ (23) Information concerning:
 - (A) the person with whom the missing person was last seen; or (B) a possible abductor.
 - ▶ (24) The date of last contact with the missing person.
 - ▶ (25) Any other information that will assist in locating the missing person.
- ▶ Law enforcement may get medical or dental records, x-rays, or additional photographs. (Still must obtain necessary subpoena, or search warrant)
- ▶ Only after a diligent investigation reveals that a missing person is either voluntarily missing or not missing may the investigation be stopped. However, the investigative steps and the results of the investigation that led to such conclusion must be documented.
- ▶ Law enforcement may disclose whereabouts of missing person to person who made report only if given permission by the "missing person."
- ▶ Law enforcement may release photo of missing person without written authorization.

- ▶ Law enforcement may notify ISP and request assistance.
- ▶ Creates new category of “high risk missing persons” whose whereabouts are not known and who may be at risk of injury or death. The term includes the following:
 - ▶ (1) Missing as the result of abduction by a stranger.
 - ▶ (2) Disappearance may be the result of the commission of a crime.
 - ▶ (3) Disappearance occurred under circumstances that are inherently dangerous.
 - ▶ (4) Missing for more than thirty (30) days.
 - ▶ (5) Missing and in need of medical attention or prescription medication.
 - ▶ (6) Missing and at risk due to abduction by a noncustodial parent.
 - ▶ (7) Missing and is mentally impaired.
 - ▶ (8) Missing and is less than 21 years of age.
 - ▶ (9) Missing and was previously the victim of a threat of violence or an act of violence.
 - ▶ (10) Missing and determined by a law enforcement agency to be:
 - (A) at risk of injury or death; or
 - (B) a person that meets any of the descriptions in subdivisions (1) through (9).
 - ▶ (11) Missing and is an endangered adult (as defined in IC 12-7-2-131.3).
- ▶ Law enforcement shall determine as soon as possible whether the missing person is a high risk missing person.
- ▶ Upon receiving report of “high risk missing person,” law enforcement SHALL:
 - ▶ Enter information into NCIC within 2 hours of report, and any other appropriate database within 24 hours of report.
 - ▶ Ensure that person entering medical information has appropriate training to understand and enter medical information.
 - ▶ Immediately instruct officers to be on alert for missing person.
 - ▶ Immediately enter all information into appropriate state and federal databases.

IC 35-44-2-2 (P.L. 92, § 5)

FALSE INFORMING

- ▶ Adds “false report of a missing person” to the list of acts constituting False Informing. (Class B Misdemeanor) (Class A Misdemeanor if substantially hinders law enforcement or results in harm to an innocent person)

JUVENILES / SCHOOLS

IC 31-32-2-2.5 (P.L. 120, § 1)

JUVENILE SELF-INCRIMINATION

- ▶ Information provided by child during court ordered or voluntary mental health screening, assessment, evaluation, or treatment, cannot be used as evidence against child.
- ▶ Not applicable to statements relating to homicide or intentions to commit a crime.
- ▶ Not applicable to probation revocations or if child asserts insanity defense.

**IC 20-30-11 (P.L. 67, § 1); IC 31-39-9 (P.L. 67, § 6)
IC 31-37-4-3 (P.L. 67, § 2); IC 35-50-8 (P.L. 67, § 7)**

JUVENILES / SCHOOLS

- ▶ If student is interrogated on school property by law enforcement, and student is a suspect and under 18 years old, the school must notify parent immediately, and not later than 12 hours after the interrogation.
- ▶ Does not require presence at interrogation.
- ▶ Not applicable if student at least 18 years old.
- ▶ If school has a policy already in place, it must apply to all students, even if over 18 years old.

- ▶ If child is taken into custody, arresting law enforcement agency shall notify his school within 48 hours of reason child was taken into custody.
 - ▶ Applies only if child is taken into custody for one of 25 listed crimes, including any drug, battery, or sex crime)

- ▶ Allows exchange of juvenile records between a court, law enforcement, DOC, FSSA, and schools

- ▶ Upon conviction or adjudication of a student for a Class A, B, C Felony, or 2 Class D felonies, The presiding Judge shall notify the school in writing within 7 days of the trial, plea agreement, or adjudication.
 - ▶ Must also notify school of any future modification of sentence.

IC 35-38-1-28 (P.L. 216, § 35)

JUVENILE JURISDICTION

- ▶ Attempted Murder added to list of crimes over which Juvenile Court has no jurisdiction if the child is 16 years old or older.

IC 5-2-17 (P.L. 92, § 1)

SCHOOLS

- ▶ Safe school committee shall provide a copy of the floor plans for each building located on the school's property that clearly indicates each exit, the interior rooms and hallways, and the location of any hazardous materials located in the building to the law enforcement agency and the fire department that have jurisdiction over the school.

- ▶ School Corporation may establish School Corporation Police Department.
 - ▶ Officers must have LEA pre-basic and basic training, and yearly CLE.
 - ▶ Existing officers have 3 years to complete training requirements.

CRIMINAL PROCEDURE

IC 35-34-1-5 (P.L. 178, § 1)

AMENDMENTS TO INFORMATION

- ▶ Allows for amendments to the Information (in matters of substance or form) AT ANY TIME BEFORE TRIAL, as long as the substantial rights of the defendant are not prejudiced.
- ▶ “Fixes” problem created by Court of Appeals in Fajardo v. State, 859 N.E.2d 1201 (January 16, 2007), which interpreted IC 35-34-1-5 and held that amendment to Information to add an additional count of Child Molesting was reversible error since it did not come 30 days before Omnibus Date. (Even though five months before eventual trial)

IC 35-38-1-1.3 (P.L. 178, § 2)

SENTENCING STATEMENTS

- ▶ Requires the trial court, after a felony sentencing, to issue a sentencing statement of the “reasons for selecting the sentence that it imposes.”

IC 35-50-2-1.3 (P.L. 178, § 4)

CONSECUTIVE SENTENCING

- ▶ Makes clear (almost) that trial court is not required to sentence to the advisory (presumptive) sentence when ordering consecutive sentences, as long as the crimes do not arise out of a single episode of criminal conduct.

IC 35-38-1-28 (P.L. 216, § 38)

FINGERPRINTING

- ▶ Immediately after sentencing, the court shall order the defendant to be fingerprinted.
- ▶ The court shall order a law enforcement officer to provide the fingerprints to the prosecuting attorney and the state police department.
- ▶ Not required if previously arrested and processed at the county jail.
- ▶ A clerk, court, law enforcement officer, or prosecuting attorney is immune from civil liability unless willful or wanton misconduct or gross negligence.

IC 35-38-4-7 (P.L. 234, § 71)

RETRIAL - EXPENSE REIMBURSEMENT

- ▶ Where defendant is convicted and wins appeal, and Indiana Supreme Court or the Indiana Court of Appeals remand case for new trial, the State shall reimburse the trial court, the prosecuting attorney, and public defender for expenses in conducting new trial up to \$50,000 per retrial. Such expenses may not include salaries.

IC 33-28-5 (P.L. 118, § 2 to § 21)
IC 33-37-10-1 (P.L. 118, § 26)

JURY RULES

- ▶ Makes statutory amendments in conformity with new Indiana Supreme Court Jury Rules.
 - ▶ Disqualifies a law enforcement officer from serving on a jury.
 - ▶ Juror must be citizen at least 18 years old and a resident of the County.
 - ▶ Juror must be able to read, speak, and understand English language.
 - ▶ Juror must be able to render satisfactory jury service despite mental or physical disability.
 - ▶ Must make reasonable accommodation to allow disabled juror to serve.
 - ▶ Convicted felon may serve, but only if right to vote has been restored.
 - ▶ May not serve if juror served during previous 365 days in a case resulting in a verdict.
 - ▶ Prospective juror may defer service one time upon a showing of hardship, extreme inconvenience, or necessity.
 - ▶ A prospective juror who serves until jury selection is complete, but is not chosen, may not be selected for another jury panel until all nonexempt persons in the jury pool are called.
- ▶ Changes name of Jury Commissioners to Jury Administrators.
- ▶ Repeals IC 35-37-1-7 authorizing the Sheriff to summon talesmen from outside courthouse.
- ▶ Prospective Juror is paid \$15 per day for appearance, \$40 per day if selected as juror
- ▶ Jurors paid mileage at state rate. (42¢ per mile)
 - ▶ County may adopt an ordinance authorizing supplemental payment to jurors.
 - ▶ County may adopt an ordinance authorizing payment for parking fees instead of mileage.

IC 35-33-8-3.2 (P.L. 1, § 226)

BAIL

- ▶ Allows the trial court, when a cash bail is set, to require the person posting the bail to execute an agreement allowing the Court to take from that amount court costs, fines, fees, and restitution upon conviction.

SEATBELTS

IC 9-19-10 (P.L. 214, § 6 to § 9)

SEATBELTS

- ▶ Eliminates “truck” loophole. “Each occupant of a motor vehicle equipped with a safety belt that [is standard equipment] shall have a safety belt properly fastened about the occupant’s body at all times when the vehicle is in forward motion.”
- ▶ Law enforcement may stop a vehicle to determine compliance with this chapter.
 - ▶ However, a vehicle, the contents, the driver, or a passenger in a vehicle may not be inspected, searched, or detained solely because of a violation of this chapter.
- ▶ A law enforcement agency may not use a safety belt checkpoint to detect and issue a citation for a person’s failure to comply with this chapter. (Legislative trade-off for eliminating “truck” loophole)

MISCELLANEOUS

IC 35-33-5-5 (P.L. 1, § 225)

DISPOSITION OF PROPERTY

- ▶ Allows for the destruction by law enforcement of chemicals, controlled substances, or “chemically contaminated equipment” without a Court Order IF “a sufficient quantity” kept to show association with illegal manufacture of drugs, photographs are taken and a chemical inventory completed.

IC 35-33-5-5.1 (P.L. 227, § 70)

GAMBLING DEVICES

- ▶ Wathen Bill, related to the return of gambling devices seized by law enforcement but never charged by the Prosecutor (Mariott Inn in Clark County) is repealed.

IC 35-45-5 (P.L. 227, § 36 TO § 66)

GAMBLING

- ▶ CREATES NEW CRIME OF Maintaining a Professional Gambling Site.
 - ▶ A person who knowingly or intentionally accepts or offers to accept for profit, money, or other property risked in gambling on an electronic gaming device possessed by the person commits maintaining a professional gambling site.
 - ▶ Class D Felony elevated to Class C Felony for 2nd conviction.
- ▶ Possession of Electronic Gaming Device is a Class A Infraction. (Up to \$10,000 / Per Se)
- ▶ "Electronic gaming device" means any device which for consideration affords the player an opportunity to obtain money or other items of value, the award of which is determined by chance even if accomplished by some skill, whether or not the prize is automatically paid by the contrivance.
 - ▶ Includes any slot machine, video card game
 - ▶ Toy crane and similar devices are excluded as long as less than \$25 fmv.
- ▶ For purposes of this chapter:
 - (1) a card game; or
 - (2) an electronic version of a card game;is a game of chance and may not be considered a bona fide contest of skill.
- ▶ Gaming Commission given authority to revoke alcohol permits and retail merchant certificates upon showing of violation of illegal gambling.
- ▶ Gaming Commission funded for 16 Gaming Control Officers.

- ▶ Expands scope from Class A, B, C Felony Controlled Substances Offenses to also include: Murder, Kidnapping, Confinement, Robbery, Arson, Child Solicitation, Human Trafficking, Escape as a Class B or C Felony, Offenses relating to Weapons of Mass Destruction, any Attempt or Conspiracy of the above offenses, and substantially similar crimes in any jurisdiction.
 - ▶ Changes “telephonic or telegraphic communication to “electronic communication.
 - ▶ Adds definition of “Electronic Communication” as anything transmitted by “wire, radio, or an electromagnetic, a photoelectronic, or a photo-optical system.”
 - ▶ Specifically excludes from application the interception of radio transmissions not scrambled or encrypted.
 - ▶ Allows Chief Deputy Prosecutor to apply for Wiretap Warrant if he has specific authorization from Prosecuting Attorney.
 - ▶ Allows other law enforcement agencies to operate or monitor wiretap equipment, but only under supervision of State Police. In such case, such agency shall reimburse ISP for expenses.
 - ▶ ISP Superintendent may terminate wiretap if he determines that the basis for the interception is without merit.
 - ▶ Prosecuting Attorney may apply for wiretap warrant by phone, by fax, or in person under oath - as well as by written search warrant / affidavit. The Prosecuting Attorney shall read to the Court from a search warrant form, and the Judge shall direct that the Prosecuting Attorney sign the name of the Judge on the Warrant. Such Warrant expires in 24 hours from issuance.
 - ▶ Increases the time for authorized interception from 14 to 30 days. Increases the time from issuance that the interception must occur from 3 to 10 days.
- * This is a summary and should not be relied upon. Please refer to text of statute.
- * All statutes are effective July 1, 2007 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.