

NEW LEGISLATION

1995



Steve Stewart
Clark County
Prosecuting Attorney
285-6264 / FAX 285-6259

CRIMES AGAINST PERSONS

IC 35-42-2-6 (P.L. 298, § 1)

- ▶ Creates NEW crime of Battery by Body Waste.
- ▶ “A person who knowingly or intentionally in a rude, insolent, or angry manner places blood or another body fluid or waste on a law enforcement officer or corrections officer identified as such and while engaged in the performance of official duties, or coerces another person to place blood or another body fluid or waste on a law enforcement officer or corrections officer, commits battery by body waste, a Class D felony.”
- ▶ Penalty increased to Class C Felony if the person “knew or recklessly failed to know” they were infected with hepatitis B, HIV, or tuberculosis; Class B Felony if it then results in transmission of hepatitis B or tuberculosis; Class A Felony if it then results in transmission of HIV.

IC 35-42-2-5 (P.L. 297, § 1)

- ▶ Creates NEW crime of Overpass Mischief.
- ▶ (b) “A person who knowingly, intentionally, or recklessly:
(1) drops, causes to drop, or throws an object from an overpass; or
(2) with intent that the object fall, places on an overpass an object that falls off the overpass;
causing bodily injury to another person, commits overpass mischief, a Class C felony.”
(Class B felony if serious bodily injury results)
- ▶ “Overpass” defined as a “bridge or other structure designed to carry vehicular or pedestrian traffic over any roadway, railroad track, or waterway.”

IC 35-42-2-1 (P.L. 59, § 2)

- ▶ Increases age from 13 to 14 for victim of Class D Felony Battery, so that a battery committed by a person at least 18 resulting in bodily injury to a person under 14, commits a Class D Felony; Class B Felony if serious bodily injury results.

IC 35-46-1-15.1 (P.L. 303, § 1)

- ▶ Adds subsection (b), mandating a nonsuspendable 5-day term of imprisonment for a 2nd conviction for Invasion of Privacy which results in bodily injury. Sentence may be intermittent, but at least 48 hours must be consecutive, and good-time credit does not apply.

CRIMES AGAINST PROPERTY

IC 35-43-5-5 (P.L. 300, § 1)

- ▶ Increases penalty for Check Deception from A Misdemeanor to D Felony if check is at least \$2,500 and for a motor vehicle.

IC 35-43-9-1 to IC 35-43-9-9 (P.L. 300, § 2)

- ▶ Creates NEW crime of Conversion or Misappropriation of Title Insurance Escrow Funds.
- ▶ Title insurer or employee who converts money held in title insurance escrow account during residential real property transaction commits D Felony.; C Felony if amount is more than \$10,000; B Felony if amount is at least \$100,000.
- ▶ Court “shall” order restitution at sentencing pursuant to IC 35-50-5-3.

IC 35-50-5-3 (P.L. 300, § 3)

- ▶ Requires Clerk to notify Department of Insurance upon a restitution order for conviction of Conversion or Misappropriation of Title Insurance Escrow Funds.
- ▶ Court “may” order restitution upon conviction.

IC 35-43-4-7 (P.L. 299, § 1)

- ▶ Creates NEW crime of Vending Machine Vandalism.
- ▶ Class B Misdemeanor to damage vending machine, or remove property without paying; Class A Misdemeanor if damage or property removed over \$250.

IC 35-45-12 (P.L. 302)

- ▶ Creates NEW crime of Possession or Use of a Code Grabbing Device. (Class C Misdemeanor) Defined as a device that disarms a security alarm system or automatic door locking system)

PAROLE

IC 11-13-3-3 (k) (P.L. 147, § 1)

- ▶ Parole Board is no longer required to hold yearly parole hearings on inmates eligible for parole, but may instead may hold parole hearings every 5 years. The Board may hold a hearing earlier than 5 years only if special circumstances exist.

CONTROLLED SUBSTANCES

IC 35-48-4-1 (P.L. 296, § 3)

- ▶ Makes Dealing in Cocaine or a Narcotic Drug a Class A Felony if delivered in any amount or financed in a public park. (or on school bus or within 1000' of school)

IC 35-48-4-2 (P.L. 296, § 4)

- ▶ Makes Dealing in a Schedule I, II, or III Controlled Substance a Class A Felony if delivered in any amount or financed in a public park. (or on school bus or within 1000' of school)

IC 35-48-4-3 (P.L. 296, § 5)

- ▶ Makes Dealing in a Schedule IV Controlled Substance a Class B Felony if delivered in any amount or financed in a public park. (or on school bus or within 1000' of school)

IC 35-48-4-10 (P.L. 296, § 9)

- ▶ Makes Dealing in Marijuana, Hash Oil, or Hashish a Class C Felony if delivered in any amount or financed in a public park. (or on school bus or within 1000' of school)

IC 35-48-4-4 (P.L. 296, § 6)

- ▶ Makes Dealing in a Schedule V Controlled Substance a Class B Felony if delivered in any amount or financed in a public park. (or on school bus or within 1000' of school)

IC 35-48-4-6 (P.L. 296, § 7)

- ▶ Makes Possession of Cocaine or a Narcotic Drug a Class B Felony if possession in a public park of less than 3 grams; a Class A Felony if possession in a public park of at least 3 grams. (or on school bus or within 1000' of school)

IC 35-48-4-7 (P.L. 296, § 8)

- ▶ Makes Possession of a Schedule I, II, III, or IV Controlled Substance a Class C Felony if possession in a public park. (or on school bus or within 1000' of school)

IC 5-2-11-5 (P.L. 62, § 2)

- ▶ Allows local drug free community funds to be allocated for out-of-county programs. (25% for prevention and education, 25% for intervention and treatment, 25% for criminal justice services, and the remainder for any of the above)

ABORTION

IC 16-34-2-1.1 (P.L. 187, § 4)

- ▶ Requires that 18 hours before an abortion, the pregnant woman must be given certain information relating to abortion procedures, risks, available alternatives, and even an offer to provide a picture of a fetus.

SEX CRIMES

IC 11-10-8-2 (P.L. 144, § 1) (Effective April 24, 1995)

- ▶ Makes sex offenders ineligible for certain minimum security DOC assignments.

IC 11-12-5-2 (P.L. 144, § 2) (Effective April 24, 1995)

- ▶ Makes sex offenders ineligible for temporary release for work, academic training, or treatment from county jails.

IC 35-38-2.5-7 (P.L. 144, § 3) (Effective April 24, 1995)

- ▶ Makes sex offenders ineligible for home detention as a condition of probation.

IC 35-38-2.6-1 (P.L. 144, § 4) (Effective April 24, 1995)

- ▶ Makes all sex offenders, not just Class A and Class B felons, ineligible for placement in community corrections program.

IC 5-2-12-4, IC 5-2-12-5 (P.L. 63, § 1-2)

- ▶ Makes sex offender registration applicable only to those convicted AFTER June 30, 1994; adds Sexual Misconduct With a Minor as a Class A or Class B Felony to the list of convictions for which sex offenders must register.
- ▶ A sex offender's duty to register expires 10 years after release from prison, parole, or probation, whichever occurs last.

IC 35-45-4-5 (P.L. 301, § 1)

- ▶ Adds "without the consent of the other person" to the crime of Voyeurism. Increases penalty from B Misdemeanor to D Felony if committed with camera or video.

IC 35-49-3-3 (P.L. 59, § 4)

- ▶ Increases penalty for Dissemination of Matter Harmful to Minors from Class A Misdemeanor to Class D Felony.

IC 35-42-4-4 (P.L. 59, § 3)

- ▶ Raises the age from 16 to 18 under which sexual conduct depicted may constitute Child Exploitation or Possession of Child Pornography.

VICTIM RIGHTS

CONSTITUTIONAL AMENDMENT - ARTICLE I, § 13(B)

- ▶ Victims of crime, as defined by law, shall have the right to be treated with fairness, dignity, and respect throughout the criminal justice process; and, as defined by law, to be informed of and present during public hearings and to confer with the prosecution, to the extent that exercising these rights does not infringe upon the constitutional rights of the accused. (Passed 1994 & 1995 legislature; now must pass statewide referendum before it becomes effective).

SCHOOLS

IC 5-2-10.1 (P.L. 61, § 1)

- ▶ Establishes the Indiana Safe Schools Fund, administered by the Indiana Criminal Justice Institute, from which schools may receive grant funds to combat violence or truancy.

IC 20-8.1-5.1-7 (P.L. 61, § 3)

- ▶ Authorizes schools to adopt disciplinary rules which include appropriate dress codes.

IC 20-8.1-5.1-10 (P.L. 61, § 4)

- ▶ Student **MUST** be expelled for 1 year if in possession of firearm; Student **MAY** be expelled up to 1 year if in possession of other deadly weapon. Requires the Superintendent to notify the Prosecuting Attorney upon expulsion.

IC 33-19-6-16 (P.L. 61, § 6)

- ▶ Upon conviction of a crime where the possession or use of a firearm is an element, the Court shall assess a "Safe Schools Fee" of \$200 - \$1,000, all of which is distributed by the City or County Clerk to the Auditor of State.

BOATING AND WATER SAFETY

IC 35-41-1-1 (P.L. 295, § 1)

- ▶ Extends Indiana criminal jurisdiction to include maximum allowable under Indiana Constitution; Concurrent jurisdiction with bordering states on Ohio River (Kentucky) and Wabash River (Illinois).

IC 9-30-5-10 (P.L. 57, § 3)

- ▶ A person convicted of Operating a Motorboat While Intoxicated is subject to having their Driver's License suspended the same as OVWI. (No priors or a prior conviction more than 10 years old = 90 days to 2 years suspension; a prior conviction 5-10 years ago = 180 days to 2 years suspension; a prior conviction less than 5 years ago = 1 year to 2 years suspension; a conviction causing serious bodily injury = 2 years to 5 years suspension)

IC 9-30-6-8 (P.L. 57, § 4)

- ▶ A person charged with Operating a Motorboat While Intoxicated is subject to having their Driver's License suspended immediately, the same as OVWI.

IC 14-15-11-9 to IC 14-15-11-17 (P.L. 57, § 8)

- ▶ Requires a person to have a valid Driver's License to operate a motorboat on public waters, except that a 15 year old may do so if issued a BMV ID card. A person 21 years old and suspended may operate a motorboat if issued a BMV ID card before January 1, 1996.

- ▶ Operating a motorboat on public waters without a Driver's License or BMV ID is punishable as a Class C Infraction (up to \$500). If the person's Driver's License was suspended for reasons other than a conviction, it is a Class A Infraction (up to \$10,000). If the person has a prior conviction under this section, or of Driving While Suspended, it is a Class A Misdemeanor (up to 1 year / \$5,000). If the person was suspended due to a conviction, it is a Class A Misdemeanor (up to 1 year / \$5,000). 60 days of the sentence is nonsuspendable, and motorboat privileges shall be suspended from 90 days to 2 years. In any prosecution, the burden is on the defendant to show a valid Driver's License.
- ▶ Authorizes BMV to adopt rules relating to assessment of "points" for watercraft violations.

IC 14-15-12-1 to IC 14-15-12-13 (P.L. 57, § 9)

- ▶ Makes it a Class C Infraction (up to \$500) to violate certain specific watercraft safety laws.
- ▶ Makes it a Class C Misdemeanor (up to 60 days / \$500) "to operate a personal watercraft on public waters in a way that endangers human life, human physical safety, or property."

JUVENILES

IC 31-6-4-6.5 (P.L. 269, § 2)

IC 31-6-4-15.4 (P.L. 269, § 3) IC 31-6-4-15.9(k) (P.L. 269, § 4)

- ▶ A juvenile court may not place a child in detention, secure, or shelter facility outside the child's county of residence, unless a comparable facility inside the county is unavailable.

IC 31-6-2-1.1 (P.L. 269, § 1)

- ▶ Adds Criminal Deviate Conduct to the list of crimes over which the juvenile court has no jurisdiction if committed by a 16 or 17 year old. The State files such charges directly in adult court, without the necessity of a waiver hearing. (Other "direct filing" crimes include: Murder, Kidnapping, Rape, Robbery with deadly weapon or resulting in bodily injury, Carjacking, Criminal gang activity or intimidation, Carrying a Handgun Without a License, Children and Handguns, and Dealing in a Sawed-Off Shotgun; also any crime if the juvenile was previously waived in the past year and resulted in conviction in adult court; also any crime properly joined with 1-6 in bold)

IC 31-6-2-1.1 (P.L. 268, § 2)

- ▶ Changes the list of crimes over which the juvenile court has no jurisdiction to include any crime properly joined with ANY other crime listed. (no longer limited to 1-6)
- ▶ Gives the juvenile court exclusive jurisdiction over all OVWI committed by a juvenile, whether a misdemeanor or a felony.
- ▶ Gives the juvenile court exclusive jurisdiction over all misdemeanor traffic offenses committed by a juvenile less than 16 years of age.
- ▶ IC 31-6 does not apply to misdemeanor traffic offenses committed by a 16 or 17 year old, unless OVWI.
- ▶ IC 31-6 does not apply to infraction violations committed by a juvenile, unless under IC 7.1-5-7.
- ▶ IC 31-6 does not apply to any crimes committed by a juvenile that has previously been waived into adult court at any time.

IC 31-6-4-15.9 (P.L. 269, § 4)

- ▶ If found to be a delinquent child, the court may order a fixed determinate sentence to the DOC, not longer than the date the child becomes 18, which cannot be reduced by the DOC. (Only if the child is 13, 14, or 15 years old and committed Murder, Kidnapping, Rape, Criminal Deviate Conduct, or Robbery with deadly weapon or resulting in bodily injury)
- ▶ If found to be a delinquent child, the court may order a fixed determinate sentence to the DOC, not longer than 2 years, which cannot be reduced by the DOC. (Only if the child is 14 or over, has 2 prior unrelated felony adjudications, and committed a felony against the person, a Class A or B Felony controlled substance offense, or a Class A or B Felony Burglary)

IC 31-6-2-3 (P.L. 268, § 3)

- ▶ After a juvenile is placed with DOC, the DOC must send notice to the court 10 days before release of the juvenile. Within 30 days after notice, the court may reinstate jurisdiction over the child to modify dispositional decree. While in the DOC, the court may reinstate jurisdiction and order parents to participate in DOC programs.

IC 31-6-4-9 (P.L. 268, § 5)

- ▶ The child, the child's parent or guardian, and the Prosecuting Attorney are parties and have all rights provided under the Indiana Rules of Trial Procedure.

IC 31-6-4-13 (P.L. 268, § 6)

- ▶ If emancipated, only the child need consent to a factfinding hearing held immediately after the Initial Hearing.

IC 31-6-7-3 (P.L. 268, § 9)

- ▶ If emancipated by marriage or court order, the child can consent to a waiver of Miranda and other constitutional rights, without parents or counsel.

IC 31-6-7-10 (P.L. 268, § 10)

- ▶ Delinquency proceedings on a felony are OPEN to the public; may be closed during the testimony of a child witness or victim relating to sexual matters.

IC 31-6-8-1 (P.L. 268, § 12)

- ▶ Juvenile court records relating to delinquency proceedings are OPEN to the public if juvenile is alleged to have committed any felony, or 2 misdemeanors if the child is 12 or over, or 5 misdemeanors if the child is under 12. This includes name, age, and photo of the child; also includes all warrants, motions, orders, and CCS. Excluded are motions relating to psychiatric evaluations and child abuse; Clerk is required to maintain these records in a separate envelope marked "confidential." Information identifying a child victim or witness shall remain confidential also.

IC 11-14-1-5 (P.L. 148, § 1)

- ▶ Changes the definition of "youthful offender" from under 25 to under 21 years of age, and removes requirement that they have no prior convictions - DOC Boot Camp Program.

WEAPONS

IC 35-47-4-3 (P.L. 296, § 2)

- ▶ Creates NEW crime of Pointing a Firearm.
- ▶ “A person who knowingly or intentionally points a firearm at another person commits a Class D felony. However, the offense is a Class A misdemeanor if the firearm is not loaded.”

IC 35-47 (P.L. 269, § 5-9)

- ▶ If a person has a felony adjudication in juvenile court, they cannot obtain a License to Carry a Handgun or a Retain Dealer’s License until age 23.

IC 33-19-6-16 (P.L. 61, § 6)

- ▶ Upon conviction of a crime where the possession or use of a firearm is an element, the Court shall assess a “Safe Schools Fee” of \$200 - \$1,000, all of which is distributed by the City or County Clerk to the Auditor of State.

IC 35-47-5-3 (P.L. 269, § 10)

- ▶ Repeals statute making it a Class C Infraction to offer for sale knucks, sling-shot, or billy.

SENTENCING

IC 35-38-1-1 (P.L. 148, § 3)

- ▶ “(b) When the court pronounces the sentence, the court shall advise the person that the person is sentenced for not less than the earliest release date and for not more than the maximum possible release date.”

IC 35-50-2-3 (P.L. 148, § 4)

- ▶ Makes Murder punishable from 45-65 years imprisonment, with a presumptive sentence of 55 years imprisonment.

IC 35-50-2-4 (P.L. 148, § 5)

- ▶ Makes a Class A Felony punishable from 20-50 years imprisonment, with a presumptive sentence of 30 years imprisonment.

IC 35-50-2-13 (P.L. 148, § 6, 9)

- ▶ Allows the State to seek additional punishment for those convicted of Dealing in a Controlled Substance if a firearm is used (up to +5 yr), or if a handgun, sawed-off shotgun, or machine gun is possessed (up to +5 yr), or if a sawed-off shotgun is used (up to +10 yr), or if a machine gun is used (up to +20 yr), or if a firearm silencer is used (up to +20 yr). This sentence is in addition to any additional sentence imposed for use of an assault weapon under IC 35-50-2-11. Applies only to crimes committed after June 30, 1995.

IC 35-50-2-8 (P.L. 305, §1)

- ▶ Repeals “violent habitual offender” provisions of subsection (f), which authorized a term of life imprisonment, and which was added to IC 35-50-2-8 in 1994. (Other “3 strikes and you’re out” legislation, authorizing LWOP under IC 35-50-2-8.5, and also added in 1994, was left intact)

IC 35-50-1-2 (P.L. 304, §1-2)

- ▶ Limits power of court to impose consecutive sentences. In one episode of criminal conduct, the total of the consecutive terms cannot exceed the presumptive sentence on the next higher class felony. Excludes habitual offender sentences from limitation. 1995 amendments also exclude crimes of violence from limitation. “Crimes of violence” generally defined as any crime under IC 35-42; Battery, Burglary and Robbery must be Class A or B felony. 1995 changes apply only to crimes committed after June 30, 1995.

DEATH PENALTY

IC 35-38-6-1 (P.L. 294, §1)

- ▶ Changes method of execution in Indiana from electrocution to lethal injection.

IC 35-50-2-9 (P.L. 306, §1)

- ▶ “Speed-up Provisions”
- ▶ Requires execution within 1 year and a day after sentencing, which can only be stayed by the Indiana Supreme Court.
- ▶ Commands the Attorney General to answer PCR petitions on behalf of state. Prosecutor must assist if requested by Attorney General.
- ▶ Requires trial court to set hearing on PCR within 90 days after Petition filed; and must rule on PCR within 90 days after hearing.
- ▶ Requires the Supreme Court to consider all possible claims of error on direct appeal.

CHILD SUPPORT ENFORCEMENT

IC 31-1-11.5-13 (j-k) (P.L. 133, § 21) (Effective October 1, 1995)

IC 31-6-6.1-16 (j-k) (P.L. 133, § 21) (Effective October 1, 1995)

IC 25-1-1.2 (P.L. 133, § 19) IC 9-25-6-19 (P.L. 133, § 5)

- ▶ Requires Court to issue Order to BMV to suspend or refuse to issue a Driver’s License to a person “delinquent” in the payment of child support; driving after suspension s punishable as a Class A Infraction (up to \$10,000); allows a restricted driving permit to be issued if he can show public transportation is unavailable for his employment, church or vistration with children.
- ▶ Requires Court to issue Order to the licensing board of attorneys, teachers, doctors, or other professionals who are “delinquent” in the payment of child support, to suspend or refuse to issue a license to practice until further order of court.
- ▶ Delinquent is defined under IC 25-1-1.2-4 and IC 12-17-2-34 as “at least \$2,000 or 3 months past due on payment of court ordered child support payments.

IC 12-17-2-34 & 35 (P.L. 133, § 9) (Effective October 1, 1995)

IC 25-1-1.2 (P.L. 133, § 19) IC 9-25-6-20 (P.L. 133, § 6)

- ▶ Where a Title IV-D agency is responsible for enforcing a child support obligation, and can demonstrate that all previous enforcement actions have been unsuccessful, the IV-D agency shall send notice to the delinquent obligor. If not paid, and no payment plan agreed upon, and no hearing requested within 20 days after the notice, the IV-D agency “ shall issue an order” to the BMV and to any licensing board that the person is delinquent and that the license should be suspended.

COURTS

IC 33-5-10-1.5 (P.L. 18, § 24)

- ▶ Clark County Court is elevated to Clark Superior Court #3, and now has jurisdiction over any felony or misdemeanor case.

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

*** All statutes are effective July 1, 1995 unless otherwise indicated.**