

# NEW LEGISLATION

# 1996



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## CRIMES AGAINST PERSONS / DOMESTIC VIOLENCE

### **IC 35-42-2-1 (P.L. 31, §20)**

- ▶ Amends Battery statute to make it a Class D Felony where the battery is related to family or domestic violence and results in bodily injury, and the defendant was previously convicted of a battery related to family or domestic violence.

### **IC 35-45-10-5 (P.L. 225)**

- ▶ Amends Stalking statute, increasing the penalty from a Class B Misdemeanor to a Class D Felony; increases the penalty from a Class A Misdemeanor to a Class C Felony where there is a threat of sexual battery or serious bodily injury; increases the penalty from a Class A Misdemeanor to a Class C Felony where a protective order was previously issued to protect the same victim (does not include protective orders issued as a condition of bail or probation); allows the Court to enter judgment as a Class D Felony notwithstanding the Class C Felony conviction.

### **IC 27-4-1-4 (P.L. 188, §1) IC 27-8-24.3 (P.L. 188, §2)**

- ▶ Prohibits an insurer from refusing to issue or renew a policy, or adding a surcharge, or limiting coverage because the insured has been, or has the potential to be, a victim of domestic abuse. Designates such discrimination as “an unfair and deceptive act and practice in the business of insurance.”

## CRIMES AGAINST PROPERTY

### **IC 35-45-13 (P.L. 216, §23)**

### **IC 34-4-30.1-1 (P.L. 216, §8) IC 34-4-30.1-4 (P.L. 216, §9)**

- ▶ Creates a new crime of UNAUTHORIZED USE OF TELECOMMUNICATIONS SERVICES, generally making it a Class A Misdemeanor to possess or use any device capable of transmitting or receiving telephone, electronic, or radio communications, including computers, if the device is designed or adapted to acquire telecommunications services without consent of the provider; increases the penalty to a Class D Felony if at least 5 such devices are involved.
- ▶ Allows for a civil cause of action to obtain injunctive relief, recover compensatory and

punitive damages, costs and attorney's fees. Authorizes the seizure and forfeiture by the State of Unlawful Telecommunications Devices and other material.

**IC 35-43-5-3 (P.L. 222, §1)**

- ▶ Amends Deception statute, adding (11), making it a Class A Misdemeanor to avoid payment for cable TV service by any device, or by tampering with cable company equipment.

**IC 35-43-5-6.5 (P.L. 222, §2)**

- ▶ Creates a new crime, a Class D Felony, to offer for sale or lease a device designed to intercept cable tv transmissions without full payment.

**IC 35-46-3-11.5 (P.L. 143, §2)**

- ▶ Creates a new Class A Infraction to knowingly or intentionally interfere with, strike, torment, or otherwise mistreat a service animal engaged in assisting an impaired person.

**IC 15-5-18 (P.L. 143, §1)**

- ▶ Creates a rebuttable presumption that a dog is stolen, if the person selling the dog to a laboratory cannot show a valid bill of sale for the dog.

PROBATION

**IC 35-50-7 (P.L. 216, §26)**

- ▶ When a defendant is placed on probation, allows the Court to enter an order prohibiting the defendant from entering the area where the crime was committed; allows the Court to authorize the defendant to return to the area to pick up personal belongings, and to provide for supervision of the return by a law enforcement officer.
- ▶ Creates a new crime of VIOLATION OF "STAY AWAY" ORDER, making it a Class C Misdemeanor to knowingly or intentionally violate such an order.

**IC 35-33-1-1 (P.L. 216, § 10)**

- ▶ Allows a law enforcement officer to make an arrest based upon probable cause for the new crime of Violation of a Stay Away Order under IC 35-50-7-9, even if not committed in the officer's presence.

**IC 35-38-2-3 (P.L. 216, §15)**

- ▶ Amends probation revocation statute - When a Court enters an order requiring a partially indigent defendant to pay part of the public defender expenses, a failure to pay cannot be grounds for a revocation of probation.

SEX CRIMES

**IC 5-2-12 (P.L. 33)**

- ▶ Adds Sexual Battery (victim less than 18) to the list of crimes for which a defendant convicted after June 30, 1994 is subject to Sex Offender Registration.
- ▶ Adds defendants convicted of a sex offense upon a child in another state after June 30,

1994, who now reside in Indiana, to those subject to Sex Offender Registration.

- ▶ Adds juveniles over 14 years of age, adjudicated a delinquent on account of a sex offense upon a child, to those subject to Sex Offender Registration, as long as the court finds by clear and convincing evidence that the child is likely to be a repeat offender. (applies only to adjudications after June 30, 1996)
- ▶ Increases the penalty from a Class A Misdemeanor to a Class D Felony for Failure to Register with local law enforcement as a sex offender. (applies only to crimes committed after June 30, 1996)

**IC 31-6-11-25 (P.L. 108, §8)**

- ▶ Requires a person listed on the Child Abuse Registry to notify the Division of Family and Children within 10 days after any legal name change. Creates a new crime for an intentional violation as a Class B Misdemeanor.

**IC 35-42-4-3 (P.L. 33, §8)** (applies only to crimes committed after 6/30/96)

- ▶ Enhances the penalty for Child Molesting (sexual intercourse / under 14 ) from a Class B Felony to a Class A Felony if the defendant is at least 21 years old. (Does not enhance the penalty for Child Molesting (fondling / under 14) - see P.L. 216, §18 §27).

**IC 35-42-4-9 (P.L. 33, §9) (P.L. 216, §21 §27)** (applies only to crimes committed after 6/30/96)

- ▶ Enhances the penalty for Sexual Misconduct With a Minor (sexual intercourse / 14 or 15) from a Class C Felony to a Class B Felony if the defendant is at least 21 years old.
- ▶ Enhances the penalty for Sexual Misconduct With a Minor (fondling / 14 or 15) from a Class D Felony to a Class C Felony if the defendant is at least 21 years old.

**IC 35-42-4-4 (P.L. 216, §19)**

- ▶ Enhances the penalty for Child Exploitation from a Class D Felony to a Class C Felony if “committed by using a computer network (as defined in IC 35-43-2-3(a))”

**IC 35-42-4-6 (P.L. 216, §20)**

- ▶ Enhances the penalty for Child Solicitation from a Class D Felony to a Class C Felony if “committed by using a computer network (as defined in IC 35-43-2-3(a))”

**IC 33-19-6-12 (P.L. 117, § 2) IC 12-17-17 (P.L. 117, §1) IC 33-19-7-1 (P.L. 117, §3)**

- ▶ Establishes a County Child Advocacy Fund “for the purpose of assisting the county in developing interdisciplinary responses to child abuse and neglect situations.”
- ▶ The Fund is funded by Child Abuse Prevention Fees of \$100 per case which is required to be paid by defendants convicted of most all crimes against the person where the victim is less than 18 years old.
- ▶ The Clerk collects the fees and sends 50% to the State Auditor, and 50% to the County Auditor. It is a nonreverting fund administered by the Auditor. The County Council “shall” annually appropriate from amounts allocated by the County Commissioners.

**IC 35-45-2-2 (P.L. 216, §22)**

- ▶ Amends Harassment statute to include communications made by using a “computer network” or other form of “electronic communication.”

## WEAPONS / CORRECTIONS

### **IC 35-44-3-9.5 (P.L. 224)**

- ▶ Creates NEW crime UNLAWFUL POSSESSION OF A WEAPON WHILE INCARCERATED.
- ▶ Jail or prison inmate who knowingly or intentionally possesses anything that is intended to be used in a manner readily capable of causing bodily injury commits a Class C Felony. It is a Class B Felony if it is a deadly weapon. (Eliminates the need to prove “delivery” into the penal facility under IC 35-44-3-9 - Trafficking with an Inmate).

### **IC 35-44-3-9 (P.L. 223)**

- ▶ Increases the penalty for Trafficking with an Inmate from a Class D Felony to a Class C Felony if the contraband is a controlled substance.

## WEAPONS / FIREARMS

### **IC 35-47-10 (P.L. 203, §2-6) IC 35-50-2-2 (P.L. 203, §8)**

- ▶ Amends chapter relating to Children and Handguns so that it applies to all firearms, not merely handguns.
- ▶ An offense under IC 35-47 (Children and Firearms) cannot be suspended if committed knowingly or intentionally.

### **IC 35-50-2-11 (P.L. 203, §9-10)** (applies only to offenses committed after 6/30/96)

### **IC 35-50-2-2 (P.L. 203, §8)**

### **IC 35-50-1-2 (P.L. 203, §7)**

- ▶ Amends the assault weapon statute to strike all references to that term, replacing it with “firearm.”
- ▶ When the defendant is convicted of any felony under IC 35-42 resulting in serious bodily injury, or Kidnapping, or Confinement as a Class B Felony, the Court may impose an additional 5 year fixed term of imprisonment if it finds that a firearm was knowingly or intentionally used to commit the crime.
- ▶ This additional term of imprisonment must be served consecutively may not be suspended, but the Court apparently has discretion on whether to impose the sentence at all.
- ▶ The State must charge this separately, similar to Habitual Offenders. It is unclear if the jury plays any role in this proceeding.

### **IC 35-42-2-2 (P.L. 216, §17)**

- ▶ Amends the Criminal Recklessness statute to increase the penalty to a Class C Felony if committed by shooting a firearm from a vehicle into a place where people are likely to gather. (drive-by shootings)

### **IC 35-47-5-13 (P.L. 227, §1)**

- ▶ Creates a new crime of UNLAWFUL USE OF BODY ARMOR, making it a Class D Felony to wear a bullet resistant material while committing a felony.

## DEATH PENALTY

**IC 35-50-2-8 (P.L. 228, §1)**

- ▶ Adds a new Aggravating Circumstance, justifying the imposition of a Death Sentence, where the defendant “burned, mutilated, or tortured the victim while the victim was alive.”

**IC 35-50-2-9 (P.L. 216, §25)**

- ▶ Allows the Court to receive victim impact evidence following the jury verdict.

**IC 35-38-1-8.5 (P.L. 216, §12) IC 35-38-1-9 (P.L. 216, §13)**

- ▶ Amends probation statutes so that in death penalty cases, the probation officer is required to notify and solicit statements from victims, and include victim impact statements in the presentence reports. These requirements are now the same as in all other cases.

**CONTROLLED SUBSTANCES**

**IC 35-48-4-1 (P.L. 65, §11)**

- ▶ Amends Dealing in Cocaine or Narcotic Drug statute, enhancing penalty to a Class A Felony if delivered within 1000 feet of school property, a public park, or A FAMILY HOUSING COMPLEX.

**IC 35-48-4-2 (P.L. 65, §12)**

- ▶ Amends Dealing in a Schedule I II or II Controlled Substance statute, enhancing penalty to a Class A Felony if delivered within 1000 feet of school property, a public park, or A FAMILY HOUSING COMPLEX.

**IC 35-48-4-3 (P.L. 65, §13)**

- ▶ Amends Dealing in a Schedule IV Controlled Substance statute, enhancing penalty to a Class B Felony if delivered within 1000 feet of school property, a public park, or A FAMILY HOUSING COMPLEX.

**IC 35-48-4-4 (P.L. 65, §14)**

- ▶ Amends Dealing in a Schedule V Controlled Substance statute, enhancing penalty to a Class B Felony if delivered within 1000 feet of school property, a public park, or A FAMILY HOUSING COMPLEX.

**IC 35-48-4-6 (P.L. 65, §15)**

- ▶ Amends Possession of Cocaine or Narcotic Drug statute, enhancing penalty to a Class B Felony if less than 3 grams possessed on a school bus, or within 1000 feet of school property, a public park, or A FAMILY HOUSING COMPLEX; enhances penalty to a Class A Felony if more than 3 grams possessed on a school bus, or within 1000 feet of school property, a public park, or A FAMILY HOUSING COMPLEX.

**IC 35-48-4-7 (P.L. 65, §16)**

- ▶ Amends Possession of a Schedule I, II, III, or IV Controlled Substance statute, enhancing penalty to a Class C Felony if possessed on a school bus, or within 1000 feet of school property, a public park, or A FAMILY HOUSING COMPLEX.

**IC 35-48-4-10 (P.L. 65, §17)**

- ▶ Amends Dealing in Marijuana statute, enhancing penalty to a Class C Felony if delivered on a school bus, or within 1000 feet of school property, a public park, or A FAMILY HOUSING COMPLEX.

**IC 35-41-1-10.5 (P.L. 65, §10) (P.L. 216, §16)**

- ▶ Defines “Family Housing Complex” as a building(s) owned by the government, containing at least 12 units, where children are likely to be domiciled.

**IC 6-7-3 (P.L. 65, §1-8)**

- ▶ Amends statutes relating to the Controlled Substance Excise Tax in an effort to remedy double jeopardy arguments of the Indiana Supreme Court.
- ▶ Repeals the criminal penalty (Class D Felony) for failure to pay the tax.
- ▶ Reduces the amount of the tax as follows: Marijuana = \$3.50 per gram / Schedule I, II, or III = \$40 per pill or dosage / Schedule IV = \$20 per gram, pill, or dosage / Schedule V = \$10 per gram, pill, or dosage.
- ▶ Payment of the tax is valid for 30 days. (Increased from 48 hours)
- ▶ Authorizes a sentencing court, following conviction for a controlled substance offense, to consider the failure to pay the required tax, and may order the Department of Revenue to commence collection proceedings as part of the sentencing order.
- ▶ Mandates that the Department of Revenue may NOT commence collection proceedings unless notified by the Prosecutor that no charges are intended to be filed, or when ordered by a court as part of a sentencing order.

**IC 35-46-1-8 (P.L. 216, §24)**

- ▶ Increases the penalty for Contributing to the Delinquency of a Minor from a Class A Misdemeanor to a Class C Felony, when the juvenile is encouraged or aided to commit any crime of Dealing, except marijuana.

**TRAFFIC / OVWI**

**IC 9-26-1-8 (P.L. 96, §2) (P.L. 97, §2)**

- ▶ Increases the penalty for Leaving the Scene of an Accident Causing Injury from a Class B Misdemeanor to a Class A Misdemeanor.
- ▶ Adds a new section making it a Class D Felony if serious bodily injury is caused, or if the defendant has a prior conviction within 5 years for Reckless Homicide or Manslaughter involving use of a vehicle, Leaving the Scene Resulting in Injury, or OVWI resulting in Death.
- ▶ Adds a new section making it a Class C Felony if it involves the death of a person.

**IC 9-30-5-4 (P.L. 96, §3) (P.L. 97, §3)**

- ▶ Increases the penalty for OVWI / .10% Causing Serious Bodily Injury from a Class D Felony to a Class C Felony if, “within the 5 years preceding the commission of the offense, the person had a prior unrelated conviction under this chapter.”

**IC 9-30-5-5 (P.L. 96, §4) (P.L. 97, §4)**

- ▶ Increases the penalty for OVWI / .10% Causing Death from a Class C Felony to a Class B Felony if, “within the 5 years preceeding the commission of the offense, the person had a prior unrelated conviction under this chapter.”

**IC 9-30-5-8.5 (P.L. 96, §5) IC 9-30-6-15 (P.L. 96, §6)**

- ▶ Adds a new section making it a Class C Infraction for a person under 21 years old to operate a vehicle with at least 0.02% by weight of alcohol in the blood, and allows the court to suspend driving privileges for up to 1 year.

**IC 35-50-2-2 (P.L. 96, §7)**

- ▶ Amends statute relating to suspension of sentences. When a defendant is convicted of a felony offense under IC 9-30-5 (OVWI), and he has accumulated at least 2 prior unrelated offenses under IC 9-30-5, the Court may suspend only that part of the sentence that is in excess of the minimum sentence.

**IC 35-50-2-10 (P.L. 96, §8) (P.L. 97, §5)**

- ▶ Amends Habitual Substance Offender statute to make it clear to the Indiana Supreme Court that it covers a 3rd OVWI conviction.
- ▶ Substance Offense includes “an offense under IC 9-30-5 and an offense under IC 9-11-2 (before its repeal July 1, 1991).”

**IC 9-30-2-4, 5 (P.L. 99, §1-3)**

- ▶ Amends statute relating to misdemeanor traffic arrests, which requires that the defendant be taken “immediately” before a court. If not “immediately” taken before a court, the statute requires that an Indiana resident be released an issued a citation. This amendment exempts OVWI arrests from this requirement.

JUVENILES

**IC 31-6-2-1.1 (P.L. 2, §279) (P.L. 65, §9) (P.L. 203, §1)**

- ▶ Gives Juvenile Court exclusive jurisdiction over misdemeanor traffic offenses committed by a child less than 16 years of age.
- ▶ Gives Juvenile Court exclusive jurisdiction over all OVWI offenses, felony or misdemeanor, committed by a child less than 18 years of age.
- ▶ The Juvenile Code does NOT apply to ordinance violations or infractions, except those relating to alcohol under IC 7.1-5-7.
- ▶ The Juvenile Code does NOT apply to a child previously waived to adult court.
- ▶ Removes from Juvenile Court jurisdiction and authorizes direct filing in adult court, all crimes of Dealing in a Controlled Substance, except marijuana, committed by a child 16 years of age or older.

MISCELLANEOUS

**IC 36-2-13-2.8 (P.L. 230, §1)**

- ▶ Allows the county to pay the Sheriff a salary from the general fund, eliminating benefits from “meal money, but retaining tax collection fees under IC 6-8.1-8-3; Establishes a minimum annual salary as a percentage of the Prosecutor's salary depending on county population. (Clark County = 80%); Limits the pension benefits of a Sheriff to the salary of

a full-time Prosecutor at the time of retirement.

**IC 4-32 (P.L. 27, §1-9)**

- ▶ Requires an organization to be exempt from taxation under §501 of the Internal Revenue Code in order to obtain a charitable gaming license. (No longer can the organization merely be exempt from income tax or property tax)
- ▶ Requires a local public hearing if the Department receives 10 protest letters relating to a new application for a bingo license; Authorizes denial of a new bingo license or a renewal if the applicant “has violated a local ordinance” or “has engaged in fraud, deceit, or misrepresentation.”
- ▶ If a qualified organization receives 90% of its gross receipts from licensed gaming events, it is required to pay 60% of its gaming profits to an unrelated qualified organization.
- ▶ Authorizes suspension of license or civil penalties against an organization or individual for violation of statute or rule of the Department; also authorizes injunctive relief against an individual from associating with charity gaming.

**(P.L. 12, §1-16)**

- ▶ Replaces the words “state farm, “reformatory,” boys' school,” and “girls' school” from several statutes with “facility,” and provides for new names of prisons as follows:

OLD

Indiana Boys' School  
Indiana Girls' School  
Indiana Youth Center  
Indiana Reformatory  
Indiana State Farm  
Westville Correctional Center  
Indiana State Prison  
Indiana Women's Prison

NEW

Plainfield Juvenile Correctional Facility  
Indianapolis Juvenile Correctional Facility  
Plainfield Correctional Facility  
Pendleton Correctional Facility  
Putnamville Correctional Facility  
Westville Correctional Facility  
Indiana State Prison (no change)  
Indiana Women's Prison (no change)

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

\* All statutes are effective July 1, 1996 unless otherwise indicated.