

# NEW LEGISLATION

# 1997



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## CRIMES AGAINST PERSONS

### **IC 35-42-2-1 (P.L. 212, § 1) (Battery Against Jail Employees)**

- ▶ Amends Battery statute to make it a Class A Misdemeanor (without bodily injury), and a Class D Felony (with bodily injury), where the battery is committed against a prison/jail/detention center employee engaged in the execution of their official duty. Made consistent with existing penalties for battery upon other law enforcement officers.

### **IC 35-42-2-7 (P.L. 181, § 3) (Tattooing a Minor)**

- ▶ CREATES NEW CRIME OF TATOOING A MINOR
- ▶ Makes tattooing a person under 18 a Class A Misdemeanor unless parent or guardian is present and provides written permission.

## CRIMES AGAINST PROPERTY

### **IC 35-43-1-2; IC 35-46-3-4.5 (P.L. 213) (Law Enforcement Animals)**

- ▶ Amends Criminal Mischief statute to make it a Class D Felony to damage a law enforcement animal.
- ▶ Creates IC 35-46-3-4.5, defining a "law enforcement animal" as one used by law enforcement for the detection of criminal activity, the enforcement of laws, or the apprehension of offenders.
- ▶ Amends IC 35-46-3-11, allowing for restitution for vet bills and replacement costs in addition to other sentence upon conviction of mistreatment of a law enforcement animal.

## ACTS RELATING TO TOBACCO

### **IC 7.1-6 (P.L. 256, § 2-1996) (Youth Tobacco Sales)**

- ▶ Authorizes the Department of Mental Health to coordinate random, unannounced inspections of retail stores selling tobacco products to insure not sold to minors.
- ▶ Restricts such inspections to be performed only by Alcoholic Beverage Commission or Sheriff or municipal law enforcement agency.
- ▶ Allows the use of minors in an enforcement action only if written permission is first obtained from parent or guardian.
- ▶ Veto Override - Effective February 13, 1997.

**IC 16-41-37-4 (P.L. 256, § 6-1996) (Restricted Smoking Areas)**

- ▶ Makes it a Class C Infraction for a person to smoke in a public building, in a grocery store, in a drug store, or in a restaurant, in a location designated as a nonsmoking area.
- ▶ Veto Override - Effective February 13, 1997.

**IC 35-46-1-11.2; IC 35-46-1-1 (P.L. 256, § 10,11-1996) (Tobacco Businesses)**

- ▶ CREATES NEW CRIME
- ▶ Makes it a Class A Misdemeanor for a Tobacco Business to operate within 200 feet of an elementary or secondary school.
- ▶ Defines "Tobacco Business" as one whose primary activity is the sale of tobacco products or accessories.
- ▶ Veto Override - Effective February 13, 1997.

**IC 35-46-1-11.3 (P.L. 256, § 12-1996) (Tobacco Advertising)**

- ▶ CREATES NEW CRIME
- ▶ Makes it a Class c Misdemeanor to advertise tobacco products on a billboard within 200 feet of an elementary or secondary school. (Still permits advertising on exterior of business where tobacco products are sold, or on a vehicle, even within 200 feet)
- ▶ Veto Override - Effective February 13, 1997.

**IC 35-46-1-10.5 (P.L. 256, § 13-1996) (Possession of Tobacco by Minor)**

- ▶ Makes it a Class C Infraction for a person under 18 to merely "possess" tobacco on his person. (Eliminating ambiguity of prior statute outlawing the purchase or acceptance of tobacco by a minor for personal use)
- ▶ Veto Override - Effective February 13, 1997.

**IC 5-2-6.1 (P.L. 36, § 2-5) (Victim Compensation for Terrorist Act)**

- ▶ Extends eligibility for Violent Crime Compensation to include victims of terrorist acts, and victims of any violent crime in a foreign country.

**IC 5-2-12-4 (P.L. 36, § 6) (Sex Offender Registry)**

- ▶ Eliminates requirement that victims be less than 18 years old in order for offenders to be listed in registry. Now includes all sex offenders, regardless of age of victim.

**IC 35-44-2-3 (P.L. 214) (Impersonation of Law Enforcement Officer)**

- ▶ Increases the penalty from Class A Misdemeanor to Class D Felony when the public servant impersonated is a law enforcement officer.

**IC 35-46-1-15.1 (P.L. 37, § 3) (P.L. 1, § 153); IC 5-2-9-2.1 (P.L. 1, § 32) (Protective Orders)**

- ▶ Expands list of protective orders required to be maintained by Sheriff to include those issued in paternity actions, CHINS proceedings, and juvenile delinquency actions. Allows enforcement through Invasion of Privacy prosecution.
- ▶ Amends Invasion of Privacy statute to authorize enforcement of "substantially similar" protective orders from other states.

**IC 5-16-9-11 (P.L. 48) (Handicap Parking)**

- ▶ Allows a law enforcement agency to appoint volunteers to enforce disabled parking laws.
- ▶ Volunteers must be over 21 years old and must complete a course of instruction. Up-to-date list of volunteers must be submitted to Prosecuting Attorney.
- ▶ Volunteers authorized to issue complaint and summons.

**IC 9-13-2-105 (P.L. 94, §1) (Mopeds/Habitual Traffic Violators)**

- ▶ Excludes motorized bicycles from the definition of “motor vehicle” for purposes of enforcement of the habitual traffic violator laws under IC 9-30-10. (Allows person suspended for life to operate moped)

**IC 9-24-18-5 (P.L. 94, § 3) (Driving While Suspended)**

- ▶ Makes it a Class D Felony to KNOWINGLY OR INTENTIONALLY operate a motor vehicle while license is suspended as a result of a misdemeanor or felony conviction. Penalty increased to a Class C Felony if it results in the death of another.

**IC 9-25-6-14, IC 9-25-9-1 (P.L. 94, § 4-5) (BMV/Financial Responsibility)**

- ▶ Requires BMV, upon receipt of proof of compliance, to expunge administrative suspension caused by failure to notify BMV of financial responsibility on date of violation.
- ▶ Specifies circumstances under which BMV must send a request for evidence of financial responsibility. (On 3rd moving violation within 1 year; On conviction of a traffic misdemeanor or felony; On any traffic violation if previously suspended for violation of financial responsibility requirements)
- ▶ Effective on Passage.

**IC 9-25-8-2 (P.L. 100) (Financial Responsibility)**

- ▶ Decriminalizes Operating a Motor Vehicle Without Financial Responsibility, reducing penalty from Class A Misdemeanor to Class A Infraction.

**IC 9-30-10-9, IC 9-30-10-14 (P.L. 101) (Habitual Traffic Violator)**

- ▶ Allows a person adjudged a 10 year or lifetime habitual traffic violator to have driving privileges reinstated on probation in a civil action, if he was HTV only as a result of Driving While Suspended or Infractions, and he has no convictions for OVWI or RD or traffic-related homicide, and he has been suspended for a minimum of 3 years without violation.

**IC 9-13-2-49.1 (P.L. 33, § 2) (Definition of Drugs in OVWI Cases)**

- ▶ Defines “Drug” to include legend drugs, nitrous oxide, model glue, toluene, butane, and other substances listed in IC 35-46-6-2.

**IC 9-30-5-1 (P.L. 33, § 7) (OVWI .10%)**

- ▶ Amends Class C Misdemeanor “per se” law, changing language “.10 % by weight of alcohol in the person’s blood” to “.10% of alcohol by weight in grams in (1) 100 milliliters of the person’s blood, or (2) 210 liters of the person’s breath.”
- ▶ Makes conforming amendments to various other statutes:  
IC 9-30-5-4 (P.L. 33, § 8) .10% Class D Felony Serious Bodily Injury  
IC 9-30-5-5 (P.L. 33, § 9) .10% Class C Felony Death  
IC 9-13-2-131 (P.L. 33, § 3) Prima Facie Evidence of Intoxication  
IC 9-13-2-151 (P.L. 33, § 4) Relevant Evidence of Intoxication

IC 9-30-6-15 (P.L. 33, § 11) Rebuttable Trial Presumption of Intoxication  
IC 14-15-8 (P.L. 33, § 16-20) Operating a Motorboat While Intoxicated  
IC 9-30-5-8.5 (P.L. 33, § 10) Minor Operating Vehicle With .02%

**IC 9-30-5-1, IC 9-30-5-4, IC 9-30-5-5 (P.L. 33, §7-9) (OVWI .10%)**

- ▶ Amends Class C Misdemeanor “per se” law, changing language “with a controlled substance listed in Schedule I or II of IC 35-48-2 in the person’s blood” to “with a controlled substance listed in Schedule I or II of IC 35-48-2 or its metabolite in the person’s body.”
- ▶ Conforming amendments made to IC 9-30-5-4 (Serious Bodily Injury), but curiously NOT to IC 9-30-5-5 (Death), which still requires Schedule I or II or its metabolite in the person’s blood.

**IC 16-39-2 (P.L. 4, § 1-9) (Mental Health Records)**

- ▶ Provides the specific circumstances under which a written waiver by the patient to release mental health records to a third party will be honored by the provider.
- ▶ Allows for the release of medications information by a mental health provider to a law enforcement officer who has custody of a patient for any reason.

**IC 20-5-2-7 (P.L. 155) (Criminal History Information on School Employees)**

- ▶ Allows a school corporation to obtain criminal history information on employees of the school, or contractors with the school, or those seeking to contract with the school, if they are likely to have ongoing contact with children. Must be requested within 3 months of employment. Mandates a uniform policy to be adopted by the schools, but does not mandate the criminal history check. Authorizes school to deny employment or contract if history shows conviction of felony against person, or other crime relating to children, guns, or drugs within 10 years.

**IC 24-4.6-3 (P.L. 174) (Solicitation on Behalf of Police and Firefighters)**

- ▶ CREATES NEW CRIME
- ▶ Prohibits solicitation of money from the public by using the name of, or implying a connection with, police or firefighters, unless written approval is first given and the person solicited is informed of the approval. Solicitation without such approval or notice is a Class A Misdemeanor.

**IC 25-20.5 (P.L. 175, § 7) (Regulation of Hypnotists)**

- ▶ Makes it a Class B Misdemeanor to profess to be a hypnotist or hypnotherapist unless certified by a 6 member Hypnotist Committee appointed by the Governor. Requires 350 hours of post-secondary instruction and a passing examination in order to be certified.

**IC 33-19-1-4, IC 33-19-6-17, IC 33-19-10 (P.L. 204) (Payment of Jurors)**

- ▶ Increases the payment to prospective jurors in Circuit and Superior Courts from \$7.50 to \$15 per day, and to empaneled jurors from \$17.50 to \$40 per day. Allows counties to supplement these amounts. Increases the payment to prospective jurors in City and Town Courts from \$5 to \$15 per day. Allows cities and towns to supplement these amounts.
- ▶ Increases court costs in criminal, infraction, and ordinance proceedings by a \$2 jury fee. Upon the receipt of claims submitted by the Clerk, the County Council shall appropriate from the jury pay fund an amount to the Court to supplement juror pay.

**IC 33-9-14-4 (P.L. 202, § 4) (Reimbursement of Public Defender Costs)**

- ▶ Increases from 25% to 40% the amount of reimbursement by the State Public Defender Commission for County Public Defender expenses in noncapital felony cases, as long as minimum “standards” are met.

**IC 34-1-70 (P.L. 207) (Drug Dealer Liability)**

- ▶ Creates civil cause of action against distributors of illegal drugs.
- ▶ Action may be brought by any individual harmed by the negligent actions of an individual drug user, by an immediate family member of the individual drug user, by the employer or insurer of the individual drug user, a registered neighborhood association, or even an individual drug user under certain conditions.
- ▶ Recoverable damages may include everything from costs of treatment and medical expenses, costs of lessened productivity and absenteeism on the job, to pain and suffering and emotional distress. Punitive damages, court costs, expert testimony fees, and attorney’s fees may also be recovered.
- ▶ While participation in illegal distribution of drugs must be proved by clear and convincing evidence, proof of a drug conviction is sufficient and constitutes prima facie evidence.

**IC 35-50-1-2 (P.L. 219) (Consecutive Sentencing/OVWI Causing Death)**

- ▶ Adds OVWI Causing Death (IC 9-30-5-5) to the list of “Crimes of Violence” excluded from the limitations on consecutive sentencing.

**IC 35-50-2-2 (P.L. 220) (Nonsuspendable Minimum Sentence/Aggravated Battery)**

- ▶ Adds Aggravated Battery (IC 35-42-2-1.5) to the list of crimes for which the minimum sentence (6 years / Class B Felony) cannot be suspended and probated.

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WEAPONS / CORRECTIONS  
WEAPONS / FIREARMS  
DEATH PENALTY  
CONTROLLED SUBSTANCES  
TRAFFIC / OVWI  
JUVENILES  
MISCELLANEOUS

\* 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.