



# 2014 Indiana Criminal Code

## SAVINGS CLAUSES

### TITLE 1 SAVINGS CLAUSES

- 1-1-5.5-21 Savings clause – P.L.158-2013 and HEA 1006-2014  
1.1-5.5-22 Savings clause – HEA 1279-2014

#### **1-1-5.5-21. Savings clause – P.L. 158-2013 and HEA 1006-2014**

(a) A SECTION of P.L.158-2013 or HEA 1006-2014 does not affect:

- (1) penalties incurred;
- (2) crimes committed; or
- (3) proceedings begun;

before the effective date of that SECTION of P.L.158-2013 or HEA 1006-2014. Those penalties, crimes, and proceedings continue and shall be imposed and enforced under prior law as if that SECTION of P.L.158-2013 or HEA 1006-2014 had not been enacted.

(b) The general assembly does not intend the doctrine of amelioration (see *Vicory v. State*, 400 N.E.2d 1380 (Ind. 1980)) to apply to any SECTION of P.L. 158-2013 or HEA 1006-2014.

#### **1-1-5.5-22. Savings clause – HEA 1279-2014**

(a) A SECTION of HEA 1279-2014 does not affect:

- (1) penalties incurred;
- (2) crimes committed; or
- (3) proceedings begun;

before the effective date of that SECTION of HEA 1279-2014. Those penalties, crimes, and proceedings continue and shall be imposed and enforced under prior law as if that SECTION of HEA 1279-2014 had not been enacted.

(b) The general assembly does not intend the doctrine of amelioration (see *Vicory v. State*, 400 N.E.2d 1380 (Ind. 1980)) to apply to any SECTION of HEA 1279-2014.

### TITLE 7.1 ALCOHOLIC BEVERAGES

#### ARTICLE 5 CRIMES [PORTIONS OMITTED]

- |        |                        |
|--------|------------------------|
| Ch. 1  | Generally              |
| Ch. 4  | Taxes                  |
| Ch. 6  | Permits                |
| Ch. 7  | Minors                 |
| Ch. 8  | Prohibited Activities  |
| Ch. 12 | Prohibition on Smoking |

## **Chapter 1 Generally**

- 7.1-5-1-1. Title as exclusive authorization
- 7.1-5-1-3. Public intoxication
- 7.1-5-1-6. Intoxication upon common carrier
- 7.1-5-1-6.5. Immunity from arrest or prosecution
- 7.1-5-1-6.6. Deferral of prosecution
- 7.1-5-1-7. Notice of conviction
- 7.1-5-1-12. Violation of order

### **7.1-5-1-1. Title as exclusive authorization**

(a) It is unlawful for a person to manufacture for sale, bottle, sell, barter, import, transport, deliver, furnish, or possess, alcohol or alcoholic beverages, malt, malt syrup, malt extract, liquid malt or wort, for commercial purposes except as authorized in this title.

(b) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

### **7.1-5-1-3. Public intoxication**

(a) Subject to section 6.5 of this chapter, it is a Class B misdemeanor for a person to be in a public place or a place of public resort in a state of intoxication caused by the person's use of alcohol or a controlled substance (as defined in IC 35-48-1-9), if the person:

- (1) endangers the person's life;
- (2) endangers the life of another person;
- (3) breaches the peace or is in imminent danger of breaching the peace; or
- (4) harasses, annoys, or alarms another person.

(b) A person may not initiate or maintain an action against a law enforcement officer based on the officer's failure to enforce this section.

### **7.1-5-1-6. Intoxication upon common carrier**

(a) Subject to section 6.5 of this chapter, it is a Class B misdemeanor for a person to be, or to become, intoxicated as a result of the person's use of alcohol or a controlled substance (as defined in IC 35-48-1-9) in or upon a vehicle commonly used for the public transportation of passengers, or in or upon a common carrier, or in or about a depot, station, airport, ticket office, waiting room or platform, if the person:

- (1) endangers the person's life;
- (2) endangers the life of another person;
- (3) breaches the peace or is in imminent danger of breaching the peace; or
- (4) harasses, annoys, or alarms another person.

(b) A person may not initiate or maintain an action against a law enforcement officer based on the officer's failure to enforce this section.

### **7.1-5-1-6.5. Immunity from arrest or prosecution [effective March 26, 2014]**

(a) A law enforcement officer may not take a person into custody based solely on the commission of an offense involving alcohol described in subsection (b) if the law enforcement

officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that all of the following apply:

- (1) The law enforcement officer has contact with the person because the person:
  - (A) either:
    - (i) requested emergency medical assistance; or
    - (ii) acted in concert with another person who requested emergency medical assistance;for an individual who reasonably appeared to be in need of medical assistance;
  - (B) is the victim of a reported sex offense (as defined in IC 11-8-8-5.2); or
  - (C) witnessed and reported what the person reasonably believed to be a crime.
- (2) The person described in subdivision (1)(A), (1)(B), or (1)(C):
  - (A) provided:
    - (i) the person's full name; and
    - (ii) any other relevant information requested by the law enforcement officer; and
  - (B) in the case of a person described in subdivision (1)(A):
    - (i) remained at the scene with the individual who reasonably appeared to be in need of medical assistance until emergency medical assistance arrived; and
    - (ii) cooperated with emergency medical assistance personnel and law enforcement officers at the scene.

(b) A person who meets the criteria of subsection (a)(1) and (a)(2) is immune from criminal prosecution for an offense under:

- (1) section 3 of this chapter if the offense involved a state of intoxication caused by the person's use of alcohol;
- (2) section 6 of this chapter if the offense involved the person being, or becoming, intoxicated as a result of the person's use of alcohol; and
- (3) IC 7.1-5-7-7.

(c) A person may not initiate or maintain an action against a law enforcement officer based on the officer's compliance or failure to comply with this section.

#### **7.1-5-1-6.6. Deferral of prosecution [effective March 26, 2014]**

- (a) This section applies only to a person:
  - (1) arrested for a violation of:
    - (A) section 3 of this chapter if the offense involved a state of intoxication caused by the person's use of alcohol;
    - (B) section 6 of this chapter if the offense involved the person being, or becoming, intoxicated as a result of the person's use of alcohol; or
    - (C) IC 7.1-5-7-7; and
  - (2) whose arrest was facilitated because another person reported that the person appeared to be in need of medical assistance due to the use of alcohol.
- (b) If a person described in subsection (a):
  - (1) does not have a prior conviction for an offense described in subsection (a);
  - (2) pleads guilty to an offense described in subsection (a); and

(3) agrees to be placed in the custody of the court; the court, without entering a judgment of conviction, shall defer further proceedings and place the person in the custody of the court under conditions determined by the court.

(c) If the person placed in the custody of the court violates the conditions of custody, the court may enter a judgment of conviction. However, if the person fulfills the conditions of the custody, the court shall dismiss the charges against the person.

(d) There may be only one (1) dismissal under this section with respect to a person.

#### **7.1-5-1-7. Notice of conviction**

A court, upon convicting a permittee for a violation of a provision of this title, shall cause a certified copy of the judgment of conviction to be made and forwarded to the commission.

#### **7.1-5-1-12. Violation of order**

A person who recklessly imports, transports, receives, purchases, sells, distributes, delivers, or possesses an alcoholic beverage in violation of an order of the commission entered pursuant to IC 7.1-2-7, commits a Class B misdemeanor.

### **Chapter 4 Taxes**

- 7.1-5-4-1. Sale of untaxed beverages
- 7.1-5-4-3. Unlawful evidence of payment of taxes
- 7.1-5-4-5. Possession or display of counterfeit permit
- 7.1-5-4-6. Statements intended to defraud
- 7.1-5-4-7. Prima facie evidence of intent to defraud

#### **7.1-5-4-1. Sale of untaxed beverages**

It is a Class C misdemeanor for a person to sell, barter, give away, or possess an alcoholic beverage, knowing that all taxes due the state on it are not paid.

#### **7.1-5-4-3. Unlawful evidence of payment of taxes**

(a) It is unlawful for a person, other than an officer of the state lawfully entitled to do so, to furnish evidence of the payment of the excise tax, or to execute or issue a permit of any type, to another person.

(b) A person who knowingly or intentionally violates this section commits a Level 6 felony.

#### **7.1-5-4-5. Possession or display of counterfeit permit**

(a) It is unlawful for a person to possess an article, instrument, imitation, or counterfeit of a permit, other than one lawfully issued to the person and which the person is lawfully entitled to possess.

(b) It is unlawful for a person to display an imitation or counterfeit of a permit for the purpose of defrauding the state of the payment of a tax or license fee imposed by this title.

(c) A person who knowingly or intentionally violates subsection (a) or (b) commits a Class A misdemeanor. However, the offense is a Level 6 felony if the cost of the permit is at least seven hundred fifty dollars (\$750).

#### **7.1-5-4-6. Statements intended to defraud**

(a) It is unlawful for a person to make a statement, written or oral, as to payment to, or the receipt by, the state, for the purpose of defrauding the state of a tax or license fee imposed by this title.

(b) A person who knowingly or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Level 6 felony if the tax or license fee is at least seven hundred fifty dollars (\$750).

#### **7.1-5-4-7. Prima facie evidence of intent to defraud**

The possession of a permit, or of an imitation or counterfeit of a permit, contrary to the provisions of this chapter, is prima facie evidence of an intent to defraud the state by the possessor of the prohibited article.

### **Chapter 6 Permits**

- 7.1-5-6-1. Possession of unlicensed equipment
- 7.1-5-6-2. Sales without a permit
- 7.1-5-6-3. Employees without a permit
- 7.1-5-6-4. Falsification of records

#### **7.1-5-6-1. Possession of unlicensed equipment**

(a) It is a Class C misdemeanor for a person to knowingly own, have in the person's possession or under the person's control, or use a still or distilling apparatus for the manufacture of liquor, except as otherwise provided in this title.

(b) It is a Class C misdemeanor for a person to knowingly own, have in the person's possession or under the person's control, or use brewing or winemaking apparatus, for the manufacture for commercial purposes of beer or wine, except as otherwise provided in this title.

#### **7.1-5-6-2. Sales without a permit**

(a) It is unlawful for a person to act as a salesman, regardless of whether the sale is to be made by a seller within this state, to a buyer within or without this state, or by a seller outside this state for delivery to a buyer within this state, or whether the sale otherwise may be legal or illegal, unless that person has applied for and been issued a salesman's permit.

(b) It is unlawful for a buyer in this state to give an order, bargain, contract or agreement to a salesman who does not have a salesman's permit. This section does not apply to a permittee of any type, a permittee's agent, or employees working or acting on the licensed premises of the permittee.

(c) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

#### **7.1-5-6-3. Employees without a permit**

(a) It is unlawful for a person to act as a clerk in a package liquor store, or as a bartender, waiter, waitress, or manager for a retailer permittee unless that person has applied for and been issued the appropriate permit. This section does not apply to dining car or boat employees or to

a person described in IC 7.1-3-18-9(d). A person who knowingly or intentionally violates this subsection commits a Class B misdemeanor.

(b) It is a defense to a charge under this section if, not later than thirty (30) days after being cited by the commission, the person who was cited produces evidence that the appropriate permit was issued by the commission on the date of the citation.

(c) It is a defense to a charge under this section for a new applicant for a permit if, not later than thirty (30) days after being cited by the commission, the new applicant who was cited produces a receipt for a cashier's check or money order showing that an application for the appropriate permit was applied for on the date of the citation.

#### **7.1-5-6-4. Falsification of records**

(a) It is unlawful for a person to falsify, or cause to be falsified, an entry, statement, account, recital, or computation, or an application for a permit, or an instrument, or paper required to be filed in connection with the application, or in connection with the revocation, or proposed revocation, or a permit.

(b) It is unlawful for a person to enter, or cause to be entered, a false entry, statement, account, recital, computation, or representation of a fact in a book, document, account, order, paper, or statement required to be kept or filed, or made or furnished to the commission under the provisions of this title or a rule or regulation of the commission.

(c) A person who knowingly or intentionally violates this section commits a Level 6 felony.

### **Chapter 7 Minors**

- 7.1-5-7-1. Use of false or altered driver's license
- 7.1-5-7-2. Furnishing false evidence of identity
- 7.1-5-7-3. Possession of false identification
- 7.1-5-7-4. Misrepresenting age
- 7.1-5-7-5.1. Defenses to furnishing alcohol to a minor
- 7.1-5-7-7. Illegal possession, consumption or transportation of alcohol by minor
- 7.1-5-7-8. Furnishing alcoholic to minor
- 7.1-5-7-9. Taking child into tavern
- 7.1-5-7-10. Minors in taverns
- 7.1-5-7-11. Lawful presence of minors in public places where alcoholic beverages are dispensed
- 7.1-5-7-12. Employment of minors
- 7.1-5-7-13. Employment of person 18 years or older lawful
- 7.1-5-7-14. Failure to exclude minor after written notice of parent.
- 7.1-5-7-15. Inducing minor to possess alcohol
- 7.1-5-7-16. ATC random inspections; use of local law enforcement
- 7.1-5-7-17. Use of underage persons in enforcement actions

#### **7.1-5-7-1. Use of false or altered driver's license**

It is a Class C misdemeanor for a minor to knowingly or intentionally make a false statement of the minor's age or to present or offer false or fraudulent evidence of majority or

identity to a permittee for the purpose of ordering, purchasing, attempting to purchase, or otherwise procuring or attempting to procure an alcoholic beverage.

**7.1-5-7-2. Furnishing false evidence of identity**

It is a Class C misdemeanor for a person to sell, give, or furnish to a minor false or fraudulent evidence of majority or identity with the intent to violate or assist in the violation of a provision of this title.

**7.1-5-7-3. Possession of false identification**

It is a Class C infraction for a minor to have in his possession false or fraudulent evidence of majority or identity with the intent to violate a provision of this title.

**7.1-5-7-4. Misrepresenting age**

A permittee shall have the right to demand of a customer a signed written statement, on a form prescribed by the commission, that the customer is not a minor. It is a Class C infraction for a minor to misrepresent his age on the statement.

**7.1-5-7-5.1. Defenses to furnishing alcohol to a minor**

(a) A permittee in a criminal prosecution or in a proceeding before the commission or a local board based upon a charge of unlawfully furnishing an alcoholic beverage to a minor may offer either or both of the following proofs as a defense or defenses to the prosecution or proceeding:

(1) That:

(A) the purchaser:

(i) falsely represented the purchaser's age in a written statement, such as that prescribed by subsection (b), supported by two (2) forms of identification showing the purchaser to be at least twenty-one (21) years of age;

(ii) produced a driver's license bearing the purchaser's photograph;

(iii) produced a photographic identification card, issued under IC 9-24-16-1 or a similar card, issued under the laws of another state or the federal government, showing that the purchaser was of legal age to make the purchase; or

(iv) produced a government issued document bearing the purchaser's photograph and showing the purchaser to be at least twenty-one (21) years of age;

(B) the appearance of the purchaser was such that an ordinary prudent person would believe the purchaser to be of legal age to make the purchase; and

(C) the sale was made in good faith based upon the reasonable belief that the purchaser was actually of legal age to make the purchase.

(2) That the permittee or the permittee's agent had taken all reasonable precautions in instructing the permittee's employees, in hiring the permittee's employees, and in supervising them as to sale of alcoholic beverage to minors.

(b) The following written statement is sufficient for the purposes of subsection (a)(1)(A)(i):

**PRESENTATION AND STATEMENT OF AGE FOR  
PURCHASE OF ALCOHOLIC BEVERAGES**

I understand that misrepresentation of age to induce the sale, service, or delivery of alcoholic beverages to me is cause for my arrest and prosecution, which can result in punishment as follows:

- (1) Possible payment of a fine of up to \$500.
- (2) Possible imprisonment for up to 60 days.
- (3) Possible loss or deferment of driver's license privileges for up to one year.
- (4) Possible requirement to participate in an alcohol education or treatment program.

Knowing the possible penalties for misstatement, I hereby represent and state, for the purpose of inducing \_\_\_\_\_ to  
(Name of licensee)  
sell, serve, or deliver alcoholic beverages to me, that I was born \_\_\_\_\_,  
(Month)  
\_\_\_\_\_, \_\_\_\_\_ and that I am \_\_\_\_\_ years of age.  
(Day) (Year)

Date \_\_\_\_\_

Signed \_\_\_\_\_

Address \_\_\_\_\_

Other Identification \_\_\_\_\_

Presented:

Nonphoto driver's license:  
(number & state)

\_\_\_\_\_  
Signature of person who witnessed  
completion of this statement by patron

Social Security Number \_\_\_\_\_

Other \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**7.1-5-7-7. Illegal possession, consumption or transportation of alcohol by minor**

(a) Subject to IC 7.1-5-1-6.5, it is a Class C misdemeanor for a minor to knowingly:

- (1) possess an alcoholic beverage;
- (2) consume an alcoholic beverage; or

(3) transport an alcoholic beverage on a public highway when not accompanied by at least one (1) of the minor's parents or guardians.

(b) If a minor is found to have violated subsection (a)(2) or (a)(3) while operating a vehicle, the court may order the minor's driving privileges suspended for up to one (1) year. However, if the minor is less than eighteen (18) years of age, the court shall order the minor's driving privileges suspended for at least sixty (60) days.

(c) The court shall deliver any order suspending a minor's driving privileges under this section to the bureau of motor vehicles, which shall suspend the minor's driving privileges under IC 9-24-18-12.2 for the period ordered by the court.

#### **7.1-5-7-8. Furnishing alcohol to minor**

(a) It is a Class B misdemeanor for a person to:

(1) recklessly, knowingly or intentionally sell, barter, exchange, provide, or furnish an alcoholic beverage to a minor; or

(2) knowingly or intentionally:

(A) rent property; or

(B) provide or arrange for the use of property;

for the purpose of allowing or enabling a minor to consume an alcoholic beverage on the property.

(b) However, the offense described in subsection (a) is:

(1) a Class A misdemeanor if the person has a prior unrelated conviction under this section; and

(2) a Level 6 felony if the consumption, ingestion, or use of the alcoholic beverage is the proximate cause of the serious bodily injury or death of any person.

(c) This section shall not be construed to impose civil liability upon any postsecondary educational institution, including public and private universities and colleges, business schools, vocational schools, and schools for continuing education, or its agents for injury to any person or property sustained in consequence of a violation of this section unless the institution or its agent:

(1) sells, barter, exchanges, provides, or furnishes an alcoholic beverage to a minor; or

(2) either:

(A) rents property; or

(B) provides or arranges for the use of property;

for the purpose of allowing or enabling a minor to consume an alcoholic beverage on the property.

#### **7.1-5-7-9. Taking child into tavern**

(a) It is a Class C infraction for a parent, guardian, trustee, or other person having custody of a child under eighteen (18) years of age to take that child into a tavern, bar, or other public place where alcoholic beverages are sold, bartered, exchanged, given away, provided, or furnished.

(b) It is a Class C infraction for a permittee to permit the parent, guardian, trustee, or other person having custody of the child under eighteen (18) years of age to be in or around the prohibited place with the child.

### **7.1-5-7-10. Minors in taverns**

(a) It is a Class C misdemeanor for a minor to knowingly or intentionally be in a tavern, bar, or other public place where alcoholic beverages are sold, bartered, exchanged, given away, provided, or furnished.

(b) It is a Class C misdemeanor for a permittee to recklessly permit a minor to be in the prohibited place beyond a reasonable time in which an ordinary prudent person can check identification to confirm the age of a patron.

### **7.1-5-7-11. Lawful presence of minors in public places where alcoholic beverages are dispensed**

(a) The provisions of sections 9 and 10 of this chapter shall not apply if the public place involved in one (1) of the following:

- (1) Civic center.
- (2) Convention center.
- (3) Sports arena.
- (4) Bowling center.
- (5) Bona fide club.
- (6) Drug store.
- (7) Grocery store.
- (8) Boat.
- (9) Dining car.
- (10) Pullman car.
- (11) Club car.
- (12) Passenger airplane.
- (13) Horse racetrack facility holding a recognized meeting permit under IC 4-31-5.
- (14) Satellite facility (as defined in IC 4-31-2-20.5)
- (15) Catering hall under IC 7.1-3-20-24 that is not open to the public.
- (16) That part of a hotel or restaurant which is separate from a room in which is located a bar over which alcoholic beverages are sold or dispensed by the drink.
- (17) Entertainment complex.
- (18) Indoor golf facility.
- (19) A recreational facility such as a golf course, bowling center, or similar facility that has the recreational activity and not the sale of food and beverages as the principal purpose or function of the person's business.
- (20) A licensed premises owned or operated by a postsecondary educational institution described in IC 21-17-6-1.
- (21) An automobile racetrack.
- (22) An indoor theater under IC 7.1-3-20-26.

(b) For the purpose of this subsection, "food" means meals prepared on the licensed premises. It is lawful for a minor to be on licensed premises in a room in which is located a bar over which alcoholic beverages are sold or dispensed by the drink if all the following conditions are met:

- (1) The minor is eighteen (18) years of age or older.
- (2) The minor is in the company of a parent, guardian, or family member who is twenty-one (21) years of age or older.

- (3) The purpose for being on the licensed premises is the consumption of food and not the consumption of alcoholic beverages.

**7.1-5-7-12. Employment of minors**

Except as provided in section 13 of this chapter, it is a Class B misdemeanor for a person to knowingly or intentionally employ a minor in or about a place where alcoholic beverages are sold, furnished, or given away for consumption either on or off the licensed premises, in a capacity which requires or allows the minor to sell, furnish, or otherwise deal in alcoholic beverages.

**7.1-5-7-13. Employment of person 18 years or older**

**Editor's Note: This statute was amended in 2008 by P.L.3-2008 and P.L.94-2008, with neither act referring to the other. This statute has not been amended since 2008. Because the 2008 amendments to the statute are not identical, both versions of the statute are set forth below.**

**Version #1 – P.L.3-2008**

Section 12 of this chapter does not prohibit the following:

- (1) The employment of a person at least eighteen (18) years of age but less than twenty-one (21) years of age on or about licensed premises where alcoholic beverages are sold, furnished, or given away for consumption either on or off the licensed premises, for a purpose other than:

- (A) selling;
- (B) furnishing, other than serving;
- (C) consuming; or
- (D) otherwise dealing in;  
alcoholic beverages.

- (2) A person at least eighteen (18) years of age but less than twenty-one (21) years of age from ringing up a sale of alcoholic beverages in the course of the person's employment.

- (3) A person who is at least nineteen (19) years of age but less than twenty-one (21) years of age and who has successfully completed an alcohol server training program certified under IC 7.1-3-1.5 from serving alcoholic beverages in a dining area or family room of a restaurant or hotel:

- (A) in the course of a person's employment as a waiter, waitress, or server; and
- (B) under the supervision of a person who:
  - (i) is at least twenty-one (21) years of age;
  - (ii) is present at the restaurant or hotel; and
  - (iii) has successfully completed an alcohol server training program certified under IC 7.1-3-1.5 by the commission.

This subdivision does not allow a person at least nineteen (19) years of age but less than twenty-one (21) years of age to be a bartender.

**Version #2 – P.L.94-2008**

Section 12 of this chapter does not prohibit the following:

(1) The employment of a person at least eighteen (18) years of age but less than twenty-one (21) years of age on or about licensed premises where alcoholic beverages are sold, furnished, or given away for consumption either on or off the licensed premises, for a purpose other than:

- (A) selling;
- (B) furnishing, other than serving;
- (C) consuming; or
- (D) otherwise dealing in;  
alcoholic beverages.

(2) A person at least nineteen (19) years of age but less than twenty-one (21) years of age from ringing up a sale of alcoholic beverages in the course of the person's employment.

(3) A person who is at least nineteen (19) years of age but less than twenty-one (21) years of age and who has successfully completed an alcohol server training program certified under IC 7.1-3-1.5 from serving alcoholic beverages in a dining area or family room of a restaurant or hotel:

- (A) in the course of a person's employment as a waiter, waitress, or server; and
- (B) under the supervision of a person who:
  - (i) is at least twenty-one (21) years of age;
  - (ii) is present at the restaurant or hotel; and
  - (iii) has successfully completed an alcohol server training program certified under IC 7.1-3-1.5 by the commission.

This subdivision does not allow a person at least nineteen (19) years of age but less than twenty-one (21) years of age to be a bartender.

#### **7.1-5-7-14. Failure to exclude minor after written notice**

It is a Class B misdemeanor for a permittee to knowingly or intentionally permit a minor to be in or around the licensed premises after receiving written notice from the parent, guardian, or other person having custody of the minor that the minor is in fact a minor and directing that the minor be excluded from the licensed premises.

#### **7.1-5-7-15. Inducing minor to possess alcohol**

A person twenty-one (21) years of age or older who knowingly or intentionally encourages, aids, or induces a minor to unlawfully possess an alcoholic beverage commits a Class C infraction.

#### **7.1-5-7-16. ATC random inspections; use of local law enforcement**

The commission shall conduct random unannounced inspections at locations where alcoholic beverages are sold or distributed to ensure compliance with this title. Only the commission may conduct the random unannounced inspections. The commission may use retired or off duty law enforcement officers to conduct inspections under this section.

#### **7.1-5-7-17. Use of underage persons in enforcement actions**

(a) Notwithstanding any other law, an enforcement officer vested with full police powers and duties may engage a person who is:

- (1) at least eighteen (18) years of age; and
  - (2) less than twenty-one (21) years of age;
- to receive or purchase alcoholic beverages as part of an enforcement action under this article.

(b) The initial or contemporaneous receipt or purchase of an alcoholic beverage under this section by a person described in subsection (a) must:

- (1) occur under the direction of an enforcement officer vested with full police powers and duties; and
- (2) be a part of the enforcement action.

## **Chapter 8 Prohibited Activities**

- 7.1-5-8-0.3. Legislative intent
- 7.1-5-8-1. Hindrance or prevention of enforcement
- 7.1-5-8-3. Wood alcohol as a beverage
- 7.1-5-8-4. Service of setups; exceptions; race facility; concert facility
- 7.1-5-8-5. Taking alcohol on licensed premise; exceptions; race facility; concert facility
- 7.1-5-8-6. Taking liquor into restaurant; concert facility
- 7.1-5-8-9. Out-of-state beer purchases

### **7.1-5-8-0.3. Legislative intent**

The intent and purpose of the amendments made to sections 4, 5, and 6 of this chapter by P.L. 94-2008 are the promotion of performing arts in Indiana.

### **7.1-5-8-1. Hindrance or prevention of enforcement**

It is a Class C misdemeanor for a person to recklessly hinder, obstruct, interfere with, or prevent the observance or enforcement of any of the following:

- (1) A provision of this title.
- (2) A rule or regulation of the commission adopted in the administration of this title.

### **7.1-5-8-3. Wood alcohol as a beverage**

It is a Class A misdemeanor for a person knowingly to give, furnish, barter, keep for sale, or deliver a preparation, liquid, fluid, or drink, or other substance likely or intended to be used as a beverage, that contains wood alcohol.

### **7.1-5-8-4. Service of setups; exceptions; race facility; concert facility**

(a) It is a Class B misdemeanor for a person who owns or operates a private or public restaurant or place of public or private entertainment to knowingly or intentionally permit another person to come into the establishment with an alcoholic beverage for sale or gift, or for consumption in the establishment by that person or another, or to serve a setup to a person who comes into the establishment. However, the provisions of this section do not apply to the following:

- (1) A private room hired by a guest of a bond fide club or hotel that holds a retail permit.

(2) A facility that is used in connection with the operation of a paved track that is used primarily in the sport of auto racing.

(3) An outdoor place of public entertainment that:

(A) has an area of at least four (4) acres and not more than six (6) acres;

(B) is located within one (1) mile of the White River;

(C) is owned and operated by a nonprofit corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(D) is used primarily in connection with live music concerts.

(b) An establishment operated in violation of this section is declared to be a public nuisance and subject to abatement as other public nuisances are abated under the provisions of this title.

#### **7.1-5-8-5. Taking alcohol on licensed premise; exceptions; race facility; concert facility**

(a) This section does not apply to a person who, on or about a licensed premises, carries, conveys, or consumes beer or wine:

(1) described in IC 7.1-1-2-3(a)(4); and

(2) not sold or offered for sale.

(b) This section does not apply to a person at a facility that is used in connection with the operation of a track that is used primarily in the sport of auto racing.

(c) This section does not apply to a person at an outdoor place of public entertainment that:

(1) has an area of at least four (4) acres and not more than six (6) acres;

(2) is located within one (1) mile of the White River;

(3) is owned and operated by a nonprofit corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(4) is used primarily in connection with live music concerts.

(d) It is a Class C misdemeanor for a person, for the person's own use, to knowingly carry on, convey to, or consume on or about the licensed premises of a permittee an alcoholic beverage that was not then and there purchased from that permittee.

#### **7.1-5-8-6. Taking liquor into restaurant; concert facility**

(a) It is a Class C misdemeanor for a person to knowingly carry liquor into a restaurant or place of public entertainment for the purpose of consuming it, displaying it, or selling, furnishing, or giving it away to another person on the premises, or for the purpose of having it served to himself or another person, then and there. It is a Class C misdemeanor to knowingly consume liquor brought into a public establishment in violation of this section.

(b) This section does not apply to a person at an outdoor place of public entertainment that:

(1) has an area of at least four (4) acres and not more than six (6) acres;

(2) is located within one (1) mile of the White River;

(3) is owned and operated by a nonprofit corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(4) is used primarily in connection with live music concerts.

### **7.1-5-8-9. Out-of-state beer purchases**

It is a Class C misdemeanor for a permittee to knowingly or intentionally purchase, receive, or import beer from a brewer or other person located outside this state unless the bond and agreement required by this title have been accepted by the commission and are currently effective.

## **Chapter 12 Prohibition on Smoking**

- 7.1-5-12-0.5. “Ashtray” defined
- 7.1-5-12-1. “Place of employment” defined
- 7.1-5-12-2. “Public place” defined
- 7.1-5-12-3. “Smoking” defined
- 7.1-5-12-4. Smoking prohibited
- 7.1-5-12-5. Exceptions to places where smoking prohibited
- 7.1-5-12-6. Enforcement of smoking prohibition
- 7.1-5-12-7. Duties of owners and operators
- 7.1-5-12-8. Violation of smoking prohibition
- 7.1-5-12-9. Filing a civil action
- 7.1-5-12-10. Violation by owners and operators
- 7.1-5-12-11. Retaliation for reporting or enforcing
- 7.1-5-12-12. Smoking on school bus prohibited
- 7.1-5-12-13. Local government ordinances
- 7.1-5-12-14. Commission reports

### **7.1-5-12-0.5. “Ashtray” defined**

As used in this chapter, “ashtray” means any receptacle that is used for disposing of smoking materials, including ash and filters.

### **7.1-5-12-1. “Place of employment” defined**

As used in this chapter, “place of employment” means an enclosed area of a structure that is a place of employment. The term does not include a private vehicle.

### **7.1-5-12-2. “Public place” defined**

As used in this chapter, “public place” means an enclosed area of a structure in which the public is invited or permitted.

### **7.1-5-12-3. “Smoking” defined**

As used in this chapter, “smoking” means the:

- (1) carrying or holding of a lighted cigarette, cigar, or pipe, or any other lighted tobacco smoking equipment; or
- (2) inhalation or exhalation of smoke from lighted tobacco smoking equipment.

### **7.1-5-12-4. Smoking prohibited**

- (a) Except as provided in section 5 of this chapter, smoking is prohibited in the following:
  - (1) A public place.

- (2) A place of employment.
- (3) A vehicle owned, leased, or operated by the state if the vehicle is being used for a governmental function.
- (4) The area within eight (8) feet of a public entrance to:
  - (A) a public place; or
  - (B) a place of employment.

(b) An employer shall inform each of the employer's employees and prospective employees of the smoking prohibition applying to the place of employment.

(c) An owner, operator, manager, or official in charge of a public place or place of employment shall remove ashtrays or other smoking paraphernalia from areas of the public place or place of employment where smoking is prohibited under this chapter. However, this subsection does not prohibit the display of ashtrays or other smoking paraphernalia that are intended only for retail sale.

(d) This subsection does not apply to an owner, an operator, a manager, or an official in charge of a public place or place of employment in which smoking is allowed under section 5 of this chapter. An owner, operator, manager, or official in charge of a public place or place of employment shall post conspicuous signs at each public entrance that read "State Law Prohibits Smoking Within 8 Feet of this Entrance" or other similar language.

#### **7.1-5-12-5. Exceptions to places where smoking prohibited**

(a) Except as provided in subsection (c) and subject to section 13 of this chapter, smoking may be allowed in the following:

- (1) A horse racing facility operated under a permit under IC 4-13-5 and any other permanent structure on land owned or leased by the owner of the facility that is adjacent to the facility.
- (2) A riverboat (as defined in IC 4-33-2-17) and any other permanent structure that is:
  - (A) owned or leased by the owner of the riverboat; and
  - (B) located on land that is adjacent to:
    - (i) the dock to which the riverboat is moored; or
    - (ii) the land on which the riverboat is situated in the case of a riverboat described in IC 4-33-2-17(2).
- (3) A facility that operates under a gambling game license under IC 4-35-5 and any other permanent structure on land owned or leased by the owner of the facility that is adjacent to the facility.
- (4) A satellite facility licensed under IC 4-31-5.5.
- (5) An establishment owned or leased by a business that meets the following requirements:
  - (A) The business was in business and permitted smoking on December 31, 2012.
  - (B) The business prohibits entry by an individual who is less than twenty-one (21) years of age.
  - (C) The owner or operator of the business holds a beer, liquor, or wine retailer's permit.
  - (D) The business limits smoking in the establishment to either:
    - (i) cigar smoking; or

- (ii) smoking with a waterpipe or hookah device.
  - (E) During the preceding calendar year, at least ten percent (10%) of the business's annual gross income was from:
    - (i) the sale of cigars and the rental of onsite humidors; or
    - (ii) the sale of loose tobacco for use in a waterpipe or hookah device.
  - (F) The person in charge of the business posts in the establishment conspicuous signs that display the message that cigarette smoking is prohibited.
- (6) A premises owned or leased by and regularly used for the activities of a business that meets all of the following:
- (A) The business is exempt from federal income taxation under 26 U.S.C. 501(c).
  - (B) The business:
    - (i) meets the requirements to be considered a club under IC 7.1-3-20-1; or
    - (ii) is a fraternal club (as defined in IC 7.1-3-20-7).
  - (C) The business provides food or alcoholic beverages only to its bona fide members and their guests.
  - (D) The business, during a meeting of the business's members, voted within the previous two (2) years to allow smoking on the premises.
  - (E) The business:
    - (i) provides a separate, enclosed, designated smoking room or area that is adequately ventilated to prevent migration of smoke to nonsmoking areas of the premises;
    - (ii) allows smoking only in the room or area designated in item (i); and
    - (iii) does not allow an individual who is less than eighteen (18) years of age to enter into the room or area described in item (i).
- (7) A retail tobacco store used primarily for the sale of tobacco products and tobacco accessories that meets the following requirements:
- (A) The owner or operator of the store held a valid tobacco sales certificate issued under IC 7.1-3-18.5 on June 30, 2012.
  - (B) The store prohibits entry by an individual who is less than eighteen (18) years of age.
  - (C) The sale of products other than tobacco products and tobacco accessories is merely incidental.
  - (D) The sale of tobacco products accounts for at least eighty-five percent (85%) of the store's annual gross sales.
  - (E) Food or beverages are not sold in a manner that requires consumption on the premises, and there is not an area set aside for customers to consume food or beverages on the premises.
- (8) A bar or tavern:
- (A) for which the permittee holds:
    - (i) a beer retailer's permit under IC 7.1-3-4;
    - (ii) a liquor retailer's permit under IC 7.1-3-9; or

- (iii) a wine retailer's permit under IC 7.1-3-14;
- (B) that does not employ an individual who is less than eighteen (18) years of age;
- (C) that does not allow an individual who:
  - (i) is less than twenty-one (21) years of age; and
  - (ii) is not an employee of the bar or tavern;
 to enter any area of the bar or tavern; and
- (D) that is not located in a business that would otherwise be subject to this chapter.

(9) A cigar manufacturing facility that does not offer retail sales.

(10) A premises of a cigar specialty store to which all of the following apply:

- (A) The owner or operator of the store held a valid tobacco sales certificate issued under IC 7.1-3-18.5 on June 30, 2012.
- (B) The sale of tobacco products and tobacco accessories account for at least fifty percent (50%) of the store's annual gross sales.
- (C) The store has a separate, enclosed, designated smoking room that is adequately ventilated to prevent migration of smoke to nonsmoking areas.
- (D) Smoking is allowed only in the room described in clause (C).
- (E) Individuals who are less than eighteen (18) years of age are prohibited from entering into the room described in clause (C).
- (F) Cigarette smoking is not allowed on the premises of the store.
- (G) The owner or operator of the store posts a conspicuous sign on the premises of the store that displays the message that cigarette smoking is prohibited.
- (H) Food or beverages are not sold in a manner that requires consumption on the premises, and there is not an area set aside for customers to consume food or beverages on the premises.

(11) The premises of a business that is located in the business owner's private residence (as defined in IC 3-5-2-42.5) if the only employees of the business who work in the residence are the owner and other individuals who reside in the residence.

(b) The owner, operator, manager, or official in charge of an establishment or premises in which smoking is allowed under this section shall post conspicuous signs in the establishment that read "WARNING: Smoking Is Allowed In This Establishment" or other similar language.

(c) This section does not allow smoking in the following enclosed areas of an establishment or premises described in subsection (a)(1) through (a)(10):

- (1) Any hallway, elevator, or other common area where an individual who is less than eighteen (18) years of age is permitted.
- (2) Any room that is intended for use by an individual who is less than eighteen (18) years of age.

(d) The owner, operator, or manager of an establishment or premises that is listed under subsection (a) and that allows smoking shall provide a verified statement to the commission that states that the establishment or premises qualifies for the exemption. The commission may require the owner, operator, or manager of an establishment or premises to provide documentation or additional information concerning the exemption of the establishment or premises.

**7.1-5-12-6. Enforcement of smoking prohibition**

- (a) The commission shall enforce this chapter.
- (b) This chapter may also be enforced by:
  - (1) the state department of health established by IC 16-19-1-1;
  - (2) a local health department, as defined in IC 16-18-2-211;
  - (3) a health and hospital corporation established by IC 16-22-8-6;
  - (4) the division of fire and building safety established within the department of homeland security by IC 10-19-7-1; and
  - (5) a law enforcement officer;

in cooperation with the commission.

(c) The commission, the state department of health, a local health department, a health and hospital corporation, the division of fire and building safety, or a law enforcement officer may inspect premises that are subject to this chapter to ensure that the person responsible for the premises is in compliance with this chapter.

**7.1-5-12-7. Duties of owners and operators**

(a) This section does not apply to an establishment or premises in which smoking is allowed under section 5 of this chapter.

(b) The owner, operator, manager, or official in charge of a public place shall do the following:

- (1) Post conspicuous signs that read “Smoking is Prohibited by State Law” or other similar language.
- (2) Ask an individual who is smoking in violation of this chapter to refrain from smoking.
- (3) Cause to be removed from the public place an individual who is smoking in violation of this chapter and fails to refrain from smoking after being asked to refrain from smoking.

(c) In addition to the requirements under subsection (b), the owner or operator of a restaurant shall post a conspicuous sign at each entrance to the restaurant informing the public that smoking is prohibited in the restaurant.

**7.1-5-12-8. Violation of smoking prohibition**

(a) A person who smokes in an area where smoking is prohibited by this chapter commits prohibited smoking, a Class B infraction, except as provided in subsection (b).

(b) A person who smokes in an area where smoking is prohibited by this chapter commits prohibited smoking, a Class A infraction if the person has been adjudged to have committed at least three (3) prior unrelated infractions under:

- (1) this section; or
- (2) IC 16-41-37-4 (before its repeal).

**7.1-5-12-9. Filing a civil action**

(a) A local health department may enforce this chapter by filing a civil action under IC 16-20-1-26.

(b) A health and hospital corporation may enforce this chapter by filing a civil action under IC 16-22-8-31.

(c) The division of fire and building safety may enforce this chapter by filing a civil action under IC 22-12-7-13.

**7.1-5-12-10. Violation by owners and operators**

(a) An owner, manager, operator, or official in charge of a public place or place of employment who fails to comply with a requirement imposed by this chapter commits a Class B infraction, except as provided in subsection (b).

(b) A failure to comply described in subsection (a) is a Class A infraction if the owner, manager, operator, or official has been adjudged to have committed at least three (3) prior unrelated infractions under this chapter.

**7.1-5-12-11. Retaliation for reporting or enforcing**

An owner, a manager, or an employer shall not discharge, refuse to hire, or in any manner retaliate against an individual for:

- (1) reporting a violation of this chapter; or
- (2) exercising any right or satisfying any obligation under this chapter.

**7.1-5-12-12. Smoking on school bus prohibited**

(a) As used in this section, “school bus” means a motor vehicle that is:

- (1) designed and constructed for the accommodation of at least ten (10) passengers;
- (2) owned or operated by a public or governmental agency, or privately owned and operated for compensation; and
- (3) used for the transportation of school children to and from the following:
  - (A) School.
  - (B) School athletic games or contests.
  - (C) Other school functions.

(b) As used in this section, “school week” means a week that:

- (1) begins on Monday and ends on Friday; and
- (2) includes at least three (3) days during which, on each day, more than four (4) hours of classroom instruction are provided.

(c) A person who smokes in a school bus during a school week or while the school bus is being used for the transportation of school children to and from:

- (1) a school;
- (2) a school athletic game or contest; or
- (3) another school function;

commits a Class B infraction, except as provided in subsection (d).

(d) A person who smokes in a school bus as described in subsection (c) commits a Class A infraction if the person, within the twelve (12) months immediately preceding the person’s act of smoking in a school bus, committed at least three (3) prior unrelated acts of smoking in a school bus for which the person was adjudged to have committed infractions under this section.

**7.1-5-12-13. Local government ordinances**

(a) This chapter does not prohibit a county, city, town or other governmental unit from adopting an ordinance more restrictive than this chapter.

(b) This chapter does not supersede a smoking ordinance that is adopted by a county, city, town, or other governmental unit before the effective date of this chapter that is more restrictive than this chapter.

**7.1-5-12-14. Commission reports [effective March 24, 2014]**

Beginning in 2013, the commission shall present an annual report to the study committee on public health, behavioral health, and human services established by IC 2-5-1.3-4 concerning the implementation and enforcement activities taken under this chapter. The report must include the number of smoking related inspections conducted and violations for the previous calendar year. The commission shall submit the report in electronic format under IC 5-14-6 to the legislative services agency not later than September 1 of each year.

**ARTICLE 6  
YOUTH TOBACCO SALES AND ENFORCEMENT**

- Ch. 1           Definitions
- Ch. 2           Youth Tobacco Law Enforcement Authority

**Chapter 1  
Definitions**

- 7.1-6-1-1.     Application
- 7.1-6-1-2.     “Person” defined
- 7.1-6-1-3.     “Tobacco product” defined

**7.1-6-1-1. Application**

The definitions in this chapter apply throughout this article.

**7.1-6-1-2. “Person” defined**

“Person” has the meaning set forth in IC 35-31.5-2-234.

**7.1-6-1-3. “Tobacco product” defined**

“Tobacco product” means a product that contains tobacco and is intended for human consumption.

**Chapter 2  
Youth Tobacco Law Enforcement Authority**

- 7.1-6-2-0.3.   Legislative intent
- 7.1-6-2-0.4.   Late payment penalty and interest
- 7.1-6-2-1.     Enforcement of article
- 7.1-6-2-2.     Random inspections
- 7.1-6-2-3.     Unlawful sale of cigarettes; penalty
- 7.1-6-2-4.     Use of minors to enforce
- 7.1-6-2-5.     Annual report to United States Department of Health and Human Services
- 7.1-6-2-6.     Youth tobacco education and enforcement fund; administration

7.1-6-2-8. Youth tobacco education and enforcement fund; penalties

**7.1-6-2-0.3. Legislative intent**

It is the intent of the general assembly that this article be:

- (1) implemented in an equitable and a uniform manner throughout Indiana; and
- (2) enforced to ensure the eligibility for and receipt of any federal funds or grants that the state receives or may receive relating to P.L. 256-1996.

**7.1-6-2-0.4. Late payment penalty and interest**

Notwithstanding the addition of section 8 of this chapter by P.L. 204-2001, a person may pay a civil penalty:

- (1) to which section 8 of this chapter, as added by P.L. 204-2001, applies; and
- (2) that was imposed by a court before July 1, 2001;

before August 1, 2001, without the imposition of a late payment penalty or interest under section 8 of this chapter, as added by P.L. 204-2001. After July 30, 2001, late payment penalties and interest shall be added to the civil penalty as if section 8 of this chapter, as added by P.L. 204-2001, were in effect on the date that the civil penalty was imposed.

**7.1-6-2-1. Enforcement of article**

The commission, an Indiana law enforcement agency, the office of the sheriff of a county, or an organized police department of a municipal corporation may enforce this article to the extent necessary to ensure the state's compliance with:

- (1) Section 1926 of the Public Health Service Act (42 U.S.C. 300x-26); and
- (2) implementing regulations promulgated by the United States Department of Health and Human Services.

**7.1-6-2-2. Random inspections**

The division of mental health and addiction established under IC 12-21 shall coordinate the conduct of random unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with this article. Only the commission, an Indiana law enforcement agency, the office of the sheriff of a county, or an organized police department of a municipal corporation may conduct the random unannounced inspections. These entities may use retired or off-duty law enforcement officers to conduct inspections under this section.

**7.1-6-2-3. Unlawful sale of cigarettes; penalty**

(a) It is unlawful for a person to sell cigarettes other than in an unopened package originating with the manufacturer that bears the health warning required by federal law.

(b) A person who violates this section commits a Class C infraction.

**7.1-6-2-4. Use of minors to enforce**

(a) An enforcement officer vested with full police powers and duties may engage a person less than eighteen (18) years of age as part of an enforcement action under this article if the initial or contemporaneous receipt or purchase of a tobacco product or electronic cigarette by a person less than eighteen (18) years of age occurs under the direction of an enforcement officer vested with full police powers and duties and is part of the enforcement action.

(b) An enforcement officer vested with full police powers and duties shall not:

- (1) recruit or attempt to recruit a person less than eighteen (18) years of age to participate in an enforcement action under subsection (a) at the scene of a violation of section 2 of this chapter; or
- (2) allow a person less than eighteen (18) years of age to purchase or receive a tobacco product or electronic cigarette as part of an enforcement action under subsection (a) without the written permission of the person's parents or legal guardians.

**7.1-6-2-5. Annual report to United States Department of Health and Human Services.**

The division of mental health and addiction established under IC 12-21 shall annually prepare for submission to the Secretary of the United States Department of Health and Human Services the report required by Section 1926 of the Public Health Service Act (42 U.S.C. 300x-26) and implementing regulations promulgated under that act.

**7.1-6-2-6. Youth tobacco education and enforcement fund; administration**

- (a) The Richard D. Doyle youth tobacco education and enforcement fund is established. The fund shall be administered by the commission.
- (b) Expenses of administering the fund shall be paid from money in the fund.
- (c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.
- (d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.
- (e) Money in the fund shall be used for the following purposes:
  - (1) For youth smoking prevention education. The commission may contract with the state department of health or the office of the secretary of family and social services for youth smoking prevention education programs.
  - (2) For education and training of retailers who sell tobacco products. The commission may contract with education and training programs of the office of the secretary of family and social services, the division of mental health and addiction, enforcement officers, or a program approved by the commission.
  - (3) For the commission, for enforcement of youth tobacco laws.

**7.1-6-2-8. Youth tobacco education and enforcement fund; penalties.**

- (a) This section applies whenever a civil penalty payable to the Richard D. Doyle youth tobacco education and enforcement fund is imposed.
- (b) The person liable for the civil penalty shall pay the full amount of the civil penalty to the commission within thirty (30) days after final judgment.
- (c) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for a late penalty equal to the greater of the following:
  - (1) Twenty-five percent (25%) of the amount of the civil penalty imposed under IC 35-46-1.
  - (2) The lesser of the following:
    - (A) Twenty-five dollars (\$25) multiplied by the number of days that have elapsed after the date that the civil penalty was imposed by a court.
    - (B) Five thousand dollars (\$5,000).

(d) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for interest on the unpaid amount of the:

- (1) civil penalty imposed by a court; and
- (2) late penalty imposed under this section.

The interest rate is the adjusted rate of interest as determined under IC 6-8.1-10-1 payable from the date that payment of the amount was due.

(e) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for the reasonable documented out-of-pocket expenses incurred in pursuing collection efforts.

(f) The commission shall collect the following:

- (1) Civil penalties imposed by a court.
- (2) Late penalties imposed under this section.
- (3) Interest imposed under this section.
- (4) Reasonable documented out-of-pocket expenses incurred in pursuing collection efforts.

(g) Late penalties and interest imposed under this section shall be deposited in the Richard D. Doyle youth tobacco education and enforcement fund established by section 6 of this chapter.

## **TITLE 9 TRAFFIC CODE**

### **ARTICLE 13 GENERAL PROVISIONS AND DEFINITIONS [PORTIONS OMITTED]**

#### **Chapter 1 Application [Portions Omitted]**

9-13-1-1. Application

#### **9-13-1-1. Application**

Except as otherwise provided, the definitions in this article apply throughout this title.

#### **Chapter 2 Definitions [Portions Omitted]**

- 9-13-2-1.7 “Aggressive driving” defined  
9-13-2-2.2 “Alcohol” defined  
9-13-2-2.3 “Alcoholic beverage” defined  
9-13-2-2.4 “Alcohol concentration equivalent” defined  
9-13-2-2.5 “Alley” defined  
9-13-2-3 “Antique motor vehicle” defined

9-13-2-5.5 “Assembled vehicle” defined  
 9-13-2-6 “Authorized emergency vehicle” defined  
 9-13-2-14 “Bicycle” defined  
 9-13-2-16 “Bureau” defined  
 9-13-2-22 “Chemical test” defined  
 9-13-2-23 “Child restraint system” defined  
 9-13-2-25.8 “Class A motor driven cycle” defined  
 9-13-2-26.5 “Class B motor driven cycle” defined  
 9-13-2-29 “Commercial driver’s license” defined  
 9-13-2-31 “Commercial motor vehicle” defined  
 9-13-2-31.5 “Commercial vehicle” defined  
 9-13-2-33 “Commissioner” defined  
 9-13-2-34.3 “Compression release engine brake” defined  
 9-13-2-34.5 “Container” defined  
 9-13-2-35 “Controlled substance” defined  
 9-13-2-38 “Conviction” defined  
 9-13-2-39 “Court” defined  
 9-13-2-39.5 “Covered offense” defined  
 9-13-2-40 “Crosswalk” defined  
 9-13-2-41 “Current driving license” defined  
 9-13-2-47 “Driver” defined  
 9-13-2-48 “Driver’s license” defined  
 9-13-2-48.3 “Driving privileges” defined  
 9-13-2-48.5 “Driving record” defined  
 9-13-2-49 “Driveway – Private road” defined  
 9-13-2-49.1 “Drug” defined  
 9-13-2-49.3 “Electric personal assistive mobility device” defined  
 9-13-2-49.5 “Electronic traffic ticket” defined  
 9-13-2-49.7 “Entrapment” defined  
 9-13-2-56 “Farm tractor” defined  
 9-13-2-58 “Farm truck” defined  
 9-13-2-59 “Farm vehicle loaded with farm product” defined  
 9-13-2-60 “Farm wagon” defined  
 9-13-2-61 “Fatal accident” defined  
 9-13-2-69.5 “Funeral procession” defined  
 9-13-2-69.7 “Golf cart” defined  
 9-13-2-72 “Habitual violator” defined  
 9-13-2-72.7 “Highly restricted personal information” defined  
 9-13-2-73 “Highway – Street” defined  
 9-13-2-74.5 “Identification card” defined  
 9-13-2-75 “Identification number” defined  
 9-13-2-76 “Ignition interlock device” defined  
 9-13-2-77 “Implement of agriculture” defined  
 9-13-2-79.7 “Inflatable restraint system” defined  
 9-13-2-84 “Intersection” defined  
 9-13-2-85 “Interstate highway” defined

9-13-2-86 “Intoxicated” defined  
9-13-2-89 “Judgment” defined  
9-13-2-92 “Law enforcement officer” defined  
9-13-2-93 “License” defined  
9-13-2-94.5 “Low speed vehicle” defined  
9-13-2-103.5 “Motorboat” defined  
9-13-2-104 “Motor scooter” defined  
9-13-2-104.5 “Motor driven cycle” defined  
9-13-2-105 “Motor vehicle” defined  
9-13-2-108 “Motorcycle” defined  
9-13-2-109 “Motorized bicycle” defined  
9-13-2-117.3 “Off-road vehicle” defined  
9-13-2-117.5 “Operate” defined  
9-13-2-118 “Operator” defined  
9-13-2-120.5 “Out-of-service order” defined  
9-13-2-123 “Passenger motor vehicle” defined  
9-13-2-123.5 “Permit” defined  
9-13-2-124.5 “Personal information” defined  
9-13-2-127 “Police officer” defined  
9-13-2-130 “Previous conviction of operating while intoxicated” defined  
9-13-2-131 “Prima facie evidence of intoxication” defined  
9-13-2-137 “Private road” defined  
9-13-2-139 “Proof of financial responsibility” defined  
9-13-2-140 “Protocol” defined  
9-13-2-150.7 “Registration” defined  
9-13-2-151 “Relevant evidence of intoxication” defined  
9-13-2-154 “Restricted license” defined  
9-13-2-157 “Roadway” defined  
9-13-2-159 “Safety zone” defined  
9-13-2-161 “School bus” defined  
9-13-2-161.3 “School crossing guard” defined  
9-13-2-161.5 “School crossing zone” defined  
9-13-2-165 “Serious bodily injury” defined  
9-13-2-167.5 “Snowmobile” defined  
9-13-2-170.3 “Special machinery” defined  
9-13-2-170.7 “Special Purpose Bus” defined  
9-13-2-172 “Speed contest” defined  
9-13-2-175 “Street and Highway” defined  
9-13-2-177.3 “Telecommunications device” defined  
9-13-2-177.4 “Text message” defined  
9-13-2-177.5 “Third party” defined  
9-13-2-178 “Through highway” defined  
9-13-2-180 “Tractor” defined  
9-13-2-196 “Vehicle” defined  
9-13-2-196.3 “Vehicular substance offense” defined  
9-13-2-197 “Violation” defined

9-13-2-198.5 “Watercraft” defined

9-13-2-200 “Worksite” defined

**9-13-2-1.7. “Aggressive driving” defined**

“Aggressive driving,” for purposes of IC 9-21-8-55, has the meaning set forth in IC 9-21-8-55(b).

**9-13-2-2.2. “Alcohol” defined**

“Alcohol,” for purposes of IC 9-24-6, has the meaning set forth in IC 9-24-6-0.3.

**9-13-2-2.3. “Alcoholic beverage” defined**

“Alcoholic beverage,” for purposes of IC 9-30-15, has the meaning set forth in IC 7.1-1-3-5.

**9-13-2-2.4. “Alcohol concentration equivalent” defined**

“Alcohol concentration equivalent” means the alcohol concentration in a person’s blood or breath determined from a test of a sample of the person’s blood or breath.

**9-13-2-2.5. “Alley” defined**

“Alley,” means a public way in an urban district that meets the following qualifications:

- (1) Is open to the public for vehicular traffic.
- (2) Is publicly maintained.
- (3) Is one (1) lane wide.
- (4) Is designated as an alley by the local authorities on an official map of the urban district.

**9-13-2-3. “Antique motor vehicle” defined**

(a) Except as provided in subsection (b), “antique motor vehicle” means a motor vehicle that is at least twenty-five (25) years old.

(b) “Antique motor vehicle,” for purposes of IC 9-19-11-1(6), means a passenger motor vehicle or truck that was manufactured without a safety belt as a part of the standard equipment installed by the manufacturer at each designated seating position, before the requirement of the installation of safety belts in the motor vehicle according to the standards stated in the Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208).

**9-13-2-5.5. “Assembled vehicle” defined**

“Assembled vehicle,” for purposes of IC 9-17-4, has the meaning set forth in IC 9-17-4-0.3.

**9-13-2-6. “Authorized emergency vehicle” defined**

“Authorized emergency vehicle” means the following:

- (1) The following vehicles:
  - (A) Fire department vehicles.
  - (B) Police department vehicles.
  - (C) Ambulances.

- (D) Emergency vehicles operated by or for hospitals or health and hospital corporations under IC 16-22-8.
- (2) Vehicles designated as emergency vehicles by the Indiana department of transportation under IC 9-21-20-1.
- (3) Motor vehicles that, subject to IC 9-21-20-2, are approved by the Indiana emergency medical services commission that are:
  - (A) Ambulances that are owned by persons, firms, limited liability companies, or corporations other than hospitals; or
  - (B) Not ambulances and that provide emergency medical services, including extrication and rescue services (as defined in IC 16-18-2-110).
- (4) Vehicles of the department of correction that, subject to IC 9-21-20-3, are:
  - (A) Designated by the department of correction as emergency vehicles; and
  - (B) Responding to an emergency.

**9-13-2-14. “Bicycle” defined**

“Bicycle” means any foot-propelled vehicle, irrespective of the number of wheels in contact with the ground.

**9-13-2-16. “Bureau” defined**

“Bureau,” unless otherwise indicated, refers to the bureau of motor vehicles.

**9-13-2-22. “Chemical test” defined**

“Chemical test” means an analysis of a person’s blood, breath, urine, or other bodily substance for the determination of the presence of alcohol, a controlled substance or its metabolite, or a drug or its metabolite.

**9-13-2-23. “Child restraint system” defined**

“Child restraint system” means a device that:

- (1) is manufactured for the purpose of protecting children from injury during a motor vehicle accident; and
- (2) meets the standards prescribed and definition contained in 49 CFR 571.213.

**9-13-2-25.8. “Class A motor driven cycle” defined [effective January 1, 2015]**

“Class A motor driven cycle” means a motor vehicle that:

- (1) has a seat or saddle for the use of the rider;
- (2) is designed to travel on not more than three (3) wheels in contact with the ground;
- (3) complies with applicable motor vehicle equipment requirements under IC 9-19 and 49 CFR 571; and
- (4) is registered as a Class A motor driven cycle under IC 9-18.

The term does not include an electric personal assistive mobility device.

**9-13-2-26.5. “Class B motor driven cycle” defined [effective January 1, 2015]**

“Class B motor driven cycle” means a motor vehicle that:

- (1) has a seat or saddle for the use of the rider;

- (2) is designed to travel no not more than three (3) wheels in contact with the ground;
- (3) complies with applicable motor vehicle equipment requirements under IC 9-19 and 49 CFR 571;
- (4) has a cylinder capacity not exceeding fifty (50) cubic centimeters; and
- (5) is registered as a Class B motor driven cycle under IC 9-18.

The term does not include an electric personal assistive mobility device.

**9-13-2-29. “Commercial driver’s license” defined**

“Commercial driver’s license” has the meaning set forth in 49 CFR 383.5 as in effect July 1, 2010.

**9-13-2-31. “Commercial motor vehicle” defined**

(a) “Commercial motor vehicle” means, except as provided in subsection (b), a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- (1) has a gross combination weight rating of at least twenty-six thousand one (26,001) pounds, including a towed unit with a gross vehicle weight rating of more than ten thousand (10,000) pounds;
- (2) has a gross vehicle weight rating of at least twenty-six thousand one (26,001) pounds;
- (3) is designed to transport sixteen (16) or more passengers, including the driver; or
- (4) is:
  - (A) of any size;
  - (B) used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act; and
  - (C) required to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

(b) The bureau of motor vehicles may, by rule, broaden the definition of “commercial motor vehicle” under subsection (a) to include vehicles with a gross declared weight greater than eleven thousand (11,000) pounds but less than twenty-six thousand one (26,001) pounds.

**9-13-2-31.5. “Commercial vehicle” defined**

(a) Before January 1, 2016, “commercial vehicle”, for purposes of IC 9-18-2-4.5, means a motor vehicle or combination of motor vehicles used in commerce to transport property if the motor vehicle:

- (1) has a gross combination weight rating of at least twenty-six thousand one (26,001) pounds, including a towed unit with a gross vehicle weight rating of more than ten thousand (10,000) pounds;
- (2) has a gross vehicle weight rating of at least twenty-six thousand one (26,001) pounds; or
- (3) meets both of the following requirements:
  - (A) The motor vehicle has a gross vehicle weight rating of at least seven thousand (7,000) pounds, but less than twenty-six thousand one (26,001) pounds.

(B) The motor vehicle is owned by a registered carrier holding a valid Indiana fuel tax permit under IC 6-6-4.1.

(b) After December 31, 2015, “commercial vehicle”, for purposes of IC 9-18-2-4.6, means a motor vehicle used in commerce to transport property if the motor vehicle:

- (1) has a declared gross vehicle weight of at least sixteen thousand (16,000) pounds; and
- (2) is subject to the commercial motor vehicle excise tax under IC 6-6-5.5.

**9-13-2-33. “Commissioner” defined**

“Commissioner” refers to the commissioner of the bureau of motor vehicles.

**9-13-2-34.3. “Compression release engine brake” defined**

“Compression release engine brake”, for purposes of IC 9-21-8-44.5, has the meaning set forth in IC 9-21-8-44.5(a).

**9-13-2-34.5. “Container” defined**

“Container”, for purposes of IC 9-30-15, has the meaning set forth in IC 7.1-1-3-13.

**9-13-2-35. “Controlled substance” defined**

(a) Except as provided in subsection (b), “controlled substance” has the meaning set forth in IC 35-48-1.

(b) For purposes of IC 9-24-6, “controlled substance” has the meaning set forth in 49 CFR 383.5 as in effect July 1, 2010.

**9-13-2-38. “Conviction” defined**

(a) Except as provided in subsection (b), “conviction” includes the following:

- (1) A conviction or judgment upon a plea of guilty or nolo contendere.
- (2) A determination of guilt by a jury or a court, even if:
  - (A) no sentence is imposed; or
  - (B) a sentence is suspended.
- (3) A forfeiture of bail, bond, or collateral deposited to secure the defendant’s appearance for trial, unless the forfeiture is vacated.
- (4) A payment of money as a penalty or as costs in accordance with an agreement between a moving traffic violator and a traffic violations bureau.

(b) “Conviction”, for purposes of IC 9-24-6, has the meaning set forth in 49 CFR 383.5 as in effect July 1, 2010.

**9-13-2-39. “Court” defined**

“Court”, for purposes of IC 9-30-3, has the meaning set forth in IC 9-30-3-2.

**9-13-2-39.5. “Covered offense” defined**

“Covered offense”, for purposes of IC 9-30-14, has the meaning set forth in IC 9-30-14-1.

**9-13-2-40. “Crosswalk” defined**

“Crosswalk” means any of the following:

- (1) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs, from the edges of the traversable roadway.
- (2) A part of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

**9-13-2-41. “Current driving license” defined**

“Current driving license” means every class and kind of license or permit that evidences the privilege to operate a motor vehicle upon the highways of Indiana. The term includes a privilege granted by the license.

**9-13-2-47. “Driver” defined**

“Driver” means a person who drives or is in actual physical control of a vehicle.

**9-13-2-48. “Driver’s license” defined**

(a) Except as provided in subsection (b), driver’s license” means any type of license issued by the state authorizing an individual to operate the type of vehicle for which the license was issued, in the manner for which the license was issued, on public streets, roads, or highways.

(b) “Driver’s license”, for purposes of IC 9-28-2, has the meaning set forth in IC 9-28-2-4.

**9-13-2-48.3 “Driving privileges” defined**

“Driving privileges” means the authority granted to an individual that allows the individual to operate a vehicle of the type and in the manner for which the authority was granted.

**9-13-2-48.5. “Driving record” defined**

“Driving record” means the following:

- (1) A record maintained by the bureau as required under IC 9-14-3-7.
- (2) A record established by the bureau under IC 9-24-18-9.

**9-13-2-49. “Driveway – Private road” defined**

“Driveway” or “private road” means a way or place in private ownership that is used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

**9-13-2-49.1. “Drug” defined**

The term “drug” includes legend drug (as defined in IC 16-18-2-199), nitrous oxide, “model glue” (as defined in IC 35-46-6-1), and any substance listed in IC 35-46-6-2(2).

**9-13-2-49.3. “Electric personal assistive mobility device” defined**

“Electric personal assistive mobility device” means a self-balancing, two (2) nontandem wheeled device that is designed to transport only one (1) person and that has the following:

- (1) An electric propulsion system with average power of seven hundred fifty (750) watts or one (1) horsepower.
- (2) A maximum speed of less than twenty (20) miles per hour when operated on a paved level surface, when powered solely by the propulsion system referred to in

subdivision (1), and when operated by an operator weighing one hundred seventy (170) pounds.

**9-13-2-49.5. “Electronic traffic ticket” defined**

“Electronic traffic ticket”, for purposes of IC 9-30-3, has the meaning set forth in IC 9-30-3-2-5.

**9-13-2-49.7. “Entrapment” defined**

“Entrapment” means a confining circumstance from which escape or relief is difficult or impossible.

**9-13-2-56. “Farm tractor” defined**

“Farm tractor” means a motor vehicle designed and used primarily as a farm implement for drawing implements of agriculture used on a farm and, when using the highways, in traveling from one (1) field or farm to another or to or from places of repairs. The term includes a wagon, trailer, or other vehicle pulled by a farm tractor.

**9-13-2-58. “Farm truck” defined**

“Farm truck,” “farm trailer,” or “farm semitrailer and tractor” means a truck, trailer, or semitrailer and tractor used for the transportation of farm products, livestock, or machinery or supplies to or from a farm or ranch. The term includes a covered farm vehicle (as defined in 49 CFR 390.5). The term does not include an implement of agriculture. The terms may be referred to collectively as “farm vehicles.”

**9-13-2-59. “Farm vehicle loaded with farm product” defined**

“Farm vehicle loaded with a farm product” includes a truck hauling unprocessed leaf tobacco.

**9-13-2-60. “Farm wagon” defined**

(a) “Farm wagon” means any of the following:

(1) A wagon, other than an implement of agriculture, that is used primarily for transporting farm products and farm supplies in connection with a farming operation.

(2) A three (3), four (4), or six (6) wheeled motor vehicle with a folding hitch on the front of the motor vehicle, manufactured with seating for not more than four (4) individuals, that is used primarily:

(A) to transport an individual from one (1) farm field to another, whether or not the motor vehicle is operated on a highway in order to reach the other farm field;

(B) for the transportation of an individual upon farm premises; or

(C) for both purposes set forth in clauses (A) and (B).

(3) A three (3), four (4) or six (6) wheeled construction related motor vehicle, capable of cross-country travel:

(A) without the benefit of a road; and

(B) on or immediately over land, water, snow, ice, marsh, swampland, or other natural terrain;

that is used primarily for construction related purposes, including hauling building materials.

(b) The term includes a motor vehicle described in subsection (a)(2) that is used for the incidental transportation of farm supplies or farm implements at the same time it is used for the transportation of an individual.

**9-13-2-61. “Fatal accident” defined**

“Fatal accident”, for purposes of IC 9-30-7, has the meaning set forth in IC 9-30-7-1.

**9-13-2-69.5. “Funeral procession” defined**

“Funeral procession” means two (2) or more vehicles, including a lead vehicle or a funeral escort vehicle, accompanying human remains.

**9-13-2-69.7. “Golf cart” defined**

“Golf cart” means a four (4) wheeled motor vehicle originally and specifically designed and intended to transport one (1) or more individuals and golf clubs for the purpose of playing the game of golf on a golf course.

**9-13-2-72. “Habitual violator” defined**

“Habitual violator”, for purposes of IC 9-30-10, has the meaning set forth in IC 9-30-10-4.

**9-13-2-72.7. “Highly restricted personal information” defined**

“Highly restricted personal information”, for purposes of IC 9-14-3.5, has the meaning set forth in IC 9-14-3.5-2.5.

**9-13-2-73. “Highway – Street” defined**

“Highway” or “street” means the entire width between the boundary lines of every publicly maintained way when any part of the way is open to the use of the public for purposes of vehicular travel. The term includes an alley in a city or town.

**9-13-2-74.5. “Identification card” defined**

“Identification card” means an identification document issued by a state government for purposes of identification.

**9-13-2-75. “Identification number” defined**

“Identification number” means a set of numbers, letters, or both numbers and letters that is assigned to a motor vehicle or motor vehicle part by:

- (1) a manufacturer of motor vehicles or motor vehicle parts; or
- (2) a governmental entity to replace an original identification number that is destroyed, removed, altered, or defaced.

**9-13-2-76. “Ignition interlock device” defined**

“Ignition interlock device” means a blood alcohol concentration equivalence measuring device that prevents a motor vehicle from being started without first determining the operator’s equivalent breath alcohol concentration through the taking of a deep lung breath sample.

**9-13-2-77. “Implement of agriculture” defined**

“Implement of agriculture” means agricultural implements, pull type and self-propelled, used for the:

- (1) transport;
- (2) delivery; or
- (3) application;

of crop inputs, including seed, fertilizers, and crop protection products, and vehicles designed to transport these types of agricultural implements.

**9-13-2-79.7. “Inflatable restraint system” defined**

“Inflatable restraint system,” for purposes of IC 9-19-10.5, has the meaning set forth in IC 9-19-10.5-1.

**9-13-2-84. “Intersection” defined**

(a) “Intersection” means the area embraced within:

- (1) The prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of two (2) highways that join at, or approximately at, right angles; or
- (2) The area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two (2) roadways at least thirty (30) feet apart, every crossing of each roadway of the divided highway by an intersecting highway is regarded as a separate intersection. If the intersecting highway also include two (2) roadways at least thirty (30) feet apart, every crossing of two (2) roadways of the intersecting highway is regarded as a separate intersection.

**9-13-2-85. “Interstate highway” defined**

“Interstate highway” means a highway that is a part of the national system of interstate and defense highways (23 U.S.C. as in effect January 1, 1991).

**9-13-2-86. “Intoxicated” defined**

“Intoxicated” means under the influence of:

- (1) alcohol;
- (2) a controlled substance (as defined in IC 35-48-1);
- (3) a drug other than alcohol or a controlled substance;
- (4) a substance described in IC 35-46-6-2 or IC 35-46-6-3;
- (5) a combination of substances described in subdivisions (1) through (4); or
- (6) any other substance, not including food and food ingredients (as defined in IC 6-2.5-1-20), tobacco (as defined in IC 6-2.5-1-28), or a dietary supplement (as defined in IC 6-2.5-1-16);

so that there is an impaired condition of thought and action and the loss of normal control of a person’s faculties.

**9-13-2-89. “Judgment” defined**

(a) “Judgment” means, except as provided in subsections (b), (c), and (d), any judgment, except a judgment rendered against the state or a political subdivision or a municipality of the

state that becomes final by expiration without appeal of the time within which appeal might have been perfected, or by final affirmation on appeal, rendered by a court of any state of the United States.

- (b) “Judgment”, for purposes of IC 9-25-6-4, has the meaning set forth in IC 9-25-6-4(b).
- (c) “Judgment”, for purposes of IC 9-30-10, has the meaning set forth in IC 9-30-10-1.
- (d) “Judgment”, for purposes of IC 9-30-11, has the meaning set forth in IC 9-30-11-1.

**9-13-2-92. “Law enforcement officer” defined**

(a) “Law enforcement officer”, except as provided in subsection (b), includes the following:

- (1) A state police officer.
- (2) A city, town, or county police officer.
- (3) A sheriff.
- (4) A county coroner in accordance with IC 36-2-14-4.
- (5) A conservation officer.
- (6) An individual assigned duties and limitations under IC 10-11-2-26.
- (7) A member of a consolidated law enforcement department established under IC 36-3-1-5.1.
- (8) An excise police officer of the alcohol and tobacco commission.
- (9) A gaming control officer employed by the gaming control division under IC 4-33-20.

The term refers to a law enforcement officer having jurisdiction in Indiana, unless the context clearly refers to a law enforcement officer from another state or a territory or federal district of the United States.

(b) “Law enforcement officer”, for purposes of IC 9-30-6 and IC 9-30-7, has the meaning set forth in IC 35-31.5-2-185.

**9-13-2-93. “License” defined**

“License”, for purposes of IC 9-30-10, has the meaning set forth in IC 9-30-10-2.

**9-13-2-94.5. “Low speed vehicle” defined**

“Low speed vehicle” means a four (4) wheeled electrically powered motor vehicle:

- (1) with a maximum design speed of not more than thirty-five (35) miles per hour;
- (2) with operational and equipment specifications described in 49 CFR 571.500;
- (3) that is equipped with:
  - (A) headlamps;
  - (B) front and rear turn signal lamps, tail lamps, and stop lamps;
  - (C) reflex reflectors;
  - (D) exterior or interior mirrors;
  - (E) brakes as specified in IC 9-19-3-1;
  - (F) a windshield;
  - (G) a vehicle identification number; and
  - (H) a safety belt installed at each designated seating position; and
- (4) that has not been privately assembled as described in IC 9-17-4-1.

The term does not include a golf cart or an off-road vehicle.

**9-13-2-103.5. “Motorboat” defined**

(a) “Motorboat” means a watercraft propelled by an internal combustion, steam, or electrical inboard or outboard motor or engine or by any mechanical means.

(b) The term includes a sailboat that is equipped with a motor or an engine described in subsection (a) when the sailboat is in operation whether or not the sails are hoisted.

**9-13-2-104. “Motor scooter” defined [repealed effective January 1, 2015]**

“Motor scooter” means a vehicle that has the following:

- (1) Motive power.
- (2) A seat, but not a saddle, for the driver.
- (3) Two (2) wheels.
- (4) A floor pad for the driver’s feet.

**9-13-2-104.1. “Motor driven cycle” defined [effective January 1, 2015]**

“Motor driven cycle” refers to both of the following:

- (1) A Class A motor driven cycle.
- (2) A Class B motor driven cycle.

**9-13-2-105. “Motor vehicle” defined [effective January 1, 2015]**

(a) “Motor vehicle” means, except as otherwise provided in this section, a vehicle that is self-propelled. The term does not include a farm tractor, an implement of agriculture designed to be operated primarily in a farm field or on farm premises, or an electric personal assistive mobility device.

(b) “Motor vehicle”, for purposes of IC 9-21, means:

- (1) a vehicle that is self-propelled; or
- (2) a vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) “Motor vehicle”, for purposes of IC 9-19-10.5, means a vehicle that is self-propelled upon a highway in Indiana. The term does not include the following:

- (1) A farm tractor.
- (2) A motorcycle.
- (3) A motor driven cycle.

(d) “Motor vehicle”, for purposes of IC 9-32-13, includes a semitrailer.

(e) “Motor vehicle”, for purposes of IC 9-24-6, has the meaning set forth in 49 CFR 383.5 as in effect July 1, 2010.

(f) “Motor vehicle”, for purposes of IC 9-25, does not include the following:

- (1) A farm tractor.
- (2) A Class B motor driven cycle.

**9-13-2-108. “Motorcycle” defined [effective January 1, 2015]**

“Motorcycle” means a motor vehicle with motive power that:

- (1) has a seat or saddle for the use of the rider;
- (2) is designed to travel on not more than three (3) wheels in contact with the ground; and

(3) satisfies the operational and equipment specifications described in 49 CFR 571 and IC 9-19.

The term does not include a farm tractor or a motor driven cycle.

**9-13-2-109. “Motorized bicycle” defined [repealed effective January 1, 2015]**

“Motorized bicycle” means a two (2) or three (3) wheeled vehicle that is propelled by an internal combustion engine or a battery powered motor, and if powered by an internal combustion engine, has the following:

- (1) An engine rating of not more than two (2) horsepower and a cylinder capacity not exceeding fifty (50) cubic centimeters.
- (2) An automatic transmission.
- (3) A maximum design speed of not more than twenty-five (25) miles per hour on a flat surface.

The term does not include an electric personal assistive mobility device.

**9-13-2-117.3. “Off-road vehicle” defined**

“Off-road vehicle” has the meaning set forth in IC 14-8-2-185.

**9-13-2-117.5. “Operate” defined**

(a) “Operate”, except as provided in subsections (b) and (c), means to navigate or otherwise be in actual physical control of a vehicle.

(b) “Operate”, for purposes of IC 9-31, means to navigate or otherwise be in actual physical control of a motorboat.

(c) “Operate” for purposes of IC 9-18-2.5, means to:

- (1) ride in or on; and
- (2) be in actual physical control of the operation of;

an off-road vehicle or snowmobile.

**9-13-2-118. “Operator” defined**

(a) Except as provided in subsections (b) and (c), “operator”, when used in reference to a vehicle, means a person, other than a chauffeur or a public passenger chauffeur, who:

- (1) drives or operates a vehicle upon a highway; or
- (2) is exercising control over or steering a motor vehicle being towed by another vehicle.

(b) “Operator”, for purposes of IC 9-25, means a person other than a chauffeur who is in actual physical control of a motor vehicle.

(c) “Operator”, for purposes of IC 9-18-2.5, means an individual who:

- (1) operates; or
- (2) is in actual physical control of;

an off-road vehicle or snowmobile.

**9-13-2-120.5. “Out-of-service order” defined**

“Out-of-service order” means a declaration by an authorized enforcement officer of a federal, state Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service under:

- (1) 49 CFR Parts 386.72, 392.5, 395.13, 396.9;

- (2) Indiana law; or
- (3) the North American Uniform Out-of-Service Criteria.

**9-13-2-123. “Passenger motor vehicle” defined [effective January 1, 2015]**

“Passenger motor vehicle” means a motor vehicle designed for carrying passengers. The term includes a low speed vehicle but does not include the following:

- (1) A motorcycle.
- (2) A bus.
- (3) A school bus.
- (4) A snowmobile.
- (5) An off-road vehicle.
- (6) A motor driven cycle.

**9-13-2-123.5. “Permit” defined**

“Permit” means a permit issued by the state authorizing an individual to operate the type of vehicle for which the permit was issued on public streets, roads, or highways with certain restrictions.

**9-13-2-124.5. “Personal information” defined**

“Personal information”, for purposes of IC 9-14-3.5, has the meaning set forth in IC 9-14-3.5-5.

**9-13-2-127. “Police officer” defined**

(a) “Police officer” means, except as provided in subsections (b) and (c), the following:

- (1) A regular member of the state police department.
- (2) A regular member of a city or town police department.
- (3) A town marshal or town marshal deputy.
- (4) A regular member of a county sheriff’s department.
- (5) A conservation officer of the department of natural resources.
- (6) An individual assigned as a motor carrier inspector under IC 10-11-2-26(a).
- (7) An excise police officer of the alcohol and tobacco commission.
- (8) A gaming control officer employed by the gaming control division under IC 4-33-20.

The term refers to a police officer having jurisdiction in Indiana, unless the context clearly refers to a police officer from another state or a territory or federal district of the United States.

(b) “Police officer”, for purposes of IC 9-18-2.5, means the following:

- (1) A regular member of the state police department.
- (2) A regular member of a city or town police department.
- (3) A town marshal or town marshal deputy.
- (4) A regular member of a county sheriff’s department.
- (5) A conservation officer of the department of natural resources.

(c) “Police officer”, for purposes of IC 9-21, means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

**9-13-2-130. “Previous conviction of operating while intoxicated” defined**

“Previous conviction of operating while intoxicated” means a previous conviction:

(1) In Indiana of:

(A) An alcohol related or drug related crime under Acts 1939, c.48, s.52, as amended, IC 9-4-1-54 (repealed September 1, 1983), or IC 9-11-2 (repealed July 1, 1991); or

(B) A crime under IC 9-30-5-1 through IC 9-30-5-9; or

(2) In any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a crime described in IC 9-30-5-1 through IC 9-30-5-9.

**9-13-2-131. “Prima facie evidence of intoxication” defined**

“Prima facie evidence of intoxication” includes evidence that at the time of an alleged violation the person had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(1) one hundred (100) milliliters of the person’s blood; or

(2) two hundred ten (210) liters of the person’s breath.

**9-13-2-137. “Private road” defined**

“Private road” means a way or place in private ownership that is used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

**9-13-2-139. “Proof of financial responsibility” defined**

“Proof of financial responsibility,” for purposes of IC 9-25, has the meaning set forth in IC 9-25-2-3.

**9-13-2-140. “Protocol” defined**

“Protocol” means a procedure for the withdrawal of blood and other bodily substance samples.

**9-13-2-150.7. “Registration” defined [effective January 1, 2015]**

“Registration”, for purposes of IC 9-25-8, with respect to a vehicle, includes the license plate that is issued by the bureau in connection with the registration of the vehicle.

**9-13-2-151. “Relevant evidence of intoxication” defined**

“Relevant evidence of intoxication” includes evidence that at the time of an alleged violation a person had an alcohol concentration equivalent to at least five-hundredths (0.05) gram, but less than eight-hundredths (0.08) gram of alcohol per:

(1) one hundred (100) milliliters of the person’s blood; or

(2) two hundred ten (210) liters of the person’s breath.

**9-13-2-154. “Restricted license” defined**

“Restricted license” means any current driving license, on which the commission has designated restrictions.

**9-13-2-157. “Roadway” defined**

(a) Except as provided in subsection (b), “roadway” means that part of a highway improved, designed, or ordinarily used for vehicular travel.

(b) As used in IC 9-21-12-13, “roadway” means the part of a highway that is improved, designed, or ordinarily used for vehicular travel. The term does not include the sidewalk, berm, or shoulder, even if the sidewalk, berm, or shoulder is used by persons riding bicycles or other human powered vehicles.

**9-13-2-159. “Safety zone” defined**

“Safety zone” means the area or space officially set apart within a roadway for the exclusive use of pedestrians and that is protected or is so marked or indicated by adequate signs as to be plainly visible at all times.

**9-13-2-161. “School bus” defined**

(a) “School bus” means, except as provided in subsections (b) and (c), a:

- (1) bus;
- (2) hack;
- (3) conveyance;
- (4) commercial motor vehicle; or
- (5) motor vehicle;

used to transport preschool, elementary, or secondary school children to and from school and to and from school athletic games or contests or other school functions. The term does not include a privately owned automobile with a capacity of not more than five (5) passengers that is used for the purpose of transporting school children to and from school.

(b) “School bus”, for purposes of IC 9-21, means a motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school, including project headstart, or privately owned and operated for compensation for the transportation of children to and from school, including project headstart.

(c) “School bus”, for purposes of IC 9-19-11-1(1), means a motor vehicle:

- (1) that meets the federal school bus safety requirements under 49 U.S.C. 30125; or
- (2) that meets the federal school bus safety requirements under 49 U.S.C. 30125 except the:
  - (A) stop signal arm required under federal motor vehicle safety standard (FMVSS) no. 131; and
  - (B) flashing lamps required under federal motor vehicle safety standard (FMVSS) no. 108.

**9-13-2-161.3. “School crossing guard” defined**

“School crossing guard” means a person at least eighteen (18) years of age appointed by one (1) of the following:

- (1) Safety board.
- (2) Board of public works and safety.
- (3) Town board.
- (4) Board of public safety.
- (5) Sheriff.

**9-13-2-161.5. “School crossing zone” defined**

“School crossing zone” means a part of a roadway distinctly indicated for crossing by children on the way to or from school by lines or other markings on the surface of the roadway or by signs.

**9-13-2-165. “Serious bodily injury” defined**

“Serious bodily injury” has the meaning set forth in IC 35-31.5-2-292.

**9-13-2-167.5. “Snowmobile” defined**

“Snowmobile” has the meaning set forth in IC 14-8-2-261.

**9-13-2-170.3. “Special machinery” defined**

(a) “Special machinery” includes but is not limited to any of the following:

- (1) A portable saw mill.
- (2) Well drilling machinery.
- (3) A utility service cable trailer.
- (4) Any other vehicle that is designed to perform a specific function.

(b) The term does not include the following:

- (1) A vehicle that is designed to carry passengers.
- (2) Implements of agriculture designed to be operated primarily in a farm field or on farm premises.
- (3) Machinery or equipment used in highway construction or maintenance by the Indiana department of transportation, a county, or a municipality.

**9-13-2-170.7. “Special Purpose Bus” defined**

“Special purpose bus” has the meaning set forth in IC 20-27-2-10.

**9-13-2-172. “Speed contest” defined**

“Speed contest” means an unnecessary rapid acceleration by two (2) or more vehicles that creates a hazard to pedestrians, passengers, vehicles, or other property.

**9-13-2-175. “Street – Highway” defined**

“Street” or “highway” means the entire width between the boundary lines of every way publicly maintained when any part of the way is open to the use of the public for purposes of vehicular travel. The term includes an alley in a city or town.

**9-13-2-177.3. “Telecommunications device” defined**

(a) “Telecommunications device”, for purposes of IC 9-21-8, IC 9-25-4-7, and IC 9-24-11-3.3, means an electronic or digital telecommunications device. The term includes a:

- (1) wireless telephone;
- (2) personal digital assistant;
- (3) pager; or
- (4) text messaging device.

(b) The term does not include:

- (1) amateur radio equipment that is being operated by a person licensed as an amateur radio operator by the Federal Communications Commission under 47 CFR Part 97; or
- (2) a communications system installed in a commercial motor vehicle weighing more than ten thousand (10,000) pounds.

**9-13-2-177.4. “Text message” defined**

“Text message”, for purposes of IC 9-21-8, has the meaning set forth in IC 9-21-8-0.5.

**9-13-2-177.5. “Third party” defined**

“Third party”, for purposes of IC 9-17-3, has the meaning set forth in IC 9-17-3-0.5.

**9-13-2-178. “Through highway” defined**

“Through highway” means a highway or portion of a highway at the entrance to which vehicular traffic from intersecting highways is required by law to yield right-of-way to vehicles on the through highway in obedience to either a stop sign or a yield sign.

**9-13-2-180. “Tractor” defined**

“Tractor” means a motor vehicle designed and used primarily for drawing or propelling trailers, semitrailers, or vehicles of any kind. The term does not include a farm tractor.

**9-13-2-196. “Vehicle” defined [effective January 1, 2015]**

(a) “Vehicle” means, except as otherwise provided in this section, a device in, upon, or by which a person or property is, or may be, transported or drawn upon a highway.

(b) “Vehicle”, for purposes of IC 9-14 through IC 9-18, does not include the following:

- (1) A device moved by human power.
- (2) A vehicle that runs only on rails or tracks.
- (3) A vehicle propelled by electric power obtained from overhead trolley wires but not operated upon rails or tracks.
- (4) A firetruck and apparatus owned by a person or municipal division of the state and used for fire protection.
- (5) A municipally owned ambulance.
- (6) A police patrol wagon.
- (7) A vehicle not designed for or employed in general highway transportation of persons or property and occasionally operated or moved over the highway, including the following:
  - (A) Road construction or maintenance machinery.
  - (B) A movable device designed, used, or maintained to alert motorists of hazardous conditions on highways.
  - (C) Construction dust control machinery.
  - (D) Well boring apparatus.
  - (E) Ditch digging apparatus.
  - (F) An implement of agriculture designed to be operated primarily in a farm field or on farm premises.
  - (G) An invalid chair.
  - (H) A yard tractor.

(8) An electric personal assistive mobility device.

(c) For purposes of IC 9-20 and IC 9-21, the term does not include devices moved by human power or used exclusively upon stationary rails or tracks.

(d) For purposes of IC 9-22, the term refers to an automobile, a motorcycle, a truck, a trailer, a semitrailer, a tractor, a bus, a school bus, a recreational vehicle, a trailer or semitrailer used in the transportation of watercraft, or a motor driven cycle.

(e) For purposes of IC 9-24-6, the term has the meaning set forth in 49 CFR 383.5 as in effect July 1, 2010.

(f) For purposes of IC 9-30-5, IC 9-30-6, IC 9-30-8, and IC 9-30-9, the term means a device for transportation by land or air. The term does not include an electric personal assistive mobility device.

**9-13-2-196.3. “Vehicular substance offense” defined [effective January 1, 2015]**

“Vehicular substance offense”, for purposes of IC 9-30-15.5, has the meaning set forth in IC 9-30-15.5-1.

**9-13-2-197. “Violation” defined**

“Violation”, for purposes of IC 9-30-10, has the meaning set forth in IC 9-30-10-3.

**9-13-2-198.5. “Watercraft” defined**

“Watercraft” means a contrivance used or designed for navigation on water, including a vessel, boat, motor vessel, steam vessel, sailboat, vessel operated by machinery either permanently or temporarily affixed, scow, tugboat, or any marine equipment that is capable of carrying passengers, except a ferry.

**9-13-2-200. “Worksite” defined**

“Worksite” means a location or area upon which:

- (1) a public purpose construction or maintenance activity; or
- (2) a private purpose construction or maintenance activity that is authorized by a governmental agency;

is being performed on a highway. The term includes the lanes of a highway leading up to the area upon which an activity described in subdivision (1) or (2) is being performed, beginning at the point where appropriate signs directing vehicles to merge from one (1) lane into another lane are posted.

**ARTICLE 14  
BUREAU OF MOTOR VEHICLES  
[PORTIONS OMITTED]**

**Chapter 3  
Records  
[Portions Omitted]**

- 9-14-3-4 Preparation and delivery of certified copies of records; admissibility in court
- 9-14-3-7 Operating records; notice of suspension or revocation; prima facie evidence of mailing; admissibility in tort action

**9-14-3-4. Preparation and delivery of certified copies of records; admissibility in court [effective January 1, 2015]**

(a) Upon request, the bureau shall prepare and deliver a certified copy of any record of the bureau that is not otherwise declared by law to be confidential. The fee for a certified copy is the amount set forth in IC 9-29-2-1.

(b) A certified copy of a record obtained under subsection (a) is admissible in a court proceeding as if the copy were the original.

(c) An electronic record of the bureau obtained from the bureau that bears an electronic signature is admissible in a court proceeding as if the copy were the original.

**9-14-3-7. Operating records; notice of suspension and revocation; prima facie evidence of mailing; admissibility in tort action**

(a) The bureau shall maintain a driving record for each person licensed by the bureau to drive a motor vehicle.

(b) A driving record must contain the following:

(1) A person's convictions for any of the following:

(A) A moving traffic violation.

(B) Operating a vehicle without financial responsibility in violation of IC 9-25.

(2) Any administrative penalty imposed by the bureau.

(3) If the driving privileges of a person have been suspended or revoked by the bureau, an entry in the record stating that a notice of suspension or revocation was mailed by the bureau and the date of the mailing of the notice.

(4) Any suspensions, revocations, or reinstatement of a person's driving privileges, license, or permit.

(5) Any requirement that the person may operate only a motor vehicle equipped with a certified ignition interlock device.

(c) Any entry in the driving record of a defendant stating that notice of suspension or revocation was mailed by the bureau to the defendant constitutes prima facie evidence that the notice was mailed to the defendant's address as shown in the records of the bureau.

(d) A driving record maintained under this section:

(1) is not admissible as evidence in any action for damages arising out of a motor vehicle accident; and

(2) may not include voter registration information.

**ARTICLE 18  
MOTOR VEHICLE REGISTRATION  
AND LICENSE PLATES  
[PORTIONS OMITTED]**

**Chapter 2  
General Procedures for Registering  
Motor Vehicles and Obtaining License Plates  
[Portions Omitted]**

9-18-2-7	Expired plate
9-18-2-21	Failure to carry registration
9-18-2-26	Improper plate display
9-18-2-27	Operating vehicle displaying incorrect registration number
9-18-2-29	Failure to register
9-18-2-29.5	Registration of special machinery.
9-18-2-40	Penalties
9-18-2-42	Counterfeiting certificate of registration
9-18-2-43	Failure to have registration or plates
9-18-2-44	Sale or possession of false registration
9-18-2-45	Owning vehicle registered outside Indiana required to be registered in Indiana

**9-18-2-7. Expired plate [effective March 13, 2014]**

(a) A person who owns a vehicle that is operated on Indiana roadways and subject to registration shall register each vehicle owned by the person as follows:

(1) A vehicle subject to section 8 of this chapter shall be registered under section 8 of this chapter.

(2) Subject to subsection (g) or (h), a vehicle not subject to section 8 or 8.5 of this chapter or to the International Registration Plan shall be registered before:

(A) March 1 of each year;

(B) February 1 or later dates each year; if:

(i) the vehicle is being registered with the department of state revenue; or

(ii) staggered registration has been adopted by the department of state revenue; or

(C) an earlier date subsequent to January 1 of each year as set by the bureau, if the vehicle is being registered with the bureau.

(3) School buses owned by a school corporation are exempt from annual registration but are subject to registration under IC 20-27-7.

(4) Subject to subsection (f), a vehicle subject to the International Registration Plan shall be registered before April 1 of each year.

(5) A school bus not owned by a school corporation shall be registered subject to section 8.5 of this chapter.

(b) Registrations and reregistrations under this section are for the calendar year. Registration and reregistration for school buses owned by a school corporation may be for more than a calendar year.

(c) License plates for a vehicle subject to this section may be displayed during:

(1) the calendar year for which the vehicle is registered; and

(2) the period of time:

(A) subsequent to the calendar year; and

(B) before the date that the vehicle must be registered.

(d) Except as provided in IC 9-18-12.2-5, a person who owns or operates a vehicle may not operate or permit the operation of a vehicle that:

(1) is required to be registered under this chapter; and

(2) has expired license plates.

(e) If a vehicle that is required to be registered under this chapter has:

- (1) been operated on the highways; and
- (2) not been properly registered under this chapter;

the bureau shall, before the vehicle is reregistered, collect the registration fee that the owner of the vehicle would have paid if the vehicle has been properly registered.

(f) The department of state revenue may adopt rules under IC 4-22-2 to issue staggered registration to motor vehicles subject to the International Registration Plan.

(g) Except as provided in section 8.5 of this chapter, the bureau may adopt rules under IC 4-22-2 to issue staggered registration to motor vehicles described in subsection (a)(2).

(h) After June 30, 2011, the registration of a vehicle under IC 9-18-16-1(a)(1) or IC 9-18-16-1(a)(2) expires on December 14 of each year. However, if a vehicle is registered under IC 9-18-16-1(a)(1) or IC 9-18-16-1(a)(2) and the registration of the vehicle is in effect on June 30, 2011, the registration of the vehicle remains valid:

- (1) throughout calendar year 2011; and
- (2) during the period that:
  - (A) begins January 1, 2012; and
  - (B) ends on the date on which the vehicle was due for reregistration under the law in effect before this subsection took effect.

#### **9-18-2-21. Failure to carry registration**

A certification of registration or a legible reproduction of the certificate of registration must be carried:

- (1) in the vehicle to which the registration refers; or
- (2) by the person driving or in control of the vehicle, who shall display the registration upon the demand of a police officer.

#### **9-18-2-26. Improper plate display [effective January 1, 2015]**

(a) License plates, including temporary license plates, shall be displayed as follows:

- (1) For a motorcycle, motor driven cycle, trailer, semitrailer, or recreational vehicle, upon the rear of the vehicle, except as provided in subdivision (4).
- (2) For a tractor or dump truck, upon the front of the vehicle.
- (3) For every other vehicle, upon the rear of the vehicle, except as provided in subdivision (4).
- (4) For a truck with a rear mounted forklift or a mechanism to carry a rear mounted forklift or implement, upon the front of the vehicle.

(b) A license plate shall be securely fastened, in a horizontal position, to the vehicle for which the plate is issued:

- (1) to prevent the license plate from swinging;
  - (2) at a height of at least (12) inches from the ground, measuring from the bottom of the license plate;
  - (3) in a place and position that are clearly visible;
  - (4) maintained free from foreign materials and in a condition to be clearly legible;
- and
- (5) not obstructed or obscured by tires, bumpers, accessories, or other opaque objects.

(c) An interim license plate must be displayed in the manner required by IC 9-32-6-11(f).

(d) The bureau may adopt rules the bureau considers advisable to enforce the proper mounting and securing of license plates on vehicles consistent with this chapter.

**9-18-2-27. Operating vehicle while displaying incorrect registration number**

(a) Except as provided in subsections (b) and (c), a vehicle required to be registered under this chapter may not be used or operated upon the highways if the motor vehicle displays any of the following;

(1) A registration number belonging to any other vehicle.

(2) A fictitious registration number.

(3) A sign or placard bearing the words “license applied for” or “in transit” or other similar signs.

(b) Any other number may be displayed for any lawful purpose upon a:

(1) motor vehicle;

(2) trailer;

(3) semitrailer; or

(4) recreational vehicle;

in addition to the license plates issued by the bureau under this chapter.

(c) After December 31, 2007, if a vehicle is registered as an antique motor vehicle under IC 9-18-12, an authentic Indiana license plate from the antique vehicle’s model year may be displayed on the vehicle under IC 9-18-12-2.5.

**9-18-2-29. Failure to register**

Except as otherwise provided, before:

(1) a motor vehicle;

(2) a motorcycle;

(3) a truck;

(4) a trailer;

(5) a semitrailer;

(6) a tractor;

(7) a bus;

(8) a school bus;

(9) a recreational vehicle;

(10) special machinery; or

(11) a motor driven cycle;

is operated or driven on a highway, the person who owns the vehicle must register the vehicle with the bureau and pay the applicable registration fee.

**9-18-2-29.5. Registration of special machinery**

Before a piece of special machinery is operated off a highway or in a farm field, the person who owns the piece of special machinery must:

(1) register the piece of special machinery with the bureau; and

(2) pay the applicable special machinery registration fee.

**9-18-2-40. Penalties**

(a) This section does not apply to section 43 or 44 of this chapter.

(b) A person who violates this chapter commits a Class C infraction.

(c) A person who owns or operates or permits the operation of a vehicle required to be registered under this chapter with expired license plates commits a Class C infraction.

**9-18-2-42. Counterfeiting certificate of registration [repealed effective January 1, 2015]**

(a) This section does not apply to section 21 of this chapter.

(b) A person who counterfeits or falsely reproduces a certificate or registration for a motor vehicle, semitrailer, or recreational vehicle with intent to:

(1) Use the certificate of registration; or

(2) Permit another person to use the certificate of registration;

commits a Class B misdemeanor.

(c) The bureau shall suspend the driver's license or permit of a person who uses or possesses a certificate of registration described under subsection (b) for ninety (90) days. The mandatory suspension is in addition to sanctions provided in IC 9-30-4-9.

**9-18-2-43. Failure to have registration or plates**

(a) Notwithstanding any law to the contrary but except as provided in subsection (b), a law enforcement officer authorized to enforce motor vehicle laws who discovers a vehicle required to be registered under this article that does not have the proper certificate of registration or license plate:

(1) shall take the vehicle into the officer's custody; and

(2) may cause the vehicle to be taken to and stored in a suitable place until:

(A) the legal owner of the vehicle can be found; or

(B) the proper certificate of registration and license plates have been procured.

(b) Except as provided in IC 9-21-21-7(b), a law enforcement officer who discovers a vehicle in violation of the registration provisions of this article has discretion in the impoundment of any of the following:

(1) Perishable commodities.

(2) Livestock.

**9-18-2-44. Sale or possession of false registration**

A person who knowingly sells, offers to sell, buys, possesses, or offers as genuine a certificate of registration for a motor vehicle, semitrailer, or recreational vehicle that is required to be issued by the bureau and has not been issued by the:

(1) Bureau under this article; or

(2) Appropriate governmental authority of another state;

commits a Class C misdemeanor.

**9-18-2-45. Owning vehicle registered outside Indiana required to be registered in Indiana**

A person who knowingly or intentionally owns a motor vehicle that is registered outside Indiana but that is required to be registered in Indiana commits a Class B misdemeanor.

**ARTICLE 19**  
**MOTOR VEHICLE EQUIPMENT**  
**[PORTIONS OMITTED]**

Ch. 10	Passenger Restraint Systems
Ch. 11	Passenger Restraint Systems for Children
Ch. 19	Windows and Windshield Wipers

**Chapter 10**  
**Passenger Restraint Systems**

9-19-10-0.1	Applicability of amendments to IC 9-19-10-7
9-19-10-1	Applicability of chapter
9-19-10-2	Use of safety belts required
9-19-10-3.1	Stopping, inspecting, searching, detaining to determine compliance; checkpoints
9-19-10-5	Safety belts in vehicles required
9-19-10-7	Use of evidence of noncompliance
9-19-10-8	Penalty for violation of 9-19-10-2
9-19-10-9	Penalty for violation of 9-19-10-5

**9-19-10-0.1. Applicability of amendments to IC 9-19-10-7**

The amendments made to section 7 of this chapter by P.L. 121-1993 apply to a product liability action that arises after June 30, 1993.

**9-19-10-1. Applicability of chapter**

This chapter does not apply to an occupant of a motor vehicle who meets any of the following conditions:

- (1) For medical reasons should not wear safety belts, provided the occupant has written documentation of the medical reasons from a physician.
- (2) Is a child required to be restrained by a child restraint system under IC 9-19-11.
- (3) Is traveling in a commercial or a United States Postal Service vehicle that makes frequent stops for the purpose of pickup or delivery of goods or services.
- (4) Is a rural carrier of the United States Postal Service and is operating a vehicle while serving a rural postal route.
- (5) Is a newspaper motor route carrier or newspaper bundle hauler who stops to make deliveries from a vehicle.
- (6) Is a driver examiner designated and appointed under IC 9-14-2-3 and is conducting an examination of an applicant for a permit or license under IC 9-24-10.
- (7) Is an occupant of a farm truck being used on a farm in connection with agricultural pursuits that are usual and normal to the farming operation, as set forth in IC 9-21-21-1.
- (8) Is an occupant of a motor vehicle participating in a parade.
- (9) Is an occupant of the living quarters area of a recreational vehicle.

- (10) Is an occupant of the treatment area of an ambulance (as defined in IC 16-18-2-13).
- (11) Is an occupant of the sleeping area of a tractor.
- (12) Is an occupant other than the operator of a vehicle described in IC 9-20-11-1(1).
- (13) Is an occupant other than the operator of a truck on a construction site.
- (14) Is a passenger other than the operator in a cab of a Class A recovery vehicle or a Class B recovery vehicle who is being transported in the cab because the motor vehicle of the passenger is being towed by the recovery vehicle.
- (15) Is an occupant other than the operator of a motor vehicle being used by a public utility in an emergency as set forth in IC 9-20-6-5.

**9-19-10-2. Use of safety belts required**

Each occupant of a motor vehicle equipped with a safety belt that:

- (1) meets the standards stated in the Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208); and
- (2) is standard equipment installed by the manufacturer;

shall have a safety belt properly fastened about the occupant's body at all times when the vehicle is in forward motion.

**9-19-10-3.1. Stopping; inspecting, searching, detaining to determine compliance; checkpoints**

(a) Except as provided in subsection (b), a vehicle may be stopped to determine compliance with this chapter. However, a vehicle, the contents of a vehicle, the driver of a vehicle, or a passenger in a vehicle may not be inspected, searched, or detained solely because of a violation of this chapter.

(b) 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.

**9-19-10-5. Safety belts in vehicles required**

A person may not buy, sell, lease, trade, or transfer from or to Indiana residents at retail an automobile that is manufactured or assembled, commencing with the 1964 models, unless the automobile is equipped with safety belts installed for use in the front seat.

**9-19-10-7. Use of evidence of noncompliance**

(a) Failure to comply with section 1, 2, or 3.1(a) of this chapter does not constitute fault under IC 34-51-2 and does not limit the liability of an insurer.

(b) Except as provided in subsection (c), evidence of the failure to comply with section 1, 2, or 3.1(a) of this chapter may not be admitted in a civil action to mitigate damages.

(c) Evidence of a failure to comply with this chapter may be admitted in a civil action as to mitigation of damages in a product liability action involving a motor vehicle restraint or supplemental restraint system. The defendant in such an action has the burden of proving noncompliance with this chapter and that compliance with this chapter would have reduced injuries, and the extent of the reduction.

**9-19-10-8. Penalty for violation of 9-19-10-2**

(a) A person who:

- (1) is at least sixteen (16) years of age; and
- (2) violates section 2 of this chapter;

commits a Class D infraction.

(b) The bureau may not assess points under the point system for Class D infractions under this section.

**9-19-10-9. Penalty for violation of 9-19-10-5**

A person who violates section 5 of this chapter commits a Class C infraction.

**Chapter 11  
Passenger Restraint Systems  
For Children**

9-19-11-1	Applicability of chapter
9-19-11-2	Penalty for non-restraint of child less than 8
9-19-11-3.6	Penalty for non-restraint of child between 8-16
9-19-11-3.7	Restraints of child more than 40 pounds
9-19-11-4	Violations of chapter not within authority of violations clerk
9-19-11-5	Liability for costs or judgment
9-19-11-6	Proof of restraint system
9-19-11-7	Certified record of judgment
9-19-11-8	Noncompliance with chapter not contributory negligence
9-19-11-9	Child restraint system account established
9-19-11-10	Bureau not to assess points for violation of chapter
9-19-11-11	Violation of chapter not to be included in determination of habitual violator status

**9-19-11-1. Applicability of chapter**

This chapter does not apply to a person who operates any of the following vehicles:

- (1) A school bus.
- (2) A taxicab.
- (3) An ambulance.
- (4) A public passenger bus.
- (5) A motor vehicle having a seating capacity greater than nine (9) individuals that is owned or leased and operated by a religious or not-for-profit youth organization.
- (6) An antique motor vehicle.
- (7) A motor cycle.
- (8) A motor vehicle that is owned or leased by a governmental unit and is being used in the performance of official law enforcement duties.
- (9) A motor vehicle that is being used in an emergency.
- (10) A motor vehicle that is funeral equipment used in the operation of funeral services when used in:
  - (A) a funeral procession;

- (B) the return trip to a funeral home (as defined in IC 25-15-2-15); or
- (C) both the funeral procession and return trip.

**9-19-11-2. Penalty for non-resident of child less than 8**

(a) A person who operates a motor vehicle in which there is a child less than eight (8) years of age who is not properly fastened and restrained according to the child restraint system manufacturer's instructions by a child restraint system commits a Class D infraction. A person may not be found to have violated this subsection if the person carries a certificate from a physician, physician's assistant, or advanced practice nurse stating that it would be impractical to require that a child be fastened and restrained by a child restraint system because of:

- (1) a physical condition, including physical deformity; or

- (2) a medical condition;

of the child and presents the certificate to the police officer or the court.

(b) Notwithstanding IC 34-28-5-5(c), funds collected as judgments for violations under this section shall be deposited in the child restraint system account established by section 9 of this chapter.

**9-19-11-3.6. Penalty for non-restraint of child between 8-16**

(a) A person who operates a motor vehicle in which there is a child and that is equipped with a safety belt meeting the standards stated in the Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) commits a Class D infraction if:

- (1) the child is at least eight (8) years of age but less than sixteen (16) years of age; and

- (2) the child is not properly fastened and restrained according to the child restraint system manufacturer's instructions by a:

- (A) child restraint system; or

- (B) safety belt.

(b) Notwithstanding IC 34-28-5-5(c), funds collected as judgments for violations under this section shall be deposited in the child restraint system account established by section 9 of this chapter.

**9-19-11-3.7. Restraints of child more than 40 pounds**

Notwithstanding sections 2 and 3.6 of this chapter, a person may operate a motor vehicle in which there is a child who weighs more than forty (40) pounds and who is properly restrained and fastened by a lap safety belt if:

- (1) the motor vehicle is not equipped with lap and shoulder safety belts; or

- (2) not including the operator's seat and the front passenger seat:

- (A) the motor vehicle is equipped with one (1) or more lap and shoulder safety belts; and

- (B) all the lap and shoulder safety belts are being used to properly restrain other children who are less than sixteen (16) years of age.

**9-19-11-4. Violations of chapter not within authority of violations clerk**

Notwithstanding IC 34-28-5-9(1), a court may not designate violation of this chapter as being within the authority of the violations clerk.

#### **9-19-11-5. Liability for costs or judgment**

If at a proceeding to enforce section 2 of this chapter the court finds that the person:

- (1) has violated this chapter; and
- (2) possesses or has acquired a child restraint system;

the court shall enter judgment against the person. However, notwithstanding IC 34-28-5-4, the person is not liable for any costs or monetary judgment if the person has no previous judgments of violation of this chapter against the person.

#### **9-19-11-6. Proof of restraint system**

(a) If at a proceeding to enforce section 2 of this chapter the court finds that the person:

- (1) has violated this chapter; and
- (2) does not possess or has not acquired a child restraint system;

the court shall enter judgment against the person and shall order the person to provide proof of possession or acquisition within thirty (30) days.

(b) Notwithstanding IC 34-28-5-4, if the person:

- (1) complies with a court order under this section; and
- (2) has no previous judgments of violation of this chapter against the person;

the person is not liable for any costs or a monetary judgment.

#### **9-19-11-7. Certified record of judgment**

A court shall forward to the bureau of motor vehicles a certified abstract of the record of judgment of any person in the court for a violation of this chapter in the manner provided by IC 9-25-6.

#### **9-19-11-8. Noncompliance with chapter not contributory negligence**

Failure to comply with the chapter does not constitute contributory negligence.

#### **9-19-11-9. Child restraint system account established**

(a) The child restraint system account is established within the state general fund to make grants under subsection (d).

(b) The account consists of the following:

- (1) Funds collected as judgments for violations under this chapter.
- (2) Appropriations to the account from the general assembly.
- (3) Grants, gifts, and donations intended for deposit in the account.
- (4) Interest that accrues from money in the account.

(c) The account shall be administered by the criminal justice institute.

(d) The criminal justice institute, upon the recommendation of the governor's council on impaired and dangerous driving, shall use money in the account to make grants to private and public organizations to:

- (1) purchase child restraint systems; and
- (2) distribute the child restraint systems:
  - (A) without charge; or
  - (B) for a minimal charge;

to persons who are not otherwise able to afford to purchase child restraint systems.

The criminal justice institute shall adopt rules under IC 4-22-2 to implement this section.

(e) Money in the account is appropriated continuously to the criminal justice institute for the purposes stated in subsection (a).

(f) The expenses of administering the account shall be paid from money in the account.

(g) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(h) Money in the account at the end of a state fiscal year does not revert to the state general fund.

**9-19-11-10. Bureau not to assess points for violation of chapter**

The bureau may not assess points under the point system for a violation of this chapter.

**9-19-11-11. Violation of chapter not to be included in determination of habitual violator status**

A violation of this chapter may not be included in a determination of habitual violator status under IC 9-30-10-4.

**ARTICLE 19  
MOTOR VEHICLE EQUIPMENT  
[PORTIONS OMITTED]**

**Chapter 19  
Windows and Windshield Wipers  
[Portions Omitted]**

**9-19-19-4. Restrictions on tinting or sunscreening windows**

(a) This section does not apply to a manufacturer's tinting or glazing or motor vehicle windows or windshields that is otherwise in compliance with or permitted by FMVSS205 as promulgated in 49 CFR 571.205. Proof from the manufacturer, supplier, or installer that the tinting or glazing is in compliance with or permitted by FMVSS205 must be carried in the vehicle.

(b) This section does not apply to the driver of a vehicle:

- (1) that is owned by an individual required for medical reasons to be shielded from the direct rays of the sun; or
- (2) in which an individual required for medical reasons to be shielded from the direct rays of the sun is a habitual passenger.

The medical reasons must be attested to by a physician or optometrist licensed to practice in Indiana, and the physician's or optometrist's certification of that condition must be carried in the vehicle. The physician's or optometrist's certification must be renewed annually.

(c) A person may not drive a motor vehicle that has a:

- (1) windshield;
- (2) side wing;
- (3) side window that is a part of a front door; or
- (4) rear back window;

that is covered by or treated with sunscreensing material or is tinted with material that has a solar reflectance of visible light or more than twenty-five percent (25%) as measured on the nonfilm side and light transmittance of less than thirty percent (30%) in the visible light range.

(d) A person may not tint or otherwise cover or treat with sunscreensing the parts of a vehicle described in subsection (c) so that operation of the vehicle after the tinting or sunscreensing is performed is a violation of subsection (c). However, it is not a violation of this chapter if the work is performed for a person who submits a physician's or optometrist's statement as described in subsection (b) to the person who is to perform the work.

(e) A vehicle may be stopped to determine compliance with this section. However, a vehicle, the contents of a vehicle, the driver of a vehicle, or a passenger in a vehicle may not be inspected, searched, or detained solely because of a violation of this section.

**ARTICLE 21  
TRAFFIC REGULATION  
[PORTIONS OMITTED]**

Ch. 5	Speed Limits
Ch. 6	Speed Contests
Ch. 8	Vehicle Operation

**Chapter 5  
Speed Limits  
[Portions Omitted]**

9-21-5-1	Speed greater than reasonable under conditions
9-21-5-2	Maximum lawful speeds
9-21-5-4	Conditions requiring driving at reduced speed
9-21-5-5	Dimensions of vehicles required to operate at 55 mph or below
9-21-5-7	Motor vehicles driving at slow speed impeding traffic
9-21-5-8.5	Low speed vehicles
9-21-5-9	Slow moving vehicles to travel in right lanes on interstate
9-21-5-10	Maximum speed limits on bridges or other elevated structures
9-21-5-11	Speed limits at worksites
9-21-5-13	Penalty
9-21-5-14	Speed limits for school buses and special purpose buses

**9-21-5-1. Speed greater than reasonable under conditions**

A person may not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions, having regard to the actual and potential hazards then existing. Speed shall be restricted as necessary to avoid colliding with a person, vehicle, or other conveyance on, near, or entering a highway in compliance with legal requirements and with the duty of all persons to use due care.

### **9-21-5-2. Maximum lawful speeds**

Except when a special hazard exists that requires lower speed for compliance with section 1 of this chapter, the slower speed limit specified in this section or established as authorized by section 3 of this chapter is the maximum lawful speed. A person may not drive a vehicle on a highway at a speed in excess of the following maximum limits:

- (1) Thirty (30) miles per hour in an urban district.
- (2) Fifty-five (55) miles per hour, except as provided in subdivisions (1), (3), (4), (5), (6), and (7).
- (3) Seventy (70) miles per hour on a highway on the national system of interstate and defense highways located outside of an urbanized area (as defined in 23 U.S.C. 101) with a population of at least fifty thousand (50,000), except as provided in subdivision (4).
- (4) Sixty-five (65) miles per hour for a vehicle (other than a bus) having a declared gross weight greater than twenty-six thousand (26,000) pounds on a highway on the national system of interstate and defense highways located outside an urbanized area (as defined in 23 U.S.C. 101) with a population of at least fifty thousand (50,000).
- (5) Sixty-five (65) miles per hour on:
  - (A) U.S. 20 from the intersection of U.S. 20 and County Road 17 in Elkhart County to the intersection of U.S. 20 and U.S. 31 in St. Joseph County;
  - (B) U.S. 31 from the intersection of U.S. 31 and U.S. 20 in St. Joseph County to the boundary line between Indiana and Michigan; and
  - (C) a highway classified by the Indiana department of transportation as an INDOT Freeway.
- (6) On a highway that is the responsibility of the Indiana finance authority established by IC 4-4-11:
  - (A) seventy (70) miles per hour for:
    - (i) a motor vehicle having a declared gross weight of not more than twenty-six thousand (26,000) pounds; or
    - (ii) a bus; or
  - (B) sixty-five (65) miles per hour for a motor vehicle having a declared gross weight greater than twenty-six thousand (26,000) pounds.
- (7) Sixty (60) miles per hour on a highway that:
  - (A) is not designated as a part of the national system of interstate and defense highways;
  - (B) has four (4) or more lanes;
  - (C) is divided into two (2) or more roadways by:
    - (i) an intervening space that is unimproved and not intended for vehicular travel;
    - (ii) a physical barrier; or
    - (iii) a dividing section constructed to impede vehicular traffic; and
  - (D) is located outside an urbanized area (as defined in 23 U.S.C. 101) with a population of at least fifty thousand (50,000).
- (8) Fifteen (15) miles per hour in an alley.

#### **9-21-5-4. Conditions requiring driving at reduced speed**

The driver of each vehicle shall, consistent with section 1 of this chapter, drive at an appropriate reduced speed as follows:

- (1) When approaching and crossing an intersection or railway grade crossing.
- (2) When approaching and going around a curve.
- (3) When approaching a hill crest.
- (4) When traveling upon a narrow or winding roadway.
- (5) When special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

#### **9-21-5-5. Dimensions of vehicles required to operate at 55 mph or below**

In addition to the other limitations in this chapter, and in any oversize vehicle permit issued under IC 9-20, a vehicle that exceeds:

- (1) a width of ten (10) feet, six (6) inches;
- (2) a height of thirteen (13) feet, six (6) inches; or
- (3) a length of eighty-five (85) feet;

may not be operated at a speed greater than fifty-five (55) miles per hour.

#### **9-21-5-7. Motor vehicles driving at slow speed impeding traffic**

A person may not drive a motor vehicle at a slow speed that impedes or blocks the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with the law. A person who is driving at a slow speed so that three (3) or more other vehicles are blocked and cannot pass on the left around the vehicle shall give right-of-way to the other vehicles by pulling off to the right of the right lane at the earliest reasonable opportunity and allowing the blocked vehicles to pass.

#### **9-21-5-8.5. Low speed vehicles [effective January 1, 2015]**

A person may not operate a low speed vehicle on a highway that has a speed limit in excess of thirty-five (35) miles per hour.

#### **9-21-5-9. Slow moving vehicles to travel in right lanes on interstate**

A vehicle that travels at a speed less than the established maximum shall travel in the right lanes to provide for better flow of traffic on the interstate highways.

#### **9-21-5-10. Maximum speed limits on bridges or other elevated structures**

(a) A person may not drive a vehicle over a bridge or other elevated structure constituting a part of a highway at a speed that is greater than the maximum speed that can be maintained with safety to the bridge or structure, when the structure is signposted as provided in this section.

(b) The Indiana department of transportation may conduct an investigation of a bridge or other elevated structure constituting a part of a highway. If the Indiana department of transportation finds that the structure cannot with safety to the structure withstand vehicles traveling at the speed otherwise permissible under this chapter, the Indiana department of transportation shall determine and declare the maximum speed of vehicles that the structure can withstand. The Indiana department of transportation shall cause or permit suitable signs stating

the maximum speed to be erected and maintained at a distance of one hundred (100) feet or as near as practicable before each end of the structure.

(c) Upon the trial of a person charged with a violation of this section, proof of the determination of the maximum speed by the Indiana department of transportation and the existence of signs erected under subsection (b) constitutes conclusive evidence of the maximum speed that can be maintained with safety to the bridge or structure.

#### **9-21-5-11. Speed limits at worksites**

(a) Subject to subsection (b), the Indiana department of transportation, the Indiana finance authority, or a local authority may establish temporary maximum speed limits in their respective jurisdictions and in the vicinity of a worksite without conducting an engineering study and investigation required under this article. The establishing authority shall post signs notifying the traveling public of the temporary maximum speed limits established under this section.

(b) Worksite speed limits set under this section must be at least (10) miles per hour below the maximum established speed limit.

(c) A worksite speed limit set under this section may be enforced only if:

(1) workers are present in the immediate vicinity of the worksite; or

(2) if workers are not present in the immediate vicinity of the worksite, the establishing authority determines that the safety of the traveling public requires enforcement of the worksite speed limit.

(d) Notwithstanding IC 34-28-5-4(b), a judgment for the infraction of violating a speed limit set under this section must be entered as follows:

(1) If the person has not previously committed the infraction of violating a speed limit set under this section, a judgment of at least three hundred dollars (\$300).

(2) If the person has committed one (1) infraction of violating a speed limit set under this section in the previous three (3) years, a judgment of at least five hundred dollars (\$500).

(3) If the person has committed two (2) or more infractions of violating a speed limit set under this section in the previous three (3) years, a judgment of one thousand dollars (\$1,000).

(e) Notwithstanding IC 34-28-5-5(c), the funds collected as judgments for the infraction of violating a speed limit set under this section shall be transferred to the Indiana department of transportation to pay the costs of hiring off duty police officers to perform the duties described in IC 8-23-2-15(b).

#### **9-21-5-13. Penalty**

(a) Except as provided in subsections (b) and (c), a person who violates this chapter commits a Class C infraction.

(b) A person who exceeds a speed limit that is:

(1) established under section 6 of this chapter and imposed only in the immediate vicinity of a school when children are present; or

(2) established under section 11 of this chapter and imposed only in the immediate vicinity of a worksite when workers are present;

commits a Class B infraction.

(c) A person who while operating a school bus knowingly or intentionally exceeds a speed limit set forth in section 14 of this chapter commits a Class C misdemeanor.

**9-21-5-14. Speed limits for school buses and special purpose buses**

(a) A person may not operate a school bus or a special purpose bus at a speed greater than:

- (1) sixty (60) miles per hour on a federal or state highway; or
- (2) forty (40) miles per hour on a county or township highway.

(b) If the posted speed limit is lower than the absolute limits set in this section or if the absolute limits do not apply, the maximum lawful speed of a bus is the posted speed limit.

**Chapter 6  
Speed Contest**

- 9-21-6-1 Speed contests prohibited
- 9-21-6-2 Use of barricade for speed contest prohibited
- 9-21-6-3 Penalty

**9-21-6-1. Speed contests prohibited**

A person may not engage in a motor vehicle speed contest on a highway or street.

**9-21-6-2. Use of barricade for speed contest prohibited**

A person may not obstruct or place a barricade or an obstacle across a highway or street:

- (1) To facilitate or aid; or
- (2) As an incident to;

a motor vehicle speed contest.

**9-21-6-3. Penalty**

A person who violates this chapter commits a Class B misdemeanor, except as provided in IC 9-21-8-56(d), IC 9-21-8-56(f), IC 9-21-8-56(g), and IC 9-21-8-56(h).

**Chapter 8  
Vehicle Operation**

- 9-21-8-0.5 “Text message” defined.
- 9-21-8-1 Disregard of law enforcement officer
- 9-21-8-2 Left of center
- 9-21-8-3 Restricting trucks to certain lanes; directional signals
- 9-21-8-4 Vehicles coming in opposite directions to pass on right
- 9-21-8-5 Failing to allow passing; improper passing on left
- 9-21-8-6 Improper passing on right
- 9-21-8-7 Safe passing to left
- 9-21-8-7.5 Passing when approaching worksite
- 9-21-8-8 Conditions preventing passing on left
- 9-21-8-9 Wrong way on one-way street
- 9-21-8-10 Rotary traffic islands
- 9-21-8-11 Lane movement – unsafe; rules for 3 lanes
- 9-21-8-12 Trucks in right-hand lanes on interstates

- 9-21-8-13 Trucks in right-hand lanes on interstates where 3 or more lanes
- 9-21-8-14 Following too close
- 9-21-8-15 Truck following another truck too close
- 9-21-8-16 Following too close in caravan
- 9-21-8-17 Staying to right; no crossing barrier
- 9-21-8-18 Driving onto or from limited access facility
- 9-21-8-19 Entering or exiting freeway; U turns on freeway
- 9-21-8-20 Freeways; local ordinances prohibiting bicycles, etc.
- 9-21-8-21 Turning at intersection
- 9-21-8-22 Improper U-turn
- 9-21-8-23 Unsafe start
- 9-21-8-24 Safe stops, turns or lane changes; signals
- 9-21-8-25 Signaling before turn or lane change
- 9-21-8-26 Sudden stop
- 9-21-8-27 Signaling stop or turn by hand signals
- 9-21-8-28 Hand and arm signals
- 9-21-8-29 Yielding to vehicle on right at intersection
- 9-21-8-30 Left turn; yielding to oncoming vehicles
- 9-21-8-31 Entering through highway; yielding
- 9-21-8-32 Stop signs at through highways
- 9-21-8-33 Yield signs
- 9-21-8-34 Entering highway from private road
- 9-21-8-35 Yielding to emergency, recovery, highway maintenance vehicle
- 9-21-8-36 Yielding to pedestrians at crosswalk
- 9-21-8-37 Avoiding pedestrians, children, bicycles and incapacitated persons
- 9-21-8-38 Driving through safety zone
- 9-21-8-39 Stopping at railroad crossing
- 9-21-8-40 Vehicles requiring notice to railroad before crossing
- 9-21-8-41 Disobey traffic control devices or flagman
- 9-21-8-41.5 School zones
- 9-21-8-41.7 "Railroad flagman" defined; obeying flagman
- 9-21-8-42 Entering from alley or driveway
- 9-21-8-43 Obstruction of driver's view or operation
- 9-21-8-44 Coasting prohibited
- 9-21-8-44.5 Use of compression release engine brake in Porter County prohibited
- 9-21-8-45 Operation of farm wagon on interstate highway; crossing state highway
- 9-21-8-46 Operating implement of agriculture on interstate highway
- 9-21-8-47 Vehicles to be operated to avoid damage to highway or interference with traffic
- 9-21-8-48 Leaky load
- 9-21-8-49 Penalties
- 9-21-8-50 Reckless operation of tractor-trailer combination
- 9-21-8-51 Failure to dim headlights
- 9-21-8-52 Reckless driving
- 9-21-8-53 Contents of summons, etc., for speeding violations; use of speed limits in civil actions
- 9-21-8-54 Penalty; Yielding to emergency, recovery, highway maintenance vehicle

- 9-21-8-55 Aggressive driving
- 9-21-8-56 Highway work zone penalties
- 9-21-8-57 Golf carts and other off-road vehicles
- 9-21-8-58 Interstate transport of metal coils
- 9-21-8-59 Texting while operating motor vehicle

**9-21-8-0.5. “Text message” defined**

As used in this chapter, “text message” means a communication in the form of electronic text sent from a telecommunications device.

**9-21-8-1. Disregard of law enforcement officer**

It is unlawful for a person to knowingly fail to comply with a lawful order or direction of a law enforcement officer invested by law with authority to direct, control, or regulate traffic.

**9-21-8-2. Left of center [effective January 1, 2015]**

(a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway except as follows:

- (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing overtaking and passing.
- (2) When the right half of a roadway is closed to traffic under construction or repair.
- (3) Upon a roadway divided into three (3) marked lanes for traffic under the rules applicable to a roadway divided into three (3) marked lanes.
- (4) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways, a vehicle proceeding at less than the normal speed of traffic at the time and place under the conditions then existing shall be driven:

- (1) In the right-hand lane then available for traffic; or
- (2) As close as practicable to the right-hand curb or edge of the roadway;

except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon all roadways, a motor driven cycle shall be driven as close as practicable to the right-hand curb or edge of the roadway except when overtaking or passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

**9-21-8-3. Restricting trucks to certain lanes; directional signals**

(a) The Indiana department of transportation may adopt rules to restrict the operating of a truck to a certain lane or lanes of a state maintained highway and to a certain lane or lanes of a street of a city or town that is a part of the state highway system and is maintained by the state.

(b) The Indiana department of transportation may post a state highway or a city or town street that is a part of the state highway system with appropriate directional signs and signals.

**9-21-8-4. Vehicles coming in opposite directions to pass on right**

The persons who drive vehicles proceeding in opposite directions shall pass each other to the right. Upon roadways having width for not more than one (1) lane of traffic in each direction, each person who drives a vehicle subject to this section shall give to the other person

who drives a vehicle at least one-half (1/2) of the main traveled part of the roadway as nearly as possible.

**9-21-8-5. Failing to allow passing; improper passing on left**

The following rules govern the overtaking and passing of vehicles proceeding in the same direction, subject to the limitations, exceptions, and special rules stated:

(1) A person who drives a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left of the other vehicle at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, a person who drives an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and may not increase the speed of the overtaken vehicle until completely passed by the overtaking vehicle.

**9-21-8-6. Improper passing on right**

(a) A person who drives a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn.

(2) Upon a roadway with unobstructed pavement of sufficient width for two (2) or more lanes of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.

(b) A person who drives a vehicle may overtake and pass another vehicle upon the right only under conditions that permit overtaking upon the right in safety. Overtaking upon the right may not be made by driving off the roadway.

**9-21-8-7. Safe passing to left**

A vehicle may not be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side of the roadway is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the safe operating of a vehicle approaching from the opposite direction or a vehicle overtaken. The overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred (100) feet of a vehicle approaching from the opposite direction.

**9-21-8-7.5. Passing when approaching worksite**

(a) This section applies to a worksite:

(1) upon a highway divided into two (2) or more marked lanes for traffic moving in the same direction; and

(2) for which vehicles are instructed to merge from one (1) lane into another lane by an appropriate sign.

(b) A person who drives a vehicle may not pass another vehicle that is in the lane into which traffic is directed to merge within the posted no passing zone established by the Indiana department of transportation.

#### **9-21-8-8. Conditions preventing passing on left**

(a) This section does not apply to a one-way roadway.  
(b) A vehicle may not be driven to the left side of the roadway under the following conditions:

- (1) When approaching the crest of a grade or upon a curve in the highway where the view of the person who drives the vehicle is obstructed within a distance that creates a hazard if another vehicle might approach from the opposite direction.
- (2) When approaching within one hundred (100) feet of or traversing an intersection or a railroad grade crossing.
- (3) When the view is obstructed upon approaching within one hundred (100) feet of a bridge, viaduct, or tunnel.

#### **9-21-8-9. Wrong way on one-way street**

A vehicle shall be driven upon a roadway designated and signposted for one-way traffic only in the direction designated.

#### **9-21-8-10. Rotary traffic islands**

A vehicle passing around a rotary traffic island shall be driven only to the right of the rotary traffic island.

#### **9-21-8-11. Lane movement – unsafe; rules for 3 lanes**

Whenever a roadway has been divided into three (3) or more clearly marked lanes for traffic, the following rules apply:

- (1) A vehicle shall be driven as nearly as practicable entirely within a single lane and may not be moved from the lane until the person who drives the vehicle has first ascertained that the movement can be made with safety.
- (2) Upon a roadway that is divided into three (3) lanes, a vehicle may not be driven in the center lane except under any of the following conditions:
  - (A) When overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance.
  - (B) In preparation for a left turn.
  - (C) Where the center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of the allocation.
- (3) Official signs may be erected directing slow-moving traffic to use a designated lane or allocating specified lanes to traffic moving in the same direction. A person who drives a vehicle shall obey the directions of each sign.

#### **9-21-8-12. Trucks in right-hand lanes on interstates**

Except when passing a slower vehicle, entering or leaving a highway, or where a special hazard exists that requires, for safety reasons, the use of an alternate lane, a person may not operate a truck, truck tractor, road tractor, trailer, semitrailer, or pole trailer on an interstate highway in any lane except the far right lane.

**9-21-8-13. Trucks in right-hand lanes on interstates where 3 or more lanes**

Except when entering or leaving a highway or where a special hazard exists that requires, for safety reasons, the use of an alternate lane, a person may not operate a truck, truck tractor, road tractor, trailer, semitrailer, or pole trailer on an interstate highway consisting of at least three (3) lanes in one (1) direction in any lane other than the two (2) far right lanes.

**9-21-8-14. Following too close**

A person who drives a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of both vehicles, the time interval between vehicles, and the condition of the highway.

**9-21-8-15. Truck following another truck too close**

Except when overtaking and passing, a person who drives a motor truck, motor truck drawing another vehicle, or tractor-trailer combination, when traveling upon a roadway outside of a business or residence district or upon a roadway that is part of the interstate highway system, whether within or without a business or residence district, may not follow within three hundred (300) feet of another motor truck, motor truck drawing another vehicle, or a tractor-trailer combination.

**9-21-8-16. Following too close in caravan**

(a) This section does not apply to funeral or marching band processions.

(b) Motor vehicles being driven upon a roadway outside of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, must be operated to allow sufficient space between each vehicle or combination of vehicles to enable another vehicle to enter and occupy the space without danger.

**9-21-8-17. Staying to right; no crossing barrier**

Whenever a highway has been divided into two (2) roadways by:

- (1) Leaving an intervening space;
- (2) A physical barrier; or
- (3) A clearly indicated dividing section to impede vehicular traffic;

a vehicle shall be driven only upon the right-hand roadway. A vehicle may not be driven over, across, or within a dividing space, barrier, or section, except through an opening in the physical barrier, dividing section, or space or at a crossover or an intersection established by public authority.

**9-21-8-18. Driving onto or from limited access facility**

A person may not drive a vehicle onto or from a limited access facility except at entrances and exits that are established by the public authority in control of the roadway.

**9-21-8-19. Entering or exiting freeway; U turns on freeway**

A person may not drive a vehicle onto or from a freeway or the interstate highway system except at entrances and exits that are established by the public authority in control of the highway. Whenever special crossovers between the main roadways of a freeway or the interstate highway system are provided for emergency vehicles or maintenance equipment only, the freeway or interstate highway system shall be posted prohibiting "U" turns. A person who drives

a vehicle, except an emergency vehicle or maintenance equipment, may not use the crossovers or make a “U” turn anywhere on the freeway or interstate highway system.

**9-21-8-20. Freeways; local ordinances prohibiting bicycles, etc. [effective January 1, 2015]**

The Indiana department of transportation may by resolution or order entered in its minutes, and local authorities may by ordinance, with respect to any freeway or interstate highway system under their respective jurisdictions, prohibit the use of a highway by pedestrians, bicycles, or other nonmotorized traffic or by a person operating a motor driven cycle. The Indiana department of transportation or the local authority adopting a prohibiting regulation shall erect and maintain official signs on the freeway or interstate highway system on which the regulations are applicable. If signs are erected, a person may not disobey the restrictions stated on the signs.

**9-21-8-21. Turning at intersection**

(a) A person who drives a vehicle intending to turn at an intersection must do the following:

- (1) Make both the approach for a right turn and a right turn as close as practical to the right-hand curb or edge of the roadway.
- (2) Make an approach for a left turn in that part of the right half of the roadway nearest the center line of the roadway. After entering the intersection, the person who drives a vehicle must make the left turn so as to leave the intersection to the right of the center line of the roadway being entered.
- (3) Make an approach for a left turn from a two-way street into a one-way street in that part of the right half of the roadway nearest the center line of the roadway and pass to the right of the center line where the center line enters the intersection.
- (4) Make a left turn from a one-way street into a two-way street by passing to the right of the center line of the street being entered upon leaving the intersection.
- (5) Where both streets or roadways are one way, make both the approach for a left turn and a left turn as close as practicable to the left-hand curb or edge of the roadway.

(b) The Indiana department of transportation and local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections requiring and directing that a different course from that specified in this section be traveled by vehicles turning at an intersection. When markers, buttons, or signs are placed under this subsection, a person who drives a vehicle may not turn the vehicle at an intersection other than as directed and required by the markers, buttons, or signs.

**9-21-8-22. Improper U-turn**

A vehicle may not be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where the vehicle cannot be seen by the person who drives any other vehicle approaching from either direction within seven hundred fifty (750) feet.

**9-21-8-23. Unsafe start**

A person may not start a vehicle that is stopped, standing, or parked until the movement can be made with reasonable safety.

#### **9-21-8-24. Safe stops, turns or lane changes; signals**

A person may not:

- (1) Slow down or stop a vehicle;
- (2) Turn a vehicle from a direct course upon a highway; or
- (3) Change from one (1) traffic lane to another;

unless the movement can be made with reasonable safety. Before making a movement described in this section, a person shall give a clearly audible signal by sounding the horn if any pedestrian may be affected by the movement and give an appropriate stop or turn signal in the manner provided in sections 27 through 28 of this chapter if any other vehicle may be affected by the movement.

#### **9-21-8-25. Signaling before turn or lane change**

A signal of intention to turn right or left shall be given continuously during not less than the last two hundred (200) feet traveled by a vehicle before turning or changing lanes. A vehicle traveling in a speed zone of at least fifty (50) miles per hour shall give a signal continuously for not less than the last three hundred (300) feet traveled by the vehicle before turning or changing lanes.

#### **9-21-8-26. Sudden stop**

A person may not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to a person who drives a vehicle immediately to the rear when there is opportunity to give a signal.

#### **9-21-8-27. Signaling stop or turn by hand signals**

(a) Except as provided in subsection (b), a stop or turn signal required under this chapter may be given by means of the hand and arm or by a signal lamp or lamps or mechanical signal device.

(b) This subsection does not apply to farm tractors and implements of agriculture designed to be operated primarily in a farm field or on farm premises. A motor vehicle in use on a highway must be equipped with and a required signal shall be given by a signal lamp or lamps or mechanical signal device when either of the following conditions exist:

- (1) The distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of the motor vehicle exceeds twenty-four (24) inches.
- (2) The distance from the center of the top of the steering post to the rear limit of the body or load of the motor vehicle exceeds fourteen (14) feet. This measurement applies to a single vehicle and a combination of vehicles.

#### **9-21-8-28. Hand and arm signals**

All signals required under this chapter may be given by hand and arm. A signal given under this section shall be given from the left side of the vehicle in the following manner:

- (1) A left turn is indicated by extending the hand and arm horizontally.
- (2) A right turn is indicated by extending the hand and arm upward.
- (3) A stop or decreased speed is indicated by extending the hand and arm downward.

**9-21-8-29. Yielding to vehicle on right at intersection**

Except when approaching through highways and areas in which signs are posted giving other instructions, when two (2) vehicles approach or enter an intersection from different highways at approximately the same time, the person who drives the vehicle on the left shall yield the right-of-way to the vehicle on the right.

**9-21-8-30. Left turn; yielding to oncoming vehicles**

A person who drives a vehicle within an intersection intending to turn to the left shall yield the right-of-way to a vehicle approaching from the opposite direction that is within the intersection or so close to the intersection as to constitute an immediate hazard. After yielding and giving a signal as required by this chapter, the person who drives the vehicle may make the left turn, and the persons who drive other vehicles approaching the intersection from the opposite direction shall yield the right-of-way to the vehicle making the left turn.

**9-21-8-31. Entering through highway; yielding**

(a) A person who drives a vehicle shall do the following:

(1) Stop as required under this article at the entrance to a through highway.

(2) Yield the right-of-way to other vehicles that have entered the intersection from the through highway or that are approaching so closely on the through highway as to constitute an immediate hazard.

(b) After yielding as described in subsection (a)(2), the person who drives a vehicle may proceed and persons who drive other vehicles approaching the intersection on the through highway shall yield the right-of-way to the vehicle proceeding into or across the through highway.

**9-21-8-32. Stop signs at through highways**

A person who drives a vehicle shall stop at an intersection where a stop sign is erected at one (1) or more entrances to a through highway that are not a part of the through highway and proceed cautiously, yielding to vehicles that are not required to stop.

**9-21-8-33. Yield signs**

(a) A person who drives a vehicle approaching a yield sign shall slow down to a speed reasonable for the existing conditions or stop if necessary. The person shall yield the right-of-way to a pedestrian legally crossing the roadway and to a vehicle in the intersection or approaching on another highway so closely as to present an immediate hazard. After yielding, the person may proceed, and all other vehicles approaching the intersection shall yield to the vehicle proceeding.

(b) If a person who drives a vehicle is involved in a collision with a pedestrian in a crosswalk or a vehicle in the intersection after driving past a yield sign without stopping, the collision is considered prima facie evidence of the person's failure to yield the right-of-way.

**9-21-8-34. Entering highway from private road**

A person who drives a vehicle that is about to enter or cross a highway from a private road or driveway shall yield the right-of-way to all vehicles approaching on the highway.

**9-21-8-35. Yielding to emergency, recovery, highway maintenance vehicle**

(a) Upon the immediate approach of an authorized emergency vehicle, when the person who drives the authorized emergency vehicle is giving audible signal by siren or displaying alternately flashing red, red and white, or red and blue lights, a person who drives another vehicle shall do the following unless otherwise directed by a law enforcement officer:

- (1) Yield the right-of-way.
- (2) Immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway clear of any intersection.
- (3) Stop and remain in the position until the authorized emergency vehicle has passed.

(b) Upon approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, red and white, or red and blue lights, a person who drives an approaching vehicle shall:

- (1) proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard to safety and traffic conditions, if on a highway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or
- (2) proceeding with due caution, reduce the speed of the vehicle to a speed at least ten (10) miles per hour less than the posted speed limit, maintaining a safe speed for road conditions, if changing lanes would be impossible or unsafe.

(c) Upon approaching a stationary recovery vehicle, a stationary utility service vehicle (as defined in IC 8-1-8.3-5), or a stationary road, street, or highway maintenance vehicle, when the vehicle is giving a signal by displaying alternately flashing amber lights, a person who drives an approaching vehicle shall:

- (1) proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to that of the recovery vehicle, utility service vehicle, or road, street, or highway maintenance vehicle, if possible with due regard to safety and traffic conditions, if on a highway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or
- (2) proceeding with due caution, reduce the speed of the vehicle to a speed at least (10) miles per hour less than the posted speed limit, maintaining a safe speed for road conditions, if changing lanes would be impossible or unsafe.

(d) This section does not operate to relieve the person who drives an authorized emergency vehicle, a recovery vehicle, a utility service vehicle, or a road, street, or highway maintenance vehicle from the duty to operate the vehicle with due regard for the safety of all persons using the highway.

**9-21-8-36. Yielding to pedestrians at crosswalk**

Except as provided in IC 9-21-17-8 and IC 9-21-3-7(b)(4)(C), when traffic control signals are not in place or not in operation, a person who drives a vehicle shall yield the right-of-way, slowing down or stopping if necessary to yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching closely from the opposite half of the roadway.

### **9-21-8-37. Avoiding pedestrians, children, bicycles and incapacitated persons**

Notwithstanding other provisions of this article or a local ordinance, a person who drives a vehicle shall do the following:

- (1) Exercise due care to avoid colliding with a pedestrian or a person propelling a human powered vehicle, giving an audible signal when necessary.
- (2) Exercise proper caution upon observing a child or an obviously confused, incapacitated, or intoxicated person.

### **9-21-8-38. Driving through safety zone**

A vehicle may not be driven through or within a safety zone.

### **9-21-8-39. Stopping at railroad crossing**

Whenever a person who drives a vehicle approaches a railroad grade crossing, the person shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest track of the railroad and may not proceed until the person can do so safely under the following circumstances:

- (1) When a clearly visible electric or mechanical signal device gives warning of the immediate approach of a train or other on-track equipment.
- (2) When a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a train or other on-track equipment.
- (3) When a railroad train or other on-track equipment approaching within one thousand five hundred (1,500) feet of a highway crossing emits an audible signal and because of speed or nearness to the crossing is an immediate hazard.
- (4) When an approaching train or other on-track equipment is plainly visible and is in hazardous proximity to the crossing.

### **9-21-8-40. Vehicles requiring notice to railroad before crossing**

(a) A person may not operate or move a caterpillar tractor, steam shovel, derrick, roller, or any equipment or structure weighing more than ten (10) tons and having a normal operating speed of not more than six (6) miles per hour or a vertical body or load clearance of less than nine (9) inches above the level surface of a roadway upon or across tracks at a railroad grade crossing without first complying with this section.

(b) Notice of an intended crossing under this section shall be given to a superintendent of the railroad, and a reasonable time shall be given to the railroad to provide proper protection at the crossing.

(c) Before making a crossing under this section, the person operating or moving a vehicle or equipment described in subsection (a) shall first stop the vehicle or equipment not less than ten (10) feet and not more than fifty (50) feet from the nearest rail or the railway. While stopped, the person shall listen and look in both directions along the track for an approaching train or other on-track equipment and for signals indicating the approach of a train or other on-track equipment. The person shall not proceed until the crossing can be made safely.

(d) A crossing may not be made when warning is given by automatic signal, crossing gates, a flagman, or otherwise of the immediate approach of a railroad train or other on-track equipment.

#### **9-21-8-41. Disobey traffic control devices or flagman**

**Editor's Note:** This statute was amended in 2014 by P.L.113-2014 (effective date July 1, 2014) and by P.L.217-2014 (effective date January 1, 2015), with neither act referring to the other. However, the amendments to this statute by these two acts were identical, except for the effective date. Therefore, only a single version of the amended statute is set forth below.

(a) A person who drives a vehicle may not disobey the instructions of an official traffic control device placed in accordance with this article unless otherwise directed by a police officer.

(b) When a traffic control device or flagman is utilized at a worksite on a highway for traffic control, a person who drives a vehicle shall exercise extraordinary care to secure the mutual safety of all persons and vehicles at the worksite.

(c) All traffic shall observe and obey traffic control devices including signals, signs, and warnings, and all directions, signs, or warning devices that may be given or displayed by a police officer or flagman to safely control traffic movement at a worksite and promote safety at a worksite.

#### **9-21-8-41.5. School zones**

(a) A person who drives a vehicle shall obey the instructions of a school crossing guard to stop the vehicle before entering a school crossing zone.

(b) Whenever a person who drives a vehicle approaches a school crossing zone, the person shall exercise extraordinary caution to secure the safety of children in the school crossing zone.

#### **9-21-8-41.7. "Railroad flagman" defined; obeying flagman**

(a) For purposes of this section, "railroad flagman" means a person who furnishes flag protection as prescribed by rules of the carrier.

(b) A person who operates a vehicle shall obey the instructions of a railroad flagman to stop the vehicle before approaching a location in which a train or other on-track equipment is or may be located.

#### **9-21-8-42. Entering from alley or driveway**

A person who drives a vehicle within a business or residence district that is emerging from an alley, a driveway, or a building shall stop the vehicle immediately before driving onto a sidewalk or into the sidewalk area extending across an alleyway or a private driveway.

#### **9-21-8-43. Obstruction of driver's view or operation**

**Editor's Note:** This statute was amended in 2014 by P.L.113-2014 (effective date July 1, 2014) and by P.L.217-2014 (effective date January 1, 2015), with neither act referring to the other. However, the amendments to this statute by these two acts were identical, except for the effective date. Therefore, only a single version of the amended statute is set forth below.

(a) A person may not drive a vehicle when any of the following conditions exist:

(1) The vehicle:

(A) Is loaded in a manner; or

(B) Has more than three (3) persons in the front seat;

so as to obstruct the view of the person who drives the vehicle to the front or sides of the vehicle.

(2) The vehicle:

(A) Is loaded in a manner; or

(B) Has more than three (3) persons in the front seat;

so as to interfere with the person's control over the driving mechanism of the vehicle.

(b) A passenger in a vehicle may not do the following:

(1) Ride in a position that interferes with the view ahead or to the sides of the person who drives the vehicle.

(2) Interfere with the person's control over the driving mechanism of the vehicle.

#### **9-21-8-44. Coasting prohibited**

(a) A person who drives a motor vehicle may not coast with the gears of the vehicle in neutral when traveling upon a down grade.

(b) A person who drives a commercial motor vehicle may not coast with the clutch disengaged when traveling upon a down grade.

#### **9-21-8-44.5. Use of compression release engine brake in Porter County prohibited**

(a) As used in this section, "compression release engine brake" means a hydraulically operated device that converts a power producing diesel engine into a power absorbing retarding mechanism.

(b) A person who drives a motor vehicle equipped with compression release engine brakes on the Indiana toll road in a county having a population of more than one hundred fifty thousand (150,000) but less than one hundred seventy thousand (170,000) may not use the motor vehicle's compression release engine brakes instead of the service brake system, except in the case of failure of the service brake system.

#### **9-21-8-45. Operation of farm wagon on interstate highway; crossing state highway**

(a) A farm wagon may not be operated on an interstate highway.

(b) In addition to the prohibition set forth in subsection (a), a farm wagon (as defined in IC 9-13-2-60(a)(2)) may not be operated on a highway designated as a part of the state highway system under IC 8-23-4-2, except that a farm wagon may cross a state highway, other than a limited access highway, at right angles for the purpose of getting from one (1) farm field to another when the operation can be done safely. The operator shall bring the farm wagon to a complete stop before proceeding across the state highway and shall yield the right-of-way to all traffic.

#### **9-21-8-46. Operating implement of agriculture on interstate highway**

A person may not drive or operate:

(1) an implement of agriculture designed to be operated primarily in a farm field or on farm premises; or

(2) a piece of special machinery; upon any part of an interstate highway.

**9-21-8-47. Vehicles to be operated to avoid damage to highway or interference with traffic**

The following vehicles must be moved or operated so as to avoid any material damage to the highway or unreasonable interference with other highway traffic:

- (1) Machinery or equipment used in highway construction or maintenance by the Indiana department of transportation, counties, or municipalities.
- (2) Farm drainage machinery.
- (3) Implements of agriculture.
- (4) Firefighting apparatus owned or operated by a political subdivision or a volunteer fire department (as defined in IC 36-8-12-2).
- (5) Farm vehicles loaded with farm products.

**9-21-8-48. Leaky load**

A vehicle, except:

- (1) A vehicle containing poultry or livestock being transported to market; or
- (2) A highway maintenance vehicle engaged in spreading sand or deicing chemicals;

may not be driven or moved on a highway if the vehicle's contents are dripping, sifting, leaking, or otherwise escaping from the vehicle.

**9-21-8-49. Penalties**

Except as provided in sections 50, 51, 52, 54, 55, 56, and 58 of this chapter, a person who violates this chapter commits a Class C infraction.

**9-21-8-50. Reckless operation of tractor-trailer combination**

A person who operates a tractor-trailer combination in a reckless or deliberate attempt to:

- (1) Endanger the safety or property of others; or
- (2) Block the proper flow of traffic;

commits a Class B misdemeanor.

**9-21-8-51. Failure to dim headlights**

A person who:

- (1) Operates a vehicle; and
- (2) Fails to dim bright or blinding lights when meeting another vehicle or pedestrian;

commits a Class B infraction.

**9-21-8-52. Reckless driving [effective January 1, 2015]**

(a) A person who operates a vehicle and who recklessly:

- (1) drives at such an unreasonably high rate of speed or at such an unreasonably low rate of speed under the circumstances as to:
  - (A) endanger the safety or the property of others; or
  - (B) block the proper flow of traffic;
- (2) passes another vehicle from the rear while on a slope or on a curve where vision is obstructed for a distance of less than five hundred (500) feet ahead;
- (3) drives in and out of a line of traffic, except as otherwise permitted; or

(4) speeds up or refuses to give one-half (1/2) of the roadway to a driver overtaking and desiring to pass;  
commits a Class B misdemeanor.

(b) A person who operates a vehicle and who recklessly passes a school bus stopped on a roadway when the arm signal device specified in IC 9-21-12-13 is in the device's extended position commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if it causes bodily injury to a person.

(c) If an offense under subsection (a) or (b) results in damage to the property of another person or bodily injury to another person, the court shall recommend the suspension of the current driving license of the person, it is a Class C misdemeanor and the court may recommend the suspension of the current driving license of the person for a fixed period of not more than one (1) year.

**9-21-8-53. Contents of summons, etc., for speeding violations; use of speed limits in civil actions**

(a) In every charge of violation of a speed regulation under this article, the complaint or affidavit and the summons, warrant, or notice to appear must specify the following:

- (1) The speed at which the defendant is alleged to have driven.
- (2) The prima facie or fixed speed applicable within the district or at the location.

(b) The provisions of this article declaring or providing for fixed and prima facie speed limitations may not be construed to relieve the plaintiff in a civil action from the burden of proving negligence on the part of the defendant as the proximate cause of the damage alleged.

**9-21-8-54. Penalty; yielding to emergency, recovery, highway maintenance vehicle**

(a) A person who violates section 35(b) or section 35(c) of this chapter commits a Class A infraction.

(b) If a violation of section 35(b) of this chapter results in damage to the property of another person, in addition to any other penalty imposed, the court shall recommend that the person's driving privileges be suspended for a fixed period of not less than ninety (90) days and not more than one (1) year.

(c) If a violation of section 35(c) of this chapter results in damage to the property of another person of at least two hundred fifty dollars (\$250), in addition to any other penalty imposed, the court shall recommend that the person's driving privileges be suspended for a fixed period of not less than ninety (90) days and not more than one (1) year.

(d) If a violation of section 35(b) or section 35(c) of this chapter results in injury to another person, in addition to any other penalty imposed, the court shall recommend that the person's driving privileges be suspended for a fixed period of not less than one hundred eighty (180) days and not more than two (2) years.

(e) If a violation of section 35(b) or section 35(c) of this chapter results in the death of another person, in addition to any other penalty imposed, the court shall recommend that the person's driving privileges be suspended for two (2) years.

(f) The bureau shall, upon receiving a record of a judgment entered against a person under this section:

- (1) suspend the person's driving privileges for a mandatory period; or
- (2) extend the period of an existing suspension for a fixed period;

of not less than ninety (90) days and not more than two (2) years. The bureau shall fix this period in accordance with the recommendation of the court that entered the judgment.

**9-21-8-55. Aggressive driving**

(a) This section does not apply to a law enforcement official engaged in the law enforcement official's official duties.

(b) For purposes of this section, a person engages in aggressive driving if, during one (1) episode of continuous driving of a vehicle, the person does or commits at least three (3) of the following:

- (1) Following a vehicle too closely in violation of IC 9-21-8-14.
- (2) Unsafe operation of a vehicle in violation of IC 9-21-8-24.
- (3) Overtaking another vehicle on the right by driving off the roadway in violation of IC 9-21-8-6.
- (4) Unsafe stopping or slowing a vehicle in violation of IC 9-21-8-26.
- (5) Unnecessary sounding of the horn in violation of IC 9-19-5-2.
- (6) Failure to yield in violation of IC 9-21-8-29 through IC 9-21-8-34.
- (7) Failure to obey a traffic control device in violation of IC 9-21-8-41.
- (8) Driving at an unsafe speed in violation of IC 9-21-5.
- (9) Repeatedly flashing the vehicle's headlights.

(c) A person who, with the intent to harass or intimidate a person in another vehicle, knowingly or intentionally engages in aggressive driving commits aggressive driving, a Class A misdemeanor, except as provided in IC 9-21-8-56(d), (f), (g), and (h).

**9-21-8-56. Highway work zone penalties [effective January 1, 2015]**

(a) For purposes of this section, "highway work zone" has the meaning set forth in IC 8-23-2-15.

(b) Except as provided in subsections (f) through (h), a person who recklessly operates a vehicle in the immediate vicinity of a highway work zone when workers are present commits a Class A misdemeanor.

(c) Except as provided in subsections (f) through (h), a person who knowingly or intentionally operates a motor vehicle in the immediate vicinity of a highway work zone when workers are present with the intent to:

- (1) damage traffic control devices; or
- (2) inflict bodily injury on a worker;

commits a Class A misdemeanor.

(d) Except as provided in subsections (f) through (h), a person who knowingly, intentionally, or recklessly engages in:

- (1) aggressive driving, as defined in section 55 of this chapter; or
- (2) a speed contest, as prohibited under IC 9-21-6-1;

in the immediate vicinity of a highway work zone when workers are present commits a Class A misdemeanor.

(e) Except as provided in subsections (f) through (h), a person who recklessly fails to obey a traffic control device or flagman, as prohibited under section 41 of this chapter, in the immediate vicinity of a highway work zone when workers are present commits a Class A misdemeanor.

(f) An offense under subsection (b), (c), (d), or (e) is a Level 6 felony if the person who commits the offense:

(1) has a prior unrelated conviction under this section in the previous five (5) years; or

(2) is operating the vehicle in violation of IC 9-30-5-1 or IC 9-30-5-2.

(g) An offense under subsection (b), (c), (d), or (e) is a Level 6 felony if the offense results in bodily injury to a worker in the worksite.

(h) An offense under subsection (b), (c), (d), or (e) is a Level 5 felony if the offense results in the death of a worker in the worksite.

(i) A person who knowingly, intentionally, or recklessly engages in an act described in section 55(b)(1), 55(b)(2), 55(b)(3), 55(b)(4), 55(b)(5), or 55(b)(6) of this chapter in the immediate vicinity of a highway work zone when workers are present commits a Class B infraction. Notwithstanding IC 34-28-5-5(c), the funds collected as judgments for an infraction under this subsection shall be transferred to the Indiana department of transportation to pay the costs of hiring off duty police officers to perform the duties described in IC 8-23-2-15(b).

#### **9-21-8-57. Golf carts and other off-road vehicles**

A golf cart or off-road vehicle may not be operated on a highway except in accordance with:

(1) an ordinance adopted under IC 9-21-1-3(a)(14) and IC 9-21-1-3.3(a) authorizing the operation of a golf cart or an off-road vehicle on the highway; or

(2) IC 14-16-1-20 authorizing an off-road vehicle to operate on a highway.

#### **9-21-8-58. Interstate transport of metal coils**

(a) This section applies only to intrastate carriers of metal coils.

(b) 49 CFR 393.120 is adopted as Indiana law.

(c) A motor carrier (as defined in IC 8-2.1-17-10) may not initiate or terminate the commercial transport within Indiana by commercial motor vehicle of one (1) or more metal coils that, individually or grouped together, weigh at least two thousand two hundred sixty-eight (2,268) kilograms (five thousand (5,000) pounds), as provided in 49 CFR 393.120, unless the operator of the commercial motor vehicle transporting the metal coil or coils is certified in proper load securement as provided in 49 CFR 393.120.

(d) An operator of a commercial motor vehicle may not initiate or terminate the commercial transport within Indiana by the commercial motor vehicle of one (1) or more metal coils that, individually or grouped together, weigh at least two thousand two hundred sixty-eight (2,268) kilograms (five thousand (5,000) pounds), as provided in 49 CFR 393.120, unless the operator of the commercial motor vehicle transporting the metal coil or coils is certified in proper load securement as provided in 49 CFR 393.120.

(e) The department of revenue shall adopt and enforce rules under IC 4-22-2 concerning the certification in proper load securement (as provided in 49 CFR 393.120) of operators of commercial motor vehicles engaged in the commercial transport of one (1) or more metal coils, as provided in 49 CFR 393.120. The rules adopted under this subsection must recognize metal coil shipping certificates issued by other states.

(f) A person who knowingly or intentionally violates subsection (c) or (d) commits a Class A misdemeanor.

**9-21-8-59. Texting while operating motor vehicle**

- (a) A person may not use a telecommunications device to:
  - (1) type a text message or an electronic mail message;
  - (2) transmit a text message or an electronic mail message; or
  - (3) read a text message or an electronic mail message;

while operating a moving motor vehicle unless the device is used in conjunction with hands free or voice operated technology, or unless the device is used to call 911 to report a bona fide emergency.

- (b) A police officer may not, without the consent of the person:
  - (1) confiscate a telecommunications device for the purpose of determining compliance with this section;
  - (2) confiscate a telecommunications device and retain it as evidence pending trial for a violation of this section; or
  - (3) extract or otherwise download information from a telecommunications device for a violation of this section unless:
    - (A) the police officer has probable cause to believe that the telecommunications device has been used in the commission of a crime;
    - (B) the information is extracted or otherwise downloaded under a valid search warrant; or
    - (C) otherwise authorized by law.

**ARTICLE 24  
DRIVER’S LICENSES  
[PORTIONS OMITTED]**

- Ch. 1           Individuals Required to Obtain a License of Permit
- Ch. 6           Commercial Driver’s License
- Ch. 13          Rights and Duties of Licenses
- Ch. 15          Issuance of Restricted Driver’s License Because of Hardship
- Ch. 18          General Penalty Provisions
- Ch. 19          Penalty Provisions for Operating Motor Vehicle With Suspended or Revoked Driving Privileges, Licenses or Permits

**Chapter 1  
Individuals Required to  
Obtain a License or Permit  
[Portions Omitted]**

- 9-24-1-1       No operator’s license
- 9-24-1-6       No commercial driver’s license; exemptions
- 9-24-1-8       Penalty

**9-24-1-1. No operator’s license [effective January 1, 2015]**

- (a) Except as otherwise provided in this chapter, an individual must have a valid Indiana:
  - (1) operator’s license;

- (2) chauffeur's license;
- (3) public passenger chauffeur's license;
- (4) commercial driver's license;
- (5) driver's license listed in subdivision (1), (2), (3), or (4) with:
  - (A) a motorcycle endorsement; or
  - (B) a motorcycle endorsement with a Class A motor driven cycle restriction;
- (6) learner's permit; or
- (7) motor cycle learner's permit;

issued to the individual by the bureau under this article to operate upon an Indiana highway the type of motor vehicle for which the license or permit was issued.

(b) An individual must have:

- (1) an unexpired identification card with a Class B motor driven cycle endorsement issued to the individual by the bureau under IC 9-24-16; or
- (2) a valid driver's license described in subsection (a);

to operate a Class B motor driven cycle upon an Indiana highway.

**9-24-1-6. No commercial driver's license; exemptions [effective January 1, 2015]**

(a) Except as provided in subsection (b), or as otherwise provided in this article, an individual must hold a valid commercial driver's license to drive a commercial motor vehicle upon an Indiana highway.

(b) Subsection (a) does not apply if the individual:

- (1) holds a valid driver's license of any type;
- (2) is enrolled in a commercial motor vehicle training course approved by the bureau; and
- (3) is operating a commercial motor vehicle under the direct supervision of a licensed commercial motor vehicle driver.

(c) A person who knowingly or intentionally violates subsection (a) commits a Class C misdemeanor.

**9-24-1-8. Penalty [effective January 1, 2015]**

Except as provided in section 6 of this chapter, a person who violates this chapter commits a Class C infraction.

**Chapter 6  
Commercial Driver's License  
[Portions Omitted]**

- 9-24-6-0.3 "Alcohol" defined
- 9-24-6-6 Serious driving violations while driving commercial vehicle
- 9-24-6-7 Period of disqualification upon conviction of serious traffic violations
- 9-24-6-8 Other disqualifying offenses
- 9-24-6-9 One year disqualification
- 9-24-6-10 Three year disqualification
- 9-24-6-10.5 Disqualification for violation of out-of-service order

9-24-6-11	Lifetime disqualification; drug offenses
9-24-6-11.5	Hazardous material endorsement revocation
9-24-6-12	Lifetime disqualification; previous convictions; hazardous materials
9-24-6-13	Application for reinstatement
9-24-6-14	Disqualification for refusing BAC test
9-24-6-15	Penalty for operating commercial vehicle with BAC between .04 and .08
9-24-6-16	Penalty for driving after disqualification
9-24-6-17	Penalty for knowingly allowing disqualified driver to operate commercial vehicle
9-24-6-18	Penalties generally
9-24-6-19	Civil penalties for violation of out-of-service order

### **9-24-6-0.3. “Alcohol” defined**

As used in this chapter, “alcohol” has the meaning set forth in 49 CFR 383.5 as in effect July 1, 2010.

### **9-24-6-6. Serious driving violations while driving commercial vehicle**

(a) The following, if committed while driving a commercial motor vehicle or while holding any class of commercial driver’s license or permit, are serious traffic violations:

- (1) Operating a vehicle at least fifteen (15) miles per hour above the posted speed limit in violation of IC 9-21-5, IC 9-21-6, or IC 9-21-5-14.
- (2) Operating a vehicle recklessly as provided in IC 9-21-8-50 and IC 9-21-8-52.
- (3) Improper or erratic traffic lane changes in violation of IC 9-21-8-2 through IC 9-21-8-13 and IC 9-21-8-17 through IC 9-21-8-18.
- (4) Following a vehicle too closely in violation of IC 9-21-8-14 through IC 9-21-8-16.
- (5) In connection with a fatal accident, violating any statute, ordinance, or rule concerning motor vehicle traffic control other than parking statutes, ordinances, or rules.
- (6) Operating a vehicle while disqualified under this chapter.
- (7) For drivers who are not required to always stop at a railroad crossing, failing to do any of the following:
  - (A) Slow down and determine that the railroad tracks are clear of an approaching train or other on-track equipment, in violation of IC 9-21-5-4, IC 9-21-8-39, IC 35-44.1-2-13, or any similar statute.
  - (B) Stop before reaching the railroad crossing, if the railroad tracks are not clear of an approaching train or other on-track equipment, in violation of IC 9-21-4-16, IC 9-21-8-39, or any similar statute.
- (8) For all drivers, whether or not they are required to always stop at a railroad crossing, to do any of the following:
  - (A) Stopping in a railroad crossing, in violation of IC 9-21-8-50 or any similar statute.
  - (B) Failing to obey a traffic control device or failing to obey the directions of a law enforcement officer at a railroad crossing, in violation of IC 9-21-8-1 or any similar statute

(C) Stopping a railroad crossing because of insufficient undercarriage clearance, in violation of IC 35-44.1-2-13, IC 9-21-8-50, or any similar statute.

(9) Operating a commercial motor vehicle without having ever obtained a commercial driver's license or permit.

(10) Operating a commercial motor vehicle without a commercial driver's license or permit in the possession of the individual.

(11) Operating a commercial motor vehicle without holding the proper class or endorsement of a commercial driver's license or permit for the operation of the class of the commercial motor vehicle.

(12) Driving a commercial motor vehicle while using a hand-held mobile device as set forth in 49 CFR 383 through 384, and 49 CFR 390 through 392.

(b) Subsection (a)(1) through (a)(11) are intended to comply with the provisions of 49 U.S.C. 31311(a)(10) and regulations adopted under that statute.

#### **9-24-6-7. Period of disqualification upon conviction of serious traffic violations**

(a) A driver who is convicted of a serious traffic violation involving the operation of a commercial motor vehicle, other than a violation described in section 6(a)(7) or 6(a)(8) of this chapter, is disqualified from driving a commercial motor as follows:

(1) Upon conviction in two (2) separate driving incidents in any three (3) year period, disqualification for sixty (60) days.

(2) Upon conviction of a third or subsequent driving incidents in any three (3) year period, disqualification for one hundred twenty (120) days.

(b) This subsection is intended to comply with the provisions of 49 U.S.C. 31311(a)(10) and regulations adopted under that statute. If a driver is convicted of a serious traffic violation involving the operation of a commercial motor vehicle and the conviction is based on any of the violations described in section 6(a)(7) or 6(a)(8) of this chapter, the driver is disqualified from driving a commercial motor vehicle as follows:

(1) Upon conviction of a first violation described in section 6(a)(7) or 6(a)(8) of this chapter during any three (3) year period, disqualification for at least sixty (60) days.

(2) Upon conviction of a second violation described in section 6(a)(7) or 6(a)(8) of this chapter in separate incidents during any three (3) year period, disqualification for at least one hundred twenty (120) days.

(3) Upon conviction of a third or subsequent violation described in section 6(a)(7) or 6(a)(8) of this chapter in separate incidents during any three (3) year period, disqualification for at least one (1) year.

#### **9-24-6-8. Other disqualifying offenses**

The following, if committed while driving a commercial motor vehicle or while holding any class of commercial driver's license or permit, are disqualifying offenses:

(1) Operating a vehicle while under the influence of alcohol in violation of IC 9-30-5-1(a), IC 9-30-5-1(b), or section 15 of this chapter.

(2) Operating a vehicle while under the influence of a controlled substance in violation of IC 9-30-5-1(c).

- (3) Leaving the scene of an accident involving the driver's commercial motor vehicle in violation of IC 9-26-1.
- (4) Conviction of a felony involving the use of a commercial motor vehicle other than a felony described in subdivision (5).
- (5) Use of a commercial motor vehicle in the commission of a felony under IC 35-48 involving manufacturing, distributing, or dispensing of a controlled substance.
- (6) Violation of IC 9-30-5-2 through IC 9-30-5-8 involving operating a vehicle while intoxicated.
- (7) Refusing to undergo testing for the enforcement of IC 9-30-5-1 or section 15 of this chapter.

**9-24-6-9. One year disqualification**

A driver who:

(1) Either:

- (A) Is convicted for the first time of a disqualifying offense described in section 8(1) through 8(4) or 8(6) of this chapter; or
- (B) Is found to have violated section 8(7) of this chapter; and

(2) Is not transporting hazardous materials required to be placarded under the federal Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1813);

is qualified for one (1) year from driving a commercial motor vehicle.

**9-24-6-10. Three year disqualification**

A driver who:

(1) Either:

- (A) Is convicted for the first time of a disqualifying offense described in section 8(1) through 8(4) or 8(6) of this chapter; or
- (B) Is found to have violated section 8(7) of this chapter; and

(2) Is transporting hazardous materials required to be placarded under the federal Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1813);

is disqualified for three (3) years from driving a commercial motor vehicle.

**9-24-6-10.5. Disqualification for violation of out-of-service order**

(a) Except as provided in subsection (b), and in addition to any other penalty imposed for a violation of this chapter, the court that imposes a judgment for violation of an out-of-service order shall order the person receiving the judgment to be disqualified from driving a commercial vehicle as follows:

(1) For at least one hundred eighty (180) days but not more than one (1) year, if the judgment is the person's first judgment for violation of an out-of-service order.

(2) For at least two (2) years but not more than five (5) years, if the judgment is the person's second judgment for violation of an out-of-service order during any ten (10) year period.

(3) For at least three (3) years but not more than five (5) years, if the person has at least two (2) previous judgments for violation of an out-of-service order during any ten (10) year period.

(b) In addition to any other penalty imposed for a violation of this chapter, the court that imposes a judgment upon a person because the person violated an out-of-service order while the person was transporting a hazardous material or while operating a commercial motor vehicle designed or used to transport more than fifteen (15) passengers, including the driver, shall order the person to be disqualified from driving a commercial vehicle as follows:

(1) For at least one hundred eighty (180) days but not more than two (2) years, if the judgment is the person's first judgment for violation of an out-of-service order.

(2) For at least three (3) years but not more than five (5) years, if the person has at least one (1) previous judgment for violation of an out-of-service order that arose out of a separate incident during any ten (10) consecutive years.

(3) For at least three (3) years but not more than five (5) years, if the person has at least two (2) previous judgments for violation of an out-of-service order that arose out of a separate incident during any ten (10) consecutive years.

**9-24-6-11. Lifetime disqualification; drug offenses**

A driver who is convicted of an offense described in section 8(5) of this chapter is disqualified for life from driving a commercial motor vehicle.

**9-24-6-11.5. Hazardous material endorsement revocation**

(a) This section applies if the United States Department of Homeland Security, Transportation Security Administration adopts regulations concerning disqualifying offenses.

(b) The bureau shall revoke the hazardous materials endorsement of a driver who:

(1) receives a judgment or conviction for a disqualifying offense (as defined in the regulations described in subsection (a)) immediately upon receiving notice of the judgment or conviction; or

(2) is determined by the United States Department of Homeland Security, Transportation Security Administration to be potential security threat;

and shall give notice to the driver that the endorsement has been revoked and of the procedure by which the driver may appeal the revocation.

(c) The revocation of the hazardous material endorsement of a driver revocation under subsection (b) is for the period set forth under the regulations described in subsection (a).

**9-24-6-12. Lifetime disqualification; previous convictions; hazardous materials**

(a) A driver who:

(1) is:

(A) convicted of an offense described in section 8(1) through 8(4) or 8(6) of this chapter; or

(B) found to have violated section 8(7) of this chapter; and

(2) has been previously convicted in a separate incident of any offense described in section 8(1) through 8(4) or 8(6) of this chapter;

is disqualified for life from driving a commercial motor vehicle.

(b) A driver who applies for a hazardous materials endorsement and has been convicted of:

(1) a felony under Indiana law that results in serious bodily injury or death to another person; or

- (2) a crime in any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a felony described in subdivision (1);

is disqualified for life from holding a hazardous materials endorsement.

(c) The hazardous materials endorsement of a driver who holds a hazardous materials endorsement and is convicted of a:

- (1) felony under Indiana law that results in serious bodily injury or death to another person; or
- (2) crime in any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a felony described in subdivision (1);

is revoked upon conviction, and the driver is disqualified for life from holding a hazardous materials endorsement.

(d) The hazardous materials endorsement of a driver may be revoked and the driver may be disqualified from holding a hazardous materials endorsement if the revocation and disqualification are required under regulations adopted by the United States Department of Homeland Security, Transportation Security Administration.

#### **9-24-6-13. Application for reinstatement**

(a) A person who is disqualified under section 12 of this chapter may apply to the bureau for reinstatement of the person's commercial driver's license. The bureau may reinstate the person's license if:

- (1) The person has been disqualified for at least ten (10) years;
- (2) The person has voluntarily enrolled in and successfully completed an appropriate rehabilitation program that meets the standards of the bureau; and
- (3) The person meets the standards of the bureau for reinstatement of commercial driving privileges.

(b) A person whose commercial driving license is reinstated by the bureau under subsection (a) who is subsequently convicted of an offense described in section 8 of this chapter is:

- (1) Permanently disqualified; and
- (2) Ineligible to reapply for a reduction in the lifetime disqualification.

#### **9-24-6-14. Disqualification for refusing BAC test**

A person who refuses to undergo testing for the enforcement of IC 9-30-5-1 or section 15 of this chapter is disqualified from driving a commercial motor vehicle for the time provided in section 9, 10, or 11 of this chapter, whichever is applicable.

#### **9-24-6-15. Penalty for operating commercial vehicle with BAC between .04 and .08**

A person who operates a commercial motor vehicle with an alcohol concentration equivalent to at least four-hundredths (0.04) gram but less than eight-hundredths (0.08) gram of alcohol per:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath;

commits a Class C infraction.

**9-24-6-16. Penalty for driving after disqualification**

A person who:

- (1) Is disqualified under this article from driving a commercial motor vehicle; and
- (2) Drives a commercial motor vehicle;

commits a Class C misdemeanor.

**9-24-6-17. Penalty for knowingly allowing disqualified driver to operate commercial vehicle**

A person who knowingly allows, requires, permits, or authorizes another person to drive a commercial motor vehicle during a period in which:

- (1) the other person is disqualified under this article from driving a commercial motor vehicle; or
- (2) the driver, the commercial motor vehicle that the other person is driving, or the motor carrier operation is subject to an out-of-service order;

commits a Class C misdemeanor.

**9-24-6-18. Penalties generally [effective January 1, 2015]**

Except as provided in section 17 of this chapter, a person who violates this chapter commits a Class C infraction.

**9-24-6-19. Civil penalties for violation of out-of-service order**

(a) It is unlawful for a person to violate or fail to comply with an out-of-service order.

(b) If a person operates a vehicle in violation of an out-of-service order, in addition to any other penalty imposed for violation of an out-of-service order under this chapter, the court shall impose a civil penalty in accordance with 49 CFR 383.53 as in effect July 1, 2010.

(c) If an employer violates an out-of-service order, or knowingly requires or permits a driver to violate or fail to comply with an out-of-service order, in addition to any other penalty imposed for violation of an out-of-service order under this chapter, the court shall impose a civil penalty on the employer in accordance with 49 CFR 383.53 as in effect July 1, 2010.

(d) All civil penalties assessed under this section must be collected and transferred by the clerk of the court to the bureau. The bureau shall deposit the money in the motor vehicle highway account established by IC 8-14-1.

(e) A civil penalty assessed under this section is a judgment subject to proceedings supplemental by the bureau.

**Chapter 13**  
**Rights and Duties of Licensees**  
**[Portions Omitted]**

- 9-24-13-3 Duty to carry license or permit
- 9-24-13-4 Duplicate license or permit when address or name change
- 9-24-13-5 Penalty
- 9-24-13-6 Burden of proof as to license

### **9-24-13-3. Duty to carry license or permit**

An individual holding a permit or license issued under this article must have the permit or license in the individual's immediate possession when driving or operating a motor vehicle. The permittee or licensee shall display the license or permit upon demand of a court or a police officer authorized by law to enforce motor vehicle rules.

### **9-24-13-4. Duplicate license or permit when address or name change**

If:

(1) an individual holding a license or permit issued under this article changes the address shown on the license or permit application; or

(2) the name of a licensee or permittee is changed by marriage or otherwise;

the licensee or permittee shall make application for an amended driver's license or permit under IC 9-24-9 containing the correct information within thirty (30) days of the change.

### **9-24-13-5. Penalty**

A person who violates this chapter commits a Class C infraction.

### **9-24-13-6. Burden of proof as to license**

(a) Subject to subsection (b), in a proceeding to enforce section 3 of this chapter, the burden is on the defendant to prove by a preponderance of the evidence that the defendant had been issued a driving license or permit that was valid at the time of the alleged violation.

(b) A person may not be convicted of violating section 3 of this chapter if the person, within five (5) days from the time of apprehension, produces to the apprehending officer or headquarters of the apprehending officer satisfactory evidence of a permit or license issued to the person that was valid at the time of the person's apprehension.

## **Chapter 15 Hardship Driver's Licenses**

**Editor's Note: P.L.217-2014 repealed this entire chapter, effective January 1, 2015. Please refer to IC 9-30-16, effective January 1, 2015, for provisions relating to specialized driving privileges.**

## **Chapter 18 General Penalty Provisions [Portions Omitted]**

- 9-24-18-1 Operating motor vehicle – never received license; burden of proof
- 9-24-18-2 Unauthorized possession, display, use, or sale of license or permit; fraudulent procurement of license or permit
- 9-24-18-3 Person with custody of motor vehicle permitting unauthorized person to drive
- 9-24-18-4 Person owning motor vehicle permitting unauthorized person to drive
- 9-24-18-6 Burden of proof
- 9-24-18-7 Counterfeiting driver's license
- 9-24-18-12 License suspension for alcoholic beverage offenses involving minors
- 9-24-18-12.2 License suspension for alcoholic beverage violations

**9-24-18-1. Operating motor vehicle – never received license; burden of proof [effective January 1, 2015]**

(a) A person, except a person exempted under IC 9-24-1-7, who knowingly or intentionally operates a motor vehicle upon a highway and has never received a valid driving license commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

(b) In a prosecution under this section, the burden is on the defendant to prove by a preponderance of the evidence that the defendant:

- (1) had been issued a driver's license or permit that was valid; or
- (2) was operating a Class B motor driven cycle;

at the time of the alleged offense. However, it is not a defense under subdivision (2) if the defendant was operating the Class B motor driven cycle in violation of IC 9-21-11-12.

**9-24-18-2. Unauthorized possession, display, use, or sale of license or permit; fraudulent procurement of license or permit**

(a) A person may not do any of the following:

- (1) Display, cause or permit to be displayed, or have in possession a license or permit issued under this article knowing that the license or permit is fictitious or has been canceled, revoked, suspended or altered.
- (2) Lend to a person or knowingly permit the use by a person not entitled to use a license or permit a license or permit issued under this article.
- (3) Display or represent as the person's license or permit issued under this article a license or permit not issued to the person.
- (4) Fail or refuse to surrender, upon demand of the proper official, a license or permit issued under this article that has been suspended, canceled, or revoked as provided by law.
- (5) Knowingly sell, offer to sell, buy, possess, or offer as genuine, a license or permit required by this article to be issued by the bureau that has not been issued by the bureau under this article or by the appropriate authority of any other state.

A person who knowingly or intentionally violates this subsection commits a Class C misdemeanor.

(b) A person who:

- (1) knowingly or intentionally uses a false or fictitious name or gives a false or fictitious address in an application:
  - (A) for a license or permit issued under this article; or
  - (B) for a renewal, amendment, or replacement of a license or permit issued under this article; or
- (2) knowingly or intentionally makes a false statement or conceals a material fact or otherwise commits a fraud in an application for a license or permit issued under this article;

commits application fraud, a Level 6 felony.

**9-24-18-3. Person with custody of motor vehicle permitting unauthorized person to drive**

(a) A person that has a motor vehicle in the person’s custody may not cause or knowingly permit a person to operate the vehicle upon a highway unless the person holds a valid license or permit under this article for the type of vehicle that the person is operating.

(b) A person who violates this section commits a Class C infraction.

**9-24-18-4. Person owning motor vehicle permitting unauthorized person to drive**

(a) A person may not authorize or knowingly permit a motor vehicle owned by the person or under the person’s control to be operated by a person who does not have a legal right to do so or in violation of this title.

(b) A person who violates this section commits a Class C infraction.

**9-24-18-6. Burden of proof**

In a proceeding to enforce IC 9-24-1 requiring the operator of a vehicle to have a certain type of license, the burden is on the defendant to prove by a preponderance of the evidence that the defendant had been issued the applicable license or permit and that the license was valid at the time of the alleged offense.

**9-24-18-7. Counterfeiting driver’s license**

**Editor’s Note: This statute was repealed by P.L.217-2104, effective January 1, 2015. For the text of this statute, effective through December 31, 2014, please refer to the 2013 edition of the Indiana Criminal Code book.**

**9-24-18-12. License suspension for alcoholic beverage offenses involving minors**

**Editor’s Note: This statute was repealed by P.L.217-2014, effective January 1, 2015. Please also see IC 9-24-18-12.2, which was added by P.L. 159-2014, effective July 1, 2014.**

Upon receipt of a court order under IC 7.1-5-7-7 (minor possessing, consuming, or transporting alcohol or having alcohol present in a bodily substance), the bureau shall suspend the minor’s driving privileges for the period ordered by the court. If the court fails to recommend a fixed term of suspension, or recommends a fixed term that is less than the minimum term required by statute, the bureau shall impose the minimum period of suspension required under IC 7.1-5-7.

**9-24-18-12.2. License suspension for alcoholic beverage violations**

Upon receipt of a court order under IC 7.1-5-7-7 (minor consuming or transporting alcohol), the bureau shall suspend the minor’s driving privileges for the period ordered by the court. If the court fails to recommend a fixed term of suspension, or recommends a fixed term that is less than the minimum term required by statute, the bureau shall impose the minimum period of suspension under IC 7.1-5-7.

**Chapter 19  
Operating While Suspended**

- 9-24-19-1 Operating while suspended or revoked; Class A infraction
- 9-24-19-2 Operating while suspended or revoked; prior infraction violation; Class A misdemeanor

- 9-24-19-3 Operating while suspended or revoked as result of offense
- 9-24-19-4 Operating while suspended or revoked resulting in bodily injury, serious bodily injury or death
- 9-24-19-5 Suspension of driving privileges in addition to penalty
- 9-24-19-7 Burden of proof on defendant
- 9-24-19-8 Rebuttable presumption of knowledge of suspension

**9-24-19-1. Operating while suspended or revoked; Class A infraction [effective January 1, 2015]**

Except as provided in sections 2 and 3 of this chapter, a person who operates a motor vehicle upon a highway while the person's driving privilege, license, or permit is suspended or revoked commits a Class A infraction.

**9-24-19-2. Operating while suspended or revoked; prior infraction violation; Class A misdemeanor**

A person who:

- (1) knows that the person's driving privilege, license, or permit is suspended or revoked; and
- (2) operates a motor vehicle upon a highway less than ten (10) years after the date on which judgment was entered against the person for a prior unrelated violation of section 1 of this chapter, this section, IC 9-1-4-52 (repealed July 1, 1991), or IC 9-24-18-5(a) (repealed July 1, 2000);

commits a Class A misdemeanor.

**9-24-19-3. Operating while suspended or revoked as result of offense [effective January 1, 2015]**

(a) A person who operates a motor vehicle upon a highway when the person knows that the person's driving privilege, license, or permit is suspended or revoked, when the person's suspension or revocation was a result of the person's conviction of an offense (as defined in *IC 35-31.5-2-215*) commits a Class A misdemeanor.

(b) However, the offense described in subsection (a) is a:

- (1) Level 6 felony if the operation of the motor vehicle results in bodily injury; or
- (2) Level 5 felony if the operation of the motor vehicle results in the death of another person.

**9-24-19-4. Operating while suspended or revoked resulting in bodily injury, serious bodily injury or death**

**Editor's Note: This statute was repealed by P.L.217-2014, effective January 1, 2015. The provisions of this statute have been recodified in IC 9-24-19-3(b), effective January 1, 2015.**

(a) A person who violates section 3 of this chapter commits a Level 6 felony if the operation results in bodily injury or serious bodily injury.

(b) A person who violates section 3 of this chapter commits a Level 5 felony if the operation results in the death of another person.

**9-24-19-5. Suspension of driving privileges in addition to penalty**

**Editor’s Note: This statute was repealed by P.L.217-2014, effective January 1, 2015.**

(a) In addition to any other penalty imposed for a conviction under this chapter, the court shall recommend that the person's driving privileges be suspended for a fixed period of not less than ninety (90) days and not more than two (2) years.

(b) The court shall specify:

(1) the length of the fixed period of suspension; and

(2) the date the fixed period of suspension begins;

whenever the court makes a recommendation under subsection (a).

(c) The bureau shall, upon receiving a record of conviction of a person upon a charge of driving a motor vehicle while the driving privileges, permit, or license of the person is suspended, fix the period of suspension in accordance with the recommendation of the court. If the court fails to recommend a fixed term of suspension, or recommends a fixed term that is less than the minimum term required by statute, the bureau shall impose the minimum period of suspension required under this chapter.

**9-24-19-7. Burden of proof on defendant [effective January 1, 2015]**

In a prosecution under this chapter, the burden is on the defendant to prove by a preponderance of the evidence that the defendant:

(1) had been issued a driver’s license or permit that was valid; or

(2) was operating a Class B motor driven cycle;

at the time of the alleged offense. However, it is not a defense under subdivision (2) if the defendant was operating the Class B motor driven cycle in violation of IC 9-21-11-12.

**9-24-19-8. Rebuttable presumption of knowledge of suspension**

Service by the bureau of motor vehicles of a notice of an order or an order suspending or revoking a person's driving privileges by mailing the notice or order by first class mail to the defendant under this chapter at the last address shown for the defendant in the records of the bureau of motor vehicles establishes a rebuttable presumption that the defendant knows that the person's driving privileges are suspended.

**ARTICLE 25  
FINANCIAL RESPONSIBILITY  
[PORTIONS OMITTED]**

**Chapter 8  
Penalties  
[Portions Omitted]**

9-25-8-1 Inapplicability of chapter

9-25-8-2 Operating without proof of financial responsibility

9-25-8-4 No notification to prosecutor

**9-25-8-1. Inapplicability of chapter**

This chapter does not apply to the following:

- (1) Persons who have obtained a certificate of self-insurance under IC 9-25-4-11.
- (2) Operators of government owned vehicles.
- (3) Persons who are exempt under IC 9-25-1-2.

**9-25-8-2. Operating without proof of financial responsibility [effective January 1, 2015]**

- (a) A person who knowingly:
  - (1) operates; or
  - (2) permits the operation of;

a motor vehicle on a public highway in Indiana without financial responsibility in effect as set forth in IC 9-25-4-4 commits a Class A infraction. However, the offense is a Class C misdemeanor if the person knowingly or intentionally violates this section and has a prior unrelated conviction or judgment under this section.

- (b) Subsection (a)(2) applies to:
  - (1) the owner of a rental company under IC 9-25-6-3(f)(1); and
  - (2) an employer under IC 9-25-6-3(f)(2).

(c) In addition to any other penalty imposed on a person for violating this section, the court shall recommend the suspension of the person's driving privileges for at least ninety (90) days but not more than one (1) year. However, if, within the five (5) years preceding the conviction under this section, the person had a prior unrelated conviction under this section, the court shall recommend the suspension of the person's driving privileges and vehicle registration for one (1) year.

(d) Upon receiving the recommendation of the court under subsection (c), the bureau shall suspend the person's driving privileges and vehicle registration, as applicable, for the period recommended by the court. If no suspension is recommended by the court, or if the court recommends a fixed term that is less than the minimum term required by statute, the bureau shall impose the minimum period of suspension required under this article.

**9-25-8-4. No notification to prosecutor**

The commissioner is not required to notify the prosecuting attorney of a driver who has had driving privileges suspended for failure to prove financial responsibility under this article.

**ARTICLE 26  
ACCIDENTS AND  
ACCIDENT REPORTS  
[PORTIONS OMITTED]**

- Ch. 1      Duties of Drivers, Owners, and Passengers and Accident Reports
- Ch. 8      Arrest For Leaving The Scene

**Chapter 1  
Duties of Drivers, Owners  
And Passengers and  
Accident Reports**

**Editor's Note: The following statutes in this chapter were repealed by P.L.217-2014, effective January 1, 2015:**

- 9-26-1-1**
- 9-26-1-2**
- 9-26-1-3**
- 9-26-1-4**
- 9-26-1-8**
- 9-26-1-9**

**Please refer to the 2013 edition of the Indiana Criminal Code Book for these repealed provisions. Please note that the felony designations set forth in IC 9-26-1-8 were reclassified for the time period from July 1, 2014 through December 31, 2014. Also see IC 9-26-1-1.1 for new provisions in this chapter, effective January 1, 2015.**

- 9-26-1-0.3 Inapplicability to off-road vehicles and snowmobiles
- 9-26-1-0.5 Definition of "accident"
- 9-26-1-1.1 Duties after an accident; failure to stop after an accident
- 9-26-1-1.5 Injured or entrapped persons in vehicle

**9-26-1-0.3. Inapplicability to off-road vehicles and snowmobiles**

Except as provided in section 0.5 of this chapter, this article does not apply to off-road vehicles or snowmobiles, which are subject to IC 14-16-1-24 and IC 14-16-1-26.

**9-26-1-0.5. Definition of "accident"**

For purposes of this chapter, an accident does not require proof of a collision between a driver's motor vehicle and another vehicle or another person if the accident involves serious bodily injury to or the death of a person.

**9-26-1-1.1. Duties after an accident; failure to stop after an accident [effective January 1, 2015]**

- (a) The operator of a motor vehicle involved in an accident shall do the following:
  - (1) Either:
    - (A) immediately stop the operator's motor vehicle:
      - (i) at the scene of the accident; or
      - (ii) as close to the accident as possible in a manner that does not obstruct traffic more than is necessary; or
    - (B) remain at the scene of the accident until the operator does the following:
      - (i) Gives the operator's name and address and the registration number of the motor vehicle the operator was driving to any person involved in the accident.
      - (ii) Exhibits the operator's driver's license to any person involved in the accident or occupant of or any person attending to any vehicle involved in the accident.
  - (2) If the accident results in the injury or death of another person, the operator shall, in addition to the requirements of subdivision (1):

(A) provide reasonable assistance to each person injured in or entrapped by the accident, as directed by a law enforcement officer, medical personnel, or a 911 telephone operator; and

(B) immediately give notice of the accident by the quickest means of communication to one (1) of the following:

(i) The local police department, if the accident occurs within a municipality.

(ii) The office of the county sheriff or the nearest state police post, if the accident occurs outside a municipality.

(3) If the accident involves a collision with an unattended vehicle or damage to property other than a vehicle, the operator shall, in addition to the requirements of subdivision (1):

(A) take reasonable steps to locate and notify the owner or person in charge of the damaged vehicle or property of the damage; and

(B) if after reasonable inquiry the operator cannot find the owner or person in charge of the damaged vehicle or property, do the following:

(i) Notify either the sheriff's department of the county in which the damaged vehicle or property is located or a member of the state police department.

(ii) Give the sheriff's department or the state police department the information required by this section.

(b) An operator of a motor vehicle who knowingly or intentionally fails to comply with subsection (a) commits leaving the scene of an accident, a Class B misdemeanor. However, the offense is:

(1) a Class A misdemeanor if the accident results in bodily injury to another person;

(2) a Level 6 felony if:

(A) the accident results in serious bodily injury to another person; or

(B) within the five (5) years preceding the commission of the offense, the operator had a previous conviction of any of the offenses listed in IC 9-30-10-4(a);

(3) a Level 5 felony if the accident results in the death of another person; and

(4) a Level 3 felony if the operator knowingly or intentionally fails to stop or comply with subsection (a) during or after the commission of the offense of operating while intoxicated causing serious bodily injury (IC 9-30-5-4) or operating while intoxicated causing death (IC 9-30-5-5).

### **9-26-1-1.5. Injured or entrapped persons in vehicle [effective January 1, 2015]**

(a) If:

(1) the operator of a motor vehicle is physically incapable of determining the need for or rendering assistance to any injured or entrapped person as required under section 1.1(a)(2) of this chapter;

(2) there is another occupant in the motor vehicle at the time of the accident who is:

(A) at least:

- (i) fifteen (15) years of age and holds a learner's permit issued under IC 9-24-7-1 or a driver's license issued under IC 9-24-11; or
  - (ii) eighteen (18) years of age; and
  - (B) capable of determining the need for and rendering reasonable assistance to injured or entrapped persons as provided in section 1.1(a)(2) of this chapter; and
  - (3) the other occupant in the motor vehicle knows that the operator of the motor vehicle is physically incapable of determining the need for or rendering assistance to any injured or entrapped person;
- the motor vehicle occupant referred to in subdivisions (2) and (3) shall immediately determine the need for and render reasonable assistance to each person injured or entrapped in the accident as provided in section 1.1(a)(2) of this chapter.
- (b) If there is more than one (1) motor vehicle occupant to whom subsection (a) applies, it is a defense to a prosecution of one (1) motor vehicle occupant under subsection (a) that the defendant reasonably believed that another occupant of the motor vehicle determined the need for and rendered reasonable assistance as required under subsection (a).

**Chapter 8**  
**Arrest for Leaving the Scene**

- 9-26-8-1 Nonexclusive procedure for arrest and prosecution
- 9-26-8-2 Warrantless arrest.

**9-26-8-1. Nonexclusive procedure for arrest and prosecution**

The procedure prescribed in this chapter is not the exclusive method for the arrest and prosecution of a person for a similar offense.

**9-26-8-2. Warrantless arrest [effective January 1, 2015]**

A law enforcement officer may, without a warrant, arrest a person for a violation of IC 9-26-1-1.1 if the law enforcement officer has probable cause to believe that the violation was committed by the person.

**ARTICLE 30**  
**GENERAL PENALTY PROVISIONS**  
**[PORTIONS OMITTED]**

- Ch. 2 Arrests
- Ch. 3 Court Procedures
- Ch. 4 Licenses and Registrations; Suspension and Revocation
- Ch. 5 Operating a Vehicle While Intoxicated
- Ch. 6 Implied Consent; Administrative and Evidentiary Matters
- Ch. 7 Implied Consent in Accidents Involving Serious Injury or Death
- Ch. 8 Ignition Interlock Devices
- Ch. 9 Circuit Court Alcohol Abuse Deterrent Programs

Ch. 10	Habitual Violator of Traffic Laws
Ch. 13	Miscellaneous Criminal Offenses; Suspension of Driver's Licenses
Ch. 14	Victim Impact Programs
Ch. 15	Open Containers; Consuming While Operating
Ch. 15.5	Habitual Vehicular Substance Offender
Ch. 16	Suspension of Driving Privileges; Specialized Driving Privileges

**Chapter 2**  
**Arrests**  
**[Portions Omitted]**

9-30-2-1	Inapplicability of chapter
9-30-2-2	Marked vehicle or uniformed officer
9-30-2-4	Immediate appearance before judge
9-30-2-6	Warrantless arrests for leaving the scene and OWI

**9-30-2-1. Inapplicability of chapter**

Sections 2 and 3 of this chapter do not apply to the following:

- (1) Officers or members of the state militia when on active duty.
- (2) Officers of the United States government.

**9-30-2-2. Marked vehicle or uniformed officer**

A law enforcement officer may not arrest or issue a traffic information and summons to a person for a violation of an Indiana law regulating the use and operation of a motor vehicle on an Indiana highway or an ordinance of a city or town regulating the use and operation of a motor vehicle on an Indiana highway unless at the time of the arrest the officer is:

- (1) Wearing a distinctive uniform and a badge of authority; or
- (2) Operating a motor vehicle that is clearly marked as a police vehicle;

that will clearly show the officer or the officer's vehicle to casual observations to be an officer or a police vehicle. This section does not apply to an officer making an arrest when there is a uniformed officer present at the time of the arrest.

**9-30-2-4. Immediate appearance before judge**

(a) This section does not apply to a person arrested for a misdemeanor under IC 9-30-5 (operating a vehicle while intoxicated).

(b) If a person is arrested for a misdemeanor under this title, the arrested person shall be immediately taken before a court within the county in which the offense charged is alleged to have been committed and that has jurisdiction of the offense and is nearest or most accessible to the place where the arrest is made in any of the following cases:

- (1) When the person demands an immediate appearance before a court.
- (2) When the person is charged with an offense causing or contributing to an accident resulting in injury to or death of a person.
- (3) When the person is charged with failure to stop for an accident causing death, personal injuries, or damage to property.
- (4) When the person refuses to give the person's written promise to appear in court.

(5) When the person is charged with driving while the person's license is suspended or revoked.

**9-30-2-6. Warrantless arrests for leaving the scene and OWI [effective January 1, 2015]**

A law enforcement officer may, without a warrant, arrest a person in case of violations of:

(1) IC 9-26-1-1.1; and

(2) IC 9-30-5 if the violation of IC 9-30-5 is coupled with an accident;

when the law enforcement officer has probable cause to believe that the violation was committed by the person. The procedure prescribed in this section is not the only method prescribed by law for the arrest and prosecution of a person for an offense of similar grade.

**Chapter 3  
Court Procedures  
[Portions Omitted]**

9-30-3-15 Certified computer printout prima facie evidence

**9-30-3-15. Certified computer printout prima facie evidence**

In a proceeding, prosecution, or hearing where the prosecuting attorney must prove that the defendant had a prior conviction for an offense under this title, the relevant portions of a certified computer printout or electronic copy as set forth in IC 9-14-3-4 made from the records of the bureau are admissible as prima facie evidence of the prior conviction. However, the prosecuting attorney must establish that the document identifies the defendant by the defendant's driver's license number or by any other identification method utilized by the bureau.

**Chapter 4  
Licenses and Registrations  
Suspension and Revocation  
[Portions Omitted]**

9-30-4-6 Suspension or revocation of driver's license, registration certificate and plate for conviction of offense; "conviction" defined

9-30-4-6.5 License suspension begins on date of release from incarceration

9-30-4-8 Operating vehicle after registration suspended or revoked

9-30-4-12 Suspension of driving privileges or license

9-30-4-13 BMV notice requirements; penalty for failure to surrender license or registration

**9-30-4-6. Suspension or revocation of driver's license, registration certificate and plate for conviction of offense; "conviction" defined [effective January 1, 2015]**

(a) Whenever the bureau suspends or revokes the current driver's license or driving privileges upon receiving a record of the conviction of a person for any offense under the motor vehicle laws, the bureau may also suspend any of the certificates of registration and license plates issued for any motor vehicle registered in the name of the person so convicted. However, the bureau may not suspend the evidence of registration, unless otherwise required by law, if the person has given or gives and maintains during the three (3) years following the date of

suspension or revocation proof of financial responsibility in the future in the manner specified in this section.

(b) The bureau shall suspend or revoke the current driver's license or driving privileges and all certificates of registration and license plates issued or registered in the name of a person who is convicted of any of the following:

(1) Manslaughter or reckless homicide resulting from the operation of a motor vehicle.

(2) Perjury or knowingly making a false affidavit to the department under this chapter or any other law requiring the registration of motor vehicles or regulating motor vehicle operation upon the highways.

(3) Three (3) charges of criminal recklessness involving the use of a motor vehicle within the preceding twelve (12) months.

(4) Failure to stop and give information or assistance or failure to stop and disclose the person's identity at the scene of an accident that has resulted in death, personal injury, or property damage in excess of two hundred dollars (\$200).

(c) The bureau shall suspend a driver's license or driving privileges or a person upon conviction in another jurisdiction for the following:

(1) Manslaughter or reckless homicide resulting from the operation of a motor vehicle.

(2) Perjury or knowingly making a false affidavit to the department under this chapter or any other law requiring the registration of motor vehicles or regulating motor vehicle operation upon the highways.

(3) Three (3) charges of criminal recklessness involving the use of a motor vehicle within the preceding twelve (12) months.

(4) Failure to stop and give information or assistance or failure to stop and disclose the person's identity at the scene of an accident that has resulted in death, personal injury, or property damage in excess of two hundred dollars (\$200).

However, if property damage is less than two hundred dollars (\$200), the bureau may determine whether the driver's license or driving privileges and certificates of registration and license plates shall be suspended or revoked.

(d) A person whose driving privileges are suspended under this chapter is eligible for specialized driving privileges under IC 9-30-16.

(e) A suspension or revocation remains in effect and a new or renewal license may not be issued to the person and a motor vehicle may not be registered in the name of the person as follows:

(1) Except as provided in subdivision (2), for six (6) months from the date of conviction or on the date on which the person is otherwise eligible for a license, whichever is later.

(2) Upon conviction of an offense described in subsection (b)(1) or (c)(1), or (b)(4) or (c)(4) when the accident has resulted in death, for a fixed period of not less than two (2) years and not more than five (5) years, to be fixed by the bureau based upon recommendation of the court entering a conviction. A new or reinstated driver's license or driving privileges may not be issued to the person unless that person, within the three (3) years following the expiration of the suspension or revocation, gives and maintains in force at all times during the effective period of a new or reinstated license proof of financial responsibility in

the future in the manner specified in this chapter. However, the liability of the insurance carrier under a motor vehicle liability policy that is furnished for proof of financial responsibility in the future as set out in this chapter becomes absolute whenever loss or damage covered by the policy occurs, and the satisfaction by the insured of a final judgment for loss or damage is not a condition precedent to the right or obligation of the carrier to make payment on account of loss or damage, but the insurance carrier has the right to settle a claim covered by the policy. If the settlement is made in good faith, the amount shall be deductive from the limits of liability specified in the policy. A policy may not be canceled or annulled with respect to a loss or damage by an agreement between the carrier and the insured after the insured has become responsible for the loss or damage, and a cancellation or annulment is void. The policy may provide that the insured or any other person covered by the policy shall reimburse the insurance carrier for payment made on account of any loss or damage claim or suit involving a breach of the terms, provisions, or conditions of the policy. If the policy provides for limits in excess of the limits specified in this chapter, the insurance carrier may plead against any plaintiff, with respect to the amount of the excess limits of liability, any defenses that the carrier may be entitled to plead against the insured. The policy may further provide for prorating of the insurance with other applicable valid and collectible insurance. An action does not lie against the insurance carrier by or on behalf of any claimant under the policy until a final judgment has been obtained after actual trial by or on behalf of any claimant under the policy.

(f) The bureau may take action as required in this section upon receiving satisfactory evidence of a conviction of a person in another state.

(g) For the purpose of this chapter, "conviction" includes any of the following:

(1) A conviction upon a plea of guilty.

(2) A determination of guilt by a jury or court, even if:

(A) no sentence is imposed; or

(B) a sentence is suspended.

(3) A forfeiture of bail, bond, or collateral deposited to secure the defendant's appearance for trial, unless the forfeiture is vacated.

(4) A payment of money as a penalty or as costs in accordance with an agreement between a moving traffic violator and a traffic violations bureau.

(h) A suspension or revocation under this section or under IC 9-30-13-0.5 stands pending appeal of the conviction to a higher court and may be set aside or modified only upon the receipt by the bureau of the certificate of the court reversing or modifying the judgment that the cause has been reversed or modified. However, if the suspension or revocation follows a conviction in a court of no record in Indiana, the suspension or revocation is stayed pending appeal of the conviction to a court of record.

(i) A person aggrieved by an order or act of the bureau under this section or IC 9-30-13-0.5 may file a petition for a court review.

#### **9-30-4-6.5. License suspension begins on date of release from incarceration**

If a person receives a sentence that includes:

(1) a term of incarceration; and

(2) suspension of the person's driving privileges under this chapter; the suspension of driving privileges begins on the date the person is released from incarceration and not on the date the person is convicted.

**9-30-4-8. Operating vehicle after registration suspended or revoked [effective January 1, 2015]**

A person whose certificate of registration has been suspended or revoked, with restoration or the issuance of a new certificate being contingent upon the furnishing of proof of financial responsibility, and who, during the suspension or revocation or in the absence of full authorization from the bureau, operates the motor vehicle upon a highway or knowingly permits the motor vehicle to be operated by another person upon a highway except as permitted under this chapter commits a Class C misdemeanor.

**9-30-4-12. Suspension of driving privileges or license**

(a) Any court judgment, court order, or administrative proceeding that results in a suspension of a person's driving privileges also suspends any driver's license or permit held by the person.

(b) Any court judgment, court order, or administrative proceeding that results in a suspension of a person's driver's license or permit also suspends the person's driving privileges.

**9-30-4-13. BMV notice requirements; penalty for failure to surrender license or registration**

(a) Whenever the bureau is authorized or required to give notice under this chapter or any other law regulating the operation of vehicles, unless a different method of giving notice is otherwise expressly prescribed, the notice may be given either by personal delivery to the person to be notified or by deposit with the United States Postal Service of the notice by first class mail.

(b) A person who, after notification, fails to return or surrender to the bureau upon demand a suspended, revoked, or invalidated driver's license, permit, certificate of registration, or license plate commits a Class C misdemeanor. The bureau may file with the prosecuting attorney of the county in which the person resides an affidavit charging the person with the offense.

**Chapter 5  
Operating While Intoxicated**

- 9-30-5-0.2 Applicability of amendments.
- 9-30-5-1 Operating a vehicle with specified amount of alcohol or controlled substance
- 9-30-5-2 Operating while intoxicated
- 9-30-5-3 Previous convictions; minor passenger in vehicle
- 9-30-5-4 Causing serious bodily injury
- 9-30-5-5 Causing death
- 9-30-5-6 Violation of probationary license
- 9-30-5-7 Violation of ignition interlock order
- 9-30-5-8 Tampering with ignition interlock device
- 9-30-5-8.5 Persons under age 21 with BAC over .02
- 9-30-5-9 No defense; not operating on highway

- 9-30-5-9.5 No probationary license for commercial drivers
- 9-30-5-10 Additional penalties; license suspension
- 9-30-5-15 Previous conviction; imprisonment or community service
- 9-30-5-16 Installation of ignition interlock device
- 9-30-5-17 Emergency medical services restitution fund
- 9-30-5-18 Alcohol and drug services program for juvenile

**9-30-5-0.2. Applicability of amendments**

The amendments made to IC 33-19-6-10 (before its repeal, now codified at IC 33-37-5-10) by P.L.85-1998 apply to findings under this chapter made after June 30, 1998, regardless of when the action was filed.

**9-30-5-1. Operating a vehicle with specified amount of alcohol or controlled substance**

(a) A person who operates a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol but less than fifteen-hundredths (0.15) gram of alcohol per:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath;

commits a Class C misdemeanor.

(b) A person who operates a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath;

commits a Class A misdemeanor.

(c) A person who operates a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body commits a Class C misdemeanor.

(d) It is a defense to subsection (c) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

**9-30-5-2. Operating while intoxicated**

(a) Except as provided in subsection (b), a person who operates a vehicle while intoxicated commits a Class C misdemeanor.

(b) An offense described in subsection (a) is a Class A misdemeanor if the person operates a vehicle in a manner that endangers a person.

**9-30-5-3. Previous convictions; minor passenger in vehicle**

(a) Except as provided in subsection (b), a person who violates section 1 or 2 of this chapter commits a Level 6 felony if:

- (1) the person has a previous conviction of operating while intoxicated that occurred within the five (5) years immediately preceding the occurrence of the violation of section 1 or 2 of this chapter; or
- (2) the person:
  - (A) is at least twenty-one (21) years of age;
  - (B) violates section 1(b) or 2(b) of this chapter; and

(C) operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age.

(b) A person who violates section 1 or 2 of this chapter or subsection (a)(2) commits a Level 5 felony if:

(1) the person has a previous conviction of operating while intoxicated causing death (IC 9-30-5-5); or

(2) the person has a previous conviction of operating while intoxicated causing serious bodily injury (IC 9-30-5-4).

#### **9-30-5-4. Causing serious bodily injury**

(a) A person who causes serious bodily injury to another person when operating a vehicle:

(1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or

(3) while intoxicated;

commits a Level 6 felony. However, the offense is a Level 5 felony if the person has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense.

(b) A person who violates subsection (a) commits a separate offense for each person whose serious bodily injury is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

#### **9-30-5-5. Causing death**

(a) A person who causes the death of another person when operating a vehicle:

(1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or

(3) while intoxicated;

commits a Level 5 felony. However, the offense is a Level 4 felony if the person has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense, or if the person operated the vehicle when the person knew that the person's driver's license, driving privilege, or permit is suspended or revoked for a previous conviction for operating a vehicle while intoxicated.

(b) A person at least twenty-one (21) years of age who causes the death of another person when operating a vehicle:

(1) with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

- (A) one hundred (100) milliliters of the person's blood; or
- (B) two hundred ten (210) liters of the person's breath; or
- (2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood;

commits a Level 4 felony.

(c) A person who causes the death of a law enforcement animal (as defined in IC 35-46-3-4.5) when operating a vehicle:

- (1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
  - (A) one hundred (100) milliliters of the person's blood; or
  - (B) two hundred ten (210) liters of the person's breath; or
- (2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood;

commits a Level 6 felony.

(d) A person who violates subsection (a), (b), or (c) commits a separate offense for each person or law enforcement animal whose death is caused by the violation of subsection (a), (b), or (c).

(e) It is a defense under subsection (a)(2), (b)(2), or (c)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

#### **9-30-5-6. Violation of probationary license**

(a) A person who operates a vehicle in violation of any term of a probationary license issued under this chapter, IC 9-30-6, or IC 9-30-9 commits a Class C infraction.

(b) In addition to any other penalty imposed under this section, the court may suspend the person's driving privileges for a period of not more than one (1) year.

#### **9-30-5-7. Violation of ignition interlock order**

(a) A person who violates a court order issued under section 16 of this chapter commits a Class A misdemeanor.

(b) Except as provided in subsection (c), a person who knowingly assists another person who is restricted to the use of an ignition interlock device to violate a court order issued under this chapter commits a Class A misdemeanor.

(c) Subsection (b) does not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device:

- (1) Is done for the purpose of safety or mechanical repair of the device or the vehicle; and
- (2) The restricted person does not operate the vehicle.

(d) A person who, except in an emergency, knowingly rents, leases, or loans a motor vehicle that is not equipped with a functioning ignition interlock device to a person who is restricted under a court order to the use of a vehicle with an ignition interlock device commits a Class A infraction.

(e) A person who is subject to an ignition interlock device restriction and drives another vehicle in an emergency situation must notify the court of the emergency within twenty-four (24) hours.

### **9-30-5-8. Tampering with ignition interlock device**

(a) A person who knowingly or intentionally tampers with an ignition interlock device for the purpose of:

- (1) circumventing the ignition interlock device; or
- (2) rendering the ignition interlock device inaccurate or inoperative;

commits a Class B misdemeanor.

(b) A person who solicits another person to:

- (1) blow into an ignition interlock device; or
- (2) start a motor vehicle equipped with an ignition interlock device;

for the purpose of providing an operable vehicle to a person who is restricted to driving a vehicle with the ignition interlock device commits a Class C infraction.

### **9-30-5-8.5. Persons under age 21 with BAC over .02**

(a) A person who:

- (1) is less than twenty-one (21) years of age; and
- (2) operates a vehicle with an alcohol concentration equivalent to at least two-hundredths (0.02) gram but less than eight-hundredths (0.08) gram of alcohol per:
  - (A) one hundred (100) milliliters of the person's blood; or
  - (B) two hundred ten (210) liters of the person's breath;

commits a Class C infraction.

(b) In addition to the penalty imposed under this section, the court may recommend the suspension of the driving privileges of the operator of the vehicle for not more than one (1) year.

### **9-30-5-9. No defense; not operating on highway**

It is not a defense in an action under this chapter that the accused person was operating a vehicle in a place other than on a highway.

### **9-30-5-9.5. No probationary license for commercial drivers**

Probationary driving privileges under this chapter do not apply to a commercial driver's license in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat.1748).

### **9-30-5-10. Additional penalties; license suspension [effective January 1, 2015]**

(a) In addition to a criminal penalty imposed for an offense under this chapter, IC 35-46-9, or IC 14-15-8 (before its repeal), the court shall, after reviewing the person's bureau driving record and other relevant evidence, recommend the suspension of the person's driving privileges for the fixed period of time specified under this section. The court may require that a period of suspension recommended under this section be imposed, if applicable, before a period of incarceration or after a period of incarceration, or both before and after a period of incarceration, as long as the suspension otherwise complies with the periods established in this section.

(b) If the person:

- (1) does not have a previous conviction of operating a vehicle or a motorboat while intoxicated; or
- (2) has a previous conviction of operating a vehicle or a motorboat while intoxicated that occurred at least ten (10) years before the conviction under consideration by the court;

the court may recommend the suspension of the person's driving privileges for not more than two (2) years.

(c) If the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred more than five (5) years but less than ten (10) years before the conviction under consideration by the court, the court may recommend the suspension of the person's driving privileges for not more than two (2) years. The court may stay the execution of part of the suspension and grant the person specialized driving privileges for a period of time equal to the length of the stay.

(d) If the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court may recommend the suspension of the person's driving privileges for not more than two (2) years. The court may stay the execution of part of the suspension and grant the person specialized driving privileges for a period of time equal to the length of the stay. If the court grants specialized driving privileges under this subsection, the court shall order that the specialized driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. However, the court may grant specialized driving privileges under this subsection without requiring the installation of an ignition interlock device if the person is successfully participating in a court supervised alcohol treatment program in which the person is taking disulfiram or a similar substance that the court determines is effective in treating alcohol abuse. The person granted specialized driving privileges under this subsection shall pay all costs associated with the installation of an ignition interlock device unless the sentencing court determines that the person is indigent.

(e) If the conviction under consideration by the court is for an offense under:

- (1) section 4 of this chapter;
- (2) section 5 of this chapter;
- (3) IC 14-15-8-8(b) (before its repeal);
- (4) IC 14-15-8-8(c) (before its repeal);
- (5) IC 35-46-9-6(b); or
- (6) IC 35-46-9-6(c);

the court may recommend the suspension of the person's driving privileges for not more than five (5) years.

(f) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, in which a vehicle was used in the offense, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

(g) The bureau shall fix the period of suspension in accordance with the recommendation of the court under this section and in accordance with IC 9-30-6-9.

### **9-30-5-15. Previous conviction; imprisonment or community service**

(a) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

- (1) order:
  - (A) that the person be imprisoned for at least five (5) days; or
  - (B) the person to perform at least one hundred eighty (180) hours of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;

if the person has one (1) previous conviction of operating while intoxicated.

(b) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

(A) that the person be imprisoned for at least ten (10) days; or

(B) the person to perform at least three hundred sixty (360) hours of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;

if the person has at least two (2) previous convictions of operating while intoxicated.

(c) Notwithstanding IC 35-50-2-2.2 and IC 35-50-3-1, a sentence imposed under this section may not be suspended. The court may require that the person serve the term of imprisonment in an appropriate facility at whatever time or intervals (consecutive or intermittent) determined appropriate by the court. However:

(1) at least forty-eight (48) hours of the sentence must be served consecutively; and

(2) the entire sentence must be served within six (6) months after the date of sentencing.

(d) Notwithstanding IC 35-50-6, a person does not earn credit time while serving a sentence imposed under this section.

#### **9-30-5-16. Installation of ignition interlock device [effective January 1, 2015]**

(a) Except as provided in subsection (b) and section 10 of this chapter, the court may, in granting specialized driving privileges under this chapter, also order that the specialized driving privileges include the requirement that a person may not operate a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(b) A court may not order the installation of an ignition interlock device on a vehicle operated by an employee to whom any of the following apply:

(1) Has been convicted of violating section 1 or 2 of this chapter.

(2) Is employed as the operator of a vehicle owned, leased, or provided by the employee's employer.

(3) Is subject to a labor agreement that prohibits an employee who is convicted of an alcohol related offense from operating the employer's vehicle.

#### **9-30-5-17. Emergency medical services restitution fund**

(a) In addition to:

(1) A sentence imposed under this chapter for a felony or misdemeanor; and

(2) An order for restitution to a victim;

the court shall, without placing the individual on probation, or as a condition of probation, order the individual to make restitution to the emergency medical services restitution fund under IC

16-31-8 for emergency medical services necessitated because of the offense committed by the individual.

(b) An order for restitution under this section may not be for more than one thousand dollars (\$1,000).

(c) In making an order for restitution under this section, the court shall consider the following:

(1) The schedule of costs submitted to the court under IC 16-31-8-5.

(2) The amount of restitution that the individual is or will be able to pay.

(d) The court shall immediately forward a copy of an order for restitution made under this section to the Indiana emergency medical services commission under IC 16-31-8.

### **9-30-5-18. Alcohol and drug services program for juvenile**

(a) If:

(1) a criminal proceeding for driving while intoxicated under IC 9-30-5 is deferred under IC 12-23-5-1 through IC 12-23-5-9; or

(2) a child alleged to be a delinquent child based upon the child's violation of IC 9-30-5 voluntarily attends or is ordered by the court under IC 31-37 to attend an alcohol and drug services program;

the court, within ten (10) days after the defendant or child begins the program, shall forward to the bureau a certified abstract of program enrollment.

(b) The abstract must state the following:

(1) The defendant's or child's name, address, date of birth, and driver's license number.

(2) The name and location of the alcohol and drug services program that the defendant or child is attending.

## **Chapter 6 Implied Consent**

9-30-6-1	Chemical test for intoxication; implied consent
9-30-6-2	Probable cause; offer to test; alternative tests; requirement to submit
9-30-6-3	Chemical test results; evidence of intoxication; refusal to submit, admissibility; arrest
9-30-6-4	Bureau rules
9-30-6-4.3	Application of chapter when vehicle seized for forfeiture
9-30-6-5	Chemical breath test operators, equipment and chemicals; certification; rules; certificates as prima facie evidence
9-30-6-5.5	Adoption of emergency rules
9-30-6-6	Chemical tests on blood or urine by physician; disclosure of results; no privilege or liability; results admissible; limitation
9-30-6-7	Refusal to submit to chemical test; duties of arresting officer
9-30-6-8	Probable cause; judicial finding; delivery of documents to bureau; contents of affidavit
9-30-6-8.5	Duties of bureau upon receiving ignition interlock order
9-30-6-8.7	Operating without ignition interlock device
9-30-6-9	Suspension of driving privileges; duties of bureau; limitations

9-30-6-10	Suspension of driving privileges; prompt judicial hearing; issues; findings; order
9-30-6-11	Reinstatement of driving privileges; dismissal and not refiled
9-30-6-12	Suspension of driving privileges recommended by court; compliance; limitation
9-30-6-13	Reinstatement of driving privileges; duties of bureau
9-30-6-13.5	Removal of record of suspension
9-30-6-14	Previous conviction; certified copies of driving and court records as prima facie evidence
9-30-6-15	Evidence of blood alcohol content shown by chemical tests admissible
9-30-6-16	Bureau certificate; form and content
9-30-6-17	Victim notification
9-30-6-18	Early trial

### **9-30-6-1. Chemical test for intoxication; implied consent**

A person who operates a vehicle impliedly consents to submit to the chemical test provisions of this chapter as a condition of operating a vehicle in Indiana.

### **9-30-6-2. Probable cause; offer to test; alternative tests; requirement to submit**

(a) A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter, IC 9-30-5, or IC 9-30-9, or a violation under IC 9-30-15 shall offer the person the opportunity to submit to a chemical test.

(b) A law enforcement officer:

(1) Is not required to offer a chemical test to an unconscious person; and

(2) May offer a person more than one (1) chemical test under this chapter.

(c) A test administered under this chapter must be administered within three (3) hours after the law enforcement officer had probable cause to believe the person committed an offense under IC 9-30-5 or a violation under IC 9-30-15.

(d) A person must submit to each chemical test offered by a law enforcement officer in order to comply with the implied consent provisions of this chapter.

### **9-30-6-3. Chemical test results; evidence of intoxication; refusal to submit, admissibility; arrest**

(a) If a law enforcement officer has probable cause to believe that a person committed an offense under IC 9-30-5, the person may be arrested. However, if the chemical test results in prima facie evidence that the person is intoxicated, the person shall be arrested for an offense under this chapter, IC 9-30-5, or IC 9-30-9.

(b) At any proceeding under this chapter, IC 9-30-5, or IC 9-30-9, a person's refusal to submit to a chemical test is admissible into evidence.

### **9-30-6-4. Bureau rules**

The bureau shall adopt rules under IC 4-22-2 necessary to carry out this chapter, IC 9-30-5, IC 9-30-9, or IC 9-30-15.

### **9-30-6-4.3. Application of chapter when vehicle seized for forfeiture**

(a) This section applies only to a person whose motor vehicle has been seized under IC 34-24-1-1(a)(15).

(b) If the bureau receives an order from a court recommending that the bureau not register a motor vehicle in the name of a person whose motor vehicle has been seized under IC 34-24-1-1(a)(15), the bureau may not register a motor vehicle in the name of the person whose motor vehicle has been seized until the person proves that the person possesses a driver's license with valid driving privileges.

**9-30-6-5. Chemical breath test operators, equipment and chemicals; certification; rules, certificates as prima facie evidence**

(a) The director of the state department of toxicology shall adopt rules under IC 4-22-2 concerning the following:

(1) Standards and regulations for the:

- (A) selection;
- (B) training; and
- (C) certification;

of breath test operators.

(2) Standards and regulations for the:

- (A) selection; and
- (B) certification;

of breath test equipment and chemicals.

(3) The certification of the proper technique for administering a breath test.

(b) Certificates issued in accordance with rules adopted under subsection (a) shall be sent to the clerk of the circuit court in each county where the breath test operator, equipment, or chemicals are used to administer breath tests. However, failure to send a certificate does not invalidate any test.

(c) Certified copies of certificates issued in accordance with rules adopted under subsection (a):

(1) are admissible in a proceeding under this chapter, IC 9-30-5, IC 9-30-9, or IC 9-30-15;

(2) constitute prima facie evidence that the equipment or chemical:

- (A) was inspected and approved by the state department of toxicology on the date specified on the certificate copy; and
- (B) was in proper working condition on the date the breath test was administered if the date of approval is not more than one hundred eighty (180) days before the date of the breath test;

(3) constitute prima facie evidence of the approved technique for administering a breath test; and

(4) constitute prima facie evidence that the breath test operator was certified by the state department of toxicology on the date specified on the certificate.

(d) Results of chemical tests that involve an analysis of a person's breath are not admissible in a proceeding under this chapter, IC 9-30-5, IC 9-30-9, or IC 9-30-15 if:

- (1) the test operator;
- (2) the test equipment;
- (3) the chemicals used in the test, if any; or
- (4) the techniques used in the test;

have not been approved in accordance with the rules adopted under subsection (a).

### **9-30-6-5.5. Adoption of emergency rules**

(a) Notwithstanding IC 4-22-2, to implement P.L.1-2000, the director of the department of toxicology of the Indiana University School of Medicine may adopt a rule required under section 5 of this chapter, section 6 of this chapter, or both in the manner provided for emergency rules under IC 4-22-2-37.1.

(b) A rule adopted under this section is effective when it is filed with the secretary of state and expires on the latest of the following:

- (1) The date that the director adopts another emergency rule under this section to amend, repeal, or otherwise supersede the previously adopted emergency rule.
- (2) The date that the director adopts a permanent rule under IC 4-22-2 to amend, repeal, or otherwise supersede the previously adopted emergency rule.
- (3) July 1, 2001.

(c) For the purposes of IC 9-30-7-4, IC 14-15-8-14 (before its repeal), IC 35-46-9, and other statutes, the provisions of a rule adopted under this section shall be treated as a requirement under section 5 of this chapter, section 6 of this chapter, or both as appropriate.

### **9-30-6-6. Chemical tests on blood or urine by physician; disclosure of results; no privilege or liability; results admissible; limitation**

(a) A physician or a person trained in obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician, who:

- (1) obtains a blood, urine, or other bodily substance sample from a person, regardless of whether the sample is taken for diagnostic purposes or at the request of a law enforcement officer under this section; or
- (2) performs a chemical test on blood, urine, or other bodily substance obtained from a person;

shall deliver the sample or disclose the results of the test to a law enforcement officer who requests the sample or results as a part of a criminal investigation. Samples and test results shall be provided to a law enforcement officer even if the person has not consented to or otherwise authorized their release.

(b) A physician, a hospital, or an agent of a physician or hospital is not civilly or criminally liable for any of the following:

- (1) Disclosing test results in accordance with this section.
- (2) Delivering a blood, urine, or other bodily substance sample in accordance with this section.
- (3) Obtaining a blood, urine, or other bodily substance sample in accordance with this section.
- (4) Disclosing to the prosecuting attorney or the deputy prosecuting attorney for use at or testifying at the criminal trial of the person as to facts observed or opinions formed.
- (5) Failing to treat a person from whom a blood, urine, or other bodily substance sample is obtained at the request of a law enforcement officer if the person declines treatment.
- (6) Injury to a person arising from the performance of duties in good faith under this section.

(c) For the purposes of this chapter, IC 9-30-5, or IC 9-30-9:

- (1) the privileges arising from a patient-physician relationship do not apply to the samples, test results, or testimony described in this section; and
- (2) samples, test results, and testimony may be admitted in a proceeding in accordance with the applicable rules of evidence.

(d) The exceptions to the patient-physician relationship specified in subsection (c) do not affect those relationships in a proceeding not covered by this chapter, IC 9-30-5, or IC 9-30-9.

(e) The test results and samples obtained by a law enforcement officer under subsection (a) may be disclosed only to a prosecuting attorney or a deputy prosecuting attorney for use as evidence in a criminal proceeding under this chapter, IC 9-30-5, or IC 9-30-9.

(f) This section does not require a physician or a person under the direction of a physician to perform a chemical test.

(g) A physician or a person trained in obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician shall obtain a blood, urine, or other bodily substance sample if the following exist:

- (1) A law enforcement officer requests that the sample be obtained.
- (2) The law enforcement officer has certified in writing the following:
  - (A) That the officer has probable cause to believe the person from whom the sample is to be obtained has violated IC 9-30-5.
  - (B) That the person from whom the sample is to be obtained has been involved in a motor vehicle accident that resulted in the serious bodily injury or death of another.
  - (C) That the accident that caused the serious bodily injury or death of another occurred not more than three (3) hours before the time the sample is requested.

(3) Not more than the use of reasonable force is necessary to obtain the sample.

(h) If the person:

- (1) from whom the bodily substance sample is to be obtained under this section does not consent; and
- (2) resists the taking of a sample;

the law enforcement officer may use reasonable force to assist an individual, who must be authorized under this section to obtain a sample, in the taking of the sample.

(i) The person authorized under this section to obtain a bodily substance sample shall take the sample in a medically accepted manner.

(j) This subsection does not apply to a bodily substance sample taken at a licensed hospital (as defined in IC 16-18-2-179(a) and IC 16-18-2-179(b)). A law enforcement officer may transport the person to a place where the sample may be obtained by any of the following persons who are trained in obtaining bodily substance samples and who have been engaged to obtain samples under this section:

- (1) A physician holding an unlimited license to practice medicine or osteopathy.
- (2) A registered nurse.
- (3) A licensed practical nurse.
- (4) An advanced emergency medical technician (as defined in IC 16-18-2-6.5).
- (5) A paramedic (as defined in IC 16-18-2-266).
- (6) Except as provided in subsections (k) through (l), any other person qualified through training, experience, or education to obtain a bodily substance sample.

(k) A law enforcement officer may not obtain a bodily substance sample under this section if the sample is to be obtained from another law enforcement officer as a result of the other law enforcement officer's involvement in an accident or alleged crime.

(l) A law enforcement officer who is otherwise qualified to obtain a bodily substance sample under this section may obtain a bodily substance sample from a person involved in an accident or alleged crime who is not a law enforcement officer only if:

(1) before January 1, 2013, the officer obtained a bodily substance sample from an individual as part of the officer's official duties as a law enforcement officer; and

(2) the:

- (A) person consents to the officer obtaining a bodily substance sample; or
- (B) obtaining of the bodily substance sample is authorized by a search warrant.

#### **9-30-6-7. Refusal to submit to chemical test; duties of arresting officer**

(a) If a person refuses to submit to a chemical test, the arresting officer shall inform the person that refusal will result in the suspension of the person's driving privileges.

(b) If a person refuses to submit to a chemical test after having been advised that the refusal will result in the suspension of driving privileges or submits to a chemical test that results in prima facie evidence of intoxication, the arresting officer shall do the following:

(1) Obtain the person's driver's license or permit if the person is in possession of the document and issue a receipt valid until the initial hearing of the matter held under IC 35-33-7-1.

(2) Submit a probable cause affidavit to the prosecuting attorney of the county in which the alleged offense occurred.

#### **9-30-6-8. Probable cause; judicial finding; delivery of documents to bureau; contents of affidavit**

(a) Whenever a judicial officer has determined that there was probable cause to believe that a person has violated IC 9-30-5, IC 35-46-9, or IC 14-15-8 (before its repeal), the clerk of the court shall forward:

(1) a paper copy of the affidavit, or an electronic substitute; or

(2) a bureau certificate as described in section 16 of this chapter;

to the bureau.

(b) The probable cause affidavit required under section 7(b)(2) of this chapter must do the following:

(1) Set forth the grounds for the arresting officer's belief that there was probable cause that the arrested person was operating a vehicle in violation of IC 9-30-5 or a motorboat in violation of IC 35-46-9 or IC 14-15-8 (before its repeal).

(2) State that the person was arrested for a violation of IC 9-30-5 or operating a motorboat in violation of IC 35-46-9 or IC 14-15-8 (before its repeal).

(3) State whether the person:

(A) refused to submit to a chemical test when offered; or

(B) submitted to a chemical test that resulted in prima facie evidence that the person was intoxicated.

(4) Be sworn to by the arresting officer.

(c) Except as provided in subsection (d), if it is determined under subsection (a) that there was probable cause to believe that a person has violated IC 9-30-5, IC 35-46-9, or IC 14-15-8 (before its repeal), at the initial hearing of the matter held under IC 35-33-7-1 the court shall recommend immediate suspension of the person's driving privileges to take effect on the date the order is entered, and forward to the bureau a copy of the order recommending immediate suspension of driving privileges.

(d) If it is determined under subsection (a) that there is probable cause to believe that a person violated IC 9-30-5, the court may, as an alternative to suspension of the person's driving privileges under subsection (c), issue an order recommending that the person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 until the bureau is notified by a court that the criminal charges against the person have been resolved.

#### **9-30-6-8.5. Duties of bureau upon receiving ignition interlock order**

(a) If the bureau receives an order recommending use of an ignition interlock device under section 8(d) of this chapter, the bureau shall immediately do the following:

(1) Mail notice to the person's address contained in the records of the bureau stating that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending use of an ignition interlock device;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

(b) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this section is not subject to any administrative adjudication under IC 4-21.5.

#### **9-30-6-8.7. Operating without ignition interlock device**

(a) A person commits a Class B infraction if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 8(d) of this chapter.

(b) A person commits a Class B misdemeanor if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 8(d) of this chapter.

#### **9-30-6-9. Suspension of driving privileges; duties of bureau; limitations**

(a) This section does not apply if an ignition interlock device order is issued under section 8(d) of this chapter.

(b) If the affidavit under section 8(b) of this chapter states that a person refused to submit to a chemical test, the bureau shall suspend the driving privileges of the person:

(1) for:

(A) one (1) year; or

(B) if the person has at least one (1) previous conviction for operating while intoxicated, two (2) years; or

(2) until the suspension is ordered terminated under IC 9-30-5.

(c) If the affidavit under section 8(b) of this chapter states that a chemical test resulted in prima facie evidence that a person was intoxicated, the bureau shall suspend the driving privileges of the person:

(1) for one hundred eighty (180) days; or

(2) until the bureau is notified by a court that the charges have been disposed of; whichever occurs first.

(d) Whenever the bureau is required to suspend a person's driving privileges under this section, the bureau shall immediately do the following:

(1) Mail notice to the person's address contained in the records of the bureau stating that the person's driving privileges will be suspended for a specified period, commencing:

(A) seven (7) days after the date of the notice; or

(B) on the date the court enters an order recommending suspension of the person's driving privileges under section 8(c) of this chapter;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

(e) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this article is not subject to any administrative adjudication under IC 4-21.5.

(f) If a person is granted probationary driving privileges under IC 9-30-5 and the bureau has not received the probable cause affidavit described in section 8(b) of this chapter, the bureau shall suspend the person's driving privileges for a period of thirty (30) days. After the thirty (30) day period has elapsed, the bureau shall, upon receiving a reinstatement fee, if applicable, from the person who was granted probationary driving privileges, issue the person probationary driving privileges if the person otherwise qualifies.

(g) If the bureau receives an order granting probationary driving privileges to a person who, according to the records of the bureau, has a prior conviction for operating while intoxicated, the bureau shall do the following:

(1) Issue the person probationary driving privileges and notify the prosecuting attorney of the county from which the order was received that the person is not eligible for probationary driving privileges.

(2) Send a certified copy of the person's driving record to the prosecuting attorney.

The prosecuting attorney shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order. If the bureau does not receive a corrected order within sixty (60) days, the bureau shall notify the attorney general, who shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order.

**9-30-6-10. Suspension of driving privileges; prompt judicial hearing; issues; findings; order**

(a) A person against whom an ignition interlock device order has been issued under section 8.5 of this chapter or whose driving privileges have been suspended under section 9 of this chapter is entitled to a prompt judicial hearing. The person may file a petition that requests a hearing:

- (1) in the court where the charges with respect to the person's operation of a vehicle are pending; or
- (2) if charges with respect to the person's operation of a vehicle have not been filed, in any court of the county where the alleged offense or refusal occurred that has jurisdiction over crimes committed in violation of IC 9-30-5.

(b) The petition for review must:

- (1) be in writing;
- (2) be verified by the person seeking review; and
- (3) allege specific facts that contradict the facts alleged in the probable cause affidavit.

(c) The hearing under this section shall be limited to the following issues:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was operating a vehicle in violation of IC 9-30-5.
- (2) Whether the person refused to submit to a chemical test offered by a law enforcement officer.

(d) If the court finds:

- (1) that there was no probable cause; or
- (2) that the person's driving privileges were suspended under section 9(b) of this chapter and that the person did not refuse to submit to a chemical test;

the court shall order the bureau to rescind the ignition interlock device requirement or reinstate the person's driving privileges.

(e) The prosecuting attorney of the county in which a petition has been filed under this chapter shall represent the state on relation of the bureau with respect to the petition.

(f) The petitioner has the burden of proof by a preponderance of the evidence.

(g) The court's order is a final judgment appealable in the manner of civil actions by either party. The attorney general shall represent the state on relation of the bureau with respect to the appeal.

**9-30-6-11. Reinstatement of driving privileges; dismissal and not refiled**

(a) Notwithstanding any other provision of this chapter, IC 9-30-5, or IC 9-30-9, the court shall order the bureau to rescind an ignition interlock device requirement or reinstate the driving privileges of a person if:

- (1) all of the charges under IC 9-30-5 have been dismissed and the prosecuting attorney states on the record that no charges will be refiled against the person;
- (2) the court finds the allegations in a petition filed by a defendant under section 18 of this chapter are true; or

(3) the person:

- (A) did not refuse to submit to a chemical test offered as a result of a law enforcement officer having probable cause to believe the person committed the offense charged; and

(B) has been found not guilty of all charges by a court or by a jury.

(b) The court's order must contain findings of fact establishing that the requirements for reinstatement described in subsection (a) have been met.

(c) A person whose driving privileges are reinstated under this section is not required to pay a reinstatement fee.

#### **9-30-6-12. Suspension of driving privileges recommended by court; compliance; limitation**

(a) If a court recommends suspension of driving privileges under this chapter, IC 9-30-5, or IC 9-30-9, the bureau shall fix the period of suspension in accordance with the recommendation of the court. If the court fails to recommend a fixed period of suspension, or recommends a fixed term that is less than the minimum term required by statute, the bureau shall impose the minimum period of suspension required by statute.

(b) Except as provided in subsection (c), during the three (3) years following the termination of the suspension the person's driving privileges remain suspended until the person provides proof of future financial responsibility in force under IC 9-25.

(c) If a court recommends suspension of a person's driving privileges for a conviction under IC 9-30-5, during the three (3) years following the termination of the suspension the person's driving privileges remain suspended until the person provides proof of future financial responsibility in force under IC 9-25. However, if a court recommends suspension of the driving privileges under IC 9-30-5 of a person who is arrested for or charged with an offense committed under IC 9-30-5, the person is not required to provide proof of future financial responsibility under IC 9-25 unless and until the person is convicted under IC 9-30-5.

(d) If at any time during the three (3) years following the termination of the suspension imposed under subsection (a) a person who has provided proof of future financial responsibility under IC 9-25 fails to maintain the proof, the bureau shall suspend the person's driving privileges until the person again provides proof of future financial responsibility under IC 9-25.

(e) An agency action under this section is not subject to IC 4-21.5.

#### **9-30-6-13. Reinstatement of driving privileges; duties of bureau**

If a court orders the bureau to rescind an ignition interlock device requirement or reinstate a person's driving privileges under this article, the bureau shall comply with the order. Unless the order for reinstatement is issued under section 11(a)(2) of this chapter, the bureau shall also do the following:

(1) Remove any record of the ignition interlock device requirement or suspension from the official driving record of the person.

(2) Reinstate the privileges without cost to the person.

#### **9-30-6-13.5. Removal of record of suspension**

Whenever a case filed under IC 9-30-5 is terminated in favor of the defendant and the defendant's driving privileges were suspended under section 9(c) of this chapter, the bureau shall remove any record of the suspension, including the reason for suspension, from the defendant's official driving record.

#### **9-30-6-14. Previous conviction; certified copies of driving and court records as prima facie evidence**

In a proceeding under this article:

(1) A certified copy of a person's driving record obtained from the bureau; or

(2) A certified copy of a court record concerning a previous conviction; constitutes prima facie evidence that the person has a previous conviction of operating while intoxicated.

**9-30-6-15. Evidence of blood alcohol content shown by chemical tests admissible**

(a) At any proceeding concerning an offense under IC 9-30-5 or a violation under IC 9-30-15, evidence of the alcohol concentration that was in the blood of the person charged with the offense:

- (1) at the time of the alleged violation; or
- (2) within the time allowed for testing under section 2 of this chapter;

as shown by an analysis of the person's breath, blood, urine, or other bodily substance is admissible.

(b) If, in a prosecution for an offense under IC 9-30-5, evidence establishes that:

- (1) a chemical test was performed on a test sample taken from the person charged with the offense within the period of time allowed for testing under section 2 of this chapter; and
- (2) the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
  - (A) one hundred (100) milliliters of the person's blood at the time the test sample was taken; or
  - (B) two hundred ten (210) liters of the person's breath;

the trier of fact shall presume that the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, this presumption is rebuttable.

(c) If evidence in an action for a violation under IC 9-30-5-8.5 establishes that:

- (1) a chemical test was performed on a test sample taken from the person charged with the violation within the time allowed for testing under section 2 of this chapter; and
- (2) the person charged with the violation:
  - (A) was less than twenty-one (21) years of age at the time of the alleged violation; and
  - (B) had an alcohol concentration equivalent to at least two-hundredths (0.02) gram of alcohol per:
    - (i) one hundred (100) milliliters of the person's blood; or
    - (ii) two hundred ten (210) liters of the person's breath;

at the time the test sample was taken;

the trier of fact shall presume that the person charged with the violation had an alcohol concentration equivalent to at least two-hundredths (0.02) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, the presumption is rebuttable.

(d) If, in an action for a violation under IC 9-30-15, evidence establishes that:

- (1) a chemical test was performed on a test sample taken from the person charged with the offense within the time allowed for testing under section 2 of this chapter; and



(c) This section applies only if the defendant's trial occurs more than ten (10) days after the alleged offense.

(d) A prosecuting attorney's failure to comply with this section is not grounds for postconviction relief.

### **9-30-6-18 Early trial**

(a) A person against whom an ignition interlock device order has been issued under section 8.5 of this chapter or whose driving privileges have been suspended under section 9(c) of this chapter is entitled to rescission of the ignition interlock device requirement or reinstatement of driving privileges if the following occur:

(1) After a request for an early trial is made by the person at the initial hearing on the charges, a trial or other disposition of the charges for which the person was arrested under IC 9-30-5 is not held within ninety (90) days after the date of the person's initial hearing on the charges.

(2) The delay in trial or disposition of the charges is not due to the person arrested under IC 9-30-5.

(b) A person who desires rescission of the ignition interlock device requirement or reinstatement of driving privileges under this section must file a verified petition in the court where the charges against the petitioner are pending. The petition must allege the following:

(1) The date of the petitioner's arrest under IC 9-30-5.

(2) The date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(3) The date set for trial or other disposition of the matter.

(4) A statement averring the following:

(A) That the petitioner requested an early trial of the matter at the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(B) The trial or disposition date set by the court is at least ninety (90) days after the date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(C) The delay in the trial or disposition is not due to the petitioner.

(c) Upon the filing of a petition under this section, the court shall immediately examine the record of the court to determine whether the allegations in the petition are true.

(d) If the court finds the allegations of a petition filed under this section are true, the court shall order rescission of the ignition interlock device requirement or reinstatement of the petitioner's driving privileges under section 11 of this chapter. The reinstatement must not take effect until ninety (90) days after the date of the petitioner's initial hearing.

## **Chapter 7**

### **Implied Consent in Accidents Involving Serious Injury or Death**

9-30-7-0.5	Non-application to electric personal assistive mobility device
9-30-7-1	"Portable breath test," "fatal accident," defined
9-30-7-2	Implied consent
9-30-7-3	Offering chemical test

- 9-30-7-4 BAC tests
- 9-30-7-5 Penalty for refusal

### **9-30-7-0.5. Non-application to electric personal assistive mobility device**

This chapter does not apply to the operator of an electric personal assistive mobility device.

### **9-30-7-1. “Portable breath test,” “fatal accident,” defined**

(a) As used in this chapter, "portable breath test" means a hand held apparatus that measures the alcohol concentration in a breath sample delivered by a person into the mouthpiece of the apparatus.

(b) As used in this chapter, "fatal accident" means an accident, a collision, or other occurrence that involves at least one (1) vehicle and that results in:

- (1) death; or
- (2) bodily injury that gives a law enforcement officer reason to believe that the death of at least one (1) person is imminent.

### **9-30-7-2. Implied consent**

A person who operates a vehicle impliedly consents to submit to the portable breath test or chemical test under this chapter as a condition of operating a vehicle in Indiana. A person must submit to each portable breath test or chemical test offered by a law enforcement officer under this chapter to comply with this chapter.

### **9-30-7-3. Offering chemical test**

(a) A law enforcement officer shall offer a portable breath test or chemical test to any person who the officer has reason to believe operated a vehicle that was involved in a fatal accident or an accident involving serious bodily injury. If:

- (1) the results of a portable breath test indicate the presence of alcohol;
- (2) the results of a portable breath test do not indicate the presence of alcohol but the law enforcement officer has probable cause to believe the person is under the influence of a controlled substance or another drug; or
- (3) the person refuses to submit to a portable breath test;

the law enforcement officer shall offer a chemical test to the person.

(b) A law enforcement officer may offer a person more than one (1) portable breath test or chemical test under this section. However, all chemical tests must be administered within three (3) hours after the fatal accident or the accident involving serious bodily injury.

(c) It is not necessary for a law enforcement officer to offer a portable breath test or chemical test to an unconscious person.

### **9-30-7-4. BAC tests**

(a) If a chemical test conducted under this chapter involves an analysis of breath, the test must comply with the requirements under IC 9-30-6-5.

(b) IC 9-30-6-6 applies if a physician or a person trained in obtaining bodily substance samples who is acting under the direction of or under a protocol prepared by a physician or who has been engaged to obtain bodily substance samples:

- (1) Obtains a blood, urine, or other bodily substance sample from a person at the request of a law enforcement officer who acts under this section; or
- (2) Performs a chemical test on blood, urine, or another bodily substance obtained from a person under this section.

**9-30-7-5. Penalty for refusal**

(a) A person who refuses to submit to a portable breath test or chemical test offered under this chapter commits a Class C infraction. However, the person commits a Class A infraction if the person has at least one (1) previous conviction for operating while intoxicated.

(b) In addition to any other penalty imposed, the court shall suspend the person's driving privileges:

- (1) for one (1) year; or
- (2) if the person has at least one (1) previous conviction for operating while intoxicated, for two (2) years.

(c) During the three (3) years following the termination of the suspension, the person's driving privileges remain suspended until the person provides proof of future financial responsibility in force under IC 9-25.

**Chapter 8  
Ignition Interlock Devices**

- 9-30-8-1 Installation of interlock device; time periods; costs
- 9-30-8-2 Set at .02 BAC
- 9-30-8-3 Department of toxicology adopting rules
- 9-30-8-4 Responsibility of manufacturer
- 9-30-8-5 Condition of license
- 9-30-8-6 Reports by vendors

**9-30-8-1. Installation of interlock device; time periods; costs**

(a) If a court orders the installation of a certified ignition interlock device on a motor vehicle that a person whose license is restricted owns or expects to operate, except as provided in subsection (b), the court shall set the time that the installation must remain in effect. However, the term may not exceed the maximum term of imprisonment the court could have imposed. The person shall pay the cost of installation unless the sentencing court determines that the person is indigent.

(b) If the court orders installation of a certified ignition interlock device under IC 9-30-5-10(d), the installation must remain in effect for a period of six (6) months.

**9-30-8-2. Set at .02 BAC**

An ignition interlock device shall be set to render a motor vehicle inoperable if the ignition interlock device detects an alcohol concentration equivalent to at least two-hundredths (0.02) gram of alcohol per:

- (1) one hundred (100) milliliters of the blood of the person; or
- (2) two hundred ten (210) liters of the breath of the person;

who offers a breath sample.

### **9-30-8-3. Department of toxicology adopting rules [effective January 1, 2015]**

(a) The director of the state department of toxicology, based on the recommendation of the governor's council on impaired and dangerous driving, shall adopt rules under IC 4-22-2 to establish standards and specifications for a certified ignition interlock device. The standards and specifications must require at a minimum that the device meets the following requirements:

- (1) Is accurate.
- (2) Does not impede the safe operation of a vehicle.
- (3) Provides a minimum opportunity to be bypassed.
- (4) Shows evidence of tampering if tampering is attempted.
- (5) Has a label affixed warning a person that tampering with or misusing the device is a crime and may subject that person to criminal and civil penalties.
- (6) Provides the ability to accurately identify the user.

(b) After July 1, 2015, all ignition interlock devices used in Indiana must be certified under rules adopted by the state department of toxicology.

(c) A vendor or provider may submit an application for approval of an ignition interlock device in a form prescribed by the director of the state department of toxicology.

(d) The director of the state department of toxicology shall:

- (1) have tests conducted concerning the ignition interlock device with standards set forth by the state department of toxicology; and
- (2) have the results of the tests evaluated by a person or entity designated by the state department of toxicology.

(e) The tests required under this section must be performed by an independent laboratory designated by the state department of toxicology. The vendor shall pay any testing expenses under this section.

(f) If the director of the state department of toxicology finds that the ignition interlock device complies with the standards of the state department of toxicology, the director may approve the ignition interlock device as a certified ignition interlock device.

(g) The director of the state department of toxicology shall provide periodic reports to the governor's council on impaired and dangerous driving, including, but not limited to:

- (1) the number of ignition interlock devices certified by the state department of toxicology;
- (2) the number of ignition interlock devices currently installed in Indiana; and
- (3) the number of ignition interlock devices rejected by the state department of toxicology.

(h) The state department of toxicology shall consider all recommendations made by the governor's council on impaired and dangerous driving.

(i) The governor's council on impaired and dangerous driving shall meet once a year to:

- (1) evaluate reports submitted by the state department of toxicology;
- (2) evaluate and study ignition interlock issues;
- (3) make recommendations to the state department of toxicology; and
- (4) make recommendations to the general assembly in an electronic format under IC 5-14-6.

### **9-30-8-4. Responsibility of manufacturer**

The calibration and maintenance of an ignition interlock device that is mandated by a court is the responsibility of the manufacturer.

### **9-30-8-5. Condition of license**

If a court orders a person under IC 9-30-5-16 to operate only a vehicle that is equipped with an ignition interlock device, the bureau shall include that condition when issuing a license.

### **9-30-8-6. Reports by vendors**

(a) A vendor or provider whose ignition interlock device is certified under section 3 of this chapter shall provide a report to the court that ordered the device or the court's designee within two (2) weeks if any of the following occur:

- (1) Any attempt to start the vehicle with a breath alcohol concentration of four hundredths (.04) grams or higher if the person does not register a test result indicating a breath alcohol concentration of four hundredths (.04) grams or lower within ten (10) minutes of the initial test.
- (2) Absent a documented failure of the ignition interlock device, failure to take or pass any required test.
- (3) Failure of the person ordered to use an ignition interlock device to appear at the ignition interlock vendor or provider for maintenance, repair, calibration, monitoring, inspection, or replacement of the ignition interlock device.
- (4) Any violation of restrictions imposed by the court.

(b) Any person who is required to have an ignition interlock device installed as part of probation, a specialized driving permit, or any other order of a court is required to pay for the installation, leasing, maintenance, and removal of the ignition interlock device, as well as any additional expenses ordered by the court or the court's designee.

(c) An ignition interlock vendor or provider shall provide any reports or data requested by the state department of toxicology.

## **Chapter 9 Circuit Court Alcohol Abuse Deterrent Programs**

- 9-30-9-0.5 Non-application to commercial drivers after June 30, 2005
- 9-30-9-1 Applicability of chapter
- 9-30-9-2 Establishment of program
- 9-30-9-3 Criminal proceedings in which use of alcohol is contributing factor; deferral
- 9-30-9-4 Violation of condition
- 9-30-9-5 Conditionally deferring charges; probationary driving privileges; ignition interlock
- 9-30-9-6 Referral to deterrent program
- 9-30-9-7 Procedures upon referral; license suspension; ignition interlock
- 9-30-9-7.5 Operating without ignition interlock device
- 9-30-9-8 Fees
- 9-30-9-9 Establishment of county fund
- 9-30-9-10 Program administrator, funds disbursement; contracts

### **9-30-9-0.5. Non-application to commercial drivers after June 30, 2005**

After June 30, 2005, this chapter does not apply to a person who:

- (1) holds a commercial driver's license; and
- (2) has been charged with an offense involving the operation of a motor vehicle in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

### **9-30-9-1. Applicability of chapter**

This chapter applies to each circuit court that is not authorized to establish an alcohol and drug services program under IC 12-23-14-1 through IC 12-23-14-13.

### **9-30-9-2. Establishment of program**

The circuit court of a county may establish an alcohol abuse deterrent program after the county fiscal body adopts a resolution approving the program. The program must provide for the treatment of individuals who have been convicted of more than one (1) violation of IC 9-30-5 with disulfiram or a similar substance that the court determines is an effective chemical deterrent to the use of alcohol.

### **9-30-9-3. Criminal proceedings in which use of alcohol is contributing factor; deferral**

(a) This section applies to a criminal proceeding in which the use or abuse of alcohol is a contributing factor or a material element of the offense.

(b) The court may take judicial notice of the fact that proper medical treatment is likely to decrease the defendant's tendency to engage in antisocial behavior.

(c) Before conviction, the court, with the consent of the defendant and the prosecuting attorney, may conditionally defer the proceedings described in subsection (a) for up to four (4) years. However, a prosecution may not be deferred under this section if:

- (1) The offense involves death or serious bodily injury;
- (2) Other criminal proceedings, not arising out of the same incident, alleging commission of a felony are pending against the defendant;
- (3) The defendant is on probation or parole and the appropriate parole or probation authority does not consent to the defendant's participation; or
- (4) The defendant fails to meet additional eligibility requirements imposed by the court.

(d) The court may order the defendant to satisfactorily complete the program established under section 2 of this chapter if the court makes a determination under subsection (b). The court may impose other appropriate conditions upon the defendant.

### **9-30-9-4. Violation of condition**

If a defendant violates a condition imposed by the court under section 3 of this chapter, the court may order criminal proceedings to be resumed. If a defendant fulfills the conditions set by the court under section 3 of this chapter, the court shall dismiss the charges against the defendant. However, if:

- (1) The defendant was previously charged under IC 9-30-5; and
- (2) The previous charges were dismissed under this section;

the individual is not eligible to have subsequent charges under IC 9-30-5 dismissed under this chapter.

**9-30-9-5. Conditionally deferring charges; probationary driving privileges; ignition interlock**

(a) If the court enters an order conditionally deferring charges under section 3 of this chapter, the court may do the following:

(1) Suspend the person's driving privileges for at least two (2) years but not more than four (4) years.

(2) Impose other appropriate conditions, including the payment of fees imposed under section 8 of this chapter.

(b) Notwithstanding IC 9-30-6-9, the defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least one (1) year.

(c) The court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.

**9-30-9-6. Referral to deterrent program**

If the defendant is convicted in a proceeding described in section 3(a) of this chapter and the court places the defendant on probation, the court may refer the defendant to the alcohol abuse deterrent program if the court makes a determination under section 3(b) of this chapter.

**9-30-9-7. Procedures upon referral; license suspension; ignition interlock**

(a) If the court refers a defendant to the program under section 6 of this chapter, the court may do the following:

(1) Suspend the defendant's driving privileges for at least ninety (90) days but not more than four (4) years.

(2) Impose other appropriate conditions.

(b) The defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least thirty (30) days under IC 9-30-6-9.

(c) The court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.

**9-30-9-7.5. Operating without ignition interlock device**

(a) A person commits a Class B infraction if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(c) or 7(c) of this chapter.

(b) A person commits a Class B misdemeanor if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(c) or 7(c) of this chapter.

#### **9-30-9-8. Fees**

(a) The court shall order a defendant participating in a program under this chapter to pay an alcohol abuse deterrent program fee or a medical fee, or both, unless the court determines that the defendant is indigent.

(b) An alcohol abuse deterrent program fee ordered under this section may not exceed four hundred dollars (\$400).

(c) A medical fee ordered under this section may not exceed one hundred fifty dollars (\$150).

#### **9-30-9-9. Establishment of county fund**

The county auditor shall establish a county alcohol abuse deterrent fund after a program is established under section 2 of this chapter.

#### **9-30-9-10. Program administrator, funds disbursement; contracts**

The circuit court:

- (1) shall administer the program established under section 2 of this chapter;
- (2) shall submit claims under IC 33-37-8-6 for the disbursement of funds; and
- (3) may enter into contracts with individuals, firms, and corporations to provide the treatment described by section 2 of this chapter.

### **Chapter 10 Habitual Violator of Traffic Laws [Portions Omitted]**

9-30-10-1	“Judgment” defined
9-30-10-2	“License” defined
9-30-10-3	“Violation” defined
9-30-10-4	“Habitual violator” defined
9-30-10-5	Notice and suspension of privileges
9-30-10-6	Notifying bureau of material error
9-30-10-6.5	Eligibility for specialized driving privileges
9-30-10-7	Petitioning for judicial review
9-30-10-8	Hearing on petition; findings
9-30-10-16	Operating vehicle as HTV
9-30-10-17	Operating vehicle after lifetime suspension
9-30-10-18	Defense of extreme emergency

#### **9-30-10-1. “Judgment” defined**

As used in this chapter, "judgment" means:

- (1) A judgment of conviction against the defendant in a felony or misdemeanor case; or

- (2) A civil judgment against the defendant in an infraction or ordinance proceeding.

**9-30-10-2. “License” defined**

As used in this chapter, "license" includes any type of license or permit issued by the bureau to operate the type of vehicle being driven.

**9-30-10-3. “Violation” defined**

As used in this chapter, "violation" means:

- (1) A felony, a misdemeanor, or an infraction under the Indiana Code; or
- (2) A violation of an ordinance of an Indiana political subdivision.

**9-30-10-4. “Habitual violator” defined**

**Editor’s Note: This statute was amended twice in 2014 by P.L.221-2014 and by P.L.217-2014, with neither act referring to the other. Because the two amendments to this statute were not identical, each version of the statute is set forth below.**

**Version #1 – P.L.221-2014 [effective January 1, 2015]**

(a) A person who has accumulated at least two (2) judgments within a ten (10) year period for any of the following violations, singularly or in combination, and not arising out of the same incident, is a habitual violator:

- (1) Reckless homicide resulting from the operation of a motor vehicle.
- (2) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle.
- (3) Failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance.
- (4) Operation of a vehicle while intoxicated resulting in death.
- (5) Before July 1, 1997, operation of a vehicle with at least ten-hundredths percent (0.10%) alcohol in the blood resulting in death.
- (6) After June 30, 1997, and before July 1, 2001, operation of a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per:
  - (A) one hundred (100) milliliters of the blood; or
  - (B) two hundred ten (210) liters of the breath;resulting in death.
- (7) After June 30, 2001, operation of a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
  - (A) one hundred (100) milliliters of the blood; or
  - (B) two hundred ten (210) liters of the breath;resulting in death.

(b) A person who has accumulated at least three (3) judgments within a ten (10) year period for any of the following violations, singularly or in combination, and not arising out of the same incident, is a habitual violator:

- (1) Operation of a vehicle while intoxicated.

- (2) Before July 1, 1997, operation of a vehicle with at least ten-hundredths percent (0.10%) alcohol in the blood.
- (3) After June 30, 1997, and before July 1, 2001, operation of a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per:
  - (A) one hundred (100) milliliters of the blood; or
  - (B) two hundred ten (210) liters of the breath.
- (4) After June 30, 2001, operation of a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
  - (A) one hundred (100) milliliters of the blood; or
  - (B) two hundred ten (210) liters of the breath.
- (5) Operating a motor vehicle while the person's license to do so has been suspended or revoked as a result of the person's conviction of an offense under IC 9-1-4-52 (repealed July 1, 1991), IC 9-24-18-5(b) (repealed July 1, 2000), IC 9-24-19-2, or IC 9-24-19-3.
- (6) Operating a motor vehicle without ever having obtained a license to do so.
- (7) Reckless driving.
- (8) Criminal recklessness involving the operation of a motor vehicle.
- (9) Drag racing or engaging in a speed contest in violation of law.
- (10) Violating IC 9-4-1-40 (repealed July 1, 1991), IC 9-4-1-46 (repealed July 1, 1991), IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, or IC 9-26-1-4.
- (11) Any felony under an Indiana motor vehicle statute or any felony in the commission of which a motor vehicle is used.
- (12) Operating a Class B motor driven cycle in violation of IC 9-24-1-1(b).

A judgment for a violation enumerated in subsection (a) shall be added to the violations described in this subsection for the purposes of this subsection.

(c) A person who has accumulated at least ten (10) judgments within a ten (10) year period for any traffic violation, except a parking or an equipment violation, of the type required to be reported to the bureau, singularly or in combination, and not arising out of the same incident, is a habitual violator. However, at least one (1) of the judgments must be for a violation enumerated in subsection (a) or (b). A judgment for a violation enumerated in subsection (a) or (b) shall be added to the judgments described in this subsection for the purposes of this subsection.

(d) For purposes of this section, a judgment includes a judgment in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of the offenses described in subsections (a), (b), and (c).

(e) For purposes of this section, the offense date is used when determining the number of judgments accumulated within a ten (10) year period.

**Version #2 – P.L.217-2014 [effective January 1, 2015]**

(a) A person who has accumulated at least two (2) judgments within a ten (10) year period for any of the following violations, singularly or in combination, and not arising out of the same incident, is a habitual violator:

- (1) Reckless homicide resulting from the operation of a motor vehicle.

(2) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle.

(3) Failure of the operator of a vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance.

(4) Operation of a vehicle while intoxicated resulting in death.

(5) Before July 1, 1997, operation of a vehicle with at least ten-hundredths percent (0.10%) alcohol in the blood resulting in death.

(6) After June 30, 1997, and before July 1, 2001, operation of a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per:

(A) one hundred (100) milliliters of the blood; or

(B) two hundred ten (210) liters of the breath;

resulting in death.

(7) After June 30, 2001, operation of a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the blood; or

(B) two hundred ten (210) liters of the breath;

resulting in death.

(b) A person who has accumulated at least three (3) judgments within a ten (10) year period for any of the following violations, singularly or in combination, and not arising out of the same incident, is a habitual violator:

(1) Operation of a vehicle while intoxicated.

(2) Before July 1, 1997, operation of a vehicle with at least ten-hundredths percent (0.10%) alcohol in the blood.

(3) After June 30, 1997, and before July 1, 2001, operation of a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per:

(A) one hundred (100) milliliters of the blood; or

(B) two hundred ten (210) liters of the breath.

(4) After June 30, 2001, operation of a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the blood; or

(B) two hundred ten (210) liters of the breath.

(5) Reckless driving.

(6) Criminal recklessness as a felony involving the operation of a motor vehicle.

(7) Drag racing or engaging in a speed contest in violation of law.

(8) Violating IC 9-4-1-40 (repealed July 1, 1991), IC 9-4-1-46 (repealed July 1, 1991), or IC 9-26-1-1.1.

(10) Any felony under an Indiana motor vehicle statute or any felony in which the operation of a motor vehicle is an element of the offense.

A judgment for a violation enumerated in subsection (a) shall be added to the violations described in this subsection for the purposes of this subsection.

(c) A person who has accumulated at least ten (10) judgments within a ten (10) year period for any traffic violation, except a parking or an equipment violation, of the type required

to be reported to the bureau, singularly or in combination, and not arising out of the same incident, is a habitual violator. However, at least one (1) of the judgments must be for:

- (1) a violation enumerated in subsection (a);
- (2) a violation enumerated in subsection (b);
- (3) operating a motor vehicle while the person's license to do so has been suspended or revoked as a result of the person's conviction of an offense under IC 9-1-4-52 (repealed July 1, 1991), IC 9-24-18-5(b) (repealed July 1, 2000), IC 9-24-19-2, or IC 9-24-19-3; or
- (4) operating a motor vehicle without ever having obtained a license to do so.

(d) For purposes of this section, a judgment includes a judgment in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of the offenses described in subsections (a), (b), and (c).

(e) For purposes of this section, the offense date is used when determining the number of judgments accumulated within a ten (10) year period.

#### **9-30-10-5. Notice and suspension of privileges [effective January 1, 2015]**

(a) If it appears from the records maintained by the bureau that a person's driving record makes the person a habitual violator under section 4 of this chapter, the bureau shall mail a notice to the person's last known address that informs the person that the person's driving privileges will be suspended in thirty (30) days because the person is a habitual violator according to the records of the bureau.

(b) Thirty (30) days after the bureau has mailed a notice under this section, the bureau shall suspend the person's driving privileges for:

- (1) except as provided in subdivision (2), ten (10) years if the person is a habitual violator under section 4(a) of this chapter;
- (2) life if the person is a habitual violator under section 4(a) of this chapter and has at least two (2) violations under section 4(a)(4) through 4(a)(7) of this chapter;
- (3) ten (10) years if the person is a habitual violator under section 4(b) of this chapter; or
- (4) five (5) years if the person is a habitual violator under section 4(c) of this chapter.

(c) The notice must inform the person that the person may be entitled to relief under section 6 of this chapter or may seek judicial review of the person's suspension under this chapter.

(d) Notwithstanding subsection (b), if the bureau does not discover that a person's driving record makes the person a habitual violator under section 4 of this chapter for more than two (2) years after the bureau receives the person's final qualifying conviction, the bureau shall not suspend the person's driving privileges for any period.

#### **9-30-10-6. Notifying bureau of material error**

(a) A person who has received a notice under section 5 of this chapter may notify the bureau, in writing, that the bureau's records contain a material error with respect to the person's driving record. If a person so notifies the bureau, the bureau shall, within thirty (30) days after the date the notice was received by the bureau, determine whether a material error was made with respect to the person's driving record.

(b) If the bureau determines that a material error was made with respect to the person's driving record, the bureau shall:

- (1) prevent the suspension of; or
- (2) reinstate;

the person's driving privileges.

(c) The bureau shall notify the prosecuting attorney of the county where the record originated that the bureau has determined that a material error exists. The prosecuting attorney is entitled to respond to the bureau's determination.

(d) An action taken or a determination made by the bureau under this chapter is not subject to IC 4-21.5. However, the person may file a petition for judicial review under this chapter.

#### **9-30-10-6.5. Eligibility for specialized driving privileges [effective January 1, 2015]**

If a court finds by clear and convincing evidence that a person is a habitual traffic violator under IC 9-30-10-4, the court

- (1) shall order:
  - (A) that the person is a habitual traffic violator; and
  - (B) the bureau to suspend the person's driving license; and
- (2) may order that the person is eligible for specialized driving privileges under IC 9-30-16.

#### **9-30-10-7. Petitioning for judicial review**

(a) A petition for judicial review under this chapter must:

- (1) be verified by the petitioner;
- (2) state the petitioner's age, date of birth, place of residence, and driver's license identification number;
- (3) state the grounds for relief and the relief sought;
- (4) be filed in the county in which the petitioner resides; and
- (5) be filed in a circuit, superior, county, or municipal court.

(b) A summons in an action under this chapter shall be issued and served in the manner provided for civil actions. The prosecuting attorney of the county in which the petition is filed and the bureau shall be served with the summons and a copy of the petition.

(c) In an action under this chapter, the petitioner must bear the burden of proof by a preponderance of the evidence to prevail.

(d) IC 9-30-3-15 and the rules of trial procedure apply in a proceeding under this chapter. However, a responsive pleading is not required when a petition for review has been filed, and a person is not entitled to a change of venue from the county.

(e) The prosecuting attorney of the county in which the petition is filed shall represent the state in relation with the bureau.

(f) Court costs (including fees) shall be assessed and paid by the petitioner at the time of filing in an amount equal to the costs (including fees) assessed in the enforcement of infractions. However, a petitioner who has the petitioner's driving privileges reinstated under section 8 of this chapter is entitled to a refund of all costs paid.

**9-30-10-8. Hearing on petition; findings [effective January 1, 2015]**

(a) If a person files a petition for judicial review under section 6 of this chapter, the court shall promptly hold a hearing. The petition must be filed and the hearing must be held in accordance with section 7 of this chapter.

(b) If the court finds that the petitioner is not a habitual violator, the court shall order the bureau to reinstate the driving privileges of the person.

(c) If the court finds that the petitioner is a habitual violator, the person's driving privileges remain suspended.

(d) The findings of the court under this section constitute a final judgment from which either party may appeal. An appeal does not act as a stay of the findings and orders of the court.

**9-30-10-9. Probation (Repealed)**

**Editor's Note: P.L.217-2014 repealed the following statutes in this chapter, effective January 1, 2015, relating to probationary driver's licenses:**

**9-30-10-9**

**9-30-10-11**

**9-30-10-12**

**9-30-10-13**

**9-30-10-14**

**9-30-10-15**

**Please refer to IC 9-30-16, effective January 1, 2015, for provisions relating to specialized driving privileges.**

**9-30-10-16. Operating vehicle as HTV**

(a) A person who operates a motor vehicle:

(1) while the person's driving privileges are validly suspended under this chapter or IC 9-12-2 (repealed July 1, 1991) and the person knows that the person's driving privileges are suspended; or

(2) in violation of restrictions imposed under this chapter or IC 9-12-2 (repealed July 1, 1991) and who knows of the existence of the restrictions;

commits a Level 6 felony.

(b) Service by the bureau of notice of the suspension or restriction of a person's driving privileges under subsection (a)(1) or (a)(2):

(1) in compliance with section 5 of this chapter; and

(2) by first class mail to the person at the last address shown for the person in the bureau's records;

establishes a rebuttable presumption that the person knows that the person's driving privileges are suspended or restricted.

(c) In addition to any criminal penalty, a person who is convicted of a felony under subsection (a) forfeits the privilege of operating a motor vehicle for life. However, if judgment for conviction of a Class A misdemeanor is entered for an offense under subsection (a), the court may order a period of suspension of the convicted person's driving privileges that is in addition to any suspension of driving privileges already imposed upon the person.

**9-30-10-17. Operating vehicle after lifetime suspension [effective January 1, 2015]**

(a) A person who:

(1) operates a motor vehicle after the person's driving privileges are forfeited for life under section 16 of this chapter, IC 9-4-13-14 (repealed April 1, 1984), or IC 9-12-3-1 (repealed July 1, 1991); or

(2) is a habitual traffic offender under this chapter and commits an offense involving the person's operation of a motor vehicle, which offense causes serious bodily injury or death;

commits a Level 5 felony.

(b) In addition to any criminal penalties imposed for a conviction of an offense described in subsection (a), if the new offense caused death, the bureau shall suspend the person's driving privileges for the life of the person.

**9-30-10-18. Defense of extreme emergency [effective January 1, 2015]**

(a) In a criminal action brought under section 16 or 17 of this chapter, it is a defense that the operation of a motor vehicle was necessary to save life or limb in an extreme emergency. The defendant must bear the burden of proof by a preponderance of the evidence to establish this defense.

(b) In an action brought under section 16 or 17 of this chapter, it is a defense that the defendant was operating a Class B motor driven cycle, unless the defendant was operating the Class B motor driven cycle in violation of IC 9-21-11-12. The defendant must bear the burden or proof by a preponderance of the evidence to establish this defense.

**Chapter 13**  
**Miscellaneous Criminal Offenses**  
**Suspension of Driver's Licenses**

9-30-13-0.5 Certified abstract to be sent to bureau; suspension of driving privileges

9-30-13-6 Suspension of driving privileges for non-payment of child support; notice; violation

9-30-13-7 Suspension of driving privileges do to Title IV-D notice; notice; violation

9-30-13-8 Suspension of driving privileges due to fuel theft; notice; violation

**9-30-13-0.5. Certified abstract to be sent to bureau; suspension of driving privileges**

(a) A court shall forward to the bureau a certified abstract of the record of the conviction of a person in the court for a violation of a law relating to motor vehicles.

(b) If in the opinion of the court a defendant should be deprived of the privilege to operate a motor vehicle upon a public highway, the court shall recommend the suspension of the convicted person's driving privileges for a fixed period established by the court not exceeding one (1) year.

(c) The bureau shall comply with the court's recommendation.

(d) At the time of a conviction referred to in subsection (a) or under IC 9-30-5-7, the court may obtain and destroy the defendant's current driver's license.

(e) An abstract required by this section must be in the form prescribed by the bureau and, when certified, shall be accepted by an administrative agency or a court as prima facie evidence of the conviction and all other action stated in the abstract.

**9-30-13-6. Suspension of driving privileges for non-payment of child support; notice; violation [effective January 1, 2015]**

(a) The bureau shall, upon receiving an order of a court issued under IC 31-16-12-7 (or IC 31-14-12-4 before its repeal), suspend the driving privileges of the person who is the subject of the order.

(b) The bureau may not reinstate driving privileges suspended under this section until the bureau receives an order allowing reinstatement from the court that issued the order for suspension.

(c) Upon receiving an order for suspension under subsection (a), the bureau shall promptly mail a notice to the last known address of the person who is the subject of the order, stating the following:

(1) That the person's driving privileges are suspended, beginning eighteen (18) business days after the date the notice is mailed, and that the suspension will terminate ten (10) business days after the bureau receives an order allowing reinstatement from the court that issued the suspension order.

(2) That the person has the right to petition for reinstatement of driving privileges to the court that issued the order for suspension.

(d) A person who operates a motor vehicle in violation of this section commits a Class A infraction, unless:

(1) the person's driving privileges are suspended under this section; and

(2) the person has been granted specialized driving privileges under IC 9-30-16 as a result of the suspension under this section.

**9-30-13-7. Suspension of driving privileges do to Title IV-D notice; notice; violation [effective January 1, 2015]**

(a) If the bureau is advised by the Title IV-D agency that the obligor (as defined in IC 31-25-4-4) either requested a hearing under IC 31-25-4-33 and failed to appear or appeared and was found to be delinquent, the bureau shall promptly mail a notice to the obligor stating the following:

(1) That the obligor's driving privileges are suspended, beginning eighteen (18) business days after the date the notice is mailed, and that the suspension will terminate after the bureau receives a notice from the Title IV-D agency that the obligor has:

(A) paid the obligor's child support arrearage in full; or

(B) established a payment plan with the Title IV-D agency to pay the arrearage, which includes an income withholding order under IC 31-16-15-0.5 or IC 31-16-15-2.5.

(2) That the obligor may be granted specialized driving privileges under IC 9-30-16.

(b) The bureau may not reinstate driving privileges suspended under this section until the bureau receives a notice from the Title IV-D agency that the obligor has:

(1) paid the obligor's child support arrearage in full; or

(2) established a payment plan with the Title IV-D agency to pay the arrearage, which includes an income withholding order under IC 31-16-15-0.5 or IC 31-16-15-2.5.

(c) An obligor who operates a motor vehicle in violation of this section commits a Class A infraction, unless:

- (1) the obligor's driving privileges are suspended under this section; and
- (2) the obligor has been granted specialized driving privileges under IC 9-30-16 as a result of the suspension under this section.

**9-30-13-8. Suspension of driving privileges due to fuel theft; notice; violation [effective January 1, 2015]**

(a) Upon receiving an order issued by a court under IC 35-43-4-8(b) concerning a person convicted of fuel theft, the bureau shall do the following:

(1) Suspend under subsection (b) the driving privileges of the person who is the subject of the order, whether or not the person's current driver's license accompanies the order.

(2) Mail to the last known address of the person who is the subject of the order a notice:

(A) stating that the person's driving privileges are being suspended for fuel theft;

(B) setting forth the date on which the suspension takes effect and the date on which the suspension terminates; and

(C) stating that the person may be granted specialized driving privileges under IC 9-30-16 if the person meets the conditions for obtaining specialized driving privileges.

(b) The suspension of the driving privileges of a person who is the subject of an order issued under IC 35-43-4-8(b):

(1) begins five (5) business days after the date on which the bureau mails the notice to the person under subsection (a)(2); and

(2) terminates thirty (30) days after the suspension begins.

(c) A person who operates a motor vehicle during a suspension of the person's driving privileges under this section commits a Class A infraction unless the person's operation of the motor vehicle is authorized by specialized driving privileges granted to the person under IC 9-30-16.

(d) The bureau shall, upon receiving a record of conviction of a person upon a charge of driving a motor vehicle while the driving privileges, permit, or license of the person is suspended, fix the period of suspension in accordance with the order of the court.

**Chapter 14**  
**Victim Impact Programs**

- 9-30-14-1. "Covered offense" defined
- 9-30-14-2. Court order to attend victim impact program; costs
- 9-30-14-3. Requirements for victim impact program
- 9-30-14-4. Immunity from civil liability

**9-30-14-1. "Covered offense" defined**

As used in this chapter, "covered offense" means the following:

- (1) An offense:
  - (A) for which the offender's driving privileges may be suspended under IC 9-30-13; and
  - (B) that involved the obstruction of traffic with or the operation of a motor vehicle with alcohol or a controlled substance listed in schedule I or II under IC 35-48-2 in the person's blood.
- (2) An offense described under IC 9-30-5 that involved operation of a vehicle with alcohol or a controlled substance listed under schedule I or II under IC 35-48-2.

**9-30-14-2. Court order to attend victim impact program; costs**

In addition to any other requirement imposed on a person by a court, a court may order a person who is:

- (1) Convicted of a covered offense; or
- (2) A defendant in a criminal proceeding in which prosecution is conditionally deferred under IC 12-23-5 or another law for a covered offense;

to attend a victim impact program that meets the requirements specified under section 3 of this chapter. The person is responsible for any charges imposed by the victim impact program.

**9-30-14-3. Requirements for victim impact program**

To qualify as a victim impact program under section 2 of this chapter, a program must do the following:

- (1) Provide an opportunity to participate in a victim impact program in the county in which the court is located.
- (2) Present each victim impact program described in subdivision (1) with at least one (1) speaker who is one (1) of the following:
  - (A) A person who was injured as a result of the operation of a vehicle by another person who operated the vehicle under the influence of alcohol or a controlled substance listed in schedule I or II under IC 35-48-2.
  - (B) A family member or a friend of a person who was injured or died as a result of the operation of a vehicle by another person who operated the vehicle under the influence of alcohol or a controlled substance listed in schedule I or II under IC 35-48-2.
  - (C) A person who was convicted in Indiana of a covered offense or in another state of an offense that is substantially similar to a covered offense.
  - (D) A person who has been or is involved in a program designed to control the use or otherwise rehabilitate a person who is an alcohol abuser (as defined in IC 12-7-2-11), a drug abuser (as defined in IC 12-7-2-73), or both.
- (3) Require a person to visit a specified emergency medical care facility, a coroner facility, or a chronic alcoholism treatment center under supervision, as specified by the court.

#### **9-30-14-4. Immunity from civil liability**

Neither a facility described in section 3(3) of this chapter nor an employee of the facility is liable for:

- (1) Civil damages from injury to a person required to visit the facility under this chapter; or
- (2) Damages caused to a person during the visitation described in subdivision (1) by another person required to visit the facility under this chapter;

except for willful or grossly negligent acts intended to, or reasonably likely to, result in the injury or damage.

### **Chapter 15 Open Containers Consuming While Operating**

- 9-30-15-1. “Alcoholic beverage” defined
- 9-30-15-2. “Container” defined
- 9-30-15-3. Open containers in passenger compartment
- 9-30-15-4. Consuming while operating

#### **9-30-15-1. “Alcoholic beverage” defined**

As used in this chapter, "alcoholic beverage" has the meaning set forth in IC 7.1-1-3-5.

#### **9-30-15-2. “Container” defined**

As used in this chapter, "container" has the meaning set forth in IC 7.1-1-3-13.

#### **9-30-15-3. Open containers in passenger compartment**

(a) This section does not apply to the following:

- (1) A container possessed by a person, other than the operator of the motor vehicle, who is in the:
  - (A) passenger compartment of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or
  - (B) living quarters of a house coach or house trailer.
- (2) A container located in a fixed center console or other similar fixed compartment that is locked.
- (3) A container located:
  - (A) behind the last upright seat; or
  - (B) in an area not normally occupied by a person; in a motor vehicle that is not equipped with a trunk.

(b) A person in a motor vehicle who, while the motor vehicle is in operation or while the motor vehicle is located on the right-of-way of a public highway, possesses a container:

- (1) that has been opened;
- (2) that has a broken seal; or
- (3) from which some of the contents have been removed;

in the passenger compartment of the motor vehicle commits a Class C infraction.

(c) A violation of this section is not considered a moving traffic violation:

- (1) for purposes of IC 9-14-3; and

(2) for which points are assessed by the bureau under the point system.

#### **9-30-15-4. Consuming while operating**

The operator of a motor vehicle who knowingly consumes an alcoholic beverage while the motor vehicle is being operated upon a public highway commits a Class B infraction.

### **Chapter 15.5 Habitual Vehicular Substance Offender**

9-30-15.5-1 “Vehicular substance offense” defined

9-30-15.5-2 Procedure for filing enhancement; habitual vehicular substance offender; enhanced term of imprisonment

#### **9-30-15.5-1. “Vehicular substance offense” defined [effective January 1, 2015]**

As used in this chapter, “vehicular substance offense” means any misdemeanor or felony in which the operation of a motor vehicle while intoxicated, operation of a motor vehicle in excess of the statutory limit for alcohol, or operation of a motor vehicle with a controlled substance or its metabolite in the person’s body, is a material element. The terms includes an offense under IC 9-30-5, IC 9-24-6-15, and an offense under IC 9-11-2 (before its repeal).

#### **9-30-15.5-2. Procedure for filing enhancement; habitual vehicular substance offender; enhanced term of imprisonment [effective January 1, 2015]**

(a) The state may seek to have a person sentenced as a habitual vehicular substance offender for any vehicular substance offense by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated vehicular substance offense convictions.

(b) For purposes of subsection (a), a person has accumulated two (2) prior unrelated vehicular substance offense convictions if the person is convicted and sentenced for a vehicular substance offense committed after sentencing for a prior unrelated vehicular substance offense conviction. However, if the person has only two (2) prior unrelated vehicular substance offense convictions, the earlier prior unrelated offense cannot have occurred more than ten (10) years before the date of the more recent prior unrelated offense. If the person has at least three (3) prior unrelated convictions, the person has accumulated the convictions regardless of when the offenses occurred. However, a conviction does not count for purposes of subsection (a) and this subsection if:

(1) it has been set aside; or

(2) it is a conviction for which the person has been pardoned.

(c) If the person is convicted of a vehicular substance offense in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial is to the court, or the judgment is entered on a guilty plea, the court alone shall conduct the sentencing hearing, under IC 35-38-1-3.

(d) A person is a habitual vehicular substance offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person has accumulated four (4) unrelated vehicular substance offense convictions or three (3) unrelated vehicular substance offense convictions within a ten (10) year period.

(e) The court shall sentence a person found to be a habitual vehicular substance offender to an additional fixed term of at least one (1) year but not more than eight (8) years of imprisonment, to be added to the term of imprisonment imposed under IC 35-50-2 or IC 35-50-3.

**Chapter 16**  
**Suspension of Driving Privileges**  
**Specialized Driving Privileges**

9-30-16-1	Eligibility for specialized driving privileges; suspension of driving privileges
9-30-16-2	Suspension of driving privileges for offenses involving serious bodily injury or death
9-30-16-3	Stay of suspension; granting specialized driving privileges
9-30-16-4	Petition for specialized driving privileges
9-30-16-5	Violation of specialized driving privileges; penalties

**9-30-16-1. Eligibility for specialized driving privileges; suspension of driving privileges [effective January 1, 2015]**

(a) Except as provided in subsection (b), the following are ineligible for a specialized driving permit under this chapter:

- (1) A person who has never held a valid Indiana driver's license.
- (2) A person who holds a commercial driver's license.
- (3) A person who has refused to submit to a chemical test offered under IC 9-30-6.

(b) In addition to applying to a person who held an operator's, a public passenger chauffeur's, or a chauffeur's license at the time of the criminal conviction for which the operation of a motor vehicle is an element of the offense, this chapter applies to an individual who:

- (1) held a commercial driver's license at the time the individual committed an offense for which the operation of a motor vehicle was an element of the offense;
- (2) no longer holds a commercial driver's license; and
- (3) subsequently was issued an operator's license, chauffeur's license, or public passenger chauffeur's license.

(c) Except as specifically provided in this chapter, for any criminal conviction in which the operation of a motor vehicle is an element of the offense, a court may suspend the person's driving privileges for a period up to the maximum allowable period of incarceration under the penalty for the offense.

(d) A suspension of driving privileges under this chapter may begin before the conviction. Multiple suspensions of driving privileges ordered by a court that are part of the same episode of criminal conduct shall be served concurrently.

(e) If a person has had an ignition interlock device installed as a condition of specialized driving privileges, the period of the installation shall be credited as part of the suspension of driving privileges.

**9-30-16-2. Suspension of driving privileges for offenses involving serious bodily injury or death [effective January 1, 2015]**

(a) If a person is convicted of an offense that includes the element of causing serious bodily injury to another person and the offense involved the operation of a motor vehicle, the court shall order that the person's driving privileges are suspended for a period of at least one (1) year and not more than the maximum allowable period of incarceration of the criminal penalty for the offense. A person whose driving privileges are suspended under this section is eligible for specialized driving privileges under section 3 of this chapter.

(b) If a person is convicted of an offense that includes the element of causing the death of another person and the offense involved the operation of a motor vehicle, the court shall order that the person's driving privileges are suspended for a period of at least two (2) years and not more than the maximum allowable period of incarceration of the criminal penalty for the offense. A person whose driving privileges are suspended under this section is not eligible for specialized driving privileges under section 3 of this chapter.

**9-30-16-3. Stay of suspension; granting specialized driving privileges [effective January 1, 2015]**

(a) A court imposing a suspension of driving privileges under this chapter may stay the suspension and grant a specialized driving privilege as set forth in this section.

(b) Regardless of the underlying offense, specialized driving privileges granted under this section shall be granted for at least one hundred eighty (180) days.

(c) Specialized driving privileges must be determined by a court and may include, but are not limited to:

- (1) requiring the use of ignition interlock devices; and
- (2) restricting a person to being allowed to operate a motor vehicle:
  - (A) during certain hours of the day; or
  - (B) between specific locations and the person's residence.

(d) A stay of conviction and specialized driving privileges may not be granted to a person who has previously been granted specialized driving privileges and the person has more than one (1) conviction under section 5 of this chapter.

(e) A person who has been granted specialized driving privileges shall:

- (1) maintain proof of future financial responsibility insurance during the period of specialized driving privileges;
- (2) carry a copy of the order granting specialized driving privileges or have the order in the vehicle being operated by the person; and
- (3) produce a copy of the order granting specialized driving privileges upon the request of a police officer.

**9-30-16-4. Petition for specialized driving privileges [effective January 1, 2015]**

(a) A person whose driving privileges have been suspended by the bureau may petition a court for specialized driving privileges.

(b) A petition filed under this section must:

- (1) be verified by the petitioner;
- (2) state the petitioner's age, date of birth, and address;
- (3) state the grounds for relief and the relief sought;
- (4) be filed in the county in which the petitioner resides;

- (5) be filed in a circuit or superior court; and
- (6) be served on the bureau and the prosecuting attorney.

(c) A prosecuting attorney may appear on behalf of the bureau to respond to a petition filed under this section.

**9-30-16-5. Violation of specialized driving privileges; penalties [effective January 1, 2015]**

(a) A person who knowingly or intentionally violates a condition imposed by a court under section 2 of this chapter commits a Class C misdemeanor.

(b) For a person convicted of an offense under subsection (a), the court may modify or revoke specialized driving privileges. The court may order the bureau to lift the stay of a suspension of driving privileges and suspend the person’s driving license as originally ordered.

**TITLE 35  
CRIMINAL CODE**

**ARTICLE 31.5  
DEFINITIONS**

- Ch. 1           Applicability of Definitions
- Ch. 2           Definitions

**Chapter 1  
Applicability of Definitions**

**35-31.5-1-1. Applicability of definitions**

Except as otherwise provided, the definitions in this article apply throughout this title and to all other statutes relating to penal offenses.

**Chapter 2  
Definitions  
[Portions Omitted]**

- 35-31.5-2-3           “Accused” defined
- 35-31.5-2-9           “Adult employee” defined
- 35-31.5-2-11          “Agency” defined
- 35-31.5-2-12          “Agent” defined
- 35-31.5-2-16.5        “Analog” defined
- 35-31.5-2-20          “Apartment complex” defined
- 35-31.5-2-25          “Bail bond” defined
- 35-31.5-2-27.4        “Benefit, promote or further the interests of a criminal gang” defined
- 35-31.5-2-28.5        “Body fluid” defined
- 35-31.5-2-29          “Bodily injury” defined
- 35-31.5-2-31          “Bomb” defined
- 35-31.5-2-36          “Certified copy of a certificate of title” defined

35-31.5-2-38	“Child” defined
35-31.5-2-48	“Community corrections program” defined
35-31.5-2-49	“Community policing volunteer” defined
35-31.5-2-50	“Community restitution or service” defined
35-31.5-2-51	“Community transition program” defined
35-31.5-2-53	“Computer network” defined
35-31.5-2-54	“Computer program” defined
35-31.5-2-55	“Computer system” defined
35-31.5-2-56	“Confidential communication” defined
35-31.5-2-58	“Constant supervision” defined
35-31.5-2-60	“Consumer product” defined
35-31.5-2-63	“Contract agency” defined
35-31.5-2-71	“Credit institution” defined
35-31.5-2-72	“Credit restricted felon” defined
35-31.5-2-74	“Criminal gang” defined
35-31.5-2-75	“Crime” defined
35-31.5-2-76	“Crime involving domestic or family violence” defined
35-31.5-2-77	“Crime of deception” defined
35-31.5-2-78	“Crime of domestic violence” defined
35-31.5-2-83	“Dangerous gas” defined
35-31.5-2-84	“Data” defined
35-31.5-2-85	“Deadly force” defined
35-31.5-2-86	“Deadly weapon” defined
35-31.5-2-87	“Dealer” defined
35-31.5-2-87.5	“Defense counsel” defined
35-31.5-2-88	“Delinquent act” defined
35-31.5-2-90	“Dependent” defined
35-31.5-2-91	“Designated offense” defined
35-31.5-2-96	“Dispense” defined
35-31.5-2-100	“Distribute” defined
35-31.5-2-104	“Drug” defined
35-31.5-2-107	“Dwelling” defined
35-31.5-2-108	“Earliest possible release date” defined
35-31.5-2-109	“Effects of battery” defined
35-31.5-2-110	“Electronic communication” defined
35-31.5-2-110.5	“Electronic communication service” defined
35-31.5-2-111.5	“Electronic storage” defined
35-31.5-2-112.5	“Electronic user data” defined
35-31.5-2-117.5	“Enhancing circumstance” defined
35-31.5-2-122	“Evidence of a previous battery” defined
35-31.5-2-123	“Exception report” defined
35-31.5-2-123.5	“Executive authority” defined
35-31.5-2-124	“Exert control over property” defined
35-31.5-2-125	“Explosives” defined
35-31.5-2-126	“Extension” defined
35-31.5-2-127	“Family housing complex” defined

35-31.5-2-128	“Family or household member” defined
35-31.5-2-129	“Federal enforcement officer” defined
35-31.5-2-133	“Firearm” defined
35-31.5-2-135	“Firefighter” defined
35-31.5-2-137	“Food processing facility” defined
35-31.5-2-138	“Forcible felony” defined
35-31.5-2-139	“Forensic DNA analysis” defined
35-31.5-2-143.3	“Geolocation information” defined
35-31.5-2-143.5	“Geolocation information service” defined
35-31.5-2-144	“Governmental entity” defined
35-31.5-2-145.3	“Governor” defined
35-31.5-2-146	“Graffiti” defined
35-31.5-2-149	“Harm” defined
35-31.5-2-155	“Home” defined
35-31.5-2-160	“Human being” defined
35-31.5-2-163	“Identity theft” defined
35-31.5-2-166	“Imprison” defined
35-31.5-2-168	“Included offense” defined
35-31.5-2-169	“Individual with mental retardation” defined
35-31.5-2-169.5	“Infectious hepatitis” defined
35-31.5-2-173	“Instant messaging or chat room program” defined
35-31.5-2-175.5	“Intercept” defined
35-31.5-2-176	“Interception” defined
35-31.5-2-177.7	“Judicial officer” defined
35-31.5-2-179	“Key facility” defined
35-31.5-2-183	“Law enforcement agency” defined
35-31.5-2-185	“Law enforcement officer” defined
35-31.5-2-186	“Lawful detention” defined
35-31.5-2-186.2	“Lawful supervision” defined
35-31.5-2-186.5	“Level 6 felony conviction” defined
35-31.5-2-190	“Machine gun” defined
35-31.5-2-196	“Matter” defined
35-31.5-2-198	“Mentally ill” defined
35-31.5-2-204.5	“Moderate bodily injury” defined
35-31.5-2-205	“Monitoring device” defined
35-31.5-2-207	“Motor vehicle” defined
35-31.5-2-212	“Nudity” defined
35-31.5-2-213	“Offender” defined
35-31.5-2-214	“Offender against children” defined
35-31.5-2-215	“Offense” defined
35-31.5-2-216	“Offense relating to a criminal sexual act” defined
35-31.5-2-217	“Offense relating to controlled substances” defined
35-31.5-2-218	“Official proceeding” defined
35-31.5-2-221.5	“Other sexual conduct” defined
35-31.5-2-224	“Owner” defined
35-31.5-2-232	“Penal facility” defined

35-31.5-2-233	“Performance” defined
35-31.5-2-234	“Person” defined
35-31.5-2-236	“Plea agreement” defined
35-31.5-2-238	“Polygraph” defined
35-31.5-2-240	“Postarrest release” defined
35-31.5-2-241	“Postconviction release” defined
35-31.5-2-241	“Practitioner” defined
35-31.5-2-244	“Prescription drug” defined
35-31.5-2-253	“Property” defined
35-31.5-2-254	“Prosecuting attorney” defined
35-31.5-2-257	“Public court proceeding” defined
35-31.5-2-258	“Public park” defined
35-31.5-2-261	“Public servant” defined
35-31.5-2-262	“Publicly paid costs of representation” defined
35-31.5-2-264.5	“Purpose of increasing a person’s own standing or position within a criminal gang” defined
35-31.5-2-267	“Rated capacity” defined
35-31.5-2-269	“Receiving authority” defined
35-31.5-2-272	“Recommendation” defined
35-31.5-2-273.8	“Remote computing service” defined
35-31.5-2-280.5	“Sale to a minor” defined
35-31.5-2-281	“Salvia” defined
35-31.5-2-283	“School bus” defined
35-31.5-2-285	“School property” defined
35-31.5-2-287	“Scientific research facility” defined
35-31.5-2-289	“Security agent” defined
35-31.5-2-290	“Security risk” defined
35-31.5-2-292	“Serious bodily injury” defined
35-31.5-2-297	“Sex offense” defined
35-31.5-2-300	“Sexual conduct” defined
35-31.5-2-302	“Sexual intercourse” defined
35-31.5-2-303	“Sexually violent predator” defined
35-31.5-2-304	“Sexually violent predator defendant” defined
35-31.5-2-307	“Social networking website” defined
35-31.5-2-311	“State” defined
35-31.5-2-314	“Store” defined
35-31.5-2-321	“Synthetic drug” defined
35-31.5-2-321.5	“Synthetic drug lookalike substance” defined
35-31.5-2-323	“Target” defined
35-31.5-2-329	“Terrorism” defined
35-31.5-2-337.5	“Tracking device” defined
35-31.5-2-340	“Unit” defined
35-31.5-2-342.3	“Unmanned aerial vehicle” defined
35-31.5-2-343.5	“Use of a tracking device” defined
35-31.5-2-343.7	“Use of an unmanned aerial vehicle” defined
35-31.5-2-343.8	“User” defined

35-31.5-2-345	“Utter” defined
35-31.5-2-346	“Vehicle” defined
35-31.5-2-348	“Victim” defined
35-31.5-2-349	“Victim advocate” defined
35-31.5-2-350	“Victim representative” defined
35-31.5-2-351	“Victim service provider” defined
35-31.5-2-352	“Violent offender” defined
35-31.5-2-353	“Warrant” defined
35-31.5-2-354	“Weapon of mass destruction” defined
35-31.5-2-357	“Youth program center” defined

**35-31.5-2-3. “Accused” defined**

“Accused”, for purposes of IC 35-40, has the meaning set forth in IC 35-40-4-2.

**35-31.5-2-9. “Adult employee” defined**

“Adult employee” means an employee who is at least eighteen (18) years of age.

**35-31.5-2-11. “Agency” defined**

(a) “Agency” means any authority, board, bureau, commission, committee, department, division, hospital, military body, or other instrumentality of:

- (1) the state, a county, a township, a city, a town, a separate municipal corporation, a special taxing district, or a public corporation; or
- (2) a state assisted college or state assisted university.

(b) The term does not include any part of the legislative department or the judicial department of state government.

**35-31.5-2-12. “Agent” defined**

(a) Except as provided in subsection (b), “agent” means an operator, a manager, an adult employee, or a security agent employed by a store.

(b) “Agent”, for purposes of IC 35-48, has the meaning set forth in IC 35-48-1-5.

**35-31.5-2-16.5. “Analog” defined**

“Analog”, for purposes of section 321 of this chapter, means a new or novel chemical entity, independent of synthetic route or natural origin, having substantially the same:

- (1) carbon backbone structure; and
- (2) pharmacological mechanism of action;

as a compound specifically defined as a synthetic drug in section 321 of this chapter.

**35-31.5-2-20. “Apartment complex” defined**

“Apartment complex” means real property consisting of at least five (5) units that are regularly used to rent or otherwise furnish residential accommodations for periods of at least thirty (30) days.

**35-31.5-2-25. “Bail bond” defined**

“Bail bond,” for purposes of IC 35-33-8, has the meaning set forth in IC 35-38-8-1.

**35-31.5-2-27.4. “Benefit, promote, or further the interests of a criminal gang” defined**

“Benefit, promote, or further the interests of a criminal gang”, for purposes of IC 35-45-9-3, has the meaning set forth in IC 35-45-9-3(a).

**35-31.5-2-28.5. “Body fluid” defined**

“Body fluid”, for purposes of IC 35-45-16-2, has the meaning set forth in IC 35-46-16-2(a).

**35-31.5-2-29. “Bodily injury” defined**

“Bodily injury” means any impairment of physical condition, including physical pain.

**35-31.5-2-31. “Bomb” defined**

(a) “Bomb” means an explosive or incendiary device designed to release:

- (1) destructive materials or force; or
- (2) dangerous gases;

that is detonated by impact, proximity to an object, a timing mechanism, a chemical reaction, ignition, or other predetermined means.

(b) The term does not include the following:

- (1) A firearm (as defined in section 133(a) of this chapter) or the ammunition or components for handloading ammunition for a firearm.
- (2) Fireworks regulated under IC 22-11-14.
- (3) Boating, railroad, and other safety flares.
- (4) Propellants used in model rockets or similar hobby activities.
- (5) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

**35-31.5-2-36. “Certified copy of certificate of title” defined**

“Certified copy of certificate of title”, for purposes of IC 35-37-4-9, has the meaning set forth in IC 35-37-4-9(a).

**35-31.5-2-38. “Child” defined**

“Child”, for purposes of IC 35-47-10 and IC 35-44.1-5-5, has the meaning set forth in IC 35-47-10-3.

**35-31.5-2-48. “Community corrections program”**

“Community corrections program”, for purposes of IC 35-38-2.6, has the meaning set forth in IC 35-38-2.6-2.

**35-31.5-2-49. “Community policing volunteer” defined**

“Community policing volunteer” means a person who is:

- (1) not a law enforcement officer; and
- (2) actively participating in a plan, system, or strategy:
  - (A) established by and conducted under the authority of a law enforcement agency; and

(B) in which citizens:

- (i) participate with and are guided by the law enforcement agency; and
- (ii) work with members of the law enforcement agency to reduce or prevent crime within a defined geographic area.

**35-31.5-2-50. “Community restitution or service” defined**

“Community restitution or service” means performance of services directly for a:

- (1) victim;
- (2) nonprofit entity; or
- (3) governmental entity;

without compensation, including graffiti abatement, park maintenance, and other community service activities. The term does not include the reimbursement under IC 35-50-5-3 or another law of damages or expenses incurred by a victim or another person as the result of a violation of law.

**35-31.5-2-51. “Community transition program” defined**

“Community transition program” has the meaning set forth in IC 11-8-1-5.5.

**35-31.5-2-53. “Computer network” defined**

(a) Except as provided in subsection (b), “computer network” means a system that provides communications between one (1) or more computer systems and the system’s input or output devices, including display terminals and printers that are connected by telecommunications facilities.

(b) “Computer network”, for purposes of IC 35-43-2-3, has the meaning set forth in IC 35-43-2-3(a).

**35-31.5-2-54. “Computer program” defined**

“Computer program”, for purposes of this chapter and IC 35-43-1-7, means a set of instructions or statements and related data that, when executed in actual or modified form, causes a computer, computer system, or computer network to perform specified functions.

**35-31.5-2-55. “Computer system” defined**

(a) Except as provided in subsection (b), “computer system” means a device or collection of devices (including support devices):

- (1) one (1) or more of which contain a computer program, an electronic instruction, or input data and output data; and
- (2) that performs functions, including arithmetic, data storage, retrieval, communication, or control functions.

The term does not include a calculator that is not programmable and that is not capable of being used in conjunction with external files.

(b) “Computer system”, for purposes of IC 35-43-2-3, has the meaning set forth in IC 35-43-2-3(a).

**35-31.5-2-56. “Confidential communication” defined**

“Confidential communication”, for purposes of IC 35-37-6, has the meaning set forth in IC 35-37-6-1(a).

**35-31.5-2-58. “Constant supervision” defined**

“Constant supervision”, for purposes of IC 35-38-2.5, has the meaning set forth in IC 35-38-2.5-2.3.

**35-31.5-2-60. “Consumer product” defined**

(a) “Consumer product”, for purposes of IC 35-44.1-2-3, has the meaning set forth in IC 35-44.1-2-3(a).

(b) “Consumer product”, for purposes of IC 35-45-8, has the meaning set forth in IC 35-45-8-1.

**35-31.5-2-63. “Contract agency” defined**

“Contract agency”, for purposes of IC 35-38-2.5, has the meaning set forth in IC 35-38-2.5-2.5.

**35-31.5-2-71. “Credit institution”**

“Credit institution” means a bank, insurance company, credit union, savings association, investment trust, industrial loan and investment company, or other organization held out to the public as a place of deposit of funds or a medium of savings or collective investment.

**35-31.5-2-72. “Credit restricted felon” defined**

“Credit restricted felon” means a person who has been convicted of at least one (1) of the following offenses:

(1) Child molesting involving sexual intercourse, deviate sexual conduct (IC 35-42-4-3(a), before its amendment on July 1, 2014) for a crime committed before July 1, 2014, or other sexual conduct (as defined in IC 35-31.5-2-221.5) for a crime committed after June 30, 2014, if

(A) the offense is committed by a person at least twenty-one (21) years of age; and

(B) the victim is less than twelve (12) years of age.

(2) Child molesting (IC 35-42-4-3) resulting in serious bodily injury or death.

(3) Murder (IC 35-42-1-1), if:

(A) the person killed the victim while committing or attempting to commit child molesting (IC 35-42-4-3);

(B) the victim was the victim of a sex crime under IC 35-42-4 for which the person was convicted; or

(C) the victim of the murder was listed by the state or known by the person to be a witness against the person in a prosecution for a sex crime under IC 35-42-4 and the person committed the murder with the intent to prevent the victim from testifying.

**35-31.5-2-74. “Criminal gang” defined**

(a) “Criminal gang”, for purposes of IC 35-45-9, has the meaning set forth in IC 35-45-9-1.

(b) “Criminal gang”, for purposes of IC 35-50-2-15, has the meaning set forth in IC 35-50-2-1.4.

**35-31.5-2-75. “Crime” defined**

(a) Except as provided in subsection (b), “crime” means a felony or a misdemeanor.

(b) “Crime”, for purposes of IC 35-40, has the meaning set forth in IC 35-40-4-3.

**35-31.5-2-76. “Crime involving domestic or family violence” defined**

“Crime involving domestic or family violence” means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

(1) A homicide offense under IC 35-42-1.

(2) A battery offense under IC 35-42-2.

(3) Kidnapping or confinement under IC 35-42-3.

(4) Human and sexual trafficking crimes under IC 35-42-3.5.

(5) A sex offense under IC 35-42-4.

(6) Robbery under IC 35-42-5.

(7) Arson or mischief under IC 35-43-1.

(8) Burglary or trespass under IC 35-43-2.

(9) Disorderly conduct under IC 35-45-1.

(10) Intimidation or harassment under IC 35-45-2.

(11) Voyeurism under IC 35-45-4.

(12) Stalking under IC 35-45-10.

(13) An offense against family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.

(14) A crime involving animal cruelty and a family or household member under IC 35-46-3-12(b)(2) or IC 35-46-3-12.5.

**35-31.5-2-77. “Crime of deception” defined**

“Crime of deception”, for purposes of IC 35-38-1, has the meaning set forth in IC 35-38-1-2.5(a).

**35-31.5-2-78. “Crime of domestic violence” defined**

“Crime of domestic violence”, for purposes of IC 5-2-6.1, IC 35-38-9, and IC 35-47-4-7, means an offense or the attempt to commit an offense that:

(1) has as an element the:

(A) use of physical force; or

(B) threatened use of a deadly weapon; and

(2) is committed against a:

(A) current or former spouse, parent, or guardian of the defendant;

(B) person with whom the defendant shared a child in common;

(C) person who was cohabitating with or had cohabitated with the defendant as a spouse, parent, or guardian; or

(D) person who was or had been similarly situated to a spouse, parent, or guardian of the defendant.

**35-31.5-2-83. “Dangerous gas” defined**

“Dangerous gas”, for purposes of section 31 of this chapter, means a toxic chemical or its precursors that through chemical action or properties on life processes cause death or permanent injury to human beings. The term does not include the following:

- (1) Riot control agents, smoke, and obscuration materials or medical products that are manufactured, possessed, transported, or used in accordance with the laws of the United States and of this state.
- (2) Tear gas devices designed to be carried on or about the person that contain not more than one-half (1/2) ounce of the chemical.

**35-31.5-2-84. “Data” defined**

“Data”, for purposes of this chapter and IC 35-43-1-7, means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions that may be:

- (1) in any form;
- (2) in storage media or stored in the memory of a computer; or
- (3) in transit or presented on a display device.

**35-31.5-2-85. “Deadly force” defined**

“Deadly force” means force that creates a substantial risk of serious bodily injury.

**35-31.5-2-86. “Deadly weapon” defined**

(a) Except as provided in subsection (b), “deadly weapon” means the following:

- (1) A loaded or unloaded firearm.
- (2) A destructive device, weapon, device, taser (as defined in IC 35-47-8-3) or electronic stun weapon (as defined in IC 35-47-8-1), equipment, chemical substance, or other material that in the manner it:
  - (A) is used;
  - (B) could ordinarily be used; or
  - (C) is intended to be used;

is readily capable of causing serious bodily injury.

- (3) An animal (as defined in IC 35-46-3-3) that is:
  - (A) readily capable of causing serious bodily injury; and
  - (B) used in the commission or attempted commission of a crime.
- (4) A biological disease, virus, or organism that is capable of causing serious bodily injury.

(b) The term does not include:

- (1) a taser (as defined in IC 35-47-8-3);
- (2) an electronic stun weapon (as defined in IC 35-47-8-1);
- (3) a chemical designed to temporarily incapacitate a person; or
- (4) another device designed to temporarily incapacitate a person;

if the device described in subdivisions (1) through (4) is used by a law enforcement officer who has been trained in the use of the device and who uses the device in accordance with the law enforcement officer's training and while lawfully engaged in the execution of official duties.

**35-31.5-2-87. "Dealer" defined**

(a) "Dealer", for purposes of IC 35-43-4-2.3, has the meaning set forth in IC 35-43-4-2.3(a).

(b) "Dealer", for purposes of IC 35-47, has the meaning set forth in IC 35-47-1-3.

(c) "Dealer", for purposes of IC 35-47-2.5, includes any person licensed under 18 U.S.C. 923, as set forth in IC 35-47-2.5-2.

**35-31.5-2-87.5. "Defense counsel" defined**

"Defense counsel", for purposes of IC 35-40-5-11, has the meaning set forth in IC 35-40-5-11(b).

**35-31.5-2-88. "Delinquent act" defined**

"Delinquent act", for purposes of IC 35-40, has the meaning set forth in IC 35-40-4-4.

**35-31.5-2-90. "Dependent" defined**

(a) "Dependent", for purposes of IC 35-44.1-1-4, has the meaning set forth in IC 35-44.1-1-4(a)(1).

(b) "Dependent", for purposes of IC 35-46-1, has the meaning set forth in IC 35-46-1-1.

**35-31.5-2-91. "Designated offense" defined**

"Designated offense", for purposes of IC 35-33.5, means the following:

(1) A Class A, Class B, or Class C felony, for a crime committed before July 1, 2014, or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony, for a crime committed after June 30, 2014, that is a controlled substance offense (IC 35-48-4).

(2) Murder (IC 35-42-1-1).

(3) Kidnapping (IC 35-42-3-2).

(4) Criminal confinement (IC 35-42-3-3).

(5) Robbery (IC 35-42-5-1).

(6) Arson (IC 35-43-1-1).

(7) Child solicitation (IC 35-42-4-6).

(8) Human and sexual trafficking crimes under IC 35-42-3.5.

(9) Escape as a Class B felony or Class C felony, for a crime committed before July 1, 2014, or a Level 4 felony or Level 5 felony, for a crime committed after June 30, 2014 (IC 35-44.1-3-4).

(10) An offense that relates to a weapon of mass destruction (as defined in section 354 of this chapter).

(11) An attempt or conspiracy to commit an offense described in subdivisions (1) through (10).

(12) An offense under the law of the United States or in another state or country that is substantially similar to an offense described in subdivisions one (1) through (11).

**35-31.5-2-96. “Dispense” defined**

(a) Except as provided in subsection (b), “dispense”, for purposes of IC 35-48, has the meaning set forth in IC 35-48-1-12.

(b) “Dispense” for purposes of IC 35-48-7, has the meaning set forth in IC 35-48-7-2.9(a).

**35-31.5-2-100. “Distribute” defined**

(a) “Distribute”, for purposes of IC 35-46-1-10, has the meaning set forth in IC 35-46-1-10(e).

(b) “Distribute”, for purposes of IC 35-46-1-10.2, has the meaning set forth in IC 35-46-1-10.2(e).

(c) “Distribute”, for purposes of IC 35-47.5, has the meaning set forth in IC 35-47.5-2-6.

(d) “Distribute”, for purposes of IC 35-48, has the meaning set forth in IC 35-48-1-14.

(e) “Distribute”, for purposes of IC 35-49, has the meaning set forth in IC 35-49-1-2.

**35-31.5-2-104. “Drug” defined**

“Drug”, for purposes of IC 35-48, has the meaning set forth in IC 35-48-1-16.

**35-31.5-2-107. “Dwelling” defined**

“Dwelling” means a building, structure, or other enclosed space, permanent or temporary, movable or fixed, that is a person’s home or place of lodging.

**35-31.5-2-108. “Earliest possible release date” defined**

“Earliest possible release date”, for purposes of IC 35-38-3, has the meaning set forth in IC 35-38-3-1.

**35-31.5-2-109. “Effects of battery” defined**

“Effects of battery” refers to a psychological condition of an individual who has suffered repeated physical or sexual abuse inflicted by another individual who is the:

(1) victim of an alleged crime for which the abused individual is charged in a pending prosecution; and

(2) abused individual’s:

(A) spouse or former spouse;

(B) parent;

(C) guardian or former guardian;

(D) custodian or former custodian; or

(E) cohabitant or former cohabitant.

**35-31.5-2-110. “Electronic communication” defined**

“Electronic communication”, for purposes of IC 35-33.5, means any transfer of signs, signals, writing, images, sounds, data, oral communication, digital information, or intelligence of any nature transmitted in whole or in part by a wire, a radio, or an electromagnetic, a photoelectric, or a photo-optical system.

**35-31.5-2-110.5. “Electronic communication service” defined**

“Electronic communication service”, for purposes of IC 35-33-5, means a service that provides users with the ability to send or receive wire or electronic communications.

**35-31.5-2-111.5. “Electronic storage” defined**

“Electronic storage,” for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(2).

**35-31.5-2-112.5. “Electronic user data” defined**

“Electronic user data”, for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(3).

**35-31.5-2-117.5. “Enhancing circumstance” defined**

“Enhancing circumstance”, for purposes of IC 35-48, has the meaning set forth in IC 35-48-1-16.5.

**35-31.5-2-122. “Evidence of a previous battery” defined**

“Evidence of a previous battery”, for purposes of IC 35-37-4-14, has the meaning set forth in IC 35-37-4-14(b).

**35-31.5-2-123. “Exception report” defined**

“Exception report”, for purposes of IC 35-48-7, has the meaning set forth in IC 35-48-7-4.

**35-31.5-2-123.5. “Executive authority” defined**

“Executive authority”, for purposes of IC 35-33-10-3, has the meaning set forth in IC 35-33-10-3(1).

**35-31.5-2-124. “Exert control over property” defined**

“Exert control over property”, for purposes of IC 35-43-4, has the meaning set forth in IC 35-43-4-1(a).

**35-31.5-2-125. “Explosives” defined**

“Explosives”, for purposes of IC 35-47.5, has the meaning set forth in IC 35-47.5-2-7.

**35-31.5-2-126. “Extension” defined**

“Extension”, for purposes of IC 35-33.5, means an extension of the duration for which a warrant remains effective under IC 35-33.5.

**35-31.5-2-127. “Family housing complex” defined**

“Family housing complex” means a building or series of buildings:

- (1) that contains at least twelve (12) dwelling units:
  - (A) where children are domiciled or are likely to be domiciled; and
  - (B) that are owned by a governmental unit or political subdivision;
- (2) that is operated as a hotel or motel (as described in IC 22-11-18-1);
- (3) that is operated as an apartment complex; or

(4) that contains subsidized housing.

**35-31.5-2-128. “Family or household member” defined**

(a) An individual is a “family or household member” of another person if the individual:

- (1) is a current or former spouse of the other person;
- (2) is dating or has dated the other person;
- (3) is or was engaged in a sexual relationship with the other person;
- (4) is related by blood or adoption to the other person;
- (5) is or was related by marriage to the other person;
- (6) has or previously had an established legal relationship:
  - (A) as a guardian of the other person;
  - (B) as a ward of the other person;
  - (C) as a custodian of the other person;
  - (D) as a foster parent of the other person; or
  - (E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); or
- (7) has a child in common with the other person.

(b) An individual is a “family or household member” of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) applies if the individual is a minor child of one (1) of the persons.

**35-31.5-2-129. “Federal enforcement officer” defined**

“Federal enforcement officer” means any of the following:

- (1) A Federal Bureau of Investigation special agent.
- (2) A United States Marshals Service marshal or deputy.
- (3) A United States Secret Service special agent.
- (4) A United States Fish and Wildlife Service special agent.
- (5) A United States Drug Enforcement Agency agent.
- (6) A Bureau of Alcohol, Tobacco, Firearms and Explosives agent.
- (7) A United States Forest Service law enforcement officer.
- (8) A United States Department of Defense police officer or criminal investigator.
- (9) A United States Customs Service agent.
- (10) A United States Postal Service investigator.
- (11) A National Park Service law enforcement commissioned ranger.
- (12) United States Department of Agriculture, Office of Inspector General special agent.
- (13) A United States Citizenship and Immigration Services special agent.
- (14) An individual who is:
  - (A) an employee of a federal agency; and
  - (B) authorized to make arrests and carry a firearm in the performance of the individual’s official duties.

**35-31.5-2-133. “Firearm” defined**

(a) Except as provided in subsection (b), “firearm”, for purposes of IC 47, has the meaning set forth in IC 35-47-1-5.

(b) “Firearm”, for purposes if IC 35-47-15, has the meaning set forth in IC 35-47-15-1.

(c) “Firearm”, for purposes of IC 35-50-2-11, has the meaning set forth in IC 35-50-2-11(a).

**35-31.5-2-135. “Firefighter” defined**

**Editor’s Note:** This statute was separately amended during the 2013 legislative session by P.L.13-2013 and P.L.158-2013, with neither act referring to the other. There were no further amendments to this statute during the 2014 legislative session. Because the 2013 amendments were not identical, this statute is set out as amended by each act.

**Version 1 (P.L.13-2013)**

- (a) “Firefighter”, for purposes of IC 35-42-2-6, has the meaning set forth in IC 35-42-2-6(b).
- (b) “Firefighter”, for purposes of IC 35-44.1-4, has the meaning set forth in IC 35-44.1-4-3.

**Version 2 (P.L.158-2013)**

“Firefighter”, for purposes of IC 35-44.1-4, has the meaning set forth in IC 35-44.1-4-3.

**35-31.5-2-137. “Food processing facility” defined**

“Food processing facility” means a facility used to prepare or process animal, plant, or other food ingredients into food products intended for sale or distribution to the general public for human consumption.

**35-31.5-2-138. “Forcible felony” defined**

“Forcible felony” means a felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being.

**35-31.5-2-139. “Forensic DNA analysis” defined**

“Forensic DNA analysis”, for purposes of IC 35-37-4-13, has the meaning set forth in IC 35-37-4-13(a).

**35-31.5-2-143.3. “Geolocation information” defined**

“Geolocation information” means data generated by an electronic device that can be used to determine the location of the device or the owner of the device. The term includes a cellular telephone, a wireless fidelity (wi-fi) equipped computer, or a GPS navigation or tracking unit. The term does not include the content of a communication.

**35-31.5-2-143.5. “Geolocation information service” defined**

“Geolocation information service” means a person that offers or provides GPS service or other mapping, locational, or directional services to the public by means of an electronic device, including a cellular telephone, a wireless fidelity (wi-fi) equipped computer, or a GPS navigation or tracking unit.

**35-31.5-2-144. “Governmental entity” defined**

- (a) “Governmental entity” means:

- (1) the United States or any state, county, township, city, town, separate municipal corporation, special taxing district, or public school corporation;
- (2) any authority, board, bureau, commission, committee, department, division, hospital, military body, or other instrumentality of any of those entities; or
- (3) a state assisted college or state assisted university.

(b) For purposes of IC 35-33-5, “governmental entity” also includes a person authorized to act on behalf of a state or local agency.

**35-31.5-2-145.3. “Governor” defined**

“Governor”, for purposes of IC 35-33-10-3, has the meaning set forth in IC 35-33-10-3(1).

**35-31.5-2-146. “Graffiti” defined**

“Graffiti” means any unauthorized inscription, work, figure, or design that is marked, etched, scratched, drawn, or painted on a component of any building, structure, or other facility.

**35-31.5-2-149. “Harm” defined**

“Harm” means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person in whose welfare the person is interested.

**35-31.5-2-155. “Home” defined**

(a) “Home”, for purposes of IC 35-38-2.5, has the meaning set forth in IC 35-38-2.5-2.

(b) “Home”, for purposes of IC 35-38-2.6-6, has the meaning set forth in IC 35-38-2.6-6(a).

**35-31.5-2-160. “Human being” defined**

“Human being” means an individual who has been born and is alive.

**35-31.5-2-163. “Identity theft” defined**

“Identity theft”, for the purposes of IC 35-40-14, has the meaning set forth in IC 35-40-14-1.

**35-31.5-2-166. “Imprison” defined**

“Imprison” means to:

- (1) confine in a penal facility;
- (2) commit to the department of correction; or
- (3) assign to a community transition program under IC 11-10-11.5.

**35-31.5-2-168. “Included offense” defined**

“Included offense” means an offense that:

- (1) is established by proof of the same material elements or less than all the material elements required to establish the commission of the offense charged;
- (2) consists of an attempt to commit the offense charged or an offense otherwise included therein; or

(3) differs from the offense charged only in the respect that a less serious harm or risk of harm to the same person, property, or public interest, or a lesser kind of culpability, is required to establish its commission.

**35-31.5-2-169. “Individual with mental retardation” defined**

(a) “Individual with mental retardation”, for purposes of IC 35-36-2-5(e), has the meaning set forth in IC 35-36-2-5(e).

(b) “Individual with mental retardation”, for purposes of IC 35-36-9 and IC 35-50-2, has the meaning set forth in IC 35-36-9-2.

**35-31.5-2-169.5. “Infectious hepatitis” defined**

“Infectious hepatitis”, for purposes of IC 35-45-16-2, has the meaning set forth in IC 35-45-16-2(b).

**35-31.5-2-173. “Instant messaging or chat room program” defined**

“Instant messaging or chat room program” means a software program or application that:

- (1) requires a person to register or create an account, a username, or a password to become a member or registered user of the program; and
- (2) allows two (2) or more members or authorized users to communicate over the Internet in real time.

The term does not include an electronic mail program or message board program.

**35-31.5-2-175.5. “Intercept” defined**

“Intercept” for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(5).

**35-31.5-2-176. “Interception” defined**

“Interception”, for purposes of IC 35-33.5, means the intentional recording or acquisition of the contents of an electronic communication by a person other than a sender or receiver of that communication, without the consent of the sender or receiver, by means of any instrument, device, or equipment under this article. This term includes the intentional recording or acquisition of communication through the use of a computer or a fax (facsimile transmission) machine. The term does not include recording or acquiring the contents of a radio transmission that is not:

- (1) scrambled or encrypted;
- (2) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;
- (3) carried on a subcarrier or other signal subsidiary to a radio transmission;
- (4) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or
- (5) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

**35-31.5-2-177.7. “Judicial officer” defined**

“Judicial officer”, for purposes of IC 35-42-2-1 and IC 35-47-16, means an individual who hold one (1) of the following offices or appointments:

- (1) Justice of the supreme court.
- (2) Judge of the court of appeals.
- (3) Judge of the tax court.
- (4) Judge of a circuit court.
- (5) Judge of a superior court.
- (6) Judge of a probate court.
- (7) Judge of a city court.
- (8) Judge of a town court.
- (9) Judge of a small claims court.
- (10) A judge pro tempore, a senior judge, a temporary judge, or any other individual serving as judge in an action or a proceeding in an Indiana court.
- (11) Magistrate.

**35-31.5-2-179. “Key facility” defined**

“Key facility” means any of the following:

- (1) A chemical manufacturing facility.
- (2) A refinery.
- (3) An electric utility, including:
  - (A) a power plant;
  - (B) a power generation facility peaker;
  - (C) an electric transmission facility;
  - (D) an electric station or substation; or
  - (E) any other facility used to support the generation, transmission, or distribution of electricity.

However, the term does not include electric transmission land or right-of-way that is not completely enclosed, posted, and maintained by the electric utility.

- (4) A water intake structure or water treatment facility.
- (5) A natural gas utility facility, including:
  - (A) an age station;
  - (B) a compressor station;
  - (C) an odorization facility;
  - (D) a main line valve;
  - (E) a natural gas storage facility; or
  - (F) any other facility used to support the acquisition, transmission, distribution, or storage of natural gas.

However, the term does not include gas transmission pipeline property that is not completely enclosed, posted, and maintained by the natural gas utility.

- (6) A gasoline, propane, liquid natural gas (LNG), or other fuel terminal or storage facility.
- (7) A transportation facility, including, but not limited to, a port, railroad switching yard, or trucking terminal. However, the term does not include a railroad track that is not part of a railroad switching yard.
- (8) A pulp or paper manufacturing facility.

- (9) A pharmaceutical manufacturing facility.
- (10) A hazardous waste storage, treatment, or disposal facility.
- (11) A telecommunications facility, including a central office or cellular telephone tower site.
- (12) A facility:
  - (A) that is substantially similar to a facility, structure, or station listed in this section; or
  - (B) whose owner or operator is required to submit a risk management plan under the federal Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (42 U.S.C. 7412(r)).

**35-31.5-2-183. “Law enforcement agency” defined**

(a) “Law enforcement agency,” for purposes of receiving information concerning a violation of IC 35-42-3.5-1 (human trafficking), means:

- (1) an agency or department of:
  - (A) the state; or
  - (B) a political subdivision of the state;whose principal function is the apprehension of criminal offenders; and
- (2) the attorney general.

(b) “Law enforcement agency” for purposes of IC 35-47-15, has the meaning set forth in IC 35-47-15-2.

**35-31.5-2-185. “Law enforcement officer” defined**

(a) “Law enforcement officer” means:

- (1) a police officer (including a correctional police officer), sheriff, constable, marshal, prosecuting attorney, special prosecuting attorney, special deputy prosecuting attorney, the securities commissioner, or the inspector general;
- (2) a deputy of any of those persons;
- (3) an investigator for a prosecuting attorney or for the inspector general;
- (4) a conservation officer;
- (5) an enforcement officer of the alcohol and tobacco commission;
- (6) an enforcement officer of the securities division of the office of the secretary of state; or
- (7) a gaming agent employed under IC 4-33-4.5 or a gaming control officer employed by the gaming control division under IC 4-33-20.

(b) “Law enforcement officer”, for purposes of IC 35-42-2-1, includes an alcoholic beverage enforcement officer, as set forth in IC 35-42-2-1(b)(1).

(c) “Law enforcement officer”, for purposes of IC 35-45-15, includes a federal enforcement officer, as set forth in IC 35-45-15-3.

(d) “Law enforcement officer”, for purposes of IC 35-44.1-3-1 and IC 35-44.1-3-2, includes a school resource officer (as defined in IC 20-26-18.2-1) and a school corporation police officer appointed under IC 20-26-16.

**35-31.5-2-186. “Lawful detention” defined**

(a) “Lawful detention” means:

- (1) arrest;

- (2) custody following surrender in lieu of arrest;
- (3) detention in a penal facility;
- (4) detention in a facility for custody of persons alleged or found to be delinquent children;
- (5) detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance;
- (6) detention for extradition or deportation;
- (7) placement in a community corrections program's residential facility;
- (8) electronic monitoring;
- (9) custody for purposes incident to any of the above including transportation, medical diagnosis or treatment, court appearances, work, or recreation; or
- (10) any other detention for law enforcement purposes.

(b) Except as provided in subsection (a)(7) and (a)(8), the term does not include supervision of a person on probation or parole or constraint incidental to release with or without bail.

(c) The term does not include electronic monitoring through the use of an unmanned aerial vehicle under IC 35-33-5-9.

**35-31.5-2-186.2 “Lawful supervision” defined**

“Lawful supervision”, for purposes of IC 35-44.1-3-10, has the meaning set forth in IC 35-44.1-3-10.

**35-31.5-2-186.5. “Level 6 felony conviction” defined**

“Level 6 felony conviction”, for purposes of IC 35-50-2, has the meaning set forth in IC 35-50-2-1(a).

**35-31.5-2-190. “Machine gun” defined**

“Machine gun” means a weapon that:

- (1) shoots; or
- (2) can be readily restored to shoot;

automatically more than one (1) shot, without manual reloading, by a single function of the trigger.

**35-31.5-2-196. “Matter” defined**

(a) “Matter”, for purposes of IC 35-42-4-4, has the meaning set forth in IC 35-42-4-4(a).

(b) “Matter”, for purposes of IC 35-49, has the meaning set forth in IC 35-49-1-3.

**35-31.5-2-198. “Mentally ill” defined**

“Mentally ill”, for purposes of IC 35-36, has the meaning set forth in IC 35-36-1-1.

**35-31.5-2-204.5. “Moderate bodily injury” defined**

“Moderate bodily injury” means any impairment of physical condition that includes substantial pain.

**35-31.5-2-205. “Monitoring device” defined**

“Monitoring device”, for purposes of IC 35-38-2.5, has the meaning set forth in IC 35-38-2.5-3.

**35-31.5-2-207. “Motor vehicle” defined**

“Motor vehicle” has the meaning set forth in IC 9-13-2-105(a).

**35-31.5-2-212. “Nudity” defined**

(a) “Nudity”, for purposes of IC 35-45-4-1 and IC 35-45-4-1.5, has the meaning set forth in IC 35-45-4-1(d).

(b) “Nudity”, for purposes of IC 35-49, has the meaning set forth in IC 35-49-1-5.

**35-31.5-2-213. “Offender” defined**

(a) “Offender”, for purposes of IC 35-38-2-2.5, has the meaning set forth in IC 35-38-2-2.5(a).

(b) “Offender”, for purposes of IC 35-38-2.5, has the meaning set forth in IC 35-38-2.5-4.

**35-31.5-2-214. “Offender against children” defined**

(a) “Offender against children”, for purposes of IC 35-42-4-10, has the meaning set forth in IC 35-42-4-10(a).

(b) “Offender against children”, for purposes of IC 35-42-4-11, has the meaning set forth in IC 35-42-4-11(a).

**35-31.5-2-215. “Offense” defined**

(a) Except as provided in subsections (b) and (c), “offense” means a crime. The term does not include an infraction.

(b) “Offense”, for purposes of IC 35-38-7, has the meaning set forth in IC 35-38-7-3.

(c) “Offense”, for purposes of IC 35-50-2-11, has the meaning set forth in IC 35-50-2-11(b).

**35-31.5-2-216. “Offense relating to a criminal sexual act” defined**

“Offense relating to a criminal sexual act” means the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) (repealed).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child seduction (IC 35-42-4-7).
- (5) Prostitution (IC 35-45-4-2).
- (6) Patronizing a prostitute (IC 35-45-4-3).
- (7) Incest (IC 35-46-1-3).
- (8) Sexual misconduct with a minor under IC 35-42-4-9(a).

**35-31.5-2-217. “Offense relating to controlled substances” defined**

“Offense relating to controlled substances” means the following:

- (1) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (2) Dealing in methamphetamine (IC 35-48-4-1.1).
- (3) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

- (4) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (5) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (6) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- (7) Possession of methamphetamine (IC 35-48-4-6.1).
- (8) Possession of a controlled substance (IC 35-48-4-7).
- (9) Possession of paraphernalia (IC 35-48-4-8.3).
- (10) Dealing in paraphernalia (IC 35-48-4-8.5).
- (11) Offenses relating to registration (IC 35-48-4-14).

**35-31.5-2-218. “Official proceeding” defined**

“Official proceeding” means a proceeding held or that may be held before a legislative, judicial, administrative, or other agency or before an official authorized to take evidence under oath, including a referee, hearing examiner, commissioner, notary, or other person taking evidence in connection with a proceeding.

**35-31.5-2-221.5. “Other sexual conduct” defined**

“Other sexual conduct” means an act involving:

- (1) a sex organ of one (1) person and the mouth or anus of another person; or
- (2) the penetration of the sex organ or anus of a person by an object.

**35-31.5-2-224. “Owner” defined**

- (a) “Owner”, for purposes of IC 35-43-1-3, has the meaning set forth in IC 35-43-1-3(a).
- (b) “Owner”, for purposes of IC 35-48-3, has the meaning set forth in IC 35-48-3-1.5.
- (c) “Owner”, for purposes of IC 35-49, has the meaning set forth in IC 35-49-1-6.

**35-31.5-2-232. “Penal facility” defined**

“Penal facility” means a state prison, correctional facility, county jail, penitentiary, house of correction, or any other facility for confinement of persons under sentence, or awaiting trial or sentence, for offenses. The term includes a correctional facility constructed under IC 4-13.5.

**35-31.5-2-233. “Performance” defined**

- (a) “Performance”, for purposes of IC 35-42-4-4, has the meaning set forth in IC 35-42-4-4(a).
- (b) “Performance”, for purposes of IC 35-49, has the meaning set forth in IC 35-49-1-7.

**35-31.5-2-234. “Person” defined**

(a) Except as provided in subsections (b) through (d), “person” means a human being, corporation, limited liability company, partnership, unincorporated association, or governmental entity.

- (b) “Person”, for purposes of IC 35-43-6, has the meaning set forth in IC 35-43-6-7.
- (c) “Person”, for purposes of IC 35-43-9, has the meaning set forth in IC 35-43-9-2.
- (d) “Person”, for purposes of section 128 of this chapter, means an adult or a minor.

**35-31.5-2-236. “Plea agreement” defined**

“Plea agreement”, for purposes of IC 35-35-3, means an agreement between a prosecuting attorney and a defendant concerning the disposition of a felony or misdemeanor charge.

**35-31.5-2-238. “Polygraph” defined**

“Polygraph”, for purposes of IC 35-37-4.5, has the meaning set forth in IC 35-37-4.5-1.

**35-31.5-2-240. “Postarrest release” defined**

“Postarrest release”, for purposes of IC 35-40, has the meaning set forth in IC 35-40-4-5.

**35-31.5-2-241. “Postconviction release” defined**

“Postconviction release”, for purposes of IC 35-40, has the meaning set forth in IC 35-40-4-6.

**35-31.5-2-242. “Practitioner” defined**

(a) Except as provided in subsection (b), “practitioner”, for purposes of IC 35-48, has the meaning set forth in IC 35-48-1-24.

(b) “Practitioner”, for purposes of IC 35-48-7, has the meaning set forth in IC 35-48-7-5.8.

**35-31.5-2-244. “Prescription drug” defined**

“Prescription drug”, for purposes of IC 35-48, has the meaning set forth in IC 35-48-1-25.

**35-31.5-2-253. “Property” defined**

(a) Except as provided in subsection (c), “property” means anything of value. The term includes:

- (1) a gain or advantage or anything that might reasonably be regarded as such by the beneficiary;
- (2) real property, personal property, money, labor, and services;
- (3) intangibles;
- (4) commercial instruments;
- (5) written instruments concerning labor, services or property;
- (6) written instruments otherwise of value to the owner, such as a public record, deed, will, credit card, or letter of credit;
- (7) a signature to a written instrument;
- (8) extension of credit;
- (9) trade secrets;
- (10) contract rights, choses-in-action, and other interests in or claims to wealth;
- (11) electricity, gas, oil, and water;
- (12) captured or domestic animals, birds, and fish;
- (13) food and drink;
- (14) human remains; and
- (15) data.

(b) Property is that “of another person” is the other person has a possessory or proprietary interest in it, even if an accused person also has an interest in that property.

(c) “Property”, for purposes of IC 35-47.5, has the meaning set forth in IC 35-47.5-2-12.

**35-31.5-2-254. “Prosecuting attorney” defined**

“Prosecuting attorney”, for purposes of IC 35-35-3, includes a deputy prosecuting attorney.

**35-31.5-2-257. “Public court proceeding” defined**

“Public court proceeding”, for purposes of IC 35-40, has the meaning set forth in IC 35-40-4-7.

**35-31.5-2-258. “Public park” defined**

“Public park” means any property operated by a political subdivision for park purposes (as defined in IC 36-10-1-2).

**35-31.5-2-261. “Public servant” defined**

“Public servant” means a person who:

(1) is authorized to perform an official function on behalf of, and is paid by, a governmental entity;

(2) is elected or appointed to office to discharge a public duty for a governmental entity; or

(3) with or without compensation, is appointed in writing by a public official to act in an advisory capacity to a governmental entity concerning a contract or purchase to be made by the entity.

The term does not include a person appointed by the governor to an honorary advisory or honorary military position.

**35-31.5-2-262. “Publicly paid costs of representation” defined**

“Publicly paid costs of representation”, for purposes or IC 35-33-8, has the meaning set forth in IC 35-33-8-1.5.

**35-31.5-2-264.5. “Purpose of increasing a person’s own standing or position within a criminal gang” defined**

“Purpose of increasing a person’s own standing or position within a criminal gang”, for purposes of IC 35-45-9-3, has the meaning set forth in IC 35-45-9-3(b).

**35-31.5-2-267. “Rated capacity” defined**

“Rated capacity”, for purposes of IC 35-38-3, has the meaning set forth in IC 35-38-3-1.

**35-31.5-2-269. “Receiving authority” defined**

“Receiving authority”, for purposes of IC 35-38-3, has the meaning set forth in IC 35-38-3-1.

**35-31.5-2-272. “Recommendation” defined**

“Recommendation”, for purposes of IC 35-35-3 and IC 35-38-1, means a proposal that is part of a plea agreement made to a court that:

- (1) a felony charge be dismissed; or
- (2) a defendant, if the defendant pleads guilty to a felony charge, receive less than the advisory sentence.

**35-31.5-2-273.8. “Remote computing service” defined**

“Remote computing service”, for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(6).

**35-31.5-2-280.5. “Sale to a minor” defined**

“Sale to a minor”, for purposes of IC 35-48, means delivery or financing the delivery of a drug to a person less than eighteen (18) years of age and at least three (3) years junior to the person making the delivery or financing.

**35-31.5-2-281. “Salvia” defined**

(a) “Salvia” means salvia divinorum or salvinorin A, including:

- (1) all parts of the plant that are classified botanically as salvia divinorum, whether growing or not;
- (2) the seeds of the plant;
- (3) any extract from any part of the plant; and
- (4) every compound, manufacture, derivate, mixture, or preparation of the plant, its seeds, or extracts, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation of the plant, its seeds, or extracts.

(b) The term does not include any other species in the genus salvia.

**35-31.5-2-283. “School bus” defined**

“School bus” means any motor vehicle designed and constructed for the accommodation of more than ten (10) passengers and used for the transportation of Indiana school children.

**35-31.5-2-285. “School property” defined**

“School property” means the following:

- (1) A building or other structure owned or rented by:
  - (A) a school corporation;
  - (B) an entity that is required to be licensed under IC 12-17.2 or IC 31-27;
  - (C) a private school that is not supported and maintained by funds realized from the imposition of a tax on property, income, or sales; or
  - (D) a federal, state, local, or nonprofit program or service operated to serve, assist, or otherwise benefit children who are at least three (3) years of age and not yet enrolled in kindergarten, including the following:
    - (i) A Head Start program under 42 U.S.C. 9831 et seq.
    - (ii) A special education preschool program.
    - (iii) A developmental child care program for preschool children.

(2) The grounds adjacent to and owned or rented in common with a building or other structure described in subdivision (1).

**35-31.5-2-287. “Scientific research facility” defined**

“Scientific research facility” means a facility in which research is conducted.

**35-31.5-2-289. “Security agent” defined**

“Security agent” means a person who has been employed by a store to prevent the loss of property due to theft.

**35-31.5-2-290. “Security risk” defined**

“Security risk”, for purposes of IC 35-38-2.5, has the meaning set forth in IC 35-38-2.5-4.5.

**35-31.5-2-292. “Serious bodily injury” defined**

“Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) extreme pain;
- (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (5) loss of a fetus.

**35-31.5-2-297. “Sex offense” defined**

(a) “Sex offense”, for purposes of IC 35-38-2-2.5, has the meaning set forth in IC 35-38-2-2.5(b).

(b) “Sex offense”, for purposes of IC 35-50-2-14, has the meaning set forth in IC 35-50-2-14(a).

**35-31.5-2-300. “Sexual conduct” defined**

(a) “Sexual conduct”, for purposes of IC 35-42-4-4, has the meaning set forth in IC 35-42-4-4(a).

(b) “Sexual conduct”, for purposes of IC 35-49, has the meaning set forth in IC 35-49-1-9.

**35-31.5-2-302. “Sexual intercourse” defined**

“Sexual intercourse” means an act that includes any penetration of the female sex organ by the male sex organ.

**35-31.5-2-303. “Sexually violent predator” defined**

(a) “Sexually violent predator”, for purposes of IC 35-38-1-7.5, has the meaning set forth in IC 35-38-1-7.5(a).

(b) “Sexually violent predator”, for purposes of IC 35-42-4-10, has the meaning set forth in IC 35-42-4-10(b).

**35-31.5-2-304. “Sexually violent predator defendant” defined**

“Sexually violent predator defendant”, for purposes of IC 35-33-8-3.5, has the meaning set forth in IC 35-33-8-3.5(b).

**35-31.5-2-307. “Social networking web site” defined**

“Social networking web site” means an Internet web site, an application, a computer program, or software, that:

- (1) facilitates the social introduction between two (2) or more persons;
- (2) requires a person to register or create an account, a username, or a password to become a member of the web site and to communicate with other members;
- (3) allows a member to create a web page or a personal profile; and
- (4) provides a member with the opportunity to communicate with another person.

The term does not include an electronic mail program or message board program.

**35-31.5-2-311. “State” defined**

- (a) “State”, for purposes of IC 35-48-7, has the meaning set forth in IC 35-48-7-7.5.
- (b) “State”, for purposes of IC 35-37-5, has the meaning set forth in IC 35-37-5-1.

**35-31.5-2-314. “Store” defined**

“Store” means a place of business where property or service with respect to property is displayed, rented, sold, or offered for sale.

**35-31.5-2-321. “Synthetic drug” defined**

“Synthetic drug” means:

- (1) a substance containing one (1) or more of the following chemical compounds, including an analog of the compound:

- (A) JWH-015 ((2-Methyl-1-propyl-1H-indol-3-yl)naphthalenylmethanone).
- (B) JWH-018 (1-pentyl-3-(1-naphthoyl)indole).
- (C) JWH-019 (1-hexyl-3-(naphthalen-1-oyl)indole).
- (D) JWH-073 (naphthalen-1-yl-(1-butylindol-3-yl)methanone).
- (E) JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone).
- (F) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
- (G) JWH-200 ((1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-yl-methanone).
- (H) JWH-250 (1-pentyl-3-(2-methoxyphenylacetyl)indole).
- (I) JWH-251 (1-pentyl-3-(2-methylphenylacetyl)indole).
- (J) JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
- (K) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol).
- (L) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol).
- (M) HU-308 ([ (1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol).
- (N) HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-

2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione).

(O) CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).

(P) CP 47,497 (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) and its homologues, or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol), where side chain n=5, and homologues where side chain n=4, 6, or 7.

(Q) WIN 55212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

(R) RCS-4 ((4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone).

(S) RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenyl)ethanone).

(T) 4-Methylmethcathinone. Other name: mephedrone.

(U) 3,4-Methylenedioxymethcathinone. Other name: methylone.

(V) Fluoromethcathinone.

(W) 4-Methoxymethcathinone. Other name: methedrone.

(X) 4-Ethylmethcathinone (4-EMC).

(Y) Methylenedioxyprovalerone. Other name: MDPV.

(Z) JWH-007, or 1-pentyl-2-methyl-3-(1-naphthoyl)indole.

(AA) JWH-098, or 1-pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole.

(BB) JWH-164, or 1-pentyl-3-(7-methoxy-1-naphthoyl)indole.

(CC) JWH-210, or 1-pentyl-3-(4-ethyl-1-naphthoyl)indole.

(DD) JWH-201, or 1-pentyl-3-(4-methoxyphenylacetyl)indole.

(EE) JWH-203, or 1-pentyl-3-(2-chlorophenylacetyl)indole.

(FF) AM-694, or 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole.

(GG) CP 50,556-1, or [(6S,6aR,9R,10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate.

(HH) Dimethylheptylpyran, or DMHP.

(II) 4-Methyl-alpha-pyrrolidinobutiophenone, or MPBP.

(JJ) 6-APB [6-(2-aminopropyl)benzofuran].

(LL) 7-hydroxymitragynine.

(MM) -PPP [-pyrrolidinopropiophenone].

(NN) -PVP (desmethylprovalerone).

(OO) AM-251.

(PP) AM-1241.

(QQ) AM-2201.

(RR) AM-2233.

(SS) Buphedrone.

(TT) Butylone.

(UU) CP-47,497-C7.

(VV) CP-47,497-C8.

(WW) Desoxypipradol.

(XX) Ethylone.

(YY) Eutylone.

(ZZ) Flephedrone.  
 (AAA) JWH-011.  
 (BBB) JWH-020.  
 (CCC) JWH-022.  
 (DDD) JWH-030.  
 (EEE) JWH-182.  
 (FFF) JWH-302.  
 (GGG) MDAI [5,6-methylenedioxy-2-aminoindane].  
 (HHH) Mitragynine.  
 (III) Naphyrone.  
 (JJJ) Pentedrone.  
 (LLL) Pentylone.  
 (MMM) Methoxetamine [2-(3-methoxyphenyl)-2-(ethylamino)-cyclohexanone].  
 (NNN) A796,260 [1-(2-morpholin-4-ylethyl)-1H-indol-3-yl]- (2,2,3,3-tetramethylcyclopropyl)methanone].  
 (OOO) AB-001[(1s,3s)-adamantan-1-yl] (1-pentyl-1H-indol-3-yl)methanone] or [1-Pentyl-3- (1-adamantoyl)indole].  
 (PPP) AM-356 [Methanandamide].  
 (QQQ) AM 1248 [1-[(1-methyl-2- piperidinyl) methyl]- 1H-indol-3-yl] tricyclo[3.3.1.1<sup>3,7</sup>] dec-1-yl-methanone]or [(1-[(N-methylpiperindin-2-yl) Methyl]-3-(Adamant-1-oyl)indole)].  
 (RRR) AM 2233 Azepane isomer [(2-iodophenyl) (1-(1-methylazepan-3-yl)- 1H-indol-3-yl)methanone].  
 (SSS) CB-13 [1-Naphthalenyl [4-(pentyoxy)- 1-naphthalenyl]methanone].  
 (TTT) UR-144 [(1-pentyl-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl)-methanone].  
 (UUU) URB 597 [(3'-(aminocarbonyl) [1,1'-biphenyl]-3-yl)-cyclohexylcarbamate].  
 (VVV) URB602 [[1,1'-biphenyl]- 3-yl-carbamic acid, cyclohexyl ester].  
 (WWW) URB 754 [6-methyl-2-[(4-methylphenyl) amino]-1-benzoxazin-4-one].  
 (XXX) XLR-11 or 5-fluoro UR-144 (1-(5-fluoropentyl)-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl)methanone].  
 (YYY) AKB48 (Other names include: N-Adamantyl-1-pentyl-1H-Indazole-3-carboxamide; 1-pentyl-N-tricyclo[3.3.1.1<sup>3,7</sup>]dec-1-yl-1H-indazole-3-carboxamide).  
 (ZZZ) 25I-NBOMe (Other names include: 4-Iodo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine); 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl) methyl]ethanamine).  
 (AAAA) 2C-C-NBOMe (Other names include: 25C-NBOMe; 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl) methyl]ethanamine; 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl) phenethylamine).  
 (BBBB) 2NE-1 (Other names include: 1-Pentyl-3- (1-adamantylamido)indole).  
 (CCCC) STS-135 (Other names include: N-Adamantyl-1-

fluoropentylindole-3- carboxamide (1-5-fluoropentyl)-N-tricyclo[3.3.1.1<sup>3,7</sup>]dec-1-yl-1H- indole-3-carboxamide).

(2) Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.

(3) Any compound structurally derived from 3-(1-naphthoyl) pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent.

(4) Any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.

(5) Any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

(6) Any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not substituted in the cyclohexyl ring to any extent.

(7) Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

(8) Any compound, except bupropion or a compound listed under a different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified:

(A) by substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;

(B) by substitution at the 3-position with an acyclic alkyl substituent;

(C) by substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups; or

(D) by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(9) Any compound structurally derived from 3-tetramethyl cyclopropanoylindole with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl) ethyl, 1-(N-methyl-2-pyrrolidinyl) methyl, 1-(N-methyl-3- morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent.

(10) Any compound containing a N-(1-adamantyl)- 1H-indazole-3-carboxamide structure with substitution at the nitrogen atom of the indazole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted at the nitrogen atom of the carboxamide to any extent, whether or not further substituted in the indazole ring to any extent, and whether or not further substituted on the adamantyl ring system to any extent. An example of this structural class includes AKB48.

(11) Any compound containing a N-(1-adamantyl)- 1H-indole-3-carboxamide structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted at the nitrogen atom of the carboxamide to any extent, whether or not further substituted in the indole ring to any extent, and whether or not further substituted on the adamantyl ring system to any extent. An example of this structural class includes STS-135.

(12) Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted on the adamantyl ring system to any extent. An example of this structural class includes AM-1248.

(13) Any compound determined to be a synthetic drug by rule adopted under IC 25-26-13-4.1.

**35-31.5-2-321.5. “Synthetic drug lookalike substance” defined**

(a) “Synthetic drug lookalike substance,” except as provided in subsection (b), means one (1) or more of the following:

(1) A substance, other than a synthetic drug, which any of the factors listed in subsection (c) would lead a reasonable person to believe to be a synthetic drug.

(2) A substance, other than a synthetic drug:

(A) that a person knows or should have known was intended to be consumed; and

(B) the consumption of which the person knows or should have known to be intended to cause intoxication.

(b) The term "synthetic drug lookalike substance" does not include the following:

(1) Food and food ingredients (as defined in IC 6-2.5-1-20).

(2) Alcohol (as defined in IC 7.1-1-3-4).

(3) A legend drug (as defined in IC 16-18-2-199).

(4) Tobacco.

(5) A dietary supplement (as defined in IC 6-2.5-1-16).

(c) In determining whether a substance is a synthetic drug lookalike substance, the following factors may be considered:

(1) The overall appearance of a dosage unit of the substance, including its shape, color, size, markings or lack of markings, taste, consistency, and any other identifying physical characteristics.

(2) How the substance is packaged for sale or distribution, including the shape, color, size, markings or lack of markings, and any other identifying physical characteristics of the packaging.

(3) Any statement made by the owner or person in control of the substance concerning the substance's nature, use, or effect.

(4) Any statement made to the buyer or recipient of the substance suggesting or implying that the substance is a synthetic drug.

(5) Any statement made to the buyer or recipient of the substance suggesting or implying that the substance may be resold for profit.

(6) The overall circumstances under which the substance is distributed, including whether:

(A) the distribution included an exchange of, or demand for, money or other property as consideration; and

(B) the amount of the consideration was substantially greater than the reasonable retail market value of the substance the seller claims the substance to be.

**35-31.5-2-323. “Target” defined**

“Target”, for purposes of IC 35-34-2, has the meaning set forth in IC 35-34-2-1.

**35-31.5-2-329. “Terrorism” defined**

“Terrorism” means the unlawful use of force or violence or the unlawful threat of force or violence to intimidate or coerce a government of all or part of the civilian population.

**35-31.5-2-337.5. “Tracking device” defined**

“Tracking device”, for purposes of IC 35-33-5 and this chapter, means an electronic or mechanical device that allows a person to remotely determine or track the position or movement of another person or an object. The term includes the following:

- (1) A device that stores geographic data for subsequent access or analysis.
- (2) A device that allows real-time monitoring or movement.
- (3) An unmanned aerial vehicle.
- (4) A cellular telephone or other wireless or cellular communications device.

**35-31.5-2-340. “Unit” defined**

“Unit”, for purposes of IC 35-40-14, has the meaning set forth in IC 35-40-14-2.

**35-31.5-2-342.3. “Unmanned aerial vehicle” defined**

“Unmanned aerial vehicle”, for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(7).

**35-31.5-2-343.5. “Use of a tracking device” defined**

“Use of a tracking device”, for purposes of IC 35-33-5, includes the installation, maintenance, and monitoring of a tracking device. The term does not include:

- (1) the capture, collection, monitoring, or viewing of images; or
- (2) the use of a monitoring device with respect to a person required to be tracked or monitored:
  - (A) as a condition of bail;
  - (B) as a condition of probation, parole, or community corrections;
  - (C) as a requirement of sex offender registration; or
  - (D) as part of a sentence imposed for a crime.

**35-31.5-2-343.7. “Use of an unmanned aerial vehicle” defined**

“Use of an unmanned aerial vehicle”, for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(8).

**35-31.5-2-343.8. “User” defined**

“User”, for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(9).

**35-31.5-2-345. “Utter” defined**

“Utter” means to issue, authenticate, transfer, publish, deliver, sell, transmit, present, or use.

**35-31.5-2-346. “Vehicle” defined**

“Vehicle” means a device for transportation by land, water, or air. The term includes mobile equipment with provision for transport of an operator.

**35-31.5-2-348. “Victim” defined**

(a) “Victim”, for purposes of IC 35-38-1-9 and IC 35-38-1-17, means a person who has suffered harm as a result of a crime.

(b) “Victim”, for purposes of IC 35-37-6, has the meaning set forth in IC 35-37-6-3.

(c) “Victim”, for purposes of IC 35-38-7, has the meaning set forth in IC 35-38-7-4.

(d) “Victim”, for purposes of IC 35-40, has the meaning set forth in IC 35-40-4-8.

(e) “Victim”, for purposes of IC 35-45-10, has the meaning set forth in IC 35-45-10-4.

**35-31.5-2-349. “Victim advocate” defined**

“Victim advocate”, for purposes of IC 35-37-6, has the meaning set forth in IC 35-37-6-3.5.

**35-31.5-2-350. “Victim representative” defined**

“Victim representative”, for purposes of IC 35-38-1, has the meaning set forth in IC 35-38-1-2(a).

**35-31.5-2-351. “Victim service provider” defined**

“Victim service provider”, for purposes of IC 35-37-6, has the meaning set forth in IC 35-37-6-5.

**35-31.5-2-352. “Violent offender” defined**

“Violent offender”, for purposes of IC 35-38-2.5, has the meaning set forth in IC 35-38-2.5-4.7.

**35-31.5-2-353. “Warrant” defined**

“Warrant”, for purposes of IC 35-33.5, means a warrant authorizing the interception of electronic communication under IC 35-33.5.

**35-31.5-2-354. “Weapon of mass destruction” defined**

“Weapon of mass destruction” means any chemical device, biological device or organism, or radiological device that is capable of being used for terrorism.

**35-31.5-2-357. “Youth program center” defined**

(a) “Youth program center” means the following:

(1) A building or structure that on a regular basis provides recreational, vocational, academic, social, or other programs or services for a person less than eighteen (18) years of age.

(2) The real property on which a building or structure described in subdivision (1) is located.

(b) The term does not include school property (as defined in section 285 of this chapter).

**ARTICLE 32  
GENERAL PROVISIONS  
[PORTIONS OMITTED]**

**Chapter 1  
General Purpose  
[Portions Omitted]**

35-32-1-1 Construction of title

**35-32-1-1. Construction of title**

This title shall be construed in accordance with its general purposes, to:

- (1) secure simplicity in procedure;
- (2) insure fairness of administration including the elimination of unjustifiable delay;
- (3) insure the effective apprehension and trial of persons accused of offenses;
- (4) provide for the just determination of every criminal proceeding by a fair and impartial trial and adequate review;
- (5) reduce crime by promoting the use of evidence based best practices for rehabilitation of offenders in a community setting;
- (6) keep dangerous offenders in prison by avoiding the use of scarce prison space for nonviolent offenders;
- (7) give judges maximum discretion to impose sentences based on a consideration of all the circumstances related to the offense;
- (8) maintain proportionality of penalties across the criminal code, with like sentences for like crimes;
- (9) make the length of sentences served by offenders more certain for victims; and
- (10) preserve the public welfare and secure the fundamental rights of individuals.

**ARTICLE 33  
PRELIMINARY PROCEEDINGS  
[PORTIONS OMITTED]**

Ch. 1 Arrest  
Ch. 5 Search Warrants

**Chapter 1  
Arrest**

35-33-1-1 Arrests by law enforcement officers [effective until 1-1-15]  
35-33-1-1 Arrests by law enforcement officers [effective on or after 1-1-15]  
35-33-1-1.5 Responding to scene of domestic or family violence  
35-33-1-1.7 Domestic violence arrest; 8 hour hold  
35-33-1-2 Arrest by judge  
35-33-1-3 Arrest by coroner

- 35-33-1-4 Citizens' arrest
- 35-33-1-5 Arrest defined
- 35-33-1-6 Chart for detention of persons arrested for alcohol-related offense

**35-33-1-1. Arrests by law enforcement officers [effective July 1, 2014]**

(a) A law enforcement officer may arrest a person when the officer has:

- (1) a warrant commanding that the person be arrested;
- (2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony;
- (3) probable cause to believe the person has violated the provisions of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;
- (4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence;
- (5) probable cause to believe the person has committed a:
  - (A) battery resulting in bodily injury under IC 35-42-2-1; or
  - (B) domestic battery under IC 35-42-2-1.3.

The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause;

- (6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy);
- (7) probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license) or IC 35-47-2-22 (counterfeit handgun license);
- (8) probable cause to believe that the person is violating or has violated an order issued under IC 35-50-7;
- (9) probable cause to believe that the person is violating or has violated IC 35-47-6-1.1 (undisclosed transport of a dangerous device);
- (10) probable cause to believe that the person is:
  - (A) violating or has violated IC 35-45-2-5 (interference with the reporting of a crime); and
  - (B) interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5);
- (11) probable cause to believe that the person has committed theft (IC 35-43-4-2);
- (12) a removal order issued for the person by an immigration court;
- (13) a detainer or notice of action for the person issued by the United States Department of Homeland Security; or
- (14) probable cause to believe that the person has been indicted for or convicted of one (1) or more aggravated felonies (as defined in 8 U.S.C. 1101(a)(43)).

(b) A person who:

- (1) is employed full time as a federal enforcement officer;
- (2) is empowered to effect an arrest with or without warrant for a violation of the United States Code; and
- (3) is authorized to carry firearms in the performance of the person's duties;

may act as an officer for the arrest of offenders against the laws of this state where the person reasonably believes that a felony has been or is about to be committed or attempted in the person's presence.

**35-33-1-1. Arrests by law enforcement officers [effective January 1, 2015]**

(a) A law enforcement officer may arrest a person when the officer has:

- (1) a warrant commanding that the person be arrested;
- (2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony;
- (3) probable cause to believe the person has violated the provisions of IC 9-26-1-1.1 or IC 9-30-5;
- (4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence;
- (5) probable cause to believe the person has committed a:
  - (A) battery resulting in bodily injury under IC 35-42-2-1; or
  - (B) domestic battery under IC 35-42-2-1.3.

The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause;

- (6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy);
- (7) probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license) or IC 35-47-2-22 (counterfeit handgun license);
- (8) probable cause to believe that the person is violating or has violated an order issued under IC 35-50-7;
- (9) probable cause to believe that the person is violating or has violated IC 35-47-6-1.1 (undisclosed transport of a dangerous device);
- (10) probable cause to believe that the person is:
  - (A) violating or has violated IC 35-45-2-5 (interference with the reporting of a crime); and
  - (B) interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5);
- (11) probable cause to believe that the person has committed theft (IC 35-43-4-2);
- (12) a removal order issued for the person by an immigration court;
- (13) a detainer or notice of action for the person issued by the United States Department of Homeland Security; or
- (14) probable cause to believe that the person has been indicted for or convicted of one (1) or more aggravated felonies (as defined in 8 U.S.C. 1101(a)(43)).

(b) A person who:

- (1) is employed full time as a federal enforcement officer;
- (2) is empowered to effect an arrest with or without warrant for a violation of the United States Code; and
- (3) is authorized to carry firearms in the performance of the person's duties;

may act as an officer for the arrest of offenders against the laws of this state where the person reasonably believes that a felony has been or is about to be committed or attempted in the person's presence.

**35-33-1-1.1. Responding to scene of domestic or family violence**

(a) A law enforcement officer responding to the scene of an alleged crime involving domestic or family violence shall use all reasonable means to prevent further violence, including the following:

- (1) Transporting or obtaining transportation for the alleged victim and each child to a designated safe place to meet with a domestic violence counselor, local family member, or friend.
- (2) Assisting the alleged victim in removing toiletries, medication, and necessary clothing.
- (3) Giving the alleged victim immediate and written notice of the rights under IC 35-40.

(b) A law enforcement officer may confiscate and remove a firearm, ammunition, or a deadly weapon from the scene if the law enforcement officer has:

- (1) probable cause to believe that a crime involving domestic or family violence has occurred;
- (2) a reasonable belief that the firearm, ammunition, or deadly weapon:
  - (A) exposes the victim to an immediate risk of serious bodily injury; or
  - (B) was an instrumentality of the crime involving domestic or family violence; and
- (3) observed the firearm, ammunition, or deadly weapon at the scene during the response.

(c) If a firearm, ammunition, or a deadly weapon is removed from the scene under subsection (b), the law enforcement officer shall provide for the safe storage of the firearm, ammunition, or deadly weapon during the pendency of a proceeding related to the alleged act of domestic or family violence.

**35-33-1-1.7. Domestic violence arrest; 8 hour hold**

(a) A facility having custody of a person arrested for a crime of domestic violence (as described in IC 35-31.5-2-78) shall keep the person in custody for at least eight (8) hours from the time of the arrest.

(b) A person described in subsection (a) may not be released on bail until at least eight (8) hours from the time of the person's arrest.

**35-33-1-2. Arrest by judge**

A judge may arrest, or order the arrest of a person in his presence, when he has probable cause to believe the person has committed a crime.

**35-33-1-3. Arrest by coroner**

A coroner has the authority to arrest any person when performing the duties of the sheriff under IC 36-2-14-4 and authority to arrest the sheriff under IC 36-2-14-5.

**35-33-1-4. Citizen's arrest**

(a) Any person may arrest any other person if:

- (1) The other person committed a felony in his presence;

(2) A felony has been committed and he has probable cause to believe that the other person has committed that felony; or

(3) A misdemeanor involving a breach of peace is being committed in his presence and the arrest is necessary to prevent the continuance of the breach of peace.

(b) A person making an arrest under this section shall, as soon as practical, notify a law enforcement officer and deliver custody of the person arrested to a law enforcement officer.

(c) The law enforcement officer may process the arrested person as if the officer had arrested him. The officer who receives or processes a person arrested by another under this section is not liable for false arrest or false imprisonment.

### **35-33-1-5. Arrest defined**

Arrest is the taking of a person into custody, that he may be held to answer for a crime

### **35-33-1-6. Chart for detention of persons arrested for alcohol-related offense**

A law enforcement agency may use the following chart to determine the minimum number of hours that a person arrested for an alcohol-related offense should be detained before his release pending trial:

**Editor's Note: The detention chart was not changed during the 2014 legislative session and will be included with the 2014 Criminal Code Book.**

## **Chapter 5 Search Warrants**

35-33-5-0.1	Applicability (2001)
35-33-5-0.5	Definitions
35-33-5-1	Issuance of warrants
35-33-5-2	Affidavit required
35-33-5-3	Form of warrant
35-33-5-4	Return upon execution
35-33-5-5	Disposition of seized items
35-33-5-6	Search for dead bodies
35-33-5-7	Execution of warrant
35-33-5-8	Warrant issued without affidavit
35-33-5-9	Search warrant required for unmanned aerial vehicle; exceptions
35-33-5-10	Unmanned aerial vehicle; inadmissible evidence
35-33-5-11	Search warrant required for obtaining stored electronic user data
35-33-5-12	Court order required for use of real time tracking instrument
35-33-5-13	Immunity
35-33-5-14	Journalist privilege

### **35-33-5-0.1. Applicability (2001)**

The amendments made to section 5 of this chapter by P.L.17-2001 apply to all actions of a law enforcement agency taken after June 30, 2001.

### **35-33-5-0.5. Definitions**

The following definitions apply throughout this chapter:

- (1) “Electronic communication service” means a service that provides users with the ability to send or receive wire or electronic communications.
- (2) “Electronic storage” means any storage or electronic user data on a computer, computer network, or computer system regardless of whether the data is subject to recall, further manipulation, deletion, or transmission. “Electronic storage” includes any storage or electronic communication by an electronic communication service or a remote computing service.
- (3) “Electronic user data” means any data or records that are in the possession, care, custody, or control of a provider of an electronic communication service, a remote computing service, or any other service or program that stores, uses, collects, or safeguards electronic user data.
- (4) “Governmental entity” has the meaning set forth in IC 35-31.5-2-144. For purposes of this chapter, “governmental entity” also includes a person authorized to act on behalf of a state or local agency.
- (5) “Intercept” means to acquire geolocation data through the use of an electronic device, mechanical device, or other device.
- (6) “Remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communication service.
- (7) “Unmanned aerial vehicle” means an aircraft that:
  - (A) does not carry a human operator; and
  - (B) is capable of flight under remote control or autonomous programming.
- (8) “Use of an unmanned aerial vehicle” means the use of an unmanned aerial vehicle by a law enforcement officer to obtain evidence relevant to the enforcement of statutes, rules, or regulations. The term includes:
  - (A) the interception of wire, electronic, or oral communications; and
  - (B) the capture, collection, monitoring, or viewing of images.
- (9) “User” means any person who:
  - (A) uses an electronic communication service, remote computing service, geolocation information service, or an electronic device; and
  - (B) may or may not be the person or entity having legal title, claim, or right to the electronic device or electronic user data.

### **35-33-5-1. Issuance of warrants**

(a) A court may issue warrants only upon probable cause, supported by oath or affirmation, to search any place for any of the following:

- (1) Property which is obtained unlawfully.
- (2) Property, the possession of which is unlawful.
- (3) Property used or possessed with intent to be used as a means of committing an offense or concealed to prevent an offense from being discovered.
- (4) Property constituting evidence of an offense or tending to show that a particular person committed an offense.
- (5) Any person.
- (6) Evidence necessary to enforce statutes enacted to prevent cruelty or neglect of children.

(7) A firearm possessed by a person who is dangerous (as defined in IC 35-47-14-1).

(b) As used in this section, "place" includes any location where property might be secreted or hidden, including buildings, persons, or vehicles.

**35-33-5-2. Affidavit required**

(a) Except as provided in section 8 of this chapter, and subject to the requirements of section 11 of this chapter, if applicable, no warrant for search or arrest shall be issued unless there is filed with the judge an affidavit;

(1) particularly describing;

(A) the house or place to be searched and the things to be searched for; or

(B) particularly describing the person to be arrested;

(2) alleging substantially the offense in relation thereto and that the affiant believes and has good cause to believe that:

(A) the things sought are concealed there; or

(B) the person to be arrested committed the offense; and

(3) setting forth the facts known to the affiant through personal knowledge or based on hearsay, constituting the probable cause.

(b) When based on hearsay, the affidavit must either:

(1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or

(2) contain information that establishes that the totality of the circumstances corroborates the hearsay.

(c) An affidavit for search substantially in the following form shall be treated as sufficient:

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

A B swears (or affirms, as the case may be) that he believes and has good cause to believe (here set forth the facts and information constituting the probable cause) that (here describe the things to be searched for and the offense in relation thereto) are concealed in or about the (here describe the house or place) of C D, situated in the county of \_\_\_\_\_, in said state.

In accordance with Indiana Trial Rule 11, affirm under penalties for perjury that the foregoing representations are true.

\_\_\_\_\_  
(Signed) Affiant Date

**35-33-5-3. Form of warrant**

A search warrant in substantially the following form shall be sufficient:

STATE OF INDIANA            )        IN THE \_\_\_\_\_ COURT  
  ) SS: OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ )

To \_\_\_\_\_ (herein insert the name, department or classification of the law enforcement officer to whom it is addressed)

You are authorized and ordered, in the name of the State of Indiana, with the necessary and proper assistance to enter into or upon \_\_\_\_\_ (here describe the place to be searched), and there diligently search for \_\_\_\_\_ (here describe the property which is the subject of the search). You are ordered to seize such property, or any part thereof, found on such search.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_  
\_\_\_\_\_M.

\_\_\_\_\_  
(Signature of Judge)

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_  
\_\_\_\_\_M.

\_\_\_\_\_  
(Signature of Law Enforcement Officer)

**35-33-5-4. Return upon execution**

When the warrant is executed by the seizure of property or things described in it or of any other items:

- (1) the officer who executed the warrant shall make a return on it directed to the court or judge, who issued the warrant, and this return must indicate the date and time served and list the items seized.
- (2) The items so seized shall be securely held by the law enforcement agency whose officer executed the search warrant under the order of the court trying the cause, except as provided in section 6 of this chapter.

**35-33-5-5. Disposition of seized items**

(a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

(b) Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with IC 35-43-4-4(h).

(c) Following the final disposition of the cause at trial level or any other final disposition the following shall be done:

(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

(A) the rightful owner has been notified to take possession of the property;

or

(B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at a convenient time, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Except as provided in subsection (e), property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

(3) A firearm that has been seized from a person who is dangerous (as defined in IC 35-47-14-1) shall be retained, returned, or disposed of in accordance with IC 35-47-14.

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

(e) A law enforcement agency may destroy or cause to be destroyed chemicals, controlled substances, or chemically contaminated equipment (including drug paraphernalia as described in IC 35-48-4-8.5) associated with the illegal manufacture of drugs or controlled substances without a court order if all of the following conditions are met:

(1) The law enforcement agency collects and preserves a sufficient quantity of the chemicals, controlled substances, or chemically contaminated equipment to demonstrate that the chemicals, controlled substances, or chemically contaminated equipment was associated with the illegal manufacture of drugs or controlled substances.

(2) The law enforcement agency takes photographs of the illegal drug manufacturing site that accurately depict the presence and quality of chemicals, controlled substances, and chemically contaminated equipment.

(3) The law enforcement agency completes a chemical inventory report that describes the type and quantities of chemicals, controlled substances, and chemically contaminated equipment present at the illegal manufacturing site.

The photographs and description of the property shall be admissible into evidence in place of the actual physical evidence.

(f) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before disposition of the property. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in the place of the actual physical evidence. All other rules governing the admissibility of evidence shall apply to the photographs.

(g) The law enforcement agency disposing of property in any manner provided in subsection (b), (c), or (e) shall maintain certified records of any disposition under subsection (b),

(c), or (e). Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

(h) This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

(i) A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise permanently identify the property as property sold by the law enforcement agency.

(j) Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

### **35-33-5-6. Search for dead bodies**

When an affidavit is filed before a judge alleging that the affiant has good reason to believe, and does believe, that a dead human body is illegally secreted in a certain building, or other particularly specified place in the county, the judge may issue a search warrant authorizing a law enforcement officer to enter and search the building or other place for the dead body. While making the search, the law enforcement officer shall have the power of an officer executing a regular search warrant.

### **35-33-5-7. Execution of warrant**

(a) A search warrant issued by a court of record may be executed according to its terms anywhere in the state. A search warrant issued by a court that is not a court of record may be executed according to its terms anywhere in the county of the issuing court.

(b) A search warrant must be:

- (1) executed not more than ten (10) days after the date of issuance; and
- (2) returned to the court without unnecessary delay after the execution.

(c) A search warrant may be executed:

- (1) on any day of the week; and
- (2) at any time of the day or night.

(d) A law enforcement officer may break open any outer or inner door or window in order to execute a search warrant, if the officer is not admitted following an announcement of the officer's authority and purpose.

(e) A person or persons whose property is wrongfully damaged or whose person is wrongfully injured by any law enforcement officer or officers who wrongfully enter may recover such damage from the responsible authority and the law enforcement officer or officers as the court may determine. The action may be filed in the circuit court or superior court in the county where the wrongful entry took place.

### **35-33-5-8. Warrant issued without affidavit**

(a) A judge may issue a search or arrest warrant without the affidavit required under section 2 of this chapter, if the judge receives testimony subject to the penalties for perjury of the same facts required for an affidavit:

- (1) in a nonadversarial, recorded hearing before the judge;
- (2) orally by telephone or radio;

(3) in writing by facsimile transmission (FAX); or

(4) in writing by electronic mail or other electronic transmission.

(b) If a warrant is issued under subsection (a)(1), the judge shall order the court reporter to type or transcribe the testimony from the hearing for entry in the record. The judge shall then certify the transcript.

(c) After reciting the facts required for an affidavit and verifying the facts recited under penalty of perjury, an applicant for a warrant under subsection (a)(2) shall read to the judge the warrant from a warrant form on which the applicant enters the information read by the applicant to the judge. The judge may direct the applicant to modify the warrant. If the judge agrees to issue the warrant, the judge shall direct the applicant to sign the judge's name to the warrant, adding the time of the issuance of the warrant.

(d) After transmitting an affidavit, an applicant for a warrant under subsection (a)(3) or (a)(4) shall transmit to the judge a copy of a warrant form completed by the applicant. The judge may modify the transmitted warrant. If the judge agrees to issue the warrant, the judge shall sign, affix the date and time, and transmit to the applicant a duplicate of the warrant.

(e) If a warrant is issued under subsection (a)(2), the judge shall record the conversation on audio tape and order the court reporter to type or transcribe the recording for entry in the record. The judge shall certify the audio tape, the transcription, and the warrant retained by the judge for entry in the record.

(f) If a warrant is issued under subsection (a)(3), the facsimile copy of the affidavit and warrant sent to the judge shall be retained as if they were the originals. If a warrant is issued under subsection (a)(4), the electronically transmitted copy of the affidavit and warrant sent to the judge shall be printed and retained as if they were the originals.

(g) The court reporter shall notify the applicant who received a warrant under subsection (a)(1) or (a)(2) when the transcription required under this section is entered in the record. The applicant shall sign the transcribed entry upon receiving notice from the court reporter.

(h) The affiant and the judge may use an electronic signature on the affidavit and warrant. An electronic signature may be indicated by "s/Affiant's Name" or "s/Judge's Name" or by any other electronic means that identifies the affiant or judge and indicates that the affiant or judge adopts the contents of the document to which the electronic signature is affixed.

### **35-33-5-9. Search warrant required for unmanned aerial vehicle; exceptions**

(a) Except as provided in subsection (b), a law enforcement officer must obtain a search warrant in order to use an unmanned aerial vehicle.

(b) A law enforcement officer or governmental entity may use an unmanned aerial vehicle without obtaining a search warrant if the law enforcement officer determines that the use of the unmanned aerial vehicle:

(1) is required due to:

(A) the existence of exigent circumstances necessitating a warrantless search;

(B) the substantial likelihood of a terrorist attack;

(C) the need to conduct a search and rescue or recovery operation;

(D) the need to conduct efforts:

(i) in response to: or

(ii) to mitigate;

the results of a natural disaster or any other disaster; or

- (E) the need to perform a geographical, an environmental, or any other survey for a purpose that is not a criminal justice purpose; or
- (2) will be conducted with the consent of the affected property owner.

**35-33-5-10. Unmanned aerial vehicle; inadmissible evidence**

The following are not admissible in an administrative or judicial proceeding:

- (1) A communication or an image that is obtained through the use of an unmanned aerial vehicle in violation of section 9 of this chapter.
- (2) Evidence derived from a communication or image described in subdivision (1).

**35-33-5-11. Search warrant required for obtaining stored electronic user data**

(a) This subsection does not apply to electronic or video toll collection facilities or activities authorized under any of the following:

- (1) IC 8-15-2.
- (2) IC 8-15-3.
- (3) IC 8-15.5.
- (4) IC 8-15.7.
- (5) IC 8-16.
- (6) IC 9-21-3.5.

A law enforcement officer may not compel a user to provide a passkey, password, or keycode to any electronic communication service, electronic device, or electronic storage, or any form of stored electronic user data, without a valid search warrant issued by a judge using search warrant procedures.

(b) A judge may issue a court order under this section for electronic user data held in electronic storage, including the records and information related to a wire communication or electronic communication held in electronic storage, by a provider of an electronic communication service or a provider of a remote computing service regardless of whether the user data is held at a location in Indiana or at a location in another state.

(c) A judge may issue a court order under this section on a service provider that is a corporation or entity that is incorporated or organized under the laws of Indiana or a company or business entity doing business in Indiana under a contract or terms of a service agreement with an Indiana resident. The service provider shall produce all information sought, as required by the court order.

(d) Any Indiana corporation that provides electronic communications services or remote computing services to the public shall comply with a valid court order issued in another state that is seeking the information described in this section, if the court order is served on the corporation.

**35-33-5-12. Court order required for use of real time tracking instrument**

(a) A law enforcement officer or law enforcement agency may not use a real time tracking instrument that is capable of obtaining geolocation information concerning a cellular device or a device connected to a cellular network unless:

- (1) the law enforcement officer or law enforcement agency has obtained an order issued by a court based upon a finding of probable cause to use the tracking instrument; or

(2) exigent circumstances exist that necessitate using the tracking instrument without first obtaining a court order.

(b) If a law enforcement officer or law enforcement agency uses a real time tracking instrument described in subsection (a) based upon the existence of exigent circumstances, the law enforcement officer or law enforcement agency shall seek to obtain an order issued by a court based upon a finding of probable cause not later than seventy-two (72) hours after the initial use of the real time tracking instrument.

### **35-33-5-13. Immunity**

An electronic communication service, remote computing service, and geolocation information service are immune from civil or criminal liability for providing information or evidence as required by a court order under this chapter.

### **35-33-5-14. Journalist privilege**

(a) For purposes of IC 34-46-4 (Journalist's Privilege Against Disclosure of Information Source) and subject to subsection (b), if:

(1) a governmental entity requests that a court issue a search warrant to a provider of:

(A) electronic communication service; or

(B) remote computing service; and

(2) the search warrant seeks information or communications concerning a news media entity or a person otherwise described in IC 34-46-4-1;

the news media entity or person described in IC 34-46-4-1 shall be given reasonable and timely notice of the search warrant request and shall be given an opportunity to be heard by the court concerning the issuance of the search warrant before the search warrant is issued.

(b) If:

(1) the search warrant that would be issued to a provider described in subsection (a)(1) concerns a criminal investigation in which the news media entity or person described in IC 34-46-4-1 is a target of the criminal investigation; and

(2) the notice that would be provided to the news media entity or person described in IC 34-46-4-1 under subsection (a) would pose a clear and substantial threat to the integrity of the criminal investigation;

the governmental entity shall certify the threat to the court and notice of the search warrant shall be given to the news media entity or person described in IC 34-46-4-1 as soon as the court determines that the notice no longer poses a clear and substantial threat to the integrity of the criminal investigation.

## **ARTICLE 38 PROCEEDINGS FOLLOWING DISMISSAL, VERDICT OR FINDING [PORTIONS OMITTED]**

**Chapter 1**  
**Entry of Judgment**  
**And Sentencing**

- 35-38-1-0.1 Effect of amendments
- 35-38-1-1 Entry of judgment and sentence
- 35-38-1-1.3 Statement of court's reason for sentence
- 35-38-1-1.5 Conversion of Level 6 felony to Class A misdemeanor
- 35-38-1-2 Time for pronouncing sentence; sentencing previously convicted person to increased penalty; imprisonment pending sentencing
- 35-38-1-2.5 "Crime of deception" defined; sentencing order
- 35-38-1-3 Sentencing hearing in felony cases
- 35-38-1-4 Presence of defendant at sentencing
- 35-38-1-5 Statements by defendant at sentencing
- 35-38-1-6 Sentencing – defendant charged with offense and included offense
- 35-38-1-7.1 Criteria for sentencing
- 35-38-1-7.5 Determination that person is sexually violent predator
- 35-38-1-7.8 Determination of status as credit restricted felon
- 35-38-1-8 Presentence report required
- 35-38-1-8.5 Notification of victim of sentencing hearing; victim impact statement
- 35-38-1-9 Scope of presentence investigation report
- 35-38-1-9.5 Determination whether convicted person carried HIV
- 35-38-1-10 Physical and mental examination
- 35-38-1-10.5 Screening and confirmatory tests for HIV
- 35-38-1-10.6 Notification to victims that criminal carried HIV
- 35-38-1-11 Filing of presentence memorandum by convicted persons
- 35-38-1-12 Disclosure of presentence investigation report
- 35-38-1-13 Confidentiality of presentence report and memorandum
- 35-38-1-14 Documents to be sent to department of correction
- 35-38-1-15 Correction of erroneous sentence
- 35-38-1-16 Certified copies of changed sentence sent to department of correction
- 35-38-1-17 Modification of sentence
- 35-38-1-18 Payment of fine
- 35-38-1-21 Placement in home detention in lieu of department of correction
- 35-38-1-22 Order requiring juvenile to serve misdemeanor sentence in IC 31-31-8 facility
- 35-38-1-24 Denial of assignment to community transition program by court
- 35-38-1-25 Assignment to community transition program
- 35-38-1-27 DNA sample as condition of sentence for offenses in IC 10-13-6-10
- 35-38-1-28 Order of defendant to be fingerprinted
- 35-38-1-29 Lifetime parole for sexually violent predators
- 35-38-1-30 Court order for defendant to refrain from contact with another person
- 35-38-1-31 Abstract of judgment
- 35-38-1-32 Court shall inform defendant regarding habitual traffic violator

**35-38-1-0.1. Effect of amendments**

The following amendments to this chapter apply as follows:

(1) The amendments made to section 7.1 of this chapter by P.L. 280-2001 apply to all convictions for a crime entered after May 11, 2001.

(2) Notwithstanding the amendments made to IC 10-13-6-10, IC 10-13-6-11, IC 35-38-2-2.3, IC 35-38-2.5-6, and IC 35-38-2-6.3, and the addition of section 27 of this chapter by P.L. 140-2006, a probation department, community corrections department, or other agency supervising an offender on conditional release is not required to collect a DNA sample before October 1, 2006. However, a probation department, community corrections department, or other agency supervising an offender on conditional release is authorized to collect a DNA sample before October 1, 2006, and a DNA sample collected before October 1, 2006, may be analyzed and placed in the convicted offender data base.

(3) Notwithstanding the amendments made to IC 10-13-6-10, IC 10-13-6-11, IC 35-38-2-2.3, IC 35-38-2.5-6, and IC 35-38-2-6.3, and the addition of section 27 of this chapter by P.L. 173-2006, a probation department, community corrections department, or other agency supervising an offender on condition release is not required to collect a DNA sample before October 1, 2006. However, a probation department, community corrections department, or other agency supervising an offender on conditional release is authorized to collect a DNA sample before October 1, 2006, and a DNA sample collected before October 1, 2006, may be analyzed and placed in the convicted offender data base.

### **35-38-1-1. Entry of judgment; sentence**

(a) Except as provided in section 1.5 of this chapter, after verdict, finding, or plea of guilty, if a new trial is not granted, the court shall enter a judgment of conviction.

(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.

### **35-38-1-1.3. Statement of court's reason for sentence**

After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reason for selecting the sentence that it imposes unless the court imposes the advisory sentence for a felony.

### **35-38-1-1.5. Conversion of Level 6 felony to Class A misdemeanor**

(a) A court may enter judgment of conviction as a Level 6 felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor if the person fulfills certain conditions. A court may enter judgment of conviction as a Level 6 felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor only if the person pleads guilty to a Level 6 felony that qualifies for consideration as a Class A misdemeanor under IC 35-50-2-7, and the following conditions are met:

(1) The prosecuting attorney consents.

(2) The person agrees to the conditions set by the court.

(b) For a judgment of conviction to be entered under subsection (a), the court, the prosecuting attorney and the person must all agree to the conditions set by the court under subsection (a).

(c) The court is not required to convert a judgment of conviction entered as a Level 6 felony to a Class A misdemeanor if, after a hearing, the court finds:

(1) the person has violated a condition set by the court under subsection (a); or

(2) the period that the conditions set by the court under subsection (a) are in effect expires before the person successfully completes each condition.

However, the court may not convert a judgment of conviction entered as a Level 6 felony to a Class A misdemeanor if the person commits a new offense before the conditions set by the court under subsection (a) expire.

(d) The court shall enter judgment of conviction as a Class A misdemeanor if the person fulfills the conditions set by the court under subsection (a).

(e) The entry of a judgment of conviction under this section does not affect the application of any statute requiring the suspension of a person's driving privileges.

(f) This section may not be construed to diminish or alter the rights of a victim (as defined in IC 35-40-4-8) in a sentencing proceeding under this chapter.

**35-38-1-2. Time for pronouncing sentence; sentencing previously convicted person to increased penalty; imprisonment pending sentencing**

(a) As used in this chapter, "victim representative" means a person designated by a sentencing court who is:

- (1) a spouse, parent, child, sibling, or other relative of; or
- (2) a person who has had a close personal relationship with;

the victim of a felony who is deceased, incapacitated, or less than eighteen (18) years of age.

(b) Upon entering a conviction, the court shall set a date for sentencing within thirty (30) days, unless for good cause shown an extension is granted. If a presentence report is not required, the court may sentence the defendant at the time the judgment of conviction is entered. However, the court may not pronounce sentence at that time without:

- (1) inquiring as to whether an adjournment is desired by the defendant; and
- (2) informing the victim, if present, of a victim's right to make a statement concerning the crime and the sentence.

When an adjournment is requested, the defendant shall state its purpose and the court may allow a reasonable time for adjournment.

(c) If:

- (1) the state in the manner prescribed by IC 35-34-1-2.5 sought an increased penalty by alleging that the person was previously convicted of the offense; and
- (2) the person was convicted of the subsequent offense in a jury trial:

the jury shall reconvene for the sentencing hearing. The person shall be sentenced to receive the increased penalty if the jury (or the court, if the trial is to the court alone) finds that the state has proved beyond a reasonable doubt that the person has a previous conviction for the offense.

(d) If the felony is nonsuspendible under IC 35-50-2-2 (before its repeal) or IC 35-50-2-2.2, the judge shall order the defendant, if the defendant has previously been released on bail or recognizance, to be imprisoned in the county or local penal facility pending sentencing.

(e) Upon entering judgment of conviction for a felony, the court shall designate a victim representative if the victim is deceased, incapacitated, or less than eighteen (18) years of age.

**35-38-1-2.5. "Crime of deception" defined; sentencing order**

(a) As used in this section, "crime of deception" means any offense in which a person assumes the identity of another person, uses the identifying information of another person, or falsely suggests that the person is acting with the authority of another person. The term includes an offense under IC 35-43-5.

(b) This section applies to an offender who has been convicted of a crime of deception.

(c) During or after the sentencing of a person convicted of a crime of deception, the court may, upon motion by the state or upon application by a victim or a victim's representative, issue an order:

(1) describing the person whose credit history may be affected by the offender's crime of deception, with sufficient identifying information to assist another person in correcting the credit history; and

(2) stating that the person described in subdivision (1) was convicted of a crime of deception that may have affected the person's credit history.

(d) The order described in subsection (c) may be used to correct the credit history of any person described in the order.

### **35-38-1-3. Sentencing hearing in felony cases**

Before sentencing a person for a felony, the court must conduct a hearing to consider the facts and circumstances relevant to sentencing. The person is entitled to subpoena and call witnesses and to present information in his own behalf. The court shall make a record of the hearing, including:

(1) A transcript of the hearing;

(2) A copy of the presentence report; and

(3) If the court finds aggravating circumstances or mitigating circumstances, a statement of the court's reasons for selecting the sentence that it imposes.

### **35-38-1-4. Presence of defendant at sentencing**

(a) The defendant must be personally present at the time sentence is pronounced. If the defendant is not personally present when sentence is to be pronounced, the court may issue a warrant for his arrest.

(b) Sentence may be pronounced against a defendant corporation in the absence of counsel, if counsel fails to appear on the date of sentencing after reasonable notice.

### **35-38-1-5. Statements by defendant at sentencing**

When the defendant appears for sentencing, the court shall inform the defendant of the verdict of the jury or the findings of the court. The court shall afford counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant may also make a statement personally in the defendant's own behalf and, before pronouncing sentence, the court shall ask the defendant whether the defendant wishes to make such a statement. Sentence shall then be pronounced, unless a sufficient cause is alleged or appears to the court for delay in sentencing.

### **35-38-1-6. Sentencing – defendant charged with offense and included offense**

Whenever:

(1) A defendant is charged with an offense and an included offense in separate counts; and

(2) The defendant is found guilty of both counts;

judgment and sentence may not be entered against the defendant for the included offense.

**35-38-1-7.1. Criteria for sentencing [effective March 26, 2014]**

(a) In determining what sentence to impose for a crime, the court may consider the following aggravating circumstances:

- (1) The harm, injury, loss, or damage suffered by the victim of an offense was:
  - (A) significant; and
  - (B) greater than the elements necessary to prove the commission of the offense.
- (2) The person has a history of criminal or delinquent behavior.
- (3) The victim of the offense was less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense.
- (4) The person:
  - (A) committed a crime of violence (IC 35-50-1-2); and
  - (B) knowingly committed the offense in the presence or within hearing of an individual who:
    - (i) was less than eighteen (18) years of age at the time the person committed the offense; and
    - (ii) is not the victim of the offense.
- (5) The person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person.
- (6) The person has recently violated the conditions of any probation, parole, pardon, community corrections placement, or pretrial release granted to the person.
- (7) The victim of the offense was:
  - (A) a person with a disability (as defined in IC 27-7-6-12), and the defendant knew or should have known that the victim was a person with a disability; or
  - (B) mentally or physically infirm.
- (8) The person was in a position having care, custody, or control of the victim of the offense.
- (9) The injury to or death of the victim of the offense was the result of shaken baby syndrome (as defined in IC 16-41-40-2).
- (10) The person threatened to harm the victim of the offense or a witness if the victim or witness told anyone about the offense.
- (11) The person:
  - (A) committed trafficking with an inmate under IC 35-44.1-3-5; and
  - (B) is an employee of the penal facility.

(b) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

- (1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.
- (2) The crime was the result of circumstances unlikely to recur.
- (3) The victim of the crime induced or facilitated the offense.
- (4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

- (5) The person acted under strong provocation.
- (6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.
- (7) The person is likely to respond affirmatively to probation or short term imprisonment.
- (8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.
- (9) The person has made or will make restitution to the victim of the crime for injury, damage, or loss sustained.
- (10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.
- (11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.
- (12) The person was convicted of a crime relating to a controlled substance and the person's arrest or prosecution was facilitated in part because the person:

- (A) requested emergency medical assistance; or
- (B) acted in concert with another person who requested emergency medical assistance;

for an individual who reasonably appeared to be in need of medical assistance due to the use of alcohol or a controlled substance.

(c) The criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence.

(d) A court may impose any sentence that is:

- (A) authorized by statute; and
- (B) permissible under the Constitution of the State of Indiana;

regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

### **35-38-1-7.5. Determination that person is sexually violent predator**

(a) As used in this section, "sexually violent predator" means a person who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense (as defined in IC 11-8-8-5.2). The term includes a person convicted in another jurisdiction who is identified as a sexually violent predator under IC 11-8-8-20. The term does not include a person no longer considered a sexually violent predator under subsection (g).

(b) A person who:

- (1) being at least eighteen (18) years of age, commits an offense described in:
  - (A) IC 35-42-4-1;
  - (B) IC 35-42-4-3 (before its repeal);
  - (C) IC 35-42-4-3 as a Class A or Class B felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014);
  - (D) IC 35-42-4-5(a)(1);
  - (E) IC 35-42-4-5(a)(2);
  - (F) IC 35-42-4-5(a)(3);

(G) IC 35-42-4-5(b)(1) as a Class A or Class B felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014);

(H) IC 35-42-4-5(b)(2);

(I) IC 35-42-4-5(b)(3) as a Class A or Class B felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014);

(J) an attempt or conspiracy to commit a crime listed in clauses (A) through (I); or

(K) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (J);

(2) commits a sex offense (as defined in IC 11-8-8-5.2) while having a previous unrelated conviction for a sex offense for which the person is required to register as a sex or violent offender under IC 11-8-8;

(3) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a previous unrelated adjudication as a delinquent child for an act that would be a sex offense if committed by an adult, if, after considering expert testimony, a court finds by clear and convincing evidence that the person is likely to commit an additional sex offense; or

(4) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a previous unrelated adjudication as a delinquent child for an act that would be a sex offense if committed by an adult, if the person was required to register as a sex or violent offender under IC 11-8-8-5(b)(2);

is a sexually violent predator. Except as provided in subsection (g) or (h), a person is a sexually violent predator by operation of law if an offense committed by the person satisfies the conditions set forth in subdivision (1) or (2) and the person was released from incarceration, secure detention, probation, or parole for the offense after June 30, 1994.

(c) This section applies whenever a court sentences a person or a juvenile court issues a dispositional decree for a sex offense (as defined in IC 11-8-8-5.2) for which the person is required to register with the local law enforcement authority under IC 11-8-8.

(d) At the sentencing hearing, the court shall indicate on the record whether the person has been convicted of an offense that makes the person a sexually violent predator under subsection (b).

(e) If a person is not a sexually violent predator under subsection (b), the prosecuting attorney may request the court to conduct a hearing to determine whether the person (including a child adjudicated to be a delinquent child) is a sexually violent predator under subsection (a). If the court grants the motion, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person is a sexually violent predator under subsection (a). A hearing conducted under this subsection may be combined with the person's sentencing hearing.

(f) If a person is a sexually violent predator:

(1) the person is required to register with the local law enforcement authority as provided in IC 11-8-8; and

(2) the court shall send notice to the department of correction.

(g) This subsection does not apply to a person who has two (2) or more unrelated convictions for an offense described in IC 11-8-8-4.5 for which the person is required to register under IC 11-8-8. A person who is a sexually violent predator may petition the court to consider whether the person should no longer be considered a sexually violent predator. The person may file a petition under this subsection not earlier than ten (10) years after:

(1) the sentencing court or juvenile court makes its determination under subsection (e); or

(2) the person is released from incarceration or secure detention.

A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered a sexually violent predator. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person should no longer be considered a sexually violent predator under subsection (a). If a court finds that the person should no longer be considered a sexually violent predator, the court shall send notice to the department of correction that the person is no longer considered a sexually violent predator or an offender against children. Notwithstanding any other law, a condition imposed on a person due to the person's status as a sexually violent predator, including lifetime parole or GPS monitoring, does not apply to a person no longer considered a sexually violent predator.

(h) A person is not a sexually violent predator by operation of law under subsection (b)(1) if all of the following conditions are met:

(1) The victim was not less than twelve (12) years of age at the time the offense was committed.

(2) The person is not more than four (4) years older than the victim.

(3) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.

(4) The offense committed by the person was not any of the following:

(A) Rape (IC 35-42-4-1).

(B) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).

(C) An offense committed by using or threatening the use of deadly force or while armed with a deadly weapon.

(D) An offense that results in serious bodily injury.

(E) An offense that is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's consent or knowledge.

(5) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

(6) The person did not have a position of authority or substantial influence over the victim.

(7) The court finds that the person should not be considered a sexually violent predator.

**35-38-1-7.8. Determination of status as credit restricted felon**

(a) At the time of sentencing, a court shall determine whether the person is a credit restricted felon (as defined in IC 35-31.5-2-72).

(b) A determination under subsection (a) must be based upon:

- (1) evidence admitted at trial that is relevant to the credit restricted status;
- (2) evidence introduced at the sentencing hearing; or
- (3) a factual basis provided as part of a guilty plea.

(c) Upon determining that a defendant is a credit restricted felon, a court shall advise the defendant of the consequences of this determination.

**35-38-1-8. Presentence report required**

(a) Except as provided in subsection (c), a defendant convicted of a felony may not be sentenced before a written presentence report is prepared by a probation officer and considered by the sentencing court. Delay of sentence until a presentence report is prepared does not constitute an indefinite postponement or suspension of sentence.

(b) A victim present at sentencing in a felony or misdemeanor case shall be advised by the court of a victim's right to make a statement concerning the crime and the sentence.

(c) A court may sentence a person convicted of a Level 6 felony without considering a written presentence report prepared by a probation officer. However, if a defendant is committed to the department of correction or a community corrections program under IC 35-38-2.6, the probation officer shall prepare a report that meets the requirements of section 9 of this chapter to be sent with the offender to the department in lieu of the presentence investigation report required by section 14 of this chapter.

**35-38-1-8.5 Notification of victim of sentencing hearing; victim impact statement**

(a) A probation officer who is conducting a presentence investigation shall send written notification of the following to each victim or each victim representative designated by the court under section 2(e) of this chapter:

- (1) The date, time, and place of the sentencing hearing set by the court.
- (2) The right of the victim or victim representative to make an oral or written statement to the court at the sentencing hearing.
- (3) The right of the victim or victim representative to submit or refuse to submit to the probation officer a written or oral statement of the impact of the crime upon the victim for inclusion by the probation officer in a victim impact statement.

(b) The notification required by subsection (a) must be sent at least seven (7) days before the date of the sentencing hearing to the last known address of the victim or the victim representative.

(c) The probation officer shall prepare a victim impact statement for inclusion in the convicted person's presentence report. The victim impact statement consists of information about each victim and the consequences suffered by a victim or a victim's family as a result of that crime.

(d) Unless the probation officer certifies to the court under section 9 of this chapter that a victim or victim representative could not be contacted or elected not to submit a statement to the

probation officer concerning the crime, the victim impact statement required under this section must include the following information about each victim:

- (1) A summary of the financial, emotional, and physical effects of the crime on the victim and the victim's family.
- (2) Personal information concerning the victim, excluding telephone numbers, places of employment, and residential address.
- (3) Any written statements submitted by a victim or victim representative to the probation officer.
- (4) If the victim desires restitution, the basis and amount of a request for victim restitution.

(e) A victim or victim representative is not required to submit a statement or to cooperate in the preparation of the victim impact statement required under this section.

### **35-38-1-9. Scope of presentence investigation report**

(a) As used in this chapter, "recommendation" has the meaning set forth in IC 35-31.5-2-272, and "victim" has the meaning set forth in IC 35-31.5-2-348.

- (b) The presentence investigation consists of the gathering of information with respect to:
- (1) the circumstances attending the commission of the offense;
  - (2) the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education, and personal habits;
  - (3) the impact of the crime upon the victim; and
  - (4) whether the convicted person is licensed or certified in a profession regulated by IC 25.

(c) The presentence investigation may include any matter that the probation officer conducting the investigation believes is relevant to the question of sentence, and must include:

- (1) any matters the court directs to be included;
- (2) any written statements submitted to the prosecuting attorney by a victim under IC 35-35-3;
- (3) any written statements submitted to the probation officer by a victim; and
- (4) preparation of the victim impact statement required under section 8.5 of this chapter.

(d) If there are no written statements submitted to the probation officer, the probation officer shall certify to the court:

- (1) that the probation officer has attempted to contact the victim; and
- (2) that if the probation officer has contacted the victim, the probation officer has offered to accept the written statements of the victim or to reduce the victim's oral statement to writing, concerning the sentence, including the acceptance of any recommendation.

(e) A presentence investigation report prepared by a probation officer must include the information and comply with any other requirements established in the rules adopted under IC 11-13-1-8.

### **35-38-1-9.5. Determination whether convicted person carried HIV**

A probation officer shall obtain confidential information from the state department of health under IC 16-41-8-1 to determine whether a convicted person was a carrier of human immunodeficiency virus (HIV) when the crime was committed if the person is:

- (1) convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or
- (2) convicted of an offense relating to controlled substances and the offense involved:
  - (A) the delivery by any person to another person; or
  - (B) the use by any person on another person; of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates a epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

### **35-38-1-10. Physical and mental examination**

The court may order that the convicted person:

- (1) Undergo a thorough physical or mental examination in a designated facility as part of the presentence investigation; and
- (2) Remain in the facility for examination for not more than ninety (90) days.

### **35-38-1-10.5. Screening and confirmatory tests for HIV**

(a) The court:

- (1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:
  - (A) convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or
  - (B) convicted of an offense relating to controlled substances and the offense involved:
    - (i) the delivery by any person to another person; or
    - (ii) the use by any person on another person; of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact; and
- (2) may order that a person undergo a screening test for a dangerous disease (as defined in IC 16-41-8-5) in accordance with IC 16-41-8-5.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

- (1) obtain the medical records of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and
- (2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

(1) makes a report required to be made under this section; or

(2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil or criminal liability under Indiana statutes that protect patient privacy and confidentiality.

### **35-38-1-10.6. Notification to victims that criminal carried HIV**

(a) The state department of health shall notify victims of an offense relating to a criminal sexual act or an offense relating to controlled substances if tests conducted under section 10.5 of this chapter or IC 16-41-8-5 confirm that the person tested had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

### **35-38-1-11. Filing of presentence memorandum by convicted persons**

At any time before sentencing, the convicted person may file with the court a written memorandum setting forth any information he considers pertinent to the question of sentence. The convicted person may attach written statements by others in support of facts alleged in the memorandum.

### **35-38-1-12. Disclosure of presentence investigation report**

(a) Before imposing sentence, the court shall:

(1) Advise the defendant or his counsel and the prosecuting attorney of the factual contents and conclusions of the presentence investigation; or

(2) Provide the defendant or his counsel and the prosecuting attorney with a copy of the presentence report.

The court shall also offer the victim, if present, an opportunity to make a statement concerning the crime and the sentence.

(b) The sources of confidential information need not be disclosed. The court shall furnish the factual contents of the presentence investigation or a copy of the presentence report sufficiently in advance of sentencing so that the defendant will be afforded a fair opportunity to controvert the material included.

### **35-38-1-13. Confidentiality of presentence report and memorandum**

(a) Any:

(1) Presentence report or memoranda; and

(2) Report of physical or mental examination;

submitted to the court in connection with sentencing shall be kept confidential.

(b) The materials specified in subsection (a) may not be made available to any person or public or private agency other than:

(1) The convicted person and his counsel;

- (2) The prosecuting attorney;
- (3) A probation department;
- (4) The community corrections program in which an offender is placed under IC 35-38-2.6; and
- (5) The Indiana criminal justice institute established under IC 5-2-6;

except where specifically required or permitted by statute or upon specific authorization by the court and the convicted person.

**35-38-1-14. Documents to be sent to department of correction**

(a) If a convicted person is sentenced to a term of imprisonment, the court shall send a copy of:

- (1) the presentence report;
- (2) any presentence memorandum filed by the convicted person;
- (3) the report of any physical or mental examination made incident to the question of sentence;
- (4) any record made under IC 35-35-2 or IC 35-35-3;
- (5) the abstract of judgment;
- (6) the judgment of conviction; and
- (7) the sentencing order;

to the department of correction.

(b) Copies of the information sent to the department of correction under subsection (a) may be sent through any electronic means approved by the department of correction.

**35-38-1-15. Correction of erroneous sentence**

If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

**35-38-1-16. Certified copies of changed sentence sent to department of correction**

Whenever:

- (1) A court corrects an erroneous sentence or modifies a previously imposed sentence; and
- (2) The convicted person is incarcerated or is to be incarcerated by the department of correction;

the court shall immediately send certified copies of the corrected or modified sentence to the department of correction.

**35-38-1-17. Modification of sentence**

(a) This section does not apply to a credit restricted felon.

(b) Not later than three hundred sixty-five (365) days after:

- (1) a convicted person begins serving the person's sentence; and
- (2) the court obtains a report from the department of correction concerning the person's conduct while imprisoned;

the court may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing. The court must incorporate its reasons in the record.

(c) If more than three hundred sixty-five (365) days have elapsed since the convicted person began serving the sentence, the court may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing. The court must incorporate its reasons in the record.

(d) If the court sets a hearing on a petition under this section, the court must give notice to the prosecuting attorney and the prosecuting attorney must give notice to the victim (as defined in IC 35-31.5-2-348) of the crime for which the convicted person is serving the sentence.

(e) The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.2.

(f) The court may deny a request to suspend or reduce a sentence under this section without making written findings and conclusions.

(g) The court is not required to conduct a hearing before reducing or suspending a sentence under this section if:

(1) the prosecuting attorney has filed with the court an agreement of the reduction or suspension of the sentence; and

(2) the convicted person has filed with the court a waiver of the right to be present when the order to reduce or suspend the sentence is considered.

(h) A convicted person may file a petition for sentence modification under this section:

(1) not more than one (1) time in any three hundred sixty-five (365) day period; and

(2) a maximum of two (2) times during any consecutive period of incarceration.

(i) A person may not waive the right to sentence modification under this section as part of a plea agreement. Any purported waiver of the right to a sentence modification under this section in a plea agreement is invalid and unenforceable as against public policy. This subsection does not prohibit the finding of a waiver of the right to a sentence modification for any other reason, including failure to comply with the provisions of this section.

### **35-38-1-18. Payment of fine**

(a) Except as provided in subsection (b), whenever the court imposes a fine, it shall conduct a hearing to determine whether the convicted person is indigent. If the person is not indigent, the court shall order:

(1) that the person pay the entire amount of the fine at the time sentence is pronounced;

(2) that the person pay the entire amount at some later date;

(3) that the person pay specified parts at designated intervals; or

(4) at the request of the person, commitment of the person to the county jail for a period of time set by the court in lieu of a fine. If the court orders a person committed to jail under this subdivision, the person's total confinement for the crime that resulted in the conviction must not exceed the maximum term of imprisonment prescribed for the crime under IC 35-50-2 or IC 35-50-3.

(b) A court may impose a fine and suspend payment of all or part of the fine until the convicted person has completed all or part of the sentence. If the court suspends payment of the fine, the court shall conduct a hearing at the time the fine is due to determine whether the

convicted person is indigent. If the convicted person is not indigent, the court shall order the convicted person to pay the fine:

- (1) at the time the fine is due; or
- (2) in a manner set forth in subsection (a)(2) through (a)(4).

(c) If a court suspends payment of a fine under subsection (b), the court retains jurisdiction over the convicted person until the convicted person has paid the entire amount of the fine.

(d) Upon any default in the payment of the fine:

- (1) an attorney representing the county may bring an action on a debt for the unpaid amount;
- (2) the court may direct that the person, if the person is not indigent, be committed to the county jail and credited toward payment at the rate of twenty dollars (\$20) for each twenty-four (24) hour period the person is confined, until the amount paid plus the amount credited equals the entire amount due; or
- (3) the court may institute contempt proceedings or order the convicted person's wages, salary, and other income garnished in accordance with IC 24-4.5-5-105 to enforce the court's order for payment of the fine.

### **35-38-1-21. Placement in home detention in lieu of department of correction**

(a) A court that receives a petition from the department of correction under IC 35-38-3-5 may, after notice to the prosecuting attorney of the judicial circuit in which the defendant's case originated, hold a hearing for the purpose of determining whether the offender named in the petition may be placed in home detention under IC 35-38-2.5 instead of commitment to the department of correction for the remainder of the offender's minimum sentence.

(b) Notwithstanding IC 35-35-3-3(e), and after a hearing held under this section, a sentencing court may order the offender named in the petition filed under IC 35-38-3-5 to be placed in home detention under IC 35-38-2.5 instead of commitment to the department of correction for the remainder of the offender's minimum sentence.

### **35-38-1-22. Order requiring juvenile to serve misdemeanor sentence in IC 31-31-8 facility**

A court that imposes a sentence for conviction of a misdemeanor upon a person who is less than eighteen (18) years of age may enter an order requiring that the convicted person serve the sentence in a juvenile detention facility established under IC 31-31-8 (or IC 31-6-9-5 before its repeal). However, before an order may be entered under this section, the court must secure the written approval of the judge of the juvenile court allowing the detention of the person in the juvenile detention facility.

### **35-38-1-24. Denial of assignment to community transition program by court**

(a) This section applies to a person if the most serious offense for which the person is committed is a Class C or Class D felony (for a crime committed before July 1, 2014) or a Level 5 or Level 6 felony (for a crime committed after June 30, 2014).

(b) Not later than forty-five (45) days after receiving a notice under IC 11-10-11.5-2, the sentencing court may order the department of correction to retain control over a person until the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term, if the court makes specific findings that support a determination:

- (1) that placement of the person in a community transition program;

- (A) places the person in danger of serious bodily injury or death; or
- (B) represents a substantial threat to the safety of others; or
- (2) of other good cause.

If the court issues an order under this section, the department of correction may not assign a person to a community transition program.

(c) The court may make a determination under this section without a hearing. The court shall consider any written statement presented to the court by a victim of the offender's crime or by an offender under IC 11-10-11.5-4.5. The court in its discretion may consider statements submitted by a victim after the time allowed for the submission of statements under IC 11-10-11.5-4.5.

(d) The court shall make written findings for a determination under this section, whether or not a hearing was held.

(e) Not later than five (5) days after making a determination under this section, the court shall send a copy of the order to the:

- (1) prosecuting attorney where the person's case originated; and
- (2) department of correction.

### **35-38-1-25. Assignment to community transition program**

(a) This section applies to a person if the most serious offense for which the person is committed is murder, a Class A felony, or a Class B felony (for a crime committed before July 1, 2014), or a Level 1, Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014).

(b) A sentencing court may sentence a person or modify the sentence of a person to assign the person to a community transition program for any period that begins after the person's community transition program commencement date (as defined in IC 11-8-1-5.6) and ends when the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term, if the court makes specific findings of fact that support a determination that it is the best interests of justice to make the assignment. The order may include any other condition that the court could impose if the court had placed the person on probation under IC 35-38-2 or in a community corrections program under IC 35-38-2.6.

(c) The court may make a determination under this section without a hearing. The court shall consider any written statement presented to the court by a victim of the offender's crime or by an offender under IC 11-10-11.5-4.5. The court in its discretion may consider the statements submitted by a victim after the time allowed for the submission of statements under IC 11-10-11.5-4.5.

(d) The court shall make written findings for a determination under this section, whether or not a hearing was held.

(e) Not later than five (5) days after making a determination under this section, the court shall send a copy of the order to the:

- (1) prosecuting attorney where the person's case originated; and
- (2) department of correction.

### **35-38-1-27. DNA sample as condition of sentence for offenses in IC 10-13-6-10**

(a) If a court imposes a sentence that does not involve a commitment to the department of correction, the court shall require a person:

- (1) convicted of an offense described in IC 10-13-6-10; and

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6;

to provide a DNA sample as a condition of the sentence.

(b) If a person described in subsection (a) is confined at the time of sentencing, the court shall order the person to provide a DNA sample immediately after sentencing.

(c) If a person described in subsection (a) is not confined at the time of sentencing, the agency supervising the person after sentencing shall establish the date, time and location for the person to provide a DNA sample. However, the supervising agency must require that the DNA sample be provided not more than seven (7) days after sentencing. A supervising agency's failure to obtain a DNA sample not more than seven (7) days after sentencing does not permit a person required to provide a DNA sample to challenge the requirement that the person provide a DNA sample at a later date.

(d) A person's failure to provide a DNA sample is grounds for revocation of the person's probation, community corrections placement, or other conditional release.

### **35-38-1-28. Order of defendant to be fingerprinted**

(a) Except as provided in subsection (c), immediately after sentencing a defendant for an offense, the court shall order the defendant to be fingerprinted by an individual qualified to take fingerprints. The fingerprints may be recorded in any reliable manner, including by the use of digital fingerprinting device.

(b) The court shall order a law enforcement officer to provide the fingerprints to the prosecuting attorney and the state police department, in hard copy or in an electronic format approved by the security and privacy council established by IC 10-13-3-34.

(c) The court is not required to order the defendant to be fingerprinted if the defendant was previously arrested and processed at the county jail.

(d) A clerk, court, law enforcement officer, or prosecuting attorney is immune from civil liability for an error or omission in the transmission of fingerprints, case history data, or sentencing data, unless the error or omission constitutes willful or wanton misconduct or gross negligence.

### **35-38-1-29. Lifetime parole for sexually violent predators**

(a) This section applies only to a sexually violent predator, including a person who is a sexually violent predator by operation of law for committing an offense under IC 35-38-1-7.5(b).

(b) If a court imposes a sentence on a person described in subsection (a) that does not involve a commitment to the department of correction, the court shall order the parole board to place the person on lifetime parole and supervise the person in the same manner that the parole board supervises a sexually violent predator who has been released from imprisonment and placed on lifetime parole under IC 35-50-6-1(e).

(c) If a person described in subsection (b) is also required to be supervised by a court, a probation department, a community corrections program, a community transition program, or another similar program upon the person's release from imprisonment, the parole board may:

(1) supervise the person while the person is being supervised by the other supervising agency; or

(2) permit the other supervising agency to exercise all or part of the parole board's supervisory responsibility during the period in which the other supervising agency is required to supervise the person;

in accordance with IC 35-50-6-1(g).

**35-38-1-30. Court order for defendant to refrain from contact with another person**

A sentencing court may require that, as a condition of a person's executed sentence, the person shall refrain from any direct or indirect contact with an individual.

**35-38-1-31. Abstract of judgment**

(a) If a court imposes on a person convicted of a felony a sentence that involves a commitment to the department of correction, the court shall complete an abstract of judgment in an electronic format approved by the department of correction and the division of state court administration. The abstract of judgment must include, but not limited to:

- (1) each offense the person is convicted of;
- (2) the sentence, including whether the sentence includes a suspended sentence, probation, or direct commitment to community corrections; and
- (3) whether the person is a credit restricted felon.

(b) If a person convicted of a felony is committed to the department of correction by a court as a result of a violation of the terms of probation or other community placement, the court shall state in the abstract of judgment the specific reasons for revocation if probation, parole, or a community corrections placement has been revoked.

**35-38-1-32. Court shall inform defendant regarding habitual traffic violator [effective January 1, 2015]**

(a) A sentencing court shall inform a person who is convicted of or pleads guilty to the following offenses that the offense could qualify them as a habitual violator under IC 9-30-10:

- (1) Reckless homicide resulting from the operation of a motor vehicle.
- (2) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle.
- (3) Failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance.
- (4) Operation of a vehicle while intoxicated resulting in death.
- (5) Operation of a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
  - (A) one hundred (100) milliliters of the blood; or
  - (B) two hundred ten (210) liters of the breath;resulting in death.
- (6) Operation of a vehicle while intoxicated.
- (7) Operation of a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
  - (A) one hundred (100) milliliters of the blood; or
  - (B) two hundred ten (210) liters of the breath.
- (8) Reckless driving.
- (9) Criminal recklessness as a felony involving the operation of a motor vehicle.
- (10) Drag racing or engaging in a speed contest in violation of law.
- (11) Violating IC 9-26-1-1.1.
- (12) Any felony under an Indiana motor vehicle statute.

- (13) Operating a motor vehicle while the person’s license to do so has been suspended or revoked as a result of the person’s conviction of an offense under IC 9-1-4-52 (repealed July 1, 1991), IC 9-24-18-5(b) (repealed July 1, 2000), IC 9-24-19-2, or IC 24-19-3.
- (14) Operating a motor vehicle without ever having obtained a license to do so.

## **Chapter 2.5 Home Detention**

35-38-2.5-1	Applicability of chapter
35-38-2.5-2	“Home” defined
35-38-2.5-2.3	“Constant supervision” defined
35-38-2.5-2.5	“Contract agency” defined
35-38-2.5-3	“Monitoring device” defined
35-38-2.5-4	“Offender” defined
35-38-2.5-4.5	“Security risk” defined
35-38-2.5-4.7	“Violent offender” defined
35-38-2.5-5	Authority to order home detention; credit for time served
35-38-2.5-5.5	Authority to order home detention; offender resides in another county
35-38-2.5-6	Order for home detention
35-38-2.5-7	Offenders not subject to home detention
35-38-2.5-8	Disposition of fees
35-38-2.5-9	Responsibility for expenses
35-38-2.5-10	Determination of violent offenders
35-38-2.5-11	Requirements for ordering electronic surveillance
35-38-2.5-12	Supervision of offender
35-38-2.5-13	Unauthorized absence from home detention

### **35-38-2.5-1. Applicability of chapter**

This chapter applies to adult offenders and to juveniles who have committed a delinquent act that would be a crime if committed by an adult.

### **35-38-2.5-2. “Home” defined**

As used in this chapter, “home” means:

- (1) the interior living area of the temporary or permanent residence of an offender; or
- (2) if the offender’s residence is a multi-family dwelling, the unit in which the offender resides, and not the:
  - (A) halls or common areas outside the unit where the offender resides; or
  - (B) other units, occupied or unoccupied, in the multi-family dwelling.

The term includes a hospital, health care facility, hospice, group home, maternity home, residential treatment facility, and boarding house. The term does not include a public correctional facility.

### **35-38-2.5-2.3. “Constant supervision” defined**

As used in this chapter, “constant supervision” means monitoring a violent offender twenty-four (24) hours each day by means described in section 12(b) of this chapter.

### **35-38-2.5-2.5. “Contract agency” defined**

As used in this chapter, “contract agency” means an agency or a company that contracts with a community corrections program or a probation department to monitor an offender or an alleged offender using a monitoring device.

### **35-38-2.5-3. “Monitoring device” defined**

(a) As used in this chapter, “monitoring device” means an electronic device that:

(1) can record and transmit information twenty-four (24) hours each day regarding an offender’s:

(A) presence or absence from the offender’s home; or

(B) precise location;

(2) is minimally intrusive upon the privacy of the offender or other persons residing in the offender’s home;

(3) with the written consent of the offender and with the written consent of other persons residing in the home at the time an order for home detention is entered, may record or transmit:

(A) a visual image;

(B) an electronic communication or any sound; or

(C) information regarding the offender’s activities while inside the offender’s home; and

(4) can notify a probation department, a community corrections program, or a contract agency if the offender violates the terms of a home detention order.

(b) The term includes any device that can reliably determine the location of an offender and track the locations where the offender has been, including a device that uses a global positioning system satellite service.

(c) The term does not include an unmanned aerial vehicle (as defined in IC 35-31.5-2-342.3).

### **35-38-2.5-4. “Offender” defined**

As used in this chapter, “offender” has the meaning set forth in IC 11-8-1-9.

### **35-38-2.5-4.5. “Security risk” defined**

As used in this chapter, “security risk” means a person who is:

(1) a flight risk; or

(2) a threat to the physical safety of the public.

### **35-38-2.5-4.7. “Violent offender” defined**

As used in this chapter, “violent offender” means a person who is:

(1) convicted of an offense or attempted offense under IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-43-1-1, IC 35-44.1-3-4, IC 35-45-10-5, IC 35-47-5-1(repealed), or IC 35-47.5-5;

- (2) charged with an offense or attempted offense listed in IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-42-4, IC 35-43-1-1, IC 35-44.1-3-4, IC 35-45-10-5, IC 35-46-1-3, IC 35-47-5-1(repealed), or IC 35-47.5-5; or
- (3) a security risk as determined under section 10 of this chapter.

**35-38-2.5-5. Authority to order home detention; credit for time served**

(a) Except as provided in section 5.5 of this chapter, as a condition of probation a court may order an offender confined to the offender's home for a period of home detention lasting at least sixty (60) days.

(b) The period of home detention may be consecutive or nonconsecutive, as the court orders. However, the aggregate time actually spent in home detention must not exceed:

- (1) the minimum term of imprisonment prescribed for a felony under IC 35-50-2; or
- (2) the maximum term of imprisonment prescribed for a misdemeanor under IC 35-50-3;

for the crime committed by the offender.

(c) The court may order supervision of an offender's home detention to be provided by the probation department for the court or by a community corrections program that provides supervision of home detention.

(d) A person's term of confinement on home detention under this chapter is computed on the basis of the actual days the person spends on home detention plus any earned credit time.

(e) A person confined on home detention as a condition of probation accrues one (1) day of credit for each day the person is confined on home detention.

(f) In addition to credit accrued for time served under subsection (e), a person confined on home detention as a condition of probation is entitled to earn credit time under IC 35-50-6-3 and IC 35-50-6-3.1. A person confined on home detention as a condition of probation may not earn educational credit time under IC 35-50-6-3.3.

(g) A person confined on home detention may be deprived of earned credit time if the person violates a condition of probation.

**35-38-2.5-5.5. Authority to order home detention; offender resides in another county**

(a) Except as provided in subsection (b), a court in one (1) county may not place an offender who resides in another county on home detention in the other county unless:

- (1) the offender is eligible for home detention in the county in which the person resides; and
- (2) supervision of the offender will be conducted by the probation department or community corrections program located in the county in which the offender resides.

(b) If the offender described in subsection (a) resides in a county that is adjacent to the county in which the sentencing court is located, the supervision of the offender may be conducted by either the:

- (1) probation department; or
- (2) community corrections program;

located in the county in which the sentencing court is located.

(c) All home detention fees described in section 8 of this chapter shall be collected by the probation department or community corrections program that supervises the offender.

(d) A probation department or community corrections program that supervises an offender on home detention is responsible for the expenses of the supervision.

### **35-38-2.5-6. Order for home detention**

An order for home detention under section 5 of this chapter must include the following:

- (1) A requirement that the offender be confined to the offender's home at all times except when the offender is:
  - (A) working at employment approved by the court or traveling to or from approved employment;
  - (B) unemployed and seeking employment approved for the offender by the court;
  - (C) undergoing medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the offender by the court;
  - (D) attending an educational institution or a program approved for the offender by the court;
  - (E) attending regularly scheduled religious services at a place of worship; or
  - (F) participating in a community work release or community restitution or service program approved for the offender by the court.
- (2) Notice to the offender that violation of the order for home detention may subject the offender to prosecution for the crime of escape under IC 35-44.1-3-4.
- (3) A requirement that the offender abide by a schedule prepared by the probation department, or by a community corrections program ordered to provide supervision of the offender's home detention, specifically setting forth the times when the offender may be absent from the offender's home and the locations the offender is allowed to be during the scheduled absences.
- (4) A requirement that the offender is not to commit another crime during the period of home detention ordered by the court.
- (5) A requirement that the offender obtain approval from the probation department or from a community corrections program ordered to provide supervision of the offender's home detention before the offender changes residence or the schedule described in subdivision (3).
- (6) A requirement that the offender maintain:
  - (A) a working telephone in the offender's home; and
  - (B) if ordered by the court, a monitoring device in the offender's home or on the offender's person, or both.
- (7) A requirement that the offender pay a home detention fee set by the court in addition to the probation user's fee required under IC 35-38-2-1 or IC 31-40. However, the fee set under this subdivision may not exceed the maximum fee specified by the department of correction under IC 11-12-2-12.
- (8) A requirement that the offender abide by other conditions of probation set by the court under IC 35-38-2-2.3.
- (9) A requirement that an offender:
  - (A) who is convicted of an offense described in IC 10-13-6-10;
  - (B) who has not previously provided a DNA sample in accordance with IC 10-13-6; and

(C) whose sentence does not involve a commitment to the department of correction;  
provide a DNA sample.

### **35-38-2.5-7. Offenders not subject to home detention**

(a) A court may not order home detention for an offender unless the offender agrees to abide by all of the requirements set forth in the court's order issued under this chapter.

(b) A court may not order home detention for an offender who is being held under a detainer, warrant, or process issued by a court of another jurisdiction.

(c) A court may not order home detention for an offender who has been convicted of a sex offense under IC 35-42-4 or IC 35-46-1-3 unless:

(1) the home detention is supervised by a court approved home detention program; and

(2) the conditions of home detention:

(A) include twenty-four (24) hour per day supervision of the offender; and

(B) require the use of surveillance equipment and a monitoring device that can transmit information twenty-four (24) hours each day regarding the offender's precise location.

### **35-38-2.5-8. Disposition of fees**

(a) All home detention fees collected by a county based probation department shall be transferred to the county treasurer who shall deposit the fees into the county supplemental adult or juvenile probation services fund. The expenses of administering a home detention program, including the purchase of monitoring devices and other supervision expenses shall be paid from the fund.

(b) All home detention fees collected by the probation department of a city or town court shall be transferred to the fiscal officer of the city or town who shall deposit the fees into the local supplemental adult or juvenile probation services fund. The expenses of administering a home detention program, including the purchase of monitoring devices and other supervision expenses shall be paid from the fund.

(c) All home detention fees collected by a community corrections program, except any funds received by a community corrections program under IC 11-12, shall be deposited into the community corrections home detention fund established for the county under IC 11-12-7-1. The expenses of administering a community corrections home detention program, including the purchase of monitoring devices and other supervision expenses shall be paid from the fund.

### **35-38-2.5-9. Responsibility for expenses**

An offender ordered to undergo home detention under section 5 of this chapter is responsible for providing food, housing, clothing, medical care, and other treatment expenses. The offender is eligible to receive government benefits allowable for persons on probation, parole, or other conditional discharge from confinement.

### **35-38-2.5-10. Determination of violent offenders**

(a) Each probation department or community corrections program shall establish written criteria and procedures for determining whether an offender or alleged offender that the department or program supervises on home detention qualifies as a violent offender.

(b) A probation department or community corrections program shall use the criteria and procedures established under subsection (a) to establish a record keeping system that allows the department or program to quickly determine whether an offender or alleged offender who violates the terms of a home detention order is a violent offender.

(c) A probation department or a community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall provide all law enforcement agencies (including any contract agencies) having jurisdiction in the place where the probation department or a community corrections program is located with a list of offenders and alleged offenders under home detention supervision by the probation department or the community corrections program. The list must include the following information about each offender and alleged offender:

- (1) The offender's name, any known aliases, and the location of the offender's home detention.
- (2) The crime for which the offender was convicted.
- (3) The date the offender's home detention expires.
- (4) The name, address, and telephone number of the offender's supervising probation or community corrections program officer for home detention.
- (5) An indication of whether the offender or alleged offender is a violent offender.

(d) Except as provided in section 6(1) of this chapter, a probation department or community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall, at the beginning of a period of home detention, set the monitoring device and surveillance equipment to minimize the possibility that the offender or alleged offender can enter another residence or structure without a violation.

(e) A probation department or community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall:

- (1) maintain or contract with a contract agency to maintain constant supervision of each offender and alleged offender; and
- (2) have adequate staff available twenty-four (24) hours each day to respond if an offender or alleged offender violates the conditions of a home detention order.

(f) A contract agency that maintains supervision of an offender or alleged offender under subsection (e)(1) shall notify the contracting probation department or community corrections program within one (1) hour if the offender or alleged offender violates the conditions of a home detention order. However,

- (1) a community corrections advisory board, if the offender is serving home detention as part of a community corrections program; or
- (2) a probation department, if the offender or alleged offender is serving home detention as a condition of probation or bail;

may shorten the time in which the contract agency must give notice of a home detention order violation.

(g) A probation department or community corrections program may contract with a contract agency under subsection (e)(1) only if the contract agency can comply with subsection (f).

### **35-38-2.5-11. Requirements for ordering electronic surveillance**

Before entering an order for home detention that requires the use of a monitoring device described in section 3(3) of this chapter the court shall inform the offender and other persons

residing in the home of the nature and extent of electronic surveillance provided by the monitoring device in the home.

### **35-38-2.5-12. Supervision of offender**

(a) A probation department or community corrections program charged by a court with supervision of a violent offender placed on home detention under this chapter shall:

- (1) cause a local law enforcement agency or contract agency described in section 10 of this chapter to be the initial agency contacted upon determining that the violent offender is in violation of a home detention order;
- (2) maintain constant supervision of the violent offender using surveillance equipment and a monitoring device that can transmit information twenty-four (24) hours each day regarding an offender's precise location by either:
  - (A) using the supervising entity's equipment and personnel; or
  - (B) contracting with a contract agency; and
- (3) have adequate staff available twenty-four (24) hours each day to respond if the violent offender violates the conditions of a home detention order.

(b) A contract agency that maintains supervision of a violent offender under subsection (a)(2) shall notify the contracting probation department or community corrections program within one (1) hour if the violent offender violates the conditions of a home detention order. However, a:

- (1) community corrections advisory board, if the violent offender is serving home detention as part of a community corrections program; or
- (2) probation department, if the violent offender is serving home detention as a condition of probation or bail;

may shorten the time in which the contract agency must give notice of a home detention order violation.

(c) A probation department or community corrections program may contract with a contract agency under subsection (a)(2) only if the contract agency can comply with subsection (b).

### **35-38-2.5-13. Unauthorized absence from home detention**

An offender who:

- (1) leaves the offender's home in violation of section 6(1) of this chapter or without documented permission from the supervising entity;
- (2) remains outside the offender's home in violation of section 6(1) of this chapter or without documented permission from the supervising entity; or
- (3) travels to a location not authorized under section 6(1) of this chapter or not authorized in writing by the supervising entity;

commits unauthorized absence from home detention, a Class A misdemeanor.

## **Chapter 2.6 Direct Placement in Community Corrections Program**

35-38-2.6-0.1

Application to sentences imposed before July 1, 2001

35-38-2.6-1	Application of chapter
35-38-2.6-2	“Community corrections program” defined
35-38-2.6-3	Authority of court to order placement
35-38-2.6-4	Suspension of sentence
35-38-2.6-4.2	Criteria and procedures for direct placement supervision
35-38-2.6-4.5	Requirements for home detention as part of a community corrections program
35-38-2.6-5	Violation of terms of placement
35-38-2.6-6	Credit time may be earned
35-38-2.6-7	Probation on completion of program

### **35-38-2.6-0.1. Application to sentences imposed before July 1, 2001**

The amendments made to section 1 of this chapter by P.L.17-2001 shall not be construed to reduce or invalidate a sentence imposed before July 1, 2001.

### **35-38-2.6-1. Application of chapter**

(a) Except as provided in subsection (b), this chapter applies to the sentencing of a person convicted of a felony whenever any part of the sentence may not be suspended under IC 35-50-2-2.1 or IC 35-50-2-2.2.

(b) This chapter does not apply to persons convicted of any of the following:

- (1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.
- (2) Any of the following felonies:
  - (A) Murder (IC 35-42-1-1).
  - (B) Battery (IC 35-42-2-1) with a deadly weapon or battery causing death.
  - (C) Kidnapping (IC 35-42-3-2).
  - (D) Criminal confinement (IC 35-42-3-3) with a deadly weapon.
  - (E) Robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon.
  - (F) Arson (IC 35-43-1-1) for hire resulting in serious bodily injury.
  - (G) Burglary (IC 35-43-2-1) resulting in serious bodily injury.
  - (H) Resisting law enforcement (IC 35-44.1-3-1) with a deadly weapon.
  - (I) Escape (IC 35-44.1-3-4) with a deadly weapon.
  - (J) Rioting (IC 35-45-1-2) with a deadly weapon.
  - (K) Aggravated battery (IC 35-42-2-1.5).
  - (L) Disarming a law enforcement officer (IC 35-44.1-3-2).
- (3) An offense under IC 9-30-5-4.
- (4) An offense under IC 9-30-5-5.

### **35-38-2.6-2. “Community corrections program” defined**

As used in this chapter, “community corrections program” means a program consisting of residential and work release, electronic monitoring, day treatment, or day reporting that is:

- (1) Operated under a community corrections plan of a county and funded at least in part by the state subsidy provided under IC 11-12-2; or
- (2) Operated by or under contract with a court or county.

### **35-38-2.6-3. Authority of court to order placement**

(a) The court may, at the time of sentencing, suspend the sentence and order a person to be placed in a community corrections program as an alternative to commitment to the department of correction. The court may impose reasonable terms on the placement. A court shall require a person:

- (1) convicted of an offense described in IC 10-13-6-10;
- (2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and
- (3) whose sentence does not involve a commitment to the department of correction;

to provide a DNA sample as a term of placement.

(b) Placement in a community corrections program under this chapter is subject to the availability of residential beds or home detention units in a community corrections program.

(c) A person placed under this chapter is responsible for the person's own medical care while in the placement program.

(d) Placement under this chapter is subject to the community corrections program receiving a written presentence report or memorandum from a county probation agency.

### **35-38-2.6-4. Suspension of sentence**

If the court places a person in a community corrections program under this chapter, the court shall suspend the sentence for a fixed period to end not later than the date the suspended sentence expires.

#### **35-38-2.6-4.2. Criteria and procedures for direct placement supervision**

(a) A community corrections program shall establish written criteria and procedures for determining if an offender or alleged offender is eligible for direct placement supervision under this chapter.

(b) The criteria and procedures established under subsection (a) must establish a record keeping system that allows the department or community corrections program to quickly determine if an offender or alleged offender is in violation of the terms of a direct placement order issued under this chapter.

(c) A community corrections program charged by a court with supervision of offenders or alleged offenders ordered to be placed directly in a community corrections program under this chapter shall provide all law enforcement agencies, including any contract agency (as defined in IC 35-38-2.5-2.5), having jurisdiction in the place where a community corrections program is located a list of offenders and alleged offenders under direct placement supervision. The list must include the following information about each offender and alleged offender:

- (1) The offender's name, any known aliases, and the location of the offender's direct placement under this chapter.
- (2) The crime for which the offender was convicted.
- (3) The date the offender's direct placement expires.
- (4) The name, address, and telephone number of the offender's supervising community corrections program officer for direct placement under this chapter.
- (5) An indication of whether the offender is a violent offender.

(d) Except as provided in IC 35-38-2.5-6(1), a community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo direct

placement under this chapter shall, at the beginning of a period of the direct placement, set any monitoring device (as defined in IC 35-38-2.5-3) and surveillance equipment to minimize the possibility that the offender or alleged offender may enter another residence or structure without the detection of a violation.

(e) A community corrections program charged by a court with the supervision of offenders and alleged offenders ordered to undergo direct placement under this chapter shall:

- (1) maintain or contract with a contract agency constant supervision of each offender and alleged offender as described in subsection (f); and
- (2) have adequate staff available twenty-four (24) hours each day to respond if an offender or alleged offender violates the conditions of the direct placement order under this chapter.

A community corrections program may contract with a contract agency under this subsection only if the contract agency is able to comply with subsection (f).

(f) A contract agency:

- (1) that maintains supervision of an offender or alleged offender under subsection (e)(1) shall follow the rules set by the local community corrections advisory board as a part of community corrections program direct placement written criteria and procedures; and
- (2) shall notify the contracting community corrections program within one (1) hour if the offender or alleged offender violates the conditions of the direct placement order. However, if a shorter notification time is required by the community corrections program, a community corrections advisory board must require a contract agency to comply with the shorter notification requirement for a direct placement order violation as if the offender were serving a direct placement order as part of a community corrections program.

(g) A community corrections program or contract agency charged by a court with supervision of an offender or alleged offender placed under direct placement under this chapter shall cause a local law enforcement agency or contract agency described in this section to be the initial agency contacted upon determining that the offender is in violation of a direct placement order.

#### **35-38-2.6-4.5. Requirements for home detention as a part of a community corrections program**

If a court places a person on home detention as part of a community corrections program, the placement must comply with all applicable provisions in IC 35-38-2.5.

#### **35-38-2.6-5. Violation of terms of placement**

If a person who is placed under this chapter violates the terms of the placement, the court may, after a hearing, do any of the following:

- (1) Change the terms of the placement.
- (2) Continue the placement.
- (3) Revoke the placement and commit the person to the department of correction for the remainder of the person's sentence.

### **35-38-2.6-6. Credit time may be earned**

(a) As used in this subsection, “home” means the actual living area of the temporary or permanent residence of a person.

(b) A person confined on home detention in a community corrections program accrues one (1) day of credit time for each day the person is confined on home detention, plus any earned credit time.

(c) In addition to credit accrued for time served under subsection (b), a person who is placed in a community corrections program under this chapter is entitled to earn credit time under IC 35-50-6-3 and IC 35-50-6-3.1. A person confined on home detention as part of a community corrections program may not earn educational credit time under IC 35-50-6-3.3.

(d) A person who is placed in a community corrections program under this chapter may be deprived of earned credit time as provided under rules adopted by the department of correction under IC 4-22-2.

### **35-38-2.6-7. Probation on completion of program**

When a person completes a placement program under this chapter, the court shall place the person on probation.

## **Chapter 9 Sealing and Expunging Conviction Records**

35-38-9-1	Expungement of arrest records
35-38-9-2	Expungement; misdemeanor conviction
35-38-9-3	Expungement; Class D or Level 6 felony conviction
35-38-9-4	Expungement; certain felony convictions (8 years)
35-38-9-5	Expungement; certain felony convictions (10 years)
35-38-9-6	Procedure upon expungement; sections 2 and 3
35-38-9-7	Procedure upon expungement; sections 4 and 5
35-38-9-8	Petition for expungement; duties of prosecutor
35-38-9-9	Expungement hearing and order
35-38-9-10	Unlawful discrimination; use of expunged conviction by court
35-38-9-11	Waiver of expungement in plea agreement prohibited

### **35-38-9-1. Expungement of arrest records [effective March 26, 2014]**

(a) This section applies only to a person who has been arrested if:

(1) the arrest:

(A) did not result in a conviction or juvenile adjudication; or

(B) resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal; and

(2) the person is not currently participating in a pretrial diversion program.

(b) Not earlier than one (1) year after the date of arrest, if the person was not convicted or adjudicated a delinquent child, or the date of the opinion vacating the conviction or adjudication becomes final (unless the prosecuting attorney agrees in writing to an earlier time), the person may petition the court for expungement of the records related to the arrest.

(c) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:

- (1) the date of the arrest;
- (2) the county in which the arrest occurred;
- (3) the law enforcement agency employing the arresting officer, if known;
- (4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;
- (5) the date of the petitioner's birth; and
- (6) the petitioner's Social Security number.

(d) The court shall serve a copy of the petition on the prosecuting attorney.

(e) Upon receipt of a petition for expungement, the court:

- (1) may summarily deny the petition if the petition does not meet the requirements of this section, or if the statements contained in the petition indicate that the petitioner is not entitled to relief; and
- (2) shall grant the petition unless:

(A) the conditions described in subsection (a) have not been met; or

(B) criminal charges are pending against the person.

(f) Whenever the petition of a person under this section is granted, no information concerning the arrest may be placed or retained in any state central depository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency. However, this chapter does not require any change or alteration in:

- (1) any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public;
- (2) the record of any court in which the criminal charges were filed; or
- (3) records that relate to a diversion or deferral program.

(g) If a person whose records are expunged brings an action that might be defended with the contents of the expunged records, the defendant is presumed to have a complete defense to the action. In order for the plaintiff to recover, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence.

### **35-38-9-2. Expungement; misdemeanor conviction [effective March 26, 2014]**

(a) This section applies only to a person convicted of a misdemeanor, including a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) reduced to a misdemeanor.

(b) Not earlier than five (5) years after the date of conviction (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the misdemeanor may petition the sentencing court to expunge all conviction records, including records contained in:

- (1) a court's files;
- (2) the files of the department of correction;
- (3) the files of the bureau of motor vehicles; and

(4) the files of any other person who provided treatment or services to the petitioning person under a court order; that relate to the person's misdemeanor conviction.

(c) A person who files a petition to expunge conviction records shall file the petition in a circuit or superior court in the county of conviction.

(d) If the court finds by a preponderance of the evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a crime within the previous five (5) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (b));

the court shall order the conviction records described in subsection (b) expunged in accordance with section 6 of this chapter.

### **35-38-9-3. Expungement; Class D or Level 6 felony conviction [effective March 26, 2014]**

(a) Except as provided in subsection (b), this section applies only to a person convicted of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014). This section does not apply to a person if the person's Class D felony or Level 6 felony was reduced to a Class A misdemeanor.

(b) This section does not apply to the following:

- (1) An elected official convicted of an offense while serving the official's term or as a candidate for public office.
- (2) A sex or violent offender (as defined in IC 11-8-8-5).
- (3) A person convicted of a felony that resulted in bodily injury to another person.
- (4) A person convicted of perjury (IC 35-44.1-2-1) or official misconduct (IC 35-44.1-1-1)
- (5) A person convicted of an offense described in:
  - (A) IC 35-42-1;
  - (B) IC 35-42-3.5; or
  - (C) IC 35-42-4.

(c) Not earlier than eight (8) years after the date of conviction (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the Class D felony or Level 6 felony may petition a court to expunge all conviction records, including records contained in:

- (1) a court's files;
- (2) the files of the department of correction;
- (3) the files of the bureau of motor vehicles; and
- (4) the files of any other person who provided treatment or services to the petitioning person under a court order;

that relate to the person's Class D or Level 6 felony conviction.

(d) A person who files a petition to expunge conviction records shall file the petition in a circuit or superior court in the county of conviction.

(e) If the court finds by a preponderance of the evidence that:

- (1) the period required by this section has elapsed;

- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a crime within the previous eight (8) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));

the court shall order the conviction records described in subsection (c) expunged in accordance with section 6 of this chapter.

**35-38-9-4. Expungement; certain felony convictions (8 years) [effective March 26, 2014]**

(a) Except as provided in subsection (b), this section applies only to a person convicted of a felony who may not seek expungement of that felony under section 3 of this chapter.

(b) This section does not apply to the following:

- (1) An elected official convicted of an offense while serving the official's term or as a candidate for public office.
- (2) A sex or violent offender (as defined in IC 11-8-8-5).
- (3) A person convicted of a felony that resulted in serious bodily injury to another person.
- (4) A person convicted of official misconduct (IC 35-44.1-1-1).
- (5) A person convicted of an offense described in:
  - (A) IC 35-42-1;
  - (B) IC 35-42-3.5; or
  - (C) IC 35-42-4.

(c) Not earlier than the later of eight (8) years from the date of conviction, or three (3) years from the completion of the person's sentence, unless the prosecuting attorney consents in writing to an earlier period, the person convicted of a felony may petition a court to expunge all conviction records, including records contained in:

- (1) a court's files;
- (2) the files of the department of correction;
- (3) the files of the bureau of motor vehicles; and
- (4) the files of any other person who provided treatment or services to the petitioning person under a court order;

that relate to the person's felony conviction.

(d) A person who files a petition to expunge conviction records shall file the petition in a circuit or superior court in the county of conviction.

(e) If the court finds by a preponderance of the evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as a part of the sentence; and
- (4) the person has not been convicted of a crime within the previous eight (8) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));

the court may order the conviction records described in subsection (c) marked as expunged in accordance with section 7 of this chapter. A person whose records have been ordered marked as

expunged under this section is considered to have had the person's records expunged for all purposes other than the disposition of the records.

**35-38-9-5. Expungement; certain felony convictions (10 years) [effective March 26, 2014]**

(a) Except as provided in subsection (b), the section applies to a person convicted of a felony, including:

- (1) an elected official convicted of an offense while serving the official's term or as a candidate for public office; and
- (2) a person convicted of a felony that resulted in serious bodily injury to another person.

(b) This section does not apply to the following:

- (1) A sex or violent offender (as defined in IC 11-8-8-5).
- (2) A person convicted of official misconduct (IC 35-44.1-1-1).
- (3) A person convicted of an offense described in:
  - (A) IC 35-42-1;
  - (B) IC 35-42-3.5; or
  - (C) IC 35-42-4.

(c) Not earlier than the later of ten (10) years from the date of conviction, or five (5) years from the completion of the person's sentence, unless the prosecuting attorney consents in writing to an earlier period, the person convicted of the felony may petition a court to expunge all conviction records, including records contained in:

- (1) a court's files;
- (2) the files of the department of correction;
- (3) the files of the bureau of motor vehicles; and
- (4) the files of any other person who provided treatment or services to the petitioning person under a court order;

that relate to the person's felony conviction.

(d) A person who files a petition to expunge conviction records shall file the petition in a circuit or superior court in the county of conviction.

(e) If the court finds by a preponderance of the evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs and satisfied any restitution obligation placed on the person as part of the sentence;
- (4) the person has not been convicted of a crime within the previous ten (10) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c)); and
- (5) the prosecuting attorney has consented in writing to the expungement of the person's criminal records;

the court may order the conviction records described in subsection (c) marked as expunged in accordance with section 7 of this chapter. A person whose records have been ordered marked as expunged under this section is considered to have had the person's records expunged for all purposes other than the disposition of the records.

**35-38-9-6. Procedure upon expungement; sections 2 and 3 [effective March 26, 2014]**

(a) If a court orders conviction records expunged under sections 2 or 3 of this chapter, the court shall do the following with respect to the specific records expunged by the court:

(1) Order:

(A) the department of correction;

(B) the bureau of motor vehicles; and

(C) each:

(i) law enforcement agency; and

(ii) other person;

who incarcerated, provided treatment for, or provided other services for the person under an order of the court;

to prohibit the release of the person's records or information in the person's records to anyone without a court order, other than a law enforcement officer acting in the course of the officer's official duty.

(2) Order the central repository for criminal history information maintained by the state police department to seal the person's expunged conviction records. Records sealed under this subdivision may be disclosed only to:

(A) a prosecuting attorney if:

(i) authorized by a court order; and

(ii) needed to carry out the official duties of the prosecuting attorney; and

(B) a defense attorney, if:

(i) authorized by a court order; and

(ii) needed to carry out the professional duties of the defense attorney;

(C) a probation department, if:

(i) authorized by a court order; and

(ii) necessary to prepare a presentence report;

(D) the Federal Bureau of Investigation and the Department of Homeland Security, if disclosure is required to comply with an agreement relating to the sharing of criminal history information;

(E) the:

(i) supreme court;

(ii) members of the state board of law examiners;

(iii) executive director of the state board of law examiners; and

(iv) employees of the state board of law examiners, in accordance with rules adopted by the state board of law examiners;

for the purpose of determining whether an applicant possesses the necessary good moral character for admission to the bar; and

(F) a person required to access expunged records to comply with the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.) or regulations adopted under the Secure and Fair Enforcement for Mortgage Licensing Act.

(3) Notify the clerk of the supreme court to seal any records in the clerk's possession that relate to the conviction.

A probation department may provide an unredacted version of a presentence report disclosed under subdivision (2)(C) to any person authorized by law to receive a presentence report.

(b) Except as provided in subsection (c), if a petition to expunge conviction records is granted under sections 2 through 3 of this chapter, the records of:

- (1) the sentencing court;
- (2) a juvenile court;
- (3) a court of appeals; and
- (4) the supreme court;

concerning the person shall be permanently sealed. However, a petition for expungement granted under sections 2 through 3 of this chapter does not affect an existing or pending driver's license suspension.

(c) If a petition to expunge conviction records is granted under sections 2 through 3 of this chapter with respect to the records of a person who is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals, the court shall:

- (1) redact the opinion or memorandum decision as it appears on the computer gateway administered by the office of technology so that it does not include the petitioner's name (in the same manner that opinions involving juveniles are redacted); and
- (2) provide a redacted copy of the opinion to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement.

The supreme court and court of appeals are not required to destroy or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name.

(d) Notwithstanding subsection (b), a prosecuting attorney may submit a written application to a court that granted an expungement petition under this chapter to gain access to any records that were permanently sealed under subsection (b), if the records are relevant in a new prosecution of the person. If a prosecuting attorney who submits a written application under this subsection shows that the records are relevant for a new prosecution of the person, the court that granted the expungement petition shall:

- (1) order the records to be unsealed; and
- (2) allow the prosecuting attorney who submitted the written application to have access to the records.

If a court orders records to be unsealed under this subsection, the court shall order the records to be permanently resealed at the earliest possible time after the reasons for unsealing the records cease to exist. However, if the records are admitted as evidence against the person in a new prosecution that results in the person's conviction, or are used to enhance a sentence imposed on the person in a new prosecution, the court is not required to reseat the records.

(e) If a person whose conviction records are expunged under sections 2 through 5 of this chapter is required to register as a sex offender based on the commission of a felony which has been expunged:

- (1) the expungement does not affect the operation of the sex offender registry web site, any person's ability to access the person's records, records required to be maintained concerning sex or violent offenders, or any registration requirement imposed on the person; and

(2) the expunged conviction must be clearly marked as expunged on the sex offender registry web site.

(f) Expungement of a crime of domestic violence under section 2 of this chapter does not restore a person's right to possess a firearm. The right of a person convicted of a crime of domestic violence to possess a firearm may be restored only in accordance with IC 35-47-4-7.

**35-38-9-7. Procedure upon expungement; sections 4 and 5 [effective March 26, 2014]**

(a) This section applies only to a person who has filed a petition for expungement under section 4 or 5 of this chapter and whose records have been ordered marked as expunged.

(b) The court records and other public records relating to the arrest, conviction, or sentence of a person whose conviction records have been marked as expunged remain public records. However, the court shall order that the records be clearly and visibly marked or identified as being expunged. A petition for expungement granted under sections 4 through 5 of this chapter does not affect an existing or pending driver's license suspension.

(c) The state police department, the bureau of motor vehicles, and any other law enforcement agency in possession of records that relate to the conviction ordered to be marked as expunged shall add an entry to the person's record of arrest, conviction, or sentence in the criminal history data base stating that the record is marked as expunged.

**35-38-9-8. Petition for expungement; duties of prosecutor [effective March 26, 2014]**

(a) This section applies only to a petition to expunge conviction records under sections 2 through 5 of this chapter. This section does not apply to a petition to expunge arrest records under section 1 of this chapter.

(b) Any person may seek an expungement under sections 2 through 5 of this chapter by filing a verified petition for expungement. The petition must include the following:

(1) The petitioner's full name and any other legal names or aliases by which the petitioner is or has been known.

(2) The petitioner's date of birth.

(3) The petitioner's addresses from the date of the offense to the date of the petition.

(4) A certified copy of petitioner's records from the bureau of motor vehicles.

(5) The petitioner shall affirm that no criminal investigation or charges are pending against the petitioner.

(6) The petitioner shall affirm that the petitioner has not committed another crime within the period required for expungement.

(7) The petitioner shall list all convictions and the date of the conviction, and any appeals from the conviction and the date any appellate opinion was handed down, if applicable.

(8) The petitioner shall affirm that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period.

(9) The petitioner shall describe any other petitions that the petitioner has filed under this chapter.

(10) For a petition filed under section 5 of this chapter, the petitioner shall attach a copy of the prosecuting attorney's written consent.

(11) The petitioner shall provide evidence that the petitioner has paid all fines, fees, and court costs, and satisfied any restitution obligation imposed as a part of the sentence.

(c) The petitioner may include any other information that the petitioner believes may assist the court.

(d) The petitioner shall serve a copy of the petition upon the prosecuting attorney in accordance with the Indiana Rules of Trial Procedure.

(e) The prosecuting attorney shall inform the victim of the victim's rights under IC 35-40-6 by contacting the victim at the victim's last known address.

(f) The prosecuting attorney shall reply to the petition no later than thirty (30) days after receipt.

### **35-38-9-9. Expungement hearing and order [effective March 26, 2014]**

(a) If the prosecuting attorney does not object, the court may grant the petition for expungement without a hearing.

(b) The court may summarily deny a petition, if the petition does not meet the requirements of section 8 of this chapter, or if the statements contained in the petition demonstrate that the petitioner is not entitled to relief.

(c) If the prosecuting attorney objects to the petition, the court shall set the matter for hearing not sooner than sixty (60) days after service of the petition on the prosecuting attorney.

(d) A victim of the offense for which expungement is sought may submit an oral or written statement in support of or in opposition to the petition at the time of the hearing. The petitioner must prove by a preponderance of the evidence that the facts alleged in the verified petition are true.

(e) The grant or denial of a petition is an appealable final order.

(f) If the court grants the petition for expungement, the court shall issue an order of expungement as described in sections 6 and 7 of this chapter.

(g) This subsection applies only to a petition to expunge conviction records filed under sections 2 through 5 of this chapter. This subsection does not apply to a petition to expunge arrest records under section 1 of this chapter. A petitioner may seek to expunge more than one (1) conviction at the same time. The petitioner shall consolidate all convictions that the petitioner wishes to expunge from the same county in one (1) petition. A petitioner who wishes to expunge convictions from separate counties must file a petition in each county in which the conviction was entered.

(h) This subsection applies only to a petition to expunge conviction records filed under sections 2 through 5 of this chapter. This subsection does not apply to a petition to expunge arrest records under section 1 of this chapter. Except as provided in subsections (i) and (j), a petitioner may file a petition for expungement only one (1) time during the petitioner's lifetime. For purposes of this subsection, all petitions for expungement filed in separate counties for offenses committed in those counties count as one (1) petition if they are filed in one (1) three hundred sixty-five (365) day period.

(i) A petitioner whose petition for expungement has been denied, in whole in or part, may file a subsequent petition for expungement with respect to one (1) or more convictions included in the initial expungement petition that were not expunged. However, if the petition was denied due to the court's exercise of its discretion under section 4 or 5 of this chapter, a subsequent petition for expungement may be filed only after the elapse of three (3) years from the date on

which the previous expungement petition was denied. Except as provided in subsection (j), a subsequent petition for expungement may not include any conviction that was not included in the initial expungement petition.

(j) A court may permit a petitioner to file a subsequent petition for expungement with respect to one (1) or more convictions that were not included in the initial expungement petition only if the court finds that:

- (1) the petitioner intended in good faith to comply with subsections (g) and (h);
- (2) the petitioner's failure to comply with subsections (g) and (h) was due to:
  - (A) excusable neglect; or
  - (B) circumstances beyond the petitioner's control; and
- (3) permitting the petitioner to file a subsequent petition for expungement is in the best interests of justice.

**35-38-9-10. Unlawful discrimination; use of the expunged conviction by the court [effective March 26, 2014]**

(a) This section does not apply to a person whom sealed records may be disclosed under section 6(a)(2) of this chapter.

(b) It is unlawful discrimination for any person to:

- (1) suspend;
- (2) expel;
- (3) refuse to employ;
- (4) refuse to admit;
- (5) refuse to grant or renew a license, permit, or certificate necessary to engage in any activity, occupation, or profession; or
- (6) otherwise discriminate against;

any person because of a conviction or arrest record expunged or sealed under this chapter.

(c) The civil rights of a person whose conviction has been expunged shall be restored, including the right to vote, to hold public office, and to serve as a juror.

(d) In any application for employment, a license, or other right or privilege, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests, such as, "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?"

(e) A person whose record is expunged shall be treated as if the person had never been convicted of the offense. However, upon a subsequent arrest or conviction for an unrelated offense, the prior expunged conviction:

- (1) may be considered by the court in determining the sentence imposed for the new offense;
- (2) is a prior unrelated conviction for purposes of:
  - (A) a habitual offender enhancement; and
  - (B) enhancing the new offense based on a prior conviction; and
- (3) may be admitted as evidence in the proceeding for a new offense as if the conviction had not been expunged.

(f) Any person that discriminates against a person described in subsection (b) commits a Class C infraction and may be held in contempt by the court issuing the order of expungement or by any other court of general jurisdiction. Any person may file a written motion of contempt to

bring an alleged violation of this section to the attention of the court. In addition, the person is entitled to injunctive relief.

(g) In any judicial or administrative proceeding alleging negligence or other fault, an order of expungement may be introduced as evidence of the person's exercise of due care in hiring, retaining, licensing, certifying, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the order of expungement was issued.

(h) A conviction that has been expunged under this chapter is not admissible as evidence in an action for negligent hiring, admission, or licensure against a person or entity who relied on the order.

(i) A petition for expungement and an order for expungement are confidential.

### **35-38-9-11. Waiver of expungement in plea agreement prohibited [effective March 26, 2014]**

(a) A person may not waive the right to expungement under this chapter as part of a plea agreement. Any purported waiver of the right to expungement in a plea agreement is invalid and unenforceable as against public policy.

(b) This section does not prohibit the finding of a waiver of the right to expungement based on a failure to comply with the provisions of this chapter.

## **ARTICLE 41 GENERAL SUBSTANTIVE PROVISIONS**

Ch. 1	Jurisdiction
Ch. 2	Basis of Liability
Ch. 3	Defenses Relating to Culpability
Ch. 4	Standard of Proof; Bars to Prosecution
Ch. 5	Offenses of General Applicability

### **Chapter 1 Jurisdiction**

35-41-1-0.1	Application of amendments
35-41-1-1	Jurisdiction

#### **35-41-1-0.1. Application of amendments**

The addition of section 5.5 of this chapter by P.L.80-2008 applies only to persons convicted after June 30, 2008.

#### **35-41-1-1. Jurisdiction**

(a) As used in this section, "Indiana" includes:

(1) the area within the boundaries of the state of Indiana, as set forth in Article 14, Section 1 of the Constitution of the State of Indiana;

(2) the portion of the Ohio River on which Indiana possesses concurrent jurisdiction with the state of Kentucky under Article 14, Section 2 of the Constitution of the State of Indiana;

(3) the portion of the Wabash River on which Indiana possesses concurrent jurisdiction with the state of Illinois under Article 14, Section 2 of the Constitution of the State of Indiana.

(b) A person may be convicted under Indiana law of an offense if:

(1) either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana;

(2) conduct occurring outside Indiana is sufficient under Indiana law to constitute an attempt to commit an offense in Indiana;

(3) conduct occurring outside Indiana is sufficient under Indiana law to constitute a conspiracy to commit an offense in Indiana, and an overt act in furtherance of the conspiracy occurs in Indiana;

(4) conduct occurring in Indiana establishes complicity in the commission of, or an attempt or conspiracy to commit, an offense in another jurisdiction that also is an offense under Indiana law;

(5) the offense consists of the omission to perform a duty imposed by Indiana law with respect to domicile, residence, or a relationship to a person, thing, or transaction in Indiana;

(6) conduct that is an element of the offense or the result of conduct that is an element of the offense, or both, involve the use of the Internet or another computer network (as defined in IC 35-43-2-3) and access to the Internet or other computer network occurs in Indiana; or

(7) conduct:

(A) involves the use of:

(i) the Internet or another computer network (as defined in IC 35-43-2-3); or

(ii) another form of electronic communication;

(B) occurs outside Indiana and the victim of the offense resides in Indiana at the time of the offense; and

(C) is sufficient under Indiana law to constitute an offense in Indiana.

(c) When the offense is homicide, either the death of the victim or bodily impact causing death constitutes a result under subsection (b)(1). If the body of a homicide victim is found in Indiana, it is presumed that the result occurred in Indiana.

(d) If the offense is identity deception or synthetic identity deception, the lack of the victim's consent constitutes conduct that is an element of the offense under subsection (b)(1). If a victim of identity deception or synthetic identity deception resides in Indiana when a person knowingly or intentionally obtains, possesses, transfers, or uses the victim's identifying information, it is presumed that the conduct that is the lack of the victim's consent occurred in Indiana.

## **Chapter 2**

### **Basis of Liability**

35-41-2-1 Voluntary conduct

35-41-2-2 Culpability

35-41-2-3 Liability of a corporation, limited liability company, partnership or unincorporated association

- 35-41-2-4 Aiding, inducing or causing an offense
- 35-41-2-5 Intoxication not a defense

### **35-41-2-1. Voluntary conduct**

(a) A person commits an offense only if he voluntarily engages in conduct in violation of the statute defining the offense. However, a person who omits to perform an act commits an offense only if he has a statutory, common law, or contractual duty to perform the act.

(b) If possession of property constitutes any part of the prohibited conduct, it is a defense that the person who possessed the property was not aware of his possession for a time sufficient for him to have terminated his possession.

### **35-41-2-2. Culpability**

(a) A person engages in conduct “intentionally” if, when he engages in the conduct, it is his conscious objective to do so.

(b) A person engages in conduct “knowingly” if, when he engages in the conduct he is aware of a high probability that he is doing so.

(c) A person engages in conduct “recklessly” if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.

(d) Unless the statute defining the offense provides otherwise, if a kind of culpability is required for the commission of an offense, it is required with respect to every material element of the prohibited conduct.

### **35-41-2-3. Liability of a corporation, limited liability company, partnership or unincorporated association**

(a) A corporation, limited liability company, partnership, or unincorporated association may be prosecuted for any offense; it may be convicted of an offense only if it is proved that the offense was committed by its agent acting within the scope of his authority.

(b) Recovery of a fine, costs (including fees), or forfeiture from a corporation, limited liability company, partnership, or unincorporated association is limited to the property of the corporation, limited liability company, partnership, or unincorporated association.

### **35-41-2-4. Aiding, inducing or causing an offense**

A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person:

- (1) Has not been prosecuted for the offense;
- (2) Has not been convicted of the offense; or
- (3) Has been acquitted of the offense.

### **35-41-2-5. Intoxication not a defense**

Intoxication is not a defense in a prosecution for an offense and may not be taken into consideration in determining the existence of a mental state that is an element of the offense unless the defendant meets the requirements of IC 35-41-3-5.

## **Chapter 3**

### **Defenses Relating to Culpability**

35-41-3-1	Legal authority
35-41-3-2	Use of force to protect person or property
35-41-3-3	Use of force relating to arrest or escape
35-41-3-5	Intoxication
35-41-3-6	Mental disease or defect
35-41-3-7	Mistake of fact
35-41-3-8	Duress
35-41-3-9	Entrapment
35-41-3-10	Abandonment
35-41-3-11	Effects of battery

#### **35-41-3-1. Legal authority**

A person is justified in engaging in conduct otherwise prohibited if he has legal authority to do so.

#### **35-41-3-2. Use of force to protect person or property**

(a) In enacting this section, the general assembly finds and declares that it is the policy of this state to recognize the unique character of a citizen's home and to ensure that a citizen feels secure in his or her own home against unlawful intrusion by another individual or a public servant. By reaffirming the long standing right of a citizen to protect his or her own home against unlawful intrusion, however, the general assembly does not intent to diminish in any way the other robust self defense rights that citizens of this state have always enjoyed. Accordingly, the general assembly also finds and declares that it is the policy of this state that people have a right to defend themselves and third parties from physical harm and crime. The purpose of this section is to provide the citizens of this state with a lawful means of carrying out this policy.

(b) As used in this section, "public servant" means a person described in IC 35-31.5-2-129 or IC 35-31.5-2-185.

(c) A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:

(1) is justified in using deadly force; and

(2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person in this state shall be place in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

(d) A person:

(1) is justified in using reasonable force, including deadly force, against any other person; and

(2) does not have a duty to retreat;

if the person reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle.

(e) With respect to property other than a dwelling, curtilage, or an occupied motor vehicle, a person is justified in using reasonable force against any other person if the person reasonably believes that the force is necessary to immediately prevent or terminate the other person's trespass on or criminal interference with property lawfully in the person's possession, lawfully in possession of a member of the person's immediate family, or belonging to a person whose property the person has authority to protect. However, a person:

- (1) is justified in using deadly force; and
- (2) does not have a duty to retreat;

only if that force is justified under subsection (c).

(f) A person is justified in using reasonable force, including deadly force, against any other person and does not have a duty to retreat if the person reasonably believes that the force is necessary to prevent or stop the other person from hijacking, attempting to hijack, or otherwise seizing or attempting to seize unlawful control of an aircraft in flight. For purposes of this subsection, an aircraft is considered to be in flight while the aircraft is:

- (1) on the ground in Indiana:
  - (A) after the doors of the aircraft are closed for takeoff; and
  - (B) until the aircraft takes off;
- (2) in the airspace above Indiana; or
- (3) on the ground in Indiana:
  - (A) after the aircraft lands; and
  - (B) before the doors of the aircraft are opened after landing.

(g) Notwithstanding subsections (c) through (e), a person is not justified in using force if:

- (1) the person is committing or is escaping after the commission of a crime;
- (2) the person provokes unlawful action by another person with intent to cause bodily injury to the other person; or
- (3) the person has entered into combat with another person or is the initial aggressor unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.

(h) Notwithstanding subsection (f), a person is not justified in using force if the person:

- (1) is committing, or is escaping after the commission of, a crime;
- (2) provokes unlawful action by another person, with intent to cause bodily injury to the other person; or
- (3) continues to combat another person after the other person withdraws from the encounter and communicates the other person's intent to stop hijacking, attempting to hijack, or otherwise seizing or attempting to seize unlawful control of an aircraft in flight.

(i) A person is justified in using reasonable force against a public servant if the person reasonably believes the force is necessary to:

- (1) protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force;
- (2) prevent or terminate the public servant's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle; or
- (3) prevent or terminate the public servant's unlawful trespass on or criminal interference with property lawfully in the person's possession, lawfully in

possession of a member of the person's immediate family, or belonging to a person whose property the person has authority to protect.

(j) Notwithstanding subsection (i), a person is not justified in using force against a public servant if:

- (1) the person is committing or is escaping after the commission of a crime;
- (2) the person provokes action by the public servant with intent to cause bodily injury to the public servant;
- (3) the person has entered into combat with the public servant or is the initial aggressor, unless the person withdraws from the encounter and communicates to the public servant the intent to do so and the public servant nevertheless continues or threatens to continue unlawful action; or
- (4) the person reasonably believes the public servant is:
  - (A) acting lawfully; or
  - (B) engaged in the lawful execution of the public servant's official duties.

(k) A person is not justified in using deadly force against a public servant whom the person knows or reasonably should know is a public servant unless:

- (1) the person reasonably believes that the public servant is:
  - (A) acting unlawfully; or
  - (B) not engaged in the execution of the public servant's official duties; and
- (2) the force is reasonably necessary to prevent serious bodily injury to a person or a third person.

### **35-41-3-3. Use of force relating to arrest or escape**

(a) A person other than a law enforcement officer is justified in using reasonable force against another person to effect an arrest or prevent the other person's escape if:

- (1) A felony has been committed; and
- (2) There is probable cause to believe the other person committed the felony.

However, such a person is not justified in using deadly force unless that force is justified under section 2 of this chapter.

(b) A law enforcement officer is justified in using reasonable force if the officer reasonably believes that the force is necessary to effect a lawful arrest. However, an officer is justified in using deadly force only if the officer:

- (1) Has probable cause to believe that that deadly force is necessary:
  - (A) To prevent the commission of a forcible felony; or
  - (B) To effect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person; and
- (2) Has given a warning, if feasible, to the person against whom the deadly force is to be used.

(c) A law enforcement officer making an arrest under an invalid warrant is justified in using force as if the warrant was valid, unless the officer knows that the warrant is invalid.

(d) A law enforcement officer who has an arrested person in custody is justified in using the same force to prevent the escape of the arrested person from custody that the officer would be justified in using if the officer was arresting that person. However, an officer is justified in using deadly force only if the officer:

- (1) Has probable cause to believe that deadly force is necessary to prevent the escape from custody of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person; and
- (2) Has given a warning, if feasible, to the person against whom the deadly force is to be used.

(e) A guard or other official in a penal facility or a law enforcement officer is justified in using reasonable force, including deadly force, if the officer has probable cause to believe that the force is necessary to prevent the escape of a person who is detained in the penal facility.

(f) Notwithstanding subsection (b), (d), or (e), a law enforcement officer who is a defendant in a criminal prosecution has the same right as a person who is not a law enforcement officer to assert self-defense under IC 35-41-3-2.

### **35-41-3-5. Intoxication**

It is a defense that the person who engaged in the prohibited conduct did so while he was intoxicated, only if the intoxication resulted from the introduction of a substance into his body:

- (1) without his consent; or
- (2) when he did not know that the substance might cause intoxication.

### **35-41-3-6. Mental disease or defect**

(a) A person is not responsible for having engaged in prohibited conduct if, as a result of mental disease or defect, he was unable to appreciate the wrongfulness of the conduct at the time of the offense.

(b) As used in this section, “mental disease or defect” means a severely abnormal mental condition that grossly and demonstrably impairs a person’s perception, but the term does not include an abnormality manifested only by repeated unlawful or antisocial conduct.

### **35-41-3-7. Mistake of fact**

It is a defense that the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact, if the mistake negates the culpability required for commission of the offense.

### **35-41-3-8. Duress**

(a) It is a defense that the person who engaged in the prohibited conduct was compelled to do so by threat of imminent serious bodily injury to himself or another person. With respect to offenses other than felonies, it is a defense that the person who engaged in the prohibited conduct was compelled to do so by force or threat of force. Compulsion under this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.

(b) This section does not apply to a person who:

- (1) Recklessly, knowingly, or intentionally placed himself in a situation in which it was foreseeable that he would be subjected to duress; or
- (2) Committed an offense against the person as defined in IC 35-42.

### **35-41-3-9. Entrapment**

(a) It is a defense that:

(1) The prohibited conduct of the person was the product of a law enforcement officer, or his agent, using persuasion or other means likely to cause the person to engage in the conduct; and

(2) The person was not predisposed to commit the offense.

(b) Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.

### **35-41-3-10. Abandonment**

With respect to a charge under IC 35-41-2-4, IC 35-41-5-1, or IC 35-41-5-2, it is a defense that the person who engaged in the prohibited conduct voluntarily abandoned his effort to commit the underlying crime and voluntarily prevented its commission.

### **35-41-3-11. Effects of battery**

(a) As used in this section, “defendant” refers to an individual charged with any crime involving the use of force against a person.

(b) This section applies under the following circumstances when the defendant in a prosecution raises the issue that the defendant was at the time of the alleged crime suffering from the effects of battery as a result of the past course of conduct of the individual who is the victim of the alleged crime:

(1) The defendant raises the issue that the defendant was not responsible as a result of mental disease or defect under section 6 of this chapter, rendering the defendant unable to appreciate the wrongfulness of the conduct at the time of the crime.

(2) The defendant claims to have used justifiable reasonable force under section 2 of this chapter. The defendant has the burden of going forward to produce evidence from which a trier of fact could find support for the reasonableness of the defendant’s belief in the imminence of the use of unlawful force or, when deadly force is employed, the imminence of serious bodily injury to the defendant or a third person or the commission of a forcible felony.

(c) If a defendant proposes to claim the use of justifiable reasonable force under subsection (b)(2), the defendant must file a written motion of that intent with the trial court no later than:

(1) twenty (20) days if the defendant is charged with a felony; or

(2) ten (10) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date. However, in the interest of justice and upon a showing of good cause, the court may permit the filing to be made at any time before the commencement of the trial.

(d) The introduction of any expert testimony under this section shall be in accordance with the Indiana Rules of Evidence.

**Chapter 4**  
**Standard of Proof;**  
**Bars to Prosecution**

- 35-41-4-0.1 Application of amendments
- 35-41-4-1 Standard of proof; insanity defense
- 35-41-4-2 Periods of limitation
- 35-41-4-3 Prosecution barred for same offense
- 35-41-4-4 Prosecution barred for different offense
- 35-41-4-5 Former prosecution in another jurisdiction
- 35-41-4-6 Invalid or fraudulently procured prosecution

**35-41-4-0.1. Application of amendments**

The following amendments to this chapter apply as follows:

- (1) The amendments made to section 2 of this chapter by P.L.309-1985 do not apply to violations occurring before April 9, 1985.
- (2) The amendments made to section 2 of this chapter by P.L.48-2001 apply to all crimes regardless of whether the crime was committed before, on, or after July 1, 2001.
- (3) The amendments made to section 2(f) of this chapter by P.L.97-2004 do not apply to offenses committed under IC 35-42-4-3(c) and IC 35-42-4-3(d) as those provisions existed before the amendment if IC 35-42-4-3 by P.L.79-1994.

**35-41-4-1. Standard of proof; insanity defense**

(a) A person may be convicted of an offense only if his guilt is proved beyond a reasonable doubt.

(b) Notwithstanding subsection (a), the burden of proof is on the defendant to establish the defense of insanity (IC 35-41-3-6) by a preponderance of the evidence.

**35-41-4-2. Periods of limitation**

(a) Except as otherwise provided in this section, a prosecution for an offense is barred unless it is commenced:

- (1) within five (5) years after the commission of the offense, in the case of a Class B, Class C, or Class D felony (for a crime committed before July 1, 2014) or a Level 3, Level 4, Level 5, or Level 6 felony (for a crime committed after June 30, 2014); or
- (2) within two (2) years after the commission of the offense, in the case of a misdemeanor.

(b) A prosecution for a Class B or Class C felony (for a crime committed before July 1, 2014) or a Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014) that would otherwise be barred under this section may be commenced within one (1) year after the earlier of the date on which the state:

- (1) first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis; or

(2) could have discovered evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis by the exercise of due diligence.

(c) A prosecution for a Class A felony (for a crime committed before July 1, 2014) or a Level 1 felony or Level 2 felony (for a crime committed after June 30, 2014) may be commenced at any time.

(d) A prosecution for murder may be commenced:

(1) at any time; and

(2) regardless of the amount of time that passes between:

(A) the date a person allegedly commits the elements of murder; and

(B) the date the alleged victim of the murder dies.

(e) A prosecution for the following offenses is barred unless commenced before the date that the alleged victim of the offense reaches thirty-one (31) years of age:

(1) IC 35-42-4-3(a) (Child molesting).

(2) IC 35-42-4-5 (Vicarious sexual gratification).

(3) IC 35-42-4-6 (Child solicitation).

(4) IC 35-42-4-7 (Child seduction).

(5) IC 35-46-1-3 (Incest).

(f) A prosecution for forgery of an instrument for payment of money, or for the uttering of a forged instrument, under IC 35-43-5-2, is barred unless it is commenced within five (5) years after the maturity of the instrument.

(g) If a complaint, indictment, or information is dismissed because of an error, defect, insufficiency, or irregularity, a new prosecution may be commenced within ninety (90) days after the dismissal even if the period of limitation has expired at the time of dismissal, or will expire within ninety (90) days after the dismissal.

(h) The period within which a prosecution must be commenced does not include any period in which:

(1) the accused person is not usually and publicly resident in Indiana or so conceals himself or herself that process cannot be served;

(2) the accused person conceals evidence of the offense, and evidence sufficient to charge the person with that offense is unknown to the prosecuting authority and could not have been discovered by that authority by exercise of due diligence; or

(3) the accused person is a person elected or appointed to office under statute or constitution, if the offense charged is theft or conversion of public funds or bribery while in public office.

(i) For purposes of tolling the period of limitation only, a prosecution is considered commenced on the earliest of these dates:

(1) The date of filing of an indictment, information, or complaint before a court having jurisdiction.

(2) The date of issuance of a valid arrest warrant.

(3) The date of arrest of the accused person by a law enforcement officer without a warrant, if the officer has authority to make the arrest.

(j) A prosecution is considered timely commenced for any offense to which the defendant enters a plea of guilty, notwithstanding that the period of limitation has expired.

(k) The following apply to the specified offenses:

(1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-9).

(2) A prosecution for an offense under IC 30-2-10-9(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-10).

(3) A prosecution for an offense under IC 30-2-13-38(f) (misuse of funeral trust or escrow account funds) is barred unless commenced within five (5) years after the date of death of the purchaser (as defined in IC 30-2-13-9).

(l) A prosecution for an offense under IC 23-14-48-9 is barred unless commenced within five (5) years after the earlier of the date on which the state:

(1) first discovers evidence sufficient to charge the offender with the offense; or

(2) could have discovered evidence sufficient to charge the offender with the offense by the exercise of due diligence.

(m) A prosecution for a sex offense listed in IC 11-8-8-4.5 that is committed against a child and is not:

(1) a Class A felony (for a crime committed before July 1, 2014) or a Level 1 felony or Level 2 felony (for a crime committed after June 30, 2014); or

(2) listed in subsection (e);

is barred unless commenced within ten (10) years after the commission of the offense, or within four (4) years after the person ceases to be a dependent of the person alleged to have committed the offense, whichever occurs later.

### **35-41-4-3. Prosecution barred for same offense**

(a) A prosecution is barred if there was a former prosecution of the defendant based on the same facts and for commission of the same offense and if:

(1) the former prosecution resulted in an acquittal or a conviction of the defendant (A conviction of an included offense constitutes an acquittal of the greater offense, even if the conviction is subsequently set aside.); or

(2) The former prosecution was terminated after the jury was impaneled and sworn or, in a trial by the court without a jury, after the first witness was sworn, unless (i) the defendant consented to the termination or waived, by motion to dismiss or otherwise, his right to object to the termination, (ii) it was physically impossible to proceed with the trial in conformity with law; (iii) there was a legal defect in the proceedings that would make any judgment entered upon a verdict reversible as a matter of law; (iv) prejudicial conduct, in or outside the courtroom, made it impossible to proceed with the trial without injustice to either the defendant or the state, (v) the jury was unable to agree on a verdict, or (vi) false statements of a juror on voir dire prevented a fair trial.

(b) If the prosecuting authority brought about any of the circumstances in subdivisions (a)(2)(i) through (a)(2)(vi) of this section, with intent to cause termination of the trial, another prosecution is barred.

#### **35-41-4-4. Prosecution barred for different offense**

(a) A prosecution is barred if all of the following exist:

- (1) There was a former prosecution of the defendant for a different offense or for the same offense based on different facts.
- (2) The former prosecution resulted in an acquittal or a conviction of the defendant or in an improper termination under section 3 of this chapter.
- (3) The instant prosecution is for an offense with which the defendant should have been charged in the former prosecution.

(b) A prosecution is not barred under this section if the offense on which it is based was not consummated when the trial under the former prosecution began.

#### **35-41-4-5. Former prosecution in another jurisdiction**

In a case in which the alleged conduct constitutes an offense within the concurrent jurisdiction of Indiana and another jurisdiction, a former prosecution in any other jurisdiction is a bar to a subsequent prosecution for the same conduct in Indiana, if the former prosecution resulted in an acquittal or a conviction of the defendant or in an improper termination under section 3 of this chapter.

#### **35-41-4-6. Invalid or fraudulently procured prosecution**

A former prosecution is not a bar under section 3, 4, or 5 of this chapter if:

- (1) It was before a court that lacked jurisdiction over the defendant or the offense.
- (2) It was procured by the defendant without the knowledge of the prosecuting authority and with intent to avoid a more severe sentence that might otherwise have been imposed; or
- (3) It resulted in a conviction that was set aside, reversed, vacated, or held invalid in a subsequent proceeding, unless the defendant was adjudged not guilty or ordered discharged.

### **Chapter 5 Offenses of General Applicability**

35-41-5-1	Attempt
35-41-5-2	Conspiracy
35-41-5-3	Multiple convictions

#### **35-41-5-1. Attempt**

(a) A person attempts to commit a crime when, acting with the culpability required for commission of the crime, the person engages in conduct that constitutes a substantial step toward commission of the crime. An attempt to commit a crime is a felony or misdemeanor of the same level or class as the crime attempted. However, an attempt to commit murder is a Level 1 felony.

(b) It is no defense that, because of misapprehension of the circumstances, including the age of the intended victim in a prosecution for attempted child molesting (IC 35-42-4-3), it would have been impossible for the accused person to commit the crime attempted.

(c) For purposes of subsection (a), a person engages in conduct that constitutes a substantial step if the person, with the intent to commit a sex crime against a child or an individual the person believes to be a child:

- (1) communicates with the child or individual the person believes to be a child concerning the sex crime; and
- (2) travels to another location to meet the child or individual the person believes to be a child.

### **35-41-5-2. Conspiracy**

(a) A person conspires to commit a felony when, with intent to commit the felony, the person agrees with another person to commit the felony. A conspiracy to commit a felony is a felony of the same level as the underlying felony. However, a conspiracy to commit murder is:

- (1) a Level 2 felony if the conspiracy does not result in the death of a person; and
- (2) a Level 1 felony if the conspiracy results in the death of another person.

(b) The state must allege and prove that either the person or the person with whom he or she agreed performed an overt act in furtherance of the agreement.

(c) It is no defense that the person with whom the accused person is alleged to have conspired:

- (1) has not been prosecuted;
- (2) has not been convicted;
- (3) has been acquitted;
- (4) has been convicted of a different crime;
- (5) cannot be prosecuted for any reason; or
- (6) lacked the capacity to commit the crime.

### **35-41-5-3. Multiple convictions**

(a) A person may not be convicted of both a conspiracy and an attempt with respect to the same underlying crime.

(b) A person may not be convicted of both a crime and an attempt to commit the same crime.

## **ARTICLE 42 OFFENSES AGAINST THE PERSON**

Ch. 1	Homicide
Ch. 2	Battery and Related Offenses
Ch. 3	Kidnapping and Confinement
Ch. 4	Sex Crimes
Ch. 5	Robbery

### **Chapter 1 Homicide**

35-42-1-0.5	Nonapplicability of certain provisions
35-42-1-1	Murder

- 35-42-1-2 Causing suicide
- 35-42-1-2.5 Assisting suicide
- 35-42-1-3 Voluntary manslaughter
- 35-42-1-4 Involuntary manslaughter
- 35-42-1-5 Reckless homicide
- 35-42-1-6 Feticide

### **35-42-1-0.5. Nonapplicability of certain provisions**

Sections 1, 3 and 4 of this chapter do not apply to an abortion performed in compliance with:

- (1) IC 16-34; or
- (2) IC 35-1-58.5 (before its repeal).

### **35-42-1-1. Murder**

A person who:

- (1) knowingly or intentionally kills another human being;
- (2) kills another human being while committing or attempting to commit arson, burglary, child molesting, consumer product tampering, criminal deviate conduct (under IC 35-42-4-2 before its repeal), kidnapping, rape, robbery, human trafficking, promotion of human trafficking, sexual trafficking of a minor, or carjacking (before its repeal);
- (3) kills another human being while committing or attempting to commit:
  - (A) dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1);
  - (B) dealing in or manufacturing methamphetamine (IC 35-48-4-1.1);
  - (C) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
  - (D) dealing in a schedule IV controlled substance (IC 35-48-4-3); or
  - (E) dealing in a schedule V controlled substance; or
- (4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365);

commits murder, a felony.

### **35-42-1-2. Causing suicide**

A person who intentionally causes another human being, by force, duress, or deception, to commit suicide commits causing suicide, a Level 3 felony.

### **35-42-1-2.5. Assisting suicide**

(a) This section does not apply to the following:

- (1) A licensed health care provider who administers, prescribes, or dispenses medications or procedures to relieve a person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, unless such medications or procedures are intended to cause death.
- (2) The withholding or withdrawing of medical treatment or life-prolonging procedures by a licensed health care provider, including pursuant to IC 16-36-4 (living wills and life-prolonging procedures), IC 16-36-1 (health care consent), or IC 30-5 (power of attorney).

(b) A person who has knowledge that another person intends to commit or attempt to commit suicide and who intentionally does either of the following commits assisting suicide, a Level 5 felony:

- (1) Provides the physical means by which the other person attempts or commits suicide.
- (2) Participates in a physical act by which the other person attempts or commits suicide.

### **35-42-1-3. Voluntary manslaughter**

(a) A person who knowingly or intentionally:

- (1) kills another human being; or
- (2) kills a fetus that has attained viability (as defined in IC 16-18-2-365);

while acting under sudden heat commits voluntary manslaughter, a Level 2 felony.

(b) The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter.

### **35-42-1-4. Involuntary manslaughter**

(a) As used in this section, “fetus” means a fetus that has attained viability (as defined in IC 16-18-2-365).

(b) A person who kills another human being while committing or attempting to commit:

- (1) a Level 5 or Level 6 felony that inherently poses a risk of serious bodily injury;
- (2) a Class A misdemeanor that inherently poses a risk of serious bodily injury; or
- (3) battery;

commits involuntary manslaughter, a Level 5 felony.

(c) A person who kills a fetus while committing or attempting to commit:

- (1) a Level 5 or Level 6 felony that inherently poses a risk of serious bodily injury;
- (2) a Class A misdemeanor that inherently poses a risk of serious bodily injury;
- (3) battery; or
- (4) a violation of IC 9-30-5-1 through 9-30-5-5 (operating a vehicle while intoxicated);

commits involuntary manslaughter, a Level 5 felony.

### **35-42-1-5. Reckless homicide**

A person who recklessly kills another human being commits reckless homicide, a Level 5 felony.

### **35-42-1-6. Feticide**

A person who knowingly or intentionally terminates human pregnancy with an intention other than to produce live birth or to remove a dead fetus commits feticide, a Level 3 felony. This section does not apply to an abortion performed in compliance with:

- (1) IC 16-34; or
- (2) IC 35-1-58.5 (before its repeal).

## Chapter 2 Battery and Related Offenses

35-42-2-1	Battery
35-42-2-1.3	Domestic battery
35-42-2-1.5	Aggravated battery
35-42-2-2	Criminal recklessness
35-42-2-2.5	Hazing
35-42-2-3	Provocation
35-42-2-5	Overpass mischief
35-42-2-9	Strangulation

### **35-42-2-1. Battery**

(a) As used in this section, “public safety official” means:

- (1) a law enforcement officer, including an alcoholic beverage enforcement officer;
- (2) an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71);
- (3) an employee of the department of correction;
- (4) a probation officer;
- (5) a parole officer;
- (6) a community corrections worker;
- (7) a home detention officer;
- (8) a department of child services employee;
- (9) a firefighter;
- (10) an emergency medical services provider; or
- (11) a judicial officer.

(b) Except as provided in subsections (c) through (j), a person who knowingly or intentionally:

- (1) touches another person in a rude, insolent, or angry manner; or
- (2) in a rude, insolent or angry manner places any bodily fluid or waste on another person;

commits battery, a Class B misdemeanor.

(c) The offense described in subsection (b)(1) or (b)(2) is a Class A misdemeanor if it results in bodily injury to any other person.

(d) The offense described in subsection (b)(1) or (b)(2) is a Level 6 felony if one (1) of more of the following apply:

- (1) The offense results in moderate bodily injury to any other person.
- (2) The offense is committed against a public safety official while the official is engaged in the official’s official duty.
- (3) The offense is committed against a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age.
- (4) The offense is committed against a person of any age who has a mental or physical disability and is committed by a person having the care of the person with the mental or physical disability, whether the care is assumed voluntarily or because of a legal obligation.

(5) The offense is committed against an endangered adult (as defined in IC 12-10-3-2).

(6) The offense is committed against a family or household member (as defined in IC 35-31.5-2-128) if the person who committed the offense:

(A) is at least eighteen (18) years of age; and

(B) committed the offense in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense.

(e) The offense described in subsection (b)(2) is a Level 6 felony if the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with hepatitis, tuberculosis, or human immunodeficiency virus.

(f) The offense described in subsection (b)(1) or (b)(2) is a Level 5 felony if one (1) or more of the following apply:

(1) The offense results in serious bodily injury to another person.

(2) The offense is committed with a deadly weapon.

(3) The offense results in bodily injury to a pregnant woman if the person knew of the pregnancy.

(4) The person has a previous conviction for battery against the same victim.

(5) The offense results in bodily injury to one (1) or more of the following:

(A) A public safety official while the official is engaged in the official's official duties.

(B) A person less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.

(C) A person who has a mental or physical disability if the offense is committed by an individual having care of the person with the disability, regardless of whether the care is assumed voluntarily or because of a legal obligation.

(D) An endangered adult (as defined in IC 12-10-3-2).

(g) The offense described in subsection (b)(2) is a Level 5 felony if:

(1) The person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with hepatitis, tuberculosis, or human immunodeficiency virus: and

(2) the person placed the bodily fluid or waste on a public safety official.

(h) The offense described in subsection (b)(1) or (b)(2) is a Level 4 felony if it results in serious bodily injury to an endangered adult (as defined in IC 12-10-3-2).

(i) The offense described in subsection (b)(1) or (b)(2) is a Level 3 felony if it results in serious bodily injury to a person less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.

(j) The offense described in subsection (b)(1) or (b)(2) is a Level 2 felony if it results in the death of one (1) or more of the following:

(1) A person less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.

(2) an endangered adult (as defined in IC 12-10-3-2).

### **35-42-2-1.3. Domestic battery**

(a) A person who knowingly or intentionally touches an individual who:

- (1) is or was a spouse of the other person;
- (2) is or was living as if a spouse of the other person as provided in subsection (c);  
or
- (3) has a child in common with the other person;

in a rude, insolent, or angry manner that results in bodily injury to the person described in subdivision (1), (2), or (3) commits domestic battery, a Class A misdemeanor.

(b) However, the offense under subsection (a) is a Level 6 felony if the person who committed the offense:

(1) has a previous, unrelated conviction:

(A) under this section (or IC 35-42-2-1(a)(2)(E) before that provision was removed by P.L. 188-1999, SECTION 5); or

(B) in any other jurisdiction, including a military court, in which the elements of the crime for which the conviction was entered are substantially similar to the elements described in this section; or

(2) committed the offense in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense.

(c) In considering whether a person is or was living as a spouse of another individual for purposes of subsection (a)(2), the court shall review:

- (1) the duration of the relationship;
- (2) the frequency of contact;
- (3) the financial interdependence;
- (4) whether the two (2) individuals are raising children together;
- (5) whether the two (2) individuals have engaged in tasks directed toward maintaining a common household; and
- (6) other factors the court considers relevant.

### **35-42-2-1.5. Aggravated battery**

A person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death or causes:

- (1) serious permanent disfigurement;
- (2) protracted loss or impairment of the function of a bodily member or organ; or
- (3) the loss of a fetus;

commits aggravated battery, a Level 3 felony. However, the offense is a Level 1 felony if it results in the death of a child less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age.

### **35-42-2-2. Criminal recklessness**

(a) A person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person commits criminal recklessness. Except as provided in subsection (b), criminal recklessness is a Class B misdemeanor.

(b) The offense of criminal recklessness as defined in subsection (a) is:

(1) A Level 6 felony if:

(A) it is committed while armed with a deadly weapon; or

(B) the person committed aggressive driving (as defined in IC 9-21-8-55) that results in serious bodily injury to another person; or

(2) A Level 5 felony if:

(A) it is committed by shooting a firearm into an inhabited dwelling or other building or place where people are likely to gather; or

(B) the person committed aggressive driving (as defined in IC 9-21-8-55) that results in the death of another person.

### **35-42-2-2.5. Hazing**

(a) As used in this section, “hazing” means forcing or requiring another person:

(1) with or without the consent of the other person; and

(2) as a condition of association with a group or organization;

to perform an act that creates a substantial risk of bodily injury.

(b) A person who knowingly or intentionally performs hazing commits a Class B misdemeanor. However, the offense is a Level 6 felony if it results in serious bodily injury to another person, and a Level 5 felony if it is committed by means of a deadly weapon.

(c) A person, other than a person who has committed an offense under this section or a delinquent act that would be an offense under this section if the violator were an adult, who:

(1) makes a report of hazing in good faith;

(2) participates in good faith in a judicial proceeding resulting from a report of hazing;

(3) employs a reporting or participating person described in subdivision (1) or (2); or

(4) supervises a reporting or participating person described in subdivision (1) or (2);

is not liable for civil damages or criminal penalties that might otherwise be imposed because of the report or participation.

(d) A person described in subsection (c)(1) or (c)(2) is presumed to act in good faith.

(e) A person described in subsection (c)(1) or (c)(2) may not be treated as acting in bad faith solely because the person did not have probable cause to believe that a person committed:

(1) an offense under this section; or

(2) a delinquent act that would be an offense under this section if the offender were an adult.

### **35-42-2-3. Provocation**

A person who recklessly, knowingly, or intentionally engages in conduct that is likely to provoke a reasonable person to commit battery commits provocation, a Class C infraction.

### **35-42-2-5. Overpass mischief**

(a) As used in this section, “overpass” means a bridge or other structure designed to carry vehicular or pedestrian traffic over any roadway, railroad track, or waterway.

(b) A person who knowingly, intentionally, or recklessly:

(1) drops, causes to drop, or throws an object from an overpass; or

(2) with the 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 Level 5 felony. However, the offense is a Level 4 felony if it results in serious bodily injury to another person.

### **35-42-2-9. Strangulation**

- (a) This section does not apply to a medical procedure.
- (b) A person who, in a rude, angry or insolent manner, knowingly or intentionally:
  - (1) applies pressure to the throat or neck of another person; or
  - (2) obstructs the nose or mouth of another person;

in a manner that impedes the normal breathing or the blood circulation of the other person commits strangulation, a Level 6 felony.

## **Chapter 3 Kidnapping, Confinement and Interference With Custody**

35-42-3-1	Confine defined
35-42-3-2	Kidnapping
35-42-3-3	Criminal Confinement
35-42-3-4	Interference With Custody

### **35-42-3-1. Confine defined**

As used in this chapter, “confine” means to substantially interfere with the liberty of a person.

### **35-42-3-2. Kidnapping**

(a) A person who knowingly or intentionally removes another person, by fraud, enticement, force, or threat of force, from one place to another commits kidnapping. Except as provided in subsection (b), the offense of kidnapping is a Level 6 felony.

(b) The offense described in subsection (a) is:

- (1) a Level 5 felony if:
  - (A) the person removed is less than fourteen (14) years of age and is not the removing person’s child.
  - (B) it is committed by using a vehicle; or
  - (C) it results in bodily injury to a person other than the removing person;
- (2) a Level 3 felony if it:
  - (A) is committed while armed with a deadly weapon;
  - (B) results in serious bodily injury to a person other than the removing person; or
  - (C) is committed on an aircraft; and
- (3) a Level 2 felony if it is committed:
  - (A) with intent to obtain ransom;
  - (B) while hijacking a vehicle;
  - (C) with intent to obtain the release, or intent to aid in the escape, of any person from lawful incarceration; or
  - (D) with intent to use the person removed as a shield or hostage.

**35-42-3-3. Criminal confinement**

(a) A person who knowingly or intentionally confines another person without the other person's consent commits criminal confinement. Except as provided in subsection (b), the offense of criminal confinement is a Level 6 felony.

(b) The offense of criminal confinement defined in subsection (a) is:

(1) a Level 5 felony if:

(A) the person confined is less than fourteen (14) years of age and is not the confining person's child;

(B) it is committed by using a vehicle; or

(C) it results in bodily injury to a person other than the confining person;

(2) a Level 3 felony if it:

(A) is committed while armed with a deadly weapon;

(B) results in serious bodily injury to a person other than the confining person; or

(C) is committed on an aircraft; and

(3) a Level 2 felony if it is committed:

(A) with intent to obtain ransom;

(B) while hijacking a vehicle;

(C) with intent to obtain the release, or intent to aid in the escape, of any person from lawful incarceration; or

(D) with intent to use the person confined as a shield or hostage.

**35-42-3-4. Interference with custody**

(a) A person who, with the intent to deprive another person of child custody rights, knowingly or intentionally:

(1) removes another person who is less than eighteen (18) years of age to a place outside Indiana when the removal violates a child custody order of a court; or

(2) violates a child custody order of a court by failing to return a person who is less than eighteen (18) years of age to Indiana;

commits interference with custody, a Level 6 felony. However, the offense is a Level 5 felony if the other person is less than fourteen (14) years of age and is not the person's child, and a Level 4 felony if the offense is committed while armed with a deadly weapon or results in serious bodily injury to another person.

(b) A person who with the intent to deprive another person of custody or parenting time rights:

(1) knowingly or intentionally takes;

(2) knowingly or intentionally detains; or

(3) knowingly or intentionally conceals;

a person who is less than eighteen (18) years of age commits interference with custody, a Class C misdemeanor. However, the offense is a Class B misdemeanor if the taking, concealment, or detention is in violation of a court order.

(c) With respect to a violation of this section, a court may consider as a mitigating circumstance the accused person's return of the other person in accordance with the child custody order or parenting time order within seven (7) days after the removal.

(d) The offenses described in this section continue as long as the child is concealed or detained or both.

(e) If a person is convicted of an offense under this section, a court may impose against the defendant reasonable costs incurred by a parent or guardian of the child because of the taking, detention, or concealment of the child.

(f) It is a defense to a prosecution under this section that the accused person:

(1) was threatened; or

(2) reasonably believed the child was threatened;

which resulted in the child not being timely returned to the other parent resulting in a violation of a child custody order.

### **Chapter 3.5 Human and Sexual Trafficking**

35-42-3.5-1 Promotion of human trafficking; promotion of human trafficking of minor; sexual trafficking of minor; human trafficking

35-42-3.5-2 Restitution

35-42-3.5-3 Civil actions

35-42-3.5-4 Victim rights

#### **35-42-3.5-1. Promotion of human trafficking; promotion of human trafficking of minor; sexual trafficking of minor; human trafficking**

(a) A person who, by force, threat of force, or fraud, knowingly or intentionally recruits, harbors, or transports another person:

(1) to engage the other person in:

(A) forced labor; or

(B) involuntary servitude; or

(2) to force the other person into:

(A) marriage;

(B) prostitution; or

(C) participating in sexual conduct (as defined by IC 35-42-4-4);

commits promotion of human trafficking, a Level 4 felony.

(b) A person who knowingly or intentionally recruits, harbors, or transports a child less than:

(1) eighteen (18) years of age with the intent of:

(A) engaging the child in:

(i) forced labor; or

(ii) involuntary servitude; or

(B) inducing or causing the child to:

(i) engage in prostitution; or

(ii) engage in a performance or incident that includes sexual conduct in violation of IC 35-42-4-4(b) (child exploitation); or

(2) sixteen (16) years of age with the intent of inducing or causing the child to participate in sexual conduct (as defined by IC 35-42-4-4);

commits promotion of human trafficking of a minor, a Level 3 felony. Except as provided in subsection (e), it is not a defense to a prosecution under this subsection that the child consented to engage in prostitution or to participate in sexual conduct.

(c) A person who is at least eighteen (18) years of age who knowingly or intentionally sells or transfers custody of a child less than eighteen (18) years of age for the purpose of prostitution or participating in sexual conduct (as defined by IC 35-42-4-4) commits sexual trafficking of a minor, a Level 2 felony.

(d) A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into:

- (1) forced labor;
- (2) involuntary servitude; or
- (3) prostitution;

commits human trafficking, a Level 5 felony.

(e) It is a defense to a prosecution under subsection (b)(2) if:

- (1) the child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person is less than eighteen (18) years of age; or
- (2) all of the following apply:

(A) The person is not more than four (4) years older than the victim.

(B) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term “ongoing personal relationship” does not include a family relationship.

(C) The crime:

(i) was not committed by a person who is at least twenty-one (21) years of age;

(ii) was not committed by using or threatening to use deadly force;

(iii) was not committed while armed with a deadly weapon;

(iv) did not result in serious bodily injury;

(v) was not facilitated by furnishing the victim, without the victim’s knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge; and

(vi) was not committed by a person having a position of authority or substantial influence over the victim.

(D) The person has not committed another sex offense (as defined in IC 11-8-8-5.2), including a delinquent act that would be a sex offense if committed by an adult, against any other person.

### **35-42-3.5-2. Restitution**

In addition to any sentence or fine imposed for a conviction of an offense under section 1 of this chapter, the court shall order the person convicted to make restitution to the victim of the crime under IC 35-50-5-3.

### **35-42-3.5-3. Civil actions**

(a) If a person is convicted of an offense under section 1 of this chapter, the victim of the offense:

(1) has a civil cause of action against the person convicted of the offense; and

(2) may recover the following from the person in the civil action:

(A) Actual damages.

- (B) Court costs (including fees).
- (C) Punitive damages, when determined to be appropriate by the court.
- (D) Reasonable attorney's fees.

(b) An action under this section must be brought not more than two (2) years after the date the person is convicted of the offense under section 1 of this chapter.

**35-42-3.5-4. Victim rights**

- (a) An alleged victim of an offense under section 1 of this chapter:
  - (1) may not be detained in a facility that is inappropriate to the victim's status as a crime victim;
  - (2) may not be jailed, fined, or otherwise penalized due to having been the victim of the offense; and
  - (3) shall be provided protection if the victim's safety is at risk or if there is danger of additional harm by recapture of the victim by the person who allegedly committed the offense, including:
    - (A) taking measures to protect the alleged victim and the victim's family members from intimidation and threats of reprisals and reprisals from the person who allegedly committed the offense or the person's agent; and
    - (B) ensuring that the names and identifying information of the alleged victim and the victim's family members are not disclosed to the public.

This subsection shall be administered by law enforcement agencies and the Indiana criminal justice institute as appropriate.

(b) Not more than fifteen (15) days after the date a law enforcement agency first encounters an alleged victim of an offense under section 1 of this chapter, the law enforcement agency shall provide the alleged victim with a completed Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (LEA Declaration, Form I-914 Supplement B) in accordance with 8 CFR 214.11(f)(1). However, if the law enforcement agency finds that the grant of an LEA Declaration is not appropriate for the alleged victim, the law enforcement agency shall, not more than fifteen (15) days after the date the agency makes the finding, provide the alleged victim with a letter explaining the grounds for the denial of the LEA Declaration. After receiving a denial letter, the alleged victim may submit additional evidence to the law enforcement agency. If the alleged victim submits additional evidence, the law enforcement agency shall reconsider the denial of the LEA Declaration not more than seven (7) days after the date the agency receives the additional evidence.

**Chapter 4  
Sex Crimes**

- 35-42-4-1 Rape
- 35-42-4-3 Child molesting
- 35-42-4-4 Child exploitation; child pornography
- 35-42-4-5 Vicarious sexual gratification; performing sexual conduct in the presence of a minor
- 35-42-4-6 Child solicitation
- 35-42-4-7 Child seduction
- 35-42-4-8 Sexual battery

- 35-42-4-9 Sexual misconduct with a minor
- 35-42-4-10 Unlawful employment near children by sexual predator
- 35-42-4-11 Sex offender registry offense
- 35-42-4-12 Sex offender internet offense
- 35-42-4-13 Inappropriate communication with child

### **35-42-4-1. Rape**

(a) Except as provided in subsection (b), a person who knowingly or intentionally has sexual intercourse with another person or knowingly or intentionally causes another person to perform or submit to other sexual conduct (as defined in IC 35-31.5-2-221.5) when:

- (1) the other person is compelled by force or imminent threat of force;
- (2) the other person is unaware that the sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) is occurring; or
- (3) the other person is so mentally disabled or deficient that consent to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) cannot be given;

commits rape, a Level 3 felony.

(b) An offense described in subsection (a) is a Level 1 felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon;
- (3) it results in serious bodily injury to a person other than a defendant; or
- (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

### **35-42-4-3. Child Molesting**

(a) A person who, with a child under fourteen (14) years of age, knowingly or intentionally performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) commits child molesting, a Level 3 felony. However, the offense is a Level 1 felony if:

- (1) it is committed by a person at least twenty-one (21) years of age;
- (2) it is committed by using or threatening the use of deadly force or while armed with a deadly weapon;
- (3) it results in serious bodily injury; or
- (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Level 4 felony. However, the offense is a Level 2 felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) A person may be convicted of attempted child molesting of an individual at least fourteen (14) years of age if the person believed the individual to be a child under fourteen (14) years of age at the time the person attempted to commit the offense.

(d) It is a defense to a prosecution under this section that the accused person reasonably believed that the child was sixteen (16) years of age or older at the time of the conduct, unless:

(1) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon;

(2) the offense results in serious bodily injury; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

#### **35-42-4-4. Child exploitation; child pornography**

(a) The following definitions apply throughout this section:

(1) "Disseminate" means to transfer possession for free or for a consideration.

(2) "Matter" has the same meaning as in IC 35-49-1-3.

(3) "Performance" has the same meaning as in IC 35-49-1-7.

(4) "Sexual conduct" means sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who:

(1) knowingly or intentionally manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitalized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) knowingly or intentionally disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age;

(3) knowingly or intentionally makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age; or

(4) with the intent to satisfy or arouse the sexual desires of any person:

(A) knowingly or intentionally:

(i) manages;

(ii) produces;

- (iii) sponsors;
- (iv) presents;
- (v) exhibits;
- (vi) photographs;
- (vii) films;
- (viii) videotapes; or
- (ix) creates a digitized image of:

any performance or incident that includes the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age;

(B) knowingly or intentionally:

- (i) disseminates to another person;
- (ii) exhibits to another person;
- (iii) offers to disseminate or exhibit to another person; or
- (iv) sends or brings into Indiana for dissemination or exhibition:

matter that depicts the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age; or

(C) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age;

commits child exploitation, a Level 5 felony.

(c) A person who knowingly or intentionally possesses:

- (1) a picture;
- (2) a drawing;
- (3) a photograph;
- (4) a negative image;
- (5) undeveloped film;
- (6) a motion picture;
- (7) a videotape;
- (8) a digitalized image; or
- (9) any pictorial representation;

that depicts or describes sexual conduct by a child who the person knows is less than eighteen (18) years of age or who appears to be less than eighteen (18) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Level 6 felony.

(d) Subsections (b) and (c) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials is for legitimate scientific or educational purposes.

(e) It is a defense to a prosecution under this section that:

- (1) the person is a school employee; and

- (2) the acts constituting the elements of the offense were performed solely within the scope of the person's employment as a school employee.
- (f) Except as provided in subsection (g), it is a defense to a prosecution under subsection (b) or (c) if all of the following apply:
- (1) A cellular telephone, another wireless or cellular communications device, or social networking web site was used to possess, produce, or disseminate the image.
  - (2) The defendant is not more than four (4) years older or younger than the person who is depicted in the image or who received the image.
  - (3) The relationship between the defendant and the person who received the image or who is depicted in the image was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.
  - (4) The crime was committed by a person less than twenty-two (22) years of age.
  - (5) The person receiving the image or who is depicted in the image acquiesced in the defendant's conduct.
- (g) The defense to a prosecution described in subsection (f) does not apply if:
- (1) the person who receives the image disseminates it to a person other than the person:
    - (A) who sent the image; or
    - (B) who is depicted in the image;
  - (2) the image is of a person other than the person who sent the image or received the image; or
  - (3) the dissemination of the image violates:
    - (A) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
    - (B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
    - (C) a workplace violence restraining order issued under IC 34-26-6;
    - (D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders a person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
    - (E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
    - (F) a no contact order issued as a condition of probation;
    - (G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
    - (H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;

(I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;

(J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);

(K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:

(i) tribe;

(ii) band;

(iii) pueblo;

(iv) nation; or

(v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

(L) an order issued under IC 35-33-8-3.2; or

(M) an order issued under IC 35-38-1-30.

(h) It is a defense to a prosecution under this section that:

(1) the person was less than eighteen (18) years of age at the time the alleged offense was committed; and

(2) the circumstances described in IC 35-45-4-6(a)(2) through IC 35-45-4-6(a)(4) apply.

(i) A person is entitled to present the defense described in subsection (h) in a pretrial hearing. If a person proves by a preponderance of the evidence in a pretrial hearing that the defense in subsection (h) applies, the court shall dismiss the charges under this section with prejudice.

### **35-42-4-5. Vicarious sexual gratification; performing sexual conduct in the presence of a minor**

(a) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to touch or fondle himself or herself or another child under the age of sixteen (16) with the intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Level 5 felony. However, the offense is:

(1) a Level 4 felony if a child involved in the offense is under the age of fourteen (14); and

(2) a Level 3 felony if:

(A) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon;

(B) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing

that the victim was furnished with the drug or controlled substance without the victim's knowledge; or

(C) the commission of the offense results in serious bodily injury.

(b) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to:

- (1) engage in sexual intercourse with another child under sixteen (16) years of age;
- (2) engage in sexual conduct with an animal other than a human being; or
- (3) engage in other sexual conduct (as defined in IC 35-31.5-2-221.5) with another person;

with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Level 4 felony. However, the offense is a Level 3 felony if any child involved in the offense is less than fourteen (14) years of age, and the offense is a Level 2 felony if the offense is committed by using or threatening the use of deadly force, if the offense is committed while armed with a deadly weapon, if the offense results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) A person eighteen (18) years of age or older who knowingly or intentionally:

- (1) engages in sexual intercourse;
- (2) engages in other sexual conduct (as defined in IC 35-31.5-2-221.5); or
- (3) touches or fondles the person's own body;

in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits performing sexual conduct in the presence of a minor, a Level 6 felony.

### **35-42-4-6. Child solicitation**

(a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (1) in person;
- (2) by telephone or wireless device;
- (3) in writing;
- (4) by using a computer network (as defined in IC 35-43-2-3(a));
- (5) by advertisement of any kind; or
- (6) by any other means;

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person, commits child solicitation, a Level 5 felony. However, the offense is a Level 4 felony if the person solicits the child or individual the person believes to be a child under fourteen (14) years of age to engage in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) and:

- (1) commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and travels to meet the child or individual the person believes to be a child; or
- (2) has a previous unrelated conviction for committing an offense under this section.

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person, commits child solicitation, a Level 5 felony. However, the offense is a Level 4 felony if the person solicits the child or individual the person believes to be a child at least fourteen (14) but less than sixteen (16) years of age to engage in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5), and:

- (1) commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and travels to meet the child or individual the person believes to be a child; or
- (2) has a previous unrelated conviction for committing an offense under this section.

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

### **35-42-4-7. Child seduction**

- (a) As used in this section, “adoptive parent” has the meaning set forth in IC 31-9-2-6.
- (b) As used in this section, “adoptive grandparent” means the parent of an adoptive parent.
- (c) As used in this section, “charter school” has the meaning set forth in IC 20-18-2-2.5.
- (d) As used in this section, “child care worker” means a person who:
  - (1) provides care, supervision, or instruction to a child within the scope of the person’s employment in a shelter care facility;
  - (2) is employed by a:
    - (A) school corporation;
    - (B) charter school;
    - (C) nonpublic school; or
    - (D) special education cooperative;attended by a child who is the victim of a crime under this chapter; or
  - (3) is:
    - (A) affiliated with a:
      - (i) school corporation;
      - (ii) charter school;
      - (iii) nonpublic school; or
      - (iv) special education cooperative;attended by a child who is the victim of a crime under this chapter, regardless of how or whether the person is compensated;

- (B) in a position of trust in relation to a child who attends the school or cooperative;
- (C) engaged in the provision of care or supervision to a child who attends the school or cooperative; and
- (D) at least four (4) years older than the child who is the victim of a crime under this chapter.

The term does not include a student who attends the school or cooperative.

(e) As used in this section, “custodian” means any person who resides with a child and is responsible for the child’s welfare.

(f) As used in this section, “mental health professional” means:

- (1) a mental health counselor licensed under IC 25-23.6-8.5;
- (2) a psychologist; or
- (3) a psychiatrist.

(g) As used in this section, “military recruiter” means a member of the armed forces of the United States (as defined in IC 20-33-10-2) or the Indiana National Guard whose primary job function, classification, or specialty is recruiting individuals to enlist with the armed forces of the United States or the Indiana National Guard.

(h) As used in this section, “nonpublic school” has the meaning set forth in IC 20-18-2-12.

(i) For purposes of this section, a person has a “professional relationship” with a child if:

(1) the person:

- (A) has a license issued by the state or a political subdivision on the basis of the person’s training and experience that authorizes the person to carry out a particular occupation; or
- (B) is employed in a position in which counseling, supervising, instructing, or recruiting children forms a significant part of the employment; and

(2) the person has a relationship with a child that is based on the person’s employment or licensed status as described in subdivision (1).

The term includes a relationship between a child and a mental health professional or military recruiter. The term does not include a coworker relationship between a child and a person described in subdivision (1)(B).

(j) As used in this section, “school corporation” has the meaning set forth in IC 20-18-2-16.

(k) As used in this section, “special education cooperative” has the meaning set forth in IC 20-35-5-1.

(l) As used in this section, “stepparent” means an individual who is married to a child’s custodial or noncustodial parent and is not the child’s adoptive parent.

(m) If a person who:

- (1) is at least eighteen (18) years of age; and
- (2) is the:

- (A) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or
- (B) child care worker for

a child at least sixteen (16) years of age but less than eighteen (18) years of age;

engages with the child in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult, the person commits child seduction.

(n) A person who:

- (1) has or had a professional relationship with a child at least sixteen (16) years of age but less than eighteen (18) years of age whom the person knows to be at least sixteen (16) years of age but less than eighteen (18) years of age;
- (2) may exert undue influence on the child because of the person's current or previous professional relationship with the child; and
- (3) uses or exerts the person's professional relationship to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching with the child with the intent to arouse or satisfy the sexual desires of the child or the person:

commits child seduction.

(o) A law enforcement officer who:

- (1) is at least five (5) years older than a child who is:
  - (A) at least sixteen (16) years of age; and
  - (B) less than eighteen (18) years of age;
- (2) has contact with the child while acting within the scope of the law enforcement officer's official duties with respect to the child; and
- (3) uses or exerts the law enforcement officer's professional relationship with the child to engage with the child in:
  - (A) sexual intercourse;
  - (B) other sexual conduct (as defined in IC 35-31.5-2-221.5); or
  - (C) any fondling or touching with the child with the intent to arouse or satisfy the sexual desires of the child or the law enforcement officer;

commits child seduction.

(p) In determining whether a person used or exerted the person's professional relationship with the child to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching with the intent to arouse or satisfy the sexual desires of the child or the person under this section, the trier of fact may consider one (1) or more of the following:

- (1) The age difference between the person and the child.
- (2) Whether the person was in a position of trust with respect to the child.
- (3) Whether the person's conduct with the child violated any ethical obligations of the person's profession or occupation.
- (4) The authority that the person had over the child.
- (5) Whether the person exploited any particular vulnerability of the child.
- (6) Any other evidence relevant to the person's ability to exert undue influence over the child.

(q) Child seduction under this section is:

- (1) a Level 6 felony if the person or law enforcement officer engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of:
  - (A) the child; or
  - (B) the person or law enforcement officer; and

(2) a Level 5 felony if the person or law enforcement officer engaged in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the child.

#### **35-42-4-8. Sexual battery**

(a) A person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person:

(1) touches another person when that person is:

(A) compelled to submit to the touching by force or the imminent threat of force; or

(B) so mentally disabled or deficient that consent to the touching cannot be given; or

(2) touches another person's genitals, pubic area, buttocks, or female breast when that person is unaware that the touching is occurring;

commits sexual battery, a Level 6 felony.

(b) An offense described in subsection (a) is a Level 4 felony if:

(1) it is committed by using or threatening the use of deadly force;

(2) it is committed while armed with a deadly weapon; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

#### **35-42-4-9. Sexual misconduct with a minor**

(a) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) commits sexual misconduct with a minor, a Level 5 felony. However, the offense is:

(1) a Level 4 felony if it is committed by a person at least twenty-one (21) years of age; and

(2) a Level 1 felony if it is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Level 6 felony. However, the offense is:

(1) a Level 5 felony if it is committed by a person at least twenty-one (21) years of age; and

(2) a Level 2 felony if it is committed by using or threatening the use of deadly force, while armed with a deadly weapon, or if the commission of the offense is

facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) It is a defense that the accused person reasonably believed that the child was at least sixteen (16) years of age at the time of the conduct. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(d) It is a defense that the child is or has ever been married. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(e) It is a defense to a prosecution under this section if all of the following apply:

(1) The person is not more than four (4) years older than the victim.

(2) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.

(3) The crime:

(A) was not committed by a person who is at least twenty-one (21) years of age;

(B) was not committed by using or threatening the use of deadly force;

(C) was not committed while armed with a deadly weapon;

(D) did not result in serious bodily injury;

(E) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

(F) was not committed by a person having a position of authority or substantial influence over the victim.

(4) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

### **35-42-4-10. Unlawful employment near children by a sexual predator**

(a) As used in this section, "offender against children" means a person who is an offender against children under IC 35-42-4-11.

(b) As used in this section, "sexually violent predator" means a person who is a sexually violent predator under IC 35-38-1-7.5.

(c) A sexually violent predator or an offender against children who knowingly or intentionally works for compensation or as a volunteer:

(1) on school property;

(2) at a youth program center; or

(3) at a public park;

commits unlawful employment near children by a sexual predator, a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior unrelated conviction based on the person's failure to comply with any requirement imposed on an offender under IC 11-8-8.

### **35-42-4-11. Sex offender registry offense**

(a) As used in this section, and except as provided in subsection (d), “offender against children” means a person required to register as a sex or violent offender under IC 11-8-8 who has been:

- (1) found to be a sexually violent predator under IC 35-38-1-7.5; or
- (2) convicted of one (1) or more of the following offenses:
  - (A) Child molesting (IC 35-42-4-3).
  - (B) Child exploitation (IC 35-42-4-4(b)).
  - (C) Child solicitation (IC 35-42-4-6).
  - (D) Child seduction (IC 35-42-4-7).
  - (E) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age, and the person is not the child’s parent or guardian.
  - (F) Attempt to commit or conspiracy to commit an offense listed in clauses (A) through (E).
  - (G) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (F).

A person is an offender against children by operation of law if the person meets the conditions described in subdivision (1) or (2) at any time.

(b) As used in this section, “reside” means to spend more than three (3) nights in:

- (1) a residence; or
- (2) if the person does not reside in a residence, a particular location;

in any thirty (30) day period.

(c) An offender against children who knowingly or intentionally:

- (1) resides within one thousand (1,000) feet of:
  - (A) school property, not including property of an institution providing post-secondary education;
  - (B) a youth program center; or
  - (C) a public park; or
- (2) establishes a residence within one (1) mile of the residence of the victim of the offender’s sex offense;

commits a sex offender residency offense, a Level 6 felony.

(d) This subsection does not apply to an offender against children who has two (2) or more unrelated convictions for an offense described in subsection (a). A person who is an offender against children may petition the court to consider whether the person should no longer be considered an offender against children. The person may file a petition under this subsection not earlier than ten (10) years after the person is released from incarceration or parole, whichever occurs last (or, if the person is not incarcerated, not earlier than ten (10) years after the person is released from probation). A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered an offender against children. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person should no longer be considered an offender against children. If a court finds that the person should no longer be considered an

offender against children, the court shall send notice to the department of correction that the person is no longer considered an offender against children.

### **35-42-4-12. Sex offender internet offense**

(a) This section applies only to a sex offender (as defined in IC 11-8-8-4.5).

(b) A sex offender who knowingly or intentionally violates a:

- (1) condition of probation;
- (2) condition of parole; or
- (3) rule of a community transition program;

that prohibits the offender from using a social networking web site or an instant messaging or chat room program to communicate, directly or through an intermediary, with a child less than sixteen (16) years of age commits a sex offender Internet offense, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction under this section.

(c) It is a defense to a prosecution under subsection (b) that the person reasonably believed that the child was at least sixteen (16) years of age.

### **35-42-4-13. Inappropriate communication with a child**

(a) This section does not apply to the following:

- (1) A parent, guardian, or custodian of a child.
- (2) A person who acts with the permission of a child's parent, guardian, or custodian.
- (3) A person to whom a child makes a report of abuse or neglect.
- (4) A person to whom a child reports medical symptoms that relate to or may relate to sexual activity.

(b) As used in this section, "sexual activity" means sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or the fondling or touching of the buttocks, genitals, or female breasts.

(c) A person at least eighteen (18) years of age who knowingly or intentionally communicates with an individual whom the person believes to be a child less than fourteen (14) years of age concerning sexual activity with the intent to gratify the sexual desires of the person or the individual commits inappropriate communication with a child, a Class B misdemeanor. However, the offense is:

- (1) a Class A misdemeanor if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)); and
- (2) a Level 6 felony if the person has a prior unrelated conviction for a sex offense (as defined in IC 11-8-8-5.2).

## **Chapter 5 Robbery**

35-42-5-1 Robbery

### **35-42-5-1. Robbery**

A person who knowingly or intentionally takes property from another person or from the presence of another person:

(1) by using or threatening the use of force on any person; or  
(2) by putting any person in fear;  
commits robbery, a Level 5 felony. However, the offense is a Level 3 felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than the defendant, and a Level 2 felony if it results in serious bodily injury to any person other than the defendant.

## **ARTICLE 43 OFFENSES AGAINST PROPERTY**

Ch. 1	Arson; Mischief
Ch. 2	Burglary; Trespass
Ch. 4	Theft; Conversion
Ch. 5	Forgery and Other Deceptions
Ch. 6	Home Improvement Fraud
Ch. 6.5	Motor Vehicle and Watercraft Fraud
Ch. 7	Impairment of Identification
Ch. 8	Timber Spiking
Ch. 9	Conversion of Misappropriation of Title Insurance Escrow Funds
Ch. 10	Legend Drug Deception

### **Chapter 1 Arson; Mischief**

35-43-1-1	Arson
35-43-1-2	Criminal mischief
35-43-1-2.1	Cemetery mischief
35-43-1-2.3	Railroad mischief
35-43-1-3	Cave mischief
35-43-1-5	Tampering with water supply
35-43-1-6	Altering historic property
35-43-1-7	Offense against intellectual property
35-43-1-8	Offense against computer users

#### **35-43-1-1. Arson**

(a) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages:

- (1) a dwelling of another person without the other person's consent;
- (2) property of any person under circumstances that endanger human life;
- (3) property of another person without the other person's consent if the pecuniary loss is at least five thousand dollars (\$5,000); or
- (4) a structure used for religious worship without the consent of the owner of the structure;

commits arson, a Level 4 felony. However, the offense is a Level 3 felony if it results in bodily injury to any person other than a defendant and a Level 2 felony if it results in serious bodily injury to any person other than a defendant.

(b) A person who commits arson for hire commits a Level 4 felony. However, the offense is:

- (1) a Level 3 felony if it results in bodily injury to any other person; and
- (2) a Level 2 felony if it results in serious bodily injury to any other person.

(c) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages property of any person with intent to defraud commits arson, a Level 6 felony.

(d) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages property of another person without the other person's consent so that the resulting pecuniary loss is at least two hundred fifty dollars (\$250) but less than five thousand dollars (\$5,000) commits arson, a Level 6 felony.

(e) A person who commits an offense under subsection (a), (b), (c), or (d) commits a separate offense for each person who suffers bodily injury or serious bodily injury that is caused by the violation of subsection (a), (b), (c), or (d).

### **35-43-1-2. Criminal mischief**

(a) A person who recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent commits criminal mischief, a Class B misdemeanor. However, the offense is:

- (1) a Class A misdemeanor if the pecuniary loss is at least seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000); and
- (2) a Level 6 felony if:
  - (A) the pecuniary loss is at least fifty thousand dollars (\$50,000);
  - (B) the damage creates a substantial interruption or impairment of utility service rendered to the public;
  - (C) the damage is to a public record; or
  - (D) the damage is to a law enforcement animal (as defined in IC 35-46-3-4.5).

(b) A person who recklessly, knowingly, or intentionally damages:

- (1) a structure used for religious worship;
- (2) a school or community center;
- (3) the property of an agricultural operation (as defined in IC 32-30-6-1);
- (4) the grounds:

(A) adjacent to; and

(B) owned or rented in common with:

a structure or facility identified in subdivisions (1) through (3); or

(5) personal property contained in a structure or located at a facility identified in subdivisions (1) through (3);

without the consent of the owner, possessor, or occupant of the property that is damaged, commits institutional criminal mischief, a Class A misdemeanor. However, the offense is a Level 6 felony if the pecuniary loss (or property damage, in the case of an agricultural operation) is at least seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000), and a Level 5 felony if the pecuniary loss (or property damage, in the case of an agricultural operation) is at least fifty thousand dollars (\$50,000).

(c) If a person is convicted of an offense under this section that involves the use of graffiti, the court may, in addition to any other penalty, order that the person's operator's license be suspended or invalidated by the bureau of motor vehicles for not more than one (1) year.

(d) The court may rescind an order for suspension or invalidation under subsection (c) and allow the person to receive a license or permit before the period of suspension or invalidation ends if the court determines that the person has removed or painted over the graffiti or has made other suitable restitution.

### **35-43-1-2.1. Cemetery mischief**

(a) This section does not apply to the following:

(1) A person who acts in a proper and acceptable manner as authorized by IC 14-21 other than a person who disturbs the earth for an agricultural purpose under the exemption to IC 14-21 that is provided in IC 14-21-1-24.

(2) A person who acts in a proper and acceptable manner as authorized by IC 23-14.

(b) A person who recklessly, knowingly, or intentionally:

(1) damages a cemetery, a burial ground (as defined in IC 14-21-1-3), or a facility used for memorializing the dead;

(2) damages the grounds owned or rented by a cemetery or facility used for memorializing the dead; or

(3) disturbs, defaces, or damages a cemetery monument, grave marker, grave artifact, grave ornamentation, or cemetery enclosure;

commits cemetery mischief, a Class A misdemeanor. However, the offense is a Level 6 felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).

### **35-43-1-2.3. Railroad mischief**

A person who, without the consent of the owner of the property, recklessly, knowingly, or intentionally damages or defaces:

(1) a locomotive, a railroad car, a train, or equipment of a railroad company being operated on railroad right-of-way;

(2) a part of any railroad signal system, train control system, centralized dispatching system, or highway railroad grade crossing warning signal on a railroad right-of-way owned, leased, or operated by a railroad company; or

(3) any rail, switch, roadbed, viaduct, bridge, trestle, culvert, or embankment on a right-of-way owned, leased, or operated by a railroad company;

commits railroad mischief, a Level 6 felony. However, the offense is a Level 5 felony if the offense results in serious bodily injury to another person and a Level 2 felony if the offense results in the death of another person.

### **35-43-1-3. Cave mischief**

(a) As used in this section:

“Cave” means any naturally occurring subterranean cavity, including a cavern, pit, pothole, sinkhole, well, grotto, and tunnel whether or not it has a natural entrance.

“Owner” means the person who holds title to or is in possession of the land on or under which a cave is located, or his lessee, or agent.

“Scientific purposes” means exploration and research conducted by persons affiliated with recognized scientific organizations with the intent to advance knowledge and with the intent to publish the results of said exploration or research in an appropriate medium.

(b) A person who knowingly and without the express consent of the cave owner:

- (1) Disfigures, destroys, or removes an stalagmite, stalactite, or other naturally occurring mineral deposit or formation, or archeological or paleontological artifact in a cave, for other than scientific purposes;
- (2) Breaks any lock, gate, fence, or other structure designed to control or prevent access to a cave;
- (3) Deposits trash, rubbish, chemicals, or other litter in a cave; or
- (4) Destroys, injures, removes, or harasses any cave-dwelling animal for other than scientific purposes;

commits a Class A misdemeanor.

### **35-43-1-5. Tampering with water supply**

(a) 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 Level 4 felony. However, the offense is a Level 2 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 Level 3 felony.

### **35-43-1-6. Altering historic property**

A person who knowingly or intentionally alters, without a permit, historic property located on property owned or leased by the state commits a Class B misdemeanor.

### **35-43-1-7. Offense against intellectual property**

A person who knowingly or intentionally and who without authorization:

- (1) modifies data, a computer program, or supporting documentation;
- (2) destroys data, a computer program, or supporting documentation; or
- (3) discloses or takes data, a computer program, or supporting documentation that is:
  - (A) a trade secret (as defined in IC 24-2-3-2); or
  - (B) otherwise confidential as provided by law;

and that resides or exists internally or externally on a computer, computer system, or computer network, commits an offense against intellectual property, a Level 6 felony.

### **35-43-1-8. Offense against computer users**

(a) A person who knowingly or intentionally and who without authorization:

- (1) disrupts, denies, or causes the disruption or denial of computer system services to an authorized user of the computer system services that are:
  - (A) owned by;
  - (B) under contract to;

- (C) operated for, on behalf of, or in conjunction with; another person in whole or part;
- (2) destroys, takes, or damages equipment or supplies used or intended to be used in a computer, computer system, or computer network;
- (3) destroys or damages a computer, computer system, or computer network; or
- (4) introduces a computer contaminant into a computer, computer system, or computer network;

commits an offense against computer users, a Level 6 felony.

(b) However, the offense is:

- (1) a Level 5 felony if:
  - (A) the pecuniary loss caused by the offense is at least five thousand dollars (\$5,000);
  - (B) the offense was committed for the purpose of devising or executing any scheme or artifice to defraud or obtain property; or
  - (C) the offense interrupts or impairs:
    - (i) a governmental operation; or
    - (ii) the public communication, transportation, or supply of water, gas, or another public service; and
- (2) a Level 4 felony if the offense endangers human life.

## **Chapter 2 Burglary; Trespass**

- 35-43-2-1 Burglary
- 35-43-2-1.5 Residential entry
- 35-43-2-2 Trespass
- 35-43-2-3 Computer trespass

### **35-43-2-1. Burglary**

A person who breaks and enters the building or structure of another person, with intent to commit a felony or theft in it, commits burglary, a Level 5 felony. However, the offense is:

- (1) a Level 4 felony if the building or structure is a dwelling;
- (2) a Level 3 felony if it results in bodily injury to any person other than a defendant;
- (3) a Level 2 felony if it:
  - (A) is committed while armed with a deadly weapon; or
  - (B) results in serious bodily injury to any person other than a defendant;
 and
- (4) a level 1 felony if:
  - (A) the building or structure is a dwelling; and
  - (B) it results in serious bodily injury to any person other than a defendant.

### **35-43-2-1.5. Residential entry**

A person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry, a Level 6 felony.

### **35-43-2-2. Criminal trespass**

(a) As used in this section, “authorized person” means a person authorized by an agricultural operation to act on behalf of the agricultural operation.

(b) A person who:

(1) not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person’s agent;

(2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person’s agent;

(3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle;

(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person’s consent;

(5) not having a contractual interest in the property, knowingly or intentionally enters the:

(A) property of an agricultural operation that is used for the production, processing, propagation, packaging, cultivation, harvesting, care, management, or storage of an animal, plant, or other agricultural product, including any pasturage or land used for timber management, without the consent of the owner of the agricultural operation or an authorized person;  
or

(B) dwelling of another person without the person’s consent;

(6) knowingly or intentionally:

(A) travels by train without lawful authority or the railroad carrier’s consent; and

(B) rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier’s consent;

(7) not having a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is vacant or designated by a municipality or county enforcement authority to be abandoned property or an abandoned structure (as defined in IC 36-7-36-1);

(8) not having a contractual interest in the property, knowingly or intentionally enters the real property of an agricultural operation (as defined in IC 32-30-6-1) without the permission of the owner of the agricultural operation or an authorized person, and knowingly or intentionally engages in conduct that causes property damage to:

(A) the owner of or a person having a contractual interest in the agricultural operation;

(B) the operator of the agricultural operation; or

(C) a person having personal property located on the property of the agricultural operation; or

(9) knowingly or intentionally enters the property of another person after being denied by a court order that has been issued to the person or issued to the general public by conspicuous posting on or around the premises in areas where a person can observe the order when the property has been designated by a municipality or county enforcement authority to be a vacant property, an abandoned property, or an abandoned structure (as defined in IC 36-7-36-1).

commits criminal trespass, a Class A misdemeanor. However, the offense is a Level 6 felony if it is committed on a scientific research facility, on a key facility, on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a)), on school property, or on a school bus or the person has a prior unrelated conviction for an offense under this section concerning the same property. The offense is a Level 6 felony, for purposes of subdivision (8), if the property damage is more than seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000). The offense is a Level 5 felony, for purposes of subdivision (8), if the property damage is at least fifty thousand dollars (\$50,000).

(c) A person has been denied entry under subsection (b)(1) when the person has been denied entry by means of:

- (1) personal communication, oral or written;
- (2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public; or
- (3) a hearing authority or court order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36.

(d) A law enforcement officer may not deny entry to property or ask a person to leave a property under subsection (b)(7) unless there is reasonable suspicion that criminal activity has occurred or is occurring.

(e) A person described in subsection (b)(7) violates subsection (b)(7) unless the person has the written permission of the owner, owner's agent, enforcement authority, or court to come onto the property for purposes of performing maintenance, repair, or demolition.

(f) A person described in subsection (b)(9) violates subsection (b)(9) unless the court that issued the order denying the person entry grants permission for the person to come onto the property.

(g) Subsections (b), (c) and (f) do not apply to the following:

- (1) A passenger on a train.
- (2) An employee of a railroad carrier while engaged in the performance of official duties.
- (3) A law enforcement officer, firefighter, or emergency response personnel while engaged in the performance of official duties.
- (4) A person going on railroad property in an emergency to rescue a person or animal from harm's way or to remove an object that the person reasonably believes poses an imminent threat to life or limb.
- (5) A person on the station grounds or in the depot of a railroad carrier:
  - (A) as a passenger; or
  - (B) for the purpose of transacting lawful business.
- (6) A:
  - (A) person; or
  - (B) person's:
    - (i) family member;

- (ii) invitee;
- (iii) employee;
- (iv) agent; or
- (v) independent contractor;

going on a railroad's right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to land that the person owns, leases, or operates.

(7) A person having written permission from the railroad carrier to go on specified railroad property.

(8) A representative of the Indiana department of transportation while engaged in the performance of official duties.

(9) A representative of the federal Railroad Administration while engaged in the performance of official duties.

(10) A representative of the National Transportation Safety Board while engaged in the performance of official duties.

### **35-43-2-3. Computer trespass**

(a) As used in this section:

“Access” means to:

- (1) approach;
- (2) instruct;
- (3) communicate with;
- (4) store data in;
- (5) retrieve data from; or
- (6) make use of resources of;

a computer, computer system, or computer network.

“Computer network” means the interconnection or communication lines or wireless telecommunications with a computer or wireless telecommunications device through:

- (1) remote terminals;
- (2) a complex consisting of two (2) or more interconnected computers; or
- (3) a worldwide collection of interconnected networks operating as the Internet.

“Computer system” means a set of related computer equipment, software or hardware.

“Hoarding program” means a computer program designed to bypass or neutralize a security measure, access control system, or similar system used by the owner of a computer network or computer system to limit the amount of merchandise that one (1) person may purchase by means of a computer network.

(b) A person who knowingly or intentionally accesses:

- (1) a computer system;
- (2) a computer network; or
- (3) any part of a computer system or computer network;

without the consent of the owner of the computer system or computer network, or the consent of the owner's licensee, commits computer trespass, a Class A misdemeanor.

(c) A person who knowingly or intentionally uses a hoarding program to purchase merchandise by means of a computer network commits computer merchandise hoarding, a Class A misdemeanor. It is a defense to a prosecution under this subsection that the person used the hoarding program with the permission of the person selling the merchandise.

(d) A person who knowingly or intentionally sells, purchases, or distributes a hoarding program commits unlawful distribution of a hoarding program, a Class A misdemeanor. It is a defense to a prosecution under this subsection that the hoarding program was sold, purchased, or distributed for legitimate scientific or educational purposes.

## **Chapter 4**

### **Theft; Conversion**

35-43-4-0.1	Application of amendments
35-43-4-1	Definitions
35-43-4-2	Theft
35-43-4-2.3	Dealing in altered property
35-43-4-2.5	Auto theft
35-43-4-2.7	Unauthorized entry of a motor vehicle
35-43-4-3	Conversion
35-43-4-3.5	Theft by borrower
35-43-4-4	Evidence relating to theft
35-43-4-5	Defenses
35-43-4-6	Unauthorized control over property of benefit provider
35-43-4-7	Vending machine vandalism
35-43-4-8	License suspension for gas theft

#### **35-43-4-0.1. Application of amendments**

The amendments made to section 4 of this chapter by P.L. 84-2001 are intended to specify that the scope of the amended terms includes retail sales receipts, universal product codes (UPC), and other product identification codes. The amendment of these definitions shall not be construed to mean that these terms did not cover retail sales receipts, universal product codes (UPC), and other product codes before July 1, 2001.

#### **35-43-4-1. Definitions**

(a) As used in this chapter, “exert control over property” means to obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber, or possess property, or to secure, transfer, or extend a right to property.

(b) Under this chapter, a person’s control over property of another person is “unauthorized” if it is exerted:

- (1) Without the other person’s consent;
- (2) In an manner or to an extent other than that to which the other person has consented;
- (3) By transferring or encumbering other property while failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of that other property;
- (4) By creating or confirming a false impression in the other person;

- (5) By failing to correct a false impression that the person knows is influencing the other person, if the person stands in a relationship of special trust to the other person;
- (6) By promising performance that the person knows will not be performed;
- (7) By expressing an intention to damage the property or impair the rights of any other person; or
- (8) by transferring or reproducing:
  - (A) Recorded sounds; or
  - (B) A live performance;
 without the consent of the owner of the master recording or the live performance, with intent to distribute the reproduction for a profit.

(c) As used in this chapter, “receiving” means acquiring possession or control of or title to property, or lending on the security of property.

### **35-43-4-2. Theft**

(a) A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class A misdemeanor. However, the offense is:

- (1) a Level 6 felony if:
  - (A) the value of the property is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000);
  - (B) the property is a firearm; or
  - (C) the person has a prior unrelated conviction for:
    - (i) theft under this section; or
    - (ii) criminal conversion under section 3 of this chapter; and
- (2) a Level 5 felony if:
  - (A) the value of the property is at least fifty thousand dollars (\$50,000); or
  - (B) the property that is the subject of the theft is a valuable metal (as defined in IC 25-37.5-1-1) and:
    - (i) relates to transportation safety;
    - (ii) relates to public safety; or
    - (iii) is taken from a hospital or other health care facility, telecommunications provider, public utility (as defined in IC 32-24-1-5.9(a)), or a key facility;
 and the absence of the property creates a substantial risk of bodily injury to a person.

(b) In determining the value of property under this section, acts of theft committed in a single episode of criminal conduct (as defined in IC 35-50-1-2(b)) may be charged in a single count.

(c) For purposes of this section, “the value of property” means:

- (1) the fair market value of the property at the time and place the offense was committed; or
- (2) if the fair market value of the property cannot be satisfactorily determined, the cost to replace the property within a reasonable time after the offense was committed.

A price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value of the property.

### **35-43-4-2.3. Dealing in altered property**

(a) As used in this section, “dealer” means a person who buys or sells, or offers to buy or sell, personal property. The term does not include the original retailer of personal property.

(b) A dealer who recklessly, knowingly, or intentionally buys or sells personal property in which the identification number or manufacturer’s serial number has been removed, altered, obliterated, or defaced commits dealing in altered property, a Class A misdemeanor. However, the offense is a Level 6 felony if the dealer has a prior conviction of an offense under this chapter or if the fair market value of the property is at least one thousand dollars (\$1,000).

### **35-43-4-2.5. Auto theft**

(a) As used in this section, “motor vehicle” has the meaning set forth in IC 9-13-2-105(a).

(b) A person who knowingly or intentionally exerts unauthorized control over the motor vehicle of another person, with intent to deprive the owner of:

(1) the vehicle’s value or use; or

(2) a component part (as defined in IC 9-13-2-34) of the vehicle;

commits auto theft, a Level 6 felony.

(c) A person who knowingly or intentionally receives, retains, or disposes of a motor vehicle or any part of a motor vehicle of another person that has been the subject of theft commits receiving stolen auto parts, a Level 6 felony.

### **35-43-4-2.7. Unauthorized entry of a motor vehicle**

(a) This section does not apply to the following:

(1) A public safety officer (as defined in IC 35-47-4.5-3) or state police motor carrier inspector acting within the scope of the officer’s or inspector’s duties.

(2) A motor vehicle that must be moved because the motor vehicle is abandoned, inoperable, or improperly parked.

(3) An employee or agent of an entity that possesses a valid lien on a motor vehicle who is expressly authorized by the lienholder to repossess the motor vehicle based upon the failure of the owner or lessee of the motor vehicle to abide by the terms and conditions of the loan or lease agreement.

(b) As used in this section, “authorized operator” means a person who is authorized to operate a motor vehicle by an owner or a lessee of the motor vehicle.

(c) As used in this section, “motor vehicle” has the meaning set forth in IC 9-13-2-105(a).

(d) 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.

(e) The offense under subsection (d) is:

(1) a Class A misdemeanor if the motor vehicle has visible steering column damage or ignition switch alteration as a result of an act described in subsection (d)(1); or

(2) a Level 6 felony if a person occupies the motor vehicle while the motor vehicle is used to further the commission of a crime, if the person knew or should have known that a person intended to use the motor vehicle in the commission of a crime.

(f) It is a defense to a prosecution under this section that the accused person reasonably believed that the person's entry into the vehicle was necessary to prevent bodily injury or property damage.

(g) There is a rebuttable presumption that the person did not have the permission of an owner, a lessee, or an authorized operator of the motor vehicle to enter the motor vehicle if the motor vehicle has visible steering column damage or ignition switch alteration.

### **35-43-4-3. Criminal conversion**

(a) A person who knowingly or intentionally exerts unauthorized control over property of another person commits criminal conversion, a Class A misdemeanor.

(b) The offense under subsection (a) is a Level 6 felony if committed by a person who exerts unauthorized control over the motor vehicle of another person with the intent to use the motor vehicle to assist the person in the commission of a crime.

(c) The offense under subsection (a) is a Level 5 felony if:

- (1) committed by a person who exerts unauthorized control over the motor vehicle of another person; and
- (2) the person uses the motor vehicle to assist the person in the commission of a felony.

(d) The offense under subsection (a) is a Level 6 felony if:

- (1) the person acquires the property by lease;
- (2) the property is a motor vehicle;
- (3) the person signs a written agreement to return the property to a specified location within a specified time; and
- (4) the person fails to return the property:
  - (A) within thirty (30) days after the specified time; or
  - (B) within three (3) days after a written demand for return of the property is either:
    - (i) personally served on the person; or
    - (ii) sent by registered mail to the person's address that is provided by the person in the written agreement.

### **35-43-4-3.5. Conversion by borrower**

(a) If a person:

- (1) Borrows any article which belongs to or is in the care of any library, gallery, museum, collection, or exhibition;
- (2) Borrows the article under an agreement to return the article within a specified period of time; and
- (3) Fails to return the article within that specified period of time;

then the lender shall comply with subsection (b).

(b) If a person commits those acts specified in subsection (a), the lender shall:

- (1) Send written notification of the violation of the agreement to the borrower;
- (2) Attach a copy of this section to the notice;

(3) Include in the notice a request for return of the article within fifteen (15) days of receipt of the notice; and

(4) Mail the notice to the last known address of the borrower or deliver it to the borrower in person.

The lender shall send the notice required by this subsection by certified or registered mail, return receipt requested.

(c) If the borrower willingly or knowingly fails to return the article, or reimburse the lender for the value of the article, within thirty (30) days of receipt of the notice required in subsection (b), he commits a Class C infraction.

(d) A person who commits an offense under this section may not be charged with an offense under section 2 or 3 of this chapter for the same act.

#### **35-43-4-4. Evidence relating to theft**

(a) The price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value and ownership of the property.

(b) Evidence that a person:

(1) altered, substituted, or transferred a universal product code (UPC) or another product identification code, label, price tag, or price marking on property displayed or offered for sale or hire; or

(2) transferred property displayed or offered for sale or hire from the package, bag, or container in or on which the property was displayed or offered to another package, bag, or container;

constitutes prima facie evidence of intent to deprive the owner of the property of a part of its value and that the person exerted unauthorized control over the property.

(c) Evidence that a person:

(1) concealed property displayed or offered for sale or hire; and

(2) removed the property from any place within the business premises at which it was displayed or offered to a point beyond that at which payment should be made;

constitutes prima facie evidence of intent to deprive the owner of the property of a part of its value and that the person exerted unauthorized control over the property.

(d) Except as provided in subsection (e) of this section, evidence of failure to perform a promise, by itself, does not constitute evidence that the promisor knew that the promise would not be performed.

(e) Except as provided in section 5(b) of this chapter, a person who has insufficient funds in or no account with a drawee credit institution and who makes, draws, or utters a check, draft, or order for payment on the credit institution may be inferred:

(1) to have known that the credit institution would refuse payment upon presentment in the usual course of business; and

(2) to have intended to deprive the owner of any property acquired by making, drawing, or uttering the check, draft, or order for payment of a part of the value of that property.

(f) Evidence that a person, after renting or leasing any property under a written agreement providing for the return of the property to a particular place at a particular time, failed to return the property to the place within seventy-two (72) hours after the agreed time constitutes prima facie evidence that he exerted unauthorized control over the property.

(g) A judge may find that a photograph of property over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully is competent evidence, if the photograph:

- (1) will serve the purpose of demonstrating the nature of the property; and
- (2) is otherwise admissible into evidence under all other rules of law governing the admissibility of photographs into evidence.

The fact that it is impractical to introduce into evidence the actual property for any reason, including its size, weight, or unavailability, need not be established for a judge to find a photograph of that property to be competent evidence. If a photograph is found to be competent evidence under this subsection, it is admissible into evidence in place of the property and to the same extent as the property itself.

(h) A law enforcement agency that is holding as evidence property over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully, may return that property to its owner if:

- (1) the property has been photographed in a manner that will serve the purpose of demonstrating the nature of the property, and if these photographs are filed with or retained by the law enforcement agency in place of the property;
- (2) receipt of the property is obtained from the owner upon delivery by the law enforcement agency;
- (3) the prosecuting attorney who is prosecuting a case that involves the property has not requested the law enforcement agency to decline requests for return of the property to its owner; and
- (4) the property may be lawfully possessed by the owner.

### **35-43-4-5. Defenses**

(a) An owner in possession of encumbered property does not commit a crime under this chapter, as against a person having only a security interest in the property, by removing or otherwise dealing with the property contrary to the terms of the security agreement, even if title is in the credit institution under a mortgage, conditional sales contract, or bailment lease.

(b) It is a defense under this chapter if a maker or drawer:

- (1) Who has an account in a credit institution but does not have sufficient funds in that account; and
- (2) Who makes, draws, or utters a check, draft, or order for payment on the credit institution;

pays the credit institution the amount due, together with protest fees, within ten (10) days after receiving notice that the check, draft, or order has not been paid by the credit institution. Notice sent to either (i) the address printed or written on the check, draft, or order or (ii) the address given in writing to the recipient at the time the check, draft, or order was issued or delivered constitutes notice that the check, draft, or order has not been paid by the credit institution.

(c) A person who transfers or reproduces recorded sounds in connection with a broadcast or telecast, or for archival purposes, does not commit a crime under this chapter, even if he does not have the consent of the owner of the master recording.

(d) A person who receives, retains or disposes of personal property that has been the subject of theft with the purpose of restoring it to the owner, does not commit a crime under this chapter.

### **35-43-4-6. Unauthorized control over property of benefit provider**

(a) As used in this section:

“Benefit” includes any accident, sickness, or other health care or reimbursement therefore to which a person is entitled.

“Benefit identification card” means a writing that identifies a person, his spouse, or his dependent as being entitled to a benefit.

“Benefit provider” includes an employer, insurer, or health care provider who has agreed to provide or has provided a benefit to a person who has a benefit identification card.

(b) Evidence that a person:

(1) Permitted a person who was not entitled to a benefit to use his benefit identification card to obtain a benefit; or

(2) Uses his benefit identification card to obtain a benefit for a person who was not entitled to the benefit;

constitutes prima facie evidence that such person exerted unauthorized control over property of the benefit provider.

### **35-43-4-7. Vending machine vandalism**

(a) As used in this section, “vending machine” means a mechanical or an electronic device or a receptacle designed:

(1) To receive a coin, bill, or token made for that purpose; and

(2) To automatically dispense goods, wares, merchandise, or other property in return for the insertion or deposit of a coin, bill, or token.

(b) A person who knowingly or intentionally:

(1) Damages a vending machine; or

(2) Removes goods, wares, merchandise, or other property from a vending machine without:

(A) Inserting or depositing a coin, bill, or token for that purpose; or

(B) The consent of the owner or operator of the vending machine;

commits vending machine vandalism, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the amount of the damage or the value of the goods, wares, merchandise, or other property removed from the vending machine is at least two hundred fifty dollars (\$250).

### **35-43-4-8. License suspension for gas theft**

(a) A conviction for an offense under section 2 or 3 of this chapter that involves exerting unauthorized control over gasoline or motor vehicle fuel:

(1) by operation of a motor vehicle to leave the premises of an establishment at which gasoline or motor vehicle fuel is offered for sale after the gasoline or motor vehicle fuel has been dispensed into the fuel tank of the motor vehicle; and

(2) without payment or authorization of payment by a credit card, debit card, charge card, or similar method of payment;

shall result in the suspension of the driving privileges of the person.

(b) The court imposing a sentence for a violation under subsection (a) shall issue an order to the bureau of motor vehicles:

(1) stating that the person has been convicted of an offense under section 2 or 3 of this chapter involving the unauthorized taking of gasoline or motor vehicle fuel; and

(2) ordering the suspension of the person's driving privileges under IC 9-30-13-8.

The suspension of a person's driving privileges under this section is in addition to other penalties prescribed by IC 35-50-3-2 for a Class A misdemeanor or by IC 35-50-2-7 for a Level 6 felony.

## **Chapter 5 Forgery and Other Deceptions**

35-43-5-0.1	Application of amendments
35-43-5-1	Definitions
35-43-5-2	Counterfeiting; Forgery; Application Fraud
35-43-5-2.5	Counterfeit government issued identification
35-43-5-3	Deception
35-43-5-3.5	Identity deception
35-43-5-3.6	Terroristic deception
35-43-5-3.7	Notario publico deception
35-43-5-3.8	Synthetic identity deception
35-43-5-4	Fraud
35-43-5-4.3	Possession of card skimming device
35-43-5-4.5	Insurance fraud
35-43-5-4.6	Manipulation device
35-43-5-5	Check deception
35-43-5-6	Utility fraud
35-43-5-6.5	Sale or distribution of cable TV devices
35-43-5-7	Welfare fraud
35-43-5-7.1	Medicaid fraud
35-43-5-7.2	Children's health insurance fraud
35-43-5-8	Fraud on financial institutions
35-43-5-12	Check fraud
35-43-5-13	Do not resuscitate orders
35-43-5-15	Possession of false sales manufacturing device
35-43-5-16	Making false sales document
35-43-5-18	Possession of device or substance used to interfere with screening test
35-43-5-19	Interference with screening test
35-43-5-20	Inmate fraud

### **35-43-5-0.1. Application of amendments**

The amendments made to section 1 of this chapter by P.L. 84-2001 are intended to specify that the scope of the amended terms includes retail sales receipts, universal product codes (UPC), and other product identification codes. The amendment of these definitions shall not be construed to mean that these terms did not cover retail sales receipts, universal product codes (UPC), and other product identification codes before July 1, 2001.

### **35-43-5-1. Definitions**

(a) The definitions set forth in this section apply throughout this chapter.

(b) "Claim statement" means an insurance policy, a document, or a statement made in support of or in opposition to a claim for payment or other benefit under an insurance policy, or other evidence of expense, injury, or loss. The term includes statements made orally, in writing, or electronically, including the following:

- (1) An account.
- (2) A bill for services.
- (3) A bill of lading.
- (4) A claim.
- (5) A diagnosis.
- (6) An estimate of property damage.
- (7) A hospital record.
- (8) An invoice.
- (9) A notice.
- (10) A proof of loss.
- (11) A receipt for payment.
- (12) A physician's records.
- (13) A prescription.
- (14) A statement.
- (15) A test result.
- (16) X-rays.

(c) "Coin machine" means a coin box, vending machine, or other mechanical or electronic device or receptacle designed:

- (1) to receive a coin, bill, or token made for that purpose; and
- (2) in return for the insertion or deposit of a coin, bill, or token automatically:
  - (A) to offer, provide, or assist in providing; or
  - (B) to permit the acquisition of:  
some property.

(d) "Credit card" means an instrument or device (whether known as a credit card or charge plate, or by any other name) issued by an issuer for use by or on behalf of the credit card holder in obtaining property.

(e) "Credit card holder" means the person to whom or for whose benefit the credit card is issued by an issuer.

(f) "Customer" means a person who receives or has contracted for a utility service.

(g) "Drug or alcohol screening test" means a test that:

- (1) is used to determine the presence or use of alcohol, a controlled substance, or a drug in a person's bodily substance; and
- (2) is administered in the course of monitoring a person who is:
  - (A) incarcerated in a prison or jail;
  - (B) placed in a community corrections program;
  - (C) on probation or parole;
  - (D) participating in a court ordered alcohol or drug treatment program; or
  - (E) on court ordered pretrial release.

(h) “Entrusted” means held in a fiduciary capacity or placed in charge of a person engaged in the business of transporting, storing, lending on, or otherwise holding property of others.

(i) “Identifying information” means information that identifies a person, including a person’s:

(1) name, address, date of birth, place of employment, employer identification number, mother’s maiden name, Social Security number, or any identification number issued by a governmental entity;

(2) unique biometric data, including a person’s fingerprint, voice print, or retina or iris image;

(3) unique electronic identification number, address, or routing code;

(4) telecommunication identifying information; or

(5) telecommunication access device, including a card, a plate, a code, a telephone number, an account number, a personal identification number, an electronic serial number, a mobile identification number, or other telecommunications service or device or means of account access that may be used to:

(A) obtain money, goods, services, or any other thing of value; or

(B) initiate a transfer of funds.

(j) “Insurance policy” includes the following:

(1) An insurance policy.

(2) A contract with a health maintenance organization (as defined in IC 27-13-19) or a limited service health maintenance organization (as defined in IC 27-13-1-27).

(3) A written agreement entered into under IC 27-1-25.

(k) “Insurer” has the meaning set forth in IC 27-1-2-3(x). The term also includes the following:

(1) A reinsurer.

(2) A purported insurer or reinsurer.

(3) A broker.

(4) An agent of an insurer, a reinsurer, a purported insurer or reinsurer, or a broker.

(5) A health maintenance organization.

(6) A limited service health maintenance organization.

(l) “Manufacturer” means a person who manufactures a recording. The term does not include a person who manufactures a medium upon which sounds or visual images can be recorded or stored.

(m) “Make” means to draw, prepare, complete, counterfeit, copy or otherwise reproduce, or alter any written instrument in whole or in part.

(n) “Metering device” means a mechanism or system used by a utility to measure or record the quantity of services received by a customer.

(o) “Public relief or assistance” means any payment made, service rendered, hospitalization provided, or other benefit extended to a person by a governmental entity from public funds and includes township assistance, food stamps, direct relief, unemployment compensation, and any other form of support or aid.

(p) “Recording” means a tangible medium upon which sounds or visual images are recorded or stored. The term includes the following:

- (1) An original:
  - (A) phonograph record;
  - (B) compact disc;
  - (C) wire;
  - (D) tape;
  - (E) audio cassette;
  - (F) video cassette; or
  - (G) film.

(2) Any other medium on which sounds or visual images are or can be recorded or otherwise stored.

(3) A copy or reproduction of an item in subdivision (1) or (2) that duplicates the original recording in whole or in part.

(q) “Slug” means an article or object that is capable of being deposited in a coin machine as an improper substitute for a genuine coin, bill, or token.

(r) “Synthetic identifying information” means identifying information that identifies:

- (1) a false or fictitious person;
- (2) a person older than the person who is using the information; or
- (3) a combination of persons described under subdivisions (1) and (2).

(s) “Utility” means a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the production, storage, transmission, sale, or delivery of electricity, water, steam, telecommunications, information, or gas.

(t) “Written instrument” means a paper, a document, or other instrument containing written matter and includes money, coins, tokens, stamps, seals, credit cards, badges, trademarks, medals, retail sales receipts, labels or markings (including a universal product code (UPC) or another product identification code), or other objects or symbols of value, right, privilege, or identification.

### **35-43-5-2. Counterfeiting; Forgery; Application Fraud**

(a) A person who knowingly or intentionally:

(1) makes or utters a written instrument in such a manner that it purports to have been made:

- (A) by another person;
- (B) at another time;
- (C) with different provisions; or
- (D) by authority of one who did not give authority; or

(2) possesses more than one (1) written instrument knowing that the written instruments were made in a manner that they purport to have been made:

- (A) by another person;
- (B) at another time;
- (C) with different provisions; or
- (D) by authority of one who did not give authority;

commits counterfeiting, a Level 6 felony.

(b) A person who, with intent to defraud:

(1) makes or delivers to another person:

- (A) a false sales receipt
- (B) a duplicate of a sales receipt; or

(C) a label or other item with a false universal product code (UPC) or other product identification code; or

(2) places a false universal product code (UPC) or another product identification code on property displayed or offered for sale;

commits making or delivering a false sales document, a Level 6 felony.

(c) A person who, with intent to defraud, possesses:

(1) a retail sales receipt;

(2) a label or other item with a universal product code (UPC); or

(3) a label or other item that contains a product identification code that applies to an item other than the item to which the label or other item applies;

commits possession of a fraudulent sales document, a Class A misdemeanor. However, the offense is a Level 6 felony if the person possesses at least fifteen (15) retail sales receipts, at least fifteen (15) labels containing a universal product code (UPC), at least fifteen (15) labels containing another product identification code, or at least fifteen (15) of any combination of the items described in subdivisions (1) through (3).

(d) A person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made:

(1) by another person;

(2) at another time;

(3) with different provisions; or

(4) by authority of one who did not give authority;

commits forgery, a Level 6 felony.

(e) This subsection applies to a person who applies for a driver's license (as defined in IC 9-13-2-48) or a state identification card (as described in IC 9-24-16). A person who:

(1) knowingly or intentionally uses a false or fictitious name or gives a false or fictitious address in an application for a driver's license or a state identification card or for a renewal or a duplicate of a driver's license or a state identification card; or

(2) knowingly or intentionally makes a false statement or conceals a material fact in an application for a driver's license or a state identification card;

commits application fraud, a Level 6 felony.

### **35-43-5-2.5. Counterfeit government issued identification**

A person who knowingly or intentionally possesses, produces, or distributes a document not issued by a government entity that purports to be a government issued identification commits a Class A misdemeanor.

### **35-43-5-3. Deception**

(a) A person who:

(1) being an officer, manager, or other person participating in the direction of a credit institution, knowingly or intentionally receives or permits the receipt of a deposit or other investment, knowing that the institution is insolvent;

(2) knowingly or intentionally makes a false or misleading written statement with intent to obtain property, employment, or an educational opportunity;

(3) misapplies entrusted property, property of a governmental entity, or property of a credit institution in a manner that the person knows is unlawful or that the

person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted;

(4) knowingly or intentionally, in the regular course of business, either:

(A) uses or possesses for use a false weight or measure or other device for falsely determining or recording the quality or quantity or any commodity;  
or

(B) sells, offers, or displays for sale or delivers less than the represented quality or quantity of any commodity;

(5) with intent to defraud another person furnishing electricity, gas, water, telecommunication, or any other utility service, avoids a lawful charge for that service by scheme or device or by tampering with facilities or equipment of the person furnishing the service;

(6) with intent to defraud, misrepresents the identity of the person or another person or the identity or quality of property;

(7) with intent to defraud an owner of a coin machine, deposits a slug in that machine;

(8) with intent to enable the person or another person to deposit a slug in a coin machine, makes, possesses, or disposes of a slug;

(9) disseminates to the public an advertisement that the person knows is false, misleading, or deceptive, with intent to promote the purchase or sale of property or the acceptance of employment;

(10) with the intent to defraud, misrepresents a person as being a physician licensed under IC 25-22.5;

(11) knowingly and intentionally defrauds another person furnishing cable TV service by avoiding paying compensation for that service by any scheme or device or by tampering with facilities or equipment of the person furnishing the service;  
or

(12) knowingly or intentionally provides false information to a governmental entity to obtain a contract from the governmental entity;

commits deception, a Class A misdemeanor. However, an offense under subdivision (12) is a Level 6 felony if the provision of false information results in financial loss to the governmental entity.

(b) In determining whether an advertisement is false, misleading, or deceptive under subsection (a)(9), there shall be considered, among other things, not only representations contained or suggested in the advertisement, by whatever means, including device or sound, but also the extent to which the advertisement fails to reveal material facts in the light of the representations.

(c) A person who knowingly or intentionally falsely represents:

(1) any entity as:

(A) a disadvantaged business enterprise (as defined in IC 5-16-6.5-1); or

(B) a women-owned business enterprise (as defined in IC 5-16-6.5-3);

in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5-2) designed to assist disadvantaged business enterprises or women-owned business enterprises in obtaining contracts with public agencies for the provision of goods and services;  
or

(2) an entity with which the person will subcontract all or part of a contract with a public agency (as defined in IC 5-16-6.5-2) as:

(A) a disadvantaged business enterprise (as defined in IC 5-16-6.5-1); or

(B) a woman-owned enterprise (as defined in IC 5-16-16.5-3);

in order to qualify for certification as an eligible bidder under a program that is conducted by a public agency designed to assist disadvantaged business enterprises or women-owned business enterprises in obtaining contracts with public agencies for the provision of goods and services;

commits a Level 6 felony.

### **35-43-5-3.5. Identity deception**

**Editor's Note: This statute was separately amended during the 2013 legislative session by P.L.20-2013 and P.L.158-2013, with neither act referring to the other. There were no further amendments to this statute during the 2014 legislative session. Because the 2013 amendments to this statute were not identical, this statute is set forth below as amended by each act.**

#### **Version 1 (as amended by P.L.20-2103)**

(a) Except as provided in subsection (c), a person who knowingly or intentionally obtains, possesses, transfers, or uses the identifying information of another person, including the identifying information of a person who is deceased:

(1) without the other person's consent; and

(2) with intent to:

(A) harm or defraud another person;

(B) assume another person's identity; or

(C) profess to be another person;

commits identity deception, a Class D felony.

(b) However, the offense defined in subsection (a) is a Class C felony if:

(1) a person obtains, possesses, transfers, or uses the identifying information of more than one hundred (100) persons;

(2) the fair market value of the fraud or harm caused by the offense is at least fifty thousand dollars (\$50,000); or

(3) a person obtains, possesses, transfers, or uses the identifying information of a person who is less than eighteen (18) years of age and is:

(A) the person's son or daughter;

(B) a dependent of the person;

(C) a ward of the person; or

(D) an individual for whom the person is a guardian.

(c) The conduct prohibited in subsections (a) and (b) does not apply to:

(1) a person less than twenty-one (21) years of age who uses the identifying information of another person to acquire an alcoholic beverage (as defined in IC 7.1-1-3-5);

(2) a minor (as defined in IC 35-49-1-4) who uses the identifying information of another person to acquire:

(A) a cigarette, an electronic cigarette (as defined in IC 35-46-1-1.5), or a tobacco product (as defined in IC 6-7-2-5);

- (B) a periodical, a videotape, or other communication medium that contains or depicts nudity (as defined in IC 35-49-1-5);
- (C) admittance to a performance (live or film) that prohibits the attendance of the minor based on age; or
- (D) an item that is prohibited by law for use or consumption by a minor;
- (3) any person who uses the identifying information for a lawful purpose.
- (d) It is not a defense in a prosecution under subsection (a) or (b) that no person was harmed or defrauded.

**Version 2 (as amended by P.L.158-2013)**

(a) Except as provided in subsection (c), a person who knowingly or intentionally obtains, possesses, transfers, or uses the identifying information of another person, including the identifying information of a person who is deceased:

- (1) without the other person's consent; and
- (2) with intent to:
  - (A) harm or defraud another person;
  - (B) assume another person's identity; or
  - (C) profess to be another person;

commits identity deception, a Level 6 felony.

(b) However, the offense defined in subsection (a) is a Level 5 felony if:

- (1) a person obtains, possesses, transfers, or uses the identifying information of more than one hundred (100) persons;
- (2) the fair market value of the fraud or harm caused by the offense is at least fifty thousand dollars (\$50,000); or
- (3) a person obtains, possesses, transfers, or uses the identifying information of a person who is less than eighteen (18) years of age and is:
  - (A) the person's son or daughter;
  - (B) a dependent of the person;
  - (C) a ward of the person; or
  - (D) an individual for whom the person is a guardian.

(c) The conduct prohibited in subsections (a) and (b) does not apply to:

- (1) a person less than twenty-one (21) years of age who uses the identifying information of another person to acquire an alcoholic beverage (as defined in IC 7.1-1-3-5);
- (2) a minor (as defined in IC 35-49-1-4) who uses the identifying information of another person to acquire:
  - (A) a cigarette, an electronic cigarette (as defined in IC 35-46-1-1.5), or a tobacco product (as defined in IC 6-7-2-5);
  - (B) a periodical, a videotape, or other communication medium that contains or depicts nudity (as defined in IC 35-49-1-5);
  - (C) admittance to a performance (live or film) that prohibits the attendance of the minor based on age; or
  - (D) an item that is prohibited by law for use or consumption by a minor;
- (3) any person who uses the identifying information for a lawful purpose.

(d) It is not a defense in a prosecution under subsection (a) or (b) that no person was harmed or defrauded.

#### **35-43-5-3.6. Terroristic deception**

A person who knowingly or intentionally obtains, possesses, transfers, or uses the identifying information of another person with intent to:

- (1) commit terrorism; or
- (2) obtain or transport a weapon of mass destruction;

commits terroristic deception, a Level 5 felony.

#### **35-43-5-3.7. Notario publico deception**

A person who violates IC 33-42-2-10 commits notario publico deception, a Class A misdemeanor.

#### **35-43-5-3.8. Synthetic identity deception**

(a) A person who knowingly or intentionally obtains, possesses, transfers, or uses the synthetic identifying information:

- (1) with intent to harm or defraud another person;
- (2) with intent to assume another person's identity; or
- (3) with intent to profess to be another person;

commits synthetic identity deception, a Level 6 felony.

(b) The offense under subsection (a) is a Level 5 felony if:

- (1) a person obtains, possesses, transfers, or uses the synthetic identifying information of more than one hundred (100) persons; or
- (2) the fair market value of the fraud or harm caused by the offense is at least fifty thousand dollars (\$50,000).

(c) The conduct prohibited in subsections (a) and (b) does not apply to:

- (1) a person less than twenty-one (21) years of age who uses the synthetic identifying information of another person to acquire an alcoholic beverage (as defined in IC 7.1-1-3-5); or
- (2) a minor (as defined in IC 35-49-1-4) who uses the synthetic identifying information of another person to acquire:
  - (A) a cigarette or tobacco product (as defined in IC 6-7-2-5);
  - (B) a periodical, a videotape, or other communication medium that contains or depicts nudity (as defined in IC 35-49-1-5);
  - (C) admittance to a performance (live or film) that prohibits the attendance of the minor based on age; or
  - (D) an item that is prohibited by law for use or consumption by a minor.

(d) It is not a defense in a prosecution under subsection (a) or (b) that no person was harmed or defrauded.

#### **35-43-5-4. Fraud**

A person who:

(1) with intent to defraud, obtains property by:

- (A) using a credit card, knowing that the credit card was unlawfully obtained or retained;
- (B) using a credit card, knowing that the credit card is forged, revoked, or expired;

- (C) using, without consent, a credit card that was issued to another person;
- (D) representing, without the consent of the credit card holder, that the person is the authorized holder of the credit card; or
- (E) representing that the person is the authorized holder of a credit card when the card has not in fact been issued;
- (2) being authorized by an issuer to furnish property upon presentation of a credit card, fails to furnish the property and, with intent to defraud the issuer or the credit card holder, represents in writing to the issuer that the person has furnished the property;
- (3) being authorized by an issuer to furnish property upon presentation of a credit card, furnishes, with intent to defraud the issuer or the credit card holder, property upon presentation of a credit card, knowing that the credit card was unlawfully obtained or retained or that the credit card is forged, revoked, or expired;
- (4) not being the issuer, knowingly or intentionally sells a credit card;
- (5) not being the issuer, receives a credit card, knowing that the credit card was unlawfully obtained or retained or that the credit card is forged, revoked, or expired;
- (6) with intent to defraud, receives a credit card as security for debt;
- (7) receives property, knowing that the property was obtained in violation of subdivision (1) of this section;
- (8) with intent to defraud the person's creditor or purchaser, conceals, encumbers, or transfers property;
- (9) with intent to defraud, damages property; or
- (10) knowingly or intentionally:
  - (A) sells;
  - (B) rents;
  - (C) transports; or
  - (D) possesses;

a recording for commercial gain or personal financial gain that does not conspicuously display the true name and address of the manufacturer of the recording;  
 commits fraud, a Level 6 felony.

### **35-43-5-4.3. Card skimming device**

(a) As used in this section, "card skimming device" means a device that is designed to read information encoded on a credit card. The term includes a device designed to read, record, or transmit information encoded on a credit card:

- (1) directly from a credit card; or
- (2) from another device that reads information directly from a credit card.
- (b) A person who possesses a card skimming device with intent to commit:
  - (1) identity deception (IC 35-43-5-3.5);
  - (2) synthetic identity deception (IC 35-43-5-3.8);
  - (3) fraud (IC 35-43-5-4); or
  - (4) terroristic deception (IC 35-43-5-3.6);

commits unlawful possession of a card skimming device. Unlawful possession of a card skimming device under subdivision (1), (2), or (3) is a Level 6 felony. Unlawful possession of a card skimming device under subdivision (4) is a Level 5 felony.

### 35-43-5-4.5. Insurance fraud

(a) A person who, knowingly and with intent to defraud:

(1) makes, utters, presents, or causes to be presented to an insurer or an insurance claimant, a claim statement that contains false, incomplete, or misleading information concerning the claim;

(2) presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, an oral, a written, or an electronic statement that the person knows to contain materially false information as part of, in support of, or concerning a fact that is material to:

(A) the rating of an insurance policy;

(B) a claim for payment or benefit under an insurance policy;

(C) premiums paid on an insurance policy;

(D) payments made in accordance with the terms of an insurance policy;

(E) an application for a certificate of authority;

(F) the financial condition of an insurer; or

(G) the acquisition of an insurer;

or conceals any information concerning a subject set forth in clauses (A) through (G);

(3) solicits or accepts new or renewal insurance risks by or for an insolvent insurer or other entity regulated under IC 27;

(4) removes:

(A) the assets;

(B) the record of assets, transactions, and affairs; or

(C) a material part of the assets or the record of assets, transactions, and affairs;

of an insurer or another entity regulated under IC 27, from the home office, other place of business, or place of safekeeping of the insurer or other regulated entity, or conceals or attempts to conceal from the department of insurance assets or records referred to in clauses (A) through (B); or

(5) diverts funds of an insurer or another person in connection with:

(A) the transaction of insurance or reinsurance;

(B) the conduct of business activities by an insurer or another entity regulated under IC 27; or

(C) the formation, acquisition, or dissolution of an insurer or another entity regulated under IC 27;

commits insurance fraud. Except as provided in subsection (b), insurance fraud is a Level 6 felony.

(b) An offense described in subsection (a) is a Level 5 felony if:

(1) the person who commits the offense has a prior unrelated conviction under this section; or

(2) the:

(A) value of property, services, or other benefits obtained or attempted to be obtained by the person as a result of the offense; or

(B) economic loss suffered by another person as a result of the offense;

is at least two thousand five hundred dollars (\$2,500).

(c) A person who knowingly and with intent to defraud makes a material misstatement in support of an application for the issuance of an insurance policy commits insurance application fraud, a Class A misdemeanor.

#### **35-43-4-4.6. Manipulation device**

(a) The following definitions apply throughout this section:

(1) “Automated sales suppression device” means a software program:

- (A) carried on a memory stick or removable compact disc;
- (B) accessed through an Internet link; or
- (C) accessed through any other means;

that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including transaction data and transaction reports.

(2) “Electronic cash register” means a device that keeps a register or supporting documents through the means of an electronic device or a computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in any manner.

(3) “Phantom-ware” means a hidden, a pre-installed, or an installed at a later time programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that:

- (A) can be used to create a virtual second till; or
- (B) may eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register.

(4) “Transaction data” includes information regarding:

- (A) items purchased by a customer;
- (B) the price for each item;
- (C) the taxability determination for each item;
- (D) a segregated tax amount for each of the taxed items;
- (E) the amount of cash or credit tendered;
- (F) the net amount returned to the customer in change;
- (G) the date and time of the purchase;
- (H) the name, address, and identification number of the vendor; and
- (I) the receipt or invoice number of the transaction.

(5) “Transaction report” means:

- (A) a report that includes:
  - (i) the sales;
  - (ii) taxes collected;
  - (iii) media totals; and
  - (iv) discount voids;

at an electronic cash register that is printed on cash register tape at the end of a day or shift; or

- (B) a report documenting every action at an electronic cash register that is stored electronically.

(6) “Zapper” refers to an automated sales suppression device.

(b) A person who knowingly or intentionally sells, purchases, installs, transfers, or possesses:

- (1) an automated sales suppression device or a zapper; or
- (2) phantom-ware;

after June 30, 2013, commits unlawful sale or possession of a transaction manipulation device, a Level 5 felony.

### **35-43-5-5. Check deception**

(a) A person who knowingly or intentionally issues or delivers a check, a draft, or an order on a credit institution for the payment of or to acquire money or other property, knowing that it will not be paid or honored by the credit institution upon presentment in the usual course of business, commits check deception, a Class A misdemeanor. However, the offense is:

- (1) a Level 6 felony if the amount of the check, draft, or order is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000); and
- (2) a Level 5 felony if the amount of the check, draft, or order is at least fifty thousand dollars (\$50,000).

(b) An unpaid and dishonored check, a draft, or an order that has the drawee's refusal to pay and reason printed, stamped, or written on or attached to it constitutes prima facie evidence:

- (1) that due presentment of it was made to the drawee for payment and dishonor thereof; and
- (2) that it properly was dishonored for the reason stated.

(c) The fact that a person issued or delivered a check, draft, or an order, payment of which was refused by the drawee, constitutes prima facie evidence that the person knew that it would not be paid or honored. In addition, evidence that a person had insufficient funds in or no account with the drawee credit institution constitutes prima facie evidence that the person knew that the check, draft, or order would not be paid or honored.

(d) The following two (2) items constitute prima facie evidence of the identity of the maker of the check, draft, or order if at the time of its acceptance they are obtained and recorded, either on the check, draft, or order itself or on file by the payee:

- (1) Name and residence, business, or mailing address of the maker.
- (2) Motor vehicle operator's license number, Social Security number, home telephone number, or place of employment of the maker.

(e) It is a defense under subsection (a) if the person who:

- (1) has an account with a credit institution but does not have sufficient funds in that account; and
- (2) issues or delivers a check, a draft, or an order for payment on that credit institution;

pays the payee or holder the amount due, together with protest fees and any service fee or charge, which may not exceed the greater of twenty-seven dollars and fifty cents (\$27.50) or five percent (5%) (but not more than two hundred fifty dollars (\$250)) of the amount due, that may be charged by the payee or holder, within ten (10) days after the date of mailing by the payee or holder of notice to the person that the check, draft, or order has not been paid by the credit institution. Notice sent in the manner set forth in IC 26-2-7-3 constitutes notice to the person that the check, draft, or order has not been paid by the credit institution. The payee or holder of a check, draft, or order that has been dishonored incurs no civil or criminal liability for sending notice under this subsection.

(f) A person does not commit a crime under subsection (a) when:

- (1) the payee or holder knows that the person has insufficient funds to ensure payment or that the check, draft, or order is postdated; or
- (2) insufficiency of funds or credit results from an adjustment to the person's account by the credit institution without notice to the person.

### **35-43-5-6. Utility fraud**

(a) A customer who utilizes any device or scheme to avoid being assessed for the full amount of services received from a utility or a cable TV service provider commits a Class B infraction.

(b) Evidence that a customer's metering device has been altered, removed, or bypassed without the knowledge of or notification to the utility is prima facie evidence that the customer has utilized a device or scheme to avoid being assessed for the full amount of services received from the utility.

(c) Evidence that access to services of a utility or a cable TV service provider has been obtained without authority from the utility or the cable TV service provider constitutes prima facie evidence that the person benefiting from the access has utilized a device or scheme to avoid being assessed for the full amount of services received from the utility or the cable TV service provider.

### **35-43-5-6.5. Sale or distribution of cable TV devices**

(a) A person who manufactures, distributes, sells, leases, or offers for sale or lease:

- (1) a device; or
- (2) a kit of parts to construct a device;

designed in whole or in part to intercept, unscramble, or decode a transmission by a cable television system with the intent that the device or kit be used to obtain cable television system services without full payment to the cable television system commits a Level 6 felony.

(b) The sale or distribution by a person of:

- (1) any device; or
- (2) a kit of parts to construct a device;

described in subsection (a) constitutes prima facie evidence of a violation of subsection (a) if, before or at the time of sale or distribution, the person advertised or indicated that the device or the assembled kit will enable a person to receive cable television system service without making full payment to the cable television system.

### **35-43-5-7. Welfare Fraud**

(a) A person who knowingly or intentionally:

- (1) obtains public relief or assistance by means of impersonation, fictitious transfer, false or misleading oral or written statement, fraudulent conveyance, or other fraudulent means;
- (2) acquires, possesses, uses, transfers, sells, trades, issues, or disposes of:
  - (A) an authorization document to obtain public relief or assistance; or
  - (B) public relief or assistance;

except as authorized by law;

- (3) uses, transfers, acquires, issues, or possesses a blank or incomplete authorization document to participate in public relief or assistance programs, except as authorized by law;

- (4) counterfeits or alters an authorization document to receive public relief or assistance, or knowingly uses, transfers, acquires, or possesses a counterfeit or altered authorization document to receive public relief or assistance; or
- (5) conceals information for the purpose of receiving public relief or assistance to which he is not entitled;

commits welfare fraud, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense is:

- (1) a Level 6 felony if the amount of public relief or assistance involved is more than seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000); and
- (2) a Level 5 felony if the amount of public relief or assistance involved is at least fifty thousand dollars (\$50,000).

(c) Whenever a person is convicted of welfare fraud under this section, the clerk of the sentencing court shall certify to the appropriate state agency and the appropriate agency of the county of the defendant's residence:

- (1) the defendant's conviction; and
- (2) whether the defendant is placed on probation and restitution is ordered under IC 35-38-2.

### **35-43-5-7.1. Medicaid fraud**

(a) Except as provided in subsection (b), a person who knowingly or intentionally:

- (1) files a Medicaid claim, including an electronic claim, in violation of IC 12-15;
- (2) obtains payment from the Medicaid program under IC 12-15 by means of a false or misleading oral or written statement or other fraudulent means;
- (3) acquires a provider number under the Medicaid program except as authorized by law;
- (4) alters with the intent to defraud or falsifies documents or records of a provider (as defined in 42 CFR 1000.30) that are required to be kept under the Medicaid program; or
- (5) conceals information for the purpose of applying for or receiving unauthorized payments from the Medicaid program;

commits Medicaid fraud, a Class A misdemeanor.

(b) the offense described in subsection (a) is:

- (1) a Level 6 felony if the fair market value of the offense is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000); and
- (2) a Level 5 felony if the fair market value of the offense is at least fifty thousand dollars (\$50,000).

### **35-43-5-7.2. Children's health insurance fraud**

(a) Except as provided in subsection (b), a person who knowingly or intentionally:

- (1) files a children's health insurance program claim, including an electronic claim, in violation of IC 12-17.6;
- (2) obtains payment from the children's health insurance program under IC 12-17.6 by means of a false or misleading oral or written statement or other fraudulent means;

- (3) acquires a provider number under the children's health insurance program except as authorized by law;
- (4) alters with intent to defraud or falsifies documents or records of a provider (as defined in 42 CFR 1002.301) that are required to be kept under the children's health insurance program; or
- (5) conceals information for the purpose of applying for or receiving unauthorized payments from the children's health insurance program;

commits insurance fraud, a Class A misdemeanor.

(b) The offense described in subsection (a) is:

- (1) a Level 6 felony if the fair market value of the offense is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000); and
- (2) a Level 5 felony if the fair market value of the offense is at least fifty thousand dollars (\$50,000).

### **35-43-5-8. Fraud on financial institutions**

(a) A person who knowingly executes, or attempts to execute, a scheme or artifice:

- (1) to defraud a state or federally chartered or federally insured financial institution; or
- (2) to obtain any of the money, funds, credits, assets, securities, or other property owned by or under the custody or control of a state or federally chartered or federally insured financial institution by means of false or fraudulent pretenses, representations, or promises;

commits a Level 5 felony.

(b) As used in this section, the term "state or federally chartered or federally insured financial institution" means:

- (1) an institution with accounts insured by the Federal Deposit Insurance Corporation;
- (2) a credit union with accounts insured by the National Credit Union Administration Board;
- (3) a federal home loan bank or a member, as defined in Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), as in effect on December 31, 1990, of the Federal Home Loan Bank System; or
- (4) a bank, banking association, land bank, intermediate credit bank, bank for cooperatives, production credit association, land bank association, mortgage association, trust company, savings bank, or other banking or financial institution organized or operating under the laws of the United States or of the state.

The term does not include a lender licensed under IC 24-4.5.

### **35-43-5-12. Check fraud**

(a) As used in this section, "financial institution" refers to a state or federally chartered bank, savings bank, savings association, or credit union.

(b) A person who knowingly or intentionally obtains property, through a scheme or artifice, with intent to defraud:

- (1) by issuing or delivering a check, a draft, an electronic debit, or an order on a financial institution:

- (A) knowing that the check, draft, order, or electronic debit will not be paid or honored by the financial institution upon presentment in the usual course of business;
- (B) using false or altered evidence of identity or residence;
- (C) using a false or altered account number; or
- (D) using a false or altered check, draft, order or electronic instrument;

(2) by:

- (A) depositing the minimum initial deposit required to open an account; and
- (B) either making no additional deposits or making insufficient additional deposits to insure debits to the account; or

(3) by opening accounts with more than one (1) financial institution in either a consecutive or concurrent time period;

commits check fraud, a Class A misdemeanor.

(c) However, the offense under subsection (b) is:

- (1) a Level 6 felony if the aggregate amount of property obtained is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000); and
- (2) a Level 5 felony if the aggregate amount of the property obtained is at least fifty thousand dollars (\$50,000).

### **35-43-5-13. Do not resuscitate orders**

Certain offenses concerning forgery and other deceptions involving out of hospital do not resuscitate declarations and orders are described in IC 16-36-5.

### **35-43-5-15. Possession of fraudulent sales document manufacturing device**

A person who, with intent to defraud, possesses a device to make retail sales receipts, universal product codes (UPC), or other product identification codes, commits possession of a fraudulent sales document manufacturing device, a Class A misdemeanor.

### **35-43-5-16. Making false sales document**

A person who, with intent to defraud:

- (1) makes or puts a false universal product code (UPC) or another product identification code on property displayed or offered for sale; or
- (2) makes a false sales receipt;

commits making a false sales document, a Level 6 felony.

### **35-43-5-18. Possession of device or substance used to interfere with screening test**

A person who knowingly or intentionally possesses a:

- (1) device; or
- (2) substance;

designed or intended to be used to interfere with a drug or alcohol screening test commits possession of a device or substance used to interfere with a drug or alcohol screening test, a Class B misdemeanor.

**35-43-5-19. Interfering with screening test**

A person who interferes with or attempts to interfere with a drug or alcohol screening test by:

- (1) using a:
  - (A) device; or
  - (B) substance;
- (2) substituting a human bodily substance that is tested in a drug or alcohol screening test; or
- (3) adulterating a substance used in a drug or alcohol screening test;

commits interfering with a drug or alcohol screening test, a Class B misdemeanor.

**35-43-5-20. Inmate fraud**

(a) As used in this section, “inmate” means a person who is confined in:

- (1) the custody of:
  - (A) the department of correction; or
  - (B) a sheriff;
- (2) a county jail; or
- (3) a secure juvenile facility.

(b) An inmate who:

- (1) is a pretrial detainee; and
- (2) with the intent of obtaining money or other property from a person who is not an inmate, knowingly or intentionally:
  - (A) makes a misrepresentation to a person who is not an inmate and obtains or attempts to obtain money or other property from the person who is not an inmate; or
  - (B) obtains or attempts to obtain money or other property from the person who is not an inmate through a misrepresentation made by another person;

commits inmate fraud, a Level 6 felony.

(c) An inmate:

- (1) who is incarcerated because the inmate has been:
  - (A) convicted of an offense; or
  - (B) adjudicated a delinquent; and
- (2) who, with the intent of obtaining money or other property from a person who is not an inmate, knowingly or intentionally:
  - (A) makes a misrepresentation to a person who is not an inmate and obtains or attempts to obtain money or other property from the person who is not an inmate; or
  - (B) obtains or attempts to obtain money or other property from the person who is not an inmate through a misrepresentation made by another person;

commits inmate fraud, a Level 5 felony.

**Chapter 6**  
**Home Improvement Fraud**

- 35-43-6-1 Application of chapter
- 35-43-6-2 “Consumer” defined

35-43-6-3	“Home improvement” defined
35-43-6-4	“Home improvement contract” defined
35-43-6-5	“Home improvement contract price” defined
35-43-6-6	“Home improvement supplier” defined
35-43-6-7	“Person” defined
35-43-6-8	Unconscionable contract
35-43-6-9	Prima facie evidence
35-43-6-10	Fair market value
35-43-6-11	Determining fair market value
35-43-6-12	Offenses
35-43-6-13	Enhancements
35-43-6-14	Mistaken belief; no defense

### **35-43-6-1. Application of chapter**

This chapter applies only to residential property, which means real property used in whole or in part as a dwelling by a consumer and includes all fixtures to, structures on, and improvements to the real property.

### **35-43-6-2. “Consumer” defined**

As used in this chapter, “consumer” means an individual who owns, leases, or rents the residential property that is the subject of the home improvement contract.

### **35-43-6-3. “Home improvement” defined**

As used in this chapter, “home improvement” means any alteration, repair, or other modification of residential property. However, this chapter does not apply to the original construction of a dwelling.

### **35-43-6-4. “Home improvement contract” defined**

As used in this chapter, “home improvement contract” means an oral or written agreement between a home improvement supplier and a consumer to make a home improvement and for which the contract price exceeds one hundred fifty dollars (\$150). Multiple contracts entered into by a home improvement supplier with a consumer are considered a home improvement contract for purposes of this chapter if the multiple contracts arise from the same transaction.

### **35-43-6-5. “Home improvement contract price” defined**

As used in this chapter, “home improvement contract price” means the amount actually charged for the services, materials, and work to be performed under the home improvement contract but does not include financing costs, loan consolidation amounts, taxes, and governmental fees paid by or on behalf of the consumer, amounts returned to or on behalf of the consumer, or similar costs not related to the home improvement.

### **35-43-6-6. “Home improvement supplier” defined**

As used in this chapter, “home improvement supplier” means a person who engages in or solicits home improvement contracts whether or not the person deals directly with the consumer.

### **35-43-6-7. “Person” defined**

As used in this chapter, “person” means an individual, corporation, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

### **35-43-6-8. Unconscionable contract**

For purposes of this chapter, a home improvement contract is unconscionable if an unreasonable difference exists between the fair market value of the services, materials, and work performed or to be performed and the home improvement contract price.

### **35-43-6-9. Prima facie evidence**

For purposes of this chapter, a home improvement contract price in excess of four (4) times greater than the fair market value of the services, materials, or work performed or to be performed is prima facie evidence of an unconscionable home improvement contract.

### **35-43-6-10. Fair market value**

For purposes of this chapter, the fair market value of a home improvement is that amount which in commercial judgment or under usage of trade would be reasonable for services, materials, and work of similar quality and workmanship.

### **35-43-6-11. Determining fair market value**

For purposes of this chapter, fair market value shall be determined as of the time either the home improvement contract was formed or at the time any of the work commenced under the home improvement contract, whichever is earlier. However, if such evidence is not readily available, the fair market value prevailing within any reasonable time before or after the time described, which in commercial judgment or under usage of trade would serve as a reasonable substitute, may be used.

### **35-43-6-12. Offenses**

(a) A home improvement supplier who enters into a home improvement contract and knowingly:

- (1) misrepresents a material fact relating to:
  - (A) the terms of the home improvement contract; or
  - (B) a preexisting or existing condition of any part of the property involved, including a misrepresentation concerning the threat of:
    - (i) fire; or
    - (ii) structural damage;if the property is not repaired;
- (2) creates or confirms a consumer’s impression that is false and that the home improvement supplier does not believe to be true;
- (3) promises performance that the home improvement supplier does not intend to perform or knows will not be performed;
- (4) uses or employs any deception, false pretense, or false promise to cause a consumer to enter into a home improvement contract;
- (5) enters into an unconscionable home improvement contract with a home improvement contract price of four thousand dollars (\$4,000) or more, but less than seven thousand dollars (\$7,000);

- (6) misrepresents or conceals the home improvement supplier's:
  - (A) real name;
  - (B) business name;
  - (C) physical or mailing business address; or
  - (D) telephone number;
- (7) upon request by the consumer, fails to provide the consumer with any copy of a written warranty or guarantee that states:
  - (A) the length of the warranty or guarantee;
  - (B) the home improvement that is covered by the warranty or guarantee; or
  - (C) how the consumer could make a claim for a repair under the warranty or guarantee;
- (8) uses a product in a home improvement that has been diluted, modified, or altered in a manner that would void the manufacturer's warranty of the product without disclosing to the consumer the reasons for the dilution, modification, or alteration and that the manufacturer's warranty may be compromised; or
- (9) falsely claims to the consumer that the home improvement supplier:
  - (A) was referred to the consumer by a contractor who previously worked for the consumer;
  - (B) is licensed, certified, or insured; or
  - (C) has obtained all necessary permits or licenses before starting a home improvement;

commits home improvement fraud, a Class B misdemeanor, except as provided in section 13 of this chapter.

(b) A home improvement supplier who, with the intent to enter into a home improvement contract, knowingly:

- (1) damages the property of a consumer;
- (2) does work on the property of a consumer without the consumer's prior authorization;
- (3) misrepresents that the supplier or another person is an employee or agent of the federal government, the state, a political subdivision of the state, or any other governmental agency or entity; or
- (4) misrepresents that the supplier or another person is an employee or agent of any public or private utility;

commits a Class A misdemeanor, except as provided in section 13(b) of this chapter.

### **35-43-6-13. Enhancements**

(a) The offense in section 12(a) of this chapter is a Class A misdemeanor:

- (1) in the case of an offense under section 12(a)(1) through 12(a)(4) of this chapter or section 12(a)(6) through 12(a)(9) of this chapter, if the home improvement contract price is one thousand dollars (\$1,000) or more;
- (2) for the second or subsequent offense under this chapter or in another jurisdiction for an offense that is substantially similar to another offense described in this chapter;
- (3) if two (2) or more home improvement contracts exceed the aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by

one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention; or

(4) if, in a violation of section 12(a)(5) of this chapter, the home improvement contract price is at least seven thousand dollars (\$7,000), but less than ten thousand dollars (\$10,000).

(b) The offense in section 12 of this chapter is a Level 6 felony:

(1) if, in a violation of section 12(a)(5) of this chapter, the home improvement contract price is more than ten thousand dollars (\$10,000);

(2) if, in a violation of:

(A) section 12(a)(1) through 12(a)(5); or

(B) section 12(a)(7) through 12(a)(9);

of this chapter, the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less;

(3) if, in a violation of section 12(b) of this chapter, the consumer is at least sixty (60) years of age; or

(4) if the home improvement contract violates more than one (1) subdivision of section 12(a) of this chapter.

(c) The offense in section 12(a) of this chapter is a Level 5 felony:

(1) if, in a violation of:

(A) section 12(a)(1) through 12(a)(5); or

(B) section 12(a)(7) through 12(a)(9);

of this chapter, the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars (\$10,000); or

(2) if, in a violation of:

(A) section 12(a)(1) through 12(a)(4); or

(B) section 12(a)(7) through 12(a)(9);

of this chapter, the consumer is at least sixty (60) years of age, and two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.

### **35-43-6-14. Mistaken belief; no defense**

For purposes of section 13 of this chapter, it is not a defense to home improvement fraud committed against a consumer who is at least sixty (60) years of age that the supplier reasonably believed the consumer to be an individual less than sixty (60) years of age.

## **Chapter 6.5 Motor Vehicle and Watercraft Fraud**

35-43-6.5-1 Fraudulent sale of vehicle, watercraft or vehicle part

35-43-6.5-2 Odometer fraud

**35-43-6.5-1. Fraudulent sale of vehicle, watercraft or vehicle part (effective January 1, 2015)**

(a) A person who sells or offers for sale a vehicle, a vehicle part, or a watercraft knowing that an identification number or certificate of title of the vehicle, vehicle part, or watercraft has been:

- (1) destroyed;
- (2) removed;
- (3) altered;
- (4) covered; or
- (5) defaced;

commits a Class A misdemeanor.

(b) A person who counterfeits or falsely reproduces a certificate of title for a motor vehicle, semitrailer, or recreational vehicle with intent to:

- (1) use the certificate of title; or
- (2) permit another person to use the certificate of title;

commits a Class B misdemeanor.

**35-43-6.5-2. Odometer fraud (effective January 1, 2015)**

(a) A person who, with the intent to defraud:

- (1) advertises for sale;
- (2) sells;
- (3) uses; or
- (4) installs;

any device that causes an odometer to register mileage other than the mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance commits a Level 6 felony.

(b) A person who, with the intent to defraud:

- (1) disconnects, resets, or alters the odometer of any motor vehicle with intent to change the number of miles or kilometers indicated on the odometer; or
- (2) sells a motor vehicle that has a broken odometer or an odometer that is not displaying correct mileage of the vehicle;

commits a Level 6 felony.

**Chapter 7  
Impairment of Identification**

- 35-43-7-1 "Consent of the original manufacturer"
- 35-43-7-2 "Identification number" defined
- 35-43-7-3 "Product" defined
- 35-43-7-4 Altering identification number
- 35-43-7-5 Possession of product with altered identification number

**35-43-7-1. "Consent of original manufacturer"**

As used in this chapter, "consent of the original manufacturer" includes consent:

- (1) Directly from the original manufacturer;

- (2) From an appointed direct representative of the original manufacturer; or
- (3) From a person operating under specific authorization of the original manufacturer.

### **35-43-7-2. “Identification number” defined**

As used in this chapter, “identification number” means a number, letter, or number and letter assigned to a product by the manufacturer of the product for purposes of identifying the item.

### **35-43-7-3. “Product” defined**

As used in this chapter, “product” means the following items:

- (1) Radio.
- (2) Piano.
- (3) Phonograph.
- (4) Sewing machine.
- (5) Washing machine.
- (6) Typewriter.
- (7) Adding machine.
- (8) Comptometer.
- (9) Bicycle.
- (10) Safe.
- (11) Vacuum cleaner.
- (12) Dictaphone.
- (13) Watch.
- (14) Watch movement.
- (15) Watch case.
- (16) Any mechanical or electrical device, appliance, contrivance, material, piece of apparatus, or equipment not described in subdivisions (1) through (15).
- (17) Integrated chip or panel.
- (18) Printed circuit.
- (19) Any other part of a computer.

### **35-43-7-4. Altering identification number**

A person who intentionally or knowingly conceals, alters, damages, or removes an identification number of a product with the intent to conceal the identity of the product and without the consent of the original manufacturer of the product commits impairment of identification, a Class A misdemeanor.

### **35-43-7-5. Possession of product with altered identification number**

A person who intentionally or knowingly receives or possesses a product on which the identification number of the product has been concealed, altered, damaged, or removed with the intent to conceal the identity of the product and without the consent of the original manufacturer of the product commits receiving unidentified property, a Class A misdemeanor.

## **Chapter 8 Timber Spiking**

- 35-43-8-1 “Timber” defined
- 35-43-8-2 Timber spiking
- 35-43-8-4 Infractions

### **35-43-8-1. “Timber” defined**

As used in this chapter, “timber” includes standing or felled trees and logs that can be used for any of the following:

- (1) Sawing or processing into lumber for building or structural purposes.
- (2) Posts, poles, bolts, pulpwood, or cordwood.
- (3) The manufacture of wood products.

### **35-43-8-2. Timber spiking**

(a) A person who recklessly, knowingly, or intentionally, without claim or right or consent of the owner, drives, places, or fastens in timber a device of metal, ceramic, or other substance sufficiently hard to damage equipment used in the processing of timber into wood products, with the intent to hinder the felling, logging, or processing of timber, commits timber spiking, a Level 6 felony.

(b) However, the offense under subsection (a) is a Level 5 felony if the offense causes bodily injury to another person.

(c) In addition to a penalty imposed under subsection (a) or (b), the court may order a person convicted of violating this section to pay attorney’s fees and restitution to the owner of property damaged because of the action of the person.

### **35-43-8-4. Infractions**

A person commits a Class A infraction who:

- (1) Possesses a device of metal, ceramic, or other substance commonly used to damage saws, wood processing, manufacturing, or transportation equipment with the intent to use the device to hinder the logging or the processing of timber; or
- (2) Possesses a chemical or biological substance, mechanical equipment, or a tool with the intent to use the substance, equipment, or tool or permit the use of the substance, equipment, or tool to damage timber processing, manufacturing, or transportation equipment.

## **Chapter 9 Conversion or Misappropriation of Title Insurance Escrow Funds**

- 35-43-9-1 “Party” defined
- 35-43-9-2 “Person” defined
- 35-43-9-3 “Residential real property transaction” defined
- 35-43-9-4 “Title insurance agent” defined
- 35-43-9-5 “Title insurance escrow account” defined
- 35-43-9-6 “Title insurer” defined

- 35-43-9-7 Conversion or misappropriation of title insurance escrow funds
- 35-43-9-8 Notice of conviction to department of insurance
- 35-43-9-9 Restitution

**35-43-9-1. “Party” defined**

As used in this chapter, “party” means an individual who is:

- (1) Buying;
- (2) Selling; or
- (3) Refinancing;

a dwelling in a residential real property transaction.

**35-43-9-2. “Person” defined**

As used in this chapter, “person” means an individual, a corporation, a limited liability company, a partnership, a firm, an association, or another organization.

**35-43-9-3. “Residential real property transaction” defined**

As used in this chapter, “residential real property transaction” means the purchase, sale, or refinancing of a dwelling that has been or will be the residence of a party in the purchase, sale or refinancing.

**35-43-9-4. “Title insurance agent” defined**

As used in this chapter, “title insurance agent” means a person who holds a limited lines producer’s license issued under IC 27-1-15.6-18(3) and disburses funds from a title insurance escrow account to a party in connection with a residential real property transaction.

**35-43-9-5. “Title insurance escrow account” defined**

As used in this chapter, “title insurance escrow account” means an account in which written instruments, money, or other items are deposited and held in escrow or trust for distribution to a party in connection with a residential real property transaction upon the performance of a specified condition or the happening of a certain event.

**35-43-9-6. “Title insurer” defined**

As used in this chapter, “title insurer” means a person holding a valid certificate of authority issued under IC 27-7-3-6.

**35-43-9-7. Conversion or misappropriation of title insurance escrow funds**

(a) An officer, a director, or an employee of a title insurer, an individual associated with the title insurer as an independent contractor, or a title insurance agent who knowingly or intentionally:

- (1) converts or misappropriates money received or held in a title insurance escrow account; or
- (2) receives or conspires to receive money described in subdivision (1);

commits a Level 6 felony, except as provided in subsection (b).

(b) The offense is:

- (1) a Level 5 felony if the amount of money:
  - (A) converted, misappropriated, or received; or

- (B) for which there is a conspiracy;  
is more than ten thousand dollars (\$10,000) but less than one hundred thousand dollars (\$100,000); and
- (2) a Level 4 felony if the amount of money:
  - (A) converted, misappropriated, or received; or
  - (B) for which there is a conspiracy;  
is at least one hundred thousand dollars (\$100,000).

### **35-43-9-8. Notice of conviction to department of insurance**

The court shall direct the clerk of court to notify the Indiana department of insurance about a conviction of an offense under section 7 of this chapter.

### **35-43-9-9. Restitution**

In addition to any sentence or fine imposed for a conviction of an offense in section 7 of this chapter, the court shall order the person convicted to make restitution to the victim of the crime pursuant to IC 35-50-5-3.

## **Chapter 10 Legend Drug Deception**

- 35-43-10-1 Application of definitions from IC 25-26-14
- 35-43-10-2 Non-application
- 35-43-10-3 Legend drug deception
- 35-43-10-4 Legend drug deception resulting in death

### **35-43-10-1. Application of definitions from IC 25-26-14**

The definitions in IC 25-26-14 apply throughout this chapter.

### **35-43-10-2. Non-application**

Except as provided by federal law or regulation, this chapter does not apply to a pharmaceutical manufacturer that is approved by the federal Food and Drug Administration.

### **35-43-10-3. Legend drug deception**

A person who knowingly or intentionally:

- (1) possesses a contraband legend drug;
- (2) sells, delivers, or possesses with intent to sell or deliver a contraband legend drug;
- (3) forges, counterfeits, or falsely creates a label for a legend drug or falsely represents a factual matter contained on a label of a legend drug; or
- (4) manufactures, purchases, sells, delivers, brings into Indiana, or possesses a contraband legend drug;

commits legend drug deception, a Level 6 felony.

**35-43-10-4. Legend drug deception resulting in death**

A person:

- (1) who knowingly or intentionally manufacturers, purchases, sells, delivers, brings into Indiana, or possesses a contraband legend drug; and
- (2) whose act under subdivision (1) results in the death of an individual;

commits legend drug deception resulting in death, a Level 2 felony.

**ARTICLE 44.1  
OFFENSES AGAINST  
GENERAL PUBLIC ADMINISTRATION**

- Ch. 1           Offenses Against General Public Administration
- Ch. 2           Interference with General Government Operations
- Ch. 3           Offenses Relating to Detention
- Ch. 4           Firefighting and Emergency Services
- Ch. 5           Illegal Alien Offenses

**Chapter 1  
Offenses Against  
General Public Administration**

- 35-44.1-1-1    Official misconduct.
- 35-41.1-1-2    Bribery
- 35-41.1-1-3    Ghost employment
- 35-41.1-1-4    Conflict of interest
- 35-41.1-1-5    Profiteering from public service

**35-44.1-1-1. Official misconduct**

A public servant who knowingly or intentionally:

- (1) commits an offense in the performance of the public servant’s official duties;
- (2) solicits, accepts, or agrees to accept from an appointee or employee any property other than what the public servant is authorized by law to accept as a condition of continued employment;
- (3) acquires or divests himself or herself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of the public servant’s office that official action that has not been made public is contemplated; or
- (4) fails to deliver public records and property in the public servant’s custody to the public servant’s successor in office when that successor qualifies;

commits official misconduct, a Level 6 felony.

**35-44.1-1-2. Bribery.**

(a) A person who:

- (1) confers, offers or agrees to confer on a public servant, either before or after the public servant becomes appointed, elected, or qualified, any property, except

property the public servant is authorized by law to accept, with intent to control the performance of an act related to the employment or function of the public servant or because of any official act performed or to be performed by the public servant, former public servant, or person selected to be a public servant;

(2) being a public servant, solicits, accepts, or agrees to accept, either before or after the person becomes appointed, elected, or qualified, any property, except property the person is authorized by law to accept, with intent to control the performance of an act related to the person's employment or function as a public servant;

(3) confers, offers, or agrees to confer on a person any property, except property the person is authorized by law to accept, with intent to cause that person to control the performance of an act related to the employment or function of a public servant;

(4) solicits, accepts, or agrees to accept any property, except property the person is authorized by law to accept, with intent to control the performance of an act related to the employment or function of a public servant;

(5) confers, offers, or agrees to confer any property on a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, with intent that the person will fail to use the person's best efforts in connection with that contest, event, or exhibition;

(6) being a person participating in, officiating in, or connected with an athletic contest, sporting event, or exhibition, solicits, accepts, or agrees to accept any property with intent that the person will fail to use the person's best efforts in connection with that contest, event, or exhibition.

(7) being a witness or informant in an official proceeding or investigation, solicits, accepts, or agrees to accept any property, with intent to:

(A) withhold any testimony, information, document, or thing;

(B) avoid legal process summoning the person to testify or supply evidence; or

(C) absent the person from the proceeding or investigation to which the person has been legally summoned;

(8) confers, offers, or agrees to confer any property on a witness or informant in an official proceeding or investigation, with intent that the witness or informant:

(A) withhold any testimony, information, document, or thing;

(B) avoid legal process summoning the witness or informant to testify or supply evidence; or

(C) absent himself or herself from any proceeding or investigation to which the witness or informant has been legally summoned; or

(9) confers or offers or agrees to confer any property on an individual for:

(A) casting a ballot or refraining from casting a ballot; or

(B) voting for a political party, for a candidate, or for or against a public question;

in an election described in IC 3-5-1-2 or at a convention of a political party authorized under IC 3;

commits bribery, a Level 5 felony.

(b) It is not a defense that the person whom the accused person sought to control was not qualified to act in the desired way.

### **35-44.1-1-3. Ghost employment**

(a) A public servant who knowingly or intentionally:

- (1) hires an employee for the governmental entity that the public servant serves; and
- (2) fails to assign to the employee any duties, or assigns to the employee any duties not related to the operation of the governmental entity;

commits ghost employment, a Level 6 felony.

(b) A public servant who knowingly or intentionally assigns to an employee under the public servant's supervision any duties not related to the operation of the governmental entity that the public servant serves commits ghost employment, a Level 6 felony.

(c) A person employed by a governmental entity who, knowing that the person has not been assigned any duties to perform for the entity, accepts property from the entity commits ghost employment, a Level 6 felony.

(d) A person employed by a governmental entity who knowingly or intentionally accepts property from the entity for the performance of duties not related to the operation of the entity commits ghost employment, a Level 6 felony.

(e) Any person who accepts property from a governmental entity in violation of this section and any public servant who permits the payment of property in violation of this section are jointly and severally liable to the governmental entity for that property. The attorney general may bring a civil action to recover that property in the county where the governmental entity is located or the person or public servant resides.

(f) For purposes of this section, an employee of a governmental entity who voluntarily performs services:

(1) that do not:

- (A) promote religion;
- (B) attempt to influence legislation or governmental policy; or
- (C) attempt to influence elections to public office;

(2) for the benefit of:

- (A) another governmental entity; or
- (B) an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;

(3) with the approval of the employee's supervisor; and

(4) in compliance with a policy or regulation that:

- (A) is in writing;
- (B) is issued by the executive officer of the governmental entity; and
- (C) contains a limitation on the total time during any calendar year that the employee may spend performing the services during normal hours of employment;

is considered to be performing duties related to the operation of the governmental entity.

### **35-44.1-1-4. Conflict of interest**

(a) The following definitions apply throughout this section:

(1) "Dependent" means any of the following:

- (A) The spouse of a public servant.

(B) A child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is:

- (i) unemancipated; and
- (ii) less than eighteen (18) years of age.

(C) An individual more than one-half (1/2) of whose support is provided during a year by the public servant.

(2) "Governmental entity served by the public servant" means the immediate governmental entity being served by a public servant.

(3) "Pecuniary interest" means an interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:

- (A) the public servant; or
- (B) a dependent of the public servant who:
  - (i) is under the direct or indirect administrative control of the public servant; or
  - (ii) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant.

(b) A public servant who knowingly or intentionally:

- (1) has a pecuniary interest in; or
- (2) derives a profit from;

a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Level 6 felony.

(c) It is not an offense under this section if any of the following apply:

(1) The public servant or the public servant's dependent receives compensation through salary or an employment contract for:

- (A) services provided as a public servant; or
- (B) expenses incurred by the public servant as provided by law.

(2) The public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars (\$250) or less.

(3) The contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government.

(4) The public servant:

- (A) acts in only an advisory capacity for a state supported college or university; and
- (B) does not have authority to act on behalf of the college or university in a matter involving a contract or purchase.

(5) A public servant under the jurisdiction of the state ethics commission (as provided in IC 4-2-6-2.5) obtains from the state ethics commission, following full and truthful disclosure, written approval that the public servant will not or does not have a conflict of interest in connection with the contract or purchase under IC 4-2-6 and this section. The approval required under this subdivision must be:

- (A) granted to the public servant before action is taken in connection with the contract or purchase by the governmental entity served; or

(B) sought by the public servant as soon as possible after the contract is executed or the purchase is made and the public servant becomes aware of the facts that give rise to a question of conflict of interest.

(6) A public servant makes a disclosure that meets the requirements of subsection (d) or (e) and is:

(A) not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity, and functions and performs duties for the governmental entity unrelated to the contract or purchase;

(B) appointed by an elected public servant;

(C) employed by the governing body of a school corporation and the contract or purchase involves the employment of a dependent or the payment of fees to a dependent;

(D) elected; or

(E) a member of, or a person appointed by, the board of trustees of a state supported college or university.

(7) The public servant is a member of the governing board of, or is a physician employed or contracted by, a hospital organized or operated under IC 16-22-1 through 16-22-5 or IC 16-23-1.

(d) A disclosure must:

(1) be in writing;

(2) describe the contract or purchase to be made by the governmental entity;

(3) describe the pecuniary interest that the public servant has in the contract or purchase;

(4) be affirmed under penalty of perjury;

(5) be submitted to the governmental entity and be accepted by the governmental entity in the public meeting of the governmental entity before final action on the contract or purchase;

(6) be filed within fifteen (15) days after final action on the contract or purchase with:

(A) the state board of accounts; and

(B) if the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and

(7) contain, if the public servant is appointed, the written approval of the elected public servant (if any) or the board of trustees of a state supported college or university (if any) that appointed the public servant.

(e) This subsection applies only to a person who is a member of, or a person appointed by, the board of trustees of a state supported college or university. A person to whom this subsection applies complies with the disclosure requirements of this chapter with respect to the person's pecuniary interest in a particular type of contract or purchase which is made on a regular basis from a particular vendor if the individual files with the state board of accounts and the board of trustees a statement of pecuniary interest in that particular type of contract or purchase made with that particular vendor. The statement required by this subsection must be made on an annual basis.

**35-44.1-1-5. Profiteering from public service**

(a) As used in this section, “pecuniary interest” has the meaning set forth in section 4(a)(3) of this chapter.

(b) A person who knowingly or intentionally:

(1) obtains a pecuniary interest in a contract or purchase with an agency within one (1) year after separation from employment or other service with the agency; and

(2) is not a public servant for the agency but who as a public servant approved, negotiated, or prepared on behalf of the agency the terms or specifications of:

(A) the contract; or

(B) the purchase;

commits profiteering from public service, a Level 6 felony.

(c) This section does not apply to negotiations or other activities related to an economic development grant, loan, or loan guarantee.

(d) This section does not apply if the person receives less than two hundred fifty dollars (\$250) of the profits from the contract or purchase.

(e) It is a defense to a prosecution under this section that:

(1) the person was screened from any participation in the contract or purchase;

(2) the person has not received a part of the profits of the contract or purchase; and

(3) notice was promptly given to the agency of the person’s interest in the contract or purchase.

**Chapter 2  
Interference with  
General Government Operations**

- 35-44.1-2-1 Perjury
- 35-44.1-2-2 Obstruction of justice
- 35-44.1-2-3 False informing
- 35-44.1-2-4 False identity statement
- 35-44.1-2-5 Assisting a criminal
- 35-44.1-2-6 Impersonation of a public servant
- 35-44.1-2-7 Unlawful use of a police radio
- 35-44.1-2-8 Manufacturing and selling official badge
- 35-44.1-2-9 Failure to appear
- 35-44.1-2-10 Failure to respond to a summons
- 35-44.1-2-11 Interference with jury service
- 35-44.1-2-12 Interference with witness service
- 35-44.1-2-13 Obstruction of traffic

**35-44.1-2-1. Perjury**

(a) A person who:

(1) makes a false, material statement under oath or affirmation, knowing the statement to be false or not believing it to be true; or

(2) has knowingly made two (2) or more material statements, in a proceeding before a court or grand jury, which are inconsistent to a degree that one (1) of them is necessarily false;

commits perjury, a Level 6 felony.

(b) In a prosecution under subsection (a)(2):

(1) the indictment or information need not specify which statement is actually false; and

(2) the falsity of a statement may be established sufficiently for conviction by proof that the defendant made irreconcilably contradictory statements which were material to the point in question.

### **35-44.1-2-2. Obstruction of justice**

(a) A person who:

(1) knowingly or intentionally induces, by threat, coercion, false statement, or offer of goods, services, or anything of value, a witness or informant in an official proceeding or investigation to:

(A) withhold or unreasonably delay in producing any testimony, information, document, or thing;

(B) avoid legal process summoning the person to testify or supply evidence; or

(C) absent the person from a proceeding or investigation to which the person has been legally summoned;

(2) knowingly or intentionally in an official criminal proceeding or investigation:

(A) withholds or unreasonably delays in producing any testimony, information, document, or thing after a court orders the person to produce the testimony, information, document, or thing;

(B) avoids legal process summoning the person to testify or supply evidence; or

(C) absents the person from a proceeding or investigation to which the person has been legally summoned;

(3) alters, damages, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation;

(4) makes, presents, or uses a false record, document, or thing with intent that the record, document, or thing, material to the point in question, appear in evidence in an official proceeding or investigation to mislead a public servant; or

(5) communicates, directly or indirectly, with a juror otherwise than as authorized by law, with intent to influence the juror regarding any matter that is or may be brought before the juror;

commits obstruction of justice, a Level 6 felony.

(b) Subsection (a)(2)(A) does not apply to:

(1) a person who qualifies for a special privilege under IC 34-46-4 with respect to the testimony, information, document, or thing; or

(2) a person who, as:

(A) an attorney;

(B) a physician;

(C) a member of the clergy; or  
(D) a husband or wife;  
is not required to testify under IC 34-46-3-1.

**35-44.1-2-3. False informing**

(a) As used in this section, “consumer product” has the meaning set forth in IC 35-45-8-1.

(b) As used in this section, “misconduct” means a violation of a departmental rule or procedure of a law enforcement agency.

(c) A person who reports, by telephone, telegraph, mail, or other written or oral communication, that:

(1) the person or another person has placed or intends to place an explosive, a destructive device, or other destructive substance in a building or transportation facility;

(2) there has been or there will be tampering with a consumer product introduced into commerce; or

(3) there has been or will be placed or introduced a weapon of mass destruction in a building or a place of assembly;

knowing the report to be false, commits false reporting, a Level 6 felony.

(d) A person who:

(1) gives a false report of the commission of a crime or gives false information in the official investigation of the commission of a crime, knowing the report or information to be false;

(2) gives a false alarm of fire to the fire department of a governmental entity, knowing the alarm to be false;

(3) makes a false request for ambulance service to an ambulance service provider, knowing the request to be false;

(4) gives a false report concerning a missing child (as defined in IC 10-13-5-4) or missing endangered adult (as defined in IC 12-7-2-131.3) or gives false information in the official investigation of a missing child or missing endangered adult knowing the report or information to be false;

(5) makes a complaint against a law enforcement officer to the state or municipality (as defined in IC 8-1-13-3(b)) that employs the officer:

(A) alleging the officer engaged in misconduct while performing the officer’s duties; and

(B) knowing the complaint to be false;

(6) makes a false report of a missing person, knowing the report or information is false; or

(7) give a false report of actions, behavior, or conditions concerning a septic tank soil absorption system under IC 8-1-2-125 or IC 13-26-5-2.5 knowing the report or information to be false;

commits false informing, a Class B misdemeanor. However, the offense is a Class A misdemeanor if it substantially hinders any law enforcement process or if it results in harm to another person.

#### **35-44.1-2-4. False identity statement.**

(a) A person who:

- (1) with intent to mislead public servants;
- (2) in a five (5) year period; and
- (3) in one (1) or more official proceedings or investigations;

has knowingly made at least two (2) material statements concerning the person's identity that are inconsistent to the degree that one (1) of them is necessarily false commits false identity statement, a Class A misdemeanor.

(b) It is a defense to a prosecution under this section that the material statements that are the basis of a prosecution under subsection (a) concerning the person's identity are accurate or were accurate in the past.

(c) In a prosecution under subsection (a):

- (1) the indictment or information need not specify which statement is actually false; and
- (2) the falsity of a statement may be established sufficiently for conviction by proof that the defendant made irreconcilably contradictory statements concerning the person's identity.

#### **35-44.1-2-5. Assisting a criminal**

(a) A person not standing in the relation of parent, child, or spouse to another person who has committed a crime or is a fugitive from justice who, with intent to hinder the apprehension or punishment of another person, harbors, conceals, or otherwise assists the person commits assisting a criminal, a Class A misdemeanor. However, the offense is:

- (1) a Level 6 felony, if the person assisted has committed a Class B, Class C, or Class D felony before July 1, 2014, or a Level 3, Level 4, Level 5, or Level 6 felony after June 30, 2014; and
- (2) a Level 5 felony, if the person assisted has committed murder or has committed a Class A felony before July 1, 2014, or a Level 1 or Level 2 felony after June 30, 2014, or if the assistance was providing a deadly weapon.

(b) It is not a defense to a prosecution under this section that the person assisted:

- (1) has not been prosecuted for the offense;
- (2) has not been convicted of the offense; or
- (3) has been acquitted of the offense by reason of insanity.

However, the acquittal of the person assisted for other reasons may be a defense.

#### **35-44.1-2-6. Impersonation of a public servant**

A person who falsely represents that the person is a public servant, with intent to mislead and induce another person to submit to false official authority or otherwise to act to the other person's detriment in reliance on the false representation, commits impersonation of a public servant, a Class A misdemeanor. However, a person who falsely represents that the person is:

- (1) a law enforcement officer; or
- (2) an agent or employee of the department of state revenue, and collects any property from another person;

commits a Level 6 felony.

**35-44.1-2-7. Unlawful use of a police radio**

(a) A person who knowingly or intentionally:

- (1) possesses a police radio;
- (2) transmits over a frequency assigned for police emergency purposes; or
- (3) possesses or uses a police radio:
  - (A) while committing a crime;
  - (B) to further the commission of a crime; or
  - (C) to avoid detection by a law enforcement agency;

commits unlawful use of a police radio, a Class B misdemeanor.

(b) Subsection (a)(1) and (a)(2) do not apply to:

- (1) a governmental entity;
- (2) a regularly employed law enforcement officer;
- (3) a common carrier of persons for hire whose vehicles are used in emergency service;
- (4) a public service or utility company whose vehicles are used in emergency service;
- (5) a person who has written permission from the chief executive officer of a law enforcement agency to possess a police radio;
- (6) a person who holds an amateur radio license issued by the Federal Communications Commission if the person is not transmitting over a frequency assigned for police emergency purposes;
- (7) a person who uses a police radio only in the person's dwelling or place of business;
- (8) a person:
  - (A) who is regularly engaged in newsgathering activities;
  - (B) who is employed by a newspaper qualified to receive legal advertisements under IC 5-3-1, a wire service, or a licensed commercial or public radio or television station; and
  - (C) whose name is furnished by the person's employer to the chief executive officer of a law enforcement agency in the county in which the employer's principal office is located;
- (9) a person engaged in the business of manufacturing or selling police radios; or
- (10) a person who possesses or uses a police radio during the normal course of the person's lawful business.

(c) As used in this section, "police radio" means a radio that is capable of sending or receiving signals transmitted on frequencies assigned by the Federal Communications Commission for police emergency purposes and that:

- (1) can be installed, maintained, or operated in a vehicle; or
- (2) can be operated while it is being carried by an individual.

The term does not include a radio designed for use only in a dwelling.

**35-44.1-2-8. Manufacturing and selling official badge**

(a) A person who knowingly or intentionally manufactures and sells or manufactures and offers for sale:

(1) an official badge or a replica of an official badge that is currently used by a law enforcement agency or fire department of the state or of a political subdivision of the state; or

(2) a document that purports to be an official employment identification that is used by a law enforcement agency or fire department of the state or a political subdivision of the state;

without the written permission of the chief executive officer of the law enforcement agency commits unlawful manufacture or sale of a police or fire insignia, a Class A misdemeanor.

(b) However, the offense described in subsection (a) is:

(1) a Level 6 felony if the person commits the offense with the knowledge or intent that the badge or employment identification will be used to further the commission of an offense under section 6 of this chapter; and

(2) a Level 4 felony if the person commits the offense with the knowledge or intent that the badge or employment identification will be used to further the commission of an offense under IC 35-47-12.

(c) It is a defense to a prosecution under subsection (a)(1) if the area of the badge or replica that is manufactured and sold or manufactured and offered for sale as measured by multiplying the greatest length of the badge by the greatest width of the badge is:

(1) less than fifty percent (50%); or

(2) more than one hundred fifty percent (150%);

of the area of an official badge that is used by a law enforcement agency or fire department of the state or a political subdivision of the state as measured by multiplying the greatest length of the official badge by the greatest width of the official badge.

#### **35-44.1-2-9. Failure to appear**

(a) A person who, having been released from lawful detention on condition that the person appear at a specified time and place in connection with a charge of a crime, intentionally fails to appear at that time and place commits failure to appear, a Class A misdemeanor. However, the offense is a Level 6 felony if the charge was a felony charge.

(b) It is no defense that the accused person was not convicted of the crime with which the person was originally charged.

(c) This section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole.

#### **35-44.1-2-10. Failure to respond to a summons**

(a) A person who, having been issued:

(1) a complaint and summons in connection with an infraction or ordinance violation; or

(2) a summons, or summons and promise to appear, in connection with a misdemeanor violation;

notifying the person to appear at a specific time and place, intentionally fails to appear at the specified time and place commits failure to respond to a summons, a Class C misdemeanor.

(b) It is no defense that judgment was entered in favor of the person in the infraction or ordinance proceeding or that the person was acquitted of the misdemeanor for which the person was summoned to appear.

### **35-44.1-2-11. Interference with jury service**

A person who knowingly or intentionally:

- (1) dismisses an employee;
- (2) deprives an employee of employee benefits; or
- (3) threatens such a dismissal or deprivation;

because the employee has received or responded to a summons, served as a juror, or attended court for prospective jury service commits interference with jury service, a Class B misdemeanor.

### **35-44.1-2-12. Interference with witness service**

A person who knowingly or intentionally:

- (1) dismisses an employee;
- (2) deprives an employee of employment benefits; or
- (3) threatens such dismissal or deprivation;

because the employee has received or responded to a subpoena in a criminal proceeding commits interference with witness service, a Class B misdemeanor.

### **35-44.1-2-13. Obstruction of traffic**

(a) Except as provided in subsection (b), a person who recklessly, knowingly, or intentionally obstructs vehicular or pedestrian traffic commits obstruction of traffic, a Class B misdemeanor.

(b) The offense described in subsection (a) is:

- (1) a Class A misdemeanor if the offense includes the use of a motor vehicle; and
- (2) a Level 6 felony if the offense results in serious bodily injury.

## **Chapter 3 Offenses Relating to Detention**

- 35-44.1-3-1 Resisting law enforcement
- 35-44.1-3-2 Disarming a law enforcement officer
- 35-44.1-3-3 Refusal to aid an officer
- 35-44.1-3-4 Escape; Failure to return to lawful detention
- 35-44.1-3-5 Trafficking with an inmate
- 35-44.1-3-6 Trafficking with an inmate outside a facility
- 35-44.1-3-7 Prisoner possessing dangerous device or material
- 35-44.1-3-8 Possession of a cell phone while incarcerated
- 35-44.1-3-9 Sex offender violating lifetime parole provisions
- 35-44.1-3-10 Sexual misconduct

### **35-44.1-3-1. Resisting law enforcement.**

(a) A person who knowingly or intentionally:

- (1) forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties;
- (2) forcibly resists, obstructs or interferes with the authorized service or execution of a civil or criminal process or order of a court; or

(3) flees from a law enforcement officer after the officer has, by visible or audible means, including the operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop; commits resisting law enforcement, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense under subsection (a) is a:

(1) Level 6 felony if:

(A) the offense is described in subsection (a)(3) and the person uses a vehicle to commit the offense; or

(B) while committing any offense described in subsection (a), the person draws or uses a deadly weapon, inflicts bodily injury on or otherwise causes bodily injury to another person, or operates a vehicle in a manner that creates a substantial risk of bodily injury to another person;

(2) Level 5 felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes serious bodily injury to another person;

(3) Level 3 felony if, while committing any offense described in subsection (a), the person operates a vehicle in manner that causes the death of another person; and

(4) Level 2 felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes the death of a law enforcement officer while the law enforcement officer is engaged in the officer's official duties.

(c) If a person uses a vehicle to commit a felony offense under subsection (b)(1)(B), (b)(2), (b)(3), or (b)(4), as a part of the criminal penalty imposed for the offense, the court shall impose a minimum executed sentence of at least:

(1) thirty (30) days, if the person does not have a prior unrelated conviction under this section;

(2) one hundred eighty (180) days, if the person has one (1) prior unrelated conviction under this section; or

(3) one (1) year, if the person has two (2) or more prior unrelated convictions under this section.

(d) Notwithstanding IC 35-50-2-2.2 and IC 35-50-3-1, the mandatory minimum sentence imposed under subsection (c) may not be suspended.

(e) If a person is convicted of an offense involving the use of a motor vehicle under:

(1) subsection (b)(1)(A), if the person exceeded the speed limit by at least twenty (20) miles per hour while committing the offense;

(2) subsection (b)(2); or

(3) subsection (b)(3);

the court may notify the bureau of motor vehicles to suspend or revoke the person's driver's license and all certificates of registration and license plates issued or registered in the person's name in accordance with IC 9-30-4-6(b)(3) for the period described in IC 9-30-4-6(d)(5). The court shall inform the bureau whether the person has been sentenced to a term of incarceration. At the time of conviction, the court may obtain the person's current driver's license and return the license to the bureau of motor vehicles.

(f) A person may not be charged or convicted of a crime under subsection (a)(3) if the law enforcement officer is a school resource officer acting in the officer's capacity as a school resource officer.

### **35-44.1-3-2. Disarming a law enforcement officer**

(a) As used in this section, "officer" includes the following:

(1) A person employed by:

(A) the department of correction;

(B) a law enforcement agency;

(C) a probation department;

(D) a county jail;

(E) a circuit, superior, county, probate, city, or town court;

who is required to carry a firearm in performance of the person's official duties.

(2) A law enforcement officer.

(b) A person who:

(1) knows that another person is an officer; and

(2) knowingly or intentionally takes or attempts to take a firearm (as defined in IC 35-47-1-5) or weapon that the officer is authorized to carry from the officer or from the immediate proximity of the officer;

(A) without the consent of the officer; and

(B) while the officer is engaged in the performance of the officer's official duties;

commits disarming a law enforcement officer, a Level 5 felony. However, the offense is a Level 3 felony if it results in serious bodily injury to a law enforcement officer, and the offense is a Level 1 felony if it results in death to a law enforcement officer.

### **35-44.1-3-3. Refusal to aid an officer**

A person who, when ordered by a law enforcement officer to assist the officer in the execution of the officer's duties, knowingly and intentionally, and without reasonable cause, refuses to assist commits refusal to aid an officer, a Class B misdemeanor.

### **35-44.1-3-4. Escape; Failure to return to lawful detention**

(a) A person, except as provided in subsection (b), who intentionally flees from lawful detention commits escape, a Level 5 felony. However, the offense is a Level 4 felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

(b) A person who knowingly or intentionally violates a home detention order or intentionally removes an electronic monitoring device or GPS tracking device commits escape, a Level 6 felony.

(c) A person who knowingly or intentionally fails to return to lawful detention following temporary leave granted for a specified purpose or limited period commits failure to return to lawful detention, a Level 6 felony. However, the offense is a Level 5 felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

### **35-44.1-3-5. Trafficking with an inmate**

(a) As used in this section, “juvenile facility” means the following:

(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) A person who, without the prior authorization of the person in charge of a penal facility or juvenile facility, knowingly or intentionally:

(1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility;

(2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility; or

(3) delivers, or carries to a worksite with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew;

commits trafficking with an inmate, a Class A misdemeanor. However, the offense is a Level 5 felony under subdivision (1) or (2) if the article is a controlled substance, a deadly weapon, or a cellular telephone or other wireless or cellular communications device.

(c) If:

(1) the person who committed the offense under subsection (b) is an employee of:

(A) the department of correction; or

(B) a penal facility;

and the article is a cigarette or tobacco product (as defined in IC 6-7-2-5), the court shall order the person to pay a fine of at least five hundred dollars (\$500) and not more than five thousand dollars (\$5,000) under IC 35-50-3-2, in addition to any term of imprisonment imposed under IC 35-50-3-2; or

(2) a person convicted of committing a Level 5 felony under subsection (b)(1) or (b)(2) because the article was a cellular telephone or other wireless or cellular communication device, the court shall order the person to pay a fine of at least five hundred dollars (\$500) and not more than ten thousand dollars (\$10,000) under IC 35-50-2-6(a) in addition to any term of imprisonment imposed on the person under IC 35-50-2-6(a).

(d) A person who:

(1) is not an inmate of a penal facility or a child of a juvenile facility; and

(2) knowingly or intentionally possesses in, or carries or causes to be brought into, the penal facility or juvenile facility, a deadly weapon without the prior authorization of the person in charge of the penal facility or juvenile facility;

commits carrying a deadly weapon into a correctional facility, a Level 5 felony.

### **35-44.1-3-6. Trafficking with an inmate outside a facility**

(a) As used in this section, “contraband” means the following:

(1) Alcohol.

(2) A cigarette or tobacco product.

(3) A controlled substance.

(4) Any item that may be used as a weapon.

(b) As used in this section, “inmate outside a facility” means a person who is incarcerated in a penal facility or detained in a juvenile facility on a full-time basis as a result of a conviction or a juvenile adjudication but who has been or is being transported to another location to participate in or prepare for a judicial proceeding. The term does not include the following:

- (1) An adult or juvenile pretrial detainee.
- (2) A person serving an intermittent term of imprisonment or detention.
- (3) A person serving a term of imprisonment or detention as:
  - (A) a condition or probation;
  - (B) a condition of a community corrections program;
  - (C) part of a community transition program;
  - (D) part of a reentry court program;
  - (E) part of a work release program; or
  - (F) part of a community based program that is similar to a program described in clauses (A) through (E).
- (4) A person who has escaped from incarceration or walked away from secure detention.
- (5) A person on temporary leave (as described in IC 11-10-9) or temporary release (as described in IC 11-10-10).

- (c) A person who, with the intent of providing contraband to an inmate outside a facility:
- (1) delivers contraband to an inmate outside a facility; or
  - (2) places contraband in a location where an inmate outside a facility could obtain the contraband;

commits trafficking with an inmate outside a facility, a Class A misdemeanor. However, the offense is a Level 6 felony if the contraband is an item described in subsection (a)(3), and a Level 5 felony if the contraband is an item described in subsection (a)(4).

#### **35-44.1-3-7. Prisoner possessing dangerous device or material**

A person who knowingly or intentionally while incarcerated in a penal facility possesses a device, equipment, a chemical substance, or other material that:

- (1) is used; or
- (2) is intended to be used;

in a manner that is readily capable of causing bodily injury commits a Level 5 felony. However, the offense is a Level 4 felony if the device, equipment, chemical substance, or other material is a deadly weapon.

#### **35-44.1-3-8. Possession of a cell phone while incarcerated**

A person who knowingly or intentionally possesses a cellular telephone or other wireless or cellular communications device while incarcerated in a penal facility commits a Class A misdemeanor.

#### **35-44.1-3-9. Sex offender violating lifetime parole provisions**

(a) A person who is being supervised on lifetime parole (as described in IC 35-50-6-1) and who knowingly or intentionally violates a condition of lifetime parole that involves direct or indirect contact with a child less than sixteen (16) years of age or with the victim of a crime that was committed by the person commits a Level 6 felony if, at the time of the violation:

- (1) the person’s lifetime parole has been revoked two (2) or more times; or

(2) the person has completed the person's sentence, including any credit time the person may have earned.

(b) The offense described in subsection (a) is a Level 5 felony if the person has a prior unrelated conviction under this section.

### **35-44.1-3-10. Sexual misconduct**

(a) The following definitions apply throughout this section:

(1) "Lawful supervision" means supervision by:

(A) the department of correction;

(B) a court;

(C) a probation department;

(D) a community corrections program, a community transition program, or another similar program; or

(E) parole.

(2) "Service provider" means:

(A) with respect to a person subject to lawful detention:

(i) a public servant;

(ii) a person employed by a governmental entity; or

(iii) a person who provides goods or services to a person who is subject to lawful detention; and

(B) with respect to a person subject to lawful supervision:

(i) a public servant whose official duties include the supervision of the person subject to lawful supervision;

(ii) a person employed by a governmental entity to provide supervision for the person subject to lawful supervision; or

(iii) a person who is employed by or contracts with a governmental entity to provide treatment or other services to the person subject to lawful supervision as a condition of the person's lawful supervision.

(b) A service provider who knowingly or intentionally engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with a person who is subject to lawful detention or lawful supervision commits sexual misconduct, a Level 5 felony.

(c) A service provider at least eighteen (18) years of age who knowingly or intentionally engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with a person who is:

(1) less than eighteen (18) years of age; and

(2) subject to lawful detention or lawful supervision;

commits sexual misconduct, a Level 4 felony.

(d) It is not a defense that an act described in subsection (b) or (c) was consensual.

(e) This section does not apply to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) between spouses.

## **Chapter 4 Firefighting and Emergency Services**

35-44.1-4-1 "Dispatched firefighter" defined

- 35-44.1-4-2 “Emergency incident area” defined
- 35-44.1-4-3 “Firefighter” defined
- 35-44.1-4-4 “Fire protective clothing and fire protective gear” defined
- 35-44.1-4-5 Refusing to leave emergency incident area
- 35-44.1-4-6 Firefighter improperly refusing to leave emergency incident area
- 35-44.1-4-7 Person improperly entering emergency incident area
- 35-44.1-4-8 Obstructing or interfering with a firefighter
- 35-44.1-4-9 Obstructing an emergency medical person

**35-44.1-4-1. “Dispatched firefighter” defined**

As used in this chapter, “dispatched firefighter” means a member of:

- (1) the fire company having jurisdiction over an emergency incident area; or
- (2) a fire company that has entered into a mutual aid agreement with the fire company having jurisdiction over an emergency incident area;

who has been dispatched by the local fire department having jurisdiction over the particular emergency incident area.

**35-44.1-4-2. “Emergency incident area” defined**

As used in this chapter, “emergency incident area” means the area surrounding a structure, vehicle, property, or area that is:

- (1) defined by police or firefighters with flags, barricades, barrier tape, or other markers; or
- (2) one hundred and fifty (150) feet in all directions from the perimeter of the emergency incident;

whichever is greater.

**35-44.1-4-3. “Firefighter” defined**

As used in this chapter, “firefighter” has the meaning set forth in IC 9-18-34-1.

**35-44.1-4-4. “Fire protective clothing and fire protective gear” defined**

As used in this chapter, “fire protective clothing and fire protective gear” includes any of the following items generally used by firefighters:

- (1) Outer fire retardant clothing and headgear.
- (2) Fire gloves.
- (3) Self contained breathing apparatus.
- (4) Emergency medical services protective gear.
- (5) Hazardous materials protective gear.

**35-44.1-4-5. Refusing to leave emergency incident area**

A person who is not a firefighter who knowingly or intentionally refuses to leave an emergency incident area immediately after being requested to do so by a firefighter or law enforcement officer commits a Class A misdemeanor.

**35-44.1-4-6. Firefighter improperly refusing to leave emergency incident area**

A firefighter who:

- (1) has not been dispatched to an emergency incident area;

- (2) enters an emergency incident area; and
- (3) refuses to leave an emergency incident area immediately after being requested to do so by a dispatched firefighter or law enforcement officer;

commits a Class C infraction.

#### **35-44.1-4-7. Person improperly entering emergency incident area**

A person other than a firefighter who, with intent to mislead a firefighter or law enforcement officer as to the person's status as a dispatched firefighter, knowingly or intentionally enters an emergency incident area while wearing, transporting, or otherwise possessing a uniform, fire protective clothing, or fire protective gear commits a Class A misdemeanor. However, the offense is a Level 6 felony if, as a proximate result of the person entering the emergency incident area, a person or firefighter suffers bodily injury.

#### **35-44.1-4-8. Obstructing or interfering with firefighter**

A person who knowingly or intentionally obstructs or interferes with a firefighter performing or attempting to perform the firefighter's emergency functions or duties as a firefighter commits obstructing a firefighter, a Class A misdemeanor.

#### **35-44.1-4-9. Obstructing an emergency medical person**

(a) As used in this section, "emergency medical person" means a person who holds a certificate issued by the Indiana emergency medical services commission to provide emergency medical services.

(b) A person who knowingly or intentionally obstructs or interferes with an emergency medical person performing or attempting to perform the emergency medical person's emergency functions or duties commits obstructing an emergency medical person, a Class B misdemeanor.

### **Chapter 5 Illegal Alien Offenses**

- 35-44.1-5-1 Non-application of chapter
- 35-44.1-5-2 "Alien" defined
- 35-44.1-5-3 Transporting illegal alien
- 35-44.1-5-4 Harboring illegal alien
- 35-44.1-5-5 No violation of chapter for certain acts involving children
- 35-44.1-5-6 Evidence that person is illegal alien
- 35-44.1-5-7 Impounding vehicles used to commit violations of chapter

#### **35-44.1-5-1. Non-application of chapter**

This chapter does not apply to the following:

- (1) A church or religious organization conducting an activity that is protected by the First Amendment to the United States Constitution.
- (2) The provision of assistance for health care items and services that are necessary for the treatment of an emergency medical condition of an individual.
- (3) A health care provider (as defined in IC 16-18-2-163(a)) that is providing health care services.
- (4) An attorney or other person that is providing legal services.

- (5) A person who:
  - (A) is a spouse of an alien or who stands in relation of parent or child to an alien; and
  - (B) would otherwise commit an offense under this chapter with respect to the alien.
- (6) A provider that:
  - (A) receives federal or state funding to provide services to victims of domestic violence, sexual assault, human trafficking, or stalking; and
  - (B) is providing the services described in clause (A).
- (7) An employee of Indiana or a political subdivision (as defined in IC 36-1-2-13) if the employee is acting within the scope of the employee's employment.
- (8) An employee of a school acting within the scope of the employee's employment.

**35-44.1-5-2. "Alien" defined**

As used in this chapter, "alien" has the meaning set forth in 8 U.S.C. 1101(a).

**35-44.1-5-3. Transporting illegal alien**

- (a) A person who knowingly or intentionally:
  - (1) transports; or
  - (2) moves;

an alien, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of the law commits transporting an illegal alien, a Class A misdemeanor.

(b) If a violation under this section involves more than nine (9) aliens, the violation is a Level 6 felony.

**35-44.1-5-4. Harboring illegal alien**

- (a) A person who knowingly or intentionally:
  - (1) conceals;
  - (2) harbors; or
  - (3) shields from detection;

an alien in any place, including a building or means of transportation, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law, commits harboring an illegal alien, a Class A misdemeanor.

(b) If a violation under this section involves more than nine (9) aliens, the violation is a Level 6 felony.

(c) A landlord that rents real property to a person who is an alien does not violate this section as a result of renting the property to the person.

**35-44.1-5-5. No violation of chapter for certain acts involving children**

A person who transports, moves, or cares for a child (as defined in IC 35-47-10-3) who is an alien does not violate this chapter as a result of transporting, moving, or caring for the child.

**35-44.1-5-6. Evidence that person is illegal alien**

A determination by the United States Department of Homeland Security that an alien has come to, entered, or remained in the United States in violation of law is evidence that the alien is in the United States in violation of law.

**35-44.1-5-7. Impounding vehicles used to commit violations of chapter**

A law enforcement officer shall impound a motor vehicle, other than a motor vehicle used in public transportation and owned and operated by the state or a political subdivision, that is used to commit a violation of section 3 or 4 of this chapter.

**ARTICLE 44.2  
OFFENSES AGAINST  
STATE PUBLIC ADMINISTRATION**

- Ch. 1 Interference With State Government
- Ch. 2 Purchasing Offenses
- Ch. 3 State Public Works Contracting
- Ch. 4 Confidentiality of Records and Meetings

**Chapter 1  
Interference With State Government**

- 35-44.2-1-1 Retaliation for reporting a violation
- 35-44.2-1-2 Retaliation for reporting to the inspector general
- 35-44.2-1-3 Obstructing the inspector general
- 35-44.2-1-4 Obstructing the department of correction ombudsman
- 35-44.2-1-5 Interference with the department of child services ombudsman
- 35-44.2-1-6 Interference with the state examiner
- 35-44.2-1-7 Refusal to follow state examiner's directives
- 35-44.2-1-8 Failure to provide annual report to state examiner
- 35-44.2-1-9 False certification by state agency's special deputy
- 35-44.2-1-10 Making a false or deficient financial disclosure statement
- 35-44.2-1-11 Failure to provide attorney general with accounting
- 35-44.2-1-12 Violation of commercial driver training school requirements
- 35-44.2-1-13 Failure to follow publication of notices rules
- 35-44.2-1-14 Failure to file disclosure concerning a public works project

**35-44.2-1-1. Retaliation for reporting a violation**

- (a) As used in this section, "supervisor" has the meaning set forth in IC 4-15-10-1.
- (b) As used in this section, "violation" means:
  - (1) a violation of a federal law or regulation;
  - (2) a violation of a state law or rule;
  - (3) a violation of an ordinance of a political subdivision (as defined in IC 36-1-2-13); or
  - (4) the misuse of public resources.

- (c) A state supervisor who knowingly or intentionally:
  - (1) dismisses from employment;
  - (2) withholds a salary increase or employment related benefit of;
  - (3) transfers or reassigns;
  - (4) denies a promotion that would have been received by; or
  - (5) demotes;

a state employee in retaliation for the state employee reporting in writing the existence of a violation commits retaliation for reporting a violation, a Class A misdemeanor.

### **35-44.2-1-2. Retaliation for reporting to the inspector general**

- (a) As used in this section, "state employee" means:
  - (1) an employee (as defined in IC 4-2-6-1(a)(8));
  - (2) a special state appointee (as defined in IC 4-2-6-1(a)(16)); or
  - (3) a state officer (as defined in IC 4-2-6-1(a)(17)).

(b) A state employee who knowingly or intentionally retaliates or threatens to retaliate against another state employee or former state employee for:

- (1) filing a complaint with the state ethics commission or the inspector general;
- (2) providing information to the state ethics commission or the inspector general;
- or
- (3) testifying at a state ethics commission proceeding;

commits retaliation for reporting to the inspector general, a Class A misdemeanor.

(c) It is a defense to a prosecution under this section that the reporting state employee or former state employee:

- (1) did not act in good faith; or
- (2) knowingly, intentionally, or recklessly provided false information or testimony to the state ethics commission or the inspector general.

### **35-44.2-1-3. Obstructing the inspector general**

A person who:

- (1) knowingly or intentionally induces or attempts to induce, by threat, coercion, suggestion, or false statement, a witness or informant in a state ethics commission proceeding or investigation conducted by the inspector general to do any of the following:

- (A) Withhold or unreasonably delay the production of any testimony, information, document or thing.
- (B) Avoid legal process summoning the person to testify or supply evidence.
- (C) Fail to appear at a proceeding or investigation to which the person has been summoned.
- (D) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a state ethics commission proceeding or inspector general investigation to mislead a state ethics commissioner or inspector general employee;

- (2) alters, damages, or removes a record, document, or thing except as permitted or required by law, with the intent to prevent the record, document, or thing from

being produced or used in a state ethics commission proceeding or inspector general investigation; or

(3) makes, presents, or uses a false record, document, or thing with the intent that the record, document or thing appear in a state ethics commission proceeding or inspector general investigation to mislead a state ethics commissioner or inspector general employee;

commits obstructing the inspector general, a Class A misdemeanor.

#### **35-44.2-1-4. Obstructing the department of correction ombudsman**

A person who:

(1) intentionally interferes with or prevents the completion of the work of the department of correction ombudsman;

(2) knowingly offers compensation to the department of correction ombudsman in an effort to affect the outcome of an investigation or a potential investigation;

(3) knowingly or intentionally retaliates against an offender or another person who provides information to the department of correction ombudsman; or

(4) makes threats because of an investigation or potential investigation against:

(A) the department of correction ombudsman;

(B) a person who has filed a complaint; or

(C) a person who provides information to the department of correction ombudsman;

commits obstructing the department of correction ombudsman, a Class A misdemeanor.

#### **35-44.2-1-5. Interference with the department of child services ombudsman**

(a) A person who knowingly or intentionally:

(1) interferes with or prevents the completion of the work of a department of child services ombudsman;

(2) offers compensation to a department of child services ombudsman in an effort to affect the outcome of an investigation or a potential investigation;

(3) retaliates against another person who provides information to a department of child services ombudsman; or

(4) threatens a department of child services ombudsman, a person who has filed a complaint, or a person who provides information to a department of child services ombudsman, because of an investigation or potential investigation:

commits interference with the department of child services ombudsman, a Class A misdemeanor.

(b) It is a defense to a prosecution under subsection (a) if the conduct is the expungement of records held by the department of child services that occurs by statutory mandate, judicial order or decree, administrative review or process, automatic operation of the Indiana Child Welfare Information System (ICWIS) computer system or any successor statewide automated child welfare information system, or in the normal course of business.

#### **35-44.2-1-6. Interference with the state examiner**

A person who interferes with the state examiner is subject to a civil action for an infraction under IC 5-11-1-10.

**35-44.2-1-7. Refusal to follow state examiner’s directives**

A person who refuses to follow the state examiner’s directives is subject to a civil action for an infraction under IC 5-11-1-21.

**35-44.2-1-8. Failure to provide annual report to state examiner**

A person who fails to provide an annual report to the state examiner is subject to a civil action for an infraction under IC 5-11-13-3.

**35-44.2-1-9. False certification by state agency’s special deputy**

A state agency’s special deputy who makes a false certification of an oath or affirmation is subject to a civil action for an infraction under IC 4-2-4-3.

**35-44.2-1-10. Making a false or deficient financial disclosure statement**

A person who makes a false or deficient financial disclosure statement is subject to a civil action for an infraction under IC 4-2-6-8.

**35-44.2-1-11. Failure to provide attorney general with accounting**

A person who fails to respond to the attorney general upon a demand of an accounting is subject to a civil action for an infraction under IC 4-6-2-6.

**35-44.2-1-12. Violation of commercial driver training school requirements**

A person who violates commercial driver training school requirements is subject to a civil action for an infraction under IC 5-2-6.5-15.

**35-44.2-1-13. Failure to follow publication of notices rules**

A person who fails to follow the publication of notices rules is subject to a civil action for an infraction under IC 5-3-1-9.

**35-44.2-1-14. Failure to file disclosure concerning a public works project**

A consultant who fails to file a disclosure concerning a public works project is subject to a civil action for an infraction under IC 5-16-11-11.

**Chapter 2  
Purchasing Offenses**

- 35-44.2-2-1 Violation of the depository rule
- 35-44.2-2-2 Violation of the cashbook rule
- 35-44.2-2-3 Violation of the itemization and certification rule
- 35-44.2-2-4 Unlawful competitive bidding
- 35-44.2-2-5 Improper teacher’s retirement fund accounting
- 35-44.2-2-6 Borrowing without legislative approval
- 35-44.2-2-7 Improper disposal of a law enforcement vehicle

**35-44.2-2-1. Violation of the depository rule**

A public servant who knowingly or intentionally fails to deposit public funds (as defined in IC 5-13-4-20) not later than one (1) business day following the receipt of the funds, in a

depository in the name of the state or political subdivision by the public servant having control of the funds, commits a violation of the depository rule, a Class A misdemeanor. However, the offense is a Level 6 felony if the amount involved is at least seven hundred fifty dollars (\$750), and a Level 5 felony if the amount involved is at least fifty thousand dollars (\$50,000).

**35-44.2-2-2. Violation of the cashbook rule.**

A public servant who receives public funds (as defined in IC 5-13-4-20) and fails to:

- (1) keep a cashbook (as defined in IC 5-13-5-1);
- (2) not later than one (1) business day following the receipt of the funds, enter into the cashbook, by item, all receipts of public funds; or
- (3) balance the cashbook daily to show funds on hand at the close of each day;

commits a violation of the cashbook rule, a Class B misdemeanor.

**35-44.2-2-3. Violation of the itemization and certification rule**

(a) This subsection does not apply to the following:

- (1) A state educational institution (as defined in IC 21-7-13-32).
- (2) A municipality (as defined in IC 36-1-2-11).
- (3) A county.
- (4) An airport authority operating in a consolidated city.
- (5) A capital improvements board of managers operating in a consolidated city.
- (6) A board of directors of a public transportation corporation operating in a consolidated city.
- (7) A municipal corporation organized under IC 16-22-8-6.
- (8) A public library.
- (9) A library services authority.
- (10) A hospital organized under IC 16-22 or a hospital organized under IC 16-23.
- (11) A school corporation (as defined in IC 36-1-2-17).
- (12) A regional water or sewer district organized under IC 13-26 or under IC 13-3-2 (before its repeal).
- (13) A municipally owned utility (as defined in IC 8-1-2-1).
- (14) A board of an airport authority under IC 8-22-3.
- (15) A conservancy district.
- (16) A board of aviation commissioners under IC 8-22-2.
- (17) A public transportation corporation under IC 36-9-4.
- (18) A commuter transportation district under IC 8-5-15.
- (19) A solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal).
- (20) A county building authority under IC 36-9-13.
- (21) A soil and water conservation district established under IC 14-32.
- (22) The northwestern Indiana regional planning commission established by IC 36-7-7.6-3.
- (23) The commuter rail service board established under IC 8-24-5.
- (24) The regional demand and scheduled bus service board established under IC 8-24-6.

(b) A disbursing officer (as described in IC 5-11-10) who knowingly or intentionally pays a claim that is not:

(1) fully itemized; and

(2) properly certified to by the claimant or some authorized person in the claimant's behalf, with the following words of certification: I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid;

commits a violation of the itemization and certification rule, a Class A misdemeanor.

#### **35-44.2-2-4. Unlawful competitive bidding**

(a) As used in this section, a "purchase" means:

(1) the purchase of materials, equipment, goods and supplies for at least ten thousand dollars (\$10,000); or

(2) the leasing of equipment for at least five thousand dollars (\$5,000).

(b) A state purchaser of materials (as described in IC 5-17-1) who fails to advertise (as defined in IC 5-3-1) for, receive, or consider bids for purchase commits unlawful competitive bidding, a Class A misdemeanor.

#### **35-44.2-2-5. Improper teacher's retirement fund accounting.**

A person who knowingly, intentionally, or recklessly violates:

(1) IC 5-10.4-3-10;

(2) IC 5-10.4-3-12;

(3) IC 5-10.4-3-14; or

(4) IC 5-10.4-3-15;

commits improper teacher's retirement fund accounting, a Class A misdemeanor.

#### **35-44.2-2-6. Borrowing without legislative approval**

A board of trustees or correctional facility that borrows without legislative approval under IC 4-10-14-1 is subject to a civil action for an infraction under IC 4-10-14-2.

#### **35-44.2-2-7. Improper disposal of a law enforcement vehicle**

A person who improperly disposes of a law enforcement vehicle is subject to a civil action for an infraction under IC 5-22-22-9.

### **Chapter 3**

#### **State Public Works Contracting**

35-44.2-3-1 Violation of state public works contract

35-44.2-3-2 Conflict of interest – hospital building authority contract

35-44.2-3-3 Conflict of interest – law enforcement academy building commission

35-44.2-3-4 Wage scale violation

35-44.2-3-5 Unlawful dividing of a public works project

35-44.2-3-6 Improperly engaging in certain employee organization activities

#### **35-44.2-3-1. Violation of state public works contract**

A person who violates provisions relating to state public works contracts is subject to criminal prosecution under IC 4-13.6-4-14.

**35-44.2-3-2. Conflict of interest – hospital building authority contract**

A person who has a conflict of interest with respect to a hospital bonding authority contract is subject to criminal prosecution under IC 5-1-4-22.

**35-44.2-3-3. Conflict of interest – law enforcement academy building commission**

A member or person employed by the law enforcement academy building commission who has a conflict of interest with respect to an action by the commission is subject to criminal prosecution under IC 5-2-2-11.

**35-44.2-3-4. Wage scale violation**

A person who commits a wage scale violation in a state public works contract is subject to criminal prosecution under IC 5-16-7-3.

**35-44.2-3-5. Unlawful dividing of a public works project**

A person who unlawfully divides a public works project is subject to a civil action for an infraction under IC 5-16-7-6.

**35-44.2-3-6. Improperly engaging in certain employee organization activities**

A person who improperly engages in certain employee organization activities is subject to a civil action for an infraction under IC 4-15-17-9.

**Chapter 4  
Confidentiality of Records and Meetings**

- 35-44.2-4-1 Disclosure of confidential information
- 35-44.2-4-2 Violations concerning social security numbers
- 35-44.2-4-3 Unlawfully disclosing confidential inspector general information
- 35-44.2-4-4 Unlawfully disclosing criminal intelligence information
- 35-44.2-4-5 Unlawfully disclosing enterprise zone information
- 35-44.2-4-6 Unlawfully disclosing state examiner investigation
- 35-44.2-4-7 Unlawfully destroying public records

**35-44.2-4-1. Disclosure of confidential information**

A person who discloses confidential information is subject to action under IC 5-14-3-10.

**35-44.2-4-2. Violations concerning social security numbers**

(a) An employee of a state agency who unlawfully discloses a Social Security number is subject to criminal prosecution under IC 4-1-10-8.

(b) An employee of a state agency who makes a false representation to obtain a Social Security number from the state agency is subject to a criminal prosecution under IC 4-1-10-9.

(c) An employee of a state agency who negligently discloses a Social Security number is subject to a civil action for an infraction under IC 4-1-10-10.

**35-44.2-4-3. Unlawfully disclosing confidential inspector general information**

A person who unlawfully discloses confidential inspector general information is subject to criminal prosecution under IC 4-2-7-8.

**35-44.2-4-4. Unlawfully disclosing criminal intelligence information**

A person who unlawfully discloses criminal intelligence information is subject to criminal prosecution under IC 5-2-4-7.

**35-44.2-4-5. Unlawfully disclosing enterprise zone information**

A person who unlawfully discloses enterprise zone information is subject to criminal prosecution under IC 5-28-15-8.

**35-44.2-4-6. Unlawfully disclosing state examiner investigation**

A person who unlawfully discloses advance notice of a state examiner investigation is subject to criminal prosecution under IC 5-11-1-18.

**35-44.2-4-7. Unlawfully destroying public records.**

A person who unlawfully destroys certain public records is subject to criminal prosecution under IC 5-15-6-8.

**ARTICLE 45  
OFFENSES AGAINST PUBLIC HEALTH  
ORDER AND DECENCY**

Ch. 1	Offenses Against Public Order
Ch. 2	Offenses Relating to Communications
Ch. 3	Littering
Ch. 4	Public Indecency; Prostitution
Ch. 5	Gambling
Ch. 6	Racketeer Influenced and Corrupt Organizations
Ch. 7	Loansharking
Ch. 8	Consumer Product Tampering
Ch. 9	Criminal Gang Control
Ch. 10	Stalking
Ch. 11	Abuse of Corpse
Ch. 12	Code Grabbing Devices
Ch. 13	Unauthorized Use of Telecommunications Services
Ch. 14	Unlawful Solicitation
Ch. 15	Money Laundering
Ch. 16	Malicious Mischief
Ch. 17	Panhandling
Ch. 18	Combative Fighting
Ch. 19	Failure of Report a Dead Body
Ch. 20	Dispensing Contact Lens Without Prescription
Ch. 21	Offenses Against Public Health

## Chapter 1 Offenses Against Public Order

35-45-1-1	Definitions
35-45-1-2	Rioting
35-45-1-3	Disorderly conduct
35-45-1-4	Flag desecration

### 35-45-1-1. Definitions

As used in this chapter:

“Tumultuous conduct” means conduct that results in, or is likely to result in, serious bodily injury to a person or substantial damage to property.

“Unlawful assembly” means an assembly of five (5) or more persons whose common objective is to commit an unlawful act, or a lawful act by unlawful means. Prior concert is not necessary to form an unlawful assembly.

### 35-45-1-2. Rioting

A person who, being a member of an unlawful assembly, recklessly, knowingly, or intentionally engages in tumultuous conduct commits rioting, a Class A misdemeanor. However, the offense is a Level 6 felony if it is committed while armed with a deadly weapon.

### 35-45-1-3. Disorderly conduct

- (a) A person who recklessly, knowingly, or intentionally:
- (1) engages in fighting or in tumultuous conduct;
  - (2) makes unreasonable noise and continues to do so after being asked to stop; or
  - (3) disrupts a lawful assembly of persons;
- commits disorderly conduct, a Class B misdemeanor.
- (b) The offense described in subsection (a) is a Level 6 felony if it:
- (1) adversely affects airport security; and
  - (2) is committed in an airport (as defined in IC 8-21-1-1) or on the premises of an airport, including in a parking area, a maintenance bay, or an aircraft hangar.
- (c) the offense described in subsection (a) is a Level 6 felony if it:
- (1) is committed within five hundred (500) feet of:
    - (A) the location where a burial is being performed;
    - (B) a funeral procession, if the person described in subsection (a) knows that the funeral procession is taking place; or
    - (C) a building in which:
      - (i) a funeral or memorial service; or
      - (ii) the viewing of a deceased person;is being conducted; and
  - (2) adversely affects the funeral, burial, viewing, funeral procession, or memorial service.

### 35-45-1-4. Flag desecration

(a) A person who knowingly or intentionally mutilates, defaces, burns, or tramples any United States flag, standard, or ensign commits flag desecration, a Class A misdemeanor.

(b) This section does not apply to a person who disposes of a flag in accordance with 36 U.S.C. 176(k).

## **Chapter 2**

### **Offenses Relating to Communications**

35-45-2-1	Intimidation
35-45-2-2	Harassment
35-45-2-3	Unlawful use of a communications medium
35-45-2-4	Unlawful disclosure
35-45-2-5	Interference with reporting crime

#### **35-45-2-1. Intimidation.**

- (a) A person who communicates a threat to another person, with the intent:
- (1) that the other person engage in conduct against the other person's will;
  - (2) that the other person be placed in fear of retaliation for a prior lawful act; or
  - (3) of:

- (A) causing:
  - (i) a dwelling, a building, or other structure; or
  - (ii) a vehicle;

to be evacuated; or

- (B) interfering with the occupancy of:
  - (i) a dwelling, building, or other structure; or
  - (ii) a vehicle;

commits intimidation, a Class A misdemeanor.

- (b) However, the offense is a:

- (1) Level 6 felony if:

- (A) the threat is to commit a forcible felony;
- (B) the person to whom the threat is communicated:
  - (i) is a law enforcement officer;
  - (ii) is a witness (or the spouse or child of a witness) in any pending criminal proceeding against the person making the threat;
  - (iii) is an employee of a school or school corporation;
  - (iv) is a community policing volunteer;
  - (v) is an employee of a court;
  - (vi) is an employee of a probation department;
  - (vii) is an employee of a community corrections program;
  - (viii) is an employee of a hospital, church, or religious organization; or
  - (ix) is a person that owns a building or structure that is open to the public or is an employee of the person;

and, except as provided in item (ii), the threat is communicated to the person because of the occupation, profession, employment status, or ownership status of the person as described in items (i) through (ix) or based on an act taken by the person within the scope of the occupation, profession, employment status, or ownership status of the person;

(C) the person has a prior unrelated conviction for an offense under this section concerning the same victim; or

(D) the threat is communicated using property, including electronic equipment or systems, or a school corporation or other governmental entity; and

(2) Level 5 felony if:

(A) while committing it, the person draws or uses a deadly weapon; or

(B) the person to whom the threat is communicated:

(i) is a judge or bailiff of any court; or

(ii) is a prosecuting attorney or deputy prosecuting attorney.

(c) “Communicates” includes posting a message electronically, including on a social networking web site (as defined in IC 35-42-4-12(d)).

(d) “Threat” means an expression, by words or action, or an intention to:

(1) unlawfully injure the person threatened or another person, or damage property;

(2) unlawfully subject a person to physical confinement or restraint;

(3) commit a crime;

(4) unlawfully withhold official action, or cause such withholding;

(5) unlawfully withhold testimony or information with respect to another person’s legal claim or defense, except for a reasonable claim for witness fees or expenses;

(6) expose the person threatened to hatred, contempt, disgrace, or ridicule;

(7) falsely harm the credit or business reputation of the person threatened; or

(8) cause the evacuation of a dwelling, a building, another structure, or a vehicle.

### **35-45-2-2. Harassment**

(a) A person who, with intent to harass, annoy, or alarm another person but with no intent of legitimate communication:

(1) makes a telephone call, whether or not a conversation ensues;

(2) communicates with a person by telegraph, mail, or other form of written communication;

(3) transmits an obscene message, or indecent or profane words, on a Citizens Radio Service channel; or

(4) uses a computer network (as defined in IC 35-43-2-3(a)) or other form of electronic communication to:

(A) communicate with a person; or

(B) transmit an obscene message or indecent or profane words to a person;

commits harassment, a Class B misdemeanor.

(b) The message is obscene if:

(1) the average person, applying contemporary community standards, finds that the dominant theme of the message, taken as a whole, appeals to the prurient interest in sex;

(2) the message refers to sexual conduct in a patently offensive way; and

(3) the message, taken as a whole, lacks serious artistic, literary, political, or scientific value.

### **35-45-2-3. Unlawful use of communications medium**

(a) A person who knowingly or intentionally:

- (1) Refuses to yield a party line upon request by another person who states that he wishes to make an emergency call from a telephone on that party line;
- (2) Refuses to yield a Citizens Radio Service channel upon request by another person who states that he wishes to make an emergency call on that channel; or
- (3) Obtains the use of a party line or Citizens Radio Service channel by falsely stating that he wishes to make an emergency call;

commits unlawful use of a communications medium, a Class B misdemeanor.

(b) "Party line" means a common telephone line for two (2) or more subscribers.

(c) "Emergency call" means a telephone call or radio message in which the caller or sender reasonably believes that a human being or property is in jeopardy and that prompt summoning of aid is essential.

### **35-45-2-4. Unlawful disclosure**

(a) This section does not apply to an employee who discloses information under IC 35-33.5.

(b) An employee of a telegraph company who knowingly or intentionally discloses the contents of a message sent or received, to a person other than the sender or receiver or authorized agent of either, commits unlawful disclosure, a Class A infraction.

(c) An employee of a telephone company who knowingly or intentionally discloses the contents of a conversation over a line of the company commits unlawful disclosure, a Class A infraction.

### **35-45-2-5. Interference with report of crime**

A person who, with the intent to commit, conceal, or aid in the commission of a crime, knowingly or intentionally interferes with or prevents an individual from:

- (1) using a 911 emergency telephone system;
- (2) obtaining medical assistance; or
- (3) making a report to a law enforcement officer;

commits interference with the reporting of a crime, a Class A misdemeanor.

## **Chapter 3 Littering**

35-45-3-2 Littering

35-45-3-3 Throwing cigarette

### **35-45-3-2. Littering**

(a) A person who recklessly, knowingly, or intentionally places or leaves refuse on property of another person, except in a container provided for refuse, commits littering, a Class B infraction. However, the offense is a Class A infraction if the refuse is placed or left in, on, or within one hundred (100) feet of a body of water that is under the jurisdiction of the:

- (1) department of natural resources; or
- (2) United States Army Corps of Engineers.

Notwithstanding IC 34-28-5-4(a), a judgment of not more than one thousand dollars (\$1,000) shall be imposed for each Class A infraction committed under this section.

(b) "Refuse" includes solid and semisolid wastes, dead animals, and offal.

(c) Evidence that littering was committed from a moving vehicle other than a public conveyance constitutes prima facie evidence that it was committed by the operator of that vehicle.

### **35-45-3-3. Throwing cigarette**

A person who throws from a moving motor vehicle:

- (1) a lighted cigarette, cigar, or match; or
- (2) other burning material;

commits a Class A infraction.

## **Chapter 4 Public Indecency; Prostitution**

35-45-4-0.1	Application of amendments
35-45-4-1	Public indecency; indecent exposure
35-45-4-1.5	Public nudity
35-45-4-2	Prostitution
35-45-4-3	Patronizing a prostitute
35-45-4-4	Promoting prostitution
35-45-4-5	Voyeurism
35-45-4-6	Indecent display by a youth

### **35-45-4-0.1. Application of amendments**

The enhanced penalty under section 5(b)(2) of this chapter, as added by P.L.7-2005, applies only if at least one (1) of the offenses is committed after June 30, 2005.

### **35-45-4-1. Public indecency; indecent exposure**

(a) A person who knowingly or intentionally, in a public place:

- (1) engages in sexual intercourse;
- (2) engages in other sexual conduct (as defined in IC 35-31.5-2-221.5);
- (3) appears in a state of nudity with the intent to arouse the sexual desires of the person or another person; or
- (4) fondles the person's genitals or the genitals of another person;

commits public indecency, a Class A misdemeanor.

(b) A person at least eighteen (18) years of age who knowingly or intentionally, in a public place, appears in a state of nudity with the intent to be seen by a child less than sixteen (16) years of age commits public indecency, a Class A misdemeanor.

(c) However, the offense under subsection (a) or (b) is a Level 6 felony if the person who commits the offense has a prior unrelated conviction:

- (1) under subsection (a) or (b); or
- (2) in another jurisdiction, including a military court, that is substantially equivalent to an offense described in subsection (a) or (b).

(d) As used in this section, “nudity” means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.

(e) A person who, in a place other than a public place, with the intent to be seen by persons other than invitees and occupants of that place:

- (1) engages in sexual intercourse;
- (2) engages in other sexual conduct (as defined in IC 35-31.5-2-221.5);
- (3) fondles the person’s genitals or the genitals of another person; or
- (4) appears in a state of nudity;

where the person can be seen by persons other than invitees and occupants of that place commits indecent exposure, a Class C misdemeanor.

### **35-45-4-1.5. Public nudity**

(a) As used in this section, “nudity” has the meaning set forth in section 1(d) of this chapter.

(b) A person who knowingly or intentionally appears in a public place in a state of nudity commits public nudity, a Class C misdemeanor.

(c) A person who knowingly or intentionally appears in a public place in a state of nudity with the intent to be seen by another person commits a Class B misdemeanor.

(d) A person who knowingly or intentionally appears in a state of nudity:

- (1) in or on school grounds;
- (2) in a public park; or
- (3) with the intent to arouse the sexual desires of the person or another person, in a department of natural resources owned or managed property;

commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction under this subsection or under subsection (c).

### **35-45-4-2. Prostitution**

A person who knowingly or intentionally:

- (1) performs, or offers or agrees to perform, sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5); or
- (2) fondles, or offers or agrees to fondle, the genitals of another person;

for money or other property commits prostitution, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has two (2) prior convictions under this section.

### **35-45-4-3. Patronizing a prostitute**

A person who knowingly or intentionally pays, or offers or agrees to pay, money or other property to another person:

- (1) for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the person or with any other person; or
- (2) for having fondled, or on the understanding that the other person will fondle, the genitals of the person or any other person;

commits patronizing a prostitute, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has two (2) prior convictions under this section.

#### **35-45-4-4. Promoting prostitution**

A person who:

- (1) knowingly or intentionally entices or compels another person to become a prostitute;
- (2) knowingly or intentionally procures, or offers or agrees to procure, a person for another person for the purpose of prostitution;
- (3) having control over the use of a place, knowingly or intentionally permits another person to use the place for prostitution;
- (4) receives money or other property from a prostitute, without lawful consideration, knowing that it was earned in whole or in part from prostitution; or
- (5) knowingly or intentionally conducts or directs another person to a place for the purpose of prostitution;

commits promoting prostitution, a Level 5 felony. However, the offense is a Level 4 felony under subdivision (1) if the person enticed or compelled is under eighteen (18) years of age.

#### **35-45-4-5. Voyeurism**

(a) The following definitions apply throughout this section:

- (1) "Camera" means a camera, a video camera, a device that captures a digital image, or any other type of video recording device.
- (2) "Peep" means any looking of a clandestine, surreptitious, prying, or secretive nature.
- (3) "Private area" means the naked or undergarment clad genitals, pubic area, or buttocks of an individual.

(b) A person:

- (1) who knowingly or intentionally:
  - (A) peeps; or
  - (B) goes upon the land of another person with the intent to peep; into an occupied dwelling of another person; or
- (2) who knowingly or intentionally peeps into an area where an occupant of the area reasonably can be expected to disrobe, including:
  - (A) restrooms;
  - (B) baths;
  - (C) showers; and
  - (D) dressing rooms;without the consent of the other person, commits voyeurism, a Class B misdemeanor.

(c) However, the offense under subsection (b) is a Level 6 felony if:

- (1) it is knowingly or intentionally committed by means of a camera; or
- (2) the person who commits the offense has a prior unrelated conviction:
  - (A) under this section; or
  - (B) in another jurisdiction, including a military court, for an offense that is substantially similar to an offense described in this section.

(d) A person who:

- (1) without the consent of the individual; and
- (2) with the intent to peep at the private area of an individual;

peeps at the private area of an individual and records an image by means of a camera commits public voyeurism, a Class A misdemeanor.

(e) The offense under subsection (d) is a Level 6 felony if the person has a prior unrelated conviction under this section or in another jurisdiction, including a military court, for an offense that is substantially similar to an offense described in this section, or if the person:

- (1) publishes the image;
- (2) makes the image available on the Internet; or
- (3) transmits or disseminates the image to another person.

(f) It is a defense to a prosecution under subsection (d) that the individual deliberately exposed the individual's private area.

### **35-45-4-6. Indecent display by a youth**

(a) This section applies only to a person to whom all of the following apply:

- (1) The person is less than eighteen (18) years of age.
- (2) The person is not more than four (4) years older than the individual who is depicted in the image or who received the image.
- (3) The relationship between the person and the individual who received the image or who is depicted in the image was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.
- (4) The individual receiving the image or who is depicted in the image acquiesced in the person's conduct.

(b) The following definitions apply throughout this section:

- (1) "Disseminate" means to transfer possession for no direct or indirect consideration.
- (2) "Matter" has the meaning set forth in IC 35-49-1-3.
- (3) "Performance" has the meaning set forth in IC 35-49-1-7.
- (4) "Sexual conduct" means sexual intercourse, other sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or other sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(c) A person who, on or by means of a cellular telephone, social media web site, or another wireless or cellular communications device, knowingly or intentionally:

- (1) produces, presents, exhibits, photographs, records, or creates a digitized image of any performance or incident that includes sexual conduct by a child at least twelve (12) years of age;
- (2) disseminates, exhibits to another person, or offers to disseminate or exhibit to another person, matter that depicts or describes sexual conduct by a child at least twelve (12) years of age; or
- (3) possesses:
  - (A) a picture;
  - (B) a drawing;
  - (C) a photograph;
  - (D) a motion picture;

- (E) a digitized image; or
- (F) any pictorial representation;

that depicts or describes sexual conduct by a child at least twelve (12) years of age who the person knows is less than sixteen (16) years of age or who appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value;

commits indecent display by a youth, a Class A misdemeanor.

(d) Subsection (c) does not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of that school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials is for legitimate scientific or educational purposes.

## **Chapter 5 Gambling**

35-45-5-1	Definitions
35-45-5-2	Unlawful gambling
35-45-5-3	Professional gambling
35-45-5-3.5	Possession of electronic gaming device
35-45-5-4	Promoting professional gambling
35-45-5-4.5	Notice to operator of illegal activity
35-45-5-4.6	Blocking gambling e-mail
35-45-5-4.7	Civil actions against gambling e-mail
35-45-5-5	Pari-mutuel wagering excluded
35-45-5-6	Lottery ticket sales excluded
35-45-5-7	Non-applicability to advertising
35-45-5-8	Gambling devices authorized
35-45-5-10	Riverboat gambling excluded
35-45-5-11	Gambling at racetracks excluded
35-45-5-12	Exclusion of raffles, drawings and Type II gambling games
35-45-5-13	Prize linked savings programs excluded

### **35-45-5-1. Definitions**

- (a) The definitions in this section apply throughout this chapter.
- (b) "Electronic gaming device" means any electromechanical device, electrical device, or machine that satisfies at least one (1) of the following requirements:
  - (1) It is a contrivance 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 accompanied by some skill, whether or not the prize is automatically paid by the contrivance.
  - (2) It is a slot machine or any simulation or variation of a slot machine.
  - (3) It is a matchup or lineup game machine or device operated for consideration, in which two (2) or more numerals, symbols, letters, or icons align in a winning combination on one (1) or more lines vertically, horizontally, diagonally, or otherwise, without assistance by the player. The use of a skill stop is not considered assistance by the player.

(4) It is a video game machine or device operated for consideration to play poker, blackjack, or any other card game, keno, or any simulation or variation of these games, including any game in which numerals, numbers, pictures, representations, or symbols are used as an equivalent or substitute for the cards used in these games.

The term does not include a toy crane machine or any other device played for amusement that rewards a player exclusively with a toy, a novelty, candy, other noncash merchandise, or a ticket or coupon redeemable for a toy, a novelty, or other noncash merchandise that has a wholesale value of not more than the lesser of ten (10) times the amount charged to play the amusement device one (1) time or twenty-five dollars (\$25).

(c) "Gain" means the direct realization of winnings.

(d) "Gambling" means risking money or other property for gain, contingent in whole or in part upon lot, chance, or the operation of the a gambling device, but it does not include participating in:

(1) bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries; or

(2) bona fide business transactions that are valid under the law of contracts.

(e) "Gambling device" means:

(1) a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance;

(2) a mechanism that, when operated for a consideration, does not return the same value or property for the same consideration upon each operation;

(3) a mechanism, furniture, fixture, construction, or installation designed primarily for use in connection with professional gambling;

(4) a policy ticket or wheel; or

(5) a subassembly or essential part designed or intended for use in connection with such a device, mechanism, furniture, fixture, construction or installation.

In the application of this definition, an immediate and unrecorded right to a replay mechanically conferred on players of pinball machines and similar amusement devices is presumed to be without value.

(f) "Gambling information" means:

(1) a communication with respect to a wager made in the course of professional gambling; or

(2) information intended to be used for professional gambling.

(g) "Interactive computer service" means an Internet service, an information service, a system, or an access software provider that provides or enables computer access to a computer served by multiple users. The term includes the following:

(1) A service or system that provides access or is an intermediary to the Internet.

(2) A system operated or services offered by a library, school, state educational institution, or private postsecondary educational institution.

(h) "Operator" means a person who owns, maintains, or operates an Internet site that is used for interactive gambling.

(i) "Profit means a realized or unrealized benefit (other than a gain) and includes benefits from proprietorship or management and unequal advantage in a series of transactions.

(j) "Tournament" means a contest in which:

(1) the consideration to enter the contest may take the form of a separate entry fee or the deposit of the required consideration to play in any manner accepted by the:

(A) video golf machine; or

(B) pinball machine or similar amusement device described in subsection (m)(2);

on which the entrant will compete;

(2) each player's score is recorded; and

(3) the contest winner and other prize winners are determined by objectively comparing the recorded scores of the competing players.

(k) "Toy crane machine" means a device that is used to lift prizes from an enclosed space by manipulating a mechanical claw.

(l) 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.

(m) In the application of the definition of gambling set forth in subsection (d), the payment of consideration to participate in a tournament conducted on:

(1) video golf games; or

(2) pinball machines and similar amusement devices that award no prizes other than to mechanically confer an immediate and unrecorded right to replay on players that is presumed to be without value under this section:

is not considered gambling even if the value of a prize awarded in the course of the tournament exceeds the amount of the player's consideration.

### **35-45-5-2. Unlawful gambling**

(a) A person who knowingly or intentionally engages in gambling commits unlawful gambling.

(b) Except as provided in subsection (c), unlawful gambling is a Class B misdemeanor.

(c) An operator who knowingly or intentionally uses the Internet to engage in unlawful gambling:

(1) in Indiana; or

(2) with a person located in Indiana;

commits a Level 6 felony.

### **35-42-5-3. Professional gambling**

(a) A person who knowingly or intentionally:

(1) engages in pool-selling;

(2) engages in bookmaking;

(3) maintains, in a place accessible to the public, slot machines, one-ball machines or variants thereof, pinball machines that award anything other than an immediate and unrecorded right of replay, roulette wheels, dice tables, or money or merchandise pushcards, punchboards, jars, or spindles;

(4) conducts lotteries or policy or numbers games or sells chances therein;

(5) conducts any banking or percentage games played with cards, dice, or counters, or accepts any fixed share of the stakes therein; or

(6) accepts, or offers to accept, for profit, money, or other property risked in gambling;

commits professional gambling, a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior unrelated conviction under this subsection.

(b) An operator who knowingly or intentionally uses the Internet to:

(1) engage in pool-selling:

(A) in Indiana; or

(B) in a transaction directly involving a person located in Indiana;

(2) engage in bookmaking:

(A) in Indiana; or

(B) in a transaction directly involving a person located in Indiana;

(3) maintain, on an Internet site accessible to residents of Indiana, the equivalent of:

(A) slot machines;

(B) one-ball machines or variants of one-ball machines;

(C) pinball machines that award anything other than an immediate and unrecorded right of replay;

(D) roulette wheels;

(E) dice tables; or

(F) money or merchandise pushcards, punchboards, jars, or spindles;

(4) conduct lotteries or policy or numbers games or sell chances in lotteries or policy or numbers games:

(A) in Indiana; or

(B) in a transaction directly involving a person located in Indiana;

(5) conduct any banking or percentage games played with the computer equivalent of cards, dice, or counters, or accept any fixed share of the stakes in those games:

(A) in Indiana; or

(B) in a transaction directly involving a person located in Indiana; or

(6) accept, or offer to accept, for profit, money or other property risked in gambling:

(A) in Indiana; or

(B) in a transaction directly involving a person located in Indiana;

commits professional gambling over the Internet, a Level 6 felony.

### **35-45-5-3.5. Possession of electronic gaming device**

(a) Except as provided in subsection (c), a person who possesses an electronic gaming device commits a Class A infraction.

(b) 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, a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior unrelated conviction under this subsection.

(c) Subsection (a) does not apply to a person who:

(1) possesses an antique slot machine;

(2) restricts display and use of the antique slot machine to the person's private residence; and

- (3) does not use the antique slot machine for profit.
- (d) As used in this section, “antique slot machine” refers to a slot machine that is:
  - (1) at least forty (40) years old; and
  - (2) possessed and used for decorative, historic, or nostalgic purposes.

**35-45-5-4. Promoting professional gambling**

- (a) Except as provided in subsections (b) and (d), a person who:
  - (1) knowingly or intentionally owns, manufactures, possesses, buys, sells, rents, leases, repairs, or transports a gambling device, or offers or solicits an interest in a gambling device;
  - (2) before a race, game, contest, or event on which gambling may be conducted, knowingly or intentionally transmits or receives gambling information by any means, or knowingly or intentionally installs or maintains equipment for the transmission or receipt of gambling information; or
  - (3) having control over the use of a place, knowingly or intentionally permits another person to use the place for professional gambling;commits promoting professional gambling, a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior unrelated conviction under this section.

- (b) Subsection (a)(1) does not apply to a boat manufacturer who:
  - (1) transports or possesses a gambling device solely for the purpose of installing the device in a boat that is to be sold and transported to a buyer; and
  - (2) does not display the gambling device to the general public or make the device available for use in Indiana.

(c) When a public utility is notified by a law enforcement agency acting within its jurisdiction that any service, facility, or equipment furnished by it is being used or will be used to violate this section, it shall discontinue or refuse to furnish that service, facility, or equipment, and no damages, penalty, or forfeiture, civil or criminal, may be found against a public utility for an act done in compliance with such a notice. This subsection does not prejudice the right of a person affected by it to secure an appropriate determination, as otherwise provided by law, that the service, facility, or equipment should not be discontinued or refused, or should be restored.

- (d) Subsection (a)(1) does not apply to a person who:
  - (1) possesses an antique slot machine;
  - (2) restricts display and use of the antique slot machine to the person’s private residence; and
  - (3) does not use the antique slot machine for profit.
- (e) As used in this section, “antique slot machine” refers to a slot machine that is:
  - (1) at least forty (40) years old; and
  - (2) possessed and used for decorative, historic, or nostalgic purposes.

**35-45-5-4.5. Notice to operator of illegal activity**

- (a) A prosecuting attorney may send written notice to an operator described in section 2(c) or 3(b) of this chapter. The notice must:
  - (1) specify the illegal gambling activity;
  - (2) state that the operator has not more than thirty (30) days after the date the notice is received to remove the illegal gambling activity; and

- (3) state that failure to remove the illegal gambling activity not more than thirty (30) days after receiving the notice may result in the filing of criminal charges against the operator.

A prosecuting attorney who sends notice under this section shall forward a copy of the notice to the attorney general. The attorney general shall maintain a depository to collect, maintain, and retain each notice sent under this section.

(b) The manner of service of a notice under subsection (a) must be:

- (1) in compliance with Rule 4.1, 4.4, 4.6, or 4.7 of the Indiana Rules of Trial Procedure; or

- (2) by publication in compliance with Rule 4.13 of the Indiana Rules of Trial Procedure if service cannot be made under subdivision (1) after a diligent search for the operator.

(c) A notice is served under subsection (a):

- (1) is admissible in a criminal proceeding under this chapter; and

- (2) constitutes prima facie evidence that the operator had knowledge that illegal gambling was occurring on the operator's internet site.

(d) A person outside Indiana who transmits information on a computer network (as defined in IC 35-43-2-3) and who knows or should know that the information is broadcast in Indiana submits to the jurisdiction of Indiana courts for prosecution under this section.

#### **35-45-5-4.6. Blocking gambling e-mail**

(a) An interactive computer service may, on its own initiative, block the receipt or transmission through its service of any commercial electronic mail message that it reasonably believes is or will be sent in violation of this chapter.

(b) An interactive computer service is not liable for such action.

#### **35-45-5-4.7. Civil actions against gambling e-mail**

(a) An interactive computer service that handles or retransmits a commercial electronic message has a right of action against a person who initiates or assists the transmission of the commercial electronic mail message that violates this chapter.

(b) This chapter does not provide a right of action against:

- (1) an interactive computer service;

- (2) a telephone company;

- (3) a CMRS provider (as defined in IC 36-8-16.7-6);

- (4) a cable operator (as defined in 47 U.S.C. 522(5)); or

- (5) any other entity that primarily provides connectivity to an operator;

if the entity's equipment is used only to transport, handle, or retransmit information that violates this chapter and is not capable of blocking the retransmission of information that violates this chapter.

(c) It is a defense to an action under this section if the defendant shows by a preponderance of the evidence that the violation of this chapter resulted from a good faith error and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid violating this chapter.

(d) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:

- (1) An injunction to enjoin future violations of this chapter.

(2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage, the plaintiff is entitled to presumptive damages of five hundred dollars (\$500) for each commercial electronic mail message that violates this chapter and that is sent by the defendant:

(A) to the plaintiff; or

(B) through the plaintiff's interactive computer service.

(3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(e) A person outside Indiana who:

(1) initiates or assists the transmission of a commercial electronic mail message that violates this chapter; and

(2) knows or should know that the commercial electronic mail message will be received in Indiana;

submits to the jurisdiction of Indiana courts for purposes of this chapter.

#### **35-45-5-5. Pari-mutuel wagering excluded**

The provisions of this chapter do not apply to pari-mutuel wagering conducted at racetrack locations or satellite facilities licensed for pari-mutuel wagering under IC 4-31.

#### **35-45-5-6. Lottery ticket sales excluded**

This chapter does not apply to the sale of lottery tickets authorized by IC 4-30.

#### **35-45-5-7. Non-applicability to advertising**

This chapter does not apply to the publication or broadcast or an advertisement, a list of prizes, or other information concerning:

(1) pari-mutuel wagering on horse races or a lottery authorized by the law of any state;

(2) a game of chance operated in accordance with IC 4-32.2;

(3) a gambling game operated in accordance with IC 4-35; or

(4) a prize linked savings program that:

(A) is offered or conducted by an eligible financial institution under IC 28-1-23.2; or

(B) is:

(i) offered or conducted by a credit union organized or reorganized under United States law; and

(ii) conducted in the same manner as a prize linked savings program under IC 28-1-23.2.

#### **35-45-5-8. Gambling devices authorized**

This chapter does not apply to the sale or use of gambling devices authorized under IC 4-32.2.

#### **35-45-5-10. Riverboat gambling excluded**

This chapter does not apply to riverboat gambling authorized by IC 4-33.

**35-45-5-11. Gambling at racetracks excluded**

This chapter does not apply to a gambling game authorized by IC 4-35.

**35-45-5-12. Exclusion of raffles, drawings and Type II gambling games**

This chapter does not apply to the following gambling games licensed or authorized under IC 4-36:

- (1) Raffles and winner take all drawings conducted under IC 4-36-5-1.
- (2) Type II gambling games.

**35-45-5-13. Prized linked savings programs excluded**

This chapter does not apply to a prize linked savings program that:

- (1) is offered or conducted by an eligible financial institution under IC 28-1-23.2; or
- (2) is:
  - (A) offered or conducted by a credit union organized or reorganized under United States law; and
  - (B) conducted in the same manner as a prize linked savings program under IC 28-1-23.2.

**Chapter 6**  
**Racketeer Influenced and**  
**Corrupt Organizations**

- 35-45-6-1 Definitions
- 35-45-6-2 Corrupt business influence

**35-45-6-1. Definitions**

- (a) The definitions in this section apply throughout this chapter.
- (b) “Documentary material” means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.
- (c) “Enterprise” means:
  - (1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or
  - (2) a union, an association, or a group, whether a legal entity or merely associated in fact.
- (d) “Pattern of racketeering activity” means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after the prior incident of racketeering activity.
- (e) “Racketeering activity” means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:
  - (1) A provision of IC 23-19, or of a rule or order issued under IC 23-19.
  - (2) A violation of IC 35-45-9.

- (3) A violation of IC 35-47.
- (4) A violation of IC 35-49-3.
- (5) Murder (IC 35-42-1-1).
- (6) Battery as a Class C felony before July 1, 2014, or a Level 5 felony after June 30, 2014 (IC 35-42-2-1).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Human and sexual trafficking crimes (IC 35-42-3.5).
- (9) Child exploitation (IC 42-4-4).
- (10) Robbery (IC 35-42-5-1).
- (11) Carjacking (IC 35-42-5-2) (before its repeal).
- (12) Arson (IC 35-43-1-1).
- (13) Burglary (IC 35-43-2-1).
- (14) Theft (IC 35-43-4-2).
- (15) Receiving stolen property (IC 35-43-4-2).
- (16) Forgery (IC 35-43-5-2).
- (17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).
- (18) Bribery (IC 35-44.1-1-2).
- (19) Official misconduct (IC 35-44.1-1-1).
- (20) Conflict of interest (IC 35-44.1-1-4).
- (21) Perjury (IC 35-44.1-2-1).
- (22) Obstruction of justice (IC 35-44.1-2-2).
- (23) Intimidation (IC 35-45-2-1).
- (24) Promoting prostitution (IC 35-45-4-4).
- (25) Professional gambling (IC 35-45-5-3).
- (26) Maintaining a professional gambling site (IC 35-45-5-3.5(b)).
- (27) Promoting professional gambling (IC 35-45-5-4).
- (28) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (29) Dealing in or manufacturing methamphetamine (IC 35-48-4-1.1).
- (30) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (31) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (32) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (33) Dealing in marijuana, hash oil, hashish, or salvia (IC 35-48-4-10).
- (34) Money laundering (IC 35-45-15-5).
- (35) A violation of IC 35-47.5-5.
- (36) A violation of any of the following:
  - (A) IC 23-14-48-9.
  - (B) IC 30-2-9-7(b).
  - (C) IC 30-2-10-9(b).
  - (D) IC 30-2-13-38(f).
- (37) Practice of law by a person who is not an attorney (IC 33-43-2-1).
- (38) Dealing in a synthetic drug or synthetic drug lookalike substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its amendment in 2013).

### **35-45-6-2. Corrupt business influence**

A person:

(1) who has knowingly or intentionally received any proceeds directly or indirectly derived from a pattern of racketeering activity, and who uses or invests those proceeds or the proceeds derived from them to acquire an interest in property or to establish or to operate an enterprise;

(2) who through a pattern of racketeering activity, knowingly or intentionally acquires or maintains, either directly or indirectly, an interest in or control of property or an enterprise; or

(3) who is employed by or associated with an enterprise, and who knowingly or intentionally conducts or otherwise participates in the activities of that enterprise through a pattern of racketeering activity;

commits corrupt business influence, a Level 5 felony.

## **Chapter 7 Loansharking**

35-45-7-1	Definitions
35-45-7-2	Loansharking
35-45-7-3	Application of chapter
35-45-7-4	Contracts void

### **35-45-7-1. Definitions**

As used in this chapter:

“Loan” means any transaction described in section 3 of this chapter, whether or not the transaction is in the form of a loan as defined in IC 24-4.5-3-106, and without regard to whether the person making the loan is regularly engaged in making consumer loans, consumer credit sales, or consumer leases.

“Principal” means the monetary value of property which has been loaned from one (1) person to another person.

“Rate” means the monetary value of the consideration received per annum or due per annum, calculated according to the actuarial method on the unpaid balance of the principal.

### **35-45-7-2. Loansharking**

A person who, in exchange for the loan on any property, knowingly or intentionally receives or contracts to receive from another person any consideration, at a rate greater than two (2) times the rate specified in IC 24-4.5-3-508(2)(a)(i), commits loansharking, a Level 6 felony. However, loansharking is a Level 5 felony if force or the threat of force is used to collect or to attempt to collect any of the property loaned or any of the consideration for the loan.

### **35-45-7-3. Application of chapter**

(a) This chapter applies only:

(1) to consumer loans, consumer related loans, consumer credit sales, consumer related sales, and consumer leases, as those terms are defined in IC 24-4.5, subject

to adjustment, where applicable, of the dollar amounts set forth in those definitions under IC 24-4.5-1-106;

(2) to any loan primarily secured by an interest in land or sale of an interest in land that is a mortgage transaction (as defined in IC 24-4.5-1-301.5) if the transaction is otherwise a consumer loan or consumer credit sale; and

(3) to any other loan transaction or extension of credit, regardless of the amount of the principal of the loan or extension of credit, if unlawful force or the threat of force is used to collect or to attempt to collect any of the property loaned or any of the consideration for the loan or extension of credit in question.

(b) This chapter applies regardless of whether the contract is made directly or indirectly, and whether the receipt of the consideration is received or is due to be received before or after the maturity date of the loan.

#### **35-45-7-4. Contracts void**

A loan or a contract for a loan which is made through loansharking is void.

### **Chapter 8 Consumer Product Tampering**

35-45-8-1 “Consumer product” defined

35-45-8-2 “Labeling” defined

35-45-8-3 Consumer product tampering

#### **35-45-8-1. “Consumer product” defined**

As used in this chapter, “consumer product” means:

(1) A food, drug, device, or cosmetic (as defined under IC 16-18-2-82, IC 16-18-2-94, IC 16-18-2-101(a), or IC 16-18-2-135(a)); or

(2) An item designed to be consumed for personal care or for performing household services.

#### **35-45-8-2. “Labeling” defined**

As used in this chapter, “labeling” has the meaning set forth in IC 16-18-2-198(a).

#### **35-45-8-3. Consumer product tampering**

A person who:

(1) recklessly, knowingly, or intentionally introduces a poison, a harmful substance, or a harmful foreign object into a consumer product; or

(2) with intent to mislead a consumer of a consumer product, tampers with the labeling of a consumer product;

that has been introduced into commerce commits consumer product tampering, a Level 6 felony. However, the offense is a Level 5 felony if it results in harm to a person, and it is a Level 4 felony if it results in serious bodily injury to another person.

## Chapter 9 Criminal Gang Control

35-45-9-1	“Criminal gang” defined
35-45-9-2	“Threatens” defined
35-45-9-3	Criminal gang activity
35-45-9-4	Criminal gang intimidation
35-45-9-5	Criminal gang recruitment
35-45-9-6	Restitution

### **35-45-9-1. “Criminal gang” defined**

As used in this chapter, “criminal gang” means a group with at least three (3) members that specifically:

(1) either:

(A) promotes, sponsors, or assists in; or

(B) participates in; or

(2) requires as a condition of membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

### **35-45-9-2. “Threatens” defined**

As used in this chapter, “threatens” includes a communication made with the intent to harm a person or the person’s property or any other person or the property of another person.

### **35-45-9-3. Criminal gang activity**

(a) As used in this section, “benefit, promote, or further the interests of a criminal gang” means to commit a felony or misdemeanor that would cause a reasonable person to believe results in:

(1) a benefit to a criminal gang;

(2) the promotion of a criminal gang; or

(3) furthering the interests of a criminal gang.

(b) As used in this section, “purpose of increasing a person’s own standing or position within a criminal gang” means committing a felony or misdemeanor that would cause a reasonable person to believe results in increasing the person’s standing or position within a criminal gang.

(c) A person who knowingly or intentionally commits an act:

(1) with the intent to benefit, promote, or further the interests of a criminal gang;

or

(2) for the purpose of increasing the person’s own standing or position within a criminal gang;

commits criminal gang activity, a Level 6 felony.

(d) In determining whether a person committed an offense under this section, the trier of fact may consider a person’s association with a criminal gang, including, but not limited to:

(1) an admission of criminal gang membership by the person;

(2) a statement by:

(A) a member of the person’s family;

- (B) the person’s guardian; or
  - (C) a reliable member of the criminal gang;
- stating the person is a member of a criminal gang;
- (3) the person having tattoos identifying the person as a member of a criminal gang;
  - (4) the person having a style of dress that is particular to members of a criminal gang;
  - (5) the person associating with one (1) or more members of a criminal gang;
  - (6) physical evidence indicating the person is a member of a criminal gang;
  - (7) an observation of the person in the company of a known criminal gang member on multiple occasions; and
  - (8) communications authored by the person indicating criminal gang membership.

**35-45-9-4. Criminal gang intimidation**

A person who threatens another person because the other person:

- (1) refuses to join a criminal gang;
- (2) has withdrawn from a criminal gang; or
- (3) wishes to withdraw from a criminal gang;

commits criminal gang intimidation, a Level 5 felony.

**35-45-9-5. Criminal gang recruitment**

(a) Except as provided in subsection (b), an individual who knowingly or intentionally solicits, recruits, entices, or intimidates another individual to join a criminal gang or remain in a criminal gang commits criminal gang recruitment, a Level 6 felony.

(b) The offense under subsection (a) is a Level 5 felony if:

- (1) the solicitation, recruitment, enticement, or intimidation occurs within one thousand (1,000) feet of school property; or
- (2) the individual who is solicited, recruited, enticed, or intimidated is less than eighteen (18) years of age.

**35-45-9-6. Restitution**

In addition to any sentence or fine imposed on a criminal gang member for committing a felony or misdemeanor, the court shall order a criminal gang member convicted of a felony or misdemeanor to make restitution to the victim of the crime under IC 35-50-5-3.

**Chapter 10  
Stalking**

- 35-45-10-1 “Stalk” defined
- 35-45-10-2 “Harassment” defined
- 35-45-10-3 “Impermissible contact” defined
- 35-45-10-4 “Victim” defined
- 35-45-10-5 Stalking

### **35-45-10-1. “Stalk” defined**

As used in this chapter, “stalk” means a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.

### **35-45-10-2. “Harassment” defined**

As used in this chapter, “harassment” means conduct directed toward a victim that includes but is not limited to repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include statutorily or constitutionally protected activity, such as lawful picketing pursuant to labor disputes or lawful employer-related activities pursuant to labor disputes.

### **35-45-10-3. “Impermissible contact” defined**

As used in this chapter, “impermissible contact” includes but is not limited to knowingly or intentionally following or pursuing the victim.

### **35-45-10-4. “Victim” defined**

As used in this chapter, “victim” means a person who is the object or stalking.

### **35-45-10-5. Stalking**

- (a) A person who stalks another person commits stalking, a Level 6 felony.
- (b) The offense is a Level 5 felony if at least one (1) of the following applies:
  - (1) A person:
    - (A) stalks a victim; and
    - (B) makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of:
      - (i) sexual battery (as defined in IC 35-42-4-8);
      - (ii) serious bodily injury; or
      - (iii) death.
  - (2) A protective order to prevent domestic or family violence, a no contact order, or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:
    - (A) IC 31-15 and IC 34-26-5 or IC 31-1-11.5 before its repeal (dissolution or marriage or legal separation).
    - (B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal (delinquent children and children in need of services).
    - (C) IC 31-32 or IC 31-6-7 before its repeal (procedure in juvenile court).
    - (D) IC 34-26-5 or IC 34-26-2 and IC 34-4-5.1 before their repeal (protective order to prevent abuse).
    - (E) IC 34-26-6 (workplace violence restraining orders).

(3) The person's stalking of another person violates an order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion if the person has been given actual notice of the order.

(4) The person's stalking of another person violates a no contact order issued as a condition of probation if the person has been given actual notice of the order.

(5) The person's stalking of another person violates a protective order issued under IC 31-14-16-1 and IC 34-26-5 in a paternity action if the person has been given actual notice of the order.

(6) The person's stalking of another person violates an order issued in another state that is substantially similar to an order described in subdivisions (2) through (5) if the person has been given actual notice of the order.

(7) The person's stalking of another person violates an order that is substantially similar to an order described in subdivisions (2) through (5) and is issued by an Indian:

(A) tribe;

(B) band;

(C) pueblo;

(D) nation; or

(E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians if the person has been given actual notice of the order.

(8) A criminal complaint of stalking that concerns an act by the person against the same victim or victims is pending in a court and the person has been given actual notice of the complaint.

(c) The offense is a Level 4 felony if:

(1) the act or acts were committed while the person was armed with a deadly weapon; or

(2) the person has an unrelated conviction for an offense under this section against the same victim or victims.

## **Chapter 11** **Abuse of a Corpse**

35-45-11-1 Exceptions

35-45-11-2 Abuse of a corpse

### **35-45-11-1. Exceptions**

(a) This chapter does not apply to the use of a corpse for:

(1) Scientific;

(2) Medical;

(3) Organ transplantation;

(4) Historical;

(5) Forensic; or

(6) Investigative;  
purposes.

(b) This chapter does not apply to:

(1) A funeral director;

(2) An embalmer; or

(3) An employee of an individual described in subdivision (1) or (2);  
engaged in the individual's normal scope of practice and employment.

### **35-45-11-2. Abuse of a corpse**

A person who knowingly or intentionally:

(1) mutilates a corpse;

(2) has sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the corpse; or

(3) opens a casket with the intent to commit an act described in subdivision (1) or (2);

commits abuse of a corpse, a Level 6 felony.

## **Chapter 12 Code Grabbing Devices**

35-45-12-1 "Code grabbing device" defined

35-45-12-2 Possession or use of code grabbing device

### **35-45-12-1. "Code grabbing device" defined**

As used in this chapter, "code grabbing device" means a device that is capable of:

(1) Receiving and recording the code signal sent by a transmitter of:

(A) A motor vehicle security alarm system;

(B) A motor vehicle automatic door locking system; or

(C) A residential or commercial automatic garage door opening system;  
and

(2) Disarming:

(A) A motor vehicle security alarm system;

(B) A motor vehicle automatic door locking system; or

(C) A residential or commercial automatic garage door opening system.

### **35-45-12-2. Possession or use of code grabbing device**

A person who, while committing a crime or to further commission of a crime, knowingly or intentionally:

(1) Possesses a code grabbing device; or

(2) Uses a code grabbing device to disarm the security alarm system of a motor vehicle;

commits a Class C misdemeanor.

**Chapter 13**  
**Unauthorized Use of**  
**Telecommunications Service**

35-45-13-1	“Manufacture of an unlawful communications device” defined
35-45-13-2	“Publish” defined
35-45-13-3	“Telecommunications device” defined
35-45-13-4	“Telecommunications service” defined
35-45-13-5	“Telecommunications service provider” defined
35-45-13-6	“Unlawful communications device” defined
35-45-13-7	Unlawful use of telecommunications service
35-45-13-8	Restitution; civil remedies

**35-45-13-1. “Manufacture of an unlawful telecommunications device” defined**

As used in this chapter, “manufacture of an unlawful telecommunications device” means:

- (1) the production or assembly of an unlawful telecommunications device; or
- (2) the modification, alteration, programming, or reprogramming of a telecommunications device to render it capable of acquiring or facilitating the acquisition of telecommunications service without the consent of the telecommunications service provider.

**35-45-13-2. “Publish” defined**

As used in this chapter, “publish” means the communication or dissemination of information to at least one (1) person by any of the following methods:

- (1) Orally.
- (2) In person.
- (3) By telephone, radio, or television.
- (4) In a writing of any kind, including a letter, memorandum, circular handbill, newspaper, magazine article, or book.

**35-45-13-3. “Telecommunications device” defined**

As used in this chapter, “telecommunications device” means:

- (1) a type of instrument, device, machine, or piece of equipment that is capable of transmitting or receiving telephonic, electronic, or radio communications;
- (2) a part of an instrument, a device, a machine, or a piece of equipment that is capable of transmitting or receiving telephonic, electronic, or radio communications; or
- (3) a computer circuit, a computer chip, an electric mechanism, or any other component that is capable of facilitating the transmission or reception of telephonic, electronic, or radio communications.

**35-45-13-4. “Telecommunications service” defined**

As used in this chapter, “telecommunications service” means a service provided for a charge or compensation to facilitate the origination, transmission, emission, or reception of signs, signals, data, writings, images, sounds, or intelligence of any nature by:

- (1) telephone, including cellular or other wireless telephones;

- (2) wire;
- (3) radio; or
- (4) an electromagnetic, a photoelectronic, or a photo-optical system.

**35-45-13-5. “Telecommunications service provider” defined**

As used in this chapter, “telecommunications service provider” means a person or an entity:

- (1) providing telecommunications service, including a cellular, paging, or other wireless communications company; or
- (2) that, for a fee, supplies the facility, cell site, mobile telephone switching office, or other equipment for a telecommunications service.

**35-45-13-6. “Unlawful telecommunications device” defined**

(a) As used in this chapter, “unlawful telecommunications device” means a telecommunications device that:

- (1) is capable of; or
- (2) has been altered, modified, programmed, or reprogrammed, alone or in conjunction with another access device or other equipment, to render the telecommunications device capable of;

acquiring or facilitating the acquisition of an electronic serial number, a mobile identification number, or a personal identification number of any telecommunications service without the consent of the telecommunications service provider.

(b) The term does not include a device operated by a law enforcement agency in the course of its activities.

**35-45-13-7. Unlawful use of telecommunications services**

A person who knowingly or intentionally:

- (1) makes, distributes, possesses, uses or assembles an unlawful telecommunications device that is designed, adapted, or used to:
  - (A) commit a theft of telecommunications service;
  - (B) acquire or facilitate the acquisition of telecommunications service without the consent of the telecommunications service provider; or
  - (C) conceal, or assist another in concealing, from a telecommunications service provider or authority, or from another person with enforcement authority, the existence or place of origin or destination of telecommunications;
- (2) sells, possesses, distributes, gives, transports, or otherwise transfers to another or offers or advertises for sale:
  - (A) an unlawful telecommunications device, with the intent to use the unlawful telecommunications device or allow the device to be used for a purpose described in subdivision (1), or while knowing or having reason to believe that the device is intended to be so used;
  - (B) plans or instructions for making or assembling an unlawful telecommunications device, knowing or having reason to believe that the plans or instructions are intended to be used for making or assembling an unlawful telecommunications device; or

(C) material, including hardware, cables, tools, data, computer software, or other information or equipment, knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunications device; or

(3) publishes:

(A) a number or code of an existing, a canceled, a revoked, or a nonexistent telephone number, credit number, or other credit device; or

(B) the method of numbering or coding that is employed in the issuance of telephone numbers, credit numbers, or other credit devices;

with knowledge or reason to believe that the information may be used to avoid the payment of a lawful telephone or telegraph toll charge;

commits unauthorized use of telecommunications services, a Class A misdemeanor. However, if the commission of the offense involves at least five (5) unlawful telecommunications devices, the offense is a Level 6 felony.

### **35-45-13-8. Restitution; civil remedies**

(a) The court may, in addition to any other sentence imposed for a conviction under this chapter, order a person convicted under this chapter to make restitution for the offense.

(b) A person or an entity that is the victim of an offense under this chapter may, in a civil action brought in the circuit or superior court in the county in which the person who committed the offense under this chapter was convicted, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expense, court costs (including fees), and attorney's fees.

## **Chapter 14 Unlawful Solicitation**

35-45-14-1 "Attorney" defined

35-45-14-2 Unlawful solicitation

### **35-45-14-1. "Attorney" defined**

As used in this chapter, "attorney" means an individual in good standing admitted to the practice of law in Indiana or another state.

### **35-45-14-2. Unlawful solicitation**

A person who is not an attorney and who:

(1) knowingly or intentionally solicits, advises, requests, or induces another person to bring an action in a court; and

(2) in making a solicitation under subdivision (1), directly or indirectly receives any compensation, fee, or commission from the attorney for the solicitation;

commits unlawful solicitation, a Class A misdemeanor.

## **Chapter 15**

### **Money Laundering**

- 35-45-15-1 “Criminal activity” defined
- 35-45-15-2 “Funds” defined
- 35-45-15-3 “Law enforcement officer” defined
- 35-45-15-4 “Proceeds” defined
- 35-45-15-5 Money laundering

#### **35-45-15-1. “Criminal activity” defined**

As used in this chapter, “criminal activity” means any offense that:

- (1) is classified as a felony under Indiana or United States law; or
- (2) occurs in another state and is punishable by confinement for more than one (1) year under the laws of that state.

#### **35-45-15-2. “Funds” defined**

As used in this chapter, “funds” includes the following:

- (1) Coin or paper money of the United States or any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issue.
- (2) United States silver certificates, United States treasury notes, and Federal Reserve System notes.
- (3) Official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.
- (4) Foreign bank drafts.

#### **35-45-15-3. “Law enforcement officer” defined**

As used in this chapter, “law enforcement officer” includes a federal enforcement officer.

#### **35-45-15-4. “Proceeds” defined**

As used in this chapter, “proceeds” means funds acquired or derived directly or indirectly from, produced through, or realized through an act.

#### **35-45-15-5. Money laundering**

(a) A person that knowingly or intentionally:

- (1) acquires or maintains an interest in, receives, conceals, possesses, transfers, or transports the proceeds of criminal activity;
  - (2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; or
  - (3) invests, expends, receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that are the proceeds of criminal activity, and the person knows that the proceeds or funds are the result of criminal activity;
- commits money laundering, a Level 6 felony. However, the offense is:
- (A) a Level 5 felony if the value of the proceeds or funds is at least fifty thousand dollars (\$50,000);
  - (B) a Level 5 felony if a person commits the crime with the intent to:

- (i) commit or promote an act of terrorism; or
  - (ii) obtain or transport a weapon of mass destruction; and
- (C) a Level 4 felony if the value of the proceeds or funds is at least fifty thousand dollars (\$50,000) and a person commits the crime with the intent to:

- (i) commit or promote an act of terrorism; or
- (ii) obtain or transport a weapon of mass destruction.

(b) It is a defense to a prosecution under this section that the person acted with intent to facilitate the lawful seizure, forfeiture, or disposition of funds or other legitimate law enforcement purpose under Indiana or United States law.

(c) It is a defense to a prosecution under this section that:

- (1) the transaction was necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment of the United States Constitution or Article I, Section 13, of the Constitution of the State of Indiana; or
- (2) the funds were received as bona fide legal fees by a licensed attorney and, at the time of the receipt of the funds, the attorney did not have actual knowledge that the funds were derived from criminal activity.

## **Chapter 16**

### **Malicious Mischief**

35-45-16-1 "HIV" defined

35-45-16-2 Malicious mischief; malicious mischief with food

#### **35-45-16-1. "HIV" defined**

- (a) As used in this chapter, "HIV" refers to human immunodeficiency virus.
- (b) The term includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.

#### **35-45-16-2. Malicious mischief; malicious mischief with food**

- (a) As used in this section, "body fluid" means:
  - (1) blood;
  - (2) saliva;
  - (3) sputum;
  - (4) semen;
  - (5) vaginal secretions;
  - (6) human milk;
  - (7) urine;
  - (8) sweat;
  - (9) tears;
  - (10) any other liquid produced by the body; or
  - (11) any aerosol generated form of liquids listed in this subsection.
- (b) As used in this section, "infectious hepatitis" means:
  - (1) hepatitis A;
  - (2) hepatitis B;
  - (3) hepatitis C;

- (4) hepatitis D;
- (5) hepatitis E; or
- (6) hepatitis G.

(c) A person who recklessly, knowingly, or intentionally places human:

- (1) body fluid; or
- (2) fecal waste;

in a location with the intent that another person will involuntarily touch the bodily fluid or fecal waste commits malicious mischief, a Class B misdemeanor.

(d) An offense described in subsection (c) is a:

(1) Level 6 felony if the person knew or recklessly failed to know that the body fluid or fecal waste was infected with:

- (A) infectious hepatitis;
- (B) HIV; or
- (C) tuberculosis;

(2) Level 5 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with infectious hepatitis and the offense results in the transmission of infectious hepatitis to another person; or

(B) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to another person; and

(3) Level 4 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to another person.

(e) A person who recklessly, knowingly, or intentionally places human:

- (1) body fluid; or
- (2) fecal waste;

in a location with the intent that another person will ingest the body fluid or fecal waste commits malicious mischief with food, a Class A misdemeanor.

(f) An offense described in subsection (e) is:

(1) a Level 6 felony if the person knew or recklessly failed to know that the body fluid or fecal waste was infected with:

- (A) infectious hepatitis;
- (B) HIV; or
- (C) tuberculosis;

(2) a Level 5 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with infectious hepatitis and the offense results in the transmission of infectious hepatitis to the other person; or

(B) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Level 4 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

## **Chapter 17** **Panhandling**

35-45-17-1 “Panhandling” defined

35-45-17-2 Panhandling

### **35-45-17-1. “Panhandling” defined**

- (a) As used in this chapter, “panhandling” means to solicit an individual:
  - (1) on a street or in another public place; and
  - (2) by requesting an immediate donation of money or something else of value.
- (b) The term includes soliciting an individual:
  - (1) by making an oral request;
  - (2) in exchange for:
    - (A) performing music;
    - (B) singing; or
    - (C) engaging in another type of performance; or
  - (3) by offering the individual an item of little or no monetary value in exchange for money or another gratuity under circumstances that would cause a reasonable individual to understand that the transaction is only a donation.
- (c) The term does not include an act of passively standing, sitting, performing music, singing, or engaging in another type of performance:
  - (1) while displaying a sign or other indication that a donation is being sought; and
  - (2) without making an oral request other than in response to an inquiry by another person.

### **35-45-17-2. Panhandling**

A person who knowingly or intentionally does any of the following commits panhandling, a Class C misdemeanor:

- (1) Panhandling after sunset or before sunrise.
- (2) Panhandling when the individual being solicited is:
  - (A) at a bus stop;
  - (B) in a:
    - (i) vehicle; or
    - (ii) facility;
  - used for public transportation;
  - (C) in a motor vehicle that is parked or stopped on a public street or alley, unless the person soliciting the individual has the approval to do so by a unit of local government that has jurisdiction over the public street or alley;
  - (D) in the sidewalk dining area of a restaurant; or
  - (E) within twenty (20) feet of:
    - (i) an automated teller machine; or
    - (ii) the entrance to a bank.

- (3) Panhandling while touching the individual being solicited without the solicited individual's consent.
- (4) Panhandling while the individual being solicited is standing in line and waiting to be admitted to a commercial establishment.
- (5) Panhandling while blocking:
  - (A) the path of the individual being solicited; or
  - (B) the entrance to a building or motor vehicle.
- (6) Panhandling while using profane or abusive language:
  - (A) during a solicitation; or
  - (B) after the individual being solicited has declined to donate money or something else of value.
- (7) Panhandling while making a statement, a gesture, or another communication to the individual being solicited that would cause a reasonable individual to:
  - (A) fear for the individual's safety; or
  - (B) feel compelled to donate.
- (8) Panhandling with at least one (1) other individual.
- (9) Panhandling and then following or accompanying the solicited individual without the solicited individual's consent after the solicited individual has declined to donate money or something else of value.

## **Chapter 18**

### **Combative Fighting**

- 35-45-18-1 Definitions
- 35-45-18-2 Unlawful combative fighting
- 35-45-18-3 Promoting combative fighting

#### **35-45-18-1. Definitions**

(a) As used in this chapter, "combative fighting" (also known as "toughman fighting", "badman fighting", and "extreme fighting") means a match, contest, or exhibition that involves at least two (2) contestants, with or without gloves or protective headgear, in which the contestants:

- (1) use their:
  - (A) hands;
  - (B) feet; or
  - (C) both hands and feet;
 to strike each other; and
- (2) compete for a financial prize or any item of pecuniary value.

(b) The term does not include:

- (1) a boxing, sparring, or unarmed combat match regulated under IC 4-33-22;
- (2) mixed martial arts (as defined by IC 4-33-22-2);
- (3) martial arts, as regulated by the gaming commission in rules adopted under IC 4-33-22;
- (4) professional wrestling, as regulated by the gaming commission in rules adopted under IC 4-33-22; or

(5) a match, contest, or game in which a fight breaks out among the participants as an unplanned, spontaneous event and not as an intended part of the match, contest, or game.

### **35-45-18-2. Unlawful combative fighting**

A person who knowingly or intentionally participates in combative fighting commits unlawful combative fighting, a Class C misdemeanor.

### **35-45-18-3. Promoting combative fighting**

A person who knowingly or intentionally promotes or organizes combative fighting commits unlawful promotion or organization or combative fighting, a Class A misdemeanor. However, the offense is a Level 6 felony if, within the five (5) years preceding the commission of the offense, the person had a prior unrelated conviction under this section.

## **Chapter 19 Failure to Report a Dead Body**

- 35-45-19-1 Application of chapter
- 35-45-19-2 “Public safety officer” defined
- 35-45-19-3 Failure to report a dead body

### **35-45-19-1. Application of chapter**

**Editor’s Note: This statute was amended during the 2014 legislative session by P.L.217-2014. However, that amendment to this statute does not become effective until January 1, 2015. Therefore, two versions of this statute are set forth below.**

#### **Version #1 (Effective through December 31, 2014)**

This chapter does not:

- (1) apply to the driver of a vehicle involved in an accident that:
  - (A) results in the death of a person; and
  - (B) must be reported under IC 9-26-1-1; or
- (2) supersede any law governing the reporting of a death by a hospital, health care facility, or provider.

#### **Version #2 (Effective on January 1, 2015)**

This chapter does not:

- (1) apply to the driver of a vehicle involved in an accident that:
  - (A) results in the death of a person; and
  - (B) must be reported under IC 9-26-1-1.1; or
- (2) supersede any law governing the reporting of a death by a hospital, health care facility, or provider.

### **35-45-19-2. “Public safety officer” defined**

As used in this chapter, “public safety officer” means:

- (1) a law enforcement officer;
- (2) a correctional officer;

- (3) a state university police officer;
- (4) a firefighter;
- (5) an emergency medical technician; or
- (6) a paramedic.

**35-45-19-3. Failure to report a dead body**

A person who:

- (1) discovers or has custody of the body of a deceased person when it appears the deceased person died:
  - (A) by violence, suicide, or accident;
  - (B) suddenly, while in apparent good health;
  - (C) while unattended;
  - (D) from poisoning or an overdose of drugs;
  - (E) as the result of a disease that may constitute a threat to public health;
  - (F) as the result of:
    - (i) a disease;
    - (ii) an injury;
    - (iii) a toxic effect; or
    - (iv) unusual exertion;
  - incurred within the scope of the deceased person’s employment;
  - (G) due to sudden infant death syndrome;
  - (H) as the result of a diagnostic or therapeutic procedure; or
  - (I) under any other suspicious or unusual circumstances; and
- (2) knowingly or intentionally fails to report the body of the deceased person to a:
  - (A) public safety officer;
  - (B) coroner;
  - (C) physician; or
  - (D) 911 telephone call center;

within three (3) hours after finding the body;  
 commits failure to report a dead body, a Class A misdemeanor.

**Chapter 20**  
**Dispensing Contact Lenses**  
**Without a Prescription**

- 35-45-20-1 “Prescription” defined
- 35-45-20-2 Dispensing contact lenses without a prescription

**35-45-20-1. “Prescription” defined**

As used in this chapter, “prescription” means a written or electronically transmitted contact lens prescription or order that:

- (1) is issued by an optometrist licensed under IC 25-24 or a physician licensed under IC 25-22.5; and
- (2) was issued within the previous year.

### **35-45-20-2. Dispensing contact lenses without a prescription**

A person who dispenses a contact lens, including a contact lens without corrective power, to an individual who does not have a prescription for the contact lens being dispensed commits a Class A infraction.

## **Chapter 21 Offenses Against Public Health**

- 35-45-21-1 Transferring contaminated body fluids
- 35-45-21-2 Unlawful sale of home HIV test kit
- 35-45-21-3 Recklessly violating or failing to comply with IC 16-41-7
- 35-45-21-4 Tattooing a minor
- 35-45-21-5 Interference with medical services

### **35-45-21-1. Transferring contaminated body fluids**

(a) As used in this section, “blood” has the meaning set forth in IC 16-41-12-2.5.

(b) A person who recklessly, knowingly, or intentionally donates, sells, or transfers blood or semen for artificial insemination (as defined in IC 16-41-14-2) that contains the human immunodeficiency virus (HIV) commits transferring contaminated body fluids, a Level 5 felony.

(c) However, the offense under subsection (b) is a Level 3 felony if it results in the transmission of the human immunodeficiency virus (HIV) to any person other than the defendant.

(d) This section does not apply to:

- (1) a person who, for reasons of privacy, donates, sells, or transfers blood at a blood center (as defined by IC 16-41-12-3) after the person has notified the blood center that the blood must be disposed of and may not be used for any purpose;
- (2) a person who transfers blood semen, or another body fluid that contains the human immunodeficiency virus (HIV) for research purposes; or
- (3) a person who is an autologous blood donor for stem cell transplantation.

### **35-45-21-2. Unlawful sale of home HIV test kit**

(a) The sale or distribution of:

- (1) diagnostic testing equipment or apparatus; or
- (2) a blood collection kit;

intended for home use to diagnose or confirm human immunodeficiency virus (HIV) infection or disease is prohibited unless the testing equipment, apparatus, or kit has been approved for such use by the federal Food and Drug Administration.

(b) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor.

### **35-45-21-3. Recklessly violating or failing to comply with IC 16-41-7**

(a) A person who recklessly violates or fails to comply with IC 16-41-7 commits a Class B misdemeanor.

(b) A person who knowingly or intentionally violates or fails to comply with IC 16-41-7-1 commits a Level 6 felony.

(c) Each day a violation described in this section continues constitutes a separate offense.

#### **35-45-21-4. Tattooing a minor**

(a) As used in this section, “tattoo” means:

- (1) any indelible design, letter, scroll, figure, symbol, or other mark placed with the aid of needles or other instruments; or
- (2) any design, letter, scroll, figure, or symbol done by scarring;

upon or under the skin.

(b) As used in this section, “body piercing” means the perforation of any human body part other than an earlobe for the purpose of inserting jewelry or other decoration or for some other nonmedical purpose.

(c) Except as provided in subsection (e), a person who recklessly, knowingly, or intentionally provides a tattoo to a person who is less than eighteen (18) years of age commits tattooing a minor, a Class A misdemeanor.

(d) This subsection does not apply to an act of a health care professional (as defined in IC 16-27-2-1) licensed under IC 25 when the act is performed in the course of the health care professional’s practice. Except as provided in subsection (e), a person who recklessly, knowingly, or intentionally performs body piercing upon a person who is less than eighteen (18) years of age commits body piercing a minor, a Class A misdemeanor.

(e) A person may provide a tattoo to a person who is less than eighteen (18) years of age or perform body piercing upon a person who is less than eighteen (18) years of age if a parent or legal guardian of the person receiving the tattoo or undergoing the body piercing:

- (1) is present at the time the tattoo is provided or the body piercing is performed; and
- (2) provides written permission for the person to receive the tattoo or undergo the body piercing.

(f) Notwithstanding IC 36-1-3-8(a), a unit (as defined in IC 36-1-2-23) may adopt an ordinance that is at least as restrictive or more restrictive than this section or a rule adopted under IC 16-19-3-4.1 or IC 16-19-3-4.2.

#### **35-45-21-5. Interference with medical services**

(a) The following definitions apply throughout this section:

- (1) “Health care provider” refers to a health care provider (as defined in IC 16-18-2-163(a), IC 16-18-2-163(b), or IC 16-18-2-163(c) or a qualified medication aide as described in IC 16-28-1-11.
- (2) “Licensed health professional” has the meaning set forth in IC 25-23-1-27.1.
- (3) “Practitioner” has the meaning set forth in IC 16-42-19-5. However, the term does not include a veterinarian.
- (4) “Prescription drug” has the meaning set forth in IC 35-48-1-25.

(b) A person who knowingly or intentionally physically interrupts, obstructs, or alters the delivery or administration of a prescription drug:

- (1) prescribed or ordered by a practitioner for a person who is a patient of the practitioner; and
- (2) without the prescription or order of a practitioner;

commits interference with medical services, a Class A misdemeanor, except as provided in subsection (c).

(c) An offense described in subsection (b) is:

- (1) a Level 6 felony if the offense results in bodily injury;
- (2) a Level 5 felony if it is committed by a person who is a licensed health care provider or licensed health professional;
- (3) a Level 4 felony if it results in serious bodily injury to the patient; and
- (4) a Level 2 felony if it results in the death of the patient.

(d) A person is justified in engaging in conduct otherwise prohibited under this section if the conduct is performed by:

- (1) a health care provider or licensed health professional who acts in good faith within the scope of the person’s practice or employment; or
- (2) a person who is rendering emergency care at the scene of an emergency or accident in a good faith attempt to avoid or minimize serious bodily injury to the patient.

## **ARTICLE 46 MISCELLANEOUS OFFENSES**

Ch. 1	Offenses Against the Family
Ch. 2	Offenses Relating to Civil Rights
Ch. 3	Offenses Relating to Animals
Ch. 5	Offenses Against Public Sensibility
Ch. 6	Inhaling Toxic Vapors; Distributing Nitrous Oxide
Ch. 7	Offenses Against Persons Receiving Care
Ch. 8	Unlawful Recording
Ch. 8.5	Unlawful Photography and Surveillance on Private Property
Ch. 9	Operating a Motorboat While Intoxicated

### **Chapter 1 Offenses Against the Family**

35-46-1-1	Definitions
35-46-1-1.3	“Dissolvable tobacco product” defined
35-46-1-1.5	“Electronic cigarette” defined
35-46-1.1.7	“Tobacco” defined
35-46-1-2	Bigamy
35-46-1-3	Incest
35-46-1-4	Neglect of a dependent; child selling
35-46-1-4.1	Reckless supervision by a child care provider
35-46-1-5	Nonsupport of a child
35-46-1-6	Nonsupport of a spouse
35-46-1-7	Nonsupport of a parent
35-46-1-8	Contributing to the delinquency of a minor
35-48-1-9	Profiting from an adoption
35-46-1-9.5	Adoption deception
35-46-1-10	Sale of tobacco to certain minors
35-46-1-10.1	Sale of alcohol to minors; civil judgments

- 35-46-1-10.2 Tobacco sales to minors by retail establishments
- 35-46-1-10.5 Tobacco purchase by minors
- 35-46-1-11 Warning notices to minors and pregnant women
- 35-46-1-11.2 Operating tobacco business within 200 feet of school
- 35-46-1-11.5 Sale of tobacco by coin machine
- 35-46-1-11.7 Minors entering tobacco retail establishments
- 35-46-1-11.8 Self-service cigarette displays
- 35-46-1-12 Exploitation of a dependent or endangered adult
- 35-46-1-13 Failure to report battery, neglect or exploitation of endangered adult
- 35-46-1-14 Immunity from civil or criminal liability for reporting
- 35-46-1-15.1 Invasion of privacy
- 35-46-1-16 Confidential record
- 35-46-1-17 Restricted access
- 35-46-1-18 Notification of release of offender
- 35-46-1-19 24 hour notice
- 35-46-1-20 Enforcement of foreign protective orders
- 35-46-1-21 Unauthorized adoption advertising
- 35-46-1-22 Unauthorized adoption facilitation

### **35-46-1-1. Definitions**

As used in this chapter:

“Dependent” means:

- (1) an unemancipated person who is under eighteen (18) years of age; or
- (2) a person of any age who has a mental or physical disability.

“Endangered adult” has the meaning set forth in IC 12-10-3-2.

“Support” means food, clothing, shelter, or medical care.

“Tobacco business” means a sole proprietorship, corporation, partnership, or other enterprise in which:

- (1) the primary activity is the sale of tobacco, tobacco products, and tobacco accessories; and
- (2) the sale of other products is incidental.

### **35-46-1-1.3. “Dissolvable tobacco product” defined**

As used in this chapter, “dissolvable tobacco product” means a smokeless tobacco product that dissolves in the mouth of the user.

### **35-46-1-1.5. “Electronic cigarette” defined**

As used in this chapter, “electronic cigarette” means a device that is capable of providing an inhalable dose of nicotine by delivering a vaporized solution. The term includes the components and cartridges.

### **35-46-1-1.7. “Tobacco” defined**

As used in this chapter, “tobacco” includes:

- (1) chewing tobacco;
- (2) cigars, cigarettes, and snuff that contains tobacco;
- (3) pipe tobacco; and

(4) a dissolvable tobacco product.

**35-46-1-2. Bigamy**

(a) A person who, being married and knowing that the person's spouse is alive, marries again commits bigamy, a Level 6 felony.

(b) It is a defense that the accused person reasonably believed that the person was eligible to remarry.

**35-46-1-3. Incest**

(a) A person eighteen (18) years of age or older who engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with another person, when the person knows that the other person is related to the person biologically as a parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew, commits incest, a Level 5 felony. However, the offense is a Level 4 felony if the other person is less than sixteen (16) years of age.

(b) It is a defense that the accused person's otherwise incestuous relation with the other person was based on their marriage, if the marriage was valid where it was entered into.

**35-46-1-4. Neglect of a dependent; child selling**

(a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:

- (1) places the dependent in a situation that endangers the dependent's life or health;
- (2) abandons or cruelly confines the dependent;
- (3) deprives the dependent of necessary support; or
- (4) deprives the dependent of education as required by law;

commits neglect of a dependent, a Level 6 felony.

(b) However, the offense is:

(1) a Level 5 felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and:

(A) results in bodily injury; or

(B) is:

(i) committed in a location where a person is violating IC 35-48-4-1 (dealing in cocaine or a narcotic drug) or IC 35-48-4-1.1 (dealing in methamphetamine); or

(ii) the result of a violation of IC 35-48-4-1 (dealing in cocaine or a narcotic drug) or IC 35-48-4-1.1 (dealing in methamphetamine);

(2) a Level 3 felony if its is committed under subsection (a)(1), (a)(2), or (a)(3) and results in serious bodily injury;

(3) a Level 1 felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) by a person at least eighteen (18) years of age and results in the death of a dependent who is less than fourteen (14) years of age; and

(4) a Level 5 felony if it is committed under subsection (a)(2) and 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 similar device to physically restrain a dependent.

(c) It is a defense to a prosecution based on an alleged act under this section that:

(1) the accused person left a dependent child who was, at the time the alleged act occurred, not more than thirty (30) days of age with an emergency medical provider who took custody of the child under IC 31-34-2.5 when:

(A) the prosecution is based solely on the alleged act of leaving the child with the emergency medical services provider; and

(B) the alleged act did not result in bodily injury or serious bodily injury to the child; or

(2) the accused person, in the legitimate practice of the accused person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the accused person's dependent.

(d) Except for property transferred or received:

(1) under a court order made in connection with a proceeding under IC 31-15, IC 31-16, IC 31-17, or IC 31-35 (or IC 31-1-11.5 or IC 31-6-5 before their repeal); or

(2) under section 9(b) of this chapter;

a person who transfers or receives any property in consideration for the termination of the care, custody, or control of a person's dependent commits child selling, a Level 6 felony.

#### **35-46-1-4.1. Reckless supervision by a child care provider**

(a) As used in this section, "child care provider" means a person who provides child care in or on behalf of:

(1) a child care center (as defined in IC 12-7-2-28.4); or

(2) a child care home (as defined in IC 12-7-2-28.6);

regardless of whether the child care center or child care home is licensed.

(b) A child care provider who recklessly supervises a child commits reckless supervision, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the offense results in serious bodily injury to a child, and a Level 6 felony if the offense results in the death of a child.

#### **35-46-1-5. Nonsupport of a child**

(a) A person who knowingly or intentionally fails to provide support to the person's dependent child commits nonsupport of a child, a Level 6 felony. However, the offense is a Level 5 felony if the person has a previous conviction under this section.

(b) It is a defense that the child had abandoned the home of the child's family without the consent of the child's parent or on order of a court, but it is not a defense that the child had abandoned the home of the child's family if the cause of the child's leaving was the fault of the child's parent.

(c) It is a defense that the accused person, in the legitimate practice of the person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the person's dependent child.

(d) It is a defense that the accused person was unable to provide support.

#### **35-46-1-6. Nonsupport of a spouse**

(a) A person who knowingly or intentionally fails to provide support to the person's spouse, when the spouse needs support, commits nonsupport of a spouse, a Level 6 felony.

(b) It is a defense that the accused person was unable to provide support.

**35-46-1-7. Nonsupport of a parent**

(a) A person who knowingly or intentionally fails to provide support to his parent, when the parent is unable to support himself, commits nonsupport of a parent, a Class A misdemeanor.

(b) It is a defense that the accused person had not been supported by the parent during the time he was a dependent child under eighteen (18) years of age, unless the parent was unable to provide support.

(c) It is a defense that the accused person was unable to provide support.

**35-46-1-8. Contributing to the delinquency of a minor**

(a) A person at least eighteen (18) years of age who knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act of delinquency (as defined by IC 31-37-1, or IC 31-37-2) commits contributing to delinquency, a Class A misdemeanor.

(b) However, the offense described in subsection (a) is:

(1) a Level 5 felony if:

(A) the person committing the offense is at least twenty-one (21) years of age and knowingly or intentionally furnishes:

(i) an alcoholic beverage to a person less than eighteen (18) years of age in violation of IC 7.1-5-7-8 when the person committing the offense knew or reasonably should have known that the person furnished the alcoholic beverage was less than eighteen (18) years of age; or

(ii) a controlled substance (as defined in IC 35-48-1-9) or a drug (as defined in IC 9-13-2-49.1) in violation of Indiana law; and

(B) the consumption, ingestion, or use of the alcoholic beverage, controlled substance, or drug is the proximate cause of the death of any person; and

(2) a Level 6 felony if the person committing the offense knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act that would be a felony if committed by an adult under any of the following:

(A) IC 35-48-4-1.

(B) IC 35-48-4-1.1.

(C) IC 35-48-4-2.

(D) IC 35-48-4-3.

(E) IC 35-48-4-4.

(F) IC 35-48-4-4.5.

(G) IC 35-48-4-4.6.

(H) IC 35-58-4-5.

**35-46-1-9. Profiting from an adoption**

(a) Except as provided in subsection (b), a person who, with respect to an adoption, transfers or receives any property in connection with the waiver of parental rights, the

termination of parental rights, the consent to adoption, or the petition for adoption commits profiting from an adoption, a Level 6 felony.

(b) This section does not apply to the transfer or receipt of:

- (1) reasonable attorney's fees;
- (2) hospital and medical expenses concerning childbirth and pregnancy incurred by the adopted person's birth mother;
- (3) reasonable charges and fees levied by a child placing agency licensed under IC 31-27 or the department of child services;
- (4) reasonable expenses for psychological counseling relating to adoption incurred by the adopted person's birth parents;
- (5) reasonable costs of housing, utilities, and phone service for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth;
- (6) reasonable costs of maternity clothing for the adopted person's birth mother;
- (7) reasonable travel expenses incurred by the adopted person's birth mother that relate to the pregnancy or adoption;
- (8) any additional itemized necessary living expenses for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth, not listed in subdivisions (5) through (7) in an amount not to exceed one thousand dollars (\$1,000); or
- (9) other charges and fees approved by the court supervising the adoption, including reimbursement of not more than actual wages lost as a result of the inability of the adopted person's birth mother to work at her regular, existing employment due to a medical condition, excluding a psychological condition, if:
  - (A) the attending physician of the adopted person's birth mother has ordered or recommended that the adopted person's birth mother discontinue her employment; and
  - (B) the medical condition and its direct relationship to the pregnancy of the adopted person's birth mother are documented by her attending physician.

In determining the amount of reimbursable lost wages, if any, that are reasonably payable to the adopted person's birth mother under subdivision (9), the court shall offset against the reimbursable lost wages any amounts paid to the adopted person's birth mother under subdivision (5) and (8) and any unemployment compensation received by or owed to the adopted person's birth mother.

(c) Except as provided in this subsection, payments made under subsection (b)(5) through (b)(9) may not exceed three thousand dollars (\$3,000) and must be disclosed to the court supervising the adoption. The amounts paid under subsection (b)(5) through (b)(9) may not exceed three thousand dollars (\$3,000) to the extent that a court in Indiana with jurisdiction over the child who is the subject of the adoption approves the expenses after determining that:

- (1) the expenses are not being offered as an inducement to proceed with an adoption; and
- (2) failure to make the payments may seriously jeopardize the health of either the child or the mother of the child and the direct relationship is documented by a licensed social worker or the attending physician.

(d) The payment limitation under subsection (c) applies to the total amount paid under subsection (b)(5) through (b)(9) in connection with an adoption from all prospective adoptive parents, attorneys, and licensed child placing agencies.

(e) An attorney or licensed child placing agency shall inform a birth mother of the penalties for committing adoption deception under section 9.5 of this chapter before the attorney or agency transfers a payment for adoption related expenses under subsection (b) in relation to the birth mother.

(f) The limitations in this section apply regardless of the state or country in which the adoption is finalized.

### **35-46-1-9.5. Adoption deception**

A person who is a birth mother, or a woman who holds herself out to be a birth mother, and who knowingly or intentionally benefits from adoption related expenses paid:

- (1) when the person knows or should have known that the person is not pregnant;
- (2) by or on behalf of a prospective adoptive parent who is unaware that at the same time another prospective adoptive parent is also paying adoption related expenses described under section 9(b) of this chapter in an effort to adopt the same child; or
- (3) when the person does not intend to make an adoptive placement;

commits adoption deception, a Class A misdemeanor. In addition to any other penalty imposed under this section, a court may order the person who commits adoption deception to make restitution to a prospective adoptive parent, attorney, or licensed child placing agency that incurs an expense as a result of the offense.

### **35-46-1-10. Sale of tobacco to certain minors.**

(a) A person who knowingly:

- (1) sells or distributes tobacco or an electronic cigarette to a person less than eighteen (18) years of age; or
- (2) purchases tobacco or an electronic cigarette for delivery to another person who is less than eighteen (18) years of age;

commits a Class C infraction. For a sale to take place under this section, the buyer must pay the seller for the tobacco product or the electronic cigarette.

(b) It is not a defense that the person to whom the tobacco or electronic cigarette was sold or distributed did not smoke, chew, inhale, or otherwise consume the tobacco or the electronic cigarette.

(c) The following defenses are available to a person accused of selling or distributing tobacco or an electronic cigarette to a person who is less than eighteen (18) years of age:

- (1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph, showing that the purchaser or recipient was of legal age to make the purchase.
- (2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1, or a similar card issued under the laws of another state or the federal government, showing that the purchaser or recipient was of legal age to make the purchase.
- (3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the

age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused person sold or delivered the tobacco or electronic cigarette to a person who acted in the ordinary course of employment or a business concerning tobacco or electronic cigarettes:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

(e) As used in this section, “distribute” means to give tobacco or an electronic cigarette to another person as a means of promoting, advertising, or marketing the tobacco or electronic cigarette to the general public.

(f) Unless the person buys or receives tobacco or an electronic cigarette under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco or an electronic cigarette is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco or electronic cigarette is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

### **35-46-1-10.1. Sale of alcohol to minors; civil judgments**

(a) If a permit holder or an agent or employee of a permit holder violates IC 7.1-5-7-8 on the licensed premises, in addition to any other penalty, a civil judgment may be imposed against the permit holder as follows:

- (1) If the licensed premises at that specific business location has not been issued a citation or summons for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars (\$200).
- (2) If the licensed premises at that specific business location has had one (1) citation or summons for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars (\$400).
- (3) If the licensed premises at that specific business location has had two (2) citations or summonses for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars (\$700).
- (4) If the licensed premises at that specific business location has had three (3) or more citations or summonses for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars (\$1,000).

(b) The defenses set forth in IC 7.1-5-7-1 are available to a permit holder in an action under this section.

(c) Unless a person less than twenty-one (21) years of age buys or receives an alcoholic beverage under the direction of a law enforcement officer as part of an enforcement action, a permit holder that sells alcoholic beverages is not liable under this section unless the person less than twenty-one (21) years of age who bought or received the alcoholic beverage is charged for violating IC 7.1-5-7-7.

(d) All civil penalties collected under this section shall be deposited in the alcohol and tobacco commission’s enforcement and administration fund under IC 7.1-4-10.

**35-46-1-10.2. Tobacco sales to minors by retail establishments.**

(a) A retail establishment that sells or distributes tobacco or an electronic cigarette to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product or electronic cigarette. Notwithstanding IC 35-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

- (1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars (\$200).
- (2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars (\$400).
- (3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars (\$700).
- (4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars (\$1,000).

A retail establishment may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours for each specific business location.

(b) It is not a defense that the person to whom the tobacco or electronic cigarette was sold or distributed did not smoke, chew, inhale, or otherwise consume the tobacco or electronic cigarette.

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco or an electronic cigarette to a person who is less than eighteen (18) years of age:

- (1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph, showing that the purchaser or recipient was of legal age to make the purchase.
- (2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government showing that the purchaser or recipient was of legal age to make the purchase.
- (3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused retail establishment sold or delivered the tobacco or electronic cigarette to a person who acted in the ordinary course of employment or a business concerning tobacco or electronic cigarettes:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or

(5) retailing.

(e) As used in this section, “distribute” means to give tobacco or an electronic cigarette to another person as a means of promoting, advertising, or marketing the tobacco or electronic cigarette to the general public.

(f) Unless a person buys or receives tobacco or an electronic cigarette under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco or an electronic cigarette is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco or electronic cigarette is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

(h) A person who violates subsection (a) at least six (6) times in any one hundred eighty (180) day period commits habitual illegal sale of tobacco, a Class B infraction.

### **35-46-1-10.5. Tobacco purchase by minors.**

(a) A person less than eighteen (18) years of age who:

- (1) purchases tobacco or an electronic cigarette;
- (2) accepts tobacco or an electronic cigarette for personal use; or
- (3) possesses tobacco or an electronic cigarette on his person;

commits a Class C infraction.

(b) It is a defense under subsection (a) that the accused person acted in the ordinary course of employment in a business concerning tobacco or electronic cigarettes:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

### **35-46-1-11. Warning notices to minors and pregnant women.**

(a) A tobacco or electronic cigarette vending machine that is located in a public place must bear the following conspicuous notices:

(1) A notice:

(A) that reads as follows, with the capitalization indicated: “If you are under 18 years of age, YOU ARE FORBIDDEN by Indiana law to buy tobacco or electronic cigarettes from this machine.”; or

(B) that:

- (i) conveys a message substantially similar to the message described in clause (A); and
- (ii) is formatted with words and in a form authorized under the rules adopted by the alcohol and tobacco commission.

(2) A notice that reads as follows, “Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight.”.

(3) A notice printed in letters and numbers at least one-half (1/2) inch high that displays a toll free phone number for assistance to callers in quitting smoking, as determined by the state department of health.

(b) A person who owns or has control over a tobacco or electronic cigarette vending machine in a public place and who:

- (1) fails to post a notice required by subsection (a) on the vending machine; or
- (2) fails to replace a notice within one (1) month after it is removed or defaced;

commits a Class C infraction.

(c) An establishment selling tobacco or electronic cigarettes at retail shall post and maintain in a conspicuous place, at the point of sale, the following:

(1) Signs printed in letters at least one-half (1/2) inch high, reading as follows:

(A) "The sale of tobacco or electronic cigarettes to persons under 18 years of age is forbidden by Indiana law."

(B) "Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight."

(2) A sign printed in letters and numbers at least one-half (1/2) inch high that displays a toll free phone number for assistance to callers in quitting smoking, as determined by the state department of health.

(d) A person who:

(1) owns or has control over an establishment selling tobacco or electronic cigarettes at retail; and

(2) fails to post and maintain the sign required by subsection (c);

commits a Class C infraction.

### **35-46-1-11.2. Operating tobacco business within 200 feet of school**

(a) This section does not apply to a tobacco business:

(1) operating as a tobacco business before April 1, 1996; or

(2) that begins operating as a tobacco business after April 1, 1996, if at the time the tobacco business begins operation the tobacco business is not located in an area prohibited under this section.

(b) A person may not operate a tobacco business within two hundred (200) feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco business and the nearest point of a building used by the school for instructional purposes.

(c) A person who violates this section commits a Class C misdemeanor.

### **35-46-1-11.5. Sale of tobacco by coin machine**

(a) Except for a coin machine that is placed in or directly adjacent to an entryway or an exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than eighteen (18) years of age, this section does not apply to a coin machine that is located in the following:

(1) That part of a licensed premises (as defined in IC 7.1-1-3-20) where entry is limited to persons who are at least eighteen (18) years of age.

(2) Private industrial or office locations that are customarily accessible only to persons who are at least eighteen (18) years of age.

(3) Private clubs if the membership is limited to persons who are at least eighteen (18) years of age.

(4) Riverboats where entry is limited to persons at least twenty-one (21) years of age and on which lawful gambling is authorized.

(b) As used in this section, “coin machine” has the meaning set forth in IC 35-43-5-1.

(c) Except as provided in subsection (a), an owner of a retail establishment may not:

- (1) distribute or sell tobacco or electronic cigarettes by use of a coin machine; or
- (2) install or maintain a coin machine that is intended to be used for the sale or distribution of tobacco or electronic cigarettes.

(d) An owner of a retail establishment who violates this section commits a Class C infraction. A citation or summons issued under this section must provide notice that the coin machine must be moved within two (2) business days. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

- (1) If the owner of the retail establishment has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).
- (2) If the owner of the retail establishment has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).
- (3) If the owner of the retail establishment has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days for the same machine, the coin machine shall be removed or impounded by a law enforcement officer having jurisdiction where the violation occurs.

An owner of a retail establishment may not be issued a citation or summons for a violation of this section more than once every two (2) business days for each business location.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

### **35-46-1-11.7. Minors entering tobacco retail establishments**

(a) A retail establishment that has as its primary purpose the sale of tobacco products may not allow an individual who is less than eighteen (18) years of age to enter the retail establishment.

(b) An individual who is less than eighteen (18) years of age may not enter a retail establishment described in subsection (a).

(c) A retail establishment described in subsection (a) must conspicuously post on all entrances to the retail establishment the following:

- (1) A sign in boldface type that states “NOTICE: It is unlawful for a person less than 18 years old to enter this store.”
- (2) A sign printed in letters and numbers at least one-half (1/2) inch high that displays a toll free phone number for assistance to callers in quitting smoking, as determined by the state department of health.

(d) A person who violates this section commits a Class C infraction. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

- (1) If the person has not been cited for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars (\$200).
- (2) If the person has had one (1) violation in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars (\$400).

(3) If the person has had two (2) violations in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars (\$700).

(4) If the person has had three (3) or more violations in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars (\$1,000).

A person may not be cited more than once every twenty-four (24) hours.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

(f) A person who violates subsection (a) at least six (6) times in any one hundred eighty (180) day period commits habitual illegal entrance by a minor, a Class B infraction.

### **35-46-1-11.8. Self-service cigarette displays.**

(a) As used in this section, “self-service display” means a display that contains tobacco or electronic cigarettes in an area where a customer:

(1) is permitted; and

(2) has access to the tobacco or electronic cigarettes without assistance from a sales person.

(b) This section does not apply to a self-service display located in a retail establishment that:

(1) has a primary purpose to sell tobacco or electronic cigarettes; and

(2) prohibits entry by persons who are less than eighteen (18) years of age.

(c) The owner of a retail establishment that sells or distributes tobacco or electronic cigarettes through a self-service display, other than a coin operated machine operated under IC 35-46-1-11 or IC 35-46-1-11.5, commits a Class C infraction.

(d) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

### **35-46-1-12. Exploitation of dependent or endangered adult**

(a) Except as provided in subsection (b), a person who recklessly, knowingly, or intentionally exerts unauthorized use of the personal services or the property of:

(1) an endangered adult; or

(2) a dependent eighteen (18) years of age or older;

for the person’s own profit or advantage or for the profit or advantage of another person commits exploitation of a dependent or an endangered adult, a Class A misdemeanor.

(b) The offense described in subsection (a) is a Level 6 felony if:

(1) the fair market value of the personal services or property is more than ten thousand dollars (\$10,000); or

(2) the endangered adult or dependent is at least sixty (60) years of age.

(c) Except as provided in subsection (d), a person who recklessly, knowingly, or intentionally deprives an endangered adult or a dependent of the proceeds of the endangered adult’s or the dependent’s benefits under the Social Security Act or other retirement program that the division of family resources has budgeted for the endangered adult’s or dependent’s health care commits financial exploitation of an endangered adult or a dependent, a Class A misdemeanor.

(d) The offense described in subsection (c) is a Level 6 felony if:

(1) the amount of the proceeds is more than ten thousand dollars (\$10,000); or

(2) the endangered adult or dependent is at least sixty (60) years of age.

(e) It is not a defense to an offense committed under subsection (b)(2) or (d)(2) that the accused person reasonably believed that the endangered adult or dependent was less than sixty (60) years of age at the time of the offense.

(f) It is a defense to an offense committed under subsection (a), (b), or (c) if the accused person:

(1) has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or dependent; and

(2) was acting within the scope of the accused person's fiduciary responsibility.

### **35-46-1-13. Failure to report battery, neglect or exploitation of endangered adult**

(a) A person who:

(1) believes or has reason to believe that an endangered adult is the victim of battery, neglect, or exploitation as prohibited by this chapter, IC 35-42-2-1(a)(2)(C), or IC 35-42-2-1(a)(2)(E); and

(2) knowingly fails to report the facts supporting that belief to the division of disability and rehabilitative services, the division of aging, the adult protective services unit designated under IC 12-10-3, or a law enforcement agency having jurisdiction over battery, neglect, or exploitation of an endangered adult;

commits a Class B misdemeanor.

(b) An officer or employee of the division or adult protective services unit who unlawfully discloses information contained in the records of the division of aging under IC 12-10-3-12 through IC 12-10-3-15 commits a Class C infraction.

(c) A law enforcement agency that receives a report that an endangered adult is or may be a victim of battery, neglect, or exploitation as prohibited by this chapter, IC 35-42-2-1(a)(2)(C), or IC 35-42-2-1(a)(2)(E) shall immediately communicate the report to the adult protective services unit designated under IC 12-10-3.

(d) An individual who discharges, demotes, transfers, prepares a negative work performance evaluation, reduces benefits, pay, or work privileges, or takes other action to retaliate against an individual who in good faith makes a report under IC 12-10-3-9 concerning an endangered individual commits a Class A infraction.

### **35-46-1-14. Immunity from civil or criminal liability for reporting**

Any person acting in good faith who:

(1) makes or causes to be made a report of neglect, battery, or exploitation under this chapter, IC 35-42-2-1(a)(2)(C), or IC 35-42-2-1(a)(2)(E);

(2) makes or causes to be made photographs or x-rays of a victim of suspected neglect or battery of an endangered adult or a dependent eighteen (18) years of age or older; or

(3) participates in any official proceeding or a proceeding resulting from a report of neglect, battery, or exploitation of an endangered adult or a dependent eighteen (18) years of age or older relating to the subject matter of that report:

is immune from any civil or criminal liability that might otherwise be imposed because of these actions. However, this section does not apply to a person accused of neglect, battery, or exploitation of an endangered adult or a dependent eighteen (18) years of age or older.

### **35-46-1-15.1. Invasion of privacy**

A person who knowingly or intentionally violates:

- (1) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
- (2) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
- (3) a workplace violence restraining order issued under IC 34-26-6;
- (4) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
- (5) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
- (6) a no contact order issued as a condition of probation;
- (7) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
- (8) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
- (9) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;
- (10) an order issued in another state that is substantially similar to an order described in subdivisions (1) through (9);
- (11) an order that is substantially similar to an order described in subdivisions (1) through (9) and is issued by an Indian:
  - (A) tribe;
  - (B) band;
  - (C) pueblo;
  - (D) nation; or
  - (E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;
- (12) an order issued under IC 35-33-8-3.2; or
- (13) an order issued under IC 35-38-1-30;

commits invasion of privacy, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction for an offense under this section.

**35-46-1-16. Confidential record**

The law enforcement agency with custody of a person who is sentenced to a term of imprisonment of more than ten (10) days following conviction of a crime under section 15.1 of this chapter shall maintain a confidential record of the:

- (1) Name;
- (2) Address; and
- (3) Telephone number;

of each person that the person convicted under section 15.1 of this chapter is required to refrain from direct or indirect contact with under an order described by section 15.1 of this chapter.

**35-46-1-17. Restricted access**

A person convicted of a crime under section 15.1 of this chapter may not have access to the information maintained under section 16 of this chapter.

**35-46-1-18. Notification of release of offender**

The law enforcement agency having custody of a person who is sentenced to a term of imprisonment of more than ten (10) days following conviction of a crime under section 15.1 of this chapter shall:

- (1) Provide each person described in section 16 of this chapter with written notification of:
  - (A) The release of a person convicted of a crime under section 15.1 of this chapter; and
  - (B) The date, time, and place of any substantive hearing concerning a violation of section 15.1 of this chapter by a person who is sentenced to a term of imprisonment of more than ten (10) days following conviction of a crime under section 15.1 of this chapter; and
- (2) Attempt to notify each person described in section 16 of this chapter by telephone to provide the information described in subdivision (1).

**35-46-1-19. 24 hour notice**

The law enforcement agency shall:

- (1) Provide written notice; and
- (2) Attempt notification by telephone;

under section 18 of this chapter at least twenty-four (24) hours before the release or hearing.

**35-46-1-20. Enforcement of foreign protection order**

A law enforcement officer shall enforce a foreign protection order (as defined in IC 34-6-2-48.5) in conformity with the procedures in IC 34-26-5-17.

**35-46-1-21. Unauthorized adoption advertising**

(a) Only a person that is an attorney licensed to practice law or a child placing agency licensed under the laws of Indiana may place a paid advertisement or paid listing of the person's telephone number, on the person's own behalf, in a telephone directory that:

- (1) a child is offered or wanted for adoption; or
- (2) the person is able to place, locate, or receive a child for adoption.

(b) A person that publishes a telephone directory that is distributed in Indiana:

(1) shall include, at the beginning of any classified heading for adoption and adoption services, a statement that informs directory users that only attorneys licensed to practice law and licensed child placing agencies may legally provide adoption services under Indiana law; and

(2) may publish an advertisement described in subsection (a) in the telephone directory only if the advertisement contains the following:

(A) For an attorney licensed to practice law in Indiana, the person's attorney number.

(B) For a child placing agency licensed under the laws of Indiana, the number on the person's child placing agency license.

(c) A person who knowingly or intentionally violates subsection (a) commits unauthorized adoption advertising, a Class A misdemeanor.

### **35-46-1-22. Unauthorized adoption facilitation**

(a) As used in this section, "adoption services" means at least one (1) of the following services that is provided for compensation, an item of value, or reimbursement, either directly or indirectly, and provided either before or after the services are rendered:

(1) Arranging for the placement of a child.

(2) Identifying a child for adoption.

(3) Matching adoptive parents with biological parents.

(4) Arranging or facilitating an adoption.

(5) Taking or acknowledging consents or surrenders for termination of parental rights for adoption purposes.

(6) Performing background studies on:

(A) a child who is going to be adopted; or

(B) adoptive parents.

(7) Making determinations concerning the best interests of a child and the appropriateness in placing the child for adoption.

(8) Postplacement monitoring of a child before the child is adopted.

(b) As used in this section, the term "adoption services" does not include the following:

(1) Legal services provided by an attorney licensed in Indiana.

(2) Adoption related services provided by a governmental entity or a person appointed to perform an investigation by the court.

(3) General education and training on adoption issues.

(4) Postadoption services, including supportive services to families to promote the well-being of members of adoptive families or birth families.

(c) Subsection (d) does not apply to the following persons:

(1) The department of child services, an agency or person authorized to act on behalf of the department of child services, or a similar agency or county office with similar responsibilities in another state.

(2) The division of family resources, an agency or person authorized to act on behalf of the division of family resources, or a similar agency or county office with similar responsibilities in another state.

(3) A child placing agency licensed under the laws of Indiana.

(4) An attorney licensed to practice law in Indiana.

(5) A prospective biological parent or adoptive parent acting on the individual's own behalf.

(d) A person who knowingly or intentionally provides, engages in, or facilitates adoption services to a birth parent who lives in Indiana commits unauthorized adoption facilitation, a Class A misdemeanor.

(e) Subsection (f) does not apply to the following persons:

(1) The department of child services, an agency or person authorized to act on behalf of the department of child services, or a similar agency or county office with similar responsibilities in another state.

(2) The division of family resources, an agency or person authorized to act on behalf of the division of family resources, or a similar agency or county office with similar responsibilities in another state.

(3) A child placing agency licensed under the laws of Indiana or another state.

(4) An attorney licensed to practice law in Indiana or another state.

(5) A prospective biological parent or adoptive parent acting on the individual's own behalf.

(f) A person who knowingly or intentionally provides, engages in, or facilitates adoption services to a prospective adoptive parent who lives in Indiana commits unauthorized adoption facilitation, a Class A misdemeanor.

## **Chapter 2 Offenses Relating to Civil Rights**

35-46-2-1 Violation of civil rights

35-46-2-2 Discrimination in jury selection

### **35-46-2-1. Violation of civil rights**

A person who knowingly or intentionally denies to another person, because of color, creed, disability, national origin, race, religion, or sex, the full and equal use of the services, facilities, or goods in:

(1) An establishment that caters or offers its services, facilities, or goods to the general public; or

(2) A housing project owned or subsidized by a governmental entity;

commits a civil rights violation, a Class B misdemeanor.

### **35-46-2-2. Discrimination in jury selection**

A public servant having the duty to select or summon persons for grand jury or trial jury service who knowingly or intentionally fails to select or summon a person because of color, creed, disability, national origin, race, religion, or sex commits discrimination in jury selection, a Class A misdemeanor.

## **Chapter 3 Offenses Relating to Animals**

35-46-3-0.1 Application of amendments

35-46-3-0.5 Definitions

- 35-46-3-1 Harboring a non-immunized dog
- 35-46-3-3 “Animal” defined
- 35-46-3-4 “Animal fighting contest” defined
- 35-46-3-4.3 “Animal fighting paraphernalia” defined
- 35-46-3-4.5 “Law enforcement animal” defined
- 35-46-3-5 Exemptions
- 35-46-3-6 Custody, care of animal; bond
- 35-46-3-7 Abandoned, neglected animal
- 35-46-3-8 Purchasing or possessing an animal for fighting
- 35-46-3-8.5 Possession of animal fighting paraphernalia
- 35-46-3-9 Animal fighting contest
- 35-46-3-9.5 Promoting animal fighting contest
- 35-46-3-10 Attending animal fighting contest
- 35-46-3-11 Striking, interfering with law enforcement animal
- 35-46-3-11.3 Striking, interfering with search and rescue dog
- 35-46-3-11.5 Striking, interfering with service animal
- 35-46-3-12 Cruelty to an animal
- 35-46-3-12.5 Domestic violence animal cruelty
- 35-46-3-13 Removal of vocal chords of trained attack dog
- 35-46-3-14 Bestiality
- 35-46-3-15 Destroying animal by placing in decompression chamber or electrocution

### **35-46-3-0.1. Application of amendments**

The following amendments to this chapter apply as follows:

(1) The amendments made to section 12 of this chapter by P.L.7-2007 apply only to:

(A) offenses; and

(B) acts that would be a crime if committed by an adult;

that are committed after June 30, 2007.

(2) The amendments made to sections 8 and 12 of this chapter by P.L.171-2007 apply only to crimes committed after June 30, 2007. However, the amendments made to section 12(d) of this chapter by P.L.171-2007 apply only to:

(A) crimes; and

(B) delinquent acts that would be crimes if committed by an adult;

that are committed after June 30, 2007.

### **35-46-3-0.5. Definitions**

The following definitions apply throughout this chapter:

(1) “Abandon” means to desert an animal or to leave the animal permanently in 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.

(2) “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.

(3) “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.

(4) “Neglect” means:

(A) endangering an animal’s health by failing to provide or arrange to provide the animal with food or drink, if the animal is dependent upon the person for the provision of food or drink;

(B) restraining an animal for more than a brief period in a manner that endangers the animal’s life or health 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;

(C) restraining an animal in a manner that seriously endangers the animal’s life or health;

(D) failing to:

- (i) provide reasonable care for; or
- (ii) seek veterinary care for;

an injury or illness to a dog or cat that seriously endangers the life or health of the dog or cat; or

(E) leaving a dog or cat outside and exposed to:

- (i) excessive heat without providing the animal with a means of shade from the heat; or
- (ii) excessive cold if the animal is not provided with straw or another means of protection from the cold;

regardless of whether the animal is restrained or kept in a kennel.

(5) “Torture” means:

(A) to inflict extreme physical pain or injury on an animal with the intent of increasing or prolonging the animal’s pain; or

(B) to administer poison to a domestic animal (as defined in section 12(d) of this chapter) or expose a domestic animal to a poisonous substance with the intent that the domestic animal ingest the substance and suffer harm, pain, or physical injury.

### **35-46-3-1. Harboring a non-immunized dog**

A person who knowingly or intentionally harbors a dog that is over the age of six (6) months and not immunized against rabies commits harboring a non-immunized dog, a Class C infraction. However, the offense is a Class B misdemeanor if the dog causes bodily injury by biting a person.

### **35-46-3-3. “Animal” defined**

As used in this chapter, “animal” does not include a human being.

### **35-46-3-4. “Animal fighting contest” defined**

As used in this chapter, “animal fighting contest” means a conflict between two (2) or more animals. The term does not include a conflict that is unorganized or accidental.

### **35-46-3-4.3. “Animal fighting paraphernalia” defined**

As used in this chapter, “animal fighting paraphernalia” means equipment used to train or condition animals for participation in an animal fighting contest.

### **35-46-3-4.5. “Law enforcement animal” defined**

(a) As used in this chapter, “law enforcement animal” means an animal that is owned or used by a law enforcement agency for the principal purpose of:

(1) aiding in:

(A) the detection of criminal activity;

(B) the enforcement of laws; and

(C) the apprehension of offenders; and

(2) ensuring the public welfare.

(b) The term includes, but is not limited to, the following:

(1) A horse.

(2) An arson investigation dog.

(3) A bomb detection dog.

(4) A narcotic detection dog.

(5) A patrol dog.

### **35-46-3-5. Exemptions**

(a) Except as provided in subsections (b) through (c), this chapter does not apply to the following:

(1) Fishing, hunting, trapping, or other conduct authorized under IC 14-22.

(2) Conduct authorized under IC 15-20-2.

(3) Veterinary practices authorized by standards adopted under IC 25-38.1-2-14.

(4) Conduct authorized by a local ordinance.

(5) Acceptable farm management practices.

(6) Conduct authorized by IC 15-17, and rules adopted under IC 15-17 for state or federally inspected livestock slaughtering facilities and state or federal animal disease control programs.

(7) A research facility registered with the United States Department of Agriculture under the federal Animal Welfare Act (7 U.S.C. 2131 et seq.).

(8) Destruction of a vertebrate defined as a pest under IC 15-16-5-24.

(9) Destruction of or injury to a fish.

(10) Destruction of a vertebrate animal that is:

(A) endangering, harassing, or threatening livestock or a domestic animal;  
or

(B) destroying or damaging a person’s property.

(11) Destruction of an animal by an animal control program, including an animal control facility, an animal shelter, or a humane society.

(12) Destruction of an injured or ill animal by an individual to prevent the animal from prolonged suffering.

(13) Conduct not resulting in serious injury or illness to the animal that is incidental to exhibiting an animal for show, competition, or display, or that is incidental to transporting the animal for show, competition, or display.

(14) Parking an animal.

(15) Humane destruction of an animal that the person owns.

(b) Section 1 of this chapter applies to conduct described in subsection (a).

(c) Destruction of an animal by electrocution is authorized under this section only if it is conducted by a person who is engaged in an acceptable farm management practice, by a research facility registered with the United States Department of Agriculture under the Animal Welfare Act, or for the animal disease diagnostic laboratory established under IC 21-46-3-1, a research facility licensed by the United States Department of Agriculture, a college, or a university.

### **35-46-3-6. Custody, care of animal; bond**

(a) This section does not apply to a violation of section 1 of this chapter.

(b) Any law enforcement officer or any other person having authority to impound animals who has probable cause to believe there has been a violation of this chapter or IC 15-20-1-4 may take custody of the animal involved.

(c) The owner of an animal that has been impounded under this section may prevent disposition of the animal by an animal shelter that is caring for the animal by posting, not later than ten (10) days after the animal has been impounded, a bond with the court in an amount sufficient to provide for the animal's care and keeping for at least thirty (30) days, beginning from the date the animal was impounded. The owner may renew a bond by posting a new bond, in an amount sufficient to provide for the animal's care and keeping for at least an additional thirty (30) days, not later than ten (10) days after the expiration of the period for which a previous bond was posted. If a bond expires and is not renewed, the animal shelter may determine disposition of the animal, subject to court order. If the owner of an animal impounded under this section is convicted of an offense under this chapter or IC 15-20-1-4, the owner shall reimburse the animal shelter for the expense of the animal's care and keeping. If the owner has paid a bond under this subsection, the animal shelter may euthanize an animal if a veterinarian determines that the animal is suffering extreme pain.

(d) If the owner requests, the court having jurisdiction of criminal charges filed under this chapter or IC 15-20-1 shall hold a hearing to determine whether probable cause exists to believe that a violation of this chapter or IC 15-20-1 has occurred. If the court determines that probable cause does not exist, the court shall order the animal returned to its owner, and the return of any bond posted by its owner.

(e) Whenever charges are filed under this chapter, the court shall appoint the state veterinarian under IC 15-17-4-1 or the state veterinarian's designee to:

(1) investigate the condition of the animal and the circumstances relating to the animal's condition; and

(2) make a recommendation to the court under subsection (f) regarding the confiscation of the animal.

(f) The state veterinarian or the state veterinarian's designee who is appointed under subsection (e) shall do the following:

- (1) Make a recommendation to the court concerning whether confiscation is necessary to protect the safety and well-being of the animal.
- (2) If confiscation is recommended under subdivision (1), recommend a manner for handling the confiscation and disposition of the animal that is in the best interests of the animal.

The state veterinarian or the state veterinarian's designee who submits a recommendation under this subsection shall articulate to the court the reasons supporting the recommendation.

(g) The court:

- (1) shall give substantial weight to; and
- (2) may enter an order based upon;

a recommendation submitted under subsection (f).

(h) If a person is convicted of an offense under this chapter or IC 15-20-1, the court may impose the following additional penalties against the person:

- (1) A requirement that the person pay the costs of caring for an animal involved in the offenses that are incurred during a period of impoundment authorized under subsection (b).
- (2) An order terminating or imposing conditions on the person's right to possession, title, custody, or care of:
  - (A) an animal that was involved in the offense; or
  - (B) any other animal in the custody or care of the person.

(i) If a person's right to possession, title, custody, or care of an animal is terminated under subsection (h), the court may:

- (1) award the animal to a humane society or other organization that has as its principal purpose the humane treatment of animals; or
- (2) order the disposition of the animal as recommended under subsection (f).

### **35-46-3-7. Abandoned, neglected animal**

(a) A person who:

- (1) has a vertebrate animal in the person's custody; and
- (2) recklessly, knowingly, or intentionally abandons or neglects the animal;

commits cruelty to an animal, a Class A misdemeanor. However, except for a conviction under section 1 of this chapter, the offense is a Level 6 felony if the person has a prior unrelated conviction under this chapter.

(b) It is a defense to a prosecution for abandoning a vertebrate animal under this section that the person who had the animal in the person's custody reasonably believed that the vertebrate animal was capable of surviving on its own.

(c) For purposes of this section, an animal that is feral is not in a person's custody.

### **35-46-3-8. Purchasing or possessing an animal for fighting**

A person who knowingly or intentionally purchases or possesses an animal for the purpose of using the animal in an animal fighting contest commits a Level 6 felony.

### **35-46-3-8.5. Possession of animal fighting paraphernalia**

A person who knowingly or intentionally possesses animal fighting paraphernalia with the intent to commit a violation of section 9 of this chapter commits possession of animal fighting paraphernalia, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

### **35-46-3-9. Animal fighting contest**

A person who knowingly or intentionally:

- (1) promotes or stages an animal fighting contest;
- (2) uses an animal in a fighting contest; or
- (3) attends an animal fighting contest having an animal in the person's possession;

commits a Level 6 felony.

### **35-46-3-9.5. Promoting animal fighting contest**

A person who knowingly or intentionally:

- (1) possesses animal fighting paraphernalia with the intent to commit a violation of section 9 of this chapter; and
- (2) possesses, harbors, or trains a dog, cock, fowl, or bird bearing:
  - (A) a scar;
  - (B) a wound; or
  - (C) an injury;

consistent with participation in or training for an animal fighting contest;

commits promoting an animal fighting contest, a Level 6 felony.

### **35-46-3-10. Attending animal fighting contest**

A person who knowingly or intentionally attends a fighting contest involving animals commits cruelty to an animal, a Class A misdemeanor. However, except for a conviction under section 1 of this chapter, the offense is a Level 6 felony if the person has a prior unrelated conviction under this chapter.

### **35-46-3-11. Striking, interfering with law enforcement animal**

(a) A person who knowingly or intentionally:

- (1) strikes, torments, injures, or otherwise mistreats a law enforcement animal; or
- (2) interferes with the actions of a law enforcement animal while the animal is engaged in assisting a law enforcement officer in the performance of the officer's duties;

commits a Class A misdemeanor.

(b) An offense under subsection (a)(1) is a Level 6 felony if the act results in:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (4) death;

of the law enforcement animal.

(c) It is a defense that the accused person:

- (1) engaged in a reasonable act of training, handling, or discipline; and

(2) acted as an employee or agent of a law enforcement agency.

(d) In addition to any sentence or fine imposed for a conviction of an offense under this section, the court:

(1) may order the person convicted to make restitution to the person or law enforcement agency owning the animal for reimbursement of veterinary bills; and

(2) shall order the person convicted to make restitution to the person or law enforcement agency owning the animal for reimbursement of the cost of replacing the animal, which may include the cost of training the animal, if the animal is permanently disabled or killed.

### **35-46-3-11.3. Striking, interfering with search and rescue dog**

(a) As used in this section, “search and rescue dog” means a dog that receives special training to locate or attempt to locate by air scent or ground or water tracking a person who is an offender or is lost, trapped, injured, or incapacitated.

(b) A person who knowingly or intentionally:

(1) interferes with the actions of a search and rescue dog while the dog is performing or is attempting to perform a search and rescue task; or

(2) strikes, torments, injures, or otherwise mistreats a search and rescue dog;

commits a Class A misdemeanor.

(c) An offense under subsection (b)(2) is a Level 6 felony if the act results in:

(1) serious permanent disfigurement;

(2) unconsciousness;

(3) permanent or protracted loss or impairment of the function of a bodily member or organ; or

(4) death;

of the search and rescue dog.

(d) It is a defense that the accused person:

(1) engaged in a reasonable act of training, handling, or disciplining the search and rescue dog; or

(2) reasonably believed the conduct was necessary to prevent injury to the accused person or another person.

(e) In addition to any sentence or fine imposed for a conviction of an offense under this section, the court may order the person to make restitution to the person who owns the search and rescue dog for reimbursement of:

(1) veterinary bills; and

(2) replacement costs of the dog if the dog is disabled or killed.

### **35-46-3-11.5. Striking, interfering with service animal**

(a) As used in this section, “service animal” means an animal that a person who is impaired by:

(1) blindness or any other visual impairment;

(2) deafness or any other aural impairment;

(3) a physical disability; or

(4) a medical condition;

relies on for navigation, assistance in performing daily activities, or alert signals regarding the onset of the person’s medical condition.

- (b) A person who knowingly or intentionally:
  - (1) interferes with the actions of a service animal; or
  - (2) strikes, torments, injures, or otherwise mistreats a service animal;while the service animal is engaged in assisting an impaired person described in subsection (a) commits a Class A misdemeanor.
- (c) The offense under subsection (b)(2) is a Level 6 felony if the act results in the:
  - (1) serious permanent disfigurement;
  - (2) unconsciousness;
  - (3) permanent or protracted loss or impairment of the function of a bodily member or organ; or
  - (4) death;of the service animal.
- (d) It is a defense that the accused person:
  - (1) engaged in a reasonable act of training, handling, or disciplining the service animal; or
  - (2) reasonably believed the conduct was necessary to prevent injury to the accused person or another person.

### **35-46-3-12. Cruelty to an animal**

- (a) This section does not apply to a person who euthanizes an injured, a sick, a homeless, or an unwanted domestic animal if
  - (1) the person is employed by a humane society, an animal control agency, or a governmental entity operating an animal shelter or other animal impounding facility; and
  - (2) the person euthanizes the domestic animal in accordance with guidelines adopted by the humane society, animal control agency, or governmental entity operating the animal shelter or other animal impounding facility.
- (b) A person who knowingly or intentionally beats a vertebrate animal commits cruelty to an animal, a Class A misdemeanor. However, the offense is a Level 6 felony if:
  - (1) the person has a previous, unrelated conviction under this section; or
  - (2) the person committed the offense with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.
- (c) A person who knowingly or intentionally tortures or mutilates a vertebrate animal commits torturing or mutilating a vertebrate animal, a Level 6 felony.
- (d) As used in this section, “domestic animal” means an animal that is not wild. The term is limited to:
  - (1) cattle, calves, horses, mules, swine, sheep, goats, dogs, cats, poultry, ostriches, rhea, and emus; and
  - (2) an animal of the bovine, equine, ovine, caprine, porcine, canine, feline, camelid, cervidae, or bison species.

A person who knowingly or intentionally kills a domestic animal without the consent of the owner of the domestic animal commits killing a domestic animal, a Level 6 felony.

- (e) It is a defense to a prosecution under this section that the accused person:
  - (1) reasonably believes the conduct was necessary to:
    - (A) prevent injury to the accused person or another person;

- (B) protect the property of the accused person from destruction or substantial damage; or
  - (C) prevent a seriously injured vertebrate animal from prolonged suffering; or
  - (2) engaged in a reasonable and recognized act of training, handling, or disciplining the vertebrate animal.
- (f) When a court imposes a sentence or enters a dispositional decree under this section, the court:
- (1) shall consider requiring:
    - (A) a person convicted of an offense under this section; or
    - (B) a child adjudicated a delinquent child for committing an act that would be a crime under this section if committed by an adult;
 to receive psychological, behavioral, or other counseling as a part of the sentence or dispositional decree; and
  - (2) may order an individual described in subdivision (1) to receive psychological, behavioral or other counseling as a part of the sentence or dispositional decree.

**35-46-3-12.5. Domestic animal cruelty**

A person who knowingly or intentionally 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 Level 6 felony.

**35-46-3-13. Removal of vocal chords of trained attack dog**

(a) A person who knowingly or intentionally removes the vocal chords of a trained attack dog commits cruelty to an animal, a Class A misdemeanor.

(b) It is a defense to a prosecution under this section that the accused person reasonably believes that the conduct was necessary to prevent a seriously injured dog from prolonged injury.

**35-46-3-14. Bestiality**

A person who knowingly or intentionally performs an act involving:

- (1) the sex organ of a person and the mouth or anus of an animal;
- (2) the sex organ of an animal and the mouth or anus of a person;
- (3) the penetration of the human female sex organ by an animal's sex organ; or
- (4) any penetration of the animal's sex organ by the human male sex organ;

commits bestiality, a Level 6 felony.

**35-46-3-15. Destroying animal by placing in decompression chamber or electrocution**

- (a) This section does not apply to the following:
- (1) A state or federally inspected livestock slaughtering facility (for conduct authorized by IC 15-17-5 and rules adopted under that chapter).
  - (2) An animal disease diagnostic laboratory established under IC 21-46-3-1.
  - (3) A postsecondary educational institution.
  - (4) A research facility licensed by the United States Department of Agriculture.
- (b) As used in this section, "animal" has the meaning set forth in IC 35-46-3-3.
- (c) A person who knowingly or intentionally destroys or authorizes the destruction of an animal by:

- (1) placing the animal in a decompression chamber and lowering the pressure of or the oxygen content in the air surrounding the animal; or
- (2) electrocution;

commits a Class B misdemeanor.

## **Chapter 5**

### **Offenses Against Public Sensibility**

- 35-46-5-1 Unlawful transfer of human tissue
- 35-46-5-2 Unlawful cloning
- 35-46-5-3 Unlawful transfer of human organism
- 35-46-5-4 Falsification of documents for organ or tissue research or transplantation

#### **35-46-5-1. Unlawful transfer of human tissue**

(a) As used in this section, “fetal tissue” means tissue from an infant or a fetus who is stillborn or aborted.

(b) As used in this section, “human organ” means the kidney, liver, heart, lung, cornea, eye, bone marrow, bone, pancreas, or skin of a human body.

(c) As used in this section, “item of value” means money, real estate, funeral related expenses, and personal property. “Item of value” does not include:

- (1) the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ; or
- (2) the reimbursement of travel, housing, lost wages, and other expenses incurred by the donor of a human organ related to the donation of the human organ.

(d) A person who intentionally acquires, receives, sells, or transfers in exchange for an item of value:

- (1) a human organ for use in human organ transplantation; or
- (2) fetal tissue;

commits unlawful transfer of human tissue, a Level 5 felony.

#### **35-46-5-2. Unlawful cloning**

(a) This section does not apply to in vitro fertilization.

(b) As used in this section, “cloning” has the meaning set forth in IC 16-18-2-56.5.

(c) A person who knowingly or intentionally:

- (1) participates in cloning;
- (2) implants or attempts to implant a cloned human embryo into a uterine environment to initiate a pregnancy; or
- (3) ships or receives a cloned human embryo;

commits unlawful participation in human cloning, a Level 6 felony.

#### **35-46-5-3. Unlawful transfer of human organism**

(a) As used in this section, “qualified third party” means a fertility clinic or similar medical facility that:

- (1) is accredited by an entity approved by the medical licensing board;

- (2) is registered under 21 CFR 1271 with the United States Food and Drug Administration; and
- (3) employs a physician licensed under IC 25-22.5 who:
  - (A) is board certified in obstetrics and gynecology; and
  - (B) performs oocyte cryopreservation at the facility.
- (b) A person who knowingly or intentionally purchases or sells a human ovum, zygote, embryo, or fetus commits unlawful transfer of a human organism, a Level 5 felony.
- (c) This section does not apply to the following:
  - (1) The transfer to or receipt by either a woman donor of an ovum or a qualified third party of an amount for:
    - (A) earnings lost due to absence from employment;
    - (B) travel expenses;
    - (C) hospital expenses;
    - (D) medical expenses, and
    - (E) recovery time in an amount not to exceed four thousand dollars (\$4,000);
 concerning a treatment or procedure to enhance human reproductive capability through in vitro fertilization, gamete intrafallopian transfer, or zygote intrafallopian transfer.
  - (2) The following types of stem cell research:
    - (A) Adult stem cell.
    - (B) Fetal stem cell (as defined in IC 16-18-2-128.5), as long as the biological parent has given written consent for the use of the fetal stem cells.
- (d) Any person who recklessly, knowingly, or intentionally uses a human embryo created with an ovum provided to a qualified third party under this section for purposes of embryonic stem cell research commits unlawful use of an embryo, a Level 5 felony.

**35-46-5-4. Falsification of documents for organ or tissue research or transplantation**

An individual who, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document that:

- (1) expresses;
- (2) makes an amendment or revocation of: or
- (3) refuses;

a gift of organs, tissues, eyes, or other body parts intended to be used in research or in transplants, commits a Class A misdemeanor.

**Chapter 6  
Inhaling Toxic Vapors  
Distributing Nitrous Oxide**

- 35-46-6-1 “Model glue” defined
- 35-46-6-2 Inhaling toxic vapors
- 35-46-6-3 Using or distributing nitrous oxide

**35-46-6-1. “Model glue” defined**

As used in this chapter, “model glue” means a glue or cement containing toluene or acetone, or both.

**35-46-6-2. Inhaling toxic vapors**

A person who, with the intent to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses, ingests or inhales the fumes of:

- (1) model glue; or
- (2) a substance that contains:
  - (A) toluene;
  - (B) acetone;
  - (C) benzene;
  - (D) N-butyl nitrite;
  - (E) any aliphatic nitrite, unless prescribed by a physician;
  - (F) butane;
  - (G) amyl butrate;
  - (H) isobutyl nitrate;
  - (I) freon;
  - (J) chlorinated hydrocarbons;
  - (K) methylene chloride;
  - (L) hexane;
  - (M) ether;
  - (N) chloroform; or
  - (O) halothane; or

(3) any other chemical having the property of releasing toxic vapors; commits inhaling toxic vapors, a Class B misdemeanor.

**35-46-6-3. Using or distributing nitrous oxide**

A person who knowingly or intentionally uses or distributes nitrous oxide to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses of another person, unless the nitrous oxide is to be used for medical purposes, commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

**Chapter 7  
Offenses Against Persons  
Receiving Care**

- 35-46-7-1 “Health care provider” defined
- 35-46-7-2 Non-application of chapter
- 35-46-7-3 Unlawful transfer or property to health care provider

**35-46-7-1. “Health care provider” defined**

As used in this chapter, “health care provider” means:

- (1) a hospital licensed under IC 16-21;
- (2) a health facility licensed under IC 16-28;

- (3) a housing services establishment that is required to file a disclosure statement under IC 12-15;
- (4) a continuing care retirement community that is required to file a disclosure statement under IC 23-2-4;
- (5) a home health agency licensed under IC 16-27;
- (6) a hospice licensed under IC 16-25;
- (7) an entity that provides licensed or certified health care professionals to:
  - (A) a health care provider; or
  - (B) a person who is in need of, or receives, professional health care services;
- (8) a community mental health center (as defined in IC 12-7-2-38);
- (9) a private psychiatric hospital licensed under IC 12-25;
- (10) a state institution (as defined in IC 12-7-2-184); or
- (11) a community residential facility for the developmentally disabled that is licensed under IC 12-28-5.

### **35-46-7-2. Non-application of chapter**

This chapter does not apply to the following:

- (1) A gift or donation of money or other asset given to:
  - (A) a health care provider in the corporate name of the health care provider; or
  - (B) a health care provider that is organized under Section 501(c)(3) of the Internal Revenue Code.
- (2) A gift or loan of money or other asset given by a person who receives services from a health care provider to a member of the person's family who:
  - (A) is employed by a health care provider; or
  - (B) owns, wholly or jointly, a health care provider.
- (3) A bequest of personal property or devise of real property made in an executable will as described in IC 29-1-5-5 to a health care provider or an owner, employee or agent of a health care provider.
- (4) The purchase of a security (as defined in IC 23-19-1-2(28)) that is traded on a national or regional exchange.
- (5) A gift or gratuity, not exceeding five hundred dollars (\$500) in the aggregate per year per person receiving services from the health care provider, to an employee of a health care provider.
- (6) Any gift or donation of money or other asset given to purchase or otherwise a product, service, or amenity for the use, entertainment, or enjoyment of persons receiving services from a health care provider.

### **35-46-7-3. Unlawful transfer of property to health care provider**

(a) The following transactions are subject to the requirements of subsection (b):

- (1) A gift, a donation, a loan, or an investment from a person who receives services from a health care provider to:
  - (A) the health care provider; or
  - (B) the owner, employee, or agent of the health care provider.

(2) A loan or an investment from a person who receives services from a health care provider to the health care provider in the corporate name of the health care provider.

(b) A transaction under subsection (a) must be executed by a competent person (including a person other than the health care provider exercising a durable power of attorney on behalf of the donor) in writing and witnessed by two (2) disinterested parties. Each witness shall sign a document that describes the transaction in the presence of:

- (1) the person who makes the transaction; and
- (2) the other witness.

(c) A health care provider, or an owner, an employee, or an agent of a health care provider, who:

- (1) receives a gift, a donation, a loan, or an investment from a person who receives services from a health care provider; and
- (2) fails to comply with the requirements of subsection (b);

commits a Class A infraction. Without regard to the amount of the transaction, the court that imposes the penalty for the infraction violation may, upon the request of the prosecuting attorney, order the person to return asset or repay money received in violation of this section, plus interest from the date of the transaction, to the person who made the gift, donation, loan, or investment. In addition, if the court finds that the person knowingly violated the requirements of subsection (b), the court may order the person to pay treble damages and reasonable attorney's fees.

## **Chapter 8 Unlawful Recording**

35-46-8-1	Non-application
35-46-8-2	“Audiovisual recording device” defined
35-46-8-3	“Motion picture exhibition facility” defined
35-46-8-4	Unlawful recording
35-46-8-5	Disposition of property

### **35-46-8-1. Non-application**

This chapter does not apply to a law enforcement officer acting within the scope of the officer's employment.

### **35-46-8-2. “Audiovisual recording device” defined**

As used in this chapter, “audiovisual recording device” means:

- (1) a digital or an analog photographic or video camera; or
- (2) any other technology capable of enabling the recording or transmission of a motion picture or other audiovisual work;

regardless of whether audiovisual recording is the sole or primary purpose of the device.

### **35-46-8-3. “Motion picture exhibition facility” defined**

(a) As used in this chapter, “motion picture exhibition facility” means:

- (1) an indoor or outdoor screening venue; or
- (2) any other premises;

where motion pictures or other audiovisual works are shown to the public for a charge, regardless of whether an admission fee is charged.

(b) The term does not include a dwelling.

#### **35-46-8-4. Unlawful recording**

(a) A person who knowingly or intentionally uses an audiovisual recording device in a motion picture exhibition facility with the intent to transmit or record a motion picture commits unlawful recording, a Class B misdemeanor.

(b) It is a defense to a prosecution under this section that the accused person had the written permission of the motion picture exhibition facility owner to transmit or record the motion picture.

#### **35-46-8-5. Disposition of property**

In addition to a criminal penalty imposed for an offense under this chapter, a court may order the forfeiture, destruction, or other disposition of:

- (1) all unauthorized copies of motion pictures or other audiovisual works; and
- (2) any audiovisual recording devices or other equipment used in connection with the offense.

### **Chapter 8.5 Unlawful Photography and Surveillance on Private Property**

35-46-8.5-1 Unlawful photography and surveillance on private property

#### **35-46-8.5-1. Unlawful photography and surveillance on private property**

(a) This section does not apply to any of the following:

- (1) Electronic or video toll collection facilities or activities authorized under any of the following:
  - (A) IC 8-15-2.
  - (B) IC 8-15-3.
  - (C) IC 8-15.5.
  - (D) IC 8-15.7.
  - (E) IC 8-16.
  - (F) IC 9-21-3.5.
- (2) A law enforcement officer who has obtained:
  - (A) a search warrant; or
  - (B) the consent of the owner or [of] private property;  
to place a camera or electronic surveillance equipment on private property.

(b) A person who knowingly or intentionally places a camera or electronic surveillance equipment that records images or data of any kind while unattended on the private property of another person without the consent of the owner or tenant of the private property commits a Class A misdemeanor.

## Chapter 9 Operating a Motorboat While Intoxicated

35-46-9-1	“Chemical test” defined
35-46-9-2	“Intoxicated” defined
35-46-9-3	“Motorboat” defined
35-46-9-4	“Prima facie evidence of intoxication” defined
35-46-9-5	“Relevant evidence” defined
35-46-9-6	Operating a motorboat while intoxicated
35-46-9-7	Unlawfully operating a motorboat
35-46-9-8	Implied consent
35-46-9-9	Offer of a chemical test
35-46-9-10	Offer of a portable breath test
35-46-9-11	Results of chemical test
35-46-9-12	Certification and use of chemical breath test
35-46-9-13	Refusal of chemical test
35-46-9-14	Prosecuting attorney to represent state
35-46-9-15	Use of results of chemical test

### **35-46-9-1. “Chemical test” defined.**

As used in this chapter, “chemical test” means an analysis of an individual’s:

- (1) blood;
- (2) breath;
- (3) urine; or
- (4) other bodily substance;

for the determination of the presence of alcohol or a controlled substance.

### **35-46-9-2. “Intoxicated” defined.**

As used in this chapter, “intoxicated” means under the influence of:

- (1) alcohol;
- (2) a controlled substance;
- (3) any drug (as defined in IC 9-13-2-49.1) other than alcohol or a controlled substance;
- (4) any combination of alcohol, controlled substances, or drugs; or
- (5) any other substance, not including food and food ingredients (as defined in IC 6-2.5-1-20), tobacco (as defined in IC 6-2.5-1-28), or a dietary supplement (as defined in IC 6-2.5-1-16);

so that that there is an impaired condition of thought and action and the loss of normal control of an individual’s faculties.

### **35-46-9-3. “Motorboat” defined.**

(a) As used in this chapter, “motorboat” means a watercraft (as defined in IC 14-8-2-305) propelled by:

- (1) an internal combustion, steam, or electrical inboard or outboard motor or engine; or

- (2) any mechanical means.
- (b) The term includes the following:
  - (1) A sailboat that is equipped with a motor or an engine described in subsection (a) when the motor or engine is in operation, whether or not the sails are hoisted.
  - (2) A personal watercraft (as defined in IC 14-8-2-202.5).

**35-46-9-4. “Prima facie evidence of intoxication” defined.**

As used in this chapter, “prima facie evidence of intoxication” includes evidence that at the time of the alleged violation there was an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least eight-hundredths (0.08) gram of alcohol per:

- (1) one hundred (100) milliliters of the person’s blood; or
- (2) two hundred ten (210) liters of the person’s breath.

**35-46-9-5. “Relevant evidence” defined.**

As used in this chapter, “relevant evidence” includes evidence that at the time of the alleged violation there was an alcohol concentration equivalent (as defined in 9-13-2-2.4) to at least five-hundredths (0.05) gram and less than eight-hundredths (0.08) gram of alcohol per:

- (1) one hundred (100) milliliters of the person’s blood; or
- (2) two hundred ten (210) liters of the person’s breath.

**35-46-9-6. Operating a motorboat while intoxicated.**

(a) Except as provided in subsections (b) and (c), a person who operates a motorboat while:

- (1) having an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least eight-hundredths (0.08) gram of alcohol per:
  - (A) one hundred (100) milliliters of the person’s blood; or
  - (B) two hundred ten (210) liters of the person’s breath;
- (2) having a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person’s body; or
- (3) intoxicated;

commits a Class C misdemeanor.

(b) The offense is a Level 6 felony if:

- (1) the person has a previous conviction under:
  - (A) IC 14-1-5 (repealed); or
  - (B) this chapter; or
- (2) the offense results in serious bodily injury to another person.

(c) The offense is a Level 5 felony if the offense results in the death of another person.

(d) It is a defense to a prosecution under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1-24) who acted in the course of the practitioner’s professional practice.

**35-46-9-7. Unlawfully operating a motorboat.**

A person who operates a motorboat after the person has been ordered not to operate a motorboat under:

- (1) IC 14-5-8 (repealed); or
- (2) this chapter;

commits a Class A misdemeanor.

**35-46-9-8. Implied consent.**

(a) A person who operates a motorboat in water over which Indiana has jurisdiction impliedly consents to submit to the chemical test provisions of this chapter as a condition of operating a motorboat in Indiana.

(b) If a person refuses to submit to a chemical test after having been advised that the refusal will result in the suspension of operating privileges or submits to a chemical test that results in prima facie evidence of intoxication, the arresting law enforcement officer shall do the following:

- (1) Obtain the person's driver's license or permit if the person is in possession of the document and issue a receipt valid until the initial hearing of the matter is held under IC 35-33-7-1.
- (2) Submit a probable cause affidavit to the prosecuting attorney of the county in which the alleged offense occurred.
- (3) Send a copy of the probable cause affidavit submitted under subdivision (2) to the bureau of motor vehicles.

**35-46-9-9. Offer of chemical test.**

(a) A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter shall offer the person the opportunity to submit to a chemical test. It is not necessary for the law enforcement officer to offer a chemical test to an unconscious person.

(b) A law enforcement officer may offer a person more than one (1) chemical test under this chapter. However, all tests must be administered within three (3) hours after the officer had probable cause to believe the person violated this chapter.

(c) A person must submit to each chemical test offered by a law enforcement officer to comply with the implied consent provisions of this chapter.

**35-46-9-10. Offer of portable breath test.**

(a) A law enforcement officer shall offer a portable breath test or chemical test to any person if the officer has reason to believe the person operated a motorboat that was involved in a fatal accident or an accident involving serious bodily injury. If:

- (1) the results of a portable breath test indicate the presence of alcohol;
- (2) the results of a portable breath test do not indicate the presence of alcohol but the law enforcement officer has probable cause to believe the person is under the influence of a controlled substance or another drug; or
- (3) the person refuses to submit to a portable breath test;

the law enforcement officer shall offer a chemical test to the person.

(b) A law enforcement officer may offer a person more than one (1) portable breath test or chemical test under this section. However, all chemical tests must be administered within three (3) hours after the fatal accident or the accident involving serious bodily injury.

(c) It is not necessary for a law enforcement officer to offer a portable breath test or chemical test to an unconscious person.

**35-46-9-11. Result of chemical test.**

(a) If a chemical test results in relevant evidence that the person is intoxicated, the person may be arrested for an offense under this chapter.

(b) If a chemical test results in prima facie evidence that the person is intoxicated, the person shall be arrested for an offense under this chapter.

(c) A person who refuses to submit to a chemical test may be arrested for an offense under this chapter.

(d) At a proceeding under this chapter, a person's refusal to submit to a chemical test is admissible into evidence.

**35-46-9-12. Certification and use of chemical breath test.**

(a) The provisions of IC 9-30-6-5 concerning the certification and use of chemical breath tests apply to the use of chemical breath tests in a prosecution under this chapter.

(b) IC 9-30-6-6 applies to chemical tests performed under this chapter.

**35-46-9-13. Refusal of chemical test.**

If a person refuses to submit to a chemical test under this chapter, the law enforcement officer shall inform the person that the person's refusal will result in the suspension of the person's motorboat and motor vehicle operation privileges.

**35-46-9-14. Prosecuting attorney to represent the state.**

The prosecuting attorney of the county in which an alleged violation of this chapter occurs shall represent the state in a proceeding under this chapter.

**35-46-9-15. Use of chemical test result.**

(a) At a proceeding concerning an offense under this chapter, evidence of the alcohol concentration that was in the blood of the person charged with the offense;

(1) at the time of the alleged violation; or

(2) within the time allowed for testing under sections 9 and 10 of this chapter;

as shown by an analysis of the person's breath, blood, urine, or other bodily substance is admissible.

(b) If, in a prosecution for an offense under this chapter, evidence establishes that:

(1) a chemical test was performed on a test sample taken from the person charged with the offense within the time allowed for testing under sections of 9 and 10 this chapter; and

(2) the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

the trier of fact shall presume that the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the motorboat. However, this presumption is rebuttable.

**ARTICLE 47**  
**REGULATION OF WEAPONS AND**  
**INSTRUMENTS OF VIOLENCE**  
**[PORTIONS OMITTED]**

Ch. 1	Definitions
Ch. 2	Handguns
Ch. 2.5	Sale of Handguns
Ch. 3	Disposal of Confiscated Weapons
Ch. 3.5	Firearm Buyback Programs Prohibited
Ch. 4	Miscellaneous Provisions
Ch. 4.5	Regulation of Laser Pointers
Ch. 5	Prohibited Weapons and Other Instruments of Violence
Ch. 6	Weapons on Aircraft
Ch. 7	Reports of Wounds Inflicted by Weapons and Dogs
Ch. 8	Electronic Stun Weapons
Ch. 9	Possession of Firearms on School Property
Ch. 10	Children and Firearms
Ch. 12	Weapons of Mass Destruction
Ch. 14	Proceedings for Seizure and Retention of Firearms
Ch. 15	Retired Law Enforcement Officers Identification for Carrying Firearms
Ch. 16	Possession of Firearms by Judicial Officers

**Chapter 1**  
**Definitions**

35-47-1-1	Application of definitions in chapter
35-47-1-2	“Alcohol abuse” defined
35-47-1-2.5	“Ammunition” defined
35-47-1-3	“Dealer” defined
35-47-1-4	“Drug abuser” defined
35-47-1-5	“Firearm” defined
35-47-1-5.1	“Firearm accessory” defined
35-47-1-5.5	“Gun show” defined
35-47-1-6	“Handgun” defined
35-47-1-7	“Proper person” defined
35-47-1-8	“Proper reason” defined
35-47-1-9	“Retail” defined
35-47-1-10	“Sawed-off shotgun” defined
35-47-1-11	“Shotgun” defined
35-47-1-12	“Superintendent” defined
35-47-1-13	“Wholesale” defined

**35-47-1-1. Application of definitions in chapter**

Except as otherwise provided, the definitions in this chapter apply throughout this article.

**35-47-1-2. “Alcohol abuser” defined**

“Alcohol abuser” means an individual who has had two (2) or more alcohol related offenses, any one (1) of which resulted in conviction by a court or treatment in an alcohol abuse facility within three (3) years prior to the date of the application.

**35-47-1-2.5. “Ammunition” defined**

“Ammunition”, for purposes of IC 35-47-11.1, means:

- (1) fixed cartridge ammunition;
- (2) shotgun shells;
- (3) the individual components of fixed cartridge ammunition and shotgun shells;
- (4) projectiles for muzzle loading firearms; and
- (5) any propellant used in a firearm or in firearm ammunition.

**35-47-1-3. “Dealer” defined**

“Dealer” means any person who holds himself out as a buyer and seller of handguns on a regular and continuing basis.

**35-47-1-4. “Drug abuser” defined**

“Drug abuser” means an individual who has had two (2) or more violations of IC 35-48-1, IC 35-48-2, IC 35-48-3, or IC 35-48-4, any one (1) of which resulted in conviction by a court or treatment in a drug abuse facility within five (5) years prior to the date of application.

**35-47-1-5. “Firearm” defined**

“Firearm” means any weapon:

- (1) that is:
  - (A) capable of expelling; or
  - (B) designed to expel; or
- (2) that may readily be converted to expel;

a projectile by means of an explosion.

**35-47-1-5.1. “Firearm accessory” defined**

“Firearm accessory” means:

- (1) any device specifically adapted to enable:
    - (A) the wearing or carrying about one’s person; or
    - (B) the storage or mounting in or on any conveyance;
- of a firearm; and

- (2) any attachment or device specifically adapted to be inserted into or affixed onto any firearm to enable, alter, or improve the functioning or capabilities of the firearm.

**35-47-1-5.5. “Gun show” defined**

“Gun show” has the meaning set forth in 27 CFR 478.100.

**35-47-1-6. “Handgun” defined**

“Handgun” means any firearm:

- (1) Designed or adapted so as to be aimed and fired from one (1) hand, regardless of barrel length; or
- (2) Any firearm with:
  - (A) A barrel less than sixteen (16) inches in length; or
  - (B) An overall length of less than twenty-six (26) inches.

**35-47-1-7. “Proper person” defined**

“Proper person” means a person who:

- (1) does not have a conviction for resisting law enforcement under IC 35-44.1-3-1 within five (5) years before the person applies for a license or permit under this chapter;
- (2) does not have a conviction for a crime for which the person could have been sentenced for more than one (1) year;
- (3) does not have a conviction for a crime of domestic violence (as defined in IC 35-31.5-2-78), unless a court has restored the person’s right to possess a firearm under IC 35-47-4-7;
- (4) is not prohibited by a court order from possessing a handgun;
- (5) does not have a record of being an alcohol or drug abuser as defined in this chapter;
- (6) does not have documented evidence which would give rise to a reasonable belief that the person has a propensity for violent or emotionally unstable conduct;
- (7) does not make a false statement of material fact on the person’s application;
- (8) does not have a conviction for any crime involving an inability to safely handle a handgun;
- (9) does not have a conviction for a violation of the provisions of this article within five (5) years of the person’s application;
- (10) does not have an adjudication as a delinquent child for an act that would be a felony if committed by an adult, if the person applying for a license or permit under this chapter is less than twenty-three (23) years of age;
- (11) has not been involuntarily committed, other than a temporary commitment for observation or evaluation, to a mental institution by a court, board, commission, or other lawful authority;
- (12) has not been the subject of a:
  - (A) ninety (90) day commitment as a result of proceeding under IC 12-26-6; or
  - (B) regular commitment under IC 12-26-7; or
- (13) has not been found by a court to be mentally incompetent, including being found:
  - (A) not guilty by reason of insanity;
  - (B) guilty but mentally ill; or
  - (C) incompetent to stand trial.

**35-47-1-8. “Proper reason” defined**

“Proper reason” means for the defense of oneself or the state of Indiana.

**35-47-1-9. “Retail” defined**

“Retail” means the sale of handguns singly or in small quantities to one who intends to be the ultimate user thereof.

**35-47-1-10. “Sawed-off shotgun” defined**

“Sawed-off shotgun” means:

- (1) A shotgun having one (1) or more barrels less than eighteen (18) inches in length; and
- (2) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if the weapon as modified has an overall length of less than twenty-six (26) inches.

**35-47-1-11. “Shotgun” defined**

“Shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

**35-47-1-12. “Superintendent” defined**

“Superintendent” refers to the superintendent of the Indiana state police department.

**35-47-1-13. “Wholesale” defined**

“Wholesale” means the sale of handguns singly or in bulk lots to one lawfully licensed to deal in handguns, or the sale of a handgun to a governmental law enforcement agency for issue to its employees.

**Chapter 2  
Handguns**

- 35-47-2-1 Carrying a handgun without a license
- 35-47-2-2 Persons excepted
- 35-47-2-3 Issuance of licenses
- 35-47-2-4 Qualified licenses; unlimited licenses
- 35-47-2-5 Suspension or revocation of license
- 35-47-2-6 Time for review of application
- 35-47-2-7 Prohibited sales or transfers
- 35-47-2-8 Persons to whom sale regulations apply
- 35-47-2-14 License requirements for retail dealer
- 35-47-2-15 Issuance of retail dealer’s license
- 35-47-2-16 License; designation of business site; display of license
- 35-47-2-17 False information when purchasing firearm
- 35-47-2-18 Obliterating identifying marks on handgun
- 35-47-2-19 Firearms excepted
- 35-47-2-20 Effect of full or conditional pardon
- 35-47-2-21 Foreign licenses
- 35-47-2-22 Use of false or altered handgun license

**35-47-2-1. Carrying a handgun without a license**

(a) Except as provided in subsections (b) and (c) and section 2 of this chapter, a person shall not carry a handgun in any vehicle or on or about the person's body without being licensed under this chapter to carry a handgun.

(b) Except as provided in subsection (c), a person may carry a handgun without being licensed under this chapter to carry a handgun if:

(1) the person carries the handgun on or about the person's body in or on property that is owned, leased, rented, or otherwise legally controlled by the person;

(2) the person carries the handgun on or about the person's body while lawfully present in or on property that is owned, leased, rented, or otherwise legally controlled by another person, if the person:

(A) has the consent of the owner, renter, lessor, or person who legally controls the property to have the handgun on the premises;

(B) is attending a firearms related event on the property, including a gun show, firearms expo, gun owner's club or convention, hunting club, shooting club, or training course; or

(C) is on the property to receive firearms related services, including the repair, maintenance, or modification of a firearm;

(3) the person carries the handgun in a vehicle that is owned, leased, rented, or otherwise legally controlled by the person, if the handgun is:

(A) unloaded;

(B) not readily accessible; and

(C) secured in a case;

(4) the person carries the handgun while lawfully present in a vehicle that is owned, leased, rented, or otherwise legally controlled by another person, if the handgun is:

(A) unloaded;

(B) not readily accessible; and

(C) secured in a case;

(5) the person carries the handgun:

(A) at a shooting range (as defined in IC 14-22-31.5-3);

(B) while attending a firearms instructional course; or

(C) while engaged in legal hunting activity.

(c) Unless the person's right to possess a firearm has been restored under IC 35-47-4-7, a person who has been convicted of domestic battery under IC 35-42-2-1.3 may not possess or carry a handgun.

(d) This section may not be construed:

(1) to prohibit a person who owns, leases, rents, or otherwise legally controls private property from regulating or prohibiting the possession of firearms on the private property;

(2) to allow a person to adopt or enforce an ordinance, resolution, policy, or rule that:

(A) prohibits; or

(B) has the effect of prohibiting;

an employee of the person from possessing a firearm or ammunition that is locked in the trunk of the employee's vehicle, kept in the glove compartment of the employee's locked vehicle, or stored out of plain sight in the employee's locked vehicle, unless the person's adoption or enforcement of the ordinance, resolution, policy, or rule is allowed under IC 34-28-7-2(b); or

(3) to allow a person to adopt or enforce a law, statute, ordinance, resolution, policy, or rule that allows a person to possess or transport a firearm or ammunition if the person is prohibited from possessing or possessing the firearm or ammunition by state or federal law.

(e) A person who knowingly or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Level 5 felony:

(1) if the offense is committed:

(A) on or in school property;

(B) within five hundred (500) feet of school property; or

(C) on a school bus; or

(2) if the person:

(A) has a prior conviction of any offense under:

(i) this section; or

(ii) section 22 of this chapter; or

(B) has been convicted of a felony within fifteen (15) years before the date of the offense.

### **35-47-2-2. Persons excepted**

Section 1 of this chapter does not apply to:

(1) marshals;

(2) sheriffs;

(3) the commissioner of the department of correction or persons authorized by the commissioner in writing to carry firearms;

(4) judicial officers;

(5) law enforcement officers;

(6) members of the armed forces of the United States or of the national guard or organized reserves while they are on duty;

(7) regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this state who are at or are going to or from their place of assembly or target practice;

(8) employees of the United States duly authorized to carry handguns;

(9) employees of express companies when engaged in company business; or

(10) any person engaged in the business of manufacturing, repairing, or dealing in firearms or the agent or representative of any such person having in the person's possession, using, or carrying a handgun in the usual or ordinary course of that business.

### **35-47-2-3. Issuance of licenses**

(a) A person desiring a license to carry a handgun shall apply:

(1) to the chief of police or corresponding law enforcement officer of the municipality in which the applicant resides;

- (2) if that municipality has no such officer, or if the applicant does not reside in a municipality, to the sheriff of the county in which the applicant resides after the applicant has obtained an application form prescribed by the superintendent; or
- (3) if the applicant is a resident of another state and has a regular place of business or employment in Indiana, to the sheriff of the county in which the applicant has a regular place of business of employment.

The superintendent and local law enforcement agencies shall allow an applicant desiring to obtain or renew a license to carry a handgun to submit an application electronically under this chapter if funds are available to establish and maintain an electronic application system.

(b) The law enforcement agency which accepts an application for a handgun license shall collect the following application fees:

- (1) From a person applying for a four (4) year handgun license, a ten dollar (\$10) application fee, five dollars (\$5) of which shall be refunded if the license is not issued.
- (2) From a person applying for a lifetime handgun license who does not currently possess a valid Indiana handgun license, a fifty dollar (\$50) application fee, thirty dollars (\$30) of which shall be refunded if the license is not issued.
- (3) From a person applying for a lifetime handgun license who currently possesses a valid Indiana handgun license, a forty dollar (\$40) application fee, thirty dollars (\$30) of which shall be refunded if the license is not issued.

Except as provided in subsection (h), the fee shall be deposited into the law enforcement agency's firearms training fund or other appropriate training activities fund and used by the agency to train law enforcement officers in the proper use of firearms or in other law enforcement duties, or to purchase firearms, firearm related equipment, or body armor (as defined in IC 35-47-5-13(a)) for the law enforcement officers employed by the law enforcement agency. The state board of accounts shall establish rules for the proper accounting and expenditure of funds collected under this subsection.

(c) The officer to whom the application is made shall ascertain the applicant's name, full address, length of residence in the community, whether the applicant's residence is located within the limits of any city or town, the applicant's occupation, place of business or employment, criminal record, if any, and convictions (minor traffic offenses excepted), age, race, sex, nationality, date of birth, citizenship, height, weight, build, color of hair, color of eyes, scars and marks, whether the applicant has previously held an Indiana license to carry a handgun and, if so, the serial number of the license and year issued, whether the applicant's license has ever been suspended or revoked, and if so, the year and reason for the suspension or revocation, and the applicant's reason for desiring a license. The officer to whom the application is made shall conduct an investigation into the applicant's official records and verify thereby the applicant's character and reputation, and shall in addition verify for accuracy the information contained in the application, and shall forward this information together with the officer's recommendation for approval or disapproval and one (1) set of legible and classifiable fingerprints of the applicant to the superintendent.

(d) The superintendent may make whatever further investigation the superintendent deems necessary. Whenever disapproval is recommended, the officer to whom the application is made shall provide the superintendent and the applicant with the officer's complete and specific reasons, in writing, for the recommendation of disapproval.

(e) If it appears to the superintendent that the applicant:

- (1) has a proper reason for carrying a handgun;
- (2) is of good character and reputation;
- (3) is a proper person to be licensed; and
- (4) is:

(A) a citizen of the United States; or

(B) not a citizen of the United States but is allowed to carry a firearm in the United States under federal law;

the superintendent shall issue to the applicant a qualified or an unlimited license to carry a handgun lawfully possessed by the applicant. The original license shall be delivered to the licensee. A copy shall be delivered to the officer to whom the application for license was made. A copy shall be retained by the superintendent for at least four (4) years in the case of a four (4) year license. The superintendent may adopt guidelines to establish a records retention policy for a lifetime license. A four (4) year license shall be valid for a period of four (4) years from the date of issue. A lifetime license is valid for the life of the individual receiving the license. The license of police officers, sheriffs or their deputies, and law enforcement officers of the United States government who have been honorably retired by a lawfully created pension board or its equivalent after twenty (20) or more years of service shall be valid for the life of those individuals. However, a lifetime license is automatically revoked if the license holder does not remain a proper person.

(f) At the time a license is issued and delivered to a licensee under subsection (e), the superintendent shall include with the license information concerning handgun safety rules that:

(1) neither opposes nor supports an individual's right to bear arms; and

(2) is:

(A) recommended by a nonprofit educational organization that is dedicated to providing education on safe handling and use of firearms;

(B) prepared by the state police department; and

(C) approved by the superintendent.

The superintendent may not deny a license under this section because the information required under this subsection is unavailable at the time the superintendent would otherwise issue a license. The state police department may accept private donations or grants to defray the cost of printing and mailing the information required under this subsection.

(g) A license to carry a handgun shall not be issued to any person who:

(1) has been convicted of a felony;

(2) has had a license to carry a handgun suspended, unless the person's license has been reinstated;

(3) is under eighteen (18) years of age;

(4) is under twenty-three (23) years of age if the person has been adjudicated a delinquent child for an act that would be a felony if committed by an adult; or

(e) has been arrested for a Class A or Class B felony for an offense committed before July 1, 2014, for a Level 1, Level 2, Level 3, or Level 4 felony for an offense committed after June 30, 2014, or any other felony that was committed while armed with a deadly weapon or that involved the use of violence, if a court has found probable cause to believe that the person committed the offense charged.

In the case of an arrest under subdivision (5), a license to carry a handgun may be issued to a person who has been acquitted of the specific offense charged of if the charges for the specific

offense are dismissed. The superintendent shall prescribe all forms to be used in connection with the administration of this chapter.

(h) If the law enforcement agency that charges a fee under subsection (b) is a city or town law enforcement agency, the fee shall be deposited in the law enforcement continuing education fund established under IC 5-2-8-2.

(i) If a person who holds a valid license to carry a handgun issued under this chapter:

(1) changes the person's name;

(2) changes the person's address; or

(3) experiences a change, including an arrest or conviction, that may affect the person's status as a proper person (as defined in IC 35-47-1-7) or otherwise disqualify the person from holding a license;

the person shall, not later than thirty (30) days after the date of a change described under subdivision (3), and not later than sixty (60) days after the date of the change described under subdivision (1) or (2), notify the superintendent, in writing, of the event described under subdivision (3) or, in the case of a change under subdivision (1) or (2), the person's new name or new address.

(j) The state police shall indicate on the form for a license to carry a handgun the notification requirements of subsection (i).

(k) The state police department shall adopt rules under IC 4-22-2 to implement an electronic application system under subsection (a). Rules adopted under this section must require the superintendent to keep on file one (1) set of classifiable and legible fingerprints from every person who has received a license to carry a handgun so that a person who applies to renew a license will not be required to submit to an additional set of fingerprints.

(l) Except as provided in subsection (m), for purposes of IC 5-14-3-4(a)(1), the following information is confidential, may not be published, and is not open to public inspection:

(1) Information submitted by a person under this section to:

(A) obtain; or

(B) renew;

a license to carry a handgun.

(2) Information obtained by a federal, state, or local government entity in the course of an investigation concerning a person who applies to:

(A) obtain; or

(B) renew;

a license to carry a handgun issued under this chapter.

(3) the name, address, and any other information that may be used to identify a person who holds a license to carry a handgun issued under this chapter.

(m) Notwithstanding subsection (l):

(1) any information concerning an applicant for or a person who holds a license to carry a handgun issued under this chapter may be released to a federal, state, or local government entity:

(A) for law enforcement purposes; or

(B) to determine the validity of a license to carry a handgun; and

(2) general information concerning the issuance of licenses to carry handguns in Indiana may be released to a person conducting journalistic or academic research, but only if all personal information that could disclose the identity of any person

who holds a license to carry a handgun issued under this chapter has been removed from the general information.

(n) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

#### **35-47-2-4. Qualified licenses; unlimited licenses**

(a) Licenses to carry handguns shall be either qualified or unlimited, and are valid for:

- (1) four (4) years from the date of issue in the case of a four (4) year license; or
- (2) the life of the individual receiving the license in the case of a lifetime license.

A qualified license shall be issued for hunting and target practice. The superintendent may adopt rules imposing limitations on the use and carrying of handguns under a license when handguns are carried by a licensee as a condition of employment. Unlimited licenses shall be issued for the protection of life and property.

(b) In addition to the application fee, the fee for;

(1) a qualified license shall be:

- (A) five dollars (\$5) for a four (4) year qualified license;
- (B) twenty-five dollars (\$25) for a lifetime qualified license from a person who does not currently possess a valid Indiana handgun license; or
- (C) twenty dollars (\$20) for a lifetime qualified license from a person who currently possesses a valid Indiana handgun license; and

(2) an unlimited license shall be:

- (A) thirty dollars (\$30) for a four (4) years unlimited license;
- (B) seventy-five dollars (\$75) for a lifetime unlimited license from a person who does not currently possess a valid Indiana handgun license; or
- (C) sixty dollars (\$60) for a lifetime unlimited license from a person who currently possesses a valid Indiana handgun license.

The superintendent shall charge a twenty dollar (\$20) fee for the issuance of a duplicate license to replace a lost or damaged license. These fees shall be deposited in accordance with subsection (e).

(c) Licensed dealers are exempt from the payment of fees specified in subsection (b) for a qualified license or an unlimited license.

(d) The following officers of this state or the United States who have honorably retired by a lawfully created pension board or its equivalent after at least twenty (20) years of service or because of a disability are exempt from the payment of fees specified in subsection (b):

- (1) Police officers.
- (2) Sheriffs or their deputies.
- (3) Law enforcement officers.
- (4) Correctional officers.

(e) Fees collected under this section shall be deposited in the state general fund.

(f) The superintendent may not issue a lifetime qualified license or a lifetime unlimited license to a person who is a resident of another state. The superintendent may issue a four (4) years qualified license or a four (4) year unlimited license to a person who is a resident of another state and who has a regular place of business or employment in Indiana as described in section 3(a)(3) of this chapter.

(g) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

### **35-47-2-5. Suspension or revocation of licenses**

(a) The superintendent may suspend or revoke any license issued under this chapter if the superintendent has reasonable grounds to believe that the person's license should be suspended or revoked.

(b) Documented evidence that a person is not a "proper person" to be licensed as defined by IC 35-47-1-7, or is prohibited under section 3(g)(5) of this chapter from being issued a license, shall be grounds for immediate suspension or revocation of a license previously issued under this chapter. However, if a license is suspended or revoked based solely on an arrest under section 3(g)(5) of this chapter, the license shall be reinstated upon the acquittal of the defendant in that case or upon the dismissal of the charges for the specific offense.

(c) A person who knowingly or intentionally fails to promptly return the person's license after written notice of suspension or revocation commits a Class A misdemeanor. The observation of a handgun license in the possession of a person whose license has been suspended or revoked constitutes a sufficient basis for the arrest of that person for violation of this subsection.

(d) The superintendent shall establish rules under IC 4-22-2 concerning the procedure for suspending or revoking a person's license.

### **35-47-2-6. Time for review of applications**

(a) Every initial application for any license under this chapter shall be granted or rejected within sixty (60) days after the application is filed.

(b) The period during which an application for the renewal of an existing license may be filed begins three hundred sixty-five (365) days before the expiration of the existing license. If the application for renewal of an existing license is filed within thirty (30) days of its expiration, the existing license is automatically extended until the application for renewal is passed upon.

### **35-47-2-7. Prohibited sales or transfers**

(a) Except an individual acting within a parent-minor child or guardian-minor protected person relationship or any other individual who is also acting in compliance with IC 35-47-10 (governing children and firearms), a person may not sell, give, or in any other manner transfer the ownership or possession of a handgun or assault weapon to any person under eighteen (18) years of age.

(b) A person who knowingly or intentionally sells, gives, or in any other manner transfers the ownership or possession of a handgun to another person who the person knows:

- (1) is ineligible for any reason other than the person's age to purchase or otherwise receive from a dealer a handgun; or
- (2) intends to use the handgun to commit a crime;

commits criminal transfer of a handgun, a Level 5 felony. However, the offense is a Level 3 felony if the other person uses the handgun to commit murder (IC 35-42-1-1).

(c) A person who purchases a handgun with the intent to:

- (1) resell or otherwise provide the handgun to another person who the person knows is ineligible for any reason to purchase or otherwise receive from a dealer a handgun;
- (2) resell or otherwise provide the handgun to another person who the person knows intends to use the handgun to commit a crime; or

(3) transport the handgun outside Indiana to be resold or otherwise provided to another person who the transferor knows:

(A) is ineligible to purchase or otherwise receive a handgun; or

(B) intends to use the handgun to commit a crime;

commits straw purchase of a handgun, a Level 5 felony. However, the offense is a Level 3 felony if the other person uses the handgun to commit murder (IC 35-42-1-1).

(d) As used in this subsection, "NICS" has the meaning set forth in IC 35-47-2.5-2.5. It is a defense to a prosecution under subsection (b)(1) that:

(1) the accused person contacted NICS (or had a dealer contact NICS on the person's behalf) to request a background check on the other person before the accused person sold, gave, or in any other manner transferred the ownership or possession of the handgun to the other person; and

(2) the accused person (or dealer acting on the person's behalf) received authorization from NICS to sell, give, or in any other manner transfer ownership or possession of the handgun to the other person.

### **35-47-2-8. Persons to whom sale regulations apply**

The regulation of the sale of handguns imposed by this chapter shall apply equally to an occasional sale, trade, or transfer between individual persons and to retail transactions between dealers and individual persons.

### **35-47-2-14. License requirements for retailer dealer**

A retail dealer who knowingly or intentionally:

(1) sells;

(2) trades;

(3) transfers;

(4) exposes for sale, trade, or transfer, or

(5) possesses with intent to sell, trade, or transfer;

any handgun without being licensed under sections 15 and 16 of this chapter and without displaying the retail dealer's license at all times commits a Class B misdemeanor.

### **35-47-2-15. Issuance of retail handgun dealer's license**

(a) A person desiring a retail handgun dealer's license shall apply to the sheriff of the county in which the person resides, or if the person is a resident of another state and has a regular place of business in Indiana, then to the sheriff of the county in which the person has a regular place of business. The applicant shall state the applicant's name, full address, occupation, sex, race, age, place of birth, date of birth, nationality, height, weight, build, color of eyes, color of hair, complexion, scars and marks, and any criminal record (minor traffic offenses excepted). The officer to whom the application is made shall verify the application and search the officer's records concerning the applicant's character and reputation.

(b) The officer to whom the application is made shall send to the superintendent:

(1) the verified application;

(2) the results of the officer's investigation; and

(3) the officer's recommendation for approval or disapproval of the application;

in as many copies as the superintendent shall designate, and one (1) set of legible and classifiable fingerprints of the applicant. The superintendent may make whatever further investigation the

superintendent deems necessary. Whenever disapproval is recommended by the officer to whom the application is made, the officer shall provide the superintendent and the applicant with the officer's complete reasons for the disapproval in writing. If the officer to whom the application is made recommends approval, the officer shall instruct the applicant in the proper method of taking legible and classifiable fingerprints.

(c) If an applicant applies for a license under this section before July 1, 2011, and it appears to the superintendent that the applicant is of good character and reputation and a proper person to be licensed, the superintendent shall issue to the applicant a retail handgun dealer's license which shall be valid for a period of two (2) years from the date of issue. The fee for the license shall be twenty dollars (\$20), which shall be deposited with the officer to whom the application is made, who shall in turn forward it to the superintendent for deposit with the treasurer of state when the application is approved by the superintendent.

(d) If an applicant applies for a license under this section after June 30, 2011:

(1) the applicant shall deposit with the officer to whom the application is made a fee for the license of sixty dollars (\$60);

(2) if it appears to the superintendent that the applicant is:

(A) of good character and reputation; and

(B) a proper person to be licensed;

the superintendent shall issue to the applicant a retail handgun dealer's license, which is valid for six (6) years after the date the license is issued; and

(3) the officer to whom the application is made shall forward the fee for the license to the superintendent for deposit with the treasurer of state when the application is approved by the superintendent.

(e) In the event that the application is disapproved by the superintendent, the fee deposited by the applicant under subsection (c) or (d) shall be returned to the applicant along with the complete reasons, in writing, for the disapproval.

(f) No retail dealer's license shall be issued to any person who has been:

(1) convicted of a felony; or

(2) adjudicated a delinquent child for an act that would be a felony if committed by an adult, if the person applying for the retail dealer's license is less than twenty-three (23) years of age;

in Indiana or any other state or country.

(g) A retail dealer's license shall permit the licensee to sell handguns at retail within this state subject to the conditions specified in this chapter. The license may be suspended or revoked in accordance with applicable law, and the licensee may be subject to punishment as provided in this chapter.

(h) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

### **35-47-2-16. License; designation of business site; display of license**

(a) A retail dealer's business shall be carried on only in the site designated in the license. A separate license shall be required for each separate retail outlet. Whenever a licensed dealer moves the dealer's place of business, the dealer shall promptly notify the superintendent, who shall at once issue an amended license certificate valid for the balance of the license period. The subsection does not apply to sales at wholesale.

(b) The license, certified by the issuing authority, shall be displayed on the business premises in a prominent place where it can be seen easily by prospective customers.

(c) No handgun shall be sold:

(1) in violation of any provision of this chapter; or

(2) under any circumstances unless the purchaser is personally known to the seller or presents clear evidence of the purchaser's identity.

(d) Notwithstanding subsection (a), a retail dealer may display, sell, or transfer handguns at a gun show in accordance with this chapter and federal law.

(e) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

### **35-47-2-17. False information when purchasing a firearm**

(a) No person, in purchasing or otherwise securing delivery of a firearm or in applying for a license to carry a handgun, shall knowingly or intentionally:

(1) give false information on a form required to:

(A) purchase or secure delivery of a firearm; or

(B) apply for a license to carry a handgun; or

(2) offer false evidence of identity.

In addition to any penalty provided by this chapter, any firearm obtained through false information shall be subject to confiscation and disposition as provided in this chapter. Upon notice of a violation of this section by the superintendent, it shall be the duty of the sheriff or chief of police or corresponding officer of the jurisdiction in which the purchaser resides to confiscate the firearm and retain it as evidence pending trial for the offense.

(b) A person who knowingly or intentionally violates this section commits a Level 5 felony.

### **35-47-2-18. Obliterating identifying marks on handgun**

(a) No person shall:

(1) change, alter, remove, or obliterate the name of the maker, model, manufacturer's serial number, or other mark of identification on any handgun; or

(2) possess any handgun on which the name of the maker, model, manufacturer's serial number, or other mark of identification has been changed, altered, removed, or obliterated;

except as provided by applicable United States statute.

(b) A person who knowingly or intentionally violates this section commits a Level 5 felony.

### **35-47-2-19. Firearms excepted**

This chapter does not apply to any firearm not designed to use fixed cartridges or fixed ammunition, or any firearm made before January 1, 1899.

### **35-47-2-20. Effect of full or conditional pardon**

(a) A full pardon from the governor of Indiana for:

(1) A felony other than a felony that is included in IC 35-42; or

(2) A violation of this chapter;

removes any disability under this chapter imposed because of that offense, if fifteen (15) years have elapsed between the time of the offense and the application for a license under this chapter.

(b) A conditional pardon described in IC 11-9-2-4 for:

(1) A felony; or

(2) A violation of this chapter;

removes a disability under this chapter if the superintendent determines after an investigation that circumstances have changed since the pardoned conviction was entered to such an extent that the pardoned person is likely to handle handguns in compliance with the law.

### **35-47-2-21. Foreign licenses**

(a) Retail dealers' licenses issued by other states or foreign countries will not be recognized in Indiana except for sales at wholesale.

(b) Licenses to carry handguns, issued by other states or foreign countries, will be recognized according to the terms thereof but only while the holders are not residents of Indiana.

### **35-47-2-22. Use of false or altered handgun license**

(a) It is unlawful for any person to use, to attempt to use, a false, counterfeit, spurious, or altered handgun-carrying license to obtain a handgun contrary to the provisions of this chapter.

(b) A person who knowingly or intentionally violates this section commits a Level 6 felony.

### **35-47-2-24. Burden of proof**

(a) In an information or indictment brought for the enforcement of any provision of this chapter, it is not necessary to negate any exemption specified under this chapter, or to allege the absence of a license required under this chapter. The burden of proof is on the defendant to prove that he is exempt under section 2 of this chapter, or that he has a license as required under this chapter.

(b) Whenever a person who has been arrested or charged with a violation of section 1 of this chapter presents a valid license to the prosecuting attorney or establishes that he is exempt under section 2 of this chapter, any prosecution for a violation of section 1 of this chapter shall be dismissed immediately, and all records of an arrest or proceedings following arrest shall be destroyed immediately.

## **Chapter 2.5 Sale of Handguns**

- 35-47-2.5-1 Application; NICS participation
- 35-47-2.5-2 "Dealer" defined
- 35-47-2.5-2.5 "NICS" defined
- 35-47-2.5-3 Criminal history information form
- 35-47-2.5-4 Dealer's duties
- 35-47-2.5-5 Photographic identification; other documentation
- 35-47-2.5-12 False statement on consent form
- 35-47-2.5-13 Violation by dealer
- 35-47-2.5-16 Criminal transfer of a firearm

### **35-47-2.5-1. Application; NICS participation**

(a) Sections 2 through 5 of this chapter do not apply to the following:

- (1) Transactions between persons who are licensed as firearms importers or collectors or firearms manufacturers or dealers under 18 U.S.C. 923.
- (2) Purchases by or sales to a law enforcement officer or agent of the United States, the state, or a county or local government.
- (3) Indiana residents licensed to carry handguns under IC 35-47-2-3.

(b) Notwithstanding any other provision of this chapter, the state shall participate in the NICS if federal funds are available to assist the state in participating in the NICS. If;

- (1) the state participates in the NICS; and
- (2) there is a conflict between:
  - (A) a provision of this chapter; and
  - (B) a procedure required under the NICS;

the procedure required under the NICS prevails over the conflicting provision of this chapter.

### **35-47-2.5-2. “Dealer” defined**

As used in this chapter, “dealer” includes any person licensed under 18 U.S.C. 923.

### **35-47-2.5-2.5. “NICS” defined**

As used in this chapter, “NICS” refers to the National Instant Criminal Background Check System maintained by the Federal Bureau of Investigation in accordance with the federal Brady Handgun Violence Prevention Act (18 U.S.C. 921 et seq.).

### **35-47-2.5-3. Criminal history information form**

A person purchasing a handgun from a dealer shall complete and sign Bureau of Alcohol, Tobacco, Firearms and Explosives Form 4473.

### **35-47-2.5-4. Dealer’s duties**

(a) A dealer may not sell, rent, trade, or transfer from the dealer’s inventory a handgun to a person until the dealer has done all of the following:

- (1) Obtained from the prospective purchaser a completed and signed Form 4473 as specified in section 3 of this chapter.
- (2) Contacted NICS:
  - (A) by telephone; or
  - (B) electronically;to request a background check on the prospective purchaser.
- (3) Received authorization from NICS to transfer the handgun to the prospective purchaser.

(b) The dealer shall record the NICS transaction number on Form 4473 and retain Form 4473 for auditing purposes.

### **35-47-2.5-5. Photographic identification; other documentation**

(a) To establish personal identification and residence in Indiana for purposes of this chapter, a dealer must require a prospective purchaser to present one (1) photographic identification form issued by a governmental agency of the state or by the United States Department of Defense, or other documentation of residence.

(b) Except when photographic identification was issued by the United States Department of Defense, other documentation of residence must show an address identical to that shown on the photographic identification form or as amended by proper notice of change of address filed with the issuing authority. Suitable other documentation of residence includes:

- (1) evidence of currently paid personal property tax or real estate tax, a current lease, utility, or telephone bill, a voter registration card, a bank check, a passport, an automobile registration, or a hunting or fishing license;
- (2) other current identification allowed as evidence of residency by 27 CFR 178.124 and United States Alcohol, Tobacco, and Firearms Ruling 79-7; or
- (3) other documentation of residence, determined to be acceptable by the state police department, that corroborates that the prospective purchaser currently resides in Indiana.

(c) If the photographic identification was issued by the United States Department of Defense, permanent orders may be used as documentation of residence.

#### **35-47-2.5-12. False statement on consent form**

A person who knowingly or intentionally makes a materially false statement on Form 4473 completed under section 3 of this chapter commits a Level 6 felony.

#### **35-47-2.5-13. Violation by dealer**

Except as otherwise provided in this chapter, a dealer who knowingly or intentionally sells, rents, trades, or transfers a handgun in violation of this chapter commits a Class A misdemeanor.

#### **35-47-2.5-16. Criminal transfer of a firearm**

(a) This section does not apply to a person who complies with IC 35-47-10 (governing children and firearms).

(b) A person who provides a firearm to an individual who the person knows:

- (1) is ineligible to purchase or otherwise receive or possess a firearm for any reason other than the person's age; or
- (2) intends to use the firearm to commit a crime;

commits criminal transfer of a firearm, a Level 5 felony. However, the offense is a Level 3 felony if the individual uses the firearm to commit murder (IC 35-42-1-1).

(c) It is a defense to a prosecution under subsection (b)(1) that:

- (1) the accused person (or dealer acting on the person's behalf) contacted NICS to request a background check on the individual before the accused person provided the firearm to the individual; and
- (2) the accused person (or dealer acting on the person's behalf) received authorization from NICS to provide the firearm to the individual.

### **Chapter 3 Disposal of Confiscated Weapons**

- |           |  |
|-----------|--|
| 35-47-3-1 | Disposal of confiscated firearms       |
| 35-47-3-2 | Firearms not required to be registered |
| 35-47-3-3 | Firearms required to be registered     |

**35-47-3-1. Disposal of confiscated firearms**

All firearms confiscated pursuant to statute shall, upon conviction of the person for the offense for which confiscation was made, be disposed of in accordance with this chapter.

**35-47-3-2. Firearms not required to be registered**

(a) This section applies only to firearms which are not required to be registered in the National Firearms Registration and Transfer Record.

(b) Firearms shall be returned to the rightful owner at once following final disposition of the cause if a return has not already occurred under the terms of IC 35-33-5. If the rightful ownership is not known the law enforcement agency holding the firearm shall make a reasonable attempt to ascertain the rightful ownership and cause the return of the firearm. However, nothing in this chapter shall be construed as requiring the return of firearms to rightful owners who have been convicted for the misuse of firearms. In such cases, the court may provide for the return of the firearm in question or order that the firearm be at once delivered:

(1) except as provided in subdivision (2), to the sheriff's department of the county in which the offense occurred; or

(2) to the city or town police force that confiscated the firearm.

(c) The receiving law enforcement agency shall dispose of firearms under subsection (b), at the discretion of the law enforcement agency, not more than one hundred twenty (120) days following receipt by use of any of the following procedures:

(1) Public sale of the firearms to the general public as follows:

(A) Notice of the sale shall be:

(i) posted for ten (10) days in the county courthouse in a place readily accessible to the general public; and

(ii) advertised in the principal newspaper of the county for two (2) days in an advertisement that appears in the newspaper at least five (5) days prior to the sale.

(B) Disposition of the firearm shall be by public auction in a place convenient to the general public, with disposition going to the highest bidder. However, no firearm shall be transferred to any bidder if that bidder is not lawfully eligible to receive and possess firearms according to the laws of the United States and Indiana.

(C) All handguns transferred under this subdivision shall also be transferred according to the transfer procedures set forth in this article.

(D) Money collected pursuant to the sales shall first be used to defray the necessary costs of administering this subdivision with any surplus to be:

(i) deposited into the receiving law enforcement agency's firearms training fund, other appropriate training activities fund, or any other fund that may be used by the receiving law enforcement agency for the purchase and maintenance of firearms, ammunition, vests, and other law enforcement equipment; and

(ii) used by the agency exclusively to train law enforcement officers in the proper use of firearms or other law enforcement

duties, and to purchase and maintain firearms, ammunition, vests, and other law enforcement equipment.

A law enforcement agency may not sell a firearm to the general public if the firearm is unsafe to operate because it has been damaged or altered.

(2) Sale of the firearms to a licensed firearms dealer as follows:

(A) Notice of the sale must be:

(i) posted for ten (10) days in the county courthouse in a place readily accessible to the general public; and

(ii) advertised in the principal newspaper of the county for two (2) days in an advertisement that appears in the newspaper at least five (5) days before the sale.

(B) Disposition of the firearm shall be by auction with disposition going to the highest bidder who is a licensed firearms dealer.

(C) Money collected from the sales shall first be used to defray the necessary costs of administering this subdivision and any surplus shall be:

(i) deposited into the receiving law enforcement agency's firearms training fund, other appropriate training activities fund, or any other fund that may be used by the receiving law enforcement agency for the purchase and maintenance of firearms, ammunition, vests, and other law enforcement equipment; and

(ii) used by the agency exclusively to train law enforcement officers in the proper use of firearms or other law enforcement duties, and to purchase and maintain firearms, ammunition, vests, and other law enforcement equipment.

A law enforcement agency may sell a firearm to a licensed firearms dealer for salvage or repair, even if the firearm is unsafe to operate because it has been damaged or altered.

(3) Sale or transfer of the firearms to another law enforcement agency.

(4) Release to the state police department laboratory or other forensic laboratory administered by the state or a political subdivision (as defined in IC 36-1-2-13) for the purposes of research, training, and comparison in conjunction with the forensic examination of firearms evidence.

(5) Destruction of the firearms. A firearm that is to be destroyed may be sold to a salvage company and destroyed by dismantling the firearm for parts, scrap metal, or recycling, or for resale as parts for other firearms.

(d) Notwithstanding the requirement of this section mandating disposal of firearms not more than one hundred twenty (120) days following receipt, the receiving law enforcement agency may at its discretion hold firearms it may receive until a sufficient number has accumulated to defray the costs of administering this section if a delay does not exceed one hundred eighty (180) days from the receipt of the first firearm in the sale lot. In addition, the receiving law enforcement agency may, at its discretion, jointly sell firearms it has received with another law enforcement agency, or permit another law enforcement agency to sell firearms it has received on behalf of the receiving law enforcement agency. In any event, all confiscated firearms shall be disposed of as promptly as possible.

(e) When a firearm is delivered to the state police department laboratory or other forensic laboratory under subsection (c)(4) and the state police department laboratory or other forensic

laboratory determines the laboratory has no further need for the firearm in question, the laboratory shall return the firearm to the law enforcement agency for disposal under subsection (c).

### **35-47-3-3. Firearm required to be registered**

(a) This section applies to firearms that are required to be registered in the National Firearms Registration and Transfer Record.

(b) Firearms shall be returned to the rightful owner at once following final disposition of the cause, if such return has not already occurred under the terms of IC 35-33-5, and if such owner remains lawfully entitled to possess such firearms according to applicable United States and Indiana statutes. If rightful ownership is not known, the law enforcement agency holding the firearm shall make a reasonable and diligent effort to ascertain the rightful ownership and cause the return of the firearm being held, providing the owner remains lawfully entitled to possess such firearms.

(c) Firearms that are not returnable under this section shall be at once delivered to:

(1) the sheriff's department of the county in which the offense occurred, unless subdivision (2) applies; or

(2) the city or town police force that confiscated the firearm if:

(A) a member of the city or town police force confiscated the firearm; and

(B) the city or town has a population of more than two thousand five hundred (2,500) and less than six hundred thousand (600,000);

following final disposition of the cause.

(d) When firearms are sent to a law enforcement agency under subsection (c), the law enforcement agency may upon request release the firearms to the state police department laboratory or other forensic laboratory administered by the state or a political subdivision (as defined in IC 36-1-2-13) for purposes of research, training, and comparison in conjunction with forensic examination of firearms evidence.

(e) The receiving law enforcement agency or laboratory shall cause the registry of such firearms in the United States National Firearms Registration and Transfer Record within thirty (30) days following receipt from the court.

(f) The court may order such firearms not returnable destroyed, specifying the exact manner of destruction and requiring the receiving law enforcement agency or laboratory to make due return to the ordering court the time, date, method of destruction, and disposition of the remains of the destroyed firearm.

(g) No portion of this section shall be construed as requiring the receiving law enforcement agency or laboratory to retain firearms which are inoperable or unserviceable, or which the receiving law enforcement agency or laboratory may choose to transfer as public property in the ordinary course of lawful commerce and exchange.

### **35-47-3-4. Unlawful disposition of confiscated firearms**

A person who knowingly or intentionally:

(1) delivers a confiscated firearm to a person convicted of a felony;

(A) involving use of a firearm; and

(B) which is the basis of the confiscation;

(2) delivers a confiscated firearm to another with knowledge that there is a rightful owner to whom the firearm must be returned; or

(3) fails to deliver a confiscated firearm to the sheriff's department, a city or town police force, the state police department laboratory or a forensic laboratory under this chapter, the state under IC 14-22-39-6, or for disposition after a determination that the rightful owner of the firearm cannot be ascertained or is no longer entitled to possess the confiscated firearm;

commits a Level 6 felony.

### **Chapter 3.5 Firearm Buyback Programs Prohibited**

- 35-47-3.5-1 Application of chapter
- 35-47-3.5-2 "Firearm buyback program" defined
- 35-47-3.5-3 Firearm buyback programs prohibited
- 35-47-3.5-3 Transfer of firearms

#### **35-47-3.5-1. Application of chapter**

This chapter applies to a unit (as defined in IC 36-1-2-23), including a law enforcement agency of a unit.

#### **35-47-3.5-2. "Firearm buyback program" defined**

As used in this chapter, "firearm buyback program" means a program to purchase privately owned firearms from individual firearm owners for the purpose of:

- (1) reducing the number of firearms owned by civilians; or
- (2) permitting civilians to sell a firearm to the government without fear of prosecution.

The term does not include the purchase of firearms from a licensed firearms dealer or a program to purchase firearms for law enforcement purposes.

#### **35-47-3.5-3. Firearm buyback programs prohibited**

A unit, including a law enforcement agency of a unit, may not conduct a firearm buyback program unless the firearm buyback program is financed or funded with private funds or grants, and not public funds.

#### **35-47-3.5-4. Transfer of firearms**

(a) A unit having possession of a firearm obtained from a firearm buyback program shall transfer the firearm to a law enforcement agency of the unit.

(b) A law enforcement agency of the unit that has possession of a firearm obtained under subsection (a), or otherwise as a result of a firearm buyback program, shall dispose of the firearm in accordance with IC 35-47-3.

### **Chapter 4 Miscellaneous Provisions**

- 35-47-4-1 Delivery of deadly weapon to intoxicated person
- 35-47-4-2 Loans secured by handgun

- 35-47-4-3 Pointing a firearm
- 35-47-4-5 Possession of a firearm by a serious violent felon
- 35-47-4-6 Possession of a firearm by a domestic batterer
- 35-47-4-7 Restoration of rights to possess firearm by a domestic batterer

#### **35-47-4-1. Delivery of deadly weapon to intoxicated person**

A person who sells, barter, gives, or delivers any deadly weapon to any person at the time in a state of intoxication, knowing him to be in a state of intoxication, or to any person who is in the habit of becoming intoxicated, and knowing him to be a person who is in the habit of becoming intoxicated, commits a Class B misdemeanor.

#### **35-47-4-2. Loan secured by handgun**

A person who makes a loan secured by a:

- (1) Mortgage;
- (2) Deposit; or
- (3) Pledge;

of a handgun commits a Class B misdemeanor.

#### **35-47-4-3. Pointing a firearm**

(a) This section does not apply to a law enforcement officer who is acting within the scope of the law enforcement officer's official duties or to a person who is justified in using reasonable force against another person under:

- (1) IC 35-41-3-2; or
- (2) IC 35-41-3-3.

(b) A person who knowingly or intentionally points a firearm at another person commits a Level 6 felony. However, the offense is a Class A misdemeanor if the firearm is not loaded.

#### **35-47-4-5. Possession of a firearm by a serious violent felon**

(a) As used in this section, "serious violent felon" means a person who has been convicted of:

- (1) committing a serious violent felony in:
  - (A) Indiana; or
  - (B) any other jurisdiction which the elements of the crime for which the conviction was entered are substantially similar to the elements of a serious violent felony; or
- (2) attempting to commit or conspiring to commit a serious violent felony in:
  - (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2; or
  - (B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of attempting to commit or conspiring to commit a serious violent felony.

(b) As used in this section, "serious violent felony" means:

- (1) murder (IC 35-42-1-1);
- (2) voluntary manslaughter (IC 35-42-1-3);
- (3) reckless homicide not committed by means of a vehicle (IC 35-42-1-5);
- (4) battery (IC 35-42-2-1) as a:

- (A) Class A felony, Class B felony, or Class C felony, for a crime committed before July 1, 2014; or
- (B) Level 2 felony, Level 3 felony, Level 4 felony, or Level 5 felony, for a crime committed after June 30, 2014;
- (5) aggravated battery (IC 35-42-2-1.5);
- (6) kidnapping (IC 35-42-3-2);
- (7) criminal confinement (IC 35-42-3-3);
- (8) rape (IC 35-42-4-1);
- (9) criminal deviate conduct (IC 35-42-4-2) (before its repeal);
- (10) child molesting (IC 35-42-4-3);
- (11) sexual battery (IC 35-42-4-8) as a:
  - (A) Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 5 felony, for a crime committed after June 30, 2014;
- (12) robbery (IC 35-42-5-1);
- (13) carjacking (IC 35-42-5-2) (before its repeal);
- (14) arson (IC 35-43-1-1(a)) as a:
  - (A) Class A felony or Class B felony, for a crime committed before July 1, 2014; or
  - (B) Level 2 felony, Level 3 felony, or Level 4 felony, for a crime committed after June 30, 2014;
- (15) burglary (IC 35-43-2-1) as a:
  - (A) Class A felony or Class B felony, for a crime committed before July 1, 2014; or
  - (B) Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony, for a crime committed after June 30, 2014;
- (16) assisting a criminal (IC 35-44.1-2-5) as a:
  - (A) Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 5 felony, for a crime committed after June 30, 2014;
- (17) resisting law enforcement (IC 35-44.1-3-1) as a:
  - (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 2 felony, Level 3 felony, or Level 5 felony, for a crime committed after June 30, 2014;
- (18) escape (IC 35-44.1-3-4) as a:
  - (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 4 felony or Level 5 felony, for a crime committed after June 30, 2014;
- (19) trafficking with an inmate (IC 35-44.1-3-5) as a:
  - (A) Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 5 felony, for a crime committed after June 30, 2014;
- (20) criminal gang intimidation (IC 35-45-9-4);
- (21) stalking (IC 35-45-10-5) as a:
  - (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or

(B) Level 4 felony or Level 5 felony, for a crime committed after June 30, 2014;

(22) incest (IC 35-46-1-3);

(23) dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1);

(24) dealing in methamphetamine (IC 35-48-4-1.1);

(25) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);

(26) dealing in a schedule IV controlled substance (IC 35-48-4-3); or

(27) dealing in a schedule V controlled substance (IC 35-48-4-4).

(c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Level 4 felony.

#### **35-47-4-6. Possession of a firearm by a domestic batterer**

(a) A person who has been convicted of domestic battery under IC 35-42-2-1.3 and who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a domestic batterer, a Class A misdemeanor.

(b) It is a defense to a prosecution under this section that the person's right to possess a firearm has been restored under IC 35-47-4-7.

#### **35-47-4-7. Restoration of right to possess firearm by a domestic batterer [effective March 26, 2014]**

(a) Notwithstanding IC 35-47-2, IC 35-47-2.5, the restoration of the right to serve on a jury under IC 33-28-5-18, the restoration of the right to vote under IC 3-7-13-5, or the expungement of a crime of domestic violence under IC 35-38-9, and except as provided in subsections (b), (c), and (f), a person who has been convicted of a crime of domestic violence may not possess a firearm.

(b) Not earlier than five (5) years after the date of conviction, a person who has been convicted of a crime of domestic violence may petition the court for restoration of the person's right to possess a firearm. In determining whether to restore the person's right to possess a firearm, the court shall consider the following factors:

(1) Whether the person has been subject to:

(A) a protective order;

(B) a no contact order;

(C) a workplace violence restraining order; or

(D) any other court order that prohibits the person from possessing a firearm.

(2) Whether the person has successfully completed a substance abuse program, if applicable.

(3) Whether the person has successfully completed a parenting class, if applicable.

(4) Whether the person still presents a threat to the victim of the crime.

(5) Whether there is any other reason why the person should not possess a firearm, including whether the person failed to satisfy a specified condition under subsection (c) or whether the person has committed a subsequent offense.

(c) The court may condition the restoration of a person's right to possess a firearm upon the person's satisfaction of specified conditions.

(d) If the court denies a petition for restoration of the right to possess a firearm, the person may not file a second or subsequent petition until one (1) year has elapsed after the filing of the most recent petition.

(e) A person has not been convicted of a crime of domestic violence for purposes of subsection (a) if the person has been pardoned.

(f) The right to possess a firearm shall be restored to a person whose conviction is reversed on appeal or on postconviction review at the earlier of the following:

(1) At the time the prosecuting attorney states on the record that the charges that gave rise to the conviction will not be refiled.

(2) Ninety (90) days after the final disposition of the appeal or postconviction proceeding.

## **Chapter 4.5**

### **Regulation of Laser Pointers**

35-47-4.5-1 Exemptions

35-47-4.5-2 “Laser pointer” defined

35-47-4.5-3 “Public safety officer” defined

35-47-4.5-4 Unlawful pointing of a laser pointer

#### **35-47-4.5-1. Exemptions**

This chapter does not apply to the use of a laser pointer:

(1) for educational purposes by individuals engaged in an organized meeting or training class; or

(2) during the normal course of work or trade activities.

#### **35-47-4.5-2. “Laser pointer” defined**

As used in this chapter, “laser pointer” means a device that emits light amplified by the stimulated emission of radiation that is visible to the human eye.

#### **35-47-4.5-3. “Public safety officer” defined**

As used in this chapter, “public safety officer” means:

(1) a state police officer;

(2) a county sheriff;

(3) a county police officer;

(4) a correctional officer;

(5) an excise police officer;

(6) a county police reserve officer;

(7) a city police officer;

(8) a city police reserve officer;

(9) a conservation enforcement officer;

(10) a gaming agent;

(11) a town marshal;

(12) a deputy town marshal;

(13) a state educational institution police officer appointed under IC 21-39-4;

(14) a probation officer;

- (15) a firefighter (as defined in IC 9-18-34-1);
- (16) an emergency medical technician;
- (17) a paramedic;
- (18) a member of a consolidated law enforcement department established under IC 36-3-1-5.1;
- (19) a gaming control officer; or
- (20) a community corrections officer.

**35-47-4.5-4. Unlawful pointing of a laser pointer**

A person who knowingly or intentionally directs light amplified by the stimulated emission of radiation that is visible to the human eye or any other electromagnetic radiation from a laser pointer at a public safety officer or a state police motor carrier inspector without the consent of the public safety officer or state police motor carrier inspector commits a Class B misdemeanor.

**Chapter 5  
Prohibited Weapons and  
Other Instruments of Violence**

- 35-47-5-2 Knife with detachable blade
- 35-47-5-2.5 Possession of a knife on school property or school bus
- 35-47-5-4.1 Sawed-off shotgun
- 35-47-5-5 Firearms exempted
- 35-47-5-8 Possession of a machine gun
- 35-47-5-9 Operating a machine gun
- 35-47-5-10 Exemptions to machine gun prohibitions
- 35-47-5-11 Armor-piercing handgun ammunition
- 35-47-5-12 Chinese throwing star
- 35-47-5-13 Unlawful use of body armor

**35-47-5-2. Knife with detachable blade**

It is a Class B misdemeanor for a person to manufacture, possess, display, offer, sell, lend, give away, or purchase any knife with a detachable blade that may be ejected from the handle as a projectile by means of gas, a spring, or any other device contained in the handle of the knife.

**35-47-5-2.5. Possession of a knife on school property or school bus**

- (a) As used in this section, “knife” means an instrument that:
  - (1) consists of a sharp edged or sharp pointed blade capable of inflicting cutting, stabbing, or tearing wounds; and
  - (2) is intended to be used as a weapon.
- (b) The term includes a dagger, dirk, poniard, stiletto, switchblade knife, or gravity knife.
- (c) A person who recklessly, knowingly, or intentionally possesses a knife on:
  - (1) school property (as defined in IC 35-31.5-2-285);
  - (2) a school bus (as defined in IC 20-27-2-8); or
  - (3) a special purpose bus (as defined in IC 20-27-2-10);

commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this section and a Level 6 felony if the offense results in bodily injury to another person.

(d) This section does not apply to a person who possesses a knife:

(1) if;

(A) the knife is provided to the person by the school corporation or possession of the knife is authorized by the school corporation; and

(B) the person uses the knife for a purpose authorized by the school corporation; or

(2) the knife is secured in a motor vehicle.

#### **35-47-5-4.1. Sawed-off shotgun**

(a) A person who:

(1) manufactures;

(2) causes to be manufactured;

(3) imports into Indiana;

(4) keeps for sale;

(5) offers or exposes for sale; or

(6) gives, lends, or possesses;

any sawed-off shotgun commits dealing in a sawed-off shotgun, a Level 6 felony.

(b) The presence of a weapon referred to in subsection (a) in a motor vehicle (as defined under IC 9-13-2-105(a)) except for school buses and a vehicle operated in the transportation of passengers by a common carrier (as defined in IC 8-2.1-17-4) creates an inference that the weapon is in the possession of the persons occupying the motor vehicle. However, the inference does not apply to all the persons occupying the motor vehicle if the weapon is found upon, or under the control of, one (1) of the occupants. In addition, the inference does not apply to a duly licensed driver of a motor vehicle for hire who finds the weapon in the licensed driver's motor vehicle in the proper pursuit of the licensed driver's trade.

(c) This section does not apply to a law enforcement officer who is acting in the course of the officer's official duties or to a person who manufactures or imports for sale or sells a sawed-off shotgun to a law enforcement agency.

#### **35-47-5-5. Firearms exempted**

This chapter does not apply to any firearm not designed to use fixed cartridges or fixed ammunition, or any firearm made before January 1, 1899.

#### **35-47-5-8. Possession of a machine gun**

A person who knowingly or intentionally owns or possesses a machine gun commits a Level 5 felony.

#### **35-47-5-9. Operating a machine gun**

A person who knowingly or intentionally operates a loaded machine gun commits a Level 4 felony.

### **35-47-5-10. Exemptions to machine gun prohibitions**

The provisions of section 8 or 9 of this chapter shall not be construed to apply to any of the following:

- (1) Members of the military or naval forces of the United States, National Guard of Indiana, or Indiana State Guard, when on duty or practicing.
- (2) Machine guns kept for display as relics and which are rendered harmless and not usable.
- (3) Any of the law enforcement officers of this state or the United States while acting in the furtherance of their duties.
- (4) Person lawfully engaged in the display, testing, or use of fireworks.
- (5) Agencies of state government.
- (6) Persons permitted by law to engage in the business of manufacturing, assembling, conducting research on, or testing machine guns, airplanes, tanks, armored vehicles, or ordinance equipment or supplies while acting within the scope of such business.
- (7) Persons possessing, or having applied to possess, machine guns under applicable United States statutes. Such machine guns must be transferred as provided in this article.
- (8) Persons lawfully engaged in the manufacture, transportation, distribution, use or possession of any material, substance, or device for the sole purpose of industrial, agricultural, mining, construction, educational, or any other lawful use.

### **35-47-5-11. Armor-piercing handgun ammunition**

(a) As used in this section, “armor-piercing handgun ammunition” means a cartridge that:

- (1) can be fired from a handgun; and
- (2) will, upon firing, expel a projectile that has a metal core and an outer coating of plastic.

(b) A person who knowingly or intentionally:

- (1) manufactures;
- (2) possesses;
- (3) transfers possession of: or
- (4) offers to transfer possession of:

armor-piercing ammunition commits a Level 5 felony.

(c) This section does not apply to nylon coated ammunition, plastic shot capsules, or ammunition designed to be used in rifles and shotguns.

(d) This section does not apply to a law enforcement officer who is acting in the course of the officer’s official duties or to a person who manufactures or imports for sale or sells armor-piercing handgun ammunition to a law enforcement agency.

### **35-47-5-12. Chinese throwing star**

(a) A person who:

- (1) Manufactures;
- (2) Causes to be manufactured;
- (3) Imports into Indiana;
- (4) Keeps for sale;
- (5) Offers or exposes for sale; or

(6) Gives, lends, or possesses;  
a Chinese throwing star commits a Class C misdemeanor.

(b) As used in this section, “Chinese throwing star” means a throwing-knife, throwing-iron, or other knife-like weapon with blades set at different angles.

**35-47-5-13. Unlawful use of body armor**

(a) As used in this section, “body armor” means bullet resistant metal or other material worn by a person to provide protection from weapons or bodily injury.

(b) A person who knowingly or intentionally uses body armor while committing a felony commits unlawful use of body armor, a Level 6 felony.

**Chapter 6  
Weapons on Aircraft**

35-47-6-0.5	Non-application of chapter
35-47-6-1	Possession of deadly weapon when boarding aircraft
35-47-6-1.1	Undisclosed transport of a dangerous device
35-47-6-1.3	Possession of deadly weapon on aircraft
35-47-6-1.4	Unlawfully entering controlled access area of airport
35-47-6-1.6	Disruption of operation of aircraft; hijacking aircraft
35-47-6-3	Consent to search of persons or personal belongings
35-47-6-4	Immunity of airline company

**35-47-6-0.5. Non-application of chapter**

(a) Except as provided in subsection (b), this chapter does not apply to an official or employee:

(1) of:

(A) the United States;

(B) a state or political subdivision of a state;

(C) an operator (as defined in IC 5-23-2-8); or

(D) any other entity that has been granted statutory authority to enforce the penal laws of Indiana;

(2) who has been granted the power to effect arrests under Indiana law; and

(3) who has been authorized by the official’s or employee’s agency or employer to carry firearms.

(b) An individual described in subsection (a) is subject to the applicable regulations of the United States concerning the possession and carriage of firearms on aircraft or in areas of an airport to which access is controlled by the inspection of persons or property.

**35-47-6-1. Possession of deadly weapon when boarding aircraft**

(a) A person who knowingly or intentionally boards a commercial or charter aircraft having in the person’s possession:

(1) a firearm;

(2) an explosive; or

(3) any other deadly weapon;

commits a Level 5 felony.

(b) However, the offense is a Level 4 felony if the person committed the offense with the intent to:

- (1) disrupt the operation of the aircraft; or
- (2) cause harm to another person.

**35-47-6-1.1. Undisclosed transport of a dangerous device**

(a) As used in this section, “dangerous device” means:

- (1) a firearm;
- (2) a destructive device (as defined in IC 35-47.5-2-4); or
- (3) a weapon of mass destruction (IC 35-31.5-2-354).

(b) A person who checks an item to be transported on a commercial passenger airline and who:

- (1) knows the item contains a dangerous device; and
- (2) knowingly or intentionally fails to disclose orally or in writing to the person to whom possession of the item is delivered for carriage that the item contains a dangerous device;

commits undisclosed transport of a dangerous device, a Class A misdemeanor.

**35-47-6-1.3. Possession of deadly weapon in airport**

A person who knowingly or intentionally enters an area of an airport to which access is controlled by the inspection of persons and property while the person:

- (1) possesses:
  - (A) a firearm;
  - (B) an explosive; or
  - (C) any other deadly weapon; or
- (2) has access to property that contains:
  - (A) a firearm;
  - (B) an explosive; or
  - (C) any other deadly weapon;

commits a Class A misdemeanor.

**35-47-6-1.4. Unlawfully entering controlled access area of airport**

(a) This section does not apply to a person who is:

- (1) employed by:
  - (A) an airport;
  - (B) an airline; or
  - (C) a law enforcement agency; and
- (2) acting lawfully within the scope of the person’s employment.

(b) A person who knowingly or intentionally enters an area of an airport to which access is controlled by the inspection of persons or property without submitting to the inspection commits a Class A misdemeanor.

**35-47-6-1.6. Disruption of operation of aircraft; hijacking aircraft**

(a) A person who knowingly or intentionally uses force or violence or the threat of force or violence to disrupt the operation of an aircraft commits a Level 4 felony.

(b) A person who knowingly or intentionally uses force or violence or the threat of force of violence to hijack an aircraft in flight commits a Level 2 felony.

(c) For purposes of this section, an aircraft is considered to be in flight while the aircraft is:

- (1) on the ground in Indiana:
  - (A) after the doors of the aircraft are closed for takeoff; and
  - (B) until the aircraft takes off;
- (2) in the airspace above Indiana; or
- (3) on the ground in Indiana:
  - (A) after the aircraft lands; and
  - (B) before the doors of the aircraft are opened after landing.

### **35-47-6-3. Consent to search of person or personal belongings**

Any person purchasing a ticket to board any commercial or charter aircraft shall by such purchase consent to a search of his person or personal belongings by the company selling said ticket to him. In case said person refuses to submit to a search of his person or personal belongings by said aircraft company, the person refusing may be denied the right to board said commercial or charter aircraft.

### **35-47-6-4. Immunity of airline company**

No action, either at law or equity, shall be brought against any commercial or charter airline company operating in Indiana for the refusal of said company to permit a person to board said aircraft where said person has refused to be searched as set out in section 3 of this chapter.

## **Chapter 7 Reports of Wounds Inflicted By Weapons or Dogs**

- |           |   |
|-----------|---|
| 35-47-7-1 | Persons required to report wounds               |
| 35-47-7-2 | Application of chapter                          |
| 35-47-7-3 | Reporting burns                                 |
| 35-47-7-4 | Reporting dog bites                             |
| 35-47-7-5 | Reporting injuries cause by destructive devices |
| 35-47-7-7 | Reporting fireworks injuries                    |

### **35-47-7-1. Persons required to report wounds**

Every case of a bullet wound, gunshot wound, powder burn, or any other injury arising from or caused by the discharge of a firearm, and every case of a wound which is likely to or may result in death and is actually or apparently inflicted by a knife, ice pick, or other sharp or pointed instrument, shall be reported at once to the law enforcement authorities of the county, city, or town in which the person reporting is located by either the physician attending or treating the case, or by the manager, superintendent, or other person in charge if the case is treated in a hospital, clinic, sanitarium, or other facility or institution. A person who violates this section commits a Class A misdemeanor.

### **35-47-7-2. Application of chapter**

The provisions of this chapter shall not apply to a wound or other injury received by a member of the armed forces of the United States or the state while engaged in the actual performance of duty.

### **35-47-7-3. Reporting burns**

(a) As used in this section, "burn" includes chemical burns, flash burns, and thermal burns.

(b) If a person is treated for:

- (1) A second or third degree burn to ten percent (10%) or more of the body;
- (2) Any burn to the upper respiratory tract or laryngeal edema due to the inhalation of superheated air; or
- (3) A burn that results in serious bodily injury;

the physician treating the person, or the hospital administrator or the hospital administrator's designee of the hospital or ambulatory outpatient surgical center (if the person is treated in a hospital or outpatient surgical center) shall report the case to the state fire marshal within seventy-two (72) hours. This report may be made orally or in writing and shall be considered confidential information.

(c) If a person is treated for a second or third degree burn to less than ten percent (10%) of the body, the attending physician may report the case to the state fire marshal under subsection (b).

(d) The state fire marshal shall ascertain the following when a report is made under this chapter:

- (1) Victim's name, address, and date of birth.
- (2) Address where burn injury occurred.
- (3) Date and time of injury.
- (4) Degree of burns and percent of body burned.
- (5) Area of body burned.
- (6) Injury severity.
- (7) Apparent cause of burn injury.
- (8) Name and address of reporting facility.
- (9) Attending physician.

### **35-47-7-4. Reporting dog bites**

The:

- (1) Physician who treats a person for a dog bite or an apparent dog bite; or
- (2) Administrator or the administrator's designee of the hospital or outpatient surgical center if a person is treated in a hospital or an outpatient surgical center for a dog bite or an apparent dog bite;

shall report the case to the Indiana state department of health not more than seventy-two (72) hours after the time the person is treated. The report may be made orally or in writing.

### **35-47-7-5. Reporting injuries caused by dangerous devices**

The:

- (1) physician who treats a person; or

(2) administrator or the administrator's designee of the hospital or outpatient surgical center where a person was treated; who has reason to believe that the physician or hospital is treating the person for an injury that was inflicted while the person was making or using a destructive device shall report the case to a local law enforcement agency not more than seventy-two (72) hours after the person is treated. The report may be made orally or in writing.

### **35-47-7-7. Reporting fireworks injuries**

(a) If:

- (1) a practitioner (as defined in IC 25-1-9-2) initially treats a person for an injury and identifies the person's injury as resulting from fireworks or pyrotechnics, the practitioner; or
- (2) a hospital or an outpatient surgical center initially treats a person for an injury and the administrator of the hospital or outpatient surgical center identifies the person's injury as resulting from fireworks or pyrotechnics, the administrator or the administrator's designee;

shall report the case to the state health data center of the state department of health not more than five (5) business days after the time the person is treated. The report may be made in writing on a form prescribed by the state department of health.

(b) A person submitting a report under subsection (a) shall make a reasonable attempt to include the following information:

- (1) The name, address, and age of the injured person.
- (2) The date and time of the injury and the location where the injury occurred.
- (3) If the injured person was less than eighteen (18) years of age at the time of the injury, whether an adult was present when the injury occurred.
- (4) Whether the injured person consumed an alcoholic beverage within three (3) hours before the occurrence of the injury.
- (5) A description of the firework or pyrotechnic that caused the injury.
- (6) The nature and extent of the injury.

(c) A report made under this section is confidential for purposes of IC 5-14-3-4(a)(1).

(d) The state department of health shall compile the data collected under this section and submit a report of the compiled data to the legislative council in an electronic format under IC 5-14-6 not later than December 31 of each year.

## **Chapter 8 Electronic Stun Weapons, Tasers and Stun Guns**

35-47-8-1	“Electronic stun weapon” defined
35-47-8-2	“Stun gun” defined
35-47-8-3	“Taser” defined
35-47-8-4	Applicability of handgun provisions
35-47-8-5	Unlawful acts

### **35-47-8-1. “Electronic stun weapon” defined**

As used in this chapter, “electronic stun weapon” means any mechanism that is:

- (1) Designed to emit an electronic, magnetic, or other type of charge that exceeds the equivalency of a five (5) milliamp sixty (60) hertz shock; and
- (2) Used for the purpose of temporarily incapacitating a person.

### **35-47-8-2. “Stun gun” defined**

As used in this chapter, “stun gun” means any mechanism that is:

- (1) Designed to emit an electronic, magnetic, or other type of charge that equals or does not exceed the equivalency of a five (5) milliamp sixty (60) hertz shock; and
- (2) Used for the purpose of temporarily incapacitating a person.

### **35-47-8-3. “Taser” defined**

As used in this chapter, “taser” means any mechanism that is:

- (1) Designed to emit an electronic, magnetic, or other type of charge or shock through the use of a projectile; and
- (2) Used for the purpose of temporarily incapacitating a person.

### **35-47-8-4. Applicability of handgun provisions**

IC 35-47-2 applies to an electronic stun weapon or taser.

### **35-47-8-5. Unlawful acts**

- (a) A person eighteen (18) years of age or over may purchase or possess a stun gun.
- (b) A person who knowingly or intentionally sells or furnishes a stun gun to a person who is less than eighteen (18) years of age commits a Class B misdemeanor.
- (c) A person who knowingly or intentionally uses a stun gun in the commission of a crime commits a Class A misdemeanor.
- (d) A person who knowingly or intentionally uses a stun gun on a law enforcement officer while the officer is performing the officer’s duties commits a Level 6 felony.

## **Chapter 9 Possession of Firearms On School Property**

35-47-9-1 Non-applicability of chapter

35-47-9-2 Possession of a firearm on school property or a school bus

### **35-47-9-1. Non-applicability of chapter**

This chapter does not apply to the following:

(1) A:

- (A) federal;
- (B) state; or
- (C) local;

law enforcement officer.

(2) A person who may legally possess a firearm and who has been authorized by:

- (A) a school board (as defined by IC 20-26-9-4); or
- (B) the body that administers a charter school established under IC 20-24;

to carry a firearm in or on school property.

(3) Except as provided in subsection (b) or (c), a person who:

(A) may legally possess a firearm; and

(B) possesses the firearm in a motor vehicle.

(4) A person who is a school resource officer, as defined in IC 20-26-18.2-1.

(5) Except as provided in subsection (b) or (c), a person who:

(A) may legally possess a firearm; and

(B) possesses only a firearm that is:

(i) locked in the trunk of the person's motor vehicle;

(ii) kept in the glove compartment of the person's locked motor vehicle; or

(iii) stored out of plain sight in the person's locked motor vehicle.

(b) For purposes of subsection (a)(3) and (a)(5), a person does not include a person who is:

(1) enrolled as a student in any high school except if the person is a high school student and is a member of a shooting sports team and the school's principal has approved the person keeping a firearm concealed in the person's motor vehicle on the days the person is competing or practicing as a member of a shooting sports team; or

(2) a former student of the school if the person is no longer enrolled in the school due to a disciplinary action within the previous twenty-four (24) months.

(c) For purposes of subsection (a)(3) and (a)(5), a motor vehicle does not include a motor vehicle owned, leased, or controlled by a school or school district unless the person who possesses the firearm is authorized by the school or school district to possess a firearm.

### **35-47-9-2. Possession of a firearm on school property or a school bus**

**Editor's Note: During the 2014 legislative session, the Indiana General Assembly enacted two bills (H.E.A. 1006 and S.E.A. 229) amending this section. Neither bill referred to the other. Since the bills were not identical, both versions of this section are set forth below.**

#### **Version #1 (H.E.A. 1006-2014)**

A person who knowingly or intentionally possesses a firearm:

(1) in or on school property; or

(2) on a school bus;

commits a Level 6 felony.

#### **Version #2 (S.E.A. 229-2014)**

(a) A person may not be charged with an offense under this subsection if the person may be charged with an offense described in subsection (c). A person who knowingly or intentionally possesses a firearm:

(1) in or on school property; or

(2) on a school bus;

commits a Level 6 felony.

(b) It is a defense to a prosecution under subsection (a) that:

- (1) the person is permitted to legally possess the firearm; and
- (2) the firearm is:
  - (A) locked in the trunk of the person's motor vehicle;
  - (B) kept in the glove compartment of the person's locked motor vehicle;
  - or
  - (C) stored out of plain sight in the person's locked motor vehicle.

(c) A person who is permitted to legally possess a firearm and who knowingly, intentionally, or recklessly leaves the firearm in plain view in a motor vehicle that is parked in a school parking lot commits a Class A misdemeanor.

## **Chapter 10**

### **Children and Firearms**

35-47-10-1	Non-application of chapter
35-47-10-2	"Adult" defined
35-47-10-3	"Child" defined
35-47-10-4	"Loaded" defined
35-47-10-5	Dangerous possession of a firearm
35-47-10-6	Dangerous control of a firearm
35-47-10-7	Dangerous control of a child
35-47-10-8	Additional penalties
35-47-10-9	Consecutive sentences
35-47-10-10	Boot camps

#### **35-47-10-1. Non-application of chapter**

- (a) This section does not apply to section 7 of this chapter.
- (b) Except as provided in subsection (c), this chapter does not apply to the following:
  - (1) A child who is attending a hunters safety course or a firearms safety course or an adult who is supervising the child during the course.
  - (2) A child engaging in practice in using a firearm for target shooting at an established range or in an area where the discharge of a firearm is not prohibited or supervised by:
    - (A) a qualified firearms instructor; or
    - (B) an adult who is supervising the child while the child is at the range.
  - (3) A child engaging in an organized competition involving the use of a firearm or participating in or practicing for a performance by an organized group under Section 501(c)(3) of the Internal Revenue Code that uses firearms as a part of a performance or an adult who is involved in the competition or performance.
  - (4) A child who is hunting or trapping under a valid license issued to the child under IC 14-22.
  - (5) A child who is traveling with an unloaded firearm to or from an activity described in this section.
  - (6) A child who:
    - (A) is on real property that is under the control of the child's parent, an adult family member of the child, or the child's legal guardian; and

(B) has permission from the child's parent or legal guardian to possess a firearm.

(7) A child who:

(A) is at the child's residence; and

(B) has the permission of the child's parent, an adult family member of the child, or the child's legal guardian to possess a firearm.

(c) This chapter applies to a child, and to a person who provides a firearm to a child, if the child:

(1) is ineligible to purchase or possess a firearm for any reason other than the child's age; or

(2) if the child intends to use the firearm to commit a crime.

**35-47-10-2. "Adult" defined**

As used in this chapter, "adult" means a person who is at least eighteen (18) years of age.

**35-47-10-3. "Child" defined**

As used in this chapter, "child" means a person who is less than eighteen (18) years of age.

**35-47-10-4. "Loaded" defined**

As used in this chapter, "loaded" means any of the following:

(1) A cartridge in the chamber or cylinder of a firearm.

(2) Ammunition in close proximity to a firearm so that a person can readily place the ammunition in the firearm.

**35-47-10-5. Dangerous possession of a firearm**

(a) A child who knowingly, intentionally, or recklessly possesses a firearm for any purpose other than a purpose described in section 1 of this chapter commits dangerous possession of a firearm, a Class A misdemeanor. However, the offense is a Level 5 felony if the child has a prior conviction under this section or has been adjudicated a delinquent for an act that would be an offense under this section if committed by an adult.

(b) A child who knowingly or intentionally provides a firearm to another child whom the child knows:

(1) is ineligible for any reason to purchase or otherwise receive from a dealer a firearm; or

(2) intends to use the firearm to commit a crime;

commits a Level 5 felony. However, the offense is a Level 3 felony if the other child uses the firearm to commit murder (IC 35-42-1-1).

**35-47-10-6. Dangerous control of a firearm**

An adult who knowingly or intentionally provides a firearm to a child whom the adult knows:

(1) is ineligible for any reason to purchase or otherwise receive from a dealer a firearm;

(2) intends to use the firearm to commit a crime;

commits dangerous control of a firearm, a Level 5 felony. However, the offense is a Level 4 felony if the adult has a prior conviction under this section, and a Level 3 felony if the child uses the firearm to commit murder (IC 35-42-1-1).

### **35-47-10-7. Dangerous control of a child**

A child's parent or legal guardian who knowingly, intentionally, or recklessly permits the child to possess a firearm:

(1) while:

(A) aware of a substantial risk that the child will use the firearm to commit a felony; and

(B) failing to make reasonable efforts to prevent the use of a firearm by the child to commit a felony; or

(2) when the child has been convicted of a crime of violence or has been adjudicated as a juvenile for an offense that would constitute a crime of violence if the child were an adult;

commits dangerous control of a child, a Level 5 felony. However, the offense is a Level 4 felony if the child's parent or legal guardian has a prior conviction under this section.

### **35-47-10-8. Additional penalties**

(a) In addition to any criminal penalty imposed for an offense under this chapter, the court shall order the following:

(1) That a person who has committed an offense be incarcerated for five (5) consecutive days in an appropriate facility.

(2) That the additional five (5) day term must be served within two (2) weeks after the date of sentencing.

(b) Notwithstanding IC 35-50-6, a person does not earn credit time while serving an additional five (5) day term of imprisonment imposed by a court under this section.

### **35-47-10-9. Consecutive sentences**

A court shall impose consecutive sentences upon a person who has a conviction under this chapter and a conviction under IC 35-47-2-7.

### **35-47-10-10. Boot camps**

When sentencing a child who has committed an offense under this chapter, a court may elect to place the child in a facility that uses a quasi-military program for rehabilitative purposes.

## **Chapter 12 Weapons of Mass Destruction**

35-47-12-1 Use and intent to carry out terrorism

35-47-12-2 Agricultural terrorism

35-47-12-3 Terroristic mischief

### **35-47-12-1. Use and intent to carry out terrorism**

A person who knowingly or intentionally:

(1) possesses;

- (2) manufactures;
- (3) places;
- (4) disseminates; or
- (5) detonates;

a weapon of mass destruction with the intent to carry out terrorism commits a Level 3 felony. However, the offense is a Level 2 felony if the conduct results in serious bodily injury or death of any person.

### **35-47-12-2. Agricultural terrorism**

A person who knowingly or intentionally:

- (1) possesses;
- (2) manufactures;
- (3) places;
- (4) disseminates; or
- (5) detonates;

a weapon of mass destruction with the intent to damage, destroy, sicken, or kill crops or livestock of another person without the consent of the other person commits agricultural terrorism, a Level 5 felony.

### **35-47-12-3. Terroristic mischief**

A person who knowingly or intentionally places or disseminates a device or substance with the intent to cause a reasonable person to believe that the device or substance is a weapon of mass destruction (as defined in IC 35-31.5-2-354) commits terroristic mischief, a Level 5 felony. However, the offense is a Level 4 felony if, as a result of the terroristic mischief:

- (1) a physician prescribes diagnostic testing or medical treatment for any person other than the person who committed the terroristic mischief; or
- (2) a person suffers serious bodily injury.

## **Chapter 14 Proceedings for Seizure and Retention Of Firearms of Dangerous Persons**

- 35-47-14-1 “Dangerous” defined
- 35-47-14-2 Search warrant for firearm in possession of dangerous person
- 35-47-14-3 Post-seizure procedures
- 35-47-14-4 Filing return of warrant
- 35-47-14-5 Hearing on retention of firearm
- 35-47-14-6 Burden of proof
- 35-47-14-7 Returning firearm to another person
- 35-47-14-8 Subsequent hearing for return of firearm
- 35-47-14-9 Disposal of firearm after 5 years
- 35-47-14-10 Sale of firearm

### **35-47-14-1. “Dangerous” defined**

- (a) For purposes of this chapter, an individual is “dangerous” if:

(1) the individual presents an imminent risk of personal injury to the individual or to another individual; or

(2) the individual may present a risk of personal injury to the individual or to another individual in the future and the individual:

(A) has a mental illness (as defined in IC 12-7-2-130) that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking the individual's medication while not under supervision; or

(B) is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or emotionally unstable conduct.

(b) The fact that an individual has been released from a mental health facility or has a mental illness that is currently controlled by medication does not establish that the individual is dangerous for the purposes of this chapter.

### **35-47-14-2. Search warrant for firearm in possession of dangerous person**

A circuit or superior court may issue a warrant to search for and seize a firearm in the possession of an individual who is dangerous if:

(1) a law enforcement officer provides the court with a sworn affidavit that:

(A) states why the law enforcement officer believes that the individual is dangerous and in possession of a firearm; and

(B) describes the law enforcement officer's interactions and conversations with:

(i) the individual who is alleged to be dangerous; or

(ii) another individual, if the law enforcement officer believes that information obtained from this individual is credible and reliable;

that have led the law enforcement officer to believe that the individual is dangerous and in possession of a firearm;

(2) the affidavit specifically describes the location of the firearm; and

(3) the circuit or superior court determines that probable cause exists to believe that the individual is:

(A) dangerous; and

(B) in possession of a firearm.

### **35-47-14-3. Post-seizure procedures**

(a) If a law enforcement officer seizes a firearm from an individual whom the law enforcement officer believes to be dangerous without obtaining a warrant, the law enforcement officer shall submit to the circuit or superior court having jurisdiction over the individual believed to be dangerous a written statement under oath or affirmation describing the basis for the law enforcement officer's belief that the individual is dangerous.

(b) The court shall review the written statement submitted under subsection (a). If the court finds that probable cause exists to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to retain the firearm. If the court finds that there is no probable cause to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual.

(c) This section does not authorize a law enforcement officer to perform a warrantless search or seizure if a warrant would otherwise be required.

**35-47-14-4. Filing return of warrant**

If a court issued a warrant to seize a firearm under this chapter, the law enforcement officer who served the warrant shall, not later than forty-eight (48) hours after the warrant was served, file a return with the court that:

- (1) states that the warrant was served; and
- (2) sets forth:
  - (A) the time and date on which the warrant was served;
  - (B) the name and address of the individual named in the warrant; and
  - (C) the quantity and identity of any firearms seized by the law enforcement officer.

**35-47-14-5. Hearing on retention of firearm**

(a) Not later than fourteen (14) days after a return is filed under section 4 of this chapter or a written statement is submitted under section 3 of this chapter, the court shall conduct a hearing to determine whether the seized firearm should be:

- (1) returned to the individual from whom the firearm was seized; or
- (2) retained by the law enforcement agency having custody of the firearm.

(b) The court shall set the hearing date as soon as possible after the return is filed under section 4 of this chapter. The court shall inform:

- (1) the prosecuting attorney; and
- (2) the individual from whom the firearm was seized;

of the date, time, and location of the hearing. The court may conduct the hearing at a facility or other suitable place not likely to have a harmful effect upon the individual's health or well-being.

**35-47-14-6. Burden of proof**

(a) In a hearing conducted under section 5 of this chapter, the state has the burden of proving all material facts by clear and convincing evidence.

(b) If the court, in a hearing under section 5 of this chapter, determines that the state has proved by clear and convincing evidence that the individual is dangerous, the court may order that the law enforcement agency having custody of the seized firearm retain the firearm. In addition, if the individual has received a license to carry a handgun, the court shall suspend the individual's license to carry a handgun. If the court determines that the state has failed to prove that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual from whom it was seized.

(c) If the court, in a hearing under section 5 of this chapter, orders a law enforcement agency to retain a firearm, the law enforcement agency shall retain the firearm until the court orders the firearm returned or otherwise disposed of.

**35-47-14-7. Returning firearm to another person**

If the court, in a hearing conducted under section 5 of this chapter, determines that:

- (1) the individual from whom the firearm was seized is dangerous; and
- (2) the firearm seized from the individual is owned by another individual;

the court may order the law enforcement agency having custody of the firearm to return the firearm to the owner of the firearm.

### **35-47-14-8. Subsequent hearings for return of firearm**

(a) At least one hundred eighty (180) days after the date on which a court orders a law enforcement agency to retain an individual's firearm under section 6(b) of this chapter, the individual may petition the court for return of the firearm.

(b) Upon receipt of a petition described in subsection (a), the court shall:

- (1) enter an order setting a date for a hearing on the petition; and
- (2) inform the prosecuting attorney of the date, time, and location of the hearing.

(c) The prosecuting attorney shall represent the state at the hearing on a petition under this section.

(d) In a hearing on a petition under this section, the individual:

- (1) may be represented by an attorney; and
- (2) must prove by a preponderance of the evidence that the individual is not dangerous.

(e) If, upon completion of the hearing and consideration of the record, the court finds that the individual is not dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual.

(f) If the court denies an individual's petition under this section, the individual may not file a subsequent petition until at least one hundred eighty (180) day after the date on which the court denied the petition.

### **35-47-14-9. Disposal of firearm after 5 years**

If at least five (5) years have passed since a court conducted the first hearing to retain a firearm under this chapter, the court, after giving notice to the parties and conducting a hearing, may order the law enforcement agency having custody of the firearm to dispose of the firearm in accordance with IC 35-47-3.

### **35-47-14-10. Sale of firearm**

(a) If a court has ordered a law enforcement agency to retain an individual's firearm under section 6 of this chapter, the individual may request the court to order the law enforcement agency to sell the firearm at auction under IC 35-47-3-2 and return the proceeds to the individual.

(b) An individual may make the request described in subsection (a):

- (1) at the retention hearing described in section 9 of this chapter; or
- (2) at any time before the retention hearing described in section 9 of this chapter is held.

(c) If an individual timely requests a sale of a firearm under subsection (a), the court shall order the law enforcement agency having custody of the firearm to sell the firearm at auction under IC 35-47-3-2, unless the serial number of the firearm has been obliterated.

(d) If the court issues an order under subsection (c), the court's order must require:

- (1) that the firearm be sold not more than one (1) year after receipt of the order; and
- (2) that the proceeds of the sale be returned to the individual who owns the firearm. However, the law enforcement agency may retain not more than eight

percent (8%) of the sale price to pay the costs of the sale, including administrative costs and the auctioneer's fee.

## **Chapter 15**

### **Retired Law Enforcement Officers Identification for Carrying Firearms**

- 35-47-15-1 "Firearm" defined
- 35-47-15-2 "Law enforcement agency" defined
- 35-47-15-3 "Law enforcement officer" defined
- 35-47-15-4 Photo ID for retired officers
- 35-47-15-5 Certification for carrying concealed firearm
- 35-47-15-6 Immunity

#### **35-47-15-1. "Firearm" defined**

As used in this chapter, "firearm" has the meaning set forth in 18 U.S.C. 926C(e).

#### **35-47-15-2. "Law enforcement agency" defined**

As used in this chapter, "law enforcement agency" means an agency or department of:

- (1) the state; or
- (2) a political subdivision of the state;

whose principal function is the apprehension of criminal offenders.

#### **35-47-15-3. "Law enforcement officer" defined**

As used in this chapter, "law enforcement officer" has the meaning set forth in IC 35-31.5-2-185. The term includes an arson investigator employed by the office of the state fire marshal.

#### **35-47-15-4. Photo ID for retired officers**

After June 30, 2005, all law enforcement agencies shall issue annually to each person who has retired from that agency as a law enforcement officer a photographic identification.

#### **35-47-15-5. Certification for carrying concealed firearm**

(a) In addition to the photographic identification issued under section 4 of this chapter, after June 30, 2005, a retired law enforcement officer who carries a concealed firearm under 18 U.S.C. 926C must obtain annually, for each type of firearm that the retired officer intends to carry as a concealed firearm, evidence that the retired officer meets the training and qualification standards for carrying that type of firearm that are established:

- (1) by the retired officer's law enforcement agency, for active officers of the agency; or
- (2) by the state, for active law enforcement officers in the state.

A retired law enforcement officer bears any expense associated with obtaining the evidence required under this subsection.

(b) The evidence required under subsection (a) is one (1) of the following:

(1) For compliance with the standards described in subsection (a)(1), an endorsement issued by the retired officer's law enforcement agency with or as part of the photographic identification issued under section 4 of this chapter.

(2) For compliance with the standards described in subsection (a)(2), a certification issued by the state.

### **35-47-15-6. Immunity**

An entity that provides evidence required under section 5 of this chapter is immune from civil or criminal liability for providing the evidence.

## **Chapter 16 Possession of Firearms By Judicial Officers**

35-47-16-1 Authorization of judicial officers to possess firearms

35-47-16-2 Civil and criminal immunities

### **35-47-16-1. Authorization of judicial officers to possess firearms**

A judicial officer:

(1) may possess and use a firearm in the same locations that a law enforcement officer who is authorized to carry a firearm under IC 5-2-1 may possess a firearm while the law enforcement officer is engaged in the execution of the law enforcement officer's official duties; and

(2) may not be prohibited from possessing a firearm on land or in buildings and other structures owned or leased by:

(A) the state or any agency of state government; or

(B) a political subdivision (as defined in IC 3-5-2-38).

### **35-47-16-2. Civil and criminal immunities**

A judicial officer who possesses a firearm as described in section 1 of this chapter has the same civil and criminal immunities and defenses concerning possession and use of the firearm that a law enforcement officer has when the law enforcement officer:

(1) possesses and uses a firearm; and

(2) is engaged in the execution of the law enforcement officer's official duties.

## **ARTICLE 47.5 REGULATED EXPLOSIVES AND DESTRUCTIVE DEVICES**

Ch. 1 Application

Ch. 2 Definitions

Ch. 3 Classification of Regulated Explosives

Ch. 4 Registration and Control

Ch. 5 Offenses Relating to Regulated Explosives and Destructive Devices

## **Chapter 1 Applicability**

35-47.5-1-1 Applicability

### **35-47.5-1-1. Applicability**

This article does not apply to the following:

- (1) Fertilizers, propellant actuated devices, or propellant activated industrial tools:
  - (A) manufactured;
  - (B) imported;
  - (C) distributed; or
  - (D) used;

for their designed purposes.

- (2) A pesticide that is:

- (A) manufactured;
- (B) stored;
- (C) transported;
- (D) distributed;
- (E) processed; or
- (F) used;

for its designed purposes or in accordance with Chapter 7 of Title 2, the federal Insecticide, Fungicide, and Rodenticide Act, 61 Stat.163, as amended, and the federal Environmental Pesticide Control Act of 1972, P.L.92-516, as amended.

## **Chapter 2 Definitions**

- 35-47.5-2-1 Application of definitions
- 35-47.5-2-2 “Booby trap” defined
- 35-47.5-2-3 “Commission” defined
- 35-47.5-2-4 “Destructive device” defined
- 35-47.5-2-5 “Detonator” defined
- 35-47.5-2-6 “Distribute” defined
- 35-47.5-2-7 “Explosives” defined
- 35-47.5-2-8 “Hoax device” or “replica” defined
- 35-47.5-2-9 “Incendiary” defined
- 35-47.5-2-10 “Division” defined
- 35-47.5-2-11 “Overpressure device” defined
- 35-47.5-2-12 “Property” defined
- 35-47.5-2-13 “Regulated explosive” defined

### **35-47.5-2-1. Application of definitions**

The definitions in this chapter apply throughout this article.

### **35-47.5-2-2. “Booby trap” defined**

“Booby trap” means a device meant to cause death or bodily injury by:

- (1) hiding the device; or
- (2) activating the device by trip wires, switches, antidisturbance, or other remote means.

**35-47.5-2-3. “Commission” defined**

“Commission” refers to the fire prevention and building safety commission established by IC 22-12-2-1.

**35-47.5-2-4. “Destructive device” defined**

(a) “Destructive device” means:

- (1) an explosive, incendiary, or overpressure device that is configured as a:
  - (A) bomb;
  - (B) grenade;
  - (C) rocket with a propellant charge of more than four (4) ounces;
  - (D) missile having an explosive or incendiary charge of more than one-quarter (1/4) ounce;
  - (E) mine;
  - (F) Molotov cocktail; or
  - (G) device that is substantially similar to an item described in clauses (A) through (F);
- (2) a type of weapon that may be readily converted to expel a projectile by the action of an explosive or other propellant through a barrel that has a bore diameter of more than one-half (1/2) inch; or
- (3) a combination of parts designed or intended for use in the conversion of a device into a destructive device.

(b) The term does not include the following:

- (1) A pistol, rifle, shotgun, or weapon suitable for sporting or personal safety purposes or ammunition.
- (2) A device that is neither designed nor redesigned for use as a weapon.
- (3) A device that, although originally designed for use as a weapon, is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device.
- (4) A military surplus ordinance sold, loaned, or given by authority of the appropriate official of the United States Department of Defense.

**35-47.5-2-5. “Detonator” defined**

“Detonator” means a device containing a detonating charge that is used to initiate detonation in an explosive, including the following:

- (1) Electric blasting caps.
- (2) Blasting caps for use with safety fuses.
- (3) Detonating cord delay connectors.
- (4) Blasting caps for use with a shock tube.
- (5) Improvised devices designed to function as a detonator.

**35-47.5-2-6. “Distribute” defined**

“Distribute” means the actual, constructive, or attempted transfer from one (1) person to another.

**35-47.5-2-7. “Explosives” defined**

“Explosives” means a chemical compound or other substance or mechanical system intended to produce an explosion capable of causing injury to persons or damage to property or containing oxidizing and combustible units or other ingredients in such proportions or quantities that ignition, fire, friction, concussion, percussion, or detonation may produce an explosion capable of causing injury to persons or damage to property, including the substances designated in IC 35-47.5-5-3. The term does not include the following:

- (1) A model rocket and model rocket engine designed, sold, and used to propel recoverable aero models.
- (2) A paper cap in which the explosive content does not average more than twenty-five hundredths (0.25) grains of explosive mixture per paper cap for toy pistols, toy cannons, toy canes, toy guns, or other devices using paper caps unless the paper cap is used as a component of a destructive device.

**35-47.5-2-8. “Hoax device” or “replica” defined**

“Hoax device” or “replica” means a device or article that has the appearance of a destructive device or detonator.

**35-47.5-2-9. “Incendiary” defined**

“Incendiary” means a flammable liquid or compound with a flash point not greater than one hundred fifty (150) degrees Fahrenheit, as determined by a Tagliabue or an equivalent closed cup device, including gasoline, kerosene, fuel oil, or a derivative of these substances.

**35-47.5-2-10. “Division” defined**

“Division” refers to the division of fire and building safety.

**35-47.5-2-11. “Overpressure device” defined**

“Overpressure device” means:

- (1) a frangible container filled with an explosive gas or expanding gas that is designed or constructed to cause the container to break or fracture in a manner that is capable of causing death, bodily harm, or property damage; or
- (2) a container filled with an explosive gas or expanding gas or chemicals that generate an expanding gas.

**35-47.5-2-12. “Property” defined**

“Property” means real or personal property of any kind, including money, choses in action, and other similar interests in property.

**35-47.5-2-13. “Regulated explosive” defined**

(a) “Regulated explosive” includes:

- (1) a destructive device; and
- (2) an explosive.

(b) The term does not include the following:

- (1) An explosive in a manufactured article that is designed and packaged in a manner that is likely to prevent an explosion resulting in property damage or

personal injury. A manufactured article to which this subdivision applies includes fixed ammunition in small arms, a firework, and a safety fuse match.

(2) Gasoline, kerosene, naphtha, turpentine, or benzine.

(3) An explosive that is being transported on or in a vessel, railroad car, or highway vehicle in conformity with the regulations adopted by the United States Department of Transportation.

(4) A blasting explosive that is transported or used for agricultural purposes and that is in a quantity that does not exceed two hundred (200) pounds.

(5) Ammonium nitrate or other explosive compounds kept for mining purposes at coal mines regulated under IC 14-34.

### **Chapter 3** **Classification of Regulated Explosives**

#### **35-47.5-3-1. Regulated explosives**

The following materials are regulated explosives within the meaning of this article:

(1) Acetylides of heavy metals.

(2) Aluminum containing polymeric propellant.

(3) Aluminum ophorite explosive.

(4) Amatex.

(5) Amatol.

(6) Ammonal.

(7) Ammonium nitrate explosive mixtures, cap sensitive.

(8) Ammonium nitrate explosive mixtures, noncap sensitive.

(9) Aromatic nitro-compound explosive mixtures.

(10) Ammonium perchlorate explosive mixtures.

(11) Ammonium perchlorate composite propellant.

(12) Ammonium picrate (picrate of ammonia, explosive D).

(13) Ammonium salt lattice with isomorphously substituted inorganic salts.

(14) Ammonium tri-iodide.

(15) ANFO (ammonium nitrate-fuel oil).

(16) Baratol.

(17) Baronol.

(18) BEAF (1,2-bis (2,2-difluoro-2-nitroacetoxyethane)).

(19) Black powder.

(20) Black powder based explosive mixtures.

(21) Blasting agents, nitro-carbo-nitrates, including noncap sensitive slurry and water-gel explosives.

(22) Blasting caps.

(23) Blasting gelatin.

(24) Blasting powder.

(25) BTNEC (bis (trinitroethyl) carbonate).

(26) Bulk salutes.

(27) BTNEN (bis (trinitroethyl) nitramine).

(28) BTTN (1,2,4 butanetriol trinitrate).

(29) Butyl tetryl.

- (30) Calcium nitrate explosive mixture.
- (31) Cellulose hexanitrate explosive mixture.
- (32) Chlorate explosive mixtures.
- (33) Composition A and variations.
- (34) Composition B and variations.
- (35) Composition C and variations.
- (36) Copper acetylide.
- (37) Cyanuric triazide.
- (38) Cyclotrimethylenetrinitramine (RDX).
- (39) Cyclotetramethylenetetranitramine (HMX).
- (40) Cyclonite (RDX).
- (41) Cyclotol.
- (42) DATB (diaminotrinitrobenzene).
- (43) DDNP (diazodinitrophenol).
- (44) DEGDN (diethyleneglycol dinitrate).
- (45) Detonating cord.
- (46) Detonators.
- (47) Dimethylol dimethyl methane dinitrate composition.
- (48) Dinitroethyleneurea.
- (49) Dinitroglycerine (glycerol dinitrate).
- (50) Dinitrophenol.
- (51) Dinitrophenolates.
- (52) Dinitrophenyl hydrazine.
- (53) Dinitroresorcinol.
- (54) Dinitrotoluene-sodium nitrate explosive mixtures.
- (55) DIPAM.
- (56) Dipicryl sulfone.
- (57) Dipicrylamine.
- (58) DNDP (dinitropentano nitrile).
- (59) DNPA (2,2-dinitropropyl acrylate).
- (60) Dynamite.
- (61) EDDN (ethylene diamine dinitrate).
- (62) EDNA.
- (63) Ednatol.
- (64) EDNP (ethyl 4,4-dinitropentanoate).
- (65) Erythritol tetranitrate explosives.
- (66) Esters of nitro substituted alcohols.
- (67) EGDN (ethylene glycol dinitrate).
- (68) Ethyl-tetryl.
- (69) Explosive conitrates.
- (70) Explosive gelatins.
- (71) Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
- (72) Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.

- (73) Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
- (74) Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
- (75) Explosive mixtures containing sensitized nitromethane.
- (76) Explosive mixtures containing tetranitromethane (nitroform).
- (77) Explosive nitro compounds of aromatic hydrocarbons.
- (78) Explosive organic nitrate mixtures.
- (79) Explosive liquids.
- (80) Explosive powders.
- (81) Flash powder.
- (82) Fulminate of mercury.
- (83) Fulminate of silver.
- (84) Fulminating gold.
- (85) Fulminating mercury.
- (86) Fulminating platinum.
- (87) Fulminating silver.
- (88) Gelatinized nitrocellulose.
- (89) Gem-dinitro aliphatic explosive mixtures.
- (90) Guanyl nitrosamino guanyl tetrazene.
- (91) Guanyl nitrosamino guanylidene hydrazine.
- (92) Hexogene or octogene and a nitrated N-methylaniline.
- (93) Hexolites.
- (94) HMX(cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetranitramine; octogen).
- (95) Hydrazinium nitrate/hydrazine/aluminum explosive system.
- (96) Hydrazoic acid.
- (97) Igniter cord.
- (98) Igniters.
- (99) Initiating tube systems.
- (100) KDNBF (potassium dinitrobenzo-furoxane).
- (101) Lead azide.
- (102) Lead mannite.
- (103) Lead mononitroresorcinate.
- (104) Lead picrate.
- (105) Lead salts, explosive.
- (106) Lead styphnate (styphnate of lead, lead trinitroresorcinate).
- (107) Liquid nitrated polyol and trimethylolethane.
- (108) Liquid oxygen explosives.
- (109) Magnesium ophorite explosives.
- (110) Mannitol hexanitrate.
- (111) MDNP (methyl 4,4-dinitropentanoate).
- (112) MEAN (monoethanolamine nitrate).
- (113) Mercuric fulminate.
- (114) Mercury oxalate.
- (115) Mercury tartrate.
- (116) Metriol trinitrate.

- (117) Minol-2 (40% TNT, 40% ammonium nitrate, 20% aluminum).
- (118) MMAN (monomethylamine nitrate); methylamine nitrate.
- (119) Mononitrotoluene-nitroglycerin mixture.
- (120) Monopropellants.
- (121) NIBTN (nitroisobutametrial trinitrate).
- (122) Nitrate sensitized with gelled nitroparaffin.
- (123) Nitrated carbohydrate explosive.
- (124) Nitrated glucoside explosive.
- (125) Nitrated polyhydric alcohol explosives.
- (126) Nitrates of soda explosive mixtures.
- (127) Nitric acid and a nitro aromatic compound explosive.
- (128) Nitric acid and carboxylic fuel explosive.
- (129) Nitric acid explosive mixtures.
- (130) Nitro aromatic explosive mixtures.
- (131) Nitro compounds of furane explosive mixtures.
- (132) Nitrocellulose explosive.
- (133) Nitroderivative of urea explosive mixture.
- (134) Nitrogelatin explosive.
- (135) Nitrogen trichloride.
- (136) Nitrogen tri-iodide.
- (137) Nitroglycerine (NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine).
- (138) Nitroglycide.
- (139) Nitroglycol (ethylene glycol dinitrate, EGDN).
- (140) Nitroguanidine explosives.
- (141) Nitroparaffins explosive grade and ammonium nitrate mixtures.
- (142) Nitronium perchlorate propellant mixtures.
- (143) Nitrostarch.
- (144) Nitro substituted carboxylic acids.
- (145) Nitrourea.
- (146) Octogen (HMX).
- (147) Octol (75% HMX, 25% TNT).
- (148) Organic amine nitrates.
- (149) Organic nitramines.
- (150) PBX (RDX and plasticizer).
- (151) Pellet powder.
- (152) Penthrinite composition.
- (153) Pentolit.
- (154) Perchlorate explosive mixtures.
- (155) Peroxide based explosive mixtures.
- (156) PETN (nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate).
- (157) Picramic acid and its salts.
- (158) Picramide.
- (159) Picrate of potassium explosive mixtures.
- (160) Picratol.
- (161) Picric acid (manufactured as an explosive).

- (162) Picryl chloride.
- (163) Picryl fluoride.
- (164) PLX (95% nitromethane, 5% ethylenediamine).
- (165) Polynitro aliphatic compounds.
- (166) Polyolpolynitrate-nitrocellulose explosive gels.
- (167) Potassium chlorate and lead sulfocyanate explosive.
- (168) Potassium nitrate explosive mixtures.
- (169) Potassium nitroaminotetrazole.
- (170) Pyrotechnic compositions.
- (171) PYX (2,6-bis(picrylamino)-3,5-dinitropyridine).
- (172) RDX (cyclonite, hexogen, T4,cyclo-1,3, 5,-trimethylene-2,4,6,-rinitramine; hexahydro-1,3,5-trinitro-S-triazine).
- (173) Safety fuse.
- (174) Salutes (bulk).
- (175) Salts of organic amino sulfonic acid explosive mixture.
- (176) Silver acetylde.
- (177) Silver azide.
- (178) Silver fulminate.
- (179) Silver oxalate explosive mixtures.
- (180) Silver styphnate.
- (181) Silver tartrate explosive mixtures.
- (182) Silver tetrazene.
- (183) Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer, cap sensitive.
- (184) Smokeless powder.
- (185) Sodatol.
- (186) Sodium amatol.
- (187) Sodium azide explosive mixture.
- (188) Sodium dinitro-ortho-cresolate.
- (189) Sodium nitrate-potassium nitrate explosive mixture.
- (190) Sodium picramate.
- (191) Special fireworks (as defined in IC 22-11-14-1).
- (192) Squibs.
- (193) Styphnic acid explosives.
- (194) Tacot (tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene).
- (195) TATB (triaminotrinitrobenzene).
- (196) TATP (triacetone triperoxide).
- (197) TEGDN (triethylene glycol dinitrate).
- (198) Tetrazene (tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate).
- (199) Tetranitrocarbazole.
- (200) Tetryl (2,4,6 tetranitro-N-methylaniline).
- (201) Tetrytol.
- (202) Thickened inorganic oxidizer salt slurried explosive mixture.
- (203) TMETN (trimethylolethane trinitrate).
- (204) TNEF (trinitroethyl formal).
- (205) TNEOC (trinitroethylorthocarbonate).

- (206) TNEOF (trinitroethylorthoformate).
- (207) TNT (trinitrotoluene, trotyl, trilitite, triton).
- (208) Torpex.
- (209) Tridite.
- (210) Trimethylol ethyl methane trinitrate composition.
- (211) Trimethylolthane trinitrate-nitrocellulose.
- (212) Trimonite.
- (213) Trinitroanisole.
- (214) Trinitrobenzene.
- (215) Trinitrobenzoic acid.
- (216) Trinitrocresol.
- (217) Trinitro-meta-cresol.
- (218) Trinitronaphthalene.
- (219) Trinitrophenetol.
- (220) Trinitrophenol.
- (221) Trinitroresorcinol.
- (222) Tritonal.
- (223) Urea nitrate.
- (224) Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates, cap sensitive.
- (225) Water in oil emulsion explosive compositions.
- (226) Xanthamonas hydrophilic colloid explosive mixture.

## **Chapter 4**

### **Registration and Control**

- 35-47.5-4-1 Division inspections of manufacturers
- 35-47.5-4-2 Insurance requirements
- 35-47.5-4-3 Division inspection of storage places
- 35-47.5-4-4 Regulated explosives magazine permit
- 35-47.5-4-4.5 Duties of commission
- 35-47.5-4-5 Qualifications of regulated explosives permit
- 35-47.5-4-6 Improper storage
- 35-47.5-4-7 Reporting injuries relating to destructive devices

#### **35-47.5-4-1. Division inspections of manufacturers**

The division shall carry out a program to periodically inspect places where regulated explosives are manufactured.

#### **35-47.5-4-2. Insurance requirements**

(a) The division may order any person engaged in the manufacture or handling of a regulated explosive and any person with control over a place where regulated explosives are manufactured or handled to maintain insurance covering fire and explosion losses. The order is not effective until sixty (60) days after the date that notice of the order is received.

(b) The state fire marshal shall specify the insurance required under subsection (a) in an amount not less than ten thousand dollars (\$10,000) nor more than two hundred fifty thousand dollars (\$250,000).

(c) Proof of the insurance required under this section must be maintained with the department of insurance.

(d) The insurance commissioner may exempt a person from the insurance requirements under this section if an applicant for the exemption submits proof that the applicant has the financial ability to discharge all judgments in the amount specified by the state fire marshal. The insurance commissioner may revoke an exemption under this subsection if the commissioner requires additional proof of financial ability and:

- (1) the exempted person fails to comply with the order; or
- (2) the insurance commissioner determines that the exempted person has failed to provide adequate proof of financial ability.

### **35-47.5-4-3. Division inspection of storage places**

The division shall carry out a program to periodically inspect places where regulated explosives are stored.

### **35-47.5-4-4. Regulated explosives magazine permit**

(a) The division shall issue a regulated explosives magazine permit to maintain an explosives magazine to an applicant who qualifies under section 5 of this chapter.

(b) A permit issued under subsection (a) expires one (1) year after it is issued. The permit is limited to storage of the types and maximum quantities of explosives specified in the permit in the place covered by the permit and under the construction and location requirements specified in the rules of the commission.

### **35-47.5-4-4.5. Duties of commission**

(a) This section does not apply to:

- (1) a person who is regulated under IC 14-34; or
- (2) near surface or subsurface use of regulated explosives associated with oil and natural gas:
  - (A) exploration;
  - (B) development;
  - (C) production; or
  - (D) abandonment activities or procedures.

(b) The commission shall adopt rules under IC 4-22-2 to:

- (1) govern the use of a regulated explosive; and
- (2) establish the requirements for the issuance of a license for the use of a regulated explosive.

(c) The commission shall include the following requirements in the rules adopted under subsection (b):

- (1) Relicensure every three (3) years after the initial issuance of a license.
- (2) Continuing education as a condition of relicensure.
- (3) An application for licensure or relicensure must be submitted to the division on forms approved by the commission.
- (4) A fee for licensure or relicensure.

(5) Reciprocal recognition of a license for the use of a regulated explosive issued by another state if the licensure requirements of the other state are substantially similar to the licensure requirements established by the commission.

(d) A person may not use a regulated explosive unless the person has a license issued under this section for the use of a regulated explosive.

(e) The division shall carry out the licensing and relicensing program under the rules adopted by the commission.

(f) As used in this section, “regulated explosive” does not include either of the following:

(1) Consumer fireworks (as defined in 27 CFR 555.11).

(2) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

#### **35-47.5-4-5. Qualifications of regulated explosives permit**

(a) To qualify for a regulated explosives permit, an applicant must:

(1) submit information on the form provided by the state fire marshal describing:

(A) the location of the affected magazine;

(B) the types and maximum quantities of explosives that will be kept in the place covered by the application; and

(C) the distance that the affected magazine will be located from the nearest highway, railway, and structure that is also used as a place of habitation or assembly other than for the manufacture of explosives;

(2) except as provided in subdivision (3), demonstrate through an inspection that the magazine is constructed and located in accordance with the rules adopted by the commission;

(3) demonstrate through an inspection that smoking, matches, open flames, and spark producing devices are not allowed within a room containing an indoor magazine; and

(4) pay the fee under IC 22-12-6-6.

(b) To qualify for the renewal of a regulated explosives permit, the applicant must pay the fee under IC 22-12-6-6.

#### **35-47.5-4-6. Improper storage**

(a) This section does not apply to storage that is exempted from the requirements of this section in the rules adopted by the commission under IC 22-13-3.

(b) A person who:

(1) stores a regulated explosive;

(2) has control over a regulated explosive that is stored; or

(3) has control over a place where a regulated explosive is stored;

without a regulated explosives magazine permit issued under this chapter that covers the storage commits a Class C infraction.

#### **35-47.5-4-7. Reporting injuries relating to destructive devices**

A physician or hospital that has reason to believe that the physician or hospital is treating a person for an injury inflicted while the person was making or using a destructive device shall report the injury to a local law enforcement agency under IC 35-47-7-5.

**Chapter 5**  
**Offenses Relating to Regulated**  
**Explosives and Destructive Devices**

- 35-47.5-5-1 Non-application of chapter
- 35-47.5-5-2 Processing, manufacturing, transporting or distributing a destructive device
- 35-47.5-5-3 Convicted felon processing, manufacturing, transporting or distributing a regulated explosive
- 35-47.5-5-4 Distributing regulated explosive to a convicted felon
- 35-47.5-5-5 Distribution to a minor
- 35-47.5-5-6 Manufacturing, processing, transporting, distributing or using a hoax device
- 35-47.5-5-7 Hindering or obstructing detection or disarming of a destructive device
- 35-47.5-5-8 Possessing, transporting, receiving, placing or detonating a destructive device
- 35-47.5-5-9 Use of an overpressure device
- 35-47.5-5-10 Deploying a booby trap
- 35-47.5-5-11 Violation of rules regarding use of regulated explosives

**35-47.5-5-1. Non-application of chapter**

Sections 2, 3, 4, 5 and 6 of this chapter do not apply to the following:

- (1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.
- (2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.
- (3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.
- (4) A law enforcement agency, a fire service agency, the department of homeland security, or an emergency management agency of Indiana, any agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent of the United States while in performance of official duties.
- (5) A law enforcement officer, a fire official, or an emergency management official of the United States or any other state if that person is attending training in Indiana.
- (6) The armed forces of the United States or of Indiana.
- (7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:
  - (A) authorized by the chief executive officer of the educational institution or the officer's designee; or
  - (B) conducted under the policy of the educational institution;

and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.

(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.

### **35-47.5-5-2. Processing, manufacturing, transporting or distributing a destructive device**

A person who knowingly or intentionally:

- (1) possesses;
- (2) manufactures;
- (3) transports;
- (4) distributes;
- (5) possesses with intent to distribute; or
- (6) offers to distribute;

a destructive device, unless authorized by law, commits a Level 5 felony.

### **35-47.5-5-3. Convicted felon processing, manufacturing, transporting or distributing a regulated explosive**

A person who has been convicted of a felony by an Indiana court or a court of any other state, the United States, or another country and knowingly or intentionally:

- (1) possesses;
- (2) manufactures;
- (3) transports;
- (4) distributes;
- (5) possesses with intent to distribute; or
- (6) offers to distribute;

a regulated explosive commits a Level 5 felony. However, the offense is a Level 4 felony if the person has a prior unrelated conviction for an offense under this section.

### **35-47.5-5-4. Distributing regulated explosive to a convicted felon**

A person who knowingly or intentionally distributes a regulated explosive to a person who has been convicted of a felony by an Indiana court or a court of another state, the United States, or another country commits a Level 5 felony.

### **35-47.5-5-5. Distribution to a minor**

A person who knowingly or intentionally distributes or offers to distribute:

- (a) a destructive device;
- (b) an explosive; or
- (c) a detonator;

to a person who is less than eighteen (18) years of age commits a Level 4 felony.

**35-47.5-5-6. Manufacturing, possessing, transporting, distributing, or using a hoax device**

A person who:

- (1) manufactures;
- (2) possesses;
- (3) transports;
- (4) distributes; or
- (5) uses;

a hoax device or replica with the intent to cause another to believe that the hoax device or replica is a destructive device or detonator commits a Level 6 felony.

**35-47.5-5-7. Hindering or obstructing detection or disarming of a destructive device**

A person who knowingly or intentionally hinders or obstructs:

- (1) a law enforcement officer;
- (2) a fire official;
- (3) an emergency management official;
- (4) an animal trained to detect destructive devices; or
- (5) a robot or mechanical device designed or used by a law enforcement officer, fire official, or emergency management official;

of Indiana or of the United States in the detection, disarming, or destruction of a destructive device commits a Level 4 felony.

**35-47.5-5-8. Possessing, transporting, receiving, placing or detonating a destructive device**

A person who:

- (1) possesses;
- (2) transports;
- (3) receives;
- (4) places; or
- (5) detonates;

a destructive device or explosive with the knowledge or intent that it will be used to kill, injure, or intimidate an individual or to destroy property commits a Level 2 felony.

**35-47.5-5-9. Use of an overpressure device**

A person who knowingly or intentionally uses an overpressure device commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction for an offense under this section.

**35-47.5-5-10. Deploying a booby trap**

A person who knowingly or intentionally deploys a booby trap commits a Level 6 felony.

**35-47.5-5-11. Violation of rules regarding use of regulated explosives**

A person who recklessly violates a rule regarding the use of a regulated explosive adopted by the commission under IC 35-47.5-4-4.5 commits a Class A misdemeanor. However, the offense is:

- (1) a Level 6 felony if the violation of the rule proximately causes bodily injury;
- and

(2) a Level 5 felony if the violation of the rule proximately causes death.

**ARTICLE 48**  
**CONTROLLED SUBSTANCES**  
**[PORTIONS OMITTED]**

Ch. 1	Definitions
Ch. 2	Classification of Drug
Ch. 4	Offenses Relating to Controlled Substances

**Chapter 1**  
**Definitions**

35-48-1-0.1	Application of amendments
35-48-1-2	Application of definitions
35-48-1-3	“Administer” defined
35-48-1-5	“Agent” defined
35-48-1-6	“Board” defined
35-48-1-7	“Cocaine” defined
35-48-1-9	“Controlled substance” defined
35-48-1-9.3	“Controlled substance analog” defined
35-48-1-10	“Counterfeit substance” defined
35-48-1-11	“Delivery” defined
35-48-1-12	“Dispense” defined
35-48-1-13	“Dispenser” defined
35-48-1-14	“Distribute” defined
35-48-1-15	“Distributor” defined
35-48-1-16	“Drug” defined
35-48-1-16.4	“Drug offense” defined
35-48-1-16.5	“Enhancing circumstance” defined
35-48-1-17	“Immediate precursor” defined
35-48-1-18	“Manufacture” defined
35-48-1-19	“Marijuana” defined
35-48-1-20	“Narcotic drug” defined
35-48-1-21	“Opiate” defined
35-48-1-22	“Opium poppy” defined
35-48-1-23	“Poppy straw” defined
35-48-1-24	“Practitioner” defined
35-48-1-25	“Prescription drug” defined
35-48-1-26	“Production” defined
35-48-1-26.5	“Sale to a minor” defined
35-48-1-27	“Ultimate user” defined

**35-48-1-0.1. Application of amendments**

The addition of section 9.3 of this chapter by P.L.225-2003 applies only to a controlled substance offense under IC 35-48-4 that occurs after June 30, 2003.

### **35-48-1-2. Application of definitions**

The definitions in this chapter apply throughout this article.

### **35-48-1-3. “Administer” defined**

“Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (1) A practitioner or by his authorized agent; or
- (2) The patient or research subject at the direction and in the presence of the practitioner.

### **35-48-1-5. “Agent” defined**

“Agent” means an authorized person who acts on behalf of, or at the direction of, a manufacturer, distributor, or dispenser, but it does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

### **35-48-1-6. “Board” defined**

“Board” refers to the Indiana state board of pharmacy.

### **35-48-1-7. “Cocaine” defined**

“Cocaine” includes coca leaves and any salt, compound, or derivative of coca leaves, and any salt, compound, isomer, derivative, or preparation which is chemically equivalent or identical to any of these substances. However, decocainized coca leaves or extraction of coca leaves that do not contain cocaine or ecgonine are not included.

### **35-48-1-9. “Controlled substance” defined**

“Controlled substance” means a drug, substance, or immediate precursor in schedule I, II, III, IV, or V under:

- (1) IC 35-48-2-4, IC 35-48-2-6, IC 35-48-2-8, IC 35-48-2-10, or IC 35-48-2-12, if IC 35-48-2-14 does not apply; or
- (2) A rule adopted by the board, if IC 35-48-2-14 applies.

### **35-48-1-9.3. “Controlled substance analog” defined**

(a) “Controlled substance analog” means a substance:

- (1) the chemical structure of which is substantially similar to that of a controlled substance included in schedule I or II and that has; or
- (2) that a person represents or intends to have;

a narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

(b) The definition set forth in subsection (a) does not include:

- (1) a controlled substance;
- (2) a substance for which there is an approved new drug application;

- (3) a substance for which an exemption is in effect for investigational use by a person under Section 505 of the federal Food, Drug and Cosmetic Act (chapter 675, 52 Stat. 1052 (21 U.S.C. 355)), to the extent that conduct with respect to the substance is permitted under the exemption; or
- (4) a substance to the extent not intended for human consumption before an exemption takes effect regarding the substance.

**35-48-1-10. “Counterfeit substance” defined**

“Counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who manufactured, distributed, or dispensed the substance.

**35-48-1-11. “Delivery” defined**

“Delivery” means

- (1) An actual or constructive transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship; or
- (2) The organizing or supervising of an activity described in subdivision (1).

**35-48-1-12. “Dispense” defined**

“Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner and includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

**35-48-1-13. “Dispenser” defined**

“Dispenser” means a practitioner who dispenses.

**35-48-1-14. “Distribute” defined**

“Distribute” means to deliver other than by administering or dispensing a controlled substance.

**35-48-1-15. “Distributor” defined**

“Distributor means a person who distributes.

**35-48-1-16. “Drug” defined**

“Drug” has the meaning set forth in IC 16-42-19-2. It does not include devices or their components, parts, or accessories, nor does it include food.

**35-48-1-16.4. “Drug offense”**

“Drug offense” means a felony or misdemeanor involving the production, delivery, sale or possession of a controlled substance.

**35-48-1-16.5. “Enhancing circumstance” defined**

“Enhancing circumstance” means one (1) or more of the following:

- (1) The person has a prior conviction, in any jurisdiction, for dealing in a controlled substance that is not marijuana, hashish, hash oil, salvia divinorum, or a synthetic drug, including an attempt or conspiracy to commit the offense.
- (2) The person committed the offense while in possession of a firearm.
- (3) The person committed the offense:
  - (A) on a school bus; or
  - (B) in, on, or within five hundred (500) feet of:
    - (i) school property while a person under eighteen (18) years of age was reasonably expected to be present;
    - (ii) a public park while a person under eighteen (18) years of age was reasonably expected to be present.
- (4) The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.
- (5) The person manufactured or financed the manufacture of the drug.
- (6) The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

**35-48-1-17. “Immediate precursor” defined**

“Immediate precursor” means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediate used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

**35-48-1-18. “Manufacture” defined**

“Manufacture” means the following:

- (1) For offenses not involving marijuana, hashish, or hash oil:
  - (A) the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. It does not include the preparation, compounding, packaging, or labeling of a controlled substance:
    - (i) by a practitioner as incident to administering or dispensing of a controlled substance in the course of a professional practice; or
    - (ii) by a practitioner, or by the practitioner’s authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
  - (B) the organizing or supervising or an activity described in clause (A).
- (2) For offenses involving marijuana, hashish, or hash oil:
  - (A) the preparation, compounding, conversion, or processing of marijuana, hashish, or hash oil, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and

includes any packaging or repackaging of the marijuana, hashish, or hash oil, or labeling or relabeling of its container. It does not include planting, growing, cultivating, or harvesting a plant, or the preparation, compounding, packaging, or labeling of marijuana, hashish, or hash oil:

(i) by a practitioner as an incident to lawfully administering or dispensing of marijuana, hashish, or hash oil in the course of a professional practice; or

(ii) by a practitioner, or by the practitioner's agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

(B) the organizing or supervising of an activity described in clause (A).

### **35-48-1-19. "Marijuana" defined**

(a) "Marijuana" means any part of the plant genus *Cannabis* whether growing or not; the seeds thereof; the resin extracted from any part of the plant, including hashish and hash oil; any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

(b) The term does not include:

(1) the mature stalks of the plant;

(2) fiber produced from the stalks;

(3) oil or cake made from the seeds of the plant;

(4) any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom);

(5) the sterilized seed of the plant which is incapable of germination; or

(6) industrial hemp (as defined by IC 15-15-13-6).

### **35-48-1-20. "Narcotic drug" defined**

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical to any of the substances referred to in subdivision (1) of this definition, but not including isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

### **35-48-1-21. "Opiate" defined**

"Opiate" means a substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under IC 35-48-2, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does not include its racemic and levorotatory forms.

### **35-48-1-22. "Opium poppy" defined**

"Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

**35-48-1-23. “Poppy straw” defined**

“Poppy straw” means any part, except the seeds, of the opium poppy, after mowing.

**35-48-1-24. “Practitioner” defined**

“Practitioner” means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other institution or individual licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in Indiana.

**35-48-1-25. “Prescription drug” defined**

“Prescription drug” means a controlled substance or a legend drug (as defined in IC 16-18-2-199).

**35-48-1-26. “Production” defined**

“Production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

**35-48-1-26.5. “Sale to a minor” defined**

“Sale to a minor” means delivery or financing the delivery of a drug to a person less than eighteen (18) years of age and at least three (3) years junior to the person making the delivery or financing.

**35-48-1-27. “Ultimate user” defined**

“Ultimate user” means a person who lawfully possesses a controlled substance for the person’s own use, for the use of a member of the person’s household, or for administering to an animal owned by the person or by a member of the person’s household.

**Chapter 2  
Classification of Drugs**

35-48-2-1	Duties and authority of board
35-48-2-2	Nomenclature
35-48-2-3	Schedule I tests
35-48-2-4	Schedule I
35-48-2-5	Schedule II tests
35-48-2-6	Schedule II
35-48-2-7	Schedule III tests
35-48-2-8	Schedule III
35-48-2-9	Schedule IV tests
35-48-2-10	Schedule IV
35-48-2-11	Schedule V tests
35-48-2-12	Schedule V
35-48-2-14	Reclassification of controlled substances

### **35-48-2-1. Duties and authority of board**

(a) The board shall administer this article and may recommend to the general assembly the addition, deletion, or rescheduling of all substances listed in the schedules in sections 4, 6, 8, 10, and 12 of this chapter by submitting in an electronic format under IC 5-14-6 a report of such recommendations to the legislative council. In making a determination regarding a substance, the board shall consider the following:

- (1) The actual or relative potential for abuse.
- (2) The scientific evidence of its pharmacological effect, if known.
- (3) The state of current scientific knowledge regarding the substance.
- (4) The history and current pattern of abuse.
- (5) The scope, duration, and significance of abuse.
- (6) The risk to public health.
- (7) The potential of the substance to produce psychic or physiological dependence liability.
- (8) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a), the board shall make findings and recommendations concerning the control of the substance if it finds the substance has a potential for abuse.

(c) If the board finds that a substance is an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated or rescheduled to a more restrictive schedule as a controlled substance under federal law and notice is given to the board, the board shall recommend similar control of the substance under this article in the board's report to the general assembly, unless the board objects to inclusion or rescheduling. In that case, the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall publish its findings.

(e) If a substance is rescheduled to a less restrictive schedule or deleted as a controlled substance under federal law, the substance is rescheduled or deleted under this article. If the board objects to inclusion, rescheduling, or deletion of the substance, the board shall notify the chairman of the legislative council not more than thirty (30) days after the federal law is changed and the substance may not be rescheduled or deleted until the conclusion of the next complete session of the general assembly. The notice from the board to the chairman of the legislative council must be published.

(f) The board shall conduct hearings regarding revocations, suspensions, and restrictions of registrations as provided in IC 35-48-3-4. All hearings shall be conducted in accordance with IC 4-21.5-3.

(g) Authority to control under this section does not extend to distilled spirits, wine, or malt beverages, as those terms are defined or used in IC 7.1, or to tobacco.

(h) The board shall exclude any nonnarcotic substance from a schedule if that substance may, under the Federal Food, Drug, and Cosmetics Act or state law, be sold over the counter without a prescription.

### 35-48-2-2. Nomenclature

The controlled substances listed in the schedules in sections 4, 6, 8, 10, and 12 of this chapter are included by whatever official, common, usual, chemical, or trade name designated. The number placed in brackets after each substance is its federal Drug Enforcement Administration Controlled Substances Code Number which is to be used for identification purposes on certain certificates of registration.

### 35-48-2-3. Schedule I tests

(a) The board shall recommend placement of a substance in schedule I under this chapter if it finds that the substance:

- (1) Has high potential for abuse; and
- (2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

(b) The board may recommend placement of a substance in schedule I under this chapter if it finds that the substance is classified as a controlled substance in schedule I under federal law.

### 35-48-2-4. Schedule I

(a) The controlled substances listed in this section are included in schedule I.

(b) Opiates. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted by rule of the board or unless listed in another schedule, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide) (9815)  
Acetylmethadol (9601)  
Allylprodine (9602)  
Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide) (9832)  
Alphacetylmethadol (9603)  
Alphameprodine (9604)  
Alphamethadol (9605)  
Alphamethylfentanyl (9814)  
Benzethidine (9606)  
Beta-hydroxy-3-methylfentanyl (9831). Other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide  
Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide) (9830)  
Betacetylmethadol (9607)  
Betameprodine (9608)  
Betamethadol (9609)  
Betaprodine (9611)  
Clonitazene (9612)  
Dextromoramide (9613)  
Diampromide (9615)  
Diethylthiambutene (9616)  
Difenoxin (9168)

Dimenoxadol (9617)  
 Dimepheptanol (9618)  
 Dimethylthiambutene (9619)  
 Dioxaphetyl butyrate (9621)  
 Dipipanone (9622)  
 Ethylmethylthiambutene (9623)  
 Etonitazene (9624)  
 Etoxidine (9625)  
 Furethidine (9626)  
 Hydroxypethidine (9627)  
 Ketobemidone (9628)  
 Levomoramide (9629)  
 Levophenacymorphan (9631)  
 3-Methylfentanyl [N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenyl-  
 propanamide](9813)  
 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-  
 phenylpropanamide) (9833)  
 MPPP (1-methyl-4-phenyl-4-propionoxypiperidine) (9961)  
 Morpheridine (9632)  
 N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), including any isomers,  
 salts, or salts of isomers (9818)  
 N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), including  
 any isomers, salts, or salts of isomers (9834)  
 Noracymethadol (9633)  
 Norlevorphanol (9634)  
 Normethadone (9635)  
 Norpipanone (9636)  
 Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide  
 (9812)  
 Phenadoxone (9637)  
 Phenampromide (9638)  
 Phenomorphan (9647)  
 Phenoperidine (9641)  
 PEPAP [1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine] (9663)  
 Pir tramide (9642)  
 Proheptazine (9643)  
 Properidine (9644)  
 Propiram (9649)  
 Racemoramide (9645)  
 Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide) (9835)  
 Tilidine (9750)  
 Trimeperidine (9646)

(c) Opium derivatives. Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted by rule of the board or unless listed in another schedule, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine (9319)  
 Acetyldihydrocodeine (9051)  
 Benzylmorphine (9052)  
 Codeine methylbromide (9070)  
 Codeine-N-Oxide (9053)  
 Cyprenorphine (9054)  
 Desomorphine (9055)  
 Dihydromorphine (9145)  
 Drotebanol (9335)  
 Etorphine (except hydrochloride salt) (9056)  
 Heroin (9200)  
 Hydromorphanol (9301)  
 Methyl-desorphine (9302)  
 Methyl-dihydromorphine (9304)  
 Morphine methylbromide (9305)  
 Morphine methylsulfonate (9306)  
 Morphine-N-Oxide (9307)  
 Myrophine (9308)  
 Nicocodeine (9309)  
 Nicomorphine (9312)  
 Normorphine (9313)  
 Pholcodine (9314)  
 Thebacon (9315)

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic, psychedelic, or psychogenic substances, their salts, isomers, and salts of isomers whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers):

- (1) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (7473). Other name: TCPy.
- (2) 4-Bromo-2, 5-Dimethoxyamphetamine (7391). Some trade or other names: 4-Bromo-2, 5-Dimethoxy- $\alpha$ -methylphenethylamine; 4-Bromo-2, 5-DMA.
- (3) 4-Bromo-2, 5-dimethoxyphenethylamine (7392). Some trade or other names: 2-[4-bromo-2, 5-dimethoxyphenyl]-1-aminoethane;  $\alpha$ -desmethyl DOB; 2C-B, Nexus.
- (4) 2, 5-Dimethoxy-4-ethylamphet-amine (7399). Other name: DOET.
- (5) 2, 5-Dimethoxy-4-(n)-propylthiophenethylamine (7348). Other name: 2C-T-7.
- (6) 2, 5-Dimethoxyamphetamine (7396). Some trade or other names: 2, 5-Dimethoxy- $\alpha$ -methylphenethylamine; 2, 5-DMA.
- (7) 4-Methoxyamphetamine (7411). Some trade or other names: 4-Methoxy- $\alpha$ -methylphenethylamine; Paramethoxyamphetamine; PMA.
- (8) 5-Methoxy-3, 4-methylenedioxy amphetamine (7401). Other Name: MDMA.
- (9) 5-Methoxy-N, N-diisopropyltryptamine, including any isomers, salts, or salts of isomers (7439). Other name: 5-MeO-DIPT.
- (10) 4-methyl-2, 5-dimethoxyamphetamine (7395). Some trade and other names: 4-methyl-2, 5-dimethoxy- $\alpha$ -methylphenethylamine; DOM; and STP.

- (11) 3, 4-methylenedioxy amphetamine (7400). Other name: MDA.
- (12) 3,4-methylenedioxy-N-ethylamphetamine (7404). Other names: N-ethyl-alpha-methyl-3,4(methylenedioxy) phenethylamine; N-ethyl MDA; MDE; and MDEA.
- (13) 3, 4-methylenedioxymethamphetamine (MDMA) (7405).
- (14) 3, 4, 5-trimethoxy amphetamine (7390). Other name: TMA.
- (15) Alpha-ethyltryptamine (7249). Some trade and other names: Etryptamine; Monase; [alpha]-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; [alpha]-ET; and AET.
- (16) Alpha-methyltryptamine (7432). Other name: AMT.
- (17) Bufotenine (7433). Some trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminonethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.
- (18) Diethyltryptamine (7434). Some trade or other names: N, N-Diethyltryptamine; DET.
- (19) Dimethyltryptamine (7435). Some trade or other names: DMT.
- (20) Ibogaine (7260). Some trade and other names: 7-Ethyl-6, 6b, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido (1', 2': 1, 2, azepino 4, 5-b) indole; tabernanthe iboga.
- (21) Lysergic acid diethylamide (7315). Other name: LSD.
- (22) Marijuana (7360).
- (23) Mescaline (7381).
- (24) Parahexyl (7374). Some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-Tetrahydro-6, 6, 9-trimethyl-6H-dibenzo (b,d) pyran; Snyhexyl.
- (25) Peyote (7415), including:
- (A) all parts of the plant that are classified botanically as *lophophora williamsii lemaire*, whether growing or not;
  - (B) the seeds thereof;
  - (C) any extract from any part of the plant; and
  - (D) every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts.
- (26) N-ethyl-3-piperidyl benzilate (7482). Other name: DMZ.
- (27) N-hydroxy-3,4-methylenedioxyamphetamine (7402). Other names: N-hydroxy-alpha-methyl-3,4 (methylenedioxy)phenethylamine; and N-hydroxy MDA.
- (28) N-methyl-3-piperidyl benzilate (7484). Other name: LBJ.
- (29) Psilocybin (7437).
- (30) Psilocyn (7438).
- (31) Tetrahydrocannabinols (7370), including synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis, sp.* and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:
- (A) [pi][1]cis or trans tetrahydrocannabinol, and their optical isomers;
  - (B) [pi][6]cis or trans tetrahydrocannabinol, and their optical isomers; and
  - (C) [pi][3],[4]cis or trans tetrahydrocannabinol, and their optical isomers.

Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered. Other name: THC.

(32) Ethylamine analog of phencyclidine (7455). Some trade or other names: N-Ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine; cyclohexamine; PCE.

(33) Pyrrolidine analog of phencyclidine (7458). Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine; PCP[y]; PHP.

(34) Thiophene analog of phencyclidine (7470). Some trade or other names: 1-(1-(2-thienyl) cyclohexyl) piperidine; 2-Thienyl Analog of Phencyclidine; TPCP.

(35) Synthetic drugs (as defined in IC 35-31.5-2-321).

(36) *Salvia divinorum* or salvinorin A, including:

(A) all parts of the plant that are classified botanically as *salvia divinorum*, whether growing or not;

(B) the seeds of the plant;

(C) any extract from any part of the plant; and

(D) every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts.

(37) 5-Methoxy-N,N-Dimethyltryptamine. Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT.

(38) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E).

(39) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D).

(40) 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C).

(41) 2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C-I).

(42) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl] ethanamine (2C-T-2).

(43) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl] ethanamine (2C-T-4).

(44) 2-(2,5-Dimethoxyphenyl) ethanamine (2C-H).

(45) 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N).

(46) 2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P).

(e) Depressants. Unless specifically excepted in a rule adopted by the board or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Gamma-hydroxybutyric acid (other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate) (2010)

Mecloqualone (2572)

Methaqualone (2565)

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

([+--]) cis-4-methylaminorex (([+--])cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazolamine) (1590)

Aminorex (1585). Other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine.

Cathinone (1235). Some trade or other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone.

Fenethylamine (1503).

N-Benzylpiperazine (7493). Other names: BZP; and 1-benzylpiperazine.

N-ethylamphetamine (1475)

Methcathinone (1237) Some other trade names: 2-Methylamino-1-Phenylpropan-I-one; Ephedrone; Monomethylpropion; UR 1431.

N, N-dimethylamphetamine (1480). Other names: N, N-alpha-trimethylbenzeneethanamine; and N, N-alpha-trimethylphenethylamine.

### **35-48-2-5. Schedule II tests**

(a) The board shall recommend placement of a substance in schedule II under this chapter if it finds that:

- (1) The substance has high potential for abuse;
- (2) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) The abuse of the substance may lead to severe psychological or physical dependence.

(b) The board may recommend placement of a substance in schedule II under this chapter if it finds that the substance is classified as a controlled substance in schedule II under federal law.

### **35-48-3-6. Schedule II**

(a) The controlled substances listed in this section are included in schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, naltrexone, and their respective salts but including:
  - (A) raw opium (9600);
  - (B) opium extracts (9610);
  - (C) opium fluid extracts (9620);
  - (D) powdered opium (9639);
  - (E) granulated opium (9640);
  - (F) tincture of opium (9630);
  - (G) codeine (9050);
  - (H) dihydroetorphine (9334);
  - (I) ethylmorphine (9190);
  - (J) etorphine hydrochloride (9059);
  - (K) hydrocodone (9193);
  - (L) hydromorphone (9150);
  - (M) metopon (9260);
  - (N) morphine (9300);
  - (O) oxycodone (9143);

(P) oxymorphone (9652);  
(Q) thebaine (9333); and  
(R) oripavine.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (b)(1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Cocaine (9041).

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy) (9670).

(c) Opiates. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alfentanil (9737)

Alphaprodine (9010)

Anileridine (9020)

Bezitramide (9800)

Bulk dextropropoxyphene (nondosage forms) (9273)

Carfentanil (9743)

Dihydrocodeine (9120)

Diphenoxylate (9170)

Fentanyl (9801)

Isomethadone (9226)

Levo-alpha-acetylmethadol (9648). Other names: Levo-alpha-acetylmethadol; levomethadyl acetate; and LAAM.

Levomethorphan (9210)

Levorphanol (9220)

Metazocine (9240)

Methadone (9250)

Methadone-Intermediate, 4-cyano-2-dimethyl-amino-4, 4-diphenyl butane (9254)

Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane- carboxylic acid (9802)

Pethidine (Meperidine) (9230)

Pethidine-Intermediate- A, 4-cyano-1-methyl-4-phenylpiperidine (9232)

Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate (9233)

Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid (9234)

Phenazodine (9715)

Piminodine (9730)

Racemethorphan (9732)

Racemorphan (9733)

Remifentanil (9739)

Sufentanil (9740)

Tapentadol

(d) Stimulants. Any material compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).
- (2) Methamphetamine, including its salts, isomers, and salts of its isomers (1105).
- (3) Phenmetrazine and its salts (1631).
- (4) Methylphenidate (1724).
- (5) Lisdexamfetamine, its salts, its isomers, and salts of its isomers.

(e) Depressants. Unless specifically excepted by rule of the board or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- Amobarbital (2125)
- Glutethimide (2550)
- Pentobarbital (2270)
- Phencyclidine (7471)
- Secobarbital (2315)

(f) Immediate precursors. Unless specifically excepted by rule of the board or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone (8501). Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.
- (2) Immediate precursors to phencyclidine (PCP):
  - (A) 1-phenylcyclohexylamine (7460); or
  - (B) 1-piperidinocyclohexanecarbonitrile (PCC) (8603).
- (3) Immediate precursor to fentanyl: 4-Anilino-N-Phenethyl-4-Piperidine (ANPP).

(g) Hallucinogenic substances: Nabilone (7379). Other name: (+-)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy -6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one.

### **35-48-2-7. Schedule III tests**

(a) The board shall recommend placement of a substance in schedule III under this chapter if it finds that:

- (1) The substance has a potential for abuse less than the substances listed in schedule I and II under this chapter;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(b) The board may recommend placement of a substance in schedule III under this chapter if it finds that the substance is classified as a controlled substance in schedule III under federal law.

### 35-48-2-8. Schedule III

(a) The controlled substances listed in this section are included in schedule III.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on April 1, 1986, as excepted compounds under 21 CFR 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or that is the same except that it contains a lesser quantity of controlled substances (1405).
- (2) Benzphetamine (1228).
- (3) Chlorphentermine (1645).
- (4) Clortermine (1647).
- (5) Phendimetrazine (1615).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any compound, mixture, or preparation containing:
  - (A) amobarbital (2126);
  - (B) secobarbital (2316);
  - (C) pentobarbital (2271); or
  - (D) any of their salts;

and one (1) or more other active medicinal ingredients which are not listed in any schedule.

- (2) Any suppository dosage form containing:
  - (A) amobarbital (2126);
  - (B) secobarbital (2316);
  - (C) pentobarbital (2271); or
  - (D) any of their salts;

and approved by the Food and Drug Administration for marketing only as a suppository.

- (3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt thereof (2100).
- (4) Chlorhexadol (2510).
- (5) Embutramide (2020).
- (6) Lysergic acid (7300).
- (7) Lysergic acid amide (7310).
- (8) Methyprylon (2575).
- (9) Sulfondiethylmethane (2600).
- (10) Sulfonethylmethane (2605).
- (11) Sulfonmethane (2610).
- (12) A combination product containing Tiletamine and Zolazepam or any salt thereof (Telazol) (7295).

(13) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq. (2012).

(d) Nalorphine (a narcotic drug) (9400).

(e) Narcotic Drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in the following limited quantities:

(1) Not more than 1.8 grams of codeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium (9803).

(2) Not more than 1.8 grams of codeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts (9804).

(3) Not more than 300 milligrams of dihydrocodeinone, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium (9805).

(4) Not more than 300 milligrams of dihydrocodeinone, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active nonnarcotic ingredients in recognized therapeutic amounts (9806).

(5) Not more than 1.8 grams of dihydrocodeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts (9807).

(6) Not more than 300 milligrams of ethylmorphine, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts (9808).

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts (9809).

(8) Not more than 50 milligrams of morphine, per 100 milliliters or per 100 grams with one (1) or more active nonnarcotic ingredients in recognized therapeutic amounts (9810).

(9) Buprenorphine (9064).

(f) Anabolic steroid (as defined in 21 U.S.C. 802(41)(A) and 21 U.S.C. 802(41)(B)).

(g) The board shall except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) through (e) from the application of any part of this article if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(h) Any material, compound, mixture, or preparation which contains any quantity of Ketamine (7285).

(i) Hallucinogenic substances:

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product (7369).

### **35-48-2-9. Schedule IV tests**

(a) The board shall recommend placement of a substance in schedule IV under this chapter if it finds that:

- (1) The substance has a low potential for abuse relative to substances in schedule III under this chapter;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III under this chapter.

(b) The board may recommend placement of a substance in schedule IV under this chapter if it finds that the substance is classified as a controlled substance in schedule IV under federal law.

### **35-48-2-10. Schedule IV**

(a) The controlled substances listed in this section are included in schedule IV.

(b) Narcotic drugs. Unless specifically excepted in a rule adopted by the board or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in the following limited quantities:

- (1) Not more than 1 milligram of difenoxin (9618) and not less than 25 micrograms of atropine sulfate per dosage unit.
- (2) Dextropropoxyphene (alpha- (+)-4-dimethylamino-1,2- diphenyl-3-methyl-2-propionoxybutane (9278).

(c) Depressants. Unless specifically excepted in a rule adopted by the board or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- Alprazolam (2882).
- Barbital (2145).
- Bromazepam (2748).
- Camazepam (2749).
- Carisoprodol.
- Chloral betaine (2460).
- Chloral hydrate (2465).
- Chlordiazepoxide (2744).
- Clobazam (2751).
- Clonazepam (2737).
- Clorazepate (2768).
- Clotiazepam (2752).
- Cloxazolam (2753).
- Delorazepam (2754).
- Diazepam (2765).
- Dichloralphenazone (2467).
- Estazolam (2756).

Ethchlorvynol (2540).  
Ethinamate (2545).  
Ethyl loflazepate (2758).  
Fludiazepam (2759).  
Flunitrazepam (2763).  
Flurazepam (2767).  
Fospropofol.  
Halazepam (2762).  
Haloxazolam (2771).  
Ketazolam (2772).  
Loprazolam (2773).  
Lorazepam (2885).  
Lormetazepam (2774).  
Mebutamate (2800).  
Medazepam (2836).  
Meprobamate (2820).  
Methohexital (2264).  
Methylphenobarbital (mephobarbital) (2250).  
Midazolam (2884).  
Nimetazepam (2837).  
Nitrazepam (2834).  
Nordiazepam (2838).  
Oxazepam (2835).  
Oxazolam (2839).  
Paraldehyde (2585).  
Petrichloral (2591).  
Phenobarbital (2285).  
Pinazepam (2883).  
Prazepam (2764).  
Quazepam (2881).  
Temazepam (2925).  
Tetrazepam (2886).  
Triazolam (2887).  
Zaleplon (2781).  
Zolpidem (Ambien) (2783).  
Zopiclone (2784).

(d) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

Fenfluramine (1670).

(e) Stimulants. Unless specifically excepted in a rule adopted by the board or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers

whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Cathine ((+)-norpseudoephedrine) (1230).  
Diethylpropion (1610).  
Fencamfamin (1760).  
Fenproporex (1575).  
Mazindol (1605).  
Mefenorex (1580).  
Modafinil (1680).  
Phentermine (1640).  
Pemoline (including organometallic complexes and chelates thereof) (1530).  
Pipradrol (1750).  
Sibutramine (1675).  
SPA ((-)-1-dimethylamino-1,2-diphenylethane (1635).

(f) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances including its salts:

Butorphanol (including its optical isomers) (9720).  
Pentazocine (9709).

(g) The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b), (c), (d), (e), or (f) from the application of any part of this article if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

### **35-48-2-11. Schedule V tests**

(a) The board shall recommend placement of a substance in schedule V under this chapter if it finds that:

- (1) The substance has a low potential for abuse relative to the controlled substances listed in schedule IV under this chapter;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV under this chapter.

(b) The board may recommend placement of a substance in schedule V under this chapter if it finds that the substance is classified as a controlled substance in schedule V under federal law.

### **35-48-2-12. Schedule V**

(a) The controlled substances listed in this section are included in schedule V.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in the following quantities, which shall include one (1) or

more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
  - (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
  - (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
  - (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
  - (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
  - (6) Not more than 0.5 milligrams of difenoxin (9168), and not less than 25 micrograms of atropine sulfate per dosage unit.
- (c) Pregabalin (2782).
- (d) Pyrovalerone (1485).
- (e) Lacosamide [(R)-2-acetoamido-N-benzyl- 3-methoxy-propionamide].

#### **35-48-2-14. Reclassification of controlled substances**

- (a) The board may adopt rules under IC 4-22-2 to reclassify a controlled substance:
- (1) From a more restrictive schedule to a less restrictive schedule; or
  - (2) As a substance that is not a controlled substance;

if the board finds that the substance qualifies for reclassification under this chapter and that the same reclassification has been made in a controlled substance schedule under federal law.

(b) If the board reclassifies a controlled substance under subsection (a), the board shall recommend the same reclassification to the general assembly under section 1 of this chapter.

(c) Notwithstanding a provision in this chapter that classifies a controlled substance in a more restrictive schedule than a rule adopted under subsection (a), a person who manufactures, distributes, dispenses, possesses, or uses a controlled substance in compliance with the requirements applicable to the less restrictive schedule to which a controlled substance is reclassified under subsection (a) does not commit an offense under this article.

(d) Notwithstanding a provision in this chapter that classifies a substance as a controlled substance, a person does not commit an offense under this article if the board reclassified the controlled substance as a substance that is not a controlled substance.

### **Chapter 4 Offenses Relating to Controlled Substances**

- 35-48-4-0.1 Application of amendments
- 35-48-4-0.5 “Controlled substance analog” defined
- 35-48-4-1 Dealing in cocaine or a narcotic drug
- 35-48-4-1.1 Dealing in methamphetamine
- 35-48-4-2 Dealing in a Schedule I, II, or III controlled substance
- 35-48-4-3 Dealing in a Schedule IV controlled substance
- 35-48-4-4 Dealing in a Schedule V controlled substance
- 35-48-4-4.1 Dumping controlled substance waste

- 35-48-4-4.5 Dealing in a substance represented to be a controlled substance
- 35-48-4-4.6 Dealing or possession of a lookalike substance
- 35-48-4-5 Dealing in a counterfeit substance
- 35-48-4-6 Possession of cocaine or a narcotic drug
- 35-48-4-6.1 Possession of methamphetamine
- 35-48-4-7 Possession of a controlled substance
- 35-48-4-8.1 Manufacture of paraphernalia
- 35-48-4-8.3 Possession of paraphernalia
- 35-48-4-8.5 Dealing in paraphernalia
- 35-48-4-10 Dealing in marijuana, hash oil, hashish or salvia
- 35-48-4-10.5 Dealing in a synthetic drug or a synthetic drug lookalike substance
- 35-48-4-11 Possession of marijuana, hash oil, hashish or salvia
- 35-48-4-11.5 Possession of a synthetic drug or a synthetic drug lookalike substance
- 35-48-4-12 Conditional discharge for possession as a first offense
- 35-48-4-13 Common nuisance
- 35-48-4-13.3 Taking a child or endangered adult to a nuisance
- 35-48-4-14 Offenses relating to registration
- 35-48-4-14.5 Illegal drug labs; possession or sale of precursors
- 35-48-4-14.7 Restriction on sale of ephedrine or pseudoephedrine products
- 35-48-4-15 Suspension of driver's license
- 35-48-4-16 Defenses within 500 feet
- 35-48-4-17 Drug lab; environmental clean-up costs

#### **35-48-4-0.1. Application of amendments**

The following amendments to this chapter apply as follows:

- (1) The amendments made to section 13 of this chapter by P.L.31-1998 apply only to offenses committed after June 30, 1998. An offense committed under section 13 of this chapter before July 1, 1998, may be prosecuted and remains punishable as provided in section 13 of this chapter, as effective before July 1, 1998.
- (2) The addition of section 0.5 of this chapter by P.L.225-2003 applies only to a controlled substance offense under this chapter that occurs after June 30, 2003.

#### **35-48-4-0.5. "Controlled substance analog" defined**

For purposes of this chapter, a "controlled substance analog" is considered to be a controlled substance in schedule I if the analog is in whole or in part intended for human consumption.

#### **35-48-4-1. Dealing in cocaine or a narcotic drug**

(a) A person who:

- (1) knowingly or intentionally:
  - (A) manufactures;
  - (B) finances the manufacture of;
  - (C) delivers; or
  - (D) finances the delivery of:

cocaine or a narcotic drug, pure or adulterated, classified in schedule I or II; or

(2) possesses, with intent to:

- (A) manufacture;
- (B) finance the manufacture of;
- (C) deliver; or
- (D) finance the delivery of;

cocaine or a narcotic drug, pure or adulterated, classified in schedule I or II;

commits dealing in cocaine or a narcotic drug, a Level 5 felony, except as provided in subsections (b) through (e).

(b) A person may be convicted of an offense under subsection (a)(2) only if there is evidence in addition to the weight of the drug that the person intended to manufacture, finance the manufacture of, deliver, or finance the delivery of the drug.

(c) The offense is a Level 4 felony if:

- (1) the amount of the drug involved is at least one (1) gram but less than five (5) grams; or
- (2) the amount of the drug involved is less than one (1) gram and an enhancing circumstance applies.

(d) The offense is a Level 3 felony if:

- (1) the amount of the drug involved is at least five (5) but less than ten (10) grams; or
- (2) the amount of the drug involved is at least one (1) gram but less than five (5) grams and an enhancing circumstance applies.

(e) The offense is a Level 2 felony if:

- (1) the amount of the drug involved is at least ten (10) grams; or
- (2) the amount of the drug involved is at least five (5) but less than ten (10) grams and an enhancing circumstance applies.

### **35-48-4-1.1. Dealing in methamphetamine**

(a) A person who:

(1) knowingly or intentionally:

- (A) manufactures;
- (B) finances the manufacture of;
- (C) delivers; or
- (D) finances the delivery of;

methamphetamine, pure or adulterated; or

(2) possesses, with intent to:

- (A) manufacture;
- (B) finance the manufacture of;
- (C) deliver; or
- (D) finance the delivery of;

methamphetamine, pure or adulterated;

commits dealing in methamphetamine, a Level 5 felony, except as provided in subsections (b) through (e).

(b) A person may be convicted of an offense under subsection (a)(2) only if there is evidence in addition to the weight of the drug that the person intended to manufacture, finance the manufacture of, deliver, or finance the delivery of the drug.

(c) The offense is a Level 4 felony if:

- (1) the amount of the drug involved is at least one (1) gram but less than five (5) grams; or
- (2) the amount of the drug involved is less than one (1) gram and an enhancing circumstance applies.
- (d) The offense is a Level 3 felony if:
  - (1) the amount of the drug involved is at least five (5) but less than ten (10) grams; or
  - (2) the amount of the drug involved is at least one (1) gram but less than five (5) grams and an enhancing circumstance applies.
- (e) The offense is a Level 2 felony if:
  - (1) the amount of the drug involved is at least ten (10) grams; or
  - (2) the amount of the drug involved is at least five (5) but less than ten (10) grams and an enhancing circumstance applies; or
  - (3) the person is manufacturing the drug and the manufacture results in an explosion causing serious bodily injury to a person other than the manufacturer.

**35-48-4-2. Dealing in a Schedule I, II, or III controlled substance**

- (a) A person who:
    - (1) knowingly or intentionally:
      - (A) manufactures;
      - (B) finances the manufacture of;
      - (C) delivers; or
      - (D) finances the delivery of:
        - a controlled substance, pure or adulterated, classified in schedule I, II, or III, except marijuana, hash oil, hashish, salvia, or a synthetic drug; or
    - (2) possesses, with intent to:
      - (A) manufacture;
      - (B) finance the manufacture of;
      - (C) deliver; or
      - (D) finance the delivery of;
        - a controlled substance, pure or adulterated, classified in schedule I, II or III, except marijuana, hash oil, hashish, salvia, or a synthetic drug;
- commits dealing in a schedule I, II, or III controlled substance, a Level 6 felony, except as provided in subsections (b) through (f).
- (b) A person may be convicted of an offense under subsection (a)(2) only if there is evidence in addition to the weight of the drug that the person intended to manufacture, finance the manufacture of, deliver, or finance the delivery of the drug.
  - (c) The offense is a Level 5 felony if:
    - (1) the amount of the drug involved is at least one (1) gram but less than five (5) grams; or
    - (2) the amount of the drug involved is less than one (1) gram and an enhancing circumstance applies.
  - (d) The offense is a Level 4 felony if:
    - (1) the amount of the drug involved is at least five (5) but less than ten (10) grams; or

- (2) the amount of the drug involved is at least one (1) gram but less than five (5) grams and an enhancing circumstance applies.
- (e) The offense is a Level 3 felony if:
  - (1) the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams; or
  - (2) the amount of the drug involved is at least five (5) but less than ten (10) grams and an enhancing circumstance applies.
- (f) The offense is a Level 2 felony if:
  - (1) the amount of the drug involved is at least twenty-eight (28) grams; or
  - (2) the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams and an enhancing circumstance applies.

**35-48-4-3. Dealing in a Schedule IV controlled substance**

- (a) A person who:
  - (1) knowingly or intentionally:
    - (A) manufactures;
    - (B) finances the manufacture of;
    - (C) delivers; or
    - (D) finances the delivery of:  
a controlled substance, pure or adulterated, classified in schedule IV; or
  - (2) possesses, with intent to manufacture or deliver, a controlled substance, pure or adulterated, classified in schedule IV;commits dealing in a schedule IV controlled substance, a Class A misdemeanor, except as provided in subsections (b) through (f).
- (b) A person may be convicted of an offense under subsection (a)(2) only if there is evidence in addition to the weight of the drug that the person intended to manufacture or deliver the controlled substance.
- (c) The offense is a Level 6 felony if:
  - (1) the amount of the drug involved is at least one (1) gram but less than five (5) grams; or
  - (2) the amount of the drug involved is less than one (1) gram and an enhancing circumstance applies.
- (d) The offense is a Level 5 felony if:
  - (1) the amount of the drug involved is at least five (5) but less than ten (10) grams; or
  - (2) the amount of the drug involved is at least one (1) gram but less than five (5) grams and an enhancing circumstance applies.
- (e) The offense is a Level 4 felony if:
  - (1) the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams; or
  - (2) the amount of the drug involved is at least five (5) but less than ten (10) grams and an enhancing circumstance applies.
- (f) The offense is a Level 3 felony if:
  - (1) the amount of the drug involved is at least twenty-eight (28) grams; or
  - (2) the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams and an enhancing circumstance applies.

#### **35-48-4-4. Dealing in a Schedule V controlled substance**

(a) A person who:

(1) knowingly or intentionally:

- (A) manufactures;
- (B) finances the manufacture of;
- (C) delivers; or
- (D) finances the delivery of:

a controlled substance, pure or adulterated, classified in schedule V; or

(2) possesses, with intent to:

- (A) manufacture;
- (B) finance the manufacture of;
- (C) deliver; or
- (D) finance the delivery of;

a controlled substance, pure or adulterated, classified in schedule V;

commits dealing in a schedule V controlled substance, a Class B misdemeanor, except as provided in subsections (b) through (f).

(b) A person may be convicted of an offense under subsection (a)(2) only if there is evidence in addition to the weight of the drug that the person intended to manufacture, finance the manufacture of, deliver, or finance the delivery of the drug.

(c) The offense is a Class A misdemeanor if:

- (1) the amount of the drug involved is at least one (1) gram but less than five (5) grams; or
- (2) the amount of the drug involved is less than one (1) gram and an enhancing circumstance applies.

(d) The offense is a Level 6 felony if:

- (1) the amount of the drug involved is at least five (5) but less than ten (10) grams; or
- (2) the amount of the drug involved is at least one (1) gram but less than five (5) grams and an enhancing circumstance applies.

(e) The offense is a Level 5 felony if:

- (1) the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams; or
- (2) the amount of the drug involved is at least five (5) but less than ten (10) grams and an enhancing circumstance applies.

(f) The offense is a Level 4 felony if:

- (1) the amount of the drug involved is at least twenty-eight (28) grams; or
- (2) the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams and an enhancing circumstance applies.

#### **35-48-4-4.1. Dumping controlled substance waste**

(a) A person who dumps, discharges, discards, transports, or otherwise disposes of:

- (1) chemicals, knowing the chemicals were used in the illegal manufacture of a controlled substance or an immediate precursor; or
- (2) waste, knowing that the waste was produced from the illegal manufacture of a controlled substance or an immediate precursor;

commits dumping controlled substance waste, a Level 6 felony.

(b) It is not a defense in a prosecution under subsection (a) that the person did not manufacture the controlled substance or immediate precursor.

#### **35-48-4-4.5. Dealing in a substance represented to be a controlled substance**

(a) A person who knowingly or intentionally delivers or finances the delivery of any substance, other than a controlled substance or a drug for which a prescription is required under federal or state law, that:

- (1) is expressly or impliedly represented to be a controlled substance;
- (2) is distributed under circumstances that would lead a reasonable person to believe that the substance is a controlled substance; or
- (3) by overall dosage unit appearance, including shape, color, size, markings, or lack of markings, taste, consistency, or any other identifying physical characteristics of the substance, would lead a reasonable person to believe the substance is a controlled substance;

commits dealing in a substance represented to be a controlled substance, a Level 6 felony.

(b) In determining whether representations have been made, subject to subsection (a)(1), or whether circumstances of distribution exist, subject to subsection (a)(2), the trier of fact may consider, in addition to other relevant factors, the following:

- (1) Statements made by the owner or other person in control of the substance, concerning the substance's nature, use, or effect.
- (2) Statements made by any person, to the buyer or recipient of the substance, that the substance may be resold for profit.
- (3) Whether the substance is packaged in a manner uniquely used for the illegal distribution of controlled substances.
- (4) Whether:
  - (A) the distribution included an exchange of, or demand for, money or other property as consideration; and
  - (B) the amount of the consideration was substantially greater than the reasonable retail market value of the substance.

#### **35-48-4-4.6. Dealing or possession of a lookalike substance**

(a) A person who knowingly or intentionally:

- (1) manufactures;
- (2) finances the manufacture of;
- (3) advertises;
- (4) distributes; or
- (5) possesses with intent to manufacture, finance the manufacture of, advertise, or distribute:

a substance described in section 4.5 of this chapter commits a Level 5 felony.

(b) A person may be convicted of an offense under subsection (a)(5) only if there is evidence in addition to the weight of the substance that the person intended to manufacture, finance the manufacture of, advertise, or distribute the substance.

(c) A person who knowingly or intentionally possesses a substance described in section 4.5 of this chapter commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous conviction under this section.

(d) In any prosecution brought under this section it is not a defense that the person believed the substance actually was a controlled substance.

(e) This section does not apply to the following:

(1) The manufacture, financing the manufacture of, processing, packaging, distribution, or sale of noncontrolled substances to licensed medical practitioners for use as placebos in professional practice or research.

(2) Persons acting in the course and legitimate scope of their employment as law enforcement officers.

(3) The retention of production samples of noncontrolled substances produced before September 1, 1986, where such samples are required by federal law.

### **35-48-4-5. Dealing in a counterfeit substance**

A person who:

(1) knowingly or intentionally:

(A) creates;

(B) delivers; or

(C) finances the delivery of;

a counterfeit substance; or

(2) possesses, with intent to:

(A) deliver; or

(B) finance the delivery of;

a counterfeit substance;

commits dealing in a counterfeit substance, a Level 6 felony. However, a person may be convicted of an offense under subsection (a)(2) only if there is evidence in addition to the weight of the counterfeit substance that the person intended to deliver or finance the delivery of the counterfeit substance.

### **35-48-4-6. Possession of cocaine or a narcotic drug**

(a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses cocaine (pure or adulterated) or a narcotic drug (pure or adulterated) classified in schedule I or II, commits possession of cocaine or a narcotic drug, a Level 6 felony, except as provided in subsections (b) through (d).

(b) The offense is a Level 5 felony if:

(1) the amount of the drug involved is at least five (5) but less than ten (10) grams; or

(2) the amount of the drug involved is less than five (5) grams and an enhancing circumstance applies.

(c) The offense is a Level 4 felony if:

(1) the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams; or

(2) the amount of the drug involved is at least five (5) but less than ten (10) grams and an enhancing circumstance applies.

(d) The offense is a Level 3 felony if:

(1) the amount of the drug involved is at least twenty-eight (28) grams; or

- (2) the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams and an enhancing circumstance applies.

#### **35-48-4-6.1. Possession of methamphetamine**

(a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses methamphetamine (pure or adulterated), commits possession of methamphetamine, a Level 6 felony, except as provided in subsections (b) through (d).

(b) The offense is a Level 5 felony if:

- (1) the amount of the drug involved is at least five (5) but less than ten (10) grams; or
- (2) the amount of the drug involved is less than five (5) grams and an enhancing circumstance applies.

(c) The offense is a Level 4 felony if:

- (1) the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams; or
- (2) the amount of the drug involved is at least five (5) but less than ten (10) grams and an enhancing circumstance applies.

(d) The offense is a Level 3 felony if:

- (1) the amount of the drug involved is at least twenty-eight (28) grams; or
- (2) the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams and an enhancing circumstance applies.

#### **35-48-4-7. Possession of a controlled substance**

(a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses a controlled substance (pure or adulterated) classified in schedule I, II, III, or IV, except marijuana, hashish, salvia, or a synthetic cannabinoid, commits possession of a controlled substance, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense is a Level 6 felony if the person commits the offense and an enhancing circumstance applies.

(c) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally obtains:

- (1) more than four (4) ounces of schedule V controlled substances containing codeine in any given forty-eight (48) hour period unless pursuant to a prescription;
- (2) a schedule V controlled substance pursuant to written or verbal misrepresentation; or
- (3) possession of a schedule V controlled substance other than by means of a prescription or by means of signing an exempt narcotic register maintained by a pharmacy licensed by the Indiana state board of pharmacy;

commits a Class A misdemeanor.

#### **35-48-4-8.1. Manufacture of paraphernalia**

(a) A person who manufactures, finances the manufacture of, or designs an instrument, a device, or other object that is intended to be used primarily for:

- (1) introducing into the human body a controlled substance;
- (2) testing the strength, effectiveness, or purity of a controlled substance; or
- (3) enhancing the effect of a controlled substance;

in violation of this chapter commits a Class A infraction for manufacturing paraphernalia.

(b) A person who:

- (1) knowingly or intentionally violates this section; and
- (2) has a previous judgment for violation of this section;

commits manufacture of paraphernalia, a Level 6 felony.

### **35-48-4-8.3. Possession of paraphernalia**

(a) A person who possesses a raw material, an instrument, a device, or other object that the person intends to use for:

- (1) introducing into the person's body a controlled substance;
- (2) testing the strength, effectiveness, or purity of a controlled substance; or
- (3) enhancing the effect of a controlled substance;

in violation of this chapter commits a Class A infraction for possession paraphernalia.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated judgment or conviction under this section.

### **35-48-4-8.5. Dealing in paraphernalia**

(a) A person who keeps for sale, offers for sale, delivers, or finances the delivery of a raw material, an instrument, a device, or other object that is intended to be or that is designed or marketed to be used primarily for:

- (1) ingesting, inhaling, or otherwise introducing into the human body marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;
- (2) testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;
- (3) enhancing the effect of a controlled substance;
- (4) manufacturing, compounding, converting, producing, processing, or preparing marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;
- (5) diluting or adulterating marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance by individuals; or
- (6) any purpose announced or described by the seller that is in violation of this chapter;

commits a Class A infraction for dealing in paraphernalia.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated judgment or conviction under this section.

(c) This section does not apply to the following:

- (1) Items marketed for use in the preparation, compounding, packaging, labeling, or other use of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance as an incident to lawful research, teaching, or chemical analysis and not for sale.
- (2) Items marketed for or historically and customarily used in connection with the planting, propagating, cultivating, growing, harvesting, manufacturing,

compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling of tobacco or any other lawful substance.

**35-48-4-10. Dealing in marijuana, hash oil, hashish, or salvia**

(a) A person who:

(1) knowingly or intentionally:

- (A) manufactures;
- (B) finances the manufacture of;
- (C) delivers; or
- (D) finances the delivery of;

marijuana, hash oil, hashish, or salvia, pure or adulterated; or

(2) possesses, with intent to:

- (A) manufacture;
- (B) finance the manufacture of;
- (C) deliver; or
- (D) finance the delivery of;

marijuana, hash oil, hashish, or salvia, pure or adulterated;

commits dealing in marijuana, hash oil, hashish, salvia, a Class A misdemeanor, except as provided in subsections (b) through (d).

(b) A person may be convicted of an offense under subsection (a)(2) only if there is evidence in addition to the weight of the drug that the person intended to manufacture, finance the manufacture of, deliver, or finance the delivery of the drug.

(c) The offense is a Level 6 felony if:

(1) the person has a prior conviction for a drug offense and the amount of the drug involved is:

- (A) less than thirty (30) grams of marijuana; or
- (B) less than five (5) grams of hash oil, hashish, or salvia; or

(2) the amount of the drug involved is:

- (A) at least thirty (30) grams but less than ten (10) pounds of marijuana; or
- (B) at least five (5) grams but less than three hundred (300) grams of hash oil, hashish, or salvia.

(d) The offense is a Level 5 felony if:

(1) the person has a prior conviction for a drug dealing offense and the amount of the drug involved is:

- (A) at least thirty (30) grams but less than ten (10) pounds of marijuana; or
- (B) at least five (5) grams but less than three hundred (300) grams of hash oil, hashish, or salvia; or

(2) the:

(A) amount of the drug involved is:

- (i) at least ten (10) pounds of marijuana; or
- (ii) at least three hundred (300) grams of hash oil, hashish, or salvia; or

(B) offense involved a sale to a minor.

### **35-48-4-10.5. Dealing in a synthetic drug of synthetic drug lookalike substance**

(a) A person who:

- (1) manufactures;
- (2) finances the manufacture of;
- (3) delivers;
- (4) finances the delivery of;
- (5) possesses, with intent to deliver; or
- (6) possesses, with intent to finance the delivery of;

a synthetic drug or a synthetic drug lookalike substance commits dealing in a synthetic drug or synthetic drug lookalike substance, a Class A infraction. However, the offense is a Level 6 felony if the offense is committed knowingly or intentionally and the person has a prior unrelated judgment or conviction under this subsection.

(b) A person may be adjudicated or convicted of an infraction or offense under subsection (a)(5) or (a)(6) only if there is evidence in addition to the weight of the synthetic drug or synthetic drug lookalike substance that the person intended to deliver or finance the delivery of the synthetic drug or synthetic drug lookalike substance.

(c) A person who:

- (1) knowingly or intentionally:
  - (A) manufactures;
  - (B) finances the manufacture of;
  - (C) delivers; or
  - (D) finances the delivery of;

a synthetic drug or synthetic drug lookalike substance; or

- (2) possesses, with intent to:
  - (A) manufacture;
  - (B) finance the manufacture of;
  - (C) deliver; or
  - (D) finance the delivery of;

a synthetic drug or synthetic drug lookalike substance;

commits dealing in a synthetic drug or synthetic drug lookalike substance, a Class A misdemeanor, except as provided in subsections (d) through (e).

(d) A person may be convicted of an offense under subsection (c)(2) only if there is evidence in addition to the weight of the synthetic drug or synthetic drug lookalike substance that the person intended to manufacture, finance the manufacture of, deliver, or finance the delivery of the synthetic drug or synthetic drug lookalike substance.

(e) The offense in subsection (c) is:

(1) a Level 6 felony if:

- (A) the recipient or intended recipient is less than eighteen (18) years of age;
- (B) the amount involved is more than five (5) grams; or
- (C) the person has a prior conviction of an offense involving a synthetic drug or synthetic drug lookalike substance; and

(2) a Level 5 felony if the amount involved is more than five (5) grams and the person delivered or financed the delivery of the synthetic drug or synthetic drug lookalike substance:

- (A) on a school bus; or

(B) in, on, or within five hundred (500) feet of:

- (i) school property; or
- (ii) a public park;

while a person under eighteen (18) years of age was reasonably expected to be present.

(f) In addition to a criminal or civil penalty imposed for a violation of this section, if the court finds that a person has violated this section and the violation involved the sale of or offer to sell, in the normal course of business, a synthetic drug or synthetic drug lookalike substance by a retail merchant in a place of business for which the retail merchant has been issued a registered retail merchant certificate, the court:

(1) shall recommend the suspension of the registered retail merchant certificate for the place of business for one (1) year if the person's violation of this section resulted in a criminal conviction; and

(2) may recommend the suspension of the registered retail merchant certificate for the place of business for six (6) months if the person's violation of this section resulted in an adjudication that the person committed an infraction.

(g) The department of state revenue shall suspend the registered retail merchant certificate of a retail merchant in accordance with the recommendation of the court. Whenever the department of state revenue is required to suspend a retail merchant's registered retail merchant certificate under this section, the department shall immediately mail a notice to the retail merchant's address that must state that the retail merchant's registered retail merchant certificate will be suspended for the period recommended by the court, commencing five (5) days after the date of the notice.

#### **35-48-4-11. Possession of marijuana, hash oil, hashish, or salvia**

(a) A person who:

- (1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, hashish, or salvia;
- (2) knowingly or intentionally grows or cultivates marijuana; or
- (3) knowing that marijuana is growing on the person's premises, fails to destroy the marijuana plants;

commits possession of marijuana, hash oil, hashish, or salvia, a Class B misdemeanor, except as provided in subsections (b) through (c).

(b) The offense described in subsection (a) is a Class A misdemeanor if the person has a prior conviction for a drug offense.

(c) The offense described in subsection (a) is a Level 6 felony if:

- (1) the person has a prior conviction for a drug offense; and
- (2) the person possesses:

(A) at least thirty (30) grams of marijuana; or

(B) at least five (5) grams of hash oil, hashish, or salvia.

#### **35-48-4-11.5. Possession of a synthetic drug or a synthetic drug lookalike substance**

(a) As used in this section, "synthetic drug lookalike substance" has the meaning set forth in IC 35-31.5-2-321.5(a)(2).

(b) A person who possesses a synthetic drug or synthetic drug lookalike substance commits possession of a synthetic drug or synthetic drug lookalike substance, a Class B infraction.

(c) A person who knowingly or intentionally possesses a synthetic drug or synthetic drug lookalike substance commits possession of a synthetic drug or synthetic drug lookalike substance, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction under this section or under section 10.5 of this chapter.

### **35-48-4-12. Conditional discharge for possession as first offense**

If a person who has no prior conviction of an offense under this article or under a law of another jurisdiction relating to controlled substances pleads guilty to possession of marijuana, hashish, salvia, or a synthetic drug or a synthetic drug lookalike substance as a misdemeanor, the court, without entering a judgment of conviction and with the consent of the person, may defer further proceedings and place the person in the custody of the court under conditions determined by the court. Upon violation of a condition of the custody, the court may enter a judgment of conviction. However, if the person fulfills the conditions of the custody, the court shall dismiss the charges against the person. There may be only one (1) dismissal under this section with respect to a person.

### **35-48-4-13. Common nuisance**

(a) A person who knowingly or intentionally visits a building, structure, vehicle or other place that is used by any person to unlawfully use a controlled substance commits visiting a common nuisance, a Class B misdemeanor.

(b) A person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used one (1) or more times:

(1) by persons to unlawfully use controlled substances; or

(2) for unlawfully:

(A) manufacturing;

(B) keeping;

(C) offering for sale;

(D) selling;

(E) delivering; or

(F) financing the delivery of;

controlled substances, or items of drug paraphernalia as described in IC 35-48-4-8.5;

commits maintaining a common nuisance, a Level 6 felony.

### **35-48-4-13.3. Taking child or endangered adult to nuisance**

A person who recklessly, knowingly, or intentionally takes a person less than eighteen (18) years of age or an endangered adult (as defined in IC 12-10-3-2) into a building, structure, vehicle, or other place that is being used by any person to:

(1) unlawfully possess drugs or controlled substances; or

(2) unlawfully:

(A) manufacture;

(B) keep;

(C) offer for sale;

- (D) sell;
- (E) deliver; or
- (F) finance the delivery of;

drugs or controlled substances;

commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction under this section.

#### **35-48-4-14. Offenses relating to registration**

(a) A person who:

(1) is subject to IC 35-48-3 and who recklessly, knowingly, or intentionally distributes or dispenses a controlled substance in violation of IC 35-48-3;

(2) is a registrant who recklessly, knowingly, or intentionally:

(A) manufactures; or

(B) finances the manufacture of:

a controlled substance not authorized by the person's registration or distributes or dispenses a controlled substance not authorized by the person's registration to another registrant or other authorized person;

(3) recklessly, knowingly, or intentionally fails to make, keep, or furnish a record, a notification, an order form, a statement, an invoice, or information required under this article; or

(4) recklessly, knowingly, or intentionally refuses entry into any premises for an inspection authorized by this article;

commits a Level 6 felony.

(b) A person who knowingly or intentionally:

(1) distributes as a registrant a controlled substance classified in schedule I or II, except under an order form as required by IC 35-48-3;

(2) uses in the course of the:

(A) manufacture of;

(B) the financing of the manufacture of; or

(C) distribution of:

a controlled substance a federal or state registration number that is fictitious, revoked, suspended, or issued to another person;

(3) furnishes false or fraudulent material information in, or omits any material information from, an application, report, or other document required to be kept or filed under this article; or

(4) makes, distributes, or possesses a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or a likeness of any of the foregoing on a drug or container or labeling thereof so as to render the drug a counterfeit substance;

commits a Level 6 felony.

(c) A person who knowingly or intentionally acquires possession of a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, alteration of a prescription order, concealment of a material fact, or use of a false name or false address commits a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior conviction for an offense under this subsection.

(d) A person who knowingly or intentionally affixes any false or forged label to a package or receptacle containing a controlled substance commits a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior conviction of an offense under this subsection. This subsection does not apply to law enforcement agencies or their representatives while engaged in enforcing IC 16-42-19 or this chapter (or IC 16-6-8 before its repeal).

(e) A person who duplicates, reproduces, or prints any prescription pads or forms without the prior written consent of a practitioner commits a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior conviction of an offense under this subsection. This subsection does not apply to the printing of prescription pads or forms upon a written, signed order placed by a practitioner or pharmacist, by legitimate printing companies.

### **35-48-4-14.5. Illegal drug labs; possession or sale of precursors**

(a) As used in this section, “chemical reagents or precursors” refers to one (1) or more of the following:

- (1) Ephedrine.
- (2) Pseudoephedrine.
- (3) Phenylpropanolamine.
- (4) The salts, isomers, and salts of isomers of a substance identified in subdivisions (1) through (3).
- (5) Anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1).
- (6) Organic solvents.
- (7) Hydrochloric acid.
- (8) Lithium metal.
- (9) Sodium metal.
- (10) Ether.
- (11) Sulfuric acid.
- (12) Red phosphorous.
- (13) Iodine.
- (14) Sodium hydroxide (lye).
- (15) Potassium dichromate.
- (16) Sodium dichromate.
- (17) Potassium permanganate.
- (18) Chromium trioxide.
- (19) Benzyl cyanide.
- (20) Phenylacetic acid and its esters or salts.
- (21) Piperidine and its salts.
- (22) Methylamine and its salts.
- (23) Isosafrole.
- (24) Safrole.
- (25) Piperonal.
- (26) Hydriodic acid.
- (27) Benzaldehyde.
- (28) Nitroethane.
- (29) Gamma-butyrolactone.
- (30) White phosphorus.
- (31) Hypophosphorous acid and its salts.

- (32) Acetic anhydride.
- (33) Benzyl chloride.
- (34) Ammonium nitrate.
- (35) Ammonium sulfate.
- (36) Hydrogen peroxide.
- (37) Thionyl chloride.
- (38) Ethyl acetate.
- (39) Pseudoephedrine hydrochloride.

(b) A person who possesses more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated, commits a Level 6 felony. However, the offense is a Level 5 felony if the person possessed:

- (1) a firearm while possessing more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated; or
- (2) more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated, in, on or within five hundred (500) feet of:
  - (A) school property while a person under eighteen (18) years of age was reasonably expected to be present; or
  - (B) a public park while a person under eighteen (18) years of age was reasonably expected to be present.

(c) A person who possesses anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with the intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6, commits a Level 6 felony. However, the offense is a Level 5 felony if the person possessed:

- (1) a firearm while possessing anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6; or
- (2) anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6, in, on, or within five hundred (500) feet of:
  - (A) school property while a person under eighteen (18) years of age was reasonably expected to be present; or
  - (B) a public park while a person under eighteen (18) years of age was reasonably expected to be present.

(d) Subsection (b) does not apply to a:

- (1) licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier or an agent of any of these persons if the possession is in the regular course of lawful business activities; or
- (2) person who possesses more than ten (10) grams of a substance described in subsection (b) if the substance is possessed under circumstances consistent with typical medicinal or household use, including:
  - (A) the location in which the substance is stored;
  - (B) the possession of the substance in a variety of:
    - (i) strengths;
    - (ii) brands; or
    - (iii) types; or

(C) the possession of the substance:

- (i) with different expiration dates; or
- (ii) in forms used for different purposes.

(e) A person who possesses two (2) or more chemical reagents or precursors with the intent to manufacture a controlled substance commits a Level 6 felony.

(f) An offense under subsection (e) is a Level 5 felony if the person possessed:

- (1) a firearm while possessing two (2) or more chemical reagents or precursors with intent to manufacture a controlled substance; or
- (2) two (2) or more chemical reagents or precursors with intent to manufacture a controlled substance in, on, or within five hundred (500) feet of:
  - (A) school property while a person under eighteen (18) years of age was reasonably expected to be present; or
  - (B) a public park while a person under eighteen (18) years of age was reasonably expected to be present.

(g) A person who sells, transfers, distributes, or furnishes a chemical reagent or precursor to another person with knowledge or the intent that the recipient will use the chemical reagent or precursors to manufacture a controlled substance commits unlawful sale of a precursor, a Level 6 felony. However, the offense is a Level 5 felony if the person sells, transfers, distributes, or furnishes more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine.

(h) This subsection does not apply to a drug containing ephedrine, pseudoephedrine, or phenylpropanolamine that is dispensed under a prescription. A person who:

(1) has been convicted of:

- (A) dealing in methamphetamine (IC 35-48-4-1.1);
- (B) possession of more than ten (10) grams of ephedrine, pseudoephedrine or phenylpropanolamine (subsection (b));
- (C) possession of anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine or amphetamine (subsection (c));
- (D) possession of two (2) or more chemical reagents or precursors with the intent to manufacture a controlled substance (subsection (e)); or
- (E) unlawful sale of a precursor (subsection (g)); and

(2) not later than seven (7) years from the date the person was sentenced for the offense;

knowingly or intentionally possesses ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated, commits possession of a precursor by a methamphetamine offender, a Level 6 felony.

#### **35-48-4-14.7. Restrictions on sale of ephedrine and pseudoephedrine products.**

(a) This section does not apply to the following:

- (1) Ephedrine or pseudoephedrine dispensed pursuant to a prescription.
- (2) The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (g).

- (3) The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or manufacturer, the person is required to report a suspicious order to the state police department in accordance with subsection (g).
- (b) The following definitions apply throughout this section:
- (1) “Constant video monitoring” means the surveillance by an automated camera that:
- (A) records at least one (1) photograph or digital image every ten (10) seconds;
  - (B) retains a photograph or digital image for at least seventy-two (72) hours;
  - (C) has sufficient resolution and magnification to permit the identification of a person in the area under surveillance; and
  - (D) stores a recorded photograph or digital image at a location that is immediately accessible to a law enforcement officer.
- (2) “Convenience package” means a package that contains a drug having as an active ingredient not more than sixty (60) milligrams of ephedrine or pseudoephedrine, or both.
- (3) “Ephedrine” means pure or adulterated ephedrine.
- (4) “Pharmacy or NPLeX retailer” means:
- (A) a pharmacy, as defined in IC 25-26-13-2;
  - (B) a retailer containing a pharmacy, as defined in IC 25-26-13-2; or
  - (C) a retailer that electronically submits the required information to the National Precursor Log Exchange (NPLeX) administered by the National Association of Drug Diversion Investigators (NADDI).
- (5) “Pseudoephedrine” means pure or adulterated pseudoephedrine.
- (6) “Retailer” means a grocery store, general merchandise store, or other similar establishment. The term does not include a pharmacy or NPLeX retailer.
- (7) “Suspicious order” means a sale or transfer of a drug containing ephedrine or pseudoephedrine if the sale or transfer:
- (A) is a sale or transfer that the retail distributor, wholesaler, or manufacturer is required to report to the United States Drug Enforcement Administration;
  - (B) appears suspicious to the retail distributor, wholesaler, or manufacturer in light of the recommendations contained in Appendix A of the report to the United States attorney general by the suspicious orders task force under the federal Comprehensive Methamphetamine Control Act of 1996; or
  - (C) is for cash or a money order in the total amount of at least two hundred dollars (\$200).
- (8) “Unusual theft” means the theft or unexplained disappearance from a particular pharmacy or NPLeX retailer of drugs containing ten (10) grams or more of ephedrine, pseudoephedrine, or both in a twenty-four (24) hour period.

(c) A drug containing ephedrine or pseudoephedrine may be sold only by a pharmacy or NPLEEx retailer. Except as provided in subsection (f), a retailer may not sell a drug containing ephedrine or pseudoephedrine.

(d) A pharmacy or NPLEEx retailer may sell a drug that contains the active ingredient of ephedrine, pseudoephedrine, or both only if the pharmacy or NPLEEx retailer complies with the following conditions:

- (1) The pharmacy or NPLEEx retailer does not sell the drug to a person less than eighteen (18) years of age.
- (2) The pharmacy or NPLEEx retailer does not sell drugs containing more than:
  - (A) three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, to one (1) individual on one (1) day;
  - (B) seven and two-tenths (7.2) grams of ephedrine or pseudoephedrine, or both, to one (1) individual in a thirty (30) day period; or
  - (C) sixty-one and two-tenths (61.2) grams of ephedrine or pseudoephedrine, or both, to one (1) individual in a three hundred sixty-five (365) day period.
- (3) The pharmacy or NPLEEx retailer requires:
  - (A) the purchaser to produce a valid government issued photo identification card showing the date of birth of the person;
  - (B) the purchaser to sign a written or electronic log attesting to the validity of the information; and
  - (C) the clerk who is conducting the transaction to initial or electronically record the clerk's identification on the log.

Records from the completion of a log must be retained for at least two (2) years. A law enforcement officer has the right to inspect and copy a log or the records from the completion of a log in accordance with state and federal law. A pharmacy or NPLEEx retailer may not sell or release a log or the records from the completion of a log for a commercial purpose. The Indiana criminal justice institute may obtain information concerning a log or the records from the completion of a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. A pharmacy or NPLEEx retailer that in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

(4) The pharmacy or NPLEEx retailer maintains a record of information from each sale of a nonprescription product containing pseudoephedrine or ephedrine. Required information includes:

- (A) the name and address of each purchaser;
  - (B) the type of identification presented;
  - (C) the governmental entity that issued the identification;
  - (D) the identification number; and
  - (E) the ephedrine or pseudoephedrine product purchased, including the number of grams the product contains and the date and time of the transaction.
- (5) Beginning on January 1, 2012, a pharmacy or NPLEEx retailer shall, except as provided in subdivision (6), before completing a sale of an over-the-counter

product containing pseudoephedrine or ephedrine, electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI), if the NPLEx system is available to pharmacies or NPLEx retailers in the state without a charge for accessing the system. The pharmacy or NPLEx retailer may not complete the sale if the system generates a stop sale alert.

(6) If a pharmacy or NPLEx retailer selling an over-the-counter product containing ephedrine or pseudoephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the pharmacy or NPLEx retailer shall maintain a written log or an alternative electronic recordkeeping mechanism until the pharmacy or NPLEx retailer is able to comply with the electronic sales tracking requirement.

(7) The pharmacy or NPLEx retailer stores the drug behind the counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee.

(e) A person may not purchase drugs containing more than:

(1) three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, on one (1) day;

(2) seven and two-tenths (7.2) grams of ephedrine or pseudoephedrine, or both, in a thirty (30) day period; or

(3) sixty-one and two-tenths (61.2) grams of ephedrine or pseudoephedrine, or both, in a three hundred sixty-five (365) day period.

These limits apply to the total amount of base ephedrine and pseudoephedrine contained in the products and not to the overall weight of the products.

(f) This subsection applies only to convenience packages. A retailer may sell convenience packages under this section without complying with the conditions listed in subsection (d):

(1) after June 30, 2013; and

(2) before January 1, 2014.

A retailer may not sell drugs containing more than sixty (60) milligrams of ephedrine or pseudoephedrine, or both in any one (1) transaction. A retailer who sells convenience packages must secure the convenience packages behind the counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee. A retailer may not sell a drug containing ephedrine or pseudoephedrine after December 31, 2013.

(g) A retail distributor, wholesaler, or manufacturer shall report a suspicious order to the state police department in writing.

(h) Not later than three (3) days after the discovery of an unusual theft at a particular retail store, the pharmacy or NPLEx retailer shall report the unusual theft to the state police department in writing. If three (3) unusual thefts occur in a thirty (30) day period at a particular pharmacy or NPLEx retailer, the pharmacy or NPLEx retailer shall, for at least one hundred eighty (180) days after the date of the last unusual theft, locate all drugs containing ephedrine or pseudoephedrine at that particular pharmacy or NPLEx retailer behind a counter in a area inaccessible to a customer or in a locked display case that makes the drug unavailable to customers without the assistance of an employee.

(i) A unit (as defined in IC 36-1-2-23) may adopt an ordinance after February 1, 2005, that is more stringent than this section.

(j) A person who knowingly or intentionally violates this section commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

(k) A pharmacy or NPLeX retailer that uses the electronic sales tracking system in accordance with this section is immune from civil liability for any act or omission committed in carrying out the duties required by this section, unless the act or omission was due to negligence, recklessness, or deliberate or wanton misconduct. A pharmacy or NPLeX retailer is immune from liability to a third party unless the pharmacy or NPLeX retailer has violated the provision of this section and the third party brings an action based on the pharmacy's or NPLeX retailer's violation of this section.

(l) The following requirements apply to NPLeX:

(1) Information contained in the NPLeX may be shared only with law enforcement officials.

(2) A law enforcement official may access Indiana transaction information maintained in the NPLeX for investigative purposes.

(3) NADDI may not modify sales transaction data that is shared with law enforcement officials.

(4) At least one (1) time per week, NADDI shall forward Indiana data contained in the NPLeX, including data concerning a transaction that could not be completed due to the issuance of a stop sale alert, to the state police department.

### **35-48-4-15. Suspension of driver's license.**

**Editor's Note: During the 2014 legislative session, this statute was amended by P.L.217-2014 (H.E.A. 1279). The effective date of the amendment is January 1, 2015. Therefore, both versions of this statute are set forth below:**

#### **Version #1 (effective until January 1, 2015)**

(a) If a person is convicted of an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, or conspiracy to commit an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, and the court finds that a motor vehicle was used in the commission of the offense, the court shall, in addition to any other order the court enters, order that the person's:

(1) driver's license be suspended;

(2) existing motor vehicle registrations be suspended; and

(3) ability to register motor vehicles be suspended;

by the bureau of motor vehicles for a period specified by the court of at least six (6) months but not more than two (2) years.

(b) If a person is convicted of an offense described in subsection (a) and the person does not hold a driver's license or a learner's permit, the court shall order that the person may not receive a driver's license or a learner's permit from the bureau of motor vehicles for a period of not less than six (6) months.

#### **Version #2 (effective beginning on January 1, 2015)**

If a person is convicted of an offense under section 1, 1.1, 2, 3, 4, or 10 of this chapter, and the court finds that a motor vehicle was used in the commission of the offense, the court

may, in addition to any other order the court enters, order that the person's driving privileges be suspended by the bureau of motor vehicles for a period specified by the court of not more than two (2) years.

**35-48-4-16. Defenses; within five hundred feet**

(a) For an offense under this chapter that requires proof of:

- (1) delivery of cocaine, a narcotic drug, methamphetamine, or a controlled substance;
- (2) financing the delivery of cocaine, a narcotic drug, methamphetamine, or a controlled substance; or
- (3) possession of cocaine, a narcotic drug, methamphetamine, or a controlled substance;

within five hundred (500) feet of school property or a public park while a person less than eighteen (18) years of age was reasonably expected to be present, the person charged may assert the defense in subsection (b) or (c).

(b) It is a defense for a person charged under this chapter with an offense that contains an element listed in subsection (a) that:

- (1) a person was briefly in, on, or within five hundred (500) feet of school property or a public park while a person less than eighteen (18) years of age was reasonably expected to be present; and
- (2) no person under eighteen (18) years of age at least three (3) years junior to the person was in, on, or within five hundred (500) feet of the school property or public park at the time of the offense.

(c) It is a defense for a person charged under this chapter with an offense that contains an element listed in subsection (a) that a person was in, on, or within five hundred (500) feet of school property or a public park:

- (1) at the request or suggestion of a law enforcement officer or an agent of a law enforcement officer; and
- (2) while a person less than eighteen (18) years of age was reasonably expected to be present.

(d) The defense under this section applies only to the element of the offense that requires proof that the delivery, financing the delivery, or possession of cocaine, a narcotic drug, methamphetamine, or a controlled substance occurred in, on, or within five hundred (500) feet of school property or a public park while a person less than eighteen (18) years of age was reasonably expected to be present.

**35-48-4-17. Drug lab; environmental clean-up costs**

(a) In addition to any other penalty imposed for conviction of an offense under this chapter involving the manufacture or intent to manufacture methamphetamine, a court shall order restitution under IC 35-50-5-3 to cover the costs, if necessary, of an environmental cleanup incurred by a law enforcement agency or other person as a result of the offense.

(b) The amount collected under subsection (a) shall be used to reimburse the law enforcement agency that assumed the costs associated with the environmental cleanup described in subsection (a).

**ARTICLE 49  
OBSCENITY AND PORNOGRAPHY**

Ch. 1	Definitions
Ch. 2	General Provisions
Ch. 3	Crimes

**Chapter 1  
Definitions**

35-49-1-1	Applicability of definitions
35-49-1-2	“Distribute” defined
35-49-1-3	“Matter” defined
35-49-1-4	“Minor” defined
35-49-1-5	“Nudity” defined
35-49-1-6	“Owner” defined
35-49-1-7	“Performance” defined
35-49-1-8	“Sado-masochistic abuse” defined
35-49-1-9	“Sexual conduct” defined
35-49-1-10	“Sexual excitement” defined

**35-49-1-1. Applicability of definitions**

The definitions in this chapter apply throughout this article.

**35-49-1-2. “Distribute” defined**

“Distribute” means to transfer possession for a consideration.

**35-49-1-3. “Matter” defined**

“Matter” means:

- (1) any book, magazine, newspaper, or other printed or written material;
- (2) any picture, drawing, photograph, motion picture, digitized image, or other pictorial representation;
- (3) any statue or other figure;
- (4) any recording, transcription, or mechanical, chemical, or electrical reproduction; or
- (5) any other articles, equipment, machines, or materials.

**35-49-1-4. “Minor” defined**

“Minor” means any individual under the age of eighteen (18) years.

**35-49-1-5. “Nudity” defined**

“Nudity” means:

- (1) The showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering;
- (2) The showing of the female breast with less than a full opaque covering of any part of the nipple; or

(3) The depiction of covered male genitals in a discernibly turgid state.

**35-49-1-6. “Owner” defined**

“Owner” means any person who owns or has legal right to possession of any matter.

**35-49-1-7. “Performance” defined**

“Performance” means any play, motion picture, dance, or other exhibition or presentation, whether pictured, animated, or live, performed before an audience of one (1) or more persons.

**35-49-1-8. “Sado-masochistic abuse” defined**

“Sado-masochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

**35-49-1-9. “Sexual conduct” defined**

“Sexual conduct” means:

- (1) sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5);
- (2) exhibition of the uncovered genitals in the context of masturbation or other sexual activity;
- (3) exhibition of the uncovered genitals of a person under sixteen (16) years of age;
- (4) sado-masochistic abuse; or
- (5) sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with an animal.

**35-49-1-10. “Sexual excitement” defined**

“Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

**Chapter 2  
General Provisions**

- |           |   |
|-----------|---|
| 35-49-2-1 | Obscene matter or performance           |
| 35-49-2-2 | Matter or performance harmful to minors |
| 35-49-2-3 | Arrest, search and seizure              |
| 35-49-2-4 | Adversary hearing                       |
| 35-49-2-5 | Ordinances not limited                  |

**35-49-2-1. Obscene matter or performance**

A matter or performance is obscene for purposes of this article if:

- (1) The average person, applying contemporary community standards, finds that the dominant theme of the matter or performance, taken as a whole, appeals to the prurient interest in sex;
- (2) The matter or performance depicts or describes, in a patently offensive way, sexual conduct; and

- (3) The matter or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value.

### **35-49-2-2. Matter or performance harmful to minors**

A matter or performance is harmful to minors for purposes of this article if:

- (1) It describes or represents, in any form, nudity, sexual conduct, sexual excitement, or sado-masochistic abuse;
- (2) Considered as a whole, it appeals to the prurient interest in sex of minors;
- (3) It is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable matter for or performance before minors; and
- (4) Considered as a whole, it lacks serious literary, artistic, political, or scientific value for minors.

### **35-49-2-3. Arrest, search and seizure**

(a) Whenever a person:

- (1) Offers matter for distribution to the public as stock-in-trade of a lawful business or activity; or
- (2) Exhibits matter at a commercial theater showing regularly scheduled performances to the general public;

the person may be arrested under this article only if the arresting officer has first obtained an arrest warrant, and matter may be seized as evidence only if a search warrant has first been obtained.

(b) The quantity of matter seized may encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

(c) If:

- (1) The subject of a seizure under this chapter is a motion picture that is allegedly harmful to minors; and
- (2) The defendant or owner of the motion picture proves that other copies of the motion picture are not available for exhibition;

the court shall order that the defendant or owner may, at his own expense, copy the motion picture and continue showing the motion picture to adults pending a preliminary determination under section 4(b) of this chapter.

### **35-49-2-4. Adversary hearing**

(a) Within ten (10) days after:

- (1) Matter is obtained by seizure or by purchase under this article; or
- (2) The defendant is arrested under this article;

whichever is later, and before trial, the state, the defendant, an owner, or any other party in interest of any matter seized or purchased may apply for an obtain a prompt adversary hearing for the purpose described in subsection (b).

(b) At the adversary hearing, the court shall make a preliminary determination of whether the matter is:

- (1) Probably obscene; or
- (2) Probably harmful to minors.

### **35-49-2-5. Ordinances not limited**

This article does not limit the power of political subdivisions to adopt or enforce zoning ordinances regarding the use of real property.

## **Chapter 3 Crimes**

- 35-49-3-1 Sale, distribution or exhibition of obscene matter
- 35-49-3-2 Obscene performance
- 35-49-3-3 Dissemination of matter harmful to minors
- 35-49-3-4 Defenses

### **35-49-3-1. Sale, distribution or exhibition of obscene matter.**

A person who knowingly or intentionally:

- (1) sends or brings into Indiana obscene matter for sale or distribution; or
- (2) offers to distribute, distributes, or exhibits to another person obscene matter;

commits a Class A misdemeanor. However, the offense is a Level 6 felony if the obscene matter depicts or describes sexual conduct involving any person who is or appears to be under eighteen (18) years of age.

### **35-49-3-2. Obscene performance.**

A person who knowingly or intentionally engages in, participates in, manages, produces, sponsors, presents, exhibits, photographs, films, or videotapes any obscene performance commits a Class A misdemeanor. However, the offense is a Level 6 felony if the obscene performance depicts or describes sexual conduct involving any person who is or appears to be under eighteen (18) years of age.

### **35-49-3-3. Dissemination of matter harmful to minors**

(a) Except as provided in subsection (b), a person who knowingly or intentionally:

- (1) disseminates matter to minors that is harmful to minors;
- (2) displays matter that is harmful to minors in an area in which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;
- (3) sells, rents, or displays for sale or rent to any person matter that is harmful to minors within five hundred (500) feet of the nearest property line of a school or church;
- (4) engages in or conducts a performance before minors that is harmful to minors;
- (5) engages in or conducts a performance that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;
- (6) misrepresents the minor's age for the purpose of obtaining admission to an area from which minors are restricted because of the display of matter or a performance that is harmful to minors; or
- (7) misrepresents that the person is a parent or guardian of a minor for the purpose of obtaining admission of the minor to an area where minors are being restricted because of display of matter or performance that is harmful to minors;

commits a Level 6 felony.

(b) This section does not apply if a person disseminates, displays, or makes available the matter described in subsection (a) through the Internet, computer electronic transfer, or a computer network unless:

- (1) the matter is obscene under IC 35-49-2-1;
- (2) the matter is child pornography under IC 35-42-4-4; or
- (3) the person distributes the matter to a child less than eighteen (18) years of age believing or intending that the recipient is a child less than eighteen (18) years of age.

### **35-39-3-4. Defenses**

(a) It is a defense to a prosecution under section 3 of this chapter for the defendant to show:

- (1) that the matter was disseminated or that the performance was performed for legitimate scientific or educational purposes;
- (2) that the matter was disseminated or displayed to or that the performance was performed before the recipient by a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or by an employee of such a school, museum, or public library acting within the scope of the employee's employment;
- (3) that the defendant had reasonable cause to believe that the minor involved was eighteen (18) years of age or older and that the minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older; or
- (4) that the defendant was a salesclerk, motion picture projectionist, usher, or ticket taker, acting within the scope of the defendant's employment and that the defendant had no financial interest in the place where the defendant was so employed.

(b) Except as provided in subsection (c), it is a defense to a prosecution under section 3 of this chapter if all of the following apply:

- (1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to disseminate matter to a minor that is harmful to minors.
- (2) The defendant is not more than four (4) years older or younger than the person who received the matter that is harmful to minors.
- (3) The relationship between the defendant and the person who received the matter that is harmful to minors was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.
- (4) The crime was committed by a person less than twenty-two (22) years of age.
- (5) The person receiving the matter expressly or implicitly acquiesced in the defendant's conduct.

(c) The defense to a prosecution described in subsection (b) does not apply if:

- (1) the image is disseminated to a person other than the person:
  - (A) who sent the image; or

- (B) who is depicted in the image; or
- (2) the dissemination of the image violates:
  - (A) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
  - (B) an ex parte order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
  - (C) a workplace violence restraining order issued under IC 34-26-6;
  - (D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
  - (E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
  - (F) a no contact order issued as a condition or probation;
  - (G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
  - (H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
  - (I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;
  - (J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);
  - (K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:
    - (i) tribe;
    - (ii) band;
    - (iii) pueblo;
    - (iv) nation; or
    - (v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;
  - (L) an order issued under IC 35-33-8-3.2; or
  - (M) an order issued under IC 35-38-1-30.

**ARTICLE 50**  
**SENTENCES**  
**[PORTIONS OMITTED]**

Ch. 1	General Provisions
Ch. 2	Sentences for Felonies
Ch. 3	Sentences for Misdemeanors
Ch. 5	Miscellaneous Penalties
Ch. 6	Release From Imprisonment; Good Time Credit
Ch. 9	Additional Sentence Requirements for Domestic Battery Convictions

**Chapter 1**  
**General Provisions**

35-50-1-1	Authority to sentence
35-50-1-2	Consecutive and concurrent terms
35-50-1-5	Effect of post-conviction remedy on subsequent sentencing
35-50-1-6	Secure private facilities
35-50-1-7	Notice to DOC of victim address

**35-50-1-1. Authority to sentence**

The court shall fix the penalty of and sentence a person convicted of an offense.

**35-50-1-2. Consecutive and concurrent terms**

**Editor's Note: This statute was amended in 2013 by P.L.214-2013 and by P.L.158-2013, with neither act referring to the other. This statute was amended in 2014 by P.L.168-2014 (H.E.A. 1006-2014). P.L.168-2014 amended this statute as previously amended by P.L.158-2013, but did not mention the 2013 amendment to the statute made by P.L.214-2013. Because the differences are minor, the statute set forth below reflects the statute as amended by the Indiana General Assembly in P.L.168-2014.**

(a) As used in this section, "crime of violence" means the following:

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Voluntary manslaughter (IC 35-42-1-3).
- (4) Involuntary manslaughter (IC 35-42-1-4).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Aggravated battery (IC 35-42-2-1.5).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Rape (IC 35-42-4-1).
- (9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- (10) Child molesting (IC 35-42-4-3).
- (11) Sexual misconduct with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a Level 2 felony under IC 35-42-4-9(b)(2).
- (12) Robbery as a Level 2 felony or a Level 3 felony (IC 35-42-5-1).

(13) Burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony (IC 35-43-2-1).

(14) Operating a vehicle while intoxicated causing death (IC 9-30-5-5).

(15) Operating a vehicle while intoxicated causing serious bodily injury to another person (IC 9-30-5-4).

(16) Resisting law enforcement as a felony (IC 35-44.1-3-1).

(b) As used in this section, “episode of criminal conduct” means offenses or a connected series of offenses that are closely related in time, place and circumstance.

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:

(1) aggravating circumstances in IC 35-38-1-7.1(a); and

(2) mitigating circumstances in IC 35-38-1-7.1(b);

in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of the terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10 (before its repeal) to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(d) If, after being arrested for one (1) crime, a person commits another crime:

(1) before the date the person is discharged from probation, parole, or a term of imprisonment for the first crime; or

(2) while the person is released:

(A) upon the person’s own recognizance; or

(B) on bond;

the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

(e) If the factfinder determines under IC 35-50-2-11 that a person used a firearm in the commission of the offense for which the person was convicted, the term of imprisonment for the underlying offense and the additional term of imprisonment imposed under IC 35-50-2-11 must be served consecutively.

### **35-50-1-5. Effect of post-conviction remedy on subsequent sentencing**

If:

(1) Prosecution is initiated against a petitioner who has successfully sought relief under any proceeding for postconviction remedy and a conviction is subsequently obtained; or

(2) A sentence has been set aside under a postconviction remedy and the successful petitioner is to be resentenced;

the sentencing court may impose a more severe penalty than that originally imposed, and the court shall give credit for time served.

### **35-50-1-6. Secure private facilities**

(a) Before a person who has been convicted of an offense and committed to the department of correction is assigned to the department of correction program or facility under IC

11-10-1, the sentencing court may recommend that the department of correction place the person in a secure private facility (as defined in IC 31-9-2-115) if:

- (1) the person was less than sixteen (16) years of age on the date of sentencing; and
- (2) the court determines that the person would benefit from the treatment offered by the facility.

(b) A secure private facility may terminate a placement and request the department of correction to reassign a convicted person to another department of correction facility or program.

(c) When a convicted person becomes twenty-one (21) years of age or if a secure private facility terminates a placement under subsection (b) a convicted person shall:

- (1) be assigned to a department of correction facility or program under IC 11-10-1-3(b); and
- (2) serve the remainder of the sentence in the department of correction facility or program.

(d) A person who is placed in a secure private facility under this section:

- (1) is entitled to earn credit time under IC 35-50-6; and
- (2) may be deprived of earned credit time as provided under rules adopted by the department of correction under IC 4-22-2.

### **35-50-1-7. Notice to DOC of victim address**

Whenever a court commits a person to the department of correction as a result of a conviction, the court shall notify the department of correction of the last known name and address of any victim of the offense for which the person is convicted.

## **Chapter 2 Sentences for Felonies**

35-50-2-0.1	Application of amendments
35-50-2-0.2	Application of amendments
35-50-2-0.3	Application of amendments
35-50-2-1	Definitions
35-50-2-1.3	“Advisory sentence” defined
35-50-2-1.4	“Criminal gang” defined
35-50-2-1.5	“Individual with mental retardation” defined
35-50-2-1.8	“Sex offense against a child” defined
35-50-2-2.1	Suspension for adult with juvenile record
35-50-2-2.2	Suspension; probation
35-50-2-3	Murder
35-50-2-4	Class A felony; Level 1 felony
35-50-2-4.5	Level 2 felony
35-50-2-5	Class B felony; Level 3 felony
35-50-2-5.5	Level 4 felony
35-50-2-6	Class C felony; Level 5 felony
35-50-2-7	Class D felony; Level 6 felony
35-50-2-8	Habitual offenders
35-50-2-9	Death sentence; Life without parole

35-50-2-11	Additional penalty for use of a firearm
35-50-2-12	Criminal justice institute offender studies
35-50-2-13	Additional penalty for use of a firearm in controlled substance offense
35-50-2-14	Repeat sexual offenders
35-50-2-15	Criminal gang sentence enhancement
35-50-2-16	Murder or attempted murder causing termination of human pregnancy
35-50-2-17	Sentencing alternatives for juvenile offenders

### **35-50-2-0.1. Application of amendments**

The following amendments to this chapter apply as follows:

- (1) The amendments described in section 0.2 of this chapter apply as described in section 0.2 of this chapter.
- (2) The amendments made to sections 3 and 9 of this chapter by P.L.332-1987 do not apply to a case in which a death sentence has been imposed before September 1, 1987.
- (3) The amendments made to sections 3 and 9 of this chapter by P.L.250-1993 apply only to murders committed after June 30, 1993.
- (4) The amendments made to section 2 of this chapter by P.L.11-1994 (before the repeal of section 2 of this chapter) apply only to an offender (as defined in IC 5-2-12-4, as added by P.L.11-1994 and before its repeal) convicted after June 30, 1994.
- (5) The amendments made to section 8 of this chapter by P.L.166-2001 apply only if the offense for which the state seeks to have the person sentenced as a habitual offender was committed after June 30, 2001.
- (6) The amendments made to section 1 of this chapter by P.L.243-2001 apply only to crimes committed on or after May 11, 2001. It is the intent of the general assembly that section 1 of this chapter, as it applies to crimes committed before May 11, 2001, be construed without drawing any inference from the passage of P.L.243-2001.
- (7) The amendments made to section 8(b)(3) of this chapter by P.L.291-2001 (before its deletion on July 1, 2014) apply only if the last offense for which the state seeks to have a person sentenced as a habitual offender was committed after June 30, 2001.
- (8) The amendments made to section 10 of this chapter by P.L.291-2001 (before the repeal of section 10 of this chapter) apply only if the last offense for which the state seeks to have the person sentenced as a habitual substance offender was committed after June 30, 2001. However, a prior unrelated conviction committed before, on, or after July 1, 2001, may be used to qualify an offender as a habitual offender under section 8 of this chapter or as a habitual substance offender under section 10 of this chapter.
- (9) The amendments made to section 1 of this chapter by P.L.291-2001 apply to crimes committed on or after May 11, 2001. It is the intent of the general assembly that section 1 of this chapter, as it applies to crimes committed before May 11, 2001, be construed without drawing any inference from the passage of P.L.291-2001.

(10) The amendments made to section 9 of this chapter by P.L.80-2002 apply only to a conviction for murder that occurs after March 20, 2002, including a conviction entered as a result of a retrial of a person, regardless of when the offense occurred.

### **35-50-2-0.2. Application of amendments**

(a) The addition of section 7.1 of this chapter (before its repeal) and the amendment of section 8 of this chapter by P.L.328-1985 do not affect any:

- (1) rights or liabilities accrued;
- (2) penalties incurred; or
- (3) proceedings begun;

before September 1, 1985. The rights, liabilities, and proceedings are continued and punishments, penalties, or forfeitures shall be imposed and enforced under section of this chapter as if P.L.328-1985 had not been enacted.

(b) If all the felonies relied upon for sentencing a person as a habitual offender under section 8 of this chapter are felonies that were committed before September 1, 1985, the felonies shall be prosecuted and remain punishable under section 8 of this chapter as if P.L.328-1985 had not been enacted.

### **35-50-2-0.3. Application of amendments**

For purposes of section 2.1 of this chapter, as added by P.L. 284-1985, the juvenile record includes only those adjudications of delinquency after May 31, 1985.

### **35-50-2-1. Definitions**

(a) As used in this chapter, “Level 6 felony conviction” means:

- (1) a conviction in Indiana for:
  - (A) a Class D felony, for a crime committed before July 1, 2014; or
  - (B) a Level 6 felony, or a crime committed after June 30, 2014; and
- (2) a conviction, in any other jurisdiction at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year.

However, the term does not include a conviction with respect to which the person has been pardoned, or a conviction of a Class A misdemeanor entered under IC 35-38-1-1.5 or section 7(c) or 7(d) of this chapter.

(b) As used in this chapter, “felony conviction” means any conviction, in any jurisdiction at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year. However, it does not include a conviction with respect to which the person has been pardoned, or a conviction of a Class A misdemeanor under section 7(c) of this chapter.

(c) As used in this chapter, “minimum sentence” means:

- (1) for murder, forty-five (45) years;
- (2) for a Class A felony, for a crime committed before July 1, 2014, twenty (20) years;
- (3) for a Class B felony, for a crime committed before July 1, 2014, six (6) years;
- (4) for a Class C felony, for a crime committed before July 1, 2014, two (2) years;
- (5) for a Class D felony, for a crime committed before July 1, 2014, one-half (1/2) year;

- (6) for a Level 1 felony, for a crime committed after June 30, 2014, twenty (20) years;
- (7) for a Level 2 felony, for a crime committed after June 30, 2014, ten (10) years;
- (8) for a Level 3 felony, for a crime committed after June 30, 2014, three (3) years;
- (9) for a Level 4 felony, for a crime committed after June 30, 2014 two (2) years;
- (10) for a Level 5 felony, for a crime committed after June 30, 2014, one (1) year; and
- (11) for a Level 6 felony, for a crime committed after June 30, 2014, one-half (1/2) year.

**35-50-2-1.3. “Advisory sentence” defined**

(a) For purposes of sections 3 through 7 of this chapter, “advisory sentence” means a guideline sentence that the court may voluntarily consider when imposing a sentence.

(b) Except as provided in subsection (c), a court is not required to use an advisory sentence.

(c) In imposing:

- (1) consecutive sentences for felony convictions that are not crimes of violence (as defined in IC 35-50-1-2(a)) arising out of an episode of criminal conduct, in accordance with IC 35-50-1-2; or
- (2) an additional fixed term to a repeat sexual offender under section 14 of this chapter;

a court is required to use the appropriate advisory sentence in imposing a consecutive sentence or an additional fixed term. However, the court is not required to use the advisory sentence in imposing the sentence for the underlying offense.

(d) This section does not require a court to use an advisory sentence in imposing consecutive sentences for felony convictions that do not arise out of an episode of criminal conduct.

**35-50-2-1.4. “Criminal gang” defined**

For purposes of section 15 of this chapter, “criminal gang” means a group with at least three (3) members that specifically:

- (1) either;
  - (A) promotes, sponsors, or assists in; or
  - (B) participates in; or
- (2) requires as a condition or membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

**35-50-2-1.5. “Individual with mental retardation” defined**

As used in this chapter, “individual with mental retardation” has the meaning set forth in IC 35-36-9-2.

**35-50-2-1.8. “Sex offense against a child” defined**

As used in this chapter, “sex offense against a child” means an offense under IC 35-42-4 in which the victim is a child less than eighteen (18) years of age.

### **35-50-2-2.1. Suspension for adult with juvenile record**

(a) Except as provided in subsection (b), the court may not suspend a sentence for a felony for a person with a juvenile record when:

(1) The juvenile record includes findings that the juvenile acts, if committed by an adult, would constitute:

- (A) one (1) Class A or Class B felony;
- (B) two (2) Class C or Class D felonies;
- (C) one (1) Class C and one (1) Class D felony;
- (D) one (1) Level 1, Level 2, Level 3, or Level 4 felony;
- (E) two (2) Level 5 or Level 6 felonies; or
- (F) one (1) Level 5 and one (1) Level 6 felony; and

(2) Less than three (3) years have elapsed between commission of the juvenile acts that would be felonies if committed by an adult and the commission of the felony for which the person is being sentenced.

(b) Notwithstanding subsection (a), the court may suspend any part of the sentence for a felony if it finds that:

- (1) the crime was the result of circumstances unlikely to recur;
- (2) the victim of the crime induced or facilitated the offense;
- (3) there are substantial grounds tending to excuse or justify the crime, although failing to establish a defense; or
- (4) the acts in the juvenile record would not be Class A, Class B, Level 1, Level 2, Level 3, or Level 4 felonies if committed by an adult, and the convicted person is to undergo home detention under IC 35-38-1-21 instead of the minimum sentence specified for the crime under this chapter.

### **35-50-2-2.2. Suspension; probation**

(a) Except as provided in subsection (b) or (c), the court may suspend any part of a sentence for a felony.

(b) If a person is convicted of a Level 2 felony or a Level 3 felony, except a Level 2 felony or a Level 3 felony concerning a controlled substance under IC 35-48-4, and has any prior unrelated felony conviction, the court may suspend only that part of a sentence that is in excess of the minimum sentence for the:

- (1) Level 2 felony; or
- (2) Level 3 felony.

(c) The court may suspend only that part of a sentence for murder or a Level 1 felony conviction that is in excess of the minimum sentence for murder or the Level 1 felony conviction.

### **35-50-2-3. Murder**

(a) A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), a person who was:

- (1) at least eighteen (18) years of age at the time the murder was committed may be sentenced to:

- (A) death; or
- (B) life imprisonment without parole; and
- (2) at least sixteen (16) years of age but less than eighteen (18) years of age at the time the murder was committed may be sentenced to life imprisonment without parole;

under section 9 of this chapter unless a court determines under IC 35-36-9 that the person is an individual with mental retardation.

#### **35-50-2-4. Class A felony; Level 1 felony**

(a) A person who commits a Class A felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) Except as provided in subsection (c), a person who commits a Level 1 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between twenty (20) and forty (40) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(c) A person who commits a Level 1 felony child molesting offense described in:

- (1) IC 35-31.5-2-72(1); or
- (2) IC 35-31.5-2-72(2);

shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

#### **35-50-2-4.5. Level 2 felony**

A person who commits a Level 2 felony shall be imprisoned for a fixed term of between ten (10) and thirty (30) years, with the advisory sentence being seventeen and one-half (17 ½ years). In addition, the person may be fined not more than ten thousand dollars (\$10,000).

#### **35-50-2-5. Class B felony; Level 3 felony**

(a) A person who commits a Class B felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) A person who commits a Level 3 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between three (3) and sixteen (16) years, with the advisory sentence being nine (9) years. In addition, person may be fined not more than ten thousand dollars (\$10,000).

#### **35-50-2-5.5. Level 4 felony**

A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**35-50-2-6. Class C felony; Level 5 felony**

(a) A person who commits a Class C felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) A person who commits a Level 5 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(c) Notwithstanding subsections (a) and (b), if a person commits nonsupport of a child as a Class C felony (for a crime committed before July 1, 2014) or a Level 5 felony (for a crime committed after June 30, 2014) under IC 35-46-1-5, the sentencing court may convert the Class C felony conviction to a Class D felony conviction or a Level 5 felony conviction to a Level 6 felony conviction if, after receiving a verified petition as described in subsection (d) and after conducting a hearing in which the prosecuting attorney has been notified, the court makes the following findings:

- (1) The person has successfully completed probation as required by the person's sentence.
- (2) The person has satisfied other obligations imposed on the person as required by the person's sentence.
- (3) The person has paid in full all child support arrearages due that are named in the information and no further child support arrearage is due.
- (4) The person has not been convicted of another felony since the person was sentenced for the underlying nonsupport of a child felony.
- (5) There are no criminal charges pending against the person.

(d) A petition filed under subsection (c) must be verified and set forth the following:

- (1) A statement that the person was convicted of nonsupport of a child under IC 35-46-1-5.
- (2) The date of the conviction.
- (3) The date the person completed the person's sentence.
- (4) The amount of child support arrearage due at the time of conviction.
- (5) The date the child support arrearage was paid in full.
- (6) A verified statement that no further child support arrearage is due.
- (7) Any other obligations imposed on the person as part of the person's sentence.
- (8) The date the obligations were satisfied.
- (9) A verified statement that there are no criminal charges pending against the person.

(e) A person whose conviction has been converted to a lower penalty under this section is eligible to seek expungement under IC 35-38-9-3 with the date of conversion used as the date of conviction to calculate time frames under IC 35-38-9.

**35-50-2-7. Class D felony; Level 6 felony**

(a) A person who commits a Class D felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½ years). In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) A person who commits a Level 6 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(c) Notwithstanding subsections (a) and (b), if a person has committed a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014), the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) if:

(1) the court finds that:

(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and

(B) the prior felony was committed less than three (3) years before the second felony was committed;

(2) the offense is domestic battery as a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) under IC 35-42-2-1.3; or

(3) the offense is possession of child pornography (IC 35-42-4-4(c)).

The court shall enter in the record, in detail, the reasons for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted under this subsection.

(d) Notwithstanding subsections (a) and (b), the sentencing court may convert a Class D felony conviction (for a crime committed before July 1, 2014) or a Level 6 felony conviction (for a crime committed after June 30, 2014) to a Class A misdemeanor conviction if, after receiving a verified petition as described in subsection (e) and after conducting a hearing of which the prosecuting attorney has been notified, the court makes the following findings:

(1) The person is not a sex or violent offender (as defined in IC 11-8-8-5).

(2) The person was not convicted of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) that resulted in bodily injury to another person.

(3) The person has not been convicted of perjury under IC 35-44.1-2-1 (or IC 35-44-2-1 before its repeal) or official misconduct under IC 35-44.1-1-1 (or IC 35-44-1-2 before its repeal).

(4) At least three (3) years have passed since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D or Level 6 felony.

(5) The person has not been convicted of a felony since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D or Level 6 felony.

(6) No criminal charges are pending against the person.

(e) A petition filed under subsection (d) or (f) must be verified and set forth:

(1) the crime the person has been convicted of:

- (2) the date of the conviction;
- (3) the date the person completed the person's sentence;
- (4) any obligations imposed on the person as part of the sentence;
- (5) the date the obligations were satisfied; and
- (6) a verified statement that there are no criminal charges pending against the person.

(f) If a person whose Class D or Level 6 felony conviction has been converted to a Class A misdemeanor conviction under subsection (d) is convicted of a felony not later than five (5) years after the conversion under subsection (d), a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction (for a crime committed before July 1, 2014) or a Level 6 felony conviction (for a crime committed after June 30, 2014).

### **35-50-2-8. Habitual offenders**

(a) The state may seek to have a person sentenced as a habitual offender for a felony by alleging, on one (1) or more pages separate from the rest of the charging instrument, that the person has accumulated the required number of prior unrelated felony convictions in accordance with this section.

(b) A person convicted of murder or a Level 1 through Level 4 felony is a habitual offender if the state proves beyond a reasonable doubt that:

- (1) the person has been convicted of two (2) prior unrelated felonies; and
- (2) at least one (1) of the prior unrelated felonies is not a Level 6 felony or Class D felony.

(c) A person convicted of a Level 5 felony is a habitual offender if the state proves beyond a reasonable doubt that:

- (1) the person has been convicted of two (2) prior unrelated felonies;
- (2) at least one (1) of the prior unrelated felonies is not a Level 6 felony or a Class D felony; and
- (3) if the person is alleged to have committed a prior unrelated:
  - (A) Level 5 felony;
  - (B) Level 6 felony;
  - (C) Class C felony; or
  - (D) Class D felony;

not more than ten (10) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) and the time the person committed the current offense.

(d) A person convicted of a Level 6 felony is a habitual offender if the state proves beyond a reasonable doubt that:

- (1) the person has been convicted of three (3) prior unrelated felonies; and
- (2) if the person is alleged to have committed a prior unrelated:
  - (A) Level 5 felony;
  - (B) Level 6 felony;
  - (C) Class C felony;
  - (D) Class D felony;

not more than ten (10) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) and the time the person committed the current offense.

(e) The state may not seek to have a person sentenced as a habitual offender for a felony offense under this section if the current offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person has a prior unrelated conviction. However, a prior unrelated felony conviction may be used to support a habitual offender determination even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense.

(f) A person has accumulated two (2) or three (3) prior unrelated felony convictions for purposes of this section only if:

(1) the second prior unrelated felony conviction was committed after commission of and sentencing for the first prior unrelated felony conviction;

(2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after commission of and sentencing for the second prior unrelated felony conviction.

(3) for a conviction requiring proof of three (3) prior unrelated felonies, the third prior unrelated felony conviction was committed after commission of and sentencing for the second prior unrelated felony conviction.

(g) A conviction does not count for purposes of this section as a prior unrelated felony conviction if:

(1) the conviction has been set aside; or

(2) the conviction is one for which the person has been pardoned.

(h) If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3. The role of the jury is to determine whether the defendant has been convicted of the unrelated felonies. The state or the defendant may not conduct any additional interrogation or questioning of the jury during the habitual offender part of the trial.

(i) The court shall sentence a person found to be a habitual offender to an additional fixed term that is between:

(1) six (6) years and twenty (20) years, for a person convicted of murder or a Level 1 through Level 4 felony; or

(2) two (2) years and six (6) years, for a person convicted of a Level 5 or Level 6 felony.

Any additional term imposed under this subsection is nonsuspendible.

(j) Habitual offender is a status that results in an enhanced sentence. It is not a separate crime and does not result in a consecutive sentence. The court shall attach the habitual offender enhancement to the felony conviction with the highest sentence imposed and specify which felony count is being enhanced. If the felony enhanced by the habitual offender determination is set aside or vacated, the court shall resentence the person and apply the habitual offender enhancement to the felony conviction with the next highest sentence in the underlying cause, if any.

(k) A prior unrelated felony conviction may not be collaterally attacked during a habitual offender proceeding unless the conviction is constitutionally invalid.

- (1) The procedural safeguards that apply to other criminal charges, including:
- (1) the requirement that the charge be filed by information or indictment; and
  - (2) the right to an initial hearing;
- also apply to a habitual offender allegation.

**35-50-2-9. Death sentence; life without parole**

(a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with mental retardation.

(b) The aggravating circumstances are as follows:

- (1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:
  - (A) Arson (IC 35-43-1-1).
  - (B) Burglary (IC 35-43-2-1).
  - (C) Child molesting (IC 35-42-4-3).
  - (D) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
  - (E) Kidnapping (IC 35-42-3-2).
  - (F) Rape (IC 35-42-4-1).
  - (G) Robbery (IC 35-42-5-1).
  - (H) Carjacking (IC 35-42-5-2) (before its repeal).
  - (I) Criminal gang activity (IC 35-45-9-3).
  - (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
  - (K) Criminal confinement (IC 35-42-3-3).
- (2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure a person or damage property.
- (3) The defendant committed the murder by lying in wait.
- (4) The defendant who committed the murder was hired to kill.
- (5) The defendant committed the murder by hiring another person to kill.
- (6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:
  - (A) the victim was acting in the course of duty; or
  - (B) the murder was motivated by an act the victim performed while acting in the course of duty.
- (7) The defendant has been convicted of another murder.
- (8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.
- (9) The defendant was:
  - (A) under the custody of the department of correction;
  - (B) under the custody of a county sheriff;
  - (C) on probation after receiving a sentence for the commission of a felony;or

- (D) on parole;  
at the time the murder was committed.
- (10) The defendant dismembered the victim.
- (11) The defendant burned, mutilated, or tortured the victim while the victim was alive.
- (12) The victim of the murder was less than twelve (12) years of age.
- (13) The victim was a victim of any of the following offenses for which the defendant was convicted:
  - (A) Battery committed before July 1, 2014, as a Class D felony or as a Class C felony under IC 35-42-2-1 or battery committed after June 30, 2014, as a Level 6 felony, a Level 5 felony, a Level 4 felony, or a Level 3 felony.
  - (B) Kidnapping (IC 35-42-3-2).
  - (C) Criminal confinement (IC 35-42-3-3).
  - (D) A sex crime under IC 35-42-4.
- (14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.
- (15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):
  - (A) into an inhabited dwelling; or
  - (B) from a vehicle.
- (16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

- (1) The defendant has no significant history of prior criminal conduct.
- (2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.
- (3) The victim was a participant in or consented to the defendant's conduct.
- (4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.
- (5) The defendant acted under the substantial domination of another person.
- (6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.
- (7) The defendant was less than eighteen (18) years of age at the time the murder was committed.
- (8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for

consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (l) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

- (1) the death penalty; or
- (2) life imprisonment without parole;

only if it makes the findings described in subsection (l). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

- (1) sentence the defendant to death; or
- (2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (l).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

- (1) conviction or sentence was in violation of the:

- (A) Constitution of the State of Indiana; or
- (B) Constitution of the United States;
- (2) sentencing court was without jurisdiction to impose a sentence; and
- (3) sentence:
  - (A) exceeds the maximum sentence authorized by law; or
  - (B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

(l) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

- (1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and
- (2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

### **35-50-2-11. Additional penalty for use of a firearm**

(a) As used in this section, "firearm" has the meaning set forth in IC 35-47-1-5.

(b) As used in this section, "offense" means:

- (1) a felony under IC 35-42 that resulted in death or serious bodily injury;
- (2) kidnapping; or
- (3) criminal confinement as a Level 2 or Level 3 felony.

(c) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense.

(d) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear the evidence in the enhancement hearing.

(e) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proven beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense, the court may sentence the person to an additional fixed term of imprisonment of between five (5) years and twenty (20) years.

### **35-50-2-12. Criminal justice institute offender studies**

The Indiana criminal justice institute shall review characteristics of offenders committed to the department of correction over such period of time it deems appropriate and of the offenses committed by those offenders in order to ascertain norms used by the trial courts in sentencing. The Indiana criminal justice institute shall from time to time publish its findings in the Indiana Register and provide its findings to the legislative services agency and the judicial conference of Indiana.

### **35-50-2-13. Additional penalty for use of firearm in controlled substance offense**

(a) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense of dealing in a controlled substance under IC 35-48-4-1 through IC 35-48-4-4 sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally:

- (1) used a firearm; or
- (2) possessed a:
  - (A) handgun in violation of IC 35-47-2-1;
  - (B) sawed-off shotgun in violation of IC 35-47-5-4.1; or
  - (C) machine gun in violation of IC 35-47-5-8;

while committing the offense.

(b) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(c) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proven beyond a reasonable doubt that the person knowingly or intentionally committed an offense as described in subsection (a), the court may sentence the person to an additional fixed term of imprisonment of not more than five (5) years, except as follows:

- (1) If the firearm is a sawed-off shotgun, the court may sentence the person to an additional fixed term of imprisonment of not more than ten (10) years.
- (2) If the firearm is a machine gun or is equipped with a firearm silencer or firearm muffler, the court may sentence the person to an additional fixed term of imprisonment of not more than twenty (20) years. The additional sentence under this subdivision is in addition to any additional sentence imposed under section 11 of this chapter for use of a firearm in the commission of an offense.

### **35-50-2-14. Repeat sexual offender**

(a) As used in this section, "sex offense" means a felony conviction:

- (1) under IC 35-42-4-1 through IC 35-42-4-9 or under IC 35-46-1-3;
- (2) for an attempt or conspiracy to commit an offense described in subdivision (1); or
- (3) for an offense under the laws of another jurisdiction, including a military court, that is substantially similar to an offense described in subdivision (1).

(b) The state may seek to have a person sentenced as a repeat sexual offender for a sex offense described in subsection (a)(1) or (a)(2) by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated one (1) prior unrelated felony conviction for a sex offense described in subsection (a).

(c) After a person has been convicted and sentenced for a felony described in subsection (a)(1) or (a)(2) after having been sentenced for a prior unrelated sex offense described in subsection (a), the person has accumulated one (1) prior unrelated felony sex offense conviction. However, a conviction does not count for purposes of this subsection, if:

(1) it has been set aside; or

(2) it is a conviction for which the person has been pardoned.

(d) If the person was convicted of the sex offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(e) A person is a repeat sexual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person has accumulated one (1) prior unrelated felony sex offense conviction.

(f) The court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the advisory sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years.

### **35-50-2-15. Criminal gang sentence enhancement**

(a) This section does not apply to an individual who is convicted of a felony offense under IC 35-45-9-3.

(b) The state may seek, on a page separate from the rest of the charging instrument, to have a person who allegedly committed a felony offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person:

(1) knowingly or intentionally was a member of a criminal gang while committing the offense; and

(2) committed the felony offense;

(A) at the direction of or in affiliation with a criminal gang; or

(B) with the intent to benefit, promote, or further the interests of a criminal gang, or for the purposes of increasing the person's own standing or position with a criminal gang.

(c) If the person is convicted of the felony offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(d) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally was a member of a criminal gang while committing the felony offense and committed the felony offense at the direction of or in affiliation with a criminal gang as described in subsection (b), the court shall:

(1) sentence the person to an additional fixed term of imprisonment equal to the sentence imposed for the underlying felony, if the person is sentenced for only one (1) felony; or

(2) sentence the person to an additional fixed term of imprisonment equal to the longest sentence imposed for the underlying felonies, if the person is being sentenced for more than one (1) felony.

(e) A sentence imposed under this section shall run consecutively to the underlying sentence.

(f) A term of imprisonment imposed under this section may not be suspended.

(g) For purposes of subsection (c), evidence that a person was a member of a criminal gang or committed a felony at the direction of or in affiliation with a criminal gang may include the following:

- (1) An admission of criminal gang membership by the person.
- (2) A statement by:
  - (A) a member of the person's family;
  - (B) the person's guardian; or
  - (C) a reliable member of the criminal gang;stating the person is a member of a criminal gang.
- (3) The person having tattoos identifying the person as a member of a criminal gang.
- (4) The person having a style of dress that is particular to members of a criminal gang.
- (5) The person associating with one (1) or more members of a criminal gang.
- (6) Physical evidence indicating the person is a member of a criminal gang.
- (7) An observation of the person in the company of a known criminal gang member on multiple occasions.
- (8) Communications authored by the person indicating gang membership.

### **35-50-2-16. Murder or attempted murder causing termination of human pregnancy**

(a) The state may seek, on a page separate from the rest of the charging instrument, to have a person who allegedly committed or attempted to commit murder under IC 35-42-1-1(1) or IC 35-42-1-1(2) sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person, while committing or attempting to commit murder under IC 35-42-1-1(1) or IC 35-42-1-1(2), caused the termination of a human pregnancy.

(b) If the person is convicted of murder or attempted murder in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(c) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person, while committing or attempting to commit murder under IC 35-42-1-1(1) or IC 35-42-1-1(2), caused the termination of a human pregnancy, the court shall sentence the person to an additional fixed term of imprisonment of not less than six (6) or more than twenty (20) years.

(d) A sentence imposed under this section runs consecutively to the underlying sentence.

(e) For purposes of this section, prosecution of the murder or attempted murder under IC 35-42-1-1(1) or IC 35-42-1-1(2) and the enhancement of the penalty for that crime does not require proof that:

- (1) the person committing or attempting to commit the murder had knowledge or should have had knowledge that the victim was pregnant; or
- (2) the defendant intended to cause the termination of a human pregnancy.

### **35-50-2-17. Sentencing alternatives for juvenile offenders.**

Notwithstanding any other provision of this chapter, if

- (1) an offender is:
  - (A) less than eighteen (18) years of age;

(B) waived to a court with criminal jurisdiction under IC 31-30-3 because the offender committed an act that would be a felony if committed by an adult: and

(C) convicted of committing the felony or enters a plea of guilty to committing the felony; or

(2) an offender is:

(A) less than eighteen (18) years of age;

(B) charged with a felony over which a juvenile court does not have jurisdiction under IC 31-30-1-4; and

(C) convicted of committing the felony by a court with criminal jurisdiction or enters a plea of guilty to committing the felony with the court;

the court may impose a sentence upon the conviction of the offender under IC 31-30-4 concerning sentencing alternatives for certain offenders under criminal court jurisdiction.

### **Chapter 3** **Sentences for Misdemeanors**

35-50-3-1	Suspension; probation
35-50-3-2	Class A misdemeanor
35-50-3-3	Class B misdemeanor
35-50-3-4	Class C misdemeanor

#### **35-50-3-1. Suspension; probation**

(a) The court may suspend any part of a sentence for a misdemeanor.

(b) Except as provided in subsection (c), whenever the court suspends in whole or in part a sentence for a Class A, Class B, or Class C misdemeanor, it may place the person on probation under IC 35-38-2 for a fixed period of not more than one (1) year, notwithstanding the maximum term of imprisonment for the misdemeanor set forth in sections 2 through 4 of this chapter. However, the combined term of imprisonment and probation for a misdemeanor may not exceed one (1) year.

(c) Whenever the court suspends a sentence for a misdemeanor, if the court finds that the use or abuse of alcohol, drugs, or harmful substances is a contributing factor or a material element of the offense, the court may place the person on probation under IC 35-38-2 for a fixed period of not more than two (2) years. However, a court may not place a person on probation for a period of more than twelve (12) months in the absence of a report that substantiates the need for a period of probation that is longer than twelve (12) months for the purpose of completing a course of substance abuse treatment. A probation user's fee that exceeds fifty percent (50%) of the maximum probation user's fee allowed under IC 35-38-2-1 may not be required beyond the first twelve (12) months of probation.

#### **35-50-3-2. Class A misdemeanor**

A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars (\$5,000).

**35-50-3-3. Class B misdemeanor**

A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars (\$1,000).

**35-50-3-4. Class C misdemeanor**

A person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty (60) days; in addition, he may be fined not more than five hundred dollars (\$500).

**Chapter 5  
Miscellaneous Penalties**

- 35-50-5-0.1 Application of amendments
- 35-50-5-1.1 Offenses under 35-44.1-1; incapacity to hold office; removal from office
- 35-50-5-2 Alternative fine
- 35-50-5-3 Restitution
- 35-50-5-4 Prisoner reimbursement

**35-50-5-0.1. Application of amendments**

The amendments made to section 3 of this chapter by P.L.125-2006 apply only to persons sentenced after June 30, 2006.

**35-50-5-1.1. Offenses under 35-44.1-1; incapacity to hold office; removal from office**

(a) Whenever a person is convicted of a misdemeanor under IC 35-44.1-1, the court may include in the sentence an order rendering the person incapable of holding a public office of trust for a fixed period of not more than ten (10) years.

(b) If any officer of a governmental entity is convicted of a misdemeanor under IC 35-44-1-1, the court may enter an order removing the officer from office.

(c) This subsection applies whenever:

(1) the court enters an order under this section that applies to a person who is an officer of a governmental entity (as defined in IC 35-31.5-2-144); and

(2) a vacancy occurs in the office held by the person as the result of the court's order.

The court must file a certified copy of the order with the person who is entitled under IC 5-8-6 to receive notice of the death of an individual holding the office. The person receiving the copy of the order must give notice of the order in the same manner as if the person had received a notice of the death of the officeholder under IC 5-8-6. The person required or permitted to fill the vacancy that results from a removal under this section must comply with IC 3-13 or IC 20, whichever applies, to fill the vacancy.

**35-50-5-2. Alternative fine**

In the alternative to the provisions concerning fines in the article, a person may be fined a sum equal to twice his pecuniary gain, or twice the pecuniary loss sustained by victims of the offense he committed.

### **35-50-5-3. Restitution**

(a) Except as provided in subsection (i), (j), (l), or (m), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;
- (4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and
- (5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a), (i), (j), (l), or (m) is a judgment lien that:

- (1) attaches to the property of the person subject to the order;
- (2) may be perfected;
- (3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and
- (4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to:

- (1) the victim services division of the Indiana criminal justice institute in an amount not exceeding:
  - (A) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and
  - (B) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; or
- (2) a probation department that shall forward restitution or part of restitution to:
  - (A) a victim of a crime;
  - (B) a victim's estate; or
  - (C) the family of a victim who is deceased.

The victim services division of the Indiana criminal justice institute shall deposit the restitution it receives under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a), (i), (j), (l), or (m), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

- (1) The name and address of the person that is to receive the restitution.
- (2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-32-3-2. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a), (i), (j), (l), or (m) does not bar a civil action for:

- (1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and
- (2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

(g) A restitution order under subsection (a), (i), (j), (l), or (m) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5 (or IC 34-48-1, IC 34-38-4, IC 34-38-5, IC 34-48-6, IC 34-1-12, or IC 34-2-7 before their repeal).

(h) The attorney general may pursue restitution ordered by the court under subsections (a) and (c) on behalf of the victim services division of the Indiana criminal justice institute established under IC 5-2-6-8.

(i) The court may order the person convicted of an offense under IC 35-43-9 to make restitution to the victim of the crime. The court shall base its restitution order upon a consideration of the amount of money that the convicted person converted, misappropriated, or received, or for which the convicted person conspired. The restitution order issued for a violation of IC 35-43-9 must comply with subsections (b), (d), (e), and (g) and is not discharged by the completion of any probationary period or other sentence imposed for a violation of IC 35-43-9.

(j) The court may order the person convicted of an offense under IC 35-43-5-3.5 to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of the amount of fraud or harm caused by the convicted person and any reasonable expenses (including lost wages) incurred by the victim in correcting the victim's credit report and addressing any other issues caused by the commission of the offense under IC 35-43-5-3.5. If, after a person is sentenced for an offense under IC 35-43-5-3.5, a victim, a victim's estate, or the family of a victim discovers or incurs additional expenses that result from the convicted person's commission of the offense under IC 35-43-5-3.5, the court may issue one (1) or more restitution orders to require the convicted person to make restitution, even if the court issued a restitution order at the time of sentencing. For purposes of entering a restitution order after sentencing, a court has continuing jurisdiction over a person convicted of an offense under IC 35-43-5-3.5 for five (5) years after the date of sentencing. Each restitution order issued for a violation of IC 35-43-5-3.5 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for an offense under IC 35-43-5-3.5.

(k) The court shall order a person convicted of an offense under IC 35-42-3.5 to make restitution to the victim of the crime in an amount equal to the greater of the following:

- (1) The gross income or value to the person of the victim's labor or services.

(2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of:

(A) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209); or

(B) IC 22-2-2 (Minimum Wage);

whichever is greater.

(l) The court shall order a person who:

(1) is convicted of dealing in methamphetamine under IC 35-48-4-1.1; and

(2) manufactured the methamphetamine on property owned by another person, without the consent of the property owner;

to pay liquidated damages to the property owner in the amount of ten thousand dollars (\$10,000) or to pay actual damages to the property owner, including lost rent and the costs of decontamination by an inspector approved under IC 13-14-1-15.

(m) The court shall order a person who:

(1) is convicted of dealing in marijuana under IC 35-48-4-10(a)(1)(A); and

(2) manufactured the marijuana on property owned by another person, without the consent of the property owner;

to pay liquidated damages to the property owner in the amount of two thousand dollars (\$2,000).

#### **35-50-5-4. Prisoner reimbursement**

(a) This section applies only:

(1) if the county in which a criminal proceeding was filed adopts an ordinance under IC 36-2-13-15; and

(2) to a person who is sentenced under this article for a felony or a misdemeanor.

(b) At the time the court imposes a sentence, the court may order the person to execute a reimbursement plan as directed by the court and make repayments under the plan to the county for the costs described in IC 36-2-13-15.

(c) The court shall fix an amount under this section that:

(1) may not exceed an amount the person can or will be able to pay;

(2) does not harm the person's ability to reasonably be self-supporting or to reasonably support any dependent of the person; and

(3) takes into consideration and gives priority to any other restitution, reparation, repayment, costs (including fees), fine, or child support obligations the person is required to pay.

(d) When an order is issued under this section, the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-32-3-2.

(e) An order under this section is not discharged:

(1) by the completion of a sentence imposed for a felony or misdemeanor; or

(2) by the liquidation of a person's estate by a receiver under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, and IC 34-48-6 before their repeal).

**Chapter 6**  
**Release From Imprisonment**  
**Credit Time**

35-50-6-0.1	Application of amendments
35-50-6-1	Parole
35-50-6-2	Release from imprisonment for a misdemeanor
35-50-6-3	Credit time classification for offense committed before July 1, 2014
35-50-6-3.1	Credit time classification for offense committed after June 30, 2014
35-50-6-3.3	Additional credit time
35-50-6-4	Initial assignment of credit time
35-50-6-5	Violations; deprivation of credit time
35-50-6-5.5	Appeal
35-50-6-6	Degree of security not a factor in assignment of credit time
35-50-6-7	Reassignment of credit time due to misconduct
35-50-6-8	No credit time for LWOP

**35-50-6-0.1. Application of amendments**

The following amendments to this chapter apply as follows:

- (1) The amendments made to section 1 of this chapter by P.L.11-1994 apply only to an offender (as defined in IC 5-2-12-4, as added by P.L.11-1994 and before its repeal) convicted after June 30, 1994.
- (2) The amendments made to sections 3, 4, and 5 of this chapter by P.L.80-2008 apply only to persons convicted after June 30, 2008.

**35-50-6-1. Parole**

(a) Except as provided in subsection (d) and (e), when a person imprisoned for a felony completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to that term, the person shall be:

- (1) released on parole for not more than twenty-four (24) months, as determined by the parole board, unless:
  - (A) the person is being placed on parole for the first time;
  - (B) the person is not being placed on parole for a conviction for a crime of violence (as defined in IC 35-50-1-2);
  - (C) the person is not a sex offender (as defined in IC 11-8-8-4.5); and
  - (D) in the six (6) months before being placed on parole, the person has not violated a rule of the department of correction or a rule of the penal facility in which the person is imprisoned;
- (2) discharged upon a finding by the committing court that the person was assigned to a community transition program and may be discharged without the requirement of parole; or
- (3) released to the committing court if the sentence included a period of probation.

A person described in subdivision (1) shall be released on parole for not more than twelve (12) months, as determined by the parole board.

(b) This subsection does not apply to a person described in subsection (d), (e), or (f). A person released on parole remains on parole from the date of release until the person's fixed term

expires, unless the person's parole is revoked or the person is discharged from that term by the parole board. In any event, if the person's parole is not revoked, the parole board shall discharge the person after the period set under subsection (a) or the expiration of the person's fixed term, whichever is shorter.

(c) A person whose parole is revoked shall be imprisoned for all or part of the remainder of the person's fixed term. However, the person shall again be released on parole when the person completes that remainder, less the credit time the person has earned since the revocation. The parole board may reinstate the person on parole at any time after the revocation.

(d) This subsection does not apply to a person who is a sexually violent predator under IC 35-38-1-7.5. When a sex offender (as defined in IC 11-8-8-4.5) completes the sex offender's fixed term of imprisonment, less credit time earned with respect to that term, the sex offender shall be placed on parole for not more than ten (10) years.

(e) The subsection applies to a person who:

- (1) is a sexually violent predator under IC 35-38-1-7.5;
- (2) has been convicted of murder (IC 35-42-1-1); or
- (3) has been convicted of voluntary manslaughter (IC 35-42-1-3).

When a person described in this subsection completes the person's fixed term of imprisonment, less credit time earned with respect to that term, the person shall be placed on parole for the remainder of the person's life.

(f) This subsection applies to a parolee in another jurisdiction who is a person described in subsection (e) and whose parole supervision is transferred to Indiana from another jurisdiction. In accordance with IC 11-13-4-1(2) (Interstate Compact for Out-of-State Probationers and Parolees) and rules adopted under Article VII (d)(8) of the Interstate Compact for Adult Offender Supervision (IC 11-13-4.5), a parolee who is a person described in subsection (e) and whose parole supervision is transferred to Indiana is subject to the same conditions of parole as a person described in subsection (e) who was convicted in Indiana, including:

- (1) lifetime parole (as described in subsection (e)); and
- (2) the requirement that the person wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location, if applicable.

(g) If a person being supervised on lifetime parole as described in subsection (e) is also required to be supervised by a court, a probation department, a community corrections program, a community transition program, or another similar program upon the person's release from imprisonment, the parole board may:

- (1) supervise the person while the person is being supervised by the other supervising agency; or
- (2) permit the other supervising agency to exercise all or part of the parole board's supervisory responsibility during the period in which the other supervising agency is required to supervise the person, if supervision by the other supervising agency will be, in the opinion of the parole board:
  - (A) at least as stringent; and
  - (B) at least as effective;as supervision by the parole board.

(h) The parole board is not required to supervise a person on lifetime parole during any period in which the person is imprisoned. However, upon the person's release from imprisonment, the parole board shall recommence its supervision of a person on lifetime parole.

(i) If the court orders the parole board to place a sexually violent predator whose sentence does not include a commitment to the department of correction on lifetime parole under IC 35-38-1-29, the parole board shall place the sexually violent predator on lifetime parole and supervise the person in the same manner in which the parole board supervises a sexually violent predator on lifetime parole whose sentence includes a commitment to the department of correction.

### **35-50-6-2. Release from imprisonment for a misdemeanor**

A person imprisoned for a misdemeanor shall be discharged when he completes his fixed term of imprisonment, less the credit time he has earned with respect to that term.

### **35-50-6-3. Credit time classification for offense committed before July 1, 2014**

- (a) This section applies to a person who commits an offense before July 1, 2014.
- (b) A person assigned to Class I earns one (1) day of credit time for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.
- (c) A person assigned to Class II earns one (1) day of credit time for every two (2) days the person is imprisoned for a crime or confined awaiting trial or sentencing.
- (d) A person assigned to Class III earns no credit time.
- (e) A person assigned to Class IV earns one (1) day of credit time for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing.

### **35-50-6-3.1. Credit time classification for offense committed after June 30, 2014**

- (a) This section applies to a person who commits an offense after June 30, 2014.
- (b) A person assigned to Class A earns one (1) day of credit time for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.
- (c) A person assigned to Class B earns one (1) day of credit time for every three (3) days the person is imprisoned for a crime or confined awaiting trial or sentencing.
- (d) A person assigned to Class C earns one (1) day of credit time for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing.
- (e) A person assigned to Class D earns no credit time.

### **35-50-6-3.3. Additional credit time**

(a) In addition to any credit time a person earns under subsection (b) or section 3 of this chapter, a person earns credit time if the person:

- (1) is in credit Class I, Class A, or Class B;
- (2) has demonstrated a pattern consistent with rehabilitation; and
- (3) successfully completes requirements to obtain one (1) of the following:
  - (A) A general educational development (GED) diploma under IC 20-20-6 (before its repeal) or IC 22-4.1-18, if the person has not previously obtained a high school diploma.
  - (B) Except as provided in subsection (o), a high school diploma, if the person has not previously obtained a general educational development (GED) diploma.
  - (C) An associate degree from an approved postsecondary educational institution (as defined under IC 21-7-13-6(a)) earned during the person's incarceration.

(D) A bachelor degree from an approved postsecondary educational institution (as defined under IC 21-7-13-6(a)) earned during the person's incarceration.

(b) In addition to any credit time that a person earns under subsection (a) or section 3 of this chapter, a person may earn credit time if, while confined by the department of correction, the person:

- (1) is in credit Class I, Class A, or Class B;
- (2) demonstrates a pattern consistent with rehabilitation; and
- (3) successfully completes requirements to obtain at least one (1) of the following:
  - (A) A certificate of completion of a career and technical or vocational education program approved by the department of correction.
  - (B) A certificate of completion of a substance abuse program approved by the department of correction.
  - (C) A certificate of completion of a literacy and basic life skills program approved by the department of correction.
  - (D) A certificate of completion of a reformatory program approved by the department of correction.

(c) The department of correction shall establish admission criteria and other requirements for programs available for earning credit time under subsection (b). A person may not earn credit time under both subsections (a) and (b) for the same program of study. The department of correction, in consultation with the department of workforce development, shall approve a program only if the program is likely to lead to an employable occupation.

(d) The amount of credit time a person may earn under this section is the following:

- (1) Six (6) months for completion of a state of Indiana general educational development (GED) diploma under IC 20-20-6 (before its repeal) or IC 22-4.1-18.
- (2) One (1) year for graduation from high school.
- (3) Not more than one (1) year for completion of an associate degree.
- (4) Not more than two (2) years for completion of a bachelor degree.
- (5) Not more than a total of one (1) year of credit, as determined by the department of correction, for the completion of one (1) or more career and technical or vocational education programs approved by the department of correction.
- (6) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more substance abuse programs approved by the department of correction.
- (7) Not more than a total of six (6) months credit, as determined by the department of correction, for the completion of one (1) or more literacy and basic life skills programs approved by the department of correction.
- (8) Not more than a total of six (6) months credit time, as determined by the department of correction, for completion of one (1) or more reformatory programs approved by the department of correction. However, a person who is serving a sentence for an offense listed under IC 11-8-8-4.5 may not earn credit time under this subdivision.

However, a person who does not have a substance abuse problem that qualifies the person to earn credit in a substance abuse program may earn not more than a total of twelve (12) months of credit, as determined by the department of correction, for the completion of one (1) or more

career and technical or vocational education programs approved by the department of correction. If a person earns more than six (6) months of credit for the completion of one (1) or more career and technical or vocational education programs, the person is ineligible to earn credit for the completion of one (1) or more substance abuse programs.

(e) Credit time earned under this section must be directly proportional to the time served and course work completed while incarcerated. The department of correction shall adopt rules under IC 4-22-2 necessary to implement this subsection.

(f) Credit time earned by a person under this section is subtracted from the release date that would otherwise apply to the person by the sentencing court after subtracting all other credit time earned by the person.

(g) A person does not earn credit time under subsection (a) unless the person completes at least a portion of the degree requirements after June 30, 1993.

(h) A person does not earn credit time under subsection (b) unless the person completes at least a portion of the program requirements after June 30, 1999.

(i) Credit time earned by a person under subsection (a) for a diploma or degree completed before July 1, 1999, shall be subtracted from:

(1) the release date that would otherwise apply to the person after subtracting all other credit time earned by the person, if the person has not been convicted of an offense described in subdivision (2); or

(2) the period of imprisonment imposed on the person by the sentencing court, if the person has been convicted of one (1) of the following crimes:

(A) Rape (IC 35-42-4-1).

(B) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).

(C) Child molesting (IC 35-42-4-3).

(D) Child exploitation (IC 35-42-4-4(b)).

(E) Vicarious sexual gratification (IC 35-42-4-5).

(F) Child solicitation (IC 35-42-4-6).

(G) Child seduction (IC 35-42-4-7).

(H) Sexual misconduct with a minor (IC 35-42-4-9) as a:

(i) Class A felony, Class B felony, or Class C felony, for a crime committed before July 1, 2014; or

(ii) Level 1, Level 2, or Level 4 felony, for a crime committed after June 30, 2014.

(I) Incest (35-46-1-3).

(J) Sexual battery (IC 35-42-4-8).

(K) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.

(L) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.

(M) An attempt or a conspiracy to commit a crime listed in clauses (A) through (L).

(j) The maximum amount of credit time a person may earn under this section is the lesser of:

(1) two (2) years; or

(2) one-third (1/3) of the person's total applicable credit time.

(k) Credit time earned under this section by an offender serving a sentence for a felony against a person under IC 35-42 or for a crime listed in IC 11-8-8-5 shall be reduced to the extent that application of the credit time would otherwise result in:

- (1) postconviction release (as defined in IC 35-40-4-6); or
- (2) assignment of the person to a community transition program;

in less than forty-five (45) days after the person earns the credit time.

(l) A person may earn credit time for multiple degrees at the same education level under subsection (d) only in accordance with guidelines approved by the department of correction. The department of correction may approve guidelines for proper sequence of education degrees under subsection (d).

(m) A person may not earn credit time:

- (1) for a general educational development (GED) diploma if the person has previously earned a high school diploma; or
- (2) for a high school diploma if the person has previously earned a general educational development (GED) diploma.

(n) A person may not earn credit time under this section if the person:

- (1) commits an offense listed in IC 11-8-8-4.5 while the person is required to register as a sex or violent offender under IC 11-8-8-7; and
- (2) is committed to the department of correction after being convicted of the offense listed in IC 11-8-8-4.5.

(o) For a person to earn credit time under subsection (a)(3)(B) for successfully completing the requirements for a high school diploma through correspondence courses, each correspondence course must be approved by the department before the person begins the correspondence course. The department may approve a correspondence course only if the entity administering the course is recognized and accredited by the department of education in the state where the entity is located.

#### **35-50-6-4. Initial assignment of credit time.**

(a) A person:

- (1) who is not a credit restricted felon; and
- (2) who is imprisoned for a Level 6 felony or a misdemeanor or imprisoned awaiting trial or sentencing for a Level 6 felony or misdemeanor;

is initially assigned to Class A.

(b) A person:

- (1) who is not a credit restricted felon; and
- (2) who is imprisoned for a crime other than a Level 6 felony or misdemeanor or imprisoned awaiting trial or sentencing for a crime other than a Level 6 felony or misdemeanor;

is initially assigned to Class B.

(c) A person who is a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class C. A credit restricted felon may not be assigned to Class A or Class B.

(d) A person who is not a credit restricted felon may be reassigned to Class C or Class D if the person violates any of the following:

- (1) A rule of the department of correction.
- (2) A rule of the penal facility in which the person is imprisoned.

(3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to a lower credit time class, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to a hearing.

(e) A person who is a credit restricted felon may be reassigned to Class D and a person who is assigned to Class IV may be assigned to Class III if the person violates any of the following:

- (1) A rule of the department of correction.
- (2) A rule of the penal facility in which the person is imprisoned.
- (3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to Class III or Class D, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

(f) In connection with the hearing granted under subsection (d) or (e), the person is entitled to:

- (1) have not less than twenty-four (24) hours advance written notice of the date, time and place of the hearing, and of the alleged misconduct and the rule the misconduct is alleged to have violated;
- (2) have reasonable time to prepare for the hearing;
- (3) have an impartial decisionmaker;
- (4) appear and speak in the person's own behalf;
- (5) call witnesses and present evidence;
- (6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;
- (7) have the assistance of a lay advocate (the department may require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);
- (8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;
- (9) have immunity if the person's testimony or any evidence derived from the person's testimony is used in any criminal proceedings; and
- (10) have the person's record expunged of any reference to the charge if the person is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(g) Except for a credit restricted felon, a person may be reassigned from:

- (1) Class III to Class I, Class II, or Class IV;
- (2) Class II to Class I;
- (3) Class D to Class A, Class B, or Class C;
- (4) Class C to Class A or Class B.

A person's assignment to Class III, Class II, Class C, or Class D shall be reviewed at least once every six (6) months to determine if the person should be reassigned to a higher credit time class. A credit restricted felon may not be reassigned to Class I or Class II or to Class A, Class B, or Class C.

(h) This subsection applies only to a person imprisoned awaiting trial. A person imprisoned awaiting trial is initially assigned to a credit class based on the most serious offense with which the person is charged. If all the offenses of which a person is convicted have a higher credit time class than the most serious offense with which the person is charged, the person earns credit time for the time imprisoned awaiting trial at the credit time class of the most serious offense of which the person is convicted. However, this section does not apply to any period during which the person is reassigned to a lower credit time class for a disciplinary violation.

### **35-50-6-5. Violations; deprivation of credit time**

(a) A person may, with respect to the same transaction, be deprived of any part of the credit time the person has earned for any of the following:

- (1) A violation of one (1) or more rules of the department of correction.
- (2) If the person is not committed to the department, a violation of one (1) or more rules of the penal facility in which the person is imprisoned.
- (3) A violation of one (1) or more rules or conditions of a:
  - (A) community transition program; or
  - (B) community corrections program.
- (4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or groundless.
- (5) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to register before being released from the department as required under IC 11-8-8-7.
- (6) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction.

However, the violation of a condition or parole or probation may not be the basis for deprivation. Whenever a person is deprived of credit time, the person may also be reassigned to Class II (if the person is not a credit restricted felon) or Class III, Class C, or Class D.

(b) Before a person may be deprived of earned credit time, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether deprivation of earned credit time is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in section 4(c) of this chapter. The person may waive the person's right to the hearing.

(c) Any part of the credit time to which a person is deprived under this section may be restored.

### **35-50-6-5.5. Appeal**

A person who has been reassigned to a lower credit time class or has been deprived of earned credit time may appeal the decision to the commissioner of the department of correction or the sheriff.

### **35-50-6-6. Degree of security not a factor in assignment of credit time**

(a) A person imprisoned for a crime earns credit time irrespective of the degree of security to which he is assigned. Except as set forth under IC 35-38-2.5-5, a person does not earn credit time while on parole or probation.

(b) A person imprisoned upon revocation of parole is initially assigned to the same credit time class to which he was assigned at the time he was released on parole.

(c) A person who, upon revocation of parole, is imprisoned on an intermittent basis does not earn credit time for the days he spends on parole outside the institution.

### **35-50-6-7. Reassignment of credit time due to misconduct**

(a) A person under the control of a county detention facility or the department of correction who:

(1) Has been charged with a new crime while confined: or

(2) Has allegedly violated a rule of the department or county facility;

may be immediately assigned to Class III and may have all credit time suspended pending disposition of the allegation.

(b) A person assigned to Class III under subsection (a) shall be denied release on parole or discharge until:

(1) He is in the actual custody of the department or the county detention facility to which he was sentenced; and

(2) He is granted a hearing concerning the allegations.

The department of sheriff may waive the hearing if the person is restored to his former credit time class and receives all previously earned credit time and any credit time that he would have earned if he had not been assigned to Class III.

(c) A person who is assigned to Class III under subsection (a) and later found not guilty of the alleged misconduct shall have all earned credit time restored and shall be reassigned to the same credit time class that he was in before his assignment to Class III. In addition, the person shall be credited with any credit time that he would have earned if he had not been assigned to Class III.

### **35-50-6-8. No credit time for LWOP**

A person serving a sentence of life imprisonment without parole does not earn credit time under this chapter.

## **Chapter 9 Additional Sentence Domestic Battery**

35-50-9-1 Batterer intervention program

### **35-50-9-1. Batterer intervention program**

(a) At the time of sentencing for a person convicted of domestic battery under IC 35-42-2-1.3 or a crime that involved domestic abuse, neglect, or violence, the court may require the person to complete a batterer's intervention program approved by the court.

(b) The person convicted of domestic battery or another crime described in subsection (a) shall pay all expenses of the batterer's intervention program.

(c) The batterer's intervention program must be an intervention program certified by the Indiana coalition against domestic violence.

**MISCELLANEOUS LAWS**

**LEGEND DRUGS  
ANABOLIC STEROIDS**

**TITLE 16**

**ARTICLE 18**

**Chapter 2  
Definitions  
[Portions Omitted]**

16-18-2-5.5	“Adult stem cell” defined
16-18-2-15	“Anabolic steroid” defined
16-18-2-56.5	“Cloning” defined
16-18-2-78	“Controlled premises” defined
16-18-2-79	“Controlled substance” defined
16-18-2-101	“Drug” defined
16-18-2-102	“Drug order” defined
16-18-2-103	“Drug sample” defined
16-18-2-128.5	“Fetal stem cell” defined
16-18-2-183.5	“Human embryo” defined
16-18-2-194	“Investigational or new drug” defined
16-18-2-199	“Legend drug” defined
16-18-2-216	“Manufacturer” defined
16-18-2-223	“Mechanical device” defined
16-18-2-281	“Pharmacist” defined
16-18-2-288	“Practitioner” defined
16-18-2-289	“Precursor” defined
16-18-2-292	“Prescription” defined
16-18-2-321	“Sale” defined
16-18-2-365	“Viability” defined
16-18-2-374	“Wholesaler” defined

**16-18-2-5.5. “Adult stem cell” defined**

“Adult stem cell” means an undifferentiated cell that:

- (1) is found in a differentiated tissue;
- (2) is renewable; and
- (3) yields specialized cell types with certain limitations of the tissue from which it originated.

**16-18-2-15. “Anabolic steroid” defined**

“Anabolic steroid,” for purposes of IC 16-42-19, means a material, compound, mixture, or preparation that contains an anabolic steroid that includes any of the following:

Chorionic gonadotropin

Clostebol  
Dehydrochlormethyltestosterone  
Ethylestrenol  
Fluoxymesterone  
Mesterolone  
Metenolone  
Methandienone  
Methandro stenolone  
Methyltestosterone  
Nandrolone decanoate  
Nandrolone phenpropionate  
Norethandrolone  
Oxandrolone  
Oxymesterone  
Oxymetholone  
Stanozolol  
Testosterone propionate  
Testosterone-like related compounds.

**16-18-2-56.5. “Cloning” defined**

(a) “Cloning” means the use of asexual reproduction to create or grow a human embryo from a single cell or cells of a genetically identical human.

(b) The term does not include:

(1) a treatment or procedure to enhance human reproductive capability through the manipulation of human oocytes or embryos, including the following:

(A) In vitro fertilization.

(B) Gamete intrafallopian transfer; or

(C) Zygote intrafallopian transfer; or

(2) the following types of stem cell research:

(A) Adult stem cell.

(B) Fetal stem cell, as long as the biological parent has given written consent for the use of the fetal stem cells.

(C) Embryonic stem cells from lines that are permissible under applicable federal law.

**16-18-2-78. “Controlled premises” defined**

“Controlled premises,” for purposes of IC 16-42-20-2, has the meaning set forth in IC 16-42-20-2(a).

**16-18-2-79. “Controlled substance” defined**

“Controlled substance,” for purposes of IC 16-42-21, has the meaning set forth in IC 16-42-21-1.

**16-18-2-101. “Drug” defined**

(a) “Drug,” for purposes of IC 16-42-1 through IC 16-42-4, means the following:

(1) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement of any of them.

(2) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals.

(3) Articles other than food intended to affect the structure or any function of the body or man or other animals.

(4) Articles intended for use as a component of any article specified in subdivision (1), (2), or (3).

The term does not include devices or their components, parts, or accessories.

(b) “Drug,” for purposes of IC 16-42-19, has the meaning set forth in IC 16-42-19-2.

**16-18-2-102. “Drug order” defined**

“Drug order,” for purposes of IC 16-42-19, has the meaning set forth in IC 16-42-19-3.

**16-18-2-103. “Drug sample” defined**

“Drug sample,” for purposes of IC 16-42-21, has the meaning set forth in IC 16-42-21-2.

**16-18-2-128.5. “Fetal stem cell” defined**

(a) “Fetal stem cell” means any of the following types of stem cells taken from a fetus that was either miscarried or stillborn from any of the following sources:

(1) Placenta.

(2) Umbilical cord.

(3) Amniotic fluid.

(4) Fetal tissue.

(b) The term does not include any cells that are taken as the result of an abortion.

**16-18-2-183.5. “Human embryo” defined**

“Human embryo” means a human egg cell with full genetic composition capable of differentiating and maturing into a complete human being.

**16-18-2-194. “Investigational or new drug” defined**

“Investigational or new drug,” for purposes of IC 16-42-19, has the meaning set forth in IC 16-42-19-4.

**16-18-2-199. “Legend drug” defined**

“Legend drug,” for purposes of IC 16-42, means a drug that is:

(1) subject to 21 U.S.C. 353(b)(1);

(2) listed in the Prescription Drug Product List as:

(A) published in United States Department of Health and Human Services Approved Drug Products with Therapeutic Equivalence Evaluations, Tenth Edition (1990); and

(B) revised in United States Department of Health and Human Services, Approved Drug Products with Therapeutic Equivalence Evaluations, Cumulative Supplement to the Tenth Edition, Number 10 (1990); or

(3) insulin.

**16-18-2-216. “Manufacturer” defined**

(a) “Manufacturer,” for purposes of IC 16-42-19 and IC 16-42-21, means a person who by compounding, cultivating, harvesting, mixing, or other process produces or prepares legend drugs. The term includes a person who:

- (1) Prepares legend drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process; or
- (2) Packages or repackages legend drugs.

(b) The term does not include pharmacists or practitioners (as defined in section 288(a) and 288(c) in the practice of their profession.

**16-18-2-223. “Mechanical device” defined**

“Mechanical device,” for purposes of IC 16-42-19-23, has the meaning set forth in IC 16-42-19-23(a).

**16-18-2-281. “Pharmacist” defined**

“Pharmacist” means a person licensed by law to practice pharmacy in Indiana.

**16-18-2-288. “Practitioner” defined**

(a) “Practitioner”, for purposes of IC 16-42-19, has the meaning set forth in IC 16-42-19-5.

(b) “Practitioner”, for purposes of IC 16-41-14, has the meaning set forth in IC 16-41-14-4.

(c) “Practitioner”, for purposes of IC 16-42-21, has the meaning set forth in IC 16-42-21-3.

(d) “Practitioner”, for purposes of IC 16-42-22 and IC 16-42-25, has the meaning set forth in IC 16-42-22-4.5.

**16-18-2-289. “Precursor” defined**

“Precursor,” for purposes of IC 16-42-19, has the meaning set forth in IC 16-42-19-6.

**16-18-2-292. “Prescription” defined**

“Prescription,” for purposes of IC 16-42-19, has the meaning set forth in IC 16-42-19-7.

**16-18-2-321. “Sale” defined**

(a) “Sale”, for purposes of IC 16-42-1 through IC 16-42-4, includes the following:

- (1) A sale.
- (2) Manufacturing, processing, transporting, handling, packing, canning, bottling, or any other production, preparation, or putting up.
- (3) Exposure, offer, or any other proffer.
- (4) Holding, storing, or any other possession.
- (5) Dispensing, giving, delivering, serving, or any other supplying.
- (6) Applying, administering, or any other using.

(b) “Sale”, for purposes of IC 16-42-19, has the meaning set forth in IC 16-42-19-8.

**16-18-2-365. “Viability” defined**

“Viability,” for purposes of IC 16-34, means the ability of a fetus to live outside the mother’s womb.

**16-18-2-374. “Wholesaler” defined**

(a) “Wholesaler”, for purposes of IC 16-42-11, has the meaning set forth in IC 16-42-11-1.1.

(b) “Wholesaler”, for purposes of IC 16-42-19 and IC 16-42-21, has the meaning set forth in IC 16-42-19-10.

(c) “Wholesaler”, for purposes of IC 16-41-32, has the meaning set forth in IC 16-41-32-13.

**TITLE 16**

**ARTICLE 42**

**Chapter 19  
Legend Drug Act**

16-42-19-1	Act supplemental
16-42-19-2	“Drug” defined
16-42-19-3	“Drug order” defined
16-42-19-4	“Investigational or new drug” defined
16-42-19-5	“Practitioner” defined
16-42-19-6	“Precursor” defined
16-42-19-7	“Prescription” defined
16-42-19-8	“Sale” defined
16-42-19-9	“Warehouseman” defined
16-42-19-10	“Wholesaler” defined
16-42-19-11	Unlawful sale of legend drugs; exceptions
16-42-19-12	Refilling prescriptions
16-42-19-13	Possession or use of legend drug or precursor
16-42-19-14	Record keeping requirements
16-42-19-15	Refusal of records inspection
16-42-19-16	Obtaining by fraud, deceit, etc.; forged prescriptions
16-42-19-17	Possession of smoking device
16-42-19-18	Possession of syringe
16-42-19-19	Possession or use of anabolic steroid
16-42-19-20	Unlawful prescriptions
16-42-19-21	Exceptions
16-42-19-22	Manufacturers’ and wholesalers’ records
16-42-19-23	“Mechanical device” defined; offense
16-42-19-24	Nuisance
16-42-19-25	Anabolic steroids; offenses
16-42-19-26	Indictment and information; exceptions; burden of proof
16-42-19-27	Penalties

- 16-42-19-28 Law enforcement officers exempted from liability
- 16-42-19-29 Insulin sale by prescription only

#### **16-42-19-1. Act supplemental**

This chapter is intended to supplement IC 16-42-1 through IC 16-42-4.

#### **16-42-19-2. “Drug” defined**

As used in this chapter, “drug” means the following:

- (1) Articles or substances recognized in United States Pharmacopeial Convention, Inc.; The United States Pharmacopeia, Twenty-Second Edition (1990) or United States Pharmacopeia Convention, Inc.; The National Formulary, Seventeenth Edition (1990) as revised by United States Pharmacopeial Convention, Inc.; Supplement 1 to the United States Pharmacopeia, Twenty-Second Edition and the National Formulary, Seventeenth Edition (1990); and any supplements printed after 1990).
- (2) Articles or substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals.
- (3) Articles other than food intended to affect the structure or any function of the body of human beings or other animals.
- (4) Articles intended for use as a component of any article specified in subdivision (1), (2), or (3).
- (5) Devices.

#### **16-42-19-3 “Drug order” defined**

As used in this chapter, “drug order” means an order that meets the following conditions:

- (1) Is;
  - (A) A written order in a hospital or other health care institution for an ultimate user for a drug or device, issued and signed by a practitioner; or
  - (B) An order transmitted by other means of communication from a practitioner that is immediately reduced to writing by the pharmacist, registered nurse, or other licensed health care practitioner authorized by the hospital or institution.
- (2) Contains the following:
  - (A) The name and bed number of the patient.
  - (B) The name and strength or size of the drug or device.
  - (C) Unless specified by individual institutional policy or guidelines, the amount to be dispensed either in quantity or days.
  - (D) Adequate directions for the proper use of the drug or device when administered to the patient.
  - (E) The name of the prescriber.

#### **16-42-19-4. “Investigational or new drug” defined**

As used in this chapter, “investigational or new drug” means a drug that is limited by state law to use under professional supervision of a practitioner authorized by law to prescribe or administer the drug.

**16-42-19-5. “Practitioner” defined**

As used in this chapter, “practitioner” means any of the following:

- (1) A physician licensed under IC 25-22.5.
- (2) A veterinarian licensed to practice veterinary medicine in Indiana.
- (3) A dentist licensed to practice dentistry in Indiana.
- (4) A podiatrist licensed to practice podiatric medicine in Indiana.
- (5) An optometrist who is:
  - (A) licensed to practice optometry in Indiana; and
  - (B) certified under IC 25-24-3.
- (6) An advanced practical nurse who meets the requirements of IC 25-23-1-19.5.
- (7) A physician assistant licensed IC 25-27.5 who is delegated prescriptive authority under IC 25-27.5-5-6.

**16-42-19-6. “Precursor” defined**

As used in this chapter, “precursor” means a substance, other than a legend drug, that:

- (1) Is an immediate chemical intermediate that can be processed or synthesized into a legend drug; and
- (2) Is used or produced primarily for use in the manufacture of a legend drug by persons other than persons:
  - (A) Licensed to manufacture the legend drug by the Indiana board of pharmacy;
  - (B) Registered by the state department; or
  - (C) Licensed to practice pharmacy by the Indiana board of pharmacy.

**16-42-19-7. “Prescription” defined**

As used in this chapter, “prescription” means:

- (1) a written order to or for an ultimate user for a drug or device containing the name and address of the patient, the name and strength or size of the drug or device, the amount to be dispensed, adequate directions for the proper use of the drug or device by the patient, and the name of the practitioner, issued and signed by a practitioner; or
- (2) an order transmitted by other means of communication from a practitioner that is:
  - (A) immediately reduced to writing by the pharmacist or pharmacist intern (as defined in IC 25-26-13-2); or
  - (B) for an electronically transmitted prescription:
    - (i) has the electronic signature of the practitioner; and
    - (ii) is recorded by the pharmacist in an electronic format.

**16-42-19-8. “Sale” defined**

As used in this chapter, “sale” means every sale and includes the following:

- (1) Manufacturing, processing, transporting, handling, packing, or any other production, preparation, or repackaging.
- (2) Exposure, offer, or any other proffer.
- (3) Holding, storing, or any other possession.
- (4) Dispensing, giving, delivering, or any other supplying.

(5) Applying, administering, or any other using.

**16-42-19-9. “Warehouseman” defined**

As used in this chapter, “wholesaler” means a person who stores legend drugs for others and who has no control over the disposition of legend drugs except for the purpose of storage.

**16-42-19-10. “Wholesaler” defined**

As used in this chapter, “wholesaler” means a person engaged in the business of distributing legend drugs that the person has not produced or prepared to persons included in any of the classes named in section 21 of this chapter.

**16-42-19-11. Unlawful sale of legend drugs; exceptions**

(a) Except as provided in section 21 of this chapter, a person may not sell a legend drug unless either of the following conditions exist:

(1) Except as provided in subsection (b), the legend drug is dispensed by a pharmacist upon an original prescription or drug order with the drug product specified on the prescription or drug order or by the authorization of the practitioner and there is affixed to the immediate container in which the drug is delivered a label bearing the following:

(A) The name, address and phone number of the establishment from which the drug was dispensed.

(B) The date on which the prescription for the drug was filled.

(C) The number of the prescription as filed in the prescription files of the pharmacist who filled the prescription.

(D) The name of the practitioner who prescribed the drug.

(E) The name of the patient, or if the drug was prescribed for an animal, a statement of the species of the animal.

(F) The directions for the use of the drug as contained in the prescription.

(2) The legend drug is delivered by the practitioner in good faith in the course of practice and the immediate container in which the drug is delivered bears a label on which appears the following:

(A) The directions for use of the drug.

(B) The name and address of the practitioner.

(C) The name of the patient.

(D) If the drug is prescribed for an animal, a statement of the species of the animal.

This section does not prohibit a practitioner from delivering professional samples of legend drugs in their original containers in the course of the practitioner’s practice when oral directions for use are given at the time of delivery.

(b) Notwithstanding subsection (a)(1), the following apply:

(1) A pharmacist at a hospital licensed under IC 16-21 may fill a drug order for a legend drug with a drug product allowed under the hospital’s policies and procedures for the use, selection, and procurement of drugs.

(2) A pharmacist who fills a prescription for a legend drug must comply with IC 16-42-22 and IC 25-26-16.

**16-42-19-12. Refilling prescriptions**

Except as authorized under IC 25-26-13-25(d), a person may not refill a prescription of drug order for a legend drug except in the manner designated on the prescription or drug order or by the authorization of the practitioner.

**16-42-19-13. Possession or use of legend drug or precursor**

A person may not possess or use a legend drug or a precursor unless the person obtains the drug:

- (1) on the prescription or drug order of a practitioner;
- (2) in accordance with section 11(2) or 21 of this chapter; or
- (3) in accordance with rules adopted by the board of pharmacy under IC 25-26-23.

**16-42-19-14. Record-keeping requirements**

A person may not fail to keep records as required by section 22 of this chapter.

**16-42-19-15. Refusal of records inspection**

A person may not refuse to make available and to accord full opportunity to check a record, as required by section 22 of this chapter.

**16-42-19-16. Obtaining by fraud, deceit, etc.; forged prescriptions**

A person may not do any of the following:

- (1) Obtain or attempt to obtain a legend drug or procure or attempt to procure the administration of a legend drug by any of the following:
  - (A) Fraud, deceit, misrepresentation, or subterfuge.
  - (B) The forgery or alteration of a prescription, drug order, or written order.
  - (C) The concealment of a material fact.
  - (D) The use of a false name or the giving of a false address.
- (2) Communicate information to a physician in an effort unlawfully to procure a legend drug or unlawfully to procure the administration of a legend drug. Such a communication is not considered a privileged communication.
- (3) Intentionally make a false statement in a prescription, drug order, order, report, or record required by this chapter.
- (4) For the purpose of obtaining a legend drug, falsely assume the title of or represent oneself to be a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other person.
- (5) Make or utter a false or forged prescription or false drug order or forged written order.
- (6) Affix a false or forged label to a package or receptacle containing legend drugs. This subdivision does not apply to law enforcement agencies or their representatives while engaged in enforcing this chapter.
- (7) Dispense a legend drug except as provided in this chapter.

**16-42-19-17. Possession of a smoking instrument**

A person may not possess or have under the person's control with intent to violate this chapter an instrument or contrivance designed or generally used in smoking a legend drug.

**16-42-19-18. Possession of a syringe**

A person may not possess or have under control with intent to violate this chapter a hypodermic syringe or needle or an instrument adapted for the use of a legend drug by injection in a human being.

**16-42-19-19. Possession of anabolic steroids**

Except as provided in section 21 of this chapter, a person may not possess or use an anabolic steroid without a valid prescription or drug order issued by a practitioner acting in the usual course of the practitioner's professional practice.

**16-42-19-20. Unlawful prescriptions**

(a) A prescription or drug order for a legend drug is not valid unless the prescription or drug order is issued for a legitimate medical purpose by a practitioner acting in the usual course of the practitioner's business.

(b) A practitioner may not knowingly issue an invalid prescription or drug order for a legend drug.

(c) A pharmacist may not knowingly fill an invalid prescription or drug order for a legend drug.

**16-42-19-21. Exceptions**

Sections 11, 13, 19, and 25(b) of this chapter are not applicable to the following:

(1) The sale of legend drugs to persons included in any of the classes named in subdivision (2), or to the agents or employees of such persons for use in the usual course of their business or practice or in the performance of their official duties.

(2) Possession of legend drugs by the following persons or their agents or employees for such use:

(A) Pharmacists.

(B) Practitioners.

(C) Persons who procure legend drugs for handling by or under the supervision of pharmacists or practitioners employed by them or for the purpose of lawful research, teaching, or testing and not for resale.

(D) Hospitals and other institutions that procure legend drugs for lawful administration by practitioners.

(E) Manufacturers and wholesalers.

(F) Carriers and warehousemen.

**16-42-19-22. Manufacturers' and wholesalers' records**

(a) Manufacturers and wholesalers shall maintain records of the movement in commerce of legend drugs for two (2) years immediately following the date of the last entry on those records and shall make those records available, at reasonable times, to law enforcement agencies, and their representatives in the enforcement of this chapter.

(b) Evidence obtained under this section may not be used in a criminal prosecution of the person from whom obtained.

**16-42-19-23. “Mechanical device” defined; offense**

(a) As used in this section, “mechanical device” means a machine for storage and dispensing of drugs. The term does not include devices or instruments used by practitioners in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings and other animals.

(b) A person may not maintain, operate, or use any type of mechanical device in which any legend drug or narcotic drug is stored or held for the purpose of dispensing the drug from the mechanical device. However, the mechanical device may be used for storage and dispensing of legend drugs if:

- (1) the mechanical device is used in a:
  - (A) pharmacy that holds a permit issued by the Indiana board of pharmacy;
  - (B) remote location under the jurisdiction of the board of pharmacy; or
  - (C) health care facility that is licensed under IC 16-28 or IC 16-21-2; and
- (2) the mechanical device is operated under the direct supervision and control of a:
  - (A) registered pharmacist; or
  - (B) practitioner;

who is directly responsible for dispensing the drug from the mechanical device.

(c) Inspectors of the Indiana board of pharmacy may inspect the premises of any person suspected of violating this section.

**16-42-19-24. Nuisance**

(a) A store, shop, warehouse, dwelling house, apartment, building, vehicle, boat, aircraft, or any other place that is used:

- (1) By a person for the purpose of unlawfully using a legend drug; or
- (2) For the unlawful keeping or selling of the legend drug;

is a common nuisance.

(b) A person may not:

- (1) Keep or maintain a common nuisance; or
- (2) Frequent or visit a place knowing the place to be used for a purpose;

as described in subsection (a).

**16-42-19-25. Anabolic steroids; offenses**

(a) A practitioner may not prescribe, order, distribute, supply, or sell an anabolic steroid for any of the following:

- (1) Enhancing performance in an exercise, sport, or game.
- (2) Hormonal manipulation intended to increase muscle mass, strength, or weight without a medical necessity.

(b) Except as provided in section 21 of this chapter, a person who is not a practitioner or lawful manufacturer of anabolic steroids may not do any of the following:

- (1) Knowingly or intentionally manufacture or deliver an anabolic steroid, pure or adulterated.
- (2) Possess, with intent to manufacture or deliver, an anabolic steroid.

**16-42-19-26. Indictment and information; exceptions, burden of proof**

In:

- (1) Any complaint, information, affidavit, or indictment; and
- (2) Any action or proceeding brought for the enforcement of any provision of this chapter;

it is not necessary to negate an exception, excuse, proviso, or exemption contained in this chapter. The burden of proof of such an exception, excuse, proviso, or exemption is upon the defendant.

**16-42-19-27. Penalties**

(a) A person who knowingly violates this chapter, except sections 24 and 25(b) of this chapter commits a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior conviction under this subsection or IC 16-6-8-10(a) before its repeal.

(b) A person who violates section 24 of this chapter commits a Class B misdemeanor.

(c) A person who violates section 25(b) of this chapter commits dealing in an anabolic steroid, a Level 5 felony. However, the offense is a Level 4 felony if the person delivered the anabolic steroid to a person who is:

- (1) less than eighteen (18) years of age; and
- (2) at least three (3) years younger than the delivering person.

**16-42-19-28. Law enforcement officer exempted from liability**

Law enforcement officers in the performance of their official duties are exempt from prosecution for and may not be convicted of violations of this chapter.

**16-42-19-29. Insulin sale by prescription only**

A legend drug that is composed wholly or partly of insulin may be sold for retail sale by a pharmacy only to an individual who possesses a prescription from one (1) of the following:

- (1) A physician licensed under IC 25-22.5.
- (2) A veterinarian licensed to practice veterinary medicine in Indiana.
- (3) An advanced practice nurse who meets the requirements of IC 25-23-1-19.5.
- (4) A physician assistant licensed under IC 25-27.5 who is delegated prescriptive authority under IC 25-27.5-5-6.

**ANHYDROUS AMMONIA**

**TITLE 22**

**ARTICLE 11**

**Chapter 20**

**Anhydrous Ammonia**

22-11-20-1 “Ammonia solution” defined

22-11-20-2 “Appurtenances” defined

22-11-20-3 “Container” defined

- 22-11-20-4 “Equipment law” defined  
22-11-20-5 “Law” defined  
22-11-20-6 Improper storage, handling, use, or transportation of anhydrous ammonia

**22-11-20-1. “Ammonia solution” defined**

As used in this chapter, “ammonia solution” means any ammonia solution that contains at least ten percent (10%) by weight of free ammonia or having a vapor pressure of one (1) PSIG or above at one hundred four (104) degrees Fahrenheit.

**22-11-20-2. “Appurtenances” defined**

As used in this chapter, “appurtenances” includes pumps, compressors, safety relief devices, liquid level gauging devices, valves, and pressure gauges.

**22-11-20-3. “Container” defined**

As used in this chapter, “container” includes vessels, tanks, cylinders, or spheres.

**22-11-20-4. “Equipment law” defined**

As used in this chapter, “equipment law” has the meaning set forth in IC 22-12-1-11.

**22-11-20-5. “Law” defined**

As used in this chapter, “law” includes the following:

- (1) IC 13 of a rule adopted under IC 13.
- (2) IC 15-16-1 or a rule adopted under IC 15-16-1.
- (3) IC 22-8-1.1 or a rule adopted under IC 22-8-1.1.
- (4) An equipment law.

**22-11-20-6. Improper storage, handling, use, or transportation of anhydrous ammonia**

(a) This section does not apply to a person that stores or transports anhydrous ammonia (NH<sub>3</sub>) or an ammonia solution for a lawful agricultural or commercial purpose.

(b) A person who knowingly or intentionally stores or transports anhydrous ammonia (NH<sub>3</sub>) or an ammonia solution:

- (1) in a container that does not; or
- (2) with appurtenances that do not;

conform to the requirements of a law governing the design, construction, location, installation, or operation of equipment for storage, handling, use, or transportation of anhydrous ammonia (NH<sub>3</sub>) or an ammonia solution commits a Class A misdemeanor.

**TITLE 31**

**ARTICLE 30**

**Chapter 4**

**Sentencing Alternatives for  
Juvenile Offenders**

- 31-30-4-1 Applicability
- 31-30-4-2 Minor offender under criminal jurisdiction
- 31-30-4-3 Probable cause review hearing
- 31-30-4-4 Reclassification of juvenile offender
- 31-30-4-5 Progress report
- 31-30-4-6 Transfer to adult facility for safety or security risk
- 31-30-4-7 Suspension of sentence revoked

**31-30-4-1. Applicability**

This chapter applies to the following:

- (1) an offender who:
  - (A) is less than eighteen (18) years of age;
  - (B) has been waived to a court with criminal jurisdiction under IC 31-30-3; and
  - (C) is charged as an adult offender.
- (2) an offender who:
  - (A) is less than eighteen (18) years of age; and
  - (B) does not come under the jurisdiction of a juvenile court because the offender is charged with an offense listed in IC 31-30-1-4.

**31-30-4-2. Minor offender under criminal jurisdiction**

(a) Subject to subsection (c), if:

- (1) an offender is:
  - (A) less than eighteen (18) years of age;
  - (B) waived to a court with criminal jurisdiction under IC 31-30-3 because the offender committed and act that would be a felony if committed by an adult; and
  - (C) convicted of committing the felony or enters a plea of guilty to committing the felony; or
- (2) an offender is:
  - (A) less than eighteen (18) years of age;
  - (B) charged with a felony over which a juvenile court does not have jurisdiction under IC 31-30-1-4; and
  - (C) convicted of committing the felony by a court with criminal jurisdiction or enters a plea of guilty to committing the felony with the court;

the court may, upon its own motion, a motion of the prosecuting attorney, or a motion of the offender’s legal representative, impose a sentence upon the conviction of the offender under this chapter.

(b) If a court elects to impose a sentence upon conviction of an offender under subsection (a) and, before the offender is sentenced, the department of correction determines that there is space available for the offender in a juvenile facility of the division of youth services of the department, the sentencing court may:

- (1) impose an appropriate criminal sentence on the offender under IC 35-50-2;
- (2) suspend the criminal sentence imposed, notwithstanding IC 35-50-2-2 (before its repeal), IC 35-50-2-2.1, and IC 35-50-2-2.2.

- (3) order the offender to be placed into the custody of the department of correction to be placed in the juvenile facility of the division of youth services; and
  - (4) provide that successful completion of the placement of the offender in the juvenile facility is a condition of the suspended sentence.
- (c) The court may not impose a sentence on an offender under subsection (a) until:
- (1) the prosecuting attorney has notified the victim of the felony of the possible imposition of a sentence on the offender under this chapter; and
  - (2) either:
    - (A) the probation department of the court has conducted a presentence investigation concerning the offender and reported its findings to the court; or
    - (B) the department of correction has conducted a diagnostic evaluation of the offender and reported its findings to the court.

#### **31-30-4-3. Probable cause review hearing**

(a) If there is probable cause to believe that an offender described in section 2(b) of this chapter has:

- (1) violated a condition of the offender's suspended criminal sentence; or
- (2) committed a new offense;

the court shall conduct a review hearing to determine if the offender has committed the violation or the new offense unless the offender waives the hearing.

(b) If the court finds by a preponderance of the evidence after a review hearing conducted under subsection (a) that the offender has violated a condition of the offender's suspended criminal sentence or committed a new offense or if the offender waives the hearing, the court may:

- (1) continue the offender's placement in the juvenile facility under section 2(b) of this chapter;
- (2) order execution of all or part of the offender's previously suspended criminal sentence in an adult facility recommended by the department of correction; or
- (3) make any other modification to the sentence imposed on the offender under section 2(b) of this chapter the court considers appropriate.

#### **31-30-4-4. Reclassification of juvenile offender**

(a) The department of correction may reclassify an offender placed in a juvenile facility under section 2(b) of this chapter and transfer the offender to an appropriate adult facility if the department determines that placement of the offender in any juvenile facility of the division of youth services is no longer appropriate.

(b) If the department of correction reclassifies and transfers an offender under this section:

- (1) the department shall notify the sentencing court of the circumstances of the reclassification and transfer; and
- (2) the sentencing court:
  - (A) shall hold a review hearing concerning the reclassification and transfer of the offender; and

(B) after the hearing is conducted under clause (A), may order execution of all or part of the offender's suspended criminal sentence in an adult facility of the department of correction.

### **31-30-4-5. Progress report**

(a) At the request of the sentencing court, the department of correction shall provide a progress report to the sentencing court concerning an offender sentenced and placed in a juvenile facility under section 2(b) of this chapter. When the offender becomes eighteen (18) years of age:

- (1) the department shall notify the sentencing court; and
- (2) the sentencing court shall hold a review hearing concerning the offender before the offender becomes nineteen (19) years of age.

(b) Except as provided in subsection (c), after a hearing is conducted under subsection (a), the sentencing court may:

- (1) continue the offender's placement in a juvenile facility until the objectives of the sentence imposed on the offender have been met, if the sentencing court finds that the objectives of the sentence imposed on the offender have not been met;
- (2) discharge the offender if the sentencing court finds that the objectives of the sentence imposed on the offender have been met;
- (3) order execution of all or part of the offender's suspended criminal sentence in an adult facility of the department of correction; or
- (4) place the offender:
  - (A) in home detention under IC 35-38-2.5;
  - (B) in a community corrections program under IC 35-38-2.6;
  - (C) on probation under IC 35-50-7; or
  - (D) in any other appropriate alternative sentencing program.

(c) This subsection applies to an offender over whom a juvenile court lacks jurisdiction under IC 31-30-1-4 who is convicted of one (1) or more of the following offenses:

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Kidnapping (IC 35-42-3-2).
- (4) Rape as a Class A felony (for a crime committed before July 1, 2014) or a Level 1 felony (for a crime committed after June 30, 2014) (IC 35-42-4-1(b)).
- (5) Criminal deviate conduct as a Class A felony (IC 35-42-4-2(b)) (before its repeal).
- (6) Robbery as a Class A felony (for a crime committed before July 1, 2014) or a Level 2 felony (for a crime committed after June 30, 2014) (IC 35-42-5-1), if:
  - (A) the offense was committed while armed with a deadly weapon; and
  - (B) the offense resulted in bodily injury to any person other than the defendant.

The court may not modify the original sentence of an offender to whom this subsection applies if the prosecuting attorney objects in writing to the modification. The prosecuting attorney shall set forth in writing the prosecuting attorney's reasons for objecting to the sentence modification.

**31-30-4-6. Transfer to adult facility for safety or security risk**

(a) At any time before an offender placed in a juvenile facility under section 2(b) of this chapter becomes twenty-one (21) years of age, the department of correction may transfer the offender to an adult facility if the department of correction believes the offender is a safety or security risk to:

- (1) the other offenders or the staff at the juvenile facility; or
- (2) the public.

(b) If the department of correction transfers an offender to an adult facility under this section, the department shall notify the sentencing court of the circumstances of the transfer.

**31-30-4-7. Suspension of sentence revoked**

If the suspension of a criminal sentence is revoked under this chapter, all time served by an offender in a juvenile facility of the division of youth services of the department of correction shall be credited toward any criminal sentence imposed on the offender under this chapter.

**FORFEITURES, RACKETEERING  
ACTIVITY**

**TITLE 34**

**ARTICLE 6  
GENERAL PROVISIONS  
AND DEFINITIONS**

**Chapters 1 and 2  
Applications and  
Definitions  
[Portions Omitted]**

- 34-6-1-1 Application
- 34-6-2-6 “Aggrieved person” defined
- 34-6-2-30.5 “Costs” includes fees
- 34-6-2-39 “Enterprise” defined
- 34-6-2-73 “Law enforcement costs” defined
- 34-6-2-120 “Property” defined
- 34-6-2-145 “Unit” defined
- 34-6-2-148 “Vehicle” defined

**34-6-1-1. Application**

Except as otherwise provided, the definitions in this article apply throughout this title.

**34-6-2-6. “Aggrieved person” defined**

“Aggrieved person,” for purposes of IC 34-24-2, means any of the following:

- (1) A person who has an interest in property or in an enterprise that:

- (A) is the object of corrupt business influence (IC 35-45-6-2); or
- (B) has suffered damages or harm as a result of corrupt business influence (IC 35-45-6-2).

(2) An individual whose personal safety is threatened by criminal gang (as defined in section 32 of this chapter) activity.

(3) An individual or a business whose property value or business activity is negatively affected due to criminal gang (as defined in section 32 of this chapter) activity.

(4) A political subdivision in which criminal gang (as defined in section 32 of this chapter) activity negatively affects the property values or business activity of the political subdivision or the personal safety of the political subdivision's residents.

(5) The state.

**34-6-2-30.5. "Costs" includes fees**

"Costs," for purposes of this article, includes fees.

**34-6-2-39. "Enterprise" defined**

"Enterprise" for purposes of IC 34-24-2, has the meaning set forth in IC 35-45-6-1.

**34-6-2-73. "Law enforcement costs" defined**

"Law enforcement costs," for purposes of IC 34-24-1, means:

(1) expenses incurred by the law enforcement agency that makes a seizure under IC 34-24-1 (or IC 34-4-30.1 before its repeal) for the criminal investigation associated with the seizure;

(2) repayment of the investigative fund of the law enforcement agency that makes a seizure under IC 34-24-1 to the extent that the agency can specifically identify any part of the money as having been expended from that fund; and

(3) expenses of the prosecuting attorney associated with the costs of proceedings associated with the seizure and offenses related to the seizure.

**34-6-2-120. "Property" defined**

(a) "Property," for purposes of IC 34-24-2, has the meaning set forth in IC 35-31.5-2-253.

(b) "Property," for purposes of IC 34-30-9, includes the following:

(1) Real property.

(2) Private ways.

(3) Waters.

(4) A structure located on property listed in subdivisions (1) through (3).

**34-6-2-145. "Unit" defined**

"Unit," for purposes of IC 34-24-1 and IC 34-24-2, has the meaning set forth in IC 36-1-2-23.

**35-6-2-148. "Vehicle" defined**

"Vehicle," for purposes of IC 34-24-3, has the meaning set forth in IC 35-31.5-2-346.

# FORFEITURES

## TITLE 34

### ARTICLE 24

#### Chapter 1

34-24-1-1	Items subject to seizure
34-24-1-2	Procedures for seizure
34-24-1-3	Procedures following seizure; filing complaint; notice; answer
34-24-1-4	Burden of proof; judgment; use of property; order
34-24-1-5	Secured interest or co-owner in property; determination of value; release to secured party
34-24-1-6	Public sale of seized property
34-24-1-7	Court order of forfeiture
34-24-1-8	Retention of attorney by prosecutor
34-24-1-9	Adoptive forfeiture and equitable sharing

#### **34-24-1-1. Items subject to seizure**

(a) The following may be seized:

(1) All vehicles (as defined by IC 35-31.5-2-346), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(ii) Dealing in methamphetamine (35-48-4-1.1).

(iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iv) Dealing in a Schedule IV controlled substance (IC 35-48-4-3).

(v) Dealing in a Schedule V controlled substance (IC 35-48-4-4).

(vi) Dealing in a counterfeit substance (IC 35-48-4-5).

(vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(viii) Possession of methamphetamine (IC 35-48-4-6.1).

(ix) Dealing in paraphernalia (IC 35-48-4-8.5).

(x) Dealing in marijuana, hash oil, hashish, or salvia (IC 35-48-4-10).

(xi) Dealing in a synthetic drug or synthetic drug lookalike substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its amendment in 2013).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-10-1.5.

- (D) A bomb (as defined in IC 35-31.5-2-31) or weapon of mass destruction (as defined in IC 35-31.5-2-354) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined in IC 35-31.5-2-329).
- (2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
  - (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;
  - (B) used to facilitate any violation of a criminal statute; or
  - (C) traceable as proceeds of the violation of a criminal statute.
- (3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.
- (4) A vehicle that is used by a person to:
  - (A) commit, attempt to commit, or conspire to commit;
  - (B) facilitate the commission of; or
  - (C) escape from the commission of:  
murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.
- (5) Real property owned by a person who uses it to commit any of the following as a Level 1, Level 2, Level 3, Level 4 or a Level 5 felony:
  - (A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
  - (B) Dealing in methamphetamine (IC 35-48-4-1.1).
  - (C) Dealing in a Schedule I, II, or III controlled substance (35-48-4-2).
  - (D) Dealing in a Schedule IV controlled substance (IC 35-48-4-3).
  - (E) Dealing in a marijuana, hash oil, hashish, or salvia (IC 35-48-4-10).
  - (F) Dealing in a synthetic drug or synthetic drug lookalike substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its amendment in 2013).
- (6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).
- (7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.
- (8) Property (as defined by IC 35-31.5-2-253) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).
- (9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.
- (10) Any equipment, including computer equipment and cellular telephones, used for or intended to use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, deriving from, or traceable as proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a vehicle used by a person who operates the vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; or

(B) on a highway while the person's driving privileges are suspended in violation of IC 9-24-19-2 through IC 9-24-19-3, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.

If a court orders the seizure of a vehicle under this subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a vehicle to be registered in the name of the person whose vehicle was seized, until the person possesses a current driving license (as defined in IC 9-13-2-41).

(16) The following real or person property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).

(B) Property constituting, derived from, or traceable to the gross proceeds that a person obtains directly or indirectly as a result of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).

(17) An automated sales suppression device (as defined in IC 35-43-5-4.6(a)(1) or phantom-ware (as defined in IC 35-43-5-4.6(a)(3)).

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can

be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found on or near a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

- (1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).
- (2) IC 35-48-4-1.1 (dealing in methamphetamine).
- (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- (5) IC 35-48-4-4 (dealing in a schedule V controlled substance).
- (6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Level 3, Level 4, or Level 5 felony.
- (7) IC 35-48-4-6.1 (possession of methamphetamine) as a Level 3, Level 4, or Level 5 felony.
- (8) IC 35-48-4-10 (dealing in marijuana, hash oil, hashish, or salvia) as a Level 5 felony.
- (9) IC 35-48-4-10.5 (dealing in a synthetic drug or synthetic drug lookalike substance) as a Level 5 felony or Level 6 felony (of a Class C felony or Class D felony under IC 35-48-4-10 before its amendment in 2013).

(e) A vehicle operated by a person who is not:

- (1) an owner of the vehicle; or
- (2) the spouse of the person who owns the vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

### **34-24-1-2. Procedures for seizure**

(a) Property may be seized under this chapter by a law enforcement officer only if:

- (1) the seizure is incident to a lawful:
  - (A) arrest;
  - (B) search; or
  - (C) administrative inspection;
- (2) the property has been the subject of a prior judgment in favor of the state or unit in a proceeding under this chapter (or IC 34-4-30.1 before its repeal); or
- (3) the court, after making an ex parte determination that there is probable cause to believe the property is subject to seizure under this chapter, issues an order for seizure.

(b) When property is seized under subsection (a), the law enforcement agency making the seizure may, pending final disposition:

- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) require another agency authorized by law to take custody of property and remove it to an appropriate location.

(c) Property that is seized under subsection (a) (or IC 34-4-30.1-2(a) before its repeal) is not subject to replevin but is considered to be in the custody of the law enforcement agency making the seizure.

### **34-24-1-3. Procedures following seizure; filing complaint, notice, answer**

(a) The prosecuting attorney for the county in which the seizure occurs may, within ninety (90) days after receiving written notice from the owner demanding return of the seized property or within one hundred eighty (180) day after the property is seized, whichever occurs first, cause an action for reimbursement of law enforcement costs and forfeiture to be brought by filing a complaint in the circuit or superior court in the jurisdiction where the seizure occurred.

The action must be brought:

- (1) in the name of the state or the state and the unit that employed the law enforcement officers who made the seizure if the state was not the employer; and
- (2) within the period that a prosecution may be commenced under IC 35-41-4-2 for the offense that is the basis for the seizure.

(b) If the property seized was a vehicle or real property, the prosecuting attorney shall serve, under the Indiana Rules of Trial Procedure, a copy of the complaint upon each person whose right, title, or interest is or record in the bureau of motor vehicles, in the county recorder's office, or other office authorized to receive or record vehicle or real property ownership interests.

(c) The owner of the seized property, or any person whose right, title or interest is or record may, within twenty (20) days after service of the complaint under the Indiana Rules of Trial Procedure, file an answer to the complaint and may appear at the hearing on the action.

(d) If, at the end of the time allotted for an answer, there is no answer on file, the court, upon motion, shall enter judgment in favor of the state and the unit (if appropriate) for reimbursement of law enforcement costs and shall order the property disposed in accordance with section 4 of this chapter.

### **34-24-1-4. Burden of proof; judgment; use of property; order**

(a) At the hearing, the prosecuting attorney must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under section 1 of this chapter. If the property seized was a vehicle, the prosecuting attorney must also show by a preponderance of the evidence that a person who has an ownership interest of record in the bureau of motor vehicles knew or had reason to know that the vehicle was being used in the commission of the offense.

(b) If the prosecuting attorney fails to meet the burden of proof, the court shall order the property released to the owner.

(c) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court, subject to section 5 of this chapter, shall order delivery to the law enforcement agency that seized the property. The court may permit the agency to use the property for a period not to exceed three (3) years. However, the court must require that, after the period specified by the court, the law enforcement agency shall deliver the property to the county sheriff for public sale.

(d) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court shall, subject to section 5 of this chapter:

(1) determine the amount of law enforcement costs; and

(2) order that:

(A) the property, if it is not money or real property, be sold under section 6 of this chapter, by the sheriff of the county in which the property was seized, and if the property is a vehicle, this sale must occur after any period of use specified in subsection (c);

(B) the property, if it is real property, be sold in the same manner as real property is sold on execution under IC 34-55-6;

(C) the proceeds of the sale or the money be:

(i) deposited in the general fund of the state, or the unit that employed the law enforcement officers that seized the property; or

(ii) deposited in the general fund of a unit if the property was seized by a local law enforcement agency of the unit for an offense, an attempted offense, or a conspiracy to commit an offense under IC 35-47 as a part of or in furtherance of an act of terrorism; and

(D) any excess in value of the proceeds or the money over the law enforcement costs be forfeited and transferred to the treasurer of the state for deposit in the common school fund.

(e) If property that is seized under this chapter (or IC 34-4-30.1-4 before its repeal) is transferred:

(1) after its seizure, but before an action is filed under section 3 of this chapter (or IC 34-4-30.1-3 before its repeal); or

(2) when an action filed under section 3 of this chapter (or IC 34-4-30.1-3 before its repeal) is pending:

the person to whom the property is transferred must establish an ownership interest or record as a bond fide purchaser for value. A person is a bond fide purchaser for value under this section if the person, at the time of the transfer, did not have reasonable cause to believe that the property was subject to forfeiture under this chapter.

(f) If the property seized was an unlawful communications device (as defined in IC 35-45-13-6) or plans, instructions, or publications used to commit an offense under IC 35-45-13, the court may order the sheriff of the county in which the person was convicted of an offense under IC 35-45-13 to destroy as contraband or to otherwise lawfully dispose of the property.

### **34-24-1-5. Secured interest or co-owner in property; determination of value; release to secured party**

(a) If;

(1) the court has entered judgment in favor of the state, and a unit (if appropriate) concerning property that is subject to seizure under this chapter; and

(2) a person:

(A) holding a valid lien, mortgage, security interest, or interest under a conditional sales contract; or

(B) who is a co-owner of the property;

did not know of the illegal use;

the court shall determine whether the secured interest or the co-owner's interest is equal to or in excess of the appraised value of the property.

(b) Appraised value is to be determined as of the date of judgment on a wholesale basis by:

- (1) agreement between the secured party or the co-owner and the prosecuting attorney; or
- (2) the inheritance tax appraiser for the county in which the action is brought.

(c) If the amount:

- (1) due to the secured party; or
- (2) of the co-owner's interest;

is equal to or greater than the appraised value of the property, the court shall order the property released to the secured party or the co-owner.

(d) If the amount:

- (1) due to the secured party; or
- (2) of the co-owner's interest;

is less than the appraised value of the property, the holder of the interest or the co-owner may pay into the court an amount equal to the owner's equity, which shall be the difference between the appraised value and the amount of the lien, mortgage, security interest under a conditional sales contract, or co-owner's interest. Upon such payment, the state or unit, or both, shall relinquish all claims to the property, and the court shall order the payment deposited as provided in section 4(d) of this chapter.

(e) If the seized property is a vehicle and if the security holder or the co-owner elects not to make payment as stated in subsection (d), the vehicle shall be disposed of in accordance with section 4(c) of this chapter.

#### **34-24-1-6. Public sale of seized property; disposition of proceeds**

(a) Where disposition of property is to be made at public sale, notice of sale shall be published in accordance with IC 34-55-6.

(b) When property is sold at a public sale under this chapter, the proceeds shall be distributed in the following order:

- (1) First, to the sheriff of the county, for all expenditures made or incurred in connection with the sale, including storage, transportation, and necessary repair.
- (2) Second, to any person:
  - (A) holding a valid lien, mortgage, land contract, or interest under a conditional sales contract or the holder of other such interest; or
  - (B) who is a co-owner and has an ownership interest;up to the amount of that person's interest as determined by the court.
- (3) The remainder, if any, shall be transferred by the sheriff to the appropriate fund as ordered by the court in section 4(d) of this chapter.

#### **34-24-1-7. Court order of forfeiture; filing**

(a) If the property seized was a vehicle, a copy of the court's order under this chapter (or IC 34-4-30.1-7 before its repeal):

- (1) shall be filed with the department of motor vehicles or other appropriate agency; and

(2) constitutes authority for the issuance of clear title to that vehicle in the name of the person or purchaser to whom the order authorizes delivery.

(b) If the property seized was real property, a copy of the court's order under this chapter (or IC 34-4-30.1-7 before its repeal):

(1) shall be filed with the county recorder; and

(2) constitutes authority for:

(A) the sale of the property in the manner provided under IC 34-55-6; and

(B) the issuance of clear title to a bona fide purchaser for value who acquires the real property at the sale.

### **34-24-1-8. Retention of attorney by prosecutor**

(a) A prosecuting attorney may retain an attorney to bring an action under this chapter.

(b) An attorney retained under this section is not required to be a deputy prosecuting attorney but must be admitted to the practice of law in Indiana.

### **34-24-1-9. Adoptive forfeiture and equitable sharing**

(a) Upon motion of a prosecuting attorney under IC 35-33-5-5(j), property seized under this chapter must be transferred, subject to perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C.S. 981(e), 19 U.S.C.S. 1616a, or 21 U.S.C.S. 881 (e) and any related regulations adopted by the United States Department of Justice.

(b) Money received by a law enforcement agency as a result of forfeiture under 18 U.S.C.S. 981(e), 19 U.S.C.S. 1616a, or 21 U.S.C.S. 881 (e) and any related regulations adopted by the United States Department of Justice must be deposited into a nonreverting fund and may be expended only with the approval of:

(1) the executive (as defined in IC 36-1-2-5), if the money is received by a local law enforcement agency; or

(2) the governor, if the money is received by a law enforcement agency in the executive branch.

The money received under this subsection must be used solely for the benefit of any agency directly participating in the seizure or forfeiture for purposes consistent with federal laws and regulations.

## **TITLE 34**

### **ARTICLE 28**

#### **Chapter 5**

#### **Infraction and Ordinance**

#### **Violations**

#### **[Portions Omitted]**

- 34-28-5-3 Detention of suspect for ordinance or infraction violation
- 34-28-5-3.5 Refusal to provide identifying information; penalty

**34-28-5-3. Detention of suspect for ordinance or infraction violation**

(a) Whenever a law enforcement officer believes in good faith that a person has committed an infraction or ordinance violation, the law enforcement officer may detain that person for a time sufficient to:

- (1) inform the person of the allegation;
- (2) obtain the person's:
  - (A) name, address, and date of birth; or
  - (B) driver's license, if in the person's possession; and
- (3) allow the person to execute a notice to appear.

(b) If a law enforcement officer detains a person because the law enforcement officer believes the person has committed an infraction or ordinance violation, the law enforcement officer may not, without the consent of the person, extract or otherwise download information from a cellular telephone or another wireless or cellular communications device possessed by the person at the time the person is detained, unless:

- (1) the law enforcement officer has probable cause to believe that the:
  - (A) cellular telephone; or
  - (B) other wireless or cellular communications device;has been used in the commission of a crime;
- (2) the information is extracted or otherwise downloaded under a valid search warrant; or
- (3) otherwise authorized by law.

**34-28-5-3.5. Refusal to provide identifying information; penalty**

A person who knowingly or intentionally refuses to provide either the person's:

- (1) name, address, and date of birth; or
- (2) driver's license, if in the person's possession;

to a law enforcement officer who has stopped the person for an infraction or ordinance violation commits a Class C misdemeanor.