

HOUSE BILL No. 1132

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-5-7; IC 35-37-1-2; IC 35-41-3; IC 35-42-4; IC 35-47; IC 35-50.

Synopsis: Criminal law matters. Requires the search warrant for a DNA sample to be executed not later than 60 days after the date of issuance. Requires a DNA sample to be returned to the court without unnecessary delay. Requires the: (1) defendant; (2) prosecuting attorney; and (3) court; to unanimously agree to the submission of a trial to the court. Requires a prosecuting attorney to consent to a defendant's waiver of trial by jury. Provides that the burden of proof for certain affirmative defenses is on the defendant. Specifies that the evidentiary standard for certain affirmative defenses is a preponderance of the evidence. Provides that the alteration or obliteration of certain markings on a firearm is a Level 5 felony. Provides that the possession of a firearm with altered or obliterated markings is a Level 5 felony. Requires a defendant to serve the sum of all executed time imposed under consecutive sentences before serving any suspended part imposed under consecutive sentences. Makes a technical correction. Makes conforming amendments.

Effective: July 1, 2020.

Steuerwald

January 8, 2020, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1132

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-33-5-7, AS AMENDED BY P.L.201-2011,
2 SECTION 111, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2020]: Sec. 7. (a) A search warrant issued by
4 a court of record may be executed according to its terms anywhere in
5 the state. A search warrant issued by a court that is not a court of record
6 may be executed according to its terms anywhere in the county of the
7 issuing court.

8 (b) **Except as provided in subsection (c)**, a search warrant must be:
9 (1) executed not more than ten (10) days after the date of
10 issuance; and
11 (2) returned to the court without unnecessary delay after the
12 execution.

13 (c) **A search warrant for a DNA sample must be:**
14 (1) **executed not more than sixty (60) days after the date of**
15 **issuance; and**
16 (2) **returned to the court without unnecessary delay after the**
17 **execution.**



1 (ⓔ) (d) A search warrant may be executed:

2 (1) on any day of the week; and

3 (2) at any time of the day or night.

4 (ⓕ) (e) A law enforcement officer may break open any outer or inner
5 door or window in order to execute a search warrant, if the officer is
6 not admitted following an announcement of the officer's authority and
7 purpose.

8 (ⓕ) (f) A person or persons whose property is wrongfully damaged
9 or whose person is wrongfully injured by any law enforcement officer
10 or officers who wrongfully enter may recover such damage from the
11 responsible authority and the law enforcement officer or officers as the
12 court may determine. The action may be filed in the circuit court or
13 superior court in the county where the wrongful entry took place.

14 SECTION 2. IC 35-37-1-2, AS AMENDED BY P.L.108-2015,
15 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2020]: Sec. 2. ~~The defendant and prosecuting attorney, with~~
17 ~~the assent of the court, may submit the trial to the court. If the~~
18 ~~defendant, prosecuting attorney, and court all agree, the trial may~~
19 ~~be submitted to the court.~~ Unless a defendant waives the right to a
20 jury trial under the Indiana Rules of Criminal Procedure **and the**
21 **prosecuting attorney consents to the defendant's waiver**, all other
22 trials must be by jury.

23 SECTION 3. IC 35-41-3-1 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) A person is
25 justified in engaging in conduct otherwise prohibited if he has legal
26 authority to do so.

27 **(b) An accused person has the burden of proving the defense**
28 **described in subsection (a) by a preponderance of the evidence.**

29 SECTION 4. IC 35-41-3-2, AS AMENDED BY P.L.107-2019,
30 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2020]: Sec. 2. (a) In enacting this section, the general
32 assembly finds and declares that it is the policy of this state to
33 recognize the unique character of a citizen's home and to ensure that a
34 citizen feels secure in his or her own home against unlawful intrusion
35 by another individual or a public servant. By reaffirming the long
36 standing right of a citizen to protect his or her home against unlawful
37 intrusion, however, the general assembly does not intend to diminish
38 in any way the other robust self defense rights that citizens of this state
39 have always enjoyed. Accordingly, the general assembly also finds and
40 declares that it is the policy of this state that people have a right to
41 defend themselves and third parties from physical harm and crime. The
42 purpose of this section is to provide the citizens of this state with a



1 lawful means of carrying out this policy. Provisions concerning civil
 2 immunity for the justified use of force as defined in this section are
 3 codified under IC 34-30-31.

4 (b) As used in this section, "public servant" means a person
 5 described in IC 35-31.5-2-129 or IC 35-31.5-2-185.

6 (c) A person is justified in using reasonable force against any other
 7 person to protect the person or a third person from what the person
 8 reasonably believes to be the imminent use of unlawful force.
 9 However, a person:

10 (1) is justified in using deadly force; and

11 (2) does not have a duty to retreat;

12 if the person reasonably believes that that force is necessary to prevent
 13 serious bodily injury to the person or a third person or the commission
 14 of a forcible felony. No person, employer, or estate of a person in this
 15 state shall be placed in legal jeopardy of any kind whatsoever for
 16 protecting the person or a third person by reasonable means necessary.

17 (d) A person:

18 (1) is justified in using reasonable force, including deadly force,
 19 against any other person; and

20 (2) does not have a duty to retreat;

21 if the person reasonably believes that the force is necessary to prevent
 22 or terminate the other person's unlawful entry of or attack on the
 23 person's dwelling, curtilage, or occupied motor vehicle.

24 (e) With respect to property other than a dwelling, curtilage, or an
 25 occupied motor vehicle, a person is justified in using reasonable force
 26 against any other person if the person reasonably believes that the force
 27 is necessary to immediately prevent or terminate the other person's
 28 trespass on or criminal interference with property lawfully in the
 29 person's possession, lawfully in possession of a member of the person's
 30 immediate family, or belonging to a person whose property the person
 31 has authority to protect. However, a person:

32 (1) is justified in using deadly force; and

33 (2) does not have a duty to retreat;

34 only if that force is justified under subsection (c).

35 (f) A person is justified in using reasonable force, including deadly
 36 force, against any other person and does not have a duty to retreat if the
 37 person reasonably believes that the force is necessary to prevent or stop
 38 the other person from hijacking, attempting to hijack, or otherwise
 39 seizing or attempting to seize unlawful control of an aircraft in flight.
 40 For purposes of this subsection, an aircraft is considered to be in flight
 41 while the aircraft is:

42 (1) on the ground in Indiana:



- 1 (A) after the doors of the aircraft are closed for takeoff; and
 2 (B) until the aircraft takes off;
 3 (2) in the airspace above Indiana; or
 4 (3) on the ground in Indiana:
 5 (A) after the aircraft lands; and
 6 (B) before the doors of the aircraft are opened after landing.
 7 (g) Notwithstanding subsections (c) through (e), a person is not
 8 justified in using force if:
 9 (1) the person is committing or is escaping after the commission
 10 of a crime;
 11 (2) the person provokes unlawful action by another person with
 12 intent to cause bodily injury to the other person; or
 13 (3) the person has entered into combat with another person or is
 14 the initial aggressor unless the person withdraws from the
 15 encounter and communicates to the other person the intent to do
 16 so and the other person nevertheless continues or threatens to
 17 continue unlawful action.
 18 (h) Notwithstanding subsection (f), a person is not justified in using
 19 force if the person:
 20 (1) is committing, or is escaping after the commission of, a crime;
 21 (2) provokes unlawful action by another person, with intent to
 22 cause bodily injury to the other person; or
 23 (3) continues to combat another person after the other person
 24 withdraws from the encounter and communicates the other
 25 person's intent to stop hijacking, attempting to hijack, or
 26 otherwise seizing or attempting to seize unlawful control of an
 27 aircraft in flight.
 28 (i) A person is justified in using reasonable force against a public
 29 servant if the person reasonably believes the force is necessary to:
 30 (1) protect the person or a third person from what the person
 31 reasonably believes to be the imminent use of unlawful force;
 32 (2) prevent or terminate the public servant's unlawful entry of or
 33 attack on the person's dwelling, curtilage, or occupied motor
 34 vehicle; or
 35 (3) prevent or terminate the public servant's unlawful trespass on
 36 or criminal interference with property lawfully in the person's
 37 possession, lawfully in possession of a member of the person's
 38 immediate family, or belonging to a person whose property the
 39 person has authority to protect.
 40 (j) Notwithstanding subsection (i), a person is not justified in using
 41 force against a public servant if:
 42 (1) the person is committing or is escaping after the commission



- 1 of a crime;
- 2 (2) the person provokes action by the public servant with intent to
- 3 cause bodily injury to the public servant;
- 4 (3) the person has entered into combat with the public servant or
- 5 is the initial aggressor, unless the person withdraws from the
- 6 encounter and communicates to the public servant the intent to do
- 7 so and the public servant nevertheless continues or threatens to
- 8 continue unlawful action; or
- 9 (4) the person reasonably believes the public servant is:
- 10 (A) acting lawfully; or
- 11 (B) engaged in the lawful execution of the public servant's
- 12 official duties.
- 13 (k) A person is not justified in using deadly force against a public
- 14 servant whom the person knows or reasonably should know is a public
- 15 servant unless:
- 16 (1) the person reasonably believes that the public servant is:
- 17 (A) acting unlawfully; or
- 18 (B) not engaged in the execution of the public servant's official
- 19 duties; and
- 20 (2) the force is reasonably necessary to prevent serious bodily
- 21 injury to the person or a third person.
- 22 **(l) An accused person has the burden of proving a justification**
- 23 **under this section by a preponderance of the evidence.**
- 24 SECTION 5. IC 35-41-3-3 IS AMENDED TO READ AS
- 25 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. (a) A person other
- 26 than a law enforcement officer is justified in using reasonable force
- 27 against another person to effect an arrest or prevent the other person's
- 28 escape if:
- 29 (1) a felony has been committed; and
- 30 (2) there is probable cause to believe the other person committed
- 31 that felony.
- 32 However, such a person is not justified in using deadly force unless that
- 33 force is justified under section 2 of this chapter.
- 34 (b) A law enforcement officer is justified in using reasonable force
- 35 if the officer reasonably believes that the force is necessary to effect a
- 36 lawful arrest. However, an officer is justified in using deadly force only
- 37 if the officer:
- 38 (1) has probable cause to believe that that deadly force is
- 39 necessary:
- 40 (A) to prevent the commission of a forcible felony; or
- 41 (B) to effect an arrest of a person who the officer has probable
- 42 cause to believe poses a threat of serious bodily injury to the



- 1 officer or a third person; and
 2 (2) has given a warning, if feasible, to the person against whom
 3 the deadly force is to be used.
- 4 (c) A law enforcement officer making an arrest under an invalid
 5 warrant is justified in using force as if the warrant was valid, unless the
 6 officer knows that the warrant is invalid.
- 7 (d) A law enforcement officer who has an arrested person in custody
 8 is justified in using the same force to prevent the escape of the arrested
 9 person from custody that the officer would be justified in using if the
 10 officer was arresting that person. However, an officer is justified in
 11 using deadly force only if the officer:
 12 (1) has probable cause to believe that deadly force is necessary to
 13 prevent the escape from custody of a person who the officer has
 14 probable cause to believe poses a threat of serious bodily injury
 15 to the officer or a third person; and
 16 (2) has given a warning, if feasible, to the person against whom
 17 the deadly force is to be used.
- 18 (e) A guard or other official in a penal facility or a law enforcement
 19 officer is justified in using reasonable force, including deadly force, if
 20 the officer has probable cause to believe that the force is necessary to
 21 prevent the escape of a person who is detained in the penal facility.
- 22 (f) Notwithstanding subsection (b), (d), or (e), a law enforcement
 23 officer who is a defendant in a criminal prosecution has the same right
 24 as a person who is not a law enforcement officer to assert self-defense
 25 under ~~IC 35-41-3-2~~ **section 2 of this chapter.**
- 26 **(g) An accused person has the burden of proving a justification**
 27 **described under this section by a preponderance of the evidence.**
 28 SECTION 6. IC 35-41-3-5 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) It is a defense
 30 that the person who engaged in the prohibited conduct did so while he
 31 was intoxicated, only if the intoxication resulted from the introduction
 32 of a substance into his body:
 33 (1) without his consent; or
 34 (2) when he did not know that the substance might cause
 35 intoxication.
- 36 **(b) An accused person has the burden of proving this defense by**
 37 **a preponderance of the evidence.**
 38 SECTION 7. IC 35-41-3-8 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. (a) It is a defense
 40 that the person who engaged in the prohibited conduct was compelled
 41 to do so by threat of imminent serious bodily injury to himself or
 42 another person. With respect to offenses other than felonies, it is a



1 defense that the person who engaged in the prohibited conduct was
 2 compelled to do so by force or threat of force. Compulsion under this
 3 section exists only if the force, threat, or circumstances are such as
 4 would render a person of reasonable firmness incapable of resisting the
 5 pressure.

6 (b) This section does not apply to a person who:

7 (1) recklessly, knowingly, or intentionally placed himself in a
 8 situation in which it was foreseeable that he would be subjected
 9 to duress; or

10 (2) committed an offense against the person as defined in
 11 IC 35-42.

12 **(c) An accused person has the burden of proving the defense**
 13 **described under this section by a preponderance of the evidence.**

14 SECTION 8. IC 35-41-3-9 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 9. (a) It is a defense
 16 that:

17 (1) the prohibited conduct of the person was the product of a law
 18 enforcement officer, or ~~his~~ **the officer's** agent, using persuasion
 19 or other means likely to cause the person to engage in the
 20 conduct; and

21 (2) the person was not predisposed to commit the offense.

22 (b) Conduct merely affording a person an opportunity to commit the
 23 offense does not constitute entrapment.

24 **(c) An accused person has the burden of proving this defense by**
 25 **a preponderance of the evidence.**

26 SECTION 9. IC 35-41-3-10 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 10. (a) With respect to
 28 a charge under IC 35-41-2-4, IC 35-41-5-1, or IC 35-41-5-2, it is a
 29 defense that the person who engaged in the prohibited conduct
 30 voluntarily abandoned his effort to commit the underlying crime and
 31 voluntarily prevented its commission.

32 **(b) An accused person has the burden of proving this defense by**
 33 **a preponderance of the evidence.**

34 SECTION 10. IC 35-42-4-3, AS AMENDED BY P.L.187-2015,
 35 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2020]: Sec. 3. (a) A person who, with a child under fourteen
 37 (14) years of age, knowingly or intentionally performs or submits to
 38 sexual intercourse or other sexual conduct (as defined in
 39 IC 35-31.5-2-221.5) commits child molesting, a Level 3 felony.
 40 However, the offense is a Level 1 felony if:

41 (1) it is committed by a person at least twenty-one (21) years of
 42 age;



1 (2) it is committed by using or threatening the use of deadly force
2 or while armed with a deadly weapon;

3 (3) it results in serious bodily injury;

4 (4) the commission of the offense is facilitated by furnishing the
5 victim, without the victim's knowledge, with a drug (as defined in
6 IC 16-42-19-2(1)) or a controlled substance (as defined in
7 IC 35-48-1-9) or knowing that the victim was furnished with the
8 drug or controlled substance without the victim's knowledge; or

9 (5) it results in the transmission of a dangerous sexually
10 transmitted disease and the person knew that the person was
11 infected with the disease.

12 (b) A person who, with a child under fourteen (14) years of age,
13 performs or submits to any fondling or touching, of either the child or
14 the older person, with intent to arouse or to satisfy the sexual desires of
15 either the child or the older person, commits child molesting, a Level
16 4 felony. However, the offense is a Level 2 felony if:

17 (1) it is committed by using or threatening the use of deadly force;

18 (2) it is committed while armed with a deadly weapon; or

19 (3) the commission of the offense is facilitated by furnishing the
20 victim, without the victim's knowledge, with a drug (as defined in
21 IC 16-42-19-2(1)) or a controlled substance (as defined in
22 IC 35-48-1-9) or knowing that the victim was furnished with the
23 drug or controlled substance without the victim's knowledge.

24 (c) A person may be convicted of attempted child molesting of an
25 individual at least fourteen (14) years of age if the person believed the
26 individual to be a child under fourteen (14) years of age at the time the
27 person attempted to commit the offense.

28 (d) It is a defense to a prosecution under this section that the
29 accused person reasonably believed that the child was sixteen (16)
30 years of age or older at the time of the conduct, unless:

31 (1) the offense is committed by using or threatening the use of
32 deadly force or while armed with a deadly weapon;

33 (2) the offense results in serious bodily injury; or

34 (3) the commission of the offense is facilitated by furnishing the
35 victim, without the victim's knowledge, with a drug (as defined in
36 IC 16-42-19-2(1)) or a controlled substance (as defined in
37 IC 35-48-1-9) or knowing that the victim was furnished with the
38 drug or controlled substance without the victim's knowledge.

39 **An accused person has the burden of proving this defense by a**
40 **preponderance of the evidence.**

41 SECTION 11. IC 35-42-4-9, AS AMENDED BY P.L.40-2019,
42 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2020]: Sec. 9. (a) A person at least eighteen (18) years of age
2 who knowingly or intentionally performs or submits to sexual
3 intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5)
4 with a child less than sixteen (16) years of age, commits sexual
5 misconduct with a minor, a Level 5 felony. However, the offense is:

6 (1) a Level 4 felony if it is committed by a person at least
7 twenty-one (21) years of age; and

8 (2) a Level 1 felony if it is committed by using or threatening the
9 use of deadly force, if it is committed while armed with a deadly
10 weapon, if it results in serious bodily injury, or if the commission
11 of the offense is facilitated by furnishing the victim, without the
12 victim's knowledge, with a drug (as defined in IC 16-42-19-2(1))
13 or a controlled substance (as defined in IC 35-48-1-9) or knowing
14 that the victim was furnished with the drug or controlled
15 substance without the victim's knowledge.

16 (b) A person at least eighteen (18) years of age who knowingly or
17 intentionally performs or submits to any fondling or touching with a
18 child less than sixteen (16) years of age with intent to arouse or to
19 satisfy the sexual desires of either the child or the older person,
20 commits sexual misconduct with a minor, a Level 6 felony. However,
21 the offense is:

22 (1) a Level 5 felony if it is committed by a person at least
23 twenty-one (21) years of age; and

24 (2) a Level 2 felony if it is committed by using or threatening the
25 use of deadly force, while armed with a deadly weapon, or if the
26 commission of the offense is facilitated by furnishing the victim,
27 without the victim's knowledge, with a drug (as defined in
28 IC 16-42-19-2(1)) or a controlled substance (as defined in
29 IC 35-48-1-9) or knowing that the victim was furnished with the
30 drug or controlled substance without the victim's knowledge.

31 (c) It is a defense that the accused person reasonably believed that
32 the child was at least sixteen (16) years of age at the time of the
33 conduct. However, this subsection does not apply to an offense
34 described in subsection (a)(2) or (b)(2).

35 (d) It is a defense that the child is or has ever been married.
36 However, this subsection does not apply to an offense described in
37 subsection (a)(2) or (b)(2).

38 (e) It is a defense to a prosecution under this section if all the
39 following apply:

40 (1) The person is not more than four (4) years older than the
41 victim.

42 (2) The relationship between the person and the victim was a



1 dating relationship or an ongoing personal relationship. The term
 2 "ongoing personal relationship" does not include a family
 3 relationship.

4 (3) The crime:

5 (A) was not committed by a person who is at least twenty-one
 6 (21) years of age;

7 (B) was not committed by using or threatening the use of
 8 deadly force;

9 (C) was not committed while armed with a deadly weapon;

10 (D) did not result in serious bodily injury;

11 (E) was not facilitated by furnishing the victim, without the
 12 victim's knowledge, with a drug (as defined in
 13 IC 16-42-19-2(1)) or a controlled substance (as defined in
 14 IC 35-48-1-9) or knowing that the victim was furnished with
 15 the drug or controlled substance without the victim's
 16 knowledge; and

17 (F) was not committed by a person having a position of
 18 authority or substantial influence over the victim.

19 (4) The person has not committed another sex offense (as defined
 20 in IC 11-8-8-5.2) (including a delinquent act that would be a sex
 21 offense if committed by an adult) against any other person.

22 (5) The person is not promoting prostitution (as defined in
 23 IC 35-45-4-4) with respect to the victim even though the person
 24 has not been charged with or convicted of the offense.

25 **(f) An accused person has the burden of proving a defense**
 26 **described under subsection (c), (d), or (e) by a preponderance of**
 27 **the evidence.**

28 SECTION 12. IC 35-47-2-18, AS AMENDED BY P.L.158-2013,
 29 SECTION 582, IS AMENDED TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2020]: Sec. 18. (a) No person shall:

31 (1) change, alter, remove, or obliterate the name of the maker,
 32 model, manufacturer's serial number, or other mark of
 33 identification on any ~~handgun~~ **firearm**; or

34 (2) possess any ~~handgun~~ **firearm** on which the name of the
 35 maker, model, manufacturer's serial number, or other mark of
 36 identification has been changed, altered, removed, or obliterated;
 37 except as provided by applicable United States statute.

38 (b) A person who knowingly or intentionally violates this section
 39 commits a Level 5 felony.

40 SECTION 13. IC 35-47-14-3, AS AMENDED BY P.L.289-2019,
 41 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2020]: Sec. 3. (a) If a law enforcement officer seizes a firearm



1 from an individual whom the law enforcement officer believes to be
 2 dangerous without obtaining a warrant, the law enforcement officer
 3 shall submit to the circuit or superior court having jurisdiction over the
 4 individual believed to be dangerous an affidavit describing the basis for
 5 the law enforcement officer's belief that the individual is dangerous.

6 (b) An affidavit described in subsection (a) shall:

7 **(1) set forth the quantity and type of each firearm seized from**
 8 **the individual under this section; and**

9 **(2) be submitted to a circuit or superior court having jurisdiction**
 10 **over the individual believed to be dangerous not later than**
 11 **forty-eight (48) hours after the seizure of the firearm.**

12 (c) The court shall review the affidavit described in subsection (a)
 13 as soon as possible.

14 (d) If the court finds that probable cause exists to believe that the
 15 individual is dangerous, the court shall order the law enforcement
 16 agency having custody of the firearm to retain the firearm.

17 (e) A law enforcement agency responsible for the seizure of the
 18 firearm under this section shall file a search warrant return with the
 19 court setting forth the:

20 (1) quantity; and

21 (2) type;

22 of each firearm seized from an individual under this section:

23 (f) (e) If the court finds that there is no probable cause to believe
 24 that the individual is dangerous, the court shall order the law
 25 enforcement agency having custody of the firearm to return the firearm
 26 to the individual as quickly as practicable, but not later than five (5)
 27 days after the date of the order.

28 SECTION 14. IC 35-50-1-2, AS AMENDED BY P.L.184-2019,
 29 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2020]: Sec. 2. (a) As used in this section, "crime of violence"
 31 means the following:

32 (1) Murder (IC 35-42-1-1).

33 (2) Attempted murder (IC 35-41-5-1).

34 (3) Voluntary manslaughter (IC 35-42-1-3).

35 (4) Involuntary manslaughter (IC 35-42-1-4).

36 (5) Reckless homicide (IC 35-42-1-5).

37 (6) Battery (IC 35-42-2-1) as a:

38 (A) Level 2 felony;

39 (B) Level 3 felony;

40 (C) Level 4 felony; or

41 (D) Level 5 felony.

42 (7) Aggravated battery (IC 35-42-2-1.5).



- 1 (8) Kidnapping (IC 35-42-3-2).
 2 (9) Rape (IC 35-42-4-1).
 3 (10) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
 4 (11) Child molesting (IC 35-42-4-3).
 5 (12) Sexual misconduct with a minor as a Level 1 felony under
 6 IC 35-42-4-9(a)(2) or a Level 2 felony under IC 35-42-4-9(b)(2).
 7 (13) Robbery as a Level 2 felony or a Level 3 felony
 8 (IC 35-42-5-1).
 9 (14) Burglary as a Level 1 felony, Level 2 felony, Level 3 felony,
 10 or Level 4 felony (IC 35-43-2-1).
 11 (15) Operating a vehicle while intoxicated causing death or
 12 catastrophic injury (IC 9-30-5-5).
 13 (16) Operating a vehicle while intoxicated causing serious bodily
 14 injury to another person (IC 9-30-5-4).
 15 (17) Child exploitation as a Level 5 felony under IC 35-42-4-4(b)
 16 or a Level 4 felony under IC 35-42-4-4(c).
 17 (18) Resisting law enforcement as a felony (IC 35-44.1-3-1).
 18 (19) Unlawful possession of a firearm by a serious violent felon
 19 (IC 35-47-4-5).
 20 (b) As used in this section, "episode of criminal conduct" means
 21 offenses or a connected series of offenses that are closely related in
 22 time, place, and circumstance.
 23 (c) Except as provided in subsection (e) or (f), the court shall
 24 determine whether terms of imprisonment shall be served concurrently
 25 or consecutively. The court may consider the:
 26 (1) aggravating circumstances in IC 35-38-1-7.1(a); and
 27 (2) mitigating circumstances in IC 35-38-1-7.1(b);
 28 in making a determination under this subsection. The court may order
 29 terms of imprisonment to be served consecutively even if the sentences
 30 are not imposed at the same time. However, except for crimes of
 31 violence, the total of the consecutive terms of imprisonment, exclusive
 32 of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10
 33 (before its repeal) to which the defendant is sentenced for felony
 34 convictions arising out of an episode of criminal conduct shall not
 35 exceed the period described in subsection (d).
 36 (d) Except as provided in subsection (c), the total of the consecutive
 37 terms of imprisonment to which the defendant is sentenced for felony
 38 convictions arising out of an episode of criminal conduct may not
 39 exceed the following:
 40 (1) If the most serious crime for which the defendant is sentenced
 41 is a Level 6 felony, the total of the consecutive terms of
 42 imprisonment may not exceed four (4) years.



1 (2) If the most serious crime for which the defendant is sentenced
2 is a Level 5 felony, the total of the consecutive terms of
3 imprisonment may not exceed seven (7) years.

4 (3) If the most serious crime for which the defendant is sentenced
5 is a Level 4 felony, the total of the consecutive terms of
6 imprisonment may not exceed fifteen (15) years.

7 (4) If the most serious crime for which the defendant is sentenced
8 is a Level 3 felony, the total of the consecutive terms of
9 imprisonment may not exceed twenty (20) years.

10 (5) If the most serious crime for which the defendant is sentenced
11 is a Level 2 felony, the total of the consecutive terms of
12 imprisonment may not exceed thirty-two (32) years.

13 (6) If the most serious crime for which the defendant is sentenced
14 is a Level 1 felony, the total of the consecutive terms of
15 imprisonment may not exceed forty-two (42) years.

16 (e) If, after being arrested for one (1) crime, a person commits
17 another crime:

18 (1) before the date the person is discharged from probation,
19 parole, or a term of imprisonment imposed for the first crime; or

20 (2) while the person is released:

21 (A) upon the person's own recognizance; or

22 (B) on bond;

23 the terms of imprisonment for the crimes shall be served consecutively,
24 regardless of the order in which the crimes are tried and sentences are
25 imposed.

26 (f) If the factfinder determines under IC 35-50-2-11 that a person
27 used a firearm in the commission of the offense for which the person
28 was convicted, the term of imprisonment for the underlying offense and
29 the additional term of imprisonment imposed under IC 35-50-2-11
30 must be served consecutively.

31 **(g) If the court imposes consecutive sentences and suspends part**
32 **of one (1) or all sentences, the defendant must serve the total of the**
33 **executed time imposed before serving any suspended part of the**
34 **sentences.**

35 SECTION 15. IC 35-50-2-2.2, AS AMENDED BY P.L.252-2017,
36 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2020]: Sec. 2.2. (a) Except as provided in subsection (b), (c),
38 (d), or (e), the court may suspend any part of a sentence for a felony.

39 (b) Except as provided in subsection (d), if a person is convicted of
40 a Level 2 felony or a Level 3 felony, except a Level 2 felony or a Level
41 3 felony concerning a controlled substance under IC 35-48-4, and has
42 any prior unrelated felony conviction, the court may suspend only that



- 1 part of a sentence that is in excess of the minimum sentence for the:
- 2 (1) Level 2 felony; or
- 3 (2) Level 3 felony.
- 4 (c) If:
- 5 (1) a person has a prior unrelated felony conviction in any
- 6 jurisdiction for dealing in a controlled substance that is not
- 7 marijuana, hashish, hash oil, salvia divinorum, or a synthetic
- 8 drug, including an attempt or conspiracy to commit the offense;
- 9 and
- 10 (2) the person is convicted of a Level 2 felony under
- 11 IC 35-48-4-1.1 or IC 35-48-4-1.2;
- 12 the court may suspend only that part of a sentence that is in excess of
- 13 the minimum sentence for the Level 2 felony.
- 14 (d) If a person:
- 15 (1) is convicted of dealing in heroin as a Level 2 or Level 3 felony
- 16 under IC 35-48-4-1 or IC 35-48-4-2; and
- 17 (2) has a prior unrelated felony conviction;
- 18 the court may suspend only that part of a sentence that is in excess of
- 19 the minimum sentence for the Level 2 or Level 3 felony.
- 20 (e) The court may suspend only that part of a sentence for murder
- 21 or a Level 1 felony conviction that is in excess of the minimum
- 22 sentence for murder or the Level 1 felony conviction.
- 23 **(f) If the court imposes consecutive sentences and suspends part**
- 24 **of one (1) or all sentences, the defendant must serve the total of the**
- 25 **executed time imposed before serving any suspended part of the**
- 26 **sentences.**
- 27 SECTION 16. IC 35-50-2-14, AS AMENDED BY P.L.125-2009,
- 28 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 29 JULY 1, 2020]: Sec. 14. (a) As used in this section, "sex offense"
- 30 means a felony conviction:
- 31 (1) under IC 35-42-4-1 through IC 35-42-4-9 or under
- 32 IC 35-46-1-3;
- 33 (2) for an attempt or conspiracy to commit an offense described
- 34 in subdivision (1); or
- 35 (3) for an offense under the laws of another jurisdiction, including
- 36 a military court, that is substantially similar to an offense
- 37 described in subdivision (1).
- 38 (b) The state may seek to have a person sentenced as a repeat sexual
- 39 offender for a sex offense described in subsection (a)(1) or (a)(2) by
- 40 alleging, on a page separate from the rest of the charging instrument,
- 41 that the person has accumulated one (1) prior unrelated felony
- 42 conviction for a sex offense described in subsection (a).



1 (c) After a person has been convicted and sentenced for a felony
2 described in subsection (a)(1) or (a)(2) after having been sentenced for
3 a prior unrelated sex offense described in subsection (a), the person has
4 accumulated one (1) prior unrelated felony sex offense conviction.
5 However, a conviction does not count for purposes of this subsection,
6 if:

7 (1) it has been set aside; or

8 (2) it is a conviction for which the person has been pardoned.

9 (d) If the person was convicted of the sex offense in a jury trial, the
10 jury shall reconvene to hear evidence in the enhancement hearing. If
11 the trial was to the court, or the judgment was entered on a guilty plea,
12 the court alone shall hear evidence in the enhancement hearing.

13 (e) A person is a repeat sexual offender if the jury (if the hearing is
14 by jury) or the court (if the hearing is to the court alone) finds that the
15 state has proved beyond a reasonable doubt that the person had
16 accumulated one (1) prior unrelated felony sex offense conviction.

17 (f) The court may sentence a person found to be a repeat sexual
18 offender to an additional fixed term that is the advisory sentence for the
19 underlying offense. However, the additional sentence may not exceed
20 ten (10) years.

