
HOUSE BILL No. 1399

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-30-5-15; IC 11-8-1-5.6; IC 11-12; IC 11-14-1-5; IC 35-33-9-1; IC 35-38; IC 35-50-2.

Synopsis: Elimination of nonsuspendible sentences. Eliminates nonsuspendible sentences. Makes conforming amendments. Repeals provisions mandating life imprisonment without parole for certain recidivist offenders and making certain offenses nonsuspendible for a person with a juvenile record.

Effective: July 1, 2004.

Smith V

January 20, 2004, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

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HOUSE BILL No. 1399



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 9-30-5-15, AS AMENDED BY P.L.32-2000,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 15. (a) In addition to any criminal penalty
4 imposed for an offense under this chapter, the court shall:
5 (1) order
6 ~~(A) that the person be imprisoned for at least five (5) days; or~~
7 ~~(B) the person to perform at least thirty (30) days of~~
8 community restitution or service; and
9 (2) order the person to receive an assessment of the person's
10 degree of alcohol and drug abuse and, if appropriate, to
11 successfully complete an alcohol or drug abuse treatment
12 program, including an alcohol deterrent program if the person
13 suffers from alcohol abuse;
14 if the person has one (1) previous conviction of operating while
15 intoxicated.
16 (b) In addition to any criminal penalty imposed for an offense under
17 this chapter, the court shall:



- 1 (1) order
- 2 (A) that the person be imprisoned for at least ten (10) days; or
- 3 (B) the person to perform at least sixty (60) days of community
- 4 restitution or service; and
- 5 (2) order the person to receive an assessment of the person's
- 6 degree of alcohol and drug abuse and, if appropriate, to
- 7 successfully complete an alcohol or drug abuse treatment
- 8 program, including an alcohol deterrent program if the person
- 9 suffers from alcohol abuse;
- 10 if the person has at least two (2) previous convictions of operating
- 11 while intoxicated.

12 (c) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence
 13 imposed under this section may not be suspended. The court may
 14 require that the person serve the term of imprisonment in an
 15 appropriate facility at whatever time or intervals (consecutive or
 16 intermittent) determined appropriate by the court. However:

- 17 (1) at least forty-eight (48) hours of the sentence must be served
- 18 consecutively; and
- 19 (2) the entire sentence must be served within six (6) months after
- 20 the date of sentencing.

21 (d) (c) Notwithstanding IC 35-50-6, a person does not earn credit
 22 time while serving a sentence imposed under this section.

23 SECTION 2. IC 11-8-1-5.6, AS AMENDED BY P.L.291-2001,
 24 SECTION 223, IS AMENDED TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2004]: Sec. 5.6. "Community transition
 26 program commencement date" means the following:

- 27 (1) Sixty (60) days before an offender's expected release date, if
- 28 the most serious offense for which the person is committed is a
- 29 Class D felony.
- 30 (2) Ninety (90) days before an offender's expected release date, if
- 31 the most serious offense for which the person is committed is a
- 32 Class C felony. and subdivision (3) does not apply.
- 33 (3) One hundred twenty (120) days before an offender's expected
- 34 release date; if:
- 35 (A) the most serious offense for which the person is committed
- 36 is a Class E felony;
- 37 (B) all of the offenses for which the person was concurrently
- 38 or consecutively sentenced are offenses under IC 16-42-19 or
- 39 IC 35-48-4; and
- 40 (C) none of the offenses for which the person was concurrently
- 41 or consecutively sentenced are listed in IC 35-50-2-2(b)(4).
- 42 (4) (3) One hundred twenty (120) days before an offender's

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1 expected release date, if the most serious offense for which the
2 person is committed is a Class A or Class B felony. ~~and~~
3 ~~subdivision (5) does not apply.~~
4 ~~(5) One hundred eighty (180) days before an offender's expected~~
5 ~~release date, if:~~

6 ~~(A) the most serious offense for which the person is committed~~
7 ~~is a Class A or Class B felony;~~

8 ~~(B) all of the offenses for which the person was concurrently~~
9 ~~or consecutively sentenced are offenses under IC 16-42-19 or~~
10 ~~IC 35-48-4; and~~

11 ~~(C) none of the offenses for which the person was concurrently~~
12 ~~or consecutively sentenced are listed in IC 35-50-2-2(b)(4).~~

13 SECTION 3. IC 11-12-2-9 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) A county
15 receiving financial aid under this chapter shall be charged a sum for
16 each person committed to the department of correction and confined in
17 a state correctional facility equal to seventy-five percent (75%) of the
18 average daily cost of confining a person in certain state correctional
19 facilities as calculated by the state board of accounts. The daily cost is
20 determined by dividing the average daily population of the state prison,
21 the Pendleton Correctional Facility, and the Putnamville Correctional
22 Facility into the previous fiscal year's operating expense of those three
23 (3) facilities and reducing the quotient to an average daily cost.
24 However, no charge may be made for those persons:

25 (1) convicted of:

26 (A) murder or a Class A or Class B felony;

27 (B) involuntary manslaughter, reckless homicide, battery,
28 criminal confinement, child molesting, robbery, burglary, or
29 escape as Class C felonies;

30 (C) any other felony resulting in bodily injury to any other
31 person;

32 (D) any other felony committed by means of a deadly weapon;

33 (E) any felony for which ~~an~~ a habitual offender sentence was
34 imposed; ~~or~~

35 ~~(F) any offense for which the sentence is nonsuspendible~~
36 ~~under IC 35-50-2-2(a); or~~

37 ~~(G)~~ (F) dealing in marijuana as a Class D felony under
38 IC 35-48-4-10(b)(1)(B) or a Class C felony under
39 IC 35-48-4-10(b)(2);

40 (2) transferred to the department of correction after they have
41 violated the terms of their community corrections sentence; or

42 (3) who were charged with:

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1 (A) a felony resulting in serious bodily injury; or
 2 (B) a felony committed by means of a deadly weapon;
 3 and the sentencing court noted on the commitment order that such
 4 charges were dismissed pursuant to a plea agreement under
 5 IC 35-35-3.
 6 (b) The amount charged a county under this section may not exceed
 7 the amount of financial aid received under this chapter. The amount
 8 charged shall be deducted from the subsidy payable to the participating
 9 county. All charges are a charge upon the county of original
 10 jurisdiction.
 11 (c) Notwithstanding subsection (a), if a county receives financial aid
 12 under this chapter for a program or a facility for persons convicted of
 13 crimes but has not received financial aid under this chapter for a
 14 program or a facility for delinquent offenders, the costs of keeping
 15 delinquent offenders in state programs or facilities operated by the
 16 department of correction shall be paid under IC 11-10-2-3.
 17 (d) Notwithstanding subsection (a), if a county receives financial aid
 18 under this chapter for a program or a facility for delinquent offenders
 19 but has not received financial aid under this chapter for a program or
 20 a facility for persons convicted of crimes, the costs of keeping persons
 21 convicted of crimes in state programs or facilities operated by the
 22 department of correction shall be paid by the department of correction.
 23 (e) Notwithstanding subsection (a), no charge may be made for:
 24 (1) the initial twelve (12) months of the county's participation in
 25 the subsidy program;
 26 (2) each month during which:
 27 (A) the county maintains a residential facility or a portion of
 28 a residential facility as part of its community corrections plan;
 29 and
 30 (B) the residential facility or the community corrections
 31 portion of the residential facility operates at the rated bed
 32 capacity specified in the county's community corrections plan;
 33 or
 34 (3) each month during which a county that has no residential
 35 facility as part of its community corrections plan operates a
 36 community corrections program at the offender-supervisor ratio
 37 specified by the plan.
 38 (f) A county fulfills the rated bed capacity requirement of subsection
 39 (e)(2) if the following conditions are met:
 40 (1) Each bed used in the calculation of rated bed capacity must be
 41 filled each day of the month unless a vacancy occurs because of
 42 the release, escape, or incarceration of the bed's occupant.

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1 (2) A vacancy that occurs because of the release, escape, or
2 incarceration of the occupant of a bed used in the calculation of
3 rated bed capacity must be filled within two (2) days after its
4 occurrence.

5 (g) A county fulfills the offender-supervisor ratio requirement of
6 subsection (e)(3) if the following conditions are met:

7 (1) Each opening used in the calculation of the
8 offender-supervisor ratio specified in the community corrections
9 plan must be filled each day of the month unless a vacancy occurs
10 because of the release, escape, or incarceration of an offender.

11 (2) A vacancy that occurs because of the release, escape, or
12 incarceration of an offender must be filled within two (2) working
13 days after its occurrence.

14 SECTION 4. IC 11-12-3.5-3, AS ADDED BY P.L.224-2003,
15 SECTION 124, IS AMENDED TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2004]: Sec. 3. The department may provide
17 funds for forensic diversion programs for those offenders who were
18 diverted from a mandatory period of incarceration from the department.

19 SECTION 5. IC 11-14-1-5 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. "Youthful offender"
21 means an offender (as defined in IC 11-8-1-9) who:

- 22 (1) is less than twenty-one (21) years of age;
- 23 (2) has been committed to the department to serve a maximum
24 sentence of not more than eight (8) years;
- 25 ~~(3) has received a suspendible sentence under IC 35-50-2-2 or~~
26 ~~IC 35-50-2-2.1;~~
- 27 ~~(4) (3)~~ has been sentenced by a court having criminal jurisdiction;
- 28 ~~(5) (4)~~ has never been confined in a state or federal adult
29 correctional facility; and
- 30 ~~(6) (5)~~ has not previously participated in a military or correctional
31 boot camp program.

32 SECTION 6. IC 35-33-9-1 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. A person convicted
34 of an offense who has appealed or desires to appeal the conviction may
35 file a petition to be admitted to bail pending appeal. The person may be
36 admitted to bail pending appeal at the discretion of the court in which
37 the case was tried, but ~~he the person~~ may not be admitted to it if ~~he the~~
38 **person** has been convicted of a Class A felony. ~~or a felony for which~~
39 ~~the court may not suspend the sentence under IC 35-50-2-2.~~

40 SECTION 7. IC 35-38-1-2 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) As used in this
42 chapter, "victim representative" means a person designated by a

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1 sentencing court who is:

2 (1) a spouse, parent, child, sibling, or other relative of; or

3 (2) a person who has had a close personal relationship with;

4 the victim of a felony who is deceased, incapacitated, or less than

5 eighteen (18) years of age.

6 (b) Upon entering a conviction, the court shall set a date for

7 sentencing within thirty (30) days, unless for good cause shown an

8 extension is granted. If a presentence report is not required, the court

9 may sentence the defendant at the time the judgment of conviction is

10 entered. However, the court may not pronounce sentence at that time

11 without:

12 (1) inquiring as to whether an adjournment is desired by the

13 defendant; and

14 (2) informing the victim, if present, of a victim's right to make a

15 statement concerning the crime and the sentence.

16 When an adjournment is requested, the defendant shall state its purpose

17 and the court may allow a reasonable time for adjournment.

18 (c) If:

19 (1) the state in the manner prescribed by IC 35-34-1-2.5 sought an

20 increased penalty by alleging that the person was previously

21 convicted of the offense; and

22 (2) the person was convicted of the subsequent offense in a jury

23 trial;

24 the jury shall reconvene for the sentencing hearing. The person shall be

25 sentenced to receive the increased penalty if the jury (or the court, if

26 the trial is to the court alone) finds that the state has proved beyond a

27 reasonable doubt that the person had a previous conviction for the

28 offense.

29 ~~(d) If the felony is nonsuspendible under IC 35-50-2-2, the judge~~

30 ~~shall order the defendant, if the defendant has previously been released~~

31 ~~on bail or recognizance, to be imprisoned in the county or local penal~~

32 ~~facility pending sentencing.~~

33 ~~(e)~~ (d) Upon entering a conviction for a felony, the court shall

34 designate a victim representative if the victim is deceased,

35 incapacitated, or less than eighteen (18) years of age.

36 SECTION 8. IC 35-38-1-17, AS AMENDED BY P.L.291-2001,

37 SECTION 224, IS AMENDED TO READ AS FOLLOWS

38 [EFFECTIVE JULY 1, 2004]: Sec. 17. (a) Within three hundred

39 sixty-five (365) days after:

40 (1) the defendant begins serving **his the defendant's** sentence;

41 (2) a hearing at which the defendant is present and of which the

42 prosecuting attorney has been notified; and

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1 (3) obtaining a report from the department of correction
 2 concerning the defendant's conduct while imprisoned;
 3 the court may reduce or suspend the sentence. The court must
 4 incorporate its reasons in the record.

5 (b) If more than three hundred sixty-five (365) days have elapsed
 6 since the defendant began serving the sentence and after a hearing at
 7 which the convicted person is present, the court may reduce or suspend
 8 the sentence, subject to the approval of the prosecuting attorney.
 9 However, if in a sentencing hearing for a defendant conducted after
 10 June 30, 2001, the court could have placed the defendant in a
 11 community corrections program as an alternative to commitment to the
 12 department of correction, the court may modify the defendant's
 13 sentence under this section without the approval of the prosecuting
 14 attorney to place the defendant in a community corrections program
 15 under IC 35-38-2.6.

16 (c) The court must give notice of the order to reduce or suspend the
 17 sentence under this section to the victim (as defined in IC 35-35-3-1)
 18 of the crime for which the defendant is serving the sentence.

19 ~~(d) The court may suspend a sentence for a felony under this section~~
 20 ~~only if suspension is permitted under IC 35-50-2-2.~~

21 ~~(e)~~ (d) The court may deny a request to suspend or reduce a
 22 sentence under this section without making written findings and
 23 conclusions.

24 ~~(f)~~ (e) Notwithstanding subsections (a) and (b), the court is not
 25 required to conduct a hearing before reducing or suspending a sentence
 26 if:

- 27 (1) the prosecuting attorney has filed with the court an agreement
 28 of the reduction or suspension of the sentence; and
 29 (2) the defendant has filed with the court a waiver of the right to
 30 be present when the order to reduce or suspend the sentence is
 31 considered.

32 SECTION 9. IC 35-38-2.6-1, AS AMENDED BY P.L.17-2001,
 33 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2004]: Sec. 1. (a) Except as provided in subsection (b), this
 35 chapter applies to the sentencing of a person convicted of:

- 36 (1) a felony; ~~whenever any part of the sentence may not be~~
 37 ~~suspended under IC 35-50-2-2 or IC 35-50-2-2.1; or~~
 38 (2) a misdemeanor. ~~whenever any part of the sentence may not be~~
 39 ~~suspended.~~

40 (b) This chapter does not apply to persons convicted of ~~any of the~~
 41 ~~following:~~

- 42 ~~(1)~~ sex crimes under IC 35-42-4 or IC 35-46-1-3.

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1 ~~(2) Any of the felonies listed in IC 35-50-2-2(b)(4).~~
2 SECTION 10. IC 35-38-3-5 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) The department,
4 after diagnosis and classification, shall:
5 (1) determine the degree of security (maximum, medium, or
6 minimum) to which a convicted person will be assigned;
7 (2) for each offender convicted of a Class D felony, ~~whose~~
8 ~~sentence for the Class D felony is nonsuspendible under~~
9 ~~IC 35-50-2-2(b)(3) due to a prior unrelated Class E or Class D~~
10 ~~felony~~, determine whether the offender is an appropriate
11 candidate for home detention under IC 35-38-2.5;
12 ~~(3) for each offender convicted of a Class D felony whose~~
13 ~~sentence for the Class D felony is nonsuspendible under:~~
14 ~~(A) IC 35-50-2-2.1(a)(1)(B);~~
15 ~~(B) IC 35-50-2-2.1(a)(1)(C); or~~
16 ~~(C) IC 35-50-2-2.1(a)(2);~~
17 determine whether the offender is an appropriate candidate for
18 home detention under IC 35-38-2.5;
19 ~~(4) (3) for each offender~~
20 ~~(A) committed to the department because the offender has~~
21 ~~been convicted for the first time of a Class C or a Class D~~
22 ~~felony, and~~
23 ~~(B) whose sentence may be suspended;~~
24 determine whether the offender is an appropriate candidate for
25 home detention under IC 35-38-2.5;
26 ~~(5) (4) notify the trial court and prosecuting attorney if the degree~~
27 ~~of security assigned differs from the court's recommendations;~~
28 ~~and~~
29 ~~(6) (5) petition the sentencing court under IC 35-38-1-21 for~~
30 ~~review of the sentence of an offender who is not a habitual~~
31 ~~offender sentenced under IC 35-50-2-8 or IC 35-50-2-10; and who~~
32 ~~whom the department has determined under subdivision (2) or~~
33 ~~subdivision (3) to be an appropriate candidate for home detention.~~
34 (b) The department may change the degree of security to which the
35 person is assigned. However, if the person is changed to a lesser degree
36 security during the first two (2) years of the commitment, the
37 department shall notify the trial court and the prosecuting attorney not
38 less than thirty (30) days before the effective date of the changed
39 security assignment.
40 SECTION 11. IC 35-50-2-2, AS AMENDED BY P.L.224-2003,
41 SECTION 126, IS AMENDED TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The court may suspend any

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part of a sentence for a felony. except as provided in this section or in section 2-1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.5:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44-3-3) with a deadly

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1 weapon;

2 (M) escape (IC 35-44-3-5) with a deadly weapon;

3 (N) rioting (IC 35-45-1-2) with a deadly weapon;

4 (O) dealing in cocaine, a narcotic drug, or methamphetamine

5 (IC 35-48-4-1) if the court finds the person possessed a firearm

6 (as defined in IC 35-47-1-5) at the time of the offense, or the

7 person delivered or intended to deliver to a person under

8 eighteen (18) years of age at least three (3) years junior to the

9 person and was on a school bus or within one thousand (1,000)

10 feet of:

11 (i) school property;

12 (ii) a public park;

13 (iii) a family housing complex; or

14 (iv) a youth program center;

15 (P) dealing in a schedule I, II, or III controlled substance

16 (IC 35-48-4-2) if the court finds the person possessed a firearm

17 (as defined in IC 35-47-1-5) at the time of the offense, or the

18 person delivered or intended to deliver to a person under

19 eighteen (18) years of age at least three (3) years junior to the

20 person and was on a school bus or within one thousand (1,000)

21 feet of:

22 (i) school property;

23 (ii) a public park;

24 (iii) a family housing complex; or

25 (iv) a youth program center;

26 (Q) an offense under IC 9-30-5 (operating a vehicle while

27 intoxicated) and the person who committed the offense has

28 accumulated at least two (2) prior unrelated convictions under

29 IC 9-30-5; or

30 (R) aggravated battery (IC 35-42-2-1.5).

31 (e) (b) Except as provided in subsection (e); (c), whenever the court
32 suspends a sentence for a felony, it shall place the person on probation
33 under IC 35-38-2 for a fixed period to end not later than the date that
34 the maximum sentence that may be imposed for the felony will expire.

35 (d) The minimum sentence for a person convicted of voluntary
36 manslaughter may not be suspended unless the court finds at the
37 sentencing hearing that the crime was not committed by means of a
38 deadly weapon.

39 (e) (c) **With respect to the following crimes listed in this**
40 **subsection**, whenever the court suspends that part of an offender's (as
41 defined in IC 5-2-12-4) sentence that is suspendible under subsection
42 (b); (a), the court shall place the offender on probation under

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- 1 IC 35-38-2 for not more than ten (10) years:
- 2 (1) The crime committed was a Class A or Class B felony and
- 3 the person has a prior unrelated felony conviction.
- 4 (2) The crime committed was a Class C felony and less than
- 5 seven (7) years have elapsed between the date the person was
- 6 discharged from probation, imprisonment, or parole,
- 7 whichever is later, for a prior unrelated felony conviction and
- 8 the date the person committed the Class C felony for which
- 9 the person is being sentenced.
- 10 (3) The crime committed was a Class D felony and less than
- 11 three (3) years have elapsed between the date the person was
- 12 discharged from probation, imprisonment, or parole,
- 13 whichever is later, for a prior unrelated felony conviction and
- 14 the date the person committed the Class D felony for which
- 15 the person is being sentenced.
- 16 (4) The felony committed was:
- 17 (A) murder (IC 35-42-1-1);
- 18 (B) battery (IC 35-42-2-1) with a deadly weapon or battery
- 19 causing death;
- 20 (C) kidnapping (IC 35-42-3-2);
- 21 (D) confinement (IC 35-42-3-3) with a deadly weapon;
- 22 (E) rape (IC 35-42-4-1) as a Class A felony;
- 23 (F) criminal deviate conduct (IC 35-42-4-2) as a Class A
- 24 felony;
- 25 (G) child molesting (IC 35-42-4-3) as a Class A or Class B
- 26 felony;
- 27 (H) sexual battery (IC 35-42-4-8) with a deadly weapon;
- 28 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury
- 29 or with a deadly weapon;
- 30 (J) arson (IC 35-43-1-1) for hire or resulting in serious
- 31 bodily injury;
- 32 (K) burglary (IC 35-43-2-1) resulting in serious bodily
- 33 injury or with a deadly weapon;
- 34 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 35 weapon;
- 36 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 37 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 38 (O) dealing in cocaine, a narcotic drug, or
- 39 methamphetamine (IC 35-48-4-1) if the court finds the
- 40 person possessed a firearm (as defined in IC 35-47-1-5) at
- 41 the time of the offense, or the person delivered or intended
- 42 to deliver to a person less than eighteen (18) years of age at

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1 **least three (3) years junior to the person and was on a**
 2 **school bus or within one thousand (1,000) feet of:**
 3 **(i) school property;**
 4 **(ii) a public park;**
 5 **(iii) a family housing complex; or**
 6 **(iv) a youth program center;**
 7 **(P) dealing in a schedule I, II, or III controlled substance**
 8 **(IC 35-48-4-2) if the court finds the person possessed a**
 9 **firearm (as defined in IC 35-47-1-5) at the time of the**
 10 **offense, or the person delivered or intended to deliver to a**
 11 **person less than eighteen (18) years of age at least three (3)**
 12 **years junior to the person and was on a school bus or**
 13 **within one thousand (1,000) feet of:**
 14 **(i) school property;**
 15 **(ii) a public park;**
 16 **(iii) a family housing complex; or**
 17 **(iv) a youth program center;**
 18 **(Q) an offense under IC 9-30-5 (operating a vehicle while**
 19 **intoxicated) and the person who committed the offense has**
 20 **accumulated at least two (2) prior unrelated convictions**
 21 **under IC 9-30-5; or**
 22 **(R) aggravated battery (IC 35-42-2-1.5).**
 23 (f) ~~An additional term of imprisonment imposed under~~
 24 ~~IC 35-50-2-11 may not be suspended.~~
 25 (g) ~~A term of imprisonment imposed under IC 35-47-10-6 or~~
 26 ~~IC 35-47-10-7 may not be suspended if the commission of the offense~~
 27 ~~was knowing or intentional.~~
 28 (h) ~~A term of imprisonment imposed for an offense under~~
 29 ~~IC 35-48-4-6(b)(1)(B) may not be suspended.~~
 30 SECTION 12. IC 35-50-2-8, AS AMENDED BY P.L.291-2001,
 31 SECTION 226, IS AMENDED TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) Except as otherwise provided
 33 in this section, the state may seek to have a person sentenced as a
 34 habitual offender for any felony by alleging, on a page separate from
 35 the rest of the charging instrument, that the person has accumulated
 36 two (2) prior unrelated felony convictions.
 37 (b) The state may not seek to have a person sentenced as a habitual
 38 offender for a felony offense under this section if:
 39 (1) the offense is a misdemeanor that is enhanced to a felony in
 40 the same proceeding as the habitual offender proceeding solely
 41 because the person had a prior unrelated conviction;
 42 (2) the offense is an offense under IC 9-30-10-16 or

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1 IC 9-30-10-17; or
 2 (3) ~~all~~ **both** of the following apply:
 3 (A) The offense is an offense under IC 16-42-19 or
 4 IC 35-48-4.
 5 ~~(B) The offense is not listed in section 2(b)(4) of this chapter.~~
 6 ~~(C)~~ (B) The total number of unrelated convictions that the
 7 person has for:
 8 (i) dealing in or selling a legend drug under IC 16-42-19-27;
 9 (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
 10 (iii) dealing in a schedule I, II, **or** III controlled substance
 11 (IC 35-48-4-2);
 12 (iv) dealing in a schedule IV controlled substance
 13 (IC 35-48-4-3); and
 14 (v) dealing in a schedule V controlled substance
 15 (IC 35-48-4-4);
 16 does not exceed one (1).
 17 (c) A person has accumulated two (2) prior unrelated felony
 18 convictions for purposes of this section only if:
 19 (1) the second prior unrelated felony conviction was committed
 20 after sentencing for the first prior unrelated felony conviction; and
 21 (2) the offense for which the state seeks to have the person
 22 sentenced as a habitual offender was committed after sentencing
 23 for the second prior unrelated felony conviction.
 24 (d) A conviction does not count for purposes of this section as a
 25 prior unrelated felony conviction if:
 26 (1) the conviction has been set aside;
 27 (2) the conviction is one for which the person has been pardoned;
 28 or
 29 (3) ~~all~~ **both** of the following apply:
 30 (A) The offense is an offense under IC 16-42-19 or
 31 IC 35-48-4.
 32 ~~(B) The offense is not listed in section 2(b)(4) of this chapter.~~
 33 ~~(C)~~ (B) The total number of unrelated convictions that the
 34 person has for:
 35 (i) dealing in or selling a legend drug under IC 16-42-19-27;
 36 (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
 37 (iii) dealing in a schedule I, II, **or** III controlled substance
 38 (IC 35-48-4-2);
 39 (iv) dealing in a schedule IV controlled substance
 40 (IC 35-48-4-3); and
 41 (v) dealing in a schedule V controlled substance
 42 (IC 35-48-4-4);

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does not exceed one (1).

(e) The requirements in subsection (b) do not apply to a prior unrelated felony conviction that is used to support a sentence as a habitual offender. A prior unrelated felony conviction may be used under this section to support a sentence as a habitual offender 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. However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed), or IC 9-12-3-2 (repealed) may not be used to support a sentence as a habitual offender.

(f) 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.

(g) A person is a habitual 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 had accumulated two (2) prior unrelated felony convictions.

(h) The court ~~shall~~ **may** sentence a person found to be a habitual offender to an additional fixed term that is not less than the presumptive sentence for the underlying offense nor more than three (3) times the presumptive sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

SECTION 13. IC 35-50-2-10, AS AMENDED BY P.L.291-2001, SECTION 227, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) As used in this section:

(1) "Drug" means a drug or a controlled substance (as defined in IC 35-48-1).

(2) "Substance offense" means a Class A misdemeanor or a felony in which the possession, use, abuse, delivery, transportation, or manufacture of alcohol or drugs is a material element of the crime. The term includes an offense under IC 9-30-5 and an offense under IC 9-11-2 (before its repeal July 1, 1991).

(b) The state may seek to have a person sentenced as a habitual substance offender for any substance offense by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated substance offense convictions.

(c) After a person has been convicted and sentenced for a substance offense committed after sentencing for a prior unrelated substance offense conviction, the person has accumulated two (2) prior unrelated substance offense convictions. However, a conviction does not count

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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 substance offense 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.

(e) A person is a habitual 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 had accumulated two (2) prior unrelated substance offense convictions.

(f) The court ~~shall~~ **may** sentence a person found to be a habitual substance offender to an additional fixed term of at least three (3) years but not more than eight (8) years imprisonment, to be added to the term of imprisonment imposed under IC 35-50-2 or IC 35-50-3. If the court finds that:

- (1) three (3) years or more have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last prior unrelated substance offense conviction and the date the person committed the substance offense for which the person is being sentenced as a habitual substance offender; or
 - (2) all of the substance offenses for which the person has been convicted are substance offenses under IC 16-42-19 or IC 35-48-4, the person has not been convicted of a substance offense listed in section ~~2(b)(4)~~ **2(c)(4)** of this chapter, and the total number of convictions that the person has for:
 - (A) dealing in or selling a legend drug under IC 16-42-19-27;
 - (B) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
 - (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); and
 - (E) dealing in a schedule V controlled substance (IC 35-48-4-4);
- does not exceed one (1);

then the court may reduce the additional fixed term. However, the court may not reduce the additional fixed term to less than one (1) year.

(g) If a reduction of the additional year fixed term is authorized under subsection (f), the court may also consider the aggravating or mitigating circumstances in IC 35-38-1-7.1 to:

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1 (1) decide the issue of granting a reduction; or
 2 (2) determine the number of years, if any, to be subtracted, under
 3 subsection (f).
 4 SECTION 14. THE FOLLOWING ARE REPEALED [EFFECTIVE
 5 JULY 1, 2004]: IC 35-50-2-2.1; IC 35-50-2-8.5.
 6 SECTION 15. [EFFECTIVE JULY 1, 2004] (a) **A sentence that**
 7 **was nonsuspendible under IC 9-30-5-15, IC 35-50-2-2.1, or**
 8 **IC 35-50-2-2 at the time it was imposed is suspendible.**
 9 (b) **An offender serving a sentence described in subsection (a)**
 10 **may seek to have any part of the sentence suspended if the offender**
 11 **is eligible for any form of sentence modification under Indiana law.**
 12 **However, an offender is not eligible for sentence modification**
 13 **solely because the offender's sentence has become suspendible**
 14 **under this act.**
 15 (c) **An offender serving a mandatory sentence under**
 16 **IC 9-30-5-15(a)(1)(A) or IC 9-30-5-15(b)(1)(A) imposed before July**
 17 **1, 2004, shall complete the balance of the offender's mandatory**
 18 **sentence.**
 19 (d) **A sentence of life imprisonment without parole imposed**
 20 **under IC 35-50-2-8.5 is commuted to an additional thirty (30) year**
 21 **fixed term, to be served consecutively to the predicate offense. An**
 22 **offender is entitled to credit time as if the additional thirty (30)**
 23 **year fixed term had been imposed at the date of sentencing. The**
 24 **additional thirty (30) year fixed term is suspendible.**
 25 (e) **An offender serving a sentence described in subsection (d)**
 26 **may seek to have any part of the sentence suspended if the offender**
 27 **is eligible for any form of sentence modification under Indiana law.**
 28 **However, an offender is not eligible for sentence modification**
 29 **solely because the offender's sentence has become suspendible**
 30 **under this act.**
 31 (f) **A person who is appealing a sentence that was**
 32 **nonsuspendible at the time the sentence was imposed may be**
 33 **admitted to bail pending appeal in accordance with IC 35-33-9-1,**
 34 **as amended by this act, if the person is otherwise eligible for bail**
 35 **pending appeal.**
 36 (g) **In a proceeding under IC 35-38-1-17, as amended by this act,**
 37 **held after June 30, 2004, a court may suspend any part of a**
 38 **sentence.**

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