IC 35-50-2

Chapter 2. Death Sentence and Sentences for Felonies and Habitual Offenders

IC 35-50-2-0.1

Application of certain amendments to chapter

Sec. 0.1. 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 to crimes committed on and 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 the 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 and 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.

As added by P.L.220-2011, SEC.634. Amended by P.L.63-2012, SEC.87; P.L.158-2013, SEC.651; P.L.168-2014, SEC.109.

IC 35-50-2-0.2

Effect of addition of section 7.1 of chapter and amendment of chapter by P.L.328-1985

Sec. 0.2. (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 8 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.

As added by P.L.220-2011, SEC.635.

IC 35-50-2-0.3

Content of juvenile record

Sec. 0.3. 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.

As added by P.L.220-2011, SEC.636.

IC 35-50-2-1

Definitions

Sec. 1. (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, for 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 a 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.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.114; P.L.334-1983, SEC.1; P.L.98-1988, SEC.8; P.L.243-2001, SEC.2 and P.L.291-2001, SEC.225; P.L.69-2012, SEC.5; P.L.158-2013, SEC.652.

IC 35-50-2-1.3

Advisory sentence

Sec. 1.3. (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.

As added by P.L.71-2005, SEC.5. Amended by P.L.178-2007, SEC.4; P.L.168-2014, SEC.110.

IC 35-50-2-1.4

"Criminal gang" defined

Sec. 1.4. 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 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).

As added by P.L.109-2006, SEC.2. Amended by P.L.192-2007, SEC.12.

IC 35-50-2-1.5

"Individual with mental retardation" defined

Sec. 1.5. As used in this chapter, "individual with mental retardation" has the meaning set forth in IC 35-36-9-2.

As added by P.L.158-1994, SEC.4. Amended by P.L.99-2007, SEC.211.

IC 35-50-2-1.8

"Sex offense against a child" defined

Sec. 1.8. 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.

As added by P.L.53-2005, SEC.1.

IC 35-50-2-2

Repealed

(Repealed by P.L.158-2013, SEC.653.)

IC 35-50-2-2.1

Suspension; persons with juvenile record

Sec. 2.1. (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, though 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.

As added by P.L.284-1985, SEC.4. Amended by P.L.331-1987, SEC.1; P.L.98-1988, SEC.10; P.L.168-2014, SEC.111.

IC 35-50-2-2.2
Suspension of a sentence for a felony

Sec. 2.2. (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.

As added by P.L.158-2013, SEC.654. Amended by P.L.168-2014, SEC.112.

IC 35-50-2-3
Murder

Sec. 3. (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.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.116; P.L.332-1987, SEC.1; P.L.250-1993, SEC.1; P.L.164-1994, SEC.2; P.L.158-1994, SEC.5; P.L.2-1995, SEC.128; P.L.148-1995, SEC.4; P.L.117-2002, SEC.1; P.L.71-2005, SEC.6; P.L.99-2007, SEC.212.

IC 35-50-2-4

Class A felony; Level 1 felony

Sec. 4. (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).

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.117; P.L.164-1994, SEC.3; P.L.148-1995, SEC.5; P.L.71-2005, SEC.7; P.L.158-2013, SEC.655; P.L.168-2014, SEC.113; P.L.226-2014(ts), SEC.13.

IC 35-50-2-4.5

Level 2 felony

Sec. 4.5. 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 1/2) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

As added by P.L.158-2013, SEC.656.

IC 35-50-2-5

Class B felony; Level 3 felony

Sec. 5. (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, the person may be fined not more than ten thousand dollars ($10,000).

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.118; P.L.71-2005, SEC.8; P.L.158-2013, SEC.657; P.L.168-2014, SEC.114.

IC 35-50-2-5.5

Level 4 felony

Sec. 5.5. 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).

As added by P.L.158-2013, SEC.658. Amended by P.L.168-2014, SEC.115.

IC 35-50-2-6

Class C felony; Level 5 felony; commission of nonsupport of child as Class D felony

Sec. 6. (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 the 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.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.119; P.L.167-1990, SEC.1; P.L.213-1996, SEC.5; P.L.71-2005, SEC.9; P.L.158-2013, SEC.659; P.L.148-2014, SEC.2; P.L.168-2014, SEC.116.

IC 35-50-2-7

Class D felony; Level 6 felony; judgment of conviction entered as a misdemeanor

Sec. 7. (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 1/2) 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 1/2) 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 reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in 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).

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.120; Acts 1982, P.L.204, SEC.40; P.L.334-1983, SEC.3; P.L.136-1987, SEC.7; P.L.167-1990, SEC.2; P.L.188-1999, SEC.9; P.L.98-2003, SEC.3; P.L.71-2005, SEC.10; P.L.69-2012, SEC.6; P.L.13-2013, SEC.145; P.L.159-2013, SEC.5; P.L.158-2013, SEC.660; P.L.168-2014, SEC.117.

IC 35-50-2-7.1

Repealed

(Repealed by P.L.164-1993, SEC.14.)

IC 35-50-2-8

Habitual offenders

Sec. 8. (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 of 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 a 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; 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.

(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 had 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; and

(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 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.

An 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.

(l) 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.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.121; Acts 1980, P.L.210, SEC.1; P.L.335-1983, SEC.1; P.L.328-1985, SEC.2; P.L.1-1990, SEC.353; P.L.164-1993, SEC.13; P.L.140-1994, SEC.14; P.L.305-1995, SEC.1; P.L.166-2001, SEC.3; P.L.291-2001, SEC.226; P.L.71-2005, SEC.11; P.L.158-2013, SEC.661; P.L.168-2014, SEC.118.

IC 35-50-2-8.5

Repealed

(Repealed by P.L.158-2013, SEC.662.)

IC 35-50-2-9

Death penalty sentencing procedure

Sec. 9. (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.

As added by Acts 1977, P.L.340, SEC.122. Amended by P.L.336-1983, SEC.1; P.L.212-1986, SEC.1; P.L.332-1987, SEC.2; P.L.320-1987, SEC.2; P.L.296-1989, SEC.2; P.L.138-1989, SEC.6; P.L.1-1990, SEC.354; P.L.230-1993, SEC.5; P.L.250-1993, SEC.2; P.L.158-1994, SEC.7; P.L.306-1995, SEC.1; P.L.228-1996, SEC.1; P.L.216-1996, SEC.25; P.L.261-1997, SEC.7; P.L.80-2002, SEC.1; P.L.117-2002, SEC.2; P.L.1-2003, SEC.97; P.L.147-2003, SEC.1; P.L.1-2006, SEC.550; P.L.99-2007, SEC.213; P.L.158-2013, SEC.663; P.L.214-2013, SEC.45; P.L.168-2014, SEC.119.

IC 35-50-2-10
Repealed

(Repealed by P.L.158-2013, SEC.664.)

IC 35-50-2-11

Firearm used in commission of offense; separate charge; additional sentence

Sec. 11. (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 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 proved 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.

As added by P.L.140-1994, SEC.15. Amended by P.L.203-1996, SEC.9; P.L.71-2005, SEC.13; P.L.158-2013, SEC.665; P.L.152-2014, SEC.10.

IC 35-50-2-12

Characteristics of incarcerated offenders; publication of findings

Sec. 12. 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.

As added by P.L.164-1994, SEC.4.

IC 35-50-2-13

Use of firearms in controlled substance offenses under IC 35-48-4-1 through IC 35-48-4-4

Sec. 13. (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 proved 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.

As added by P.L.148-1995, SEC.6. Amended by P.L.71-2005, SEC.14.

IC 35-50-2-14

Repeat sexual offender

Sec. 14. (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 had 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.

As added by P.L.214-1999, SEC.4. Amended by P.L.71-2005, SEC.15; P.L.6-2006, SEC.9, P.L.140-2006, SEC.37, and P.L.173-2006, SEC.37; P.L.125-2009, SEC.8.

IC 35-50-2-15

Criminal gang enhancement

Sec. 15. (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 a 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 criminal gang membership.

As added by P.L.109-2006, SEC.3. Amended by P.L.158-2013, SEC.666.

IC 35-50-2-16

Termination of a human pregnancy; enhancement

Sec. 16. (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 the 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.

As added by P.L.40-2009, SEC.2.

IC 35-50-2-17

Sentencing alternatives for offenders less than 18 years of age

Sec. 17. 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.

As added by P.L.104-2013, SEC.2.