

HOUSE BILL No. 1216

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-47-4-4; IC 35-47-4-5; IC 35-50-2-2.

Synopsis: Firearms and felons. Makes possession of a firearm by a serious violent felon a Class B felony for which a court may not suspend the minimum sentence. Repeals current law making it a Class D felony for a person convicted of a felony to own, carry, or possess: (1) a firearm not designed to use fixed cartridges or fixed ammunition; or (2) a firearm made before January 1, 1899.

Effective: July 1, 1999.

Stilwell

January 11, 1999, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

HOUSE BILL No. 1216



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 35-47-4-5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]: **Sec. 5. (a) As used in this section, "serious violent felon"**
4 **means a person who has been convicted of:**
5 **(1) committing a serious violent felony in:**
6 **(A) Indiana; or**
7 **(B) any other jurisdiction in which the elements of the**
8 **crime for which the conviction was entered are**
9 **substantially similar to the elements of a serious violent**
10 **felony; or**
11 **(2) attempting to commit or conspiring to commit a serious**
12 **violent felony in:**
13 **(A) Indiana as provided under IC 35-41-5-1 or**
14 **IC 35-45-5-2; or**
15 **(B) any other jurisdiction in which the elements of the**
16 **crime for which the conviction was entered are**
17 **substantially similar to the elements of attempting to**

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- 1 **commit or conspiring to commit a serious violent felony.**
2 **(b) As used in this section, "serious violent felony" means:**
3 **(1) murder (IC 35-42-1-1);**
4 **(2) voluntary manslaughter (IC 35-42-1-3);**
5 **(3) reckless homicide (IC 35-42-1-5);**
6 **(4) battery as a Class B felony (IC 35-42-2-1(a)(4)) or Class C**
7 **felony (IC 35-42-2-1(a)(3));**
8 **(5) aggravated battery (IC 35-42-2-1.5);**
9 **(6) kidnapping (IC 35-42-3-2);**
10 **(7) criminal confinement (IC 35-42-3-3);**
11 **(8) rape (IC 35-42-4-1);**
12 **(9) criminal deviate conduct (IC 35-42-4-2);**
13 **(10) child molesting (IC 35-42-4-3);**
14 **(11) sexual battery as a Class C felony (IC 35-42-4-8);**
15 **(12) robbery (IC 35-42-5-1);**
16 **(13) carjacking (IC 35-42-5-2);**
17 **(14) arson as a Class A felony or Class B felony**
18 **(IC 35-43-1-1(a));**
19 **(15) burglary as a Class A felony or Class B felony**
20 **(IC 35-43-2-1);**
21 **(16) assisting a criminal as a Class C felony (IC 35-44-3-2);**
22 **(17) resisting law enforcement as a Class B felony or Class C**
23 **felony (IC 35-44-3-3);**
24 **(18) escape as a Class C felony (IC 35-44-3-5);**
25 **(19) trafficking with an inmate as a Class C felony**
26 **(IC 35-44-3-9);**
27 **(20) criminal gang intimidation (IC 35-45-9-4);**
28 **(21) stalking as a Class B felony or Class C felony**
29 **(IC 35-45-10-5);**
30 **(22) incest (IC 35-46-1-3);**
31 **(23) dealing in cocaine or a narcotic drug (IC 35-48-4-1);**
32 **(24) dealing in a schedule I, II, or III controlled substance**
33 **(IC 35-48-4-2);**
34 **(25) dealing in a schedule IV controlled substance**
35 **(IC 35-48-4-3); or**
36 **(26) dealing in a schedule V controlled substance**
37 **(IC 35-48-4-4).**
38 **(c) A serious violent felon who knowingly or intentionally**
39 **possesses a firearm commits unlawful possession of a firearm by a**
40 **serious violent felon, a Class B felony.**
41 SECTION 2. IC 35-50-2-2 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The court may

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1 suspend any part of a sentence for a felony, except as provided in this
2 section or in section 2.1 of this chapter.

3 (b) With respect to the crimes listed in this subsection, the court
4 may suspend only that part of the sentence that is in excess of the
5 minimum sentence:

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

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

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

23 (4) The felony committed was:

24 (A) murder (IC 35-42-1-1);

25 (B) battery (IC 35-42-2-1) with a deadly weapon;

26 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

27 (D) kidnapping (IC 35-42-3-2);

28 (E) confinement (IC 35-42-3-3) with a deadly weapon;

29 (F) rape (IC 35-42-4-1) as a Class A felony;

30 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
31 felony;

32 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
33 felony;

34 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
35 with a deadly weapon;

36 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
37 injury;

38 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
39 or with a deadly weapon;

40 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
41 weapon;

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

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- 1 (N) rioting (IC 35-45-1-2) with a deadly weapon;
 2 **(O) unlawful possession of a firearm by a serious violent**
 3 **felon (IC 35-47-4-5);**
 4 ~~(O)~~ **(P)** dealing in cocaine or a narcotic drug (IC 35-48-4-1) as
 5 a Class A felony;
 6 ~~(P)~~ **(Q)** dealing in a schedule I, II, or III controlled substance
 7 (IC 35-48-4-2) if the amount of controlled substance involved
 8 has an aggregate weight of three (3) grams or more;
 9 ~~(Q)~~ **(R)** an offense under IC 9-30-5 (operating a vehicle while
 10 intoxicated) and the person who committed the offense has
 11 accumulated at least two (2) prior unrelated convictions under
 12 IC 9-30-5; or
 13 ~~(R)~~ **(S)** aggravated battery (IC 35-42-2-1.5).
 14 (c) Except as provided in subsection (e), whenever the court
 15 suspends a sentence for a felony, it shall place the person on probation
 16 under IC 35-38-2 for a fixed period to end not later than the date that
 17 the maximum sentence that may be imposed for the felony will expire.
 18 (d) The minimum sentence for a person convicted of voluntary
 19 manslaughter may not be suspended unless the court finds at the
 20 sentencing hearing that the crime was not committed by means of a
 21 deadly weapon.
 22 (e) Whenever the court suspends that part of an offender's (as
 23 defined in IC 5-2-12-4) sentence that is suspendible under subsection
 24 (b), the court shall place the offender on probation under IC 35-38-2 for
 25 not more than ten (10) years.
 26 (f) An additional term of imprisonment imposed under
 27 IC 35-50-2-11 may not be suspended.
 28 (g) A term of imprisonment imposed under IC 35-47-10-6 or
 29 IC 35-47-10-7 may not be suspended if the commission of the offense
 30 was knowing or intentional.
 31 SECTION 3. IC 35-47-4-4 IS REPEALED [EFFECTIVE JULY 1,
 32 1999].

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