

---

---

# SENATE BILL No. 485

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-31-3-14.5; IC 25-1-1.1; IC 31-37-19-10; IC 34-24-1-1; IC 35-48-4.

**Synopsis:** Sentencing for drug offenses. Enhances various penalties for possessing controlled substances, counterfeit substances, cocaine, narcotics, marijuana, hash oil, or hashish so that a person who possesses the drugs may be subjected to a penalty that is as serious as if the person had been dealing the drugs. Enhances the penalty for visiting a common nuisance from a Class B misdemeanor to a Class D felony, which is the same penalty for maintaining the common nuisance. Repeals a provision that allows for a conditional dismissal of a case in which a person pleads guilty to possessing marijuana or hashish if the person has no previous convictions for offenses relating to controlled substances. (A similar provision allowing for the conditional dismissal of the case if the person is dealing in marijuana or hashish does not exist.) Makes conforming changes.

**Effective:** July 1, 2000.

---

---

## Howard

---

---

January 10, 2000, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

---

---

C  
O  
P  
Y



Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

# SENATE BILL No. 485



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 16-31-3-14.5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 14.5. The commission  
3 may permanently revoke a license or certificate under procedures  
4 provided by section 14 of this chapter if the individual who holds the  
5 license or certificate issued under this title is convicted of any of the  
6 following:

- 7 (1) Dealing in cocaine or a narcotic drug under IC 35-48-4-1.
- 8 (2) Dealing in a schedule I, II, or III controlled substance under  
9 IC 35-48-4-2.
- 10 (3) Dealing in a schedule IV controlled substance under  
11 IC 35-48-4-3.
- 12 (4) Dealing in a schedule V controlled substance under  
13 IC 35-48-4-4.
- 14 (5) Dealing in a substance represented to be a controlled  
15 substance under IC 35-48-4-4.5.
- 16 (6) Knowingly or intentionally manufacturing, advertising,  
17 distributing, or possessing with intent to manufacture, advertise,



C  
O  
P  
Y

- 1 or distribute a substance represented to be a controlled substance  
 2 under IC 35-48-4-4.6.
- 3 (7) Dealing in a counterfeit substance under ~~IC 35-48-4-5:~~  
 4 **IC 35-48-4-5(a).**
- 5 (8) Dealing in marijuana, hash oil, or hashish under  
 6 IC 35-48-4-10(b).
- 7 (9) Conspiracy under IC 35-41-5-2 to commit an offense listed in  
 8 subdivisions (1) through (8).
- 9 (10) Attempt under IC 35-41-5-1 to commit an offense listed in  
 10 subdivisions (1) through (8).
- 11 (11) A crime of violence (as defined in IC 35-50-1-2(a)).
- 12 (12) An offense in any other jurisdiction in which the elements of  
 13 the offense for which the conviction was entered are substantially  
 14 similar to the elements of an offense described under subdivisions  
 15 (1) through (11).
- 16 SECTION 2. IC 25-1-1.1-2 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. A board, a  
 18 commission, or a committee may suspend or revoke a license or  
 19 certificate issued under this title by the board, the commission, or the  
 20 committee if the individual who holds the license or certificate is  
 21 convicted of any of the following:
- 22 (1) Possession of cocaine or a narcotic drug under IC 35-48-4-6.  
 23 (2) Possession of a controlled substance under IC 35-48-4-7(a)  
 24 **or IC 35-48-4-7(b).**
- 25 (3) Fraudulently obtaining a controlled substance under  
 26 ~~IC 35-48-4-7(b):~~ **IC 35-48-4-7(c).**
- 27 (4) Manufacture of paraphernalia as a Class D felony under  
 28 IC 35-48-4-8.1(b).
- 29 (5) Dealing in paraphernalia as a Class D felony under  
 30 IC 35-48-4-8.5(b).
- 31 (6) Possession of paraphernalia as a Class D felony under  
 32 IC 35-48-4-8.3(b).
- 33 (7) Possession of marijuana, hash oil, or hashish as a Class D  
 34 felony under IC 35-48-4-11.
- 35 (8) **Visiting or** maintaining a common nuisance under  
 36 IC 35-48-4-13.
- 37 (9) An offense relating to registration, labeling, and prescription  
 38 forms under IC 35-48-4-14.
- 39 (10) Conspiracy under IC 35-41-5-2 to commit an offense listed  
 40 in subdivisions (1) through (9).
- 41 (11) Attempt under IC 35-41-5-1 to commit an offense listed in  
 42 subdivisions (1) through (9).

C  
O  
P  
Y

1 (12) An offense in any other jurisdiction in which the elements of  
 2 the offense for which the conviction was entered are substantially  
 3 similar to the elements of an offense described under subdivisions  
 4 (1) through (11).

5 SECTION 3. IC 25-1-1.1-3 IS AMENDED TO READ AS  
 6 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. A board, a  
 7 commission, or a committee shall revoke or suspend a license or  
 8 certificate issued under this title by the board, the commission, or the  
 9 committee if the individual who holds the license or certificate is  
 10 convicted of any of the following:

- 11 (1) Dealing in cocaine or a narcotic drug under IC 35-48-4-1.  
 12 (2) Dealing in a schedule I, II, or III controlled substance under  
 13 IC 35-48-4-2.  
 14 (3) Dealing in a schedule IV controlled substance under  
 15 IC 35-48-4-3.  
 16 (4) Dealing in a schedule V controlled substance under  
 17 IC 35-48-4-4.  
 18 (5) Dealing in a substance represented to be a controlled  
 19 substance under IC 35-48-4-4.5.  
 20 (6) Knowingly or intentionally manufacturing, advertising,  
 21 distributing, or possessing with intent to manufacture, advertise,  
 22 or distribute a substance represented to be a controlled substance  
 23 under IC 35-48-4-4.6.  
 24 (7) Dealing in a counterfeit substance under ~~IC 35-48-4-5~~  
 25 **IC 35-48-4-5(a)**.  
 26 (8) Dealing in marijuana, hash oil, or hashish under  
 27 IC 35-48-4-10(b).  
 28 (9) Conspiracy under IC 35-41-5-2 to commit an offense listed in  
 29 subdivisions (1) through (8).  
 30 (10) Attempt under IC 35-41-5-1 to commit an offense listed in  
 31 subdivisions (1) through (8).  
 32 (11) An offense in any other jurisdiction in which the elements of  
 33 the offense for which the conviction was entered are substantially  
 34 similar to the elements of an offense described under subdivisions  
 35 (1) through (10).  
 36 (12) A violation of any federal or state drug law or rule related to  
 37 wholesale legend drug distributors licensed under IC 25-26-14.

38 SECTION 4. IC 31-37-19-10 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 10. (a) This section  
 40 applies to a child who:

- 41 (1) is adjudicated a delinquent child for an act that if committed  
 42 by an adult would be:

C  
O  
P  
Y



- 1 (A) a felony against a person;  
 2 (B) a Class A or Class B felony that is a controlled substances  
 3 offense under IC 35-48-4-1 through ~~IC 35-48-4-5~~;  
 4 **IC 35-48-4-5(a)**; or  
 5 (C) burglary as a Class A or Class B felony under  
 6 IC 35-43-2-1;
- 7 (2) is at least fourteen (14) years of age at the time the child  
 8 committed the act for which the child is being placed; and  
 9 (3) has two (2) unrelated prior adjudications of delinquency for  
 10 acts that would be felonies if committed by an adult.
- 11 (b) A court may place the child in a facility authorized under this  
 12 chapter for not more than two (2) years.
- 13 (c) Notwithstanding IC 11-10-2-5, the department of correction may  
 14 not reduce the period ordered under this section (or IC 31-6-4-15.9(n)  
 15 before its repeal).
- 16 SECTION 5. IC 34-24-1-1 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) The following  
 18 may be seized:
- 19 (1) All vehicles (as defined by IC 35-41-1), if they are used or are  
 20 intended for use by the person or persons in possession of them to  
 21 transport or in any manner to facilitate the transportation of the  
 22 following:
- 23 (A) A controlled substance for the purpose of committing,  
 24 attempting to commit, or conspiring to commit any of the  
 25 following:
- 26 (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).  
 27 (ii) Dealing in a schedule I, II, or III controlled substance  
 28 (IC 35-48-4-2).  
 29 (iii) Dealing in a schedule IV controlled substance  
 30 (IC 35-48-4-3).  
 31 (iv) Dealing in a schedule V controlled substance  
 32 (IC 35-48-4-4).  
 33 (v) Dealing in a counterfeit substance (~~IC 35-48-4-5~~);  
 34 **IC 35-48-4-5(a)**.  
 35 (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).  
 36 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).  
 37 (viii) Dealing in marijuana, hash oil, or hashish  
 38 (IC 35-48-4-10).
- 39 (B) Any stolen (IC 35-43-4-2) or converted property  
 40 (IC 35-43-4-3) if the retail or repurchase value of that property  
 41 is one hundred dollars (\$100) or more.  
 42 (C) Any hazardous waste in violation of IC 13-30-6-6.

C  
O  
P  
Y

- 1 (2) All money, negotiable instruments, securities, weapons,  
 2 communications devices, or any property commonly used as  
 3 consideration for a violation of IC 35-48-4 (other than items  
 4 subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1  
 5 before its repeal):  
 6 (A) furnished or intended to be furnished by any person in  
 7 exchange for an act that is in violation of a criminal statute;  
 8 (B) used to facilitate any violation of a criminal statute; or  
 9 (C) traceable as proceeds of the violation of a criminal statute.  
 10 (3) Any portion of real or personal property purchased with  
 11 money that is traceable as a proceed of a violation of a criminal  
 12 statute.  
 13 (4) A vehicle that is used by a person to:  
 14 (A) commit, attempt to commit, or conspire to commit;  
 15 (B) facilitate the commission of; or  
 16 (C) escape from the commission of;  
 17 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal  
 18 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting  
 19 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).  
 20 (5) Real property owned by a person who uses it to commit any of  
 21 the following as a Class A felony, a Class B felony, or a Class C  
 22 felony:  
 23 (A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).  
 24 (B) Dealing in a schedule I, II, or III controlled substance  
 25 (IC 35-48-4-2).  
 26 (C) Dealing in a schedule IV controlled substance  
 27 (IC 35-48-4-3).  
 28 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).  
 29 (6) Equipment and recordings used by a person to commit fraud  
 30 under IC 35-43-5-4(11).  
 31 (7) Recordings sold, rented, transported, or possessed by a person  
 32 in violation of IC 24-4-10.  
 33 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as  
 34 defined by IC 35-45-6-1) that is the object of a corrupt business  
 35 influence violation (IC 35-45-6-2).  
 36 (9) Unlawful telecommunications devices (as defined in  
 37 IC 35-45-13-6) and plans, instructions, or publications used to  
 38 commit an offense under IC 35-45-13.  
 39 (b) A vehicle used by any person as a common or contract carrier in  
 40 the transaction of business as a common or contract carrier is not  
 41 subject to seizure under this section, unless it can be proven by a  
 42 preponderance of the evidence that the owner of the vehicle knowingly

C  
O  
P  
Y

1 permitted the vehicle to be used to engage in conduct that subjects it to  
2 seizure under subsection (a).

3 (c) Money, negotiable instruments, securities, weapons,  
4 communications devices, or any property commonly used as  
5 consideration for a violation of IC 35-48-4 found near or on a person  
6 who is committing, attempting to commit, or conspiring to commit any  
7 of the following offenses shall be admitted into evidence in an action  
8 under this chapter as prima facie evidence that the money, negotiable  
9 instrument, security, or other thing of value is property that has been  
10 used or was to have been used to facilitate the violation of a criminal  
11 statute or is the proceeds of the violation of a criminal statute:

12 (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).

13 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled  
14 substance).

15 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

16 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)  
17 as a Class B felony.

18 (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a  
19 Class A felony **or** Class B felony. ~~or Class E felony.~~

20 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as  
21 a Class C felony.

22 SECTION 6. IC 35-48-4-4.6, AS AMENDED BY P.L.150-1999,  
23 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
24 JULY 1, 2000]: Sec. 4.6. (a) A person who knowingly or intentionally:

25 (1) manufactures;

26 (2) finances the manufacture of;

27 (3) advertises;

28 (4) distributes; or

29 (5) possesses with intent to manufacture, finance the manufacture  
30 of, advertise, or distribute;

31 a substance described in section 4.5 of this chapter commits a Class C  
32 felony.

33 (b) A person who knowingly or intentionally possesses a substance  
34 described in section 4.5 of this chapter commits a ~~Class E~~  
35 ~~misdemeanor~~ **Class C felony**. However, the offense is a ~~Class A~~  
36 ~~misdemeanor~~ **Class B felony** if the person has a previous conviction  
37 under this section.

38 (c) In any prosecution brought under this section it is not a defense  
39 that the person believed the substance actually was a controlled  
40 substance.

41 (d) This section does not apply to the following:

42 (1) The manufacture, financing the manufacture of, processing,

C  
O  
P  
Y



1 packaging, distribution, or sale of noncontrolled substances to  
 2 licensed medical practitioners for use as placebos in professional  
 3 practice or research.

4 (2) Persons acting in the course and legitimate scope of their  
 5 employment as law enforcement officers.

6 (3) The retention of production samples of noncontrolled  
 7 substances produced before September 1, 1986, where such  
 8 samples are required by federal law.

9 (e) In addition to any other penalty imposed for conviction of an  
 10 offense under this section, a court shall order restitution pursuant to  
 11 IC 35-50-5-3 to cover the costs of an environmental cleanup incurred  
 12 by a law enforcement agency or other person as a result of the offense.

13 (f) The amount collected under subsection (e) shall be used to  
 14 reimburse the law enforcement agency that assumed the costs  
 15 associated with the environmental cleanup described in subsection (e).

16 SECTION 7. IC 35-48-4-5 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 5. (a) A person who:

18 (1) knowingly or intentionally:

19 (A) creates;

20 (B) delivers; or

21 (C) finances the delivery of;

22 a counterfeit substance; or

23 (2) possesses, with intent to:

24 (A) deliver; or

25 (B) finance the delivery of;

26 a counterfeit substance;

27 commits dealing in a counterfeit substance, a Class D felony.

28 (b) **A person who knowingly or intentionally possesses a**  
 29 **counterfeit substance commits possessing a counterfeit substance,**  
 30 **a Class D felony.**

31 SECTION 8. IC 35-48-4-6, AS AMENDED BY P.L.188-1999,  
 32 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 33 JULY 1, 2000]: Sec. 6. (a) A person who, without a valid prescription  
 34 or order of a practitioner acting in the course of the practitioner's  
 35 professional practice, knowingly or intentionally possesses cocaine  
 36 (pure or adulterated) or a narcotic drug (pure or adulterated) classified  
 37 in schedule I or II commits possession of cocaine or a narcotic drug, a  
 38 ~~Class D felony~~; **Class B felony** except as provided in subsection (b).

39 (b) The offense is **a Class A felony if:**

40 (1) ~~a Class E felony if:~~

41 (~~A~~) the amount of the drug involved (pure or adulterated)

42 weighs three (3) grams or more; ~~or~~

C  
O  
P  
Y



- 1           ~~(B)~~ **(2)** the person was also in possession of a firearm (as  
 2           defined in IC 35-47-1-5); **or**  
 3           ~~(2)~~ **a Class B felony** if **(3)** the person in possession of the cocaine  
 4           or narcotic drug possesses ~~less than three~~ **(3)** grams of ~~pure or~~  
 5           ~~adulterated~~ **the** cocaine or narcotic drug:  
 6           (A) on a school bus; or  
 7           (B) in, on, or within one thousand (1,000) feet of:  
 8           (i) school property;  
 9           (ii) a public park; or  
 10           (iii) a family housing complex. ~~and~~  
 11           ~~(3)~~ **a Class A felony** if ~~the person possesses the cocaine or~~  
 12           ~~narcotic drug in an amount (pure or adulterated) weighing at least~~  
 13           ~~three~~ **(3)** grams:  
 14           ~~(A) on a school bus; or~~  
 15           ~~(B) in, on, or within one thousand (1,000) feet of:~~  
 16           ~~(i) school property;~~  
 17           ~~(ii) a public park; or~~  
 18           ~~(iii) a family housing complex.~~  
 19           SECTION 9. IC 35-48-4-7 IS AMENDED TO READ AS  
 20           FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 7. (a) A person who,  
 21           without a valid prescription or order of a practitioner acting in the  
 22           course of his professional practice, knowingly or intentionally  
 23           possesses a controlled substance (pure or adulterated) classified in  
 24           schedule I, II, ~~or III, or IV~~; except marijuana or hashish, commits  
 25           possession of a controlled substance, a ~~Class D felony~~. **Class B felony.**  
 26           However, the offense is a ~~Class E felony~~ **Class A felony** if the person  
 27           in possession of the controlled substance possesses the controlled  
 28           substance:  
 29           (1) on a school bus; or  
 30           (2) in, on, or within one thousand (1,000) feet of:  
 31           (A) school property;  
 32           (B) a public park; or  
 33           (C) a family housing complex.  
 34           **(b) A person who, without a valid prescription or order of a**  
 35           **practitioner acting in the course of the person's professional**  
 36           **practice, knowingly or intentionally possesses a controlled**  
 37           **substance (pure or adulterated) classified in schedule IV, except**  
 38           **marijuana or hashish, commits possession of a schedule IV**  
 39           **controlled substance, a Class C felony. However, the offense is a**  
 40           **Class B felony if the person possesses the substance:**  
 41           **(1) on a school bus; or**  
 42           **(2) in, on, or within one thousand (1,000) feet of:**



C  
O  
P  
Y

- 1                   **(A) school property;**  
 2                   **(B) a public park; or**  
 3                   **(C) a family housing complex.**  
 4           ~~(b)~~ **(c)** A person who, without a valid prescription or order of a  
 5 practitioner acting in the course of his professional practice, knowingly  
 6 or intentionally obtains:  
 7           (1) more than four (4) ounces of schedule V controlled substances  
 8 containing codeine in any given forty-eight (48) hour period  
 9 unless pursuant to a prescription;  
 10           (2) a schedule V controlled substance pursuant to written or  
 11 verbal misrepresentation; or  
 12           (3) possession of a schedule V controlled substance other than by  
 13 means of a prescription or by means of signing an exempt  
 14 narcotic register maintained by a pharmacy licensed by the  
 15 Indiana state board of pharmacy;  
 16 commits a Class D felony. **However, the offense is a Class B felony**  
 17 **if the person possesses the substance on a school bus or in, on, or**  
 18 **within one thousand (1,000) feet of school property, a public park,**  
 19 **or a family housing complex.**  
 20           SECTION 10. IC 35-48-4-11 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 11. **(a)** A person who:  
 22           (1) knowingly or intentionally possesses (pure or adulterated)  
 23 marijuana, hash oil, or hashish;  
 24           (2) knowingly or intentionally grows or cultivates marijuana; or  
 25           (3) knowing that marijuana is growing on his premises, fails to  
 26 destroy the marijuana plants;  
 27 commits possession of marijuana, hash oil, or hashish, a Class A  
 28 misdemeanor. ~~However,~~  
 29           **(b)** The offense is:  
 30           **(1)** a Class D felony ~~(i)~~ if:  
 31                   **(A)** the amount involved is more than thirty (30) grams **but**  
 32                   **less than ten (10) pounds** of marijuana or two (2) grams **but**  
 33                   **less than three hundred (300) grams** of hash oil or hashish;  
 34                   or ~~(ii)~~ if  
 35                   **(B)** the person has a prior conviction of an offense involving  
 36 marijuana, hash oil, or hashish; **and**  
 37           **(2) a Class C felony if the amount involved is ten (10) pounds**  
 38 **or more of marijuana or three hundred (300) or more grams**  
 39 **of hash oil or hashish or the person possessed the marijuana,**  
 40 **hash oil, or hashish:**  
 41                   **(A) on a school bus; or**  
 42                   **(B) in, on, or within one thousand (1,000) feet of:**



C  
O  
P  
Y

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

- (i) school property;
- (ii) a public park; or
- (iii) a family housing complex.

SECTION 11. IC 35-48-4-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 13. (a) A person who knowingly or intentionally visits a building, structure, vehicle, or other place that is used by any person to unlawfully use a controlled substance commits visiting a common nuisance, a ~~Class B misdemeanor~~: **Class D felony**.

(b) A person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used one (1) or more times:

- (1) by persons to unlawfully use controlled substances; or
  - (2) for unlawfully:
    - (A) keeping;
    - (B) offering for sale;
    - (C) selling;
    - (D) delivering; or
    - (E) financing the delivery of;
 controlled substances, or items of drug paraphernalia as described in IC 35-48-4-8.5;
- commits maintaining a common nuisance, a Class D felony.

SECTION 12. IC 35-48-4-12 IS REPEALED [EFFECTIVE JULY 1, 2000].

C  
o  
p  
y

