

HOUSE BILL No. 1531

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-2.

Synopsis: Habitual offenders. Removes language prohibiting the state from seeking to have a person sentenced as a habitual offender and habitual substance offender for certain drug related offenses. Provides procedures for a person to be tried and sentenced as a repeat drug offender. Specifies that a conviction for an attempt to commit or conspiracy to commit certain sex crimes in another jurisdiction may be included for purposes of sentencing a person as a repeat sex offender.

Effective: July 1, 2011.

Foley

January 20, 2011, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1531



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 35-50-2-8, AS AMENDED BY P.L.71-2005,
- 2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2011]: Sec. 8. (a) Except as otherwise provided in this section,
- 4 the state may seek to have a person sentenced as a habitual offender for
- 5 any felony by alleging, on a page separate from the rest of the charging
- 6 instrument, that the person has accumulated two (2) prior unrelated
- 7 felony convictions.
- 8 (b) The state may not seek to have a person sentenced as a habitual
- 9 offender for a felony offense under this section if:
- 10 (1) the offense is a misdemeanor that is enhanced to a felony in
- 11 the same proceeding as the habitual offender proceeding solely
- 12 because the person had a prior unrelated conviction; **or**
- 13 (2) the offense is an offense under IC 9-30-10-16 or
- 14 IC 9-30-10-17. **or**
- 15 (3) ~~all of the following apply:~~
- 16 (A) ~~The offense is an offense under IC 16-42-19 or~~
- 17 ~~IC 35-48-4.~~



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

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1 under this section to support a sentence as a habitual offender even if
2 the sentence for the prior unrelated offense was enhanced for any
3 reason, including an enhancement because the person had been
4 convicted of another offense. However, a prior unrelated felony
5 conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed),
6 or IC 9-12-3-2 (repealed) may not be used to support a sentence as a
7 habitual offender.

8 (f) If the person was convicted of the felony in a jury trial, the jury
9 shall reconvene for the sentencing hearing. If the trial was to the court
10 or the judgment was entered on a guilty plea, the court alone shall
11 conduct the sentencing hearing under IC 35-38-1-3.

12 (g) A person is a habitual offender if the jury (if the hearing is by
13 jury) or the court (if the hearing is to the court alone) finds that the
14 state has proved beyond a reasonable doubt that the person had
15 accumulated two (2) prior unrelated felony convictions.

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

21 SECTION 2. IC 35-50-2-10, AS AMENDED BY P.L.1-2006,
22 SECTION 551, IS AMENDED TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) As used in this section:

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

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

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

35 (c) After a person has been convicted and sentenced for a substance
36 offense committed after sentencing for a prior unrelated substance
37 offense conviction, the person has accumulated two (2) prior unrelated
38 substance offense convictions. However, a conviction does not count
39 for purposes of this subsection if:

- 40 (1) it has been set aside; or
- 41 (2) it is a conviction for which the person has been pardoned.

42 (d) If the person was convicted of the substance offense in a jury

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1 trial, the jury shall reconvene for the sentencing hearing. If the trial was
 2 to the court, or the judgment was entered on a guilty plea, the court
 3 alone shall conduct the sentencing hearing, under IC 35-38-1-3.

4 (e) A person is a habitual substance offender if the jury (if the
 5 hearing is by jury) or the court (if the hearing is to the court alone)
 6 finds that the state has proved beyond a reasonable doubt that the
 7 person had accumulated two (2) prior unrelated substance offense
 8 convictions.

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

14 ~~(1)~~ three (3) years or more have elapsed since the date the person
 15 was discharged from probation, imprisonment, or parole
 16 (whichever is later) for the last prior unrelated substance offense
 17 conviction and the date the person committed the substance
 18 offense for which the person is being sentenced as a habitual
 19 substance offender, or

20 ~~(2)~~ all of the substance offenses for which the person has been
 21 convicted are substance offenses under ~~IC 16-42-19~~ or
 22 ~~IC 35-48-4~~, the person has not been convicted of a substance
 23 offense listed in section 2(b)(4) of this chapter, and the total
 24 number of convictions that the person has for:

25 (A) dealing in or selling a legend drug under ~~IC 16-42-19-27~~;

26 (B) dealing in cocaine or a narcotic drug (~~IC 35-48-4-1~~);

27 (C) dealing in a schedule I, H, or III controlled substance
 28 (~~IC 35-48-4-2~~);

29 (D) dealing in a schedule IV controlled substance
 30 (~~IC 35-48-4-3~~); and

31 (E) dealing in a schedule V controlled substance
 32 (~~IC 35-48-4-4~~);

33 does not exceed one (1);

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

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

40 (1) decide the issue of granting a reduction; or

41 (2) determine the number of years, if any, to be subtracted under
 42 subsection (f).

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1 SECTION 3. IC 35-50-2-10.5 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2011]: Sec. 10.5. (a) As used in this section,

4 "drug offense" means a felony conviction:

5 (1) under IC 35-48-4-1 through IC 35-48-4-5, IC 16-42-19-11,
6 IC 16-42-19-20, or IC 16-42-19-25;

7 (2) for an attempt or conspiracy to commit an offense
8 described in subdivision (1); or

9 (3) for an offense under the laws of another jurisdiction,
10 including a military court, that is substantially similar to an
11 offense described in subdivision (1) or (2).

12 (b) The state may seek to have a person sentenced as a repeat
13 drug offender for a drug offense described in subsection (a)(1) or
14 (a)(2) by alleging, on a page separate from the rest of the charging
15 instrument, that the person has accumulated one (1) prior
16 unrelated felony conviction for a drug offense described in
17 subsection (a).

18 (c) After a person has been convicted and sentenced for a felony
19 described in subsection (a)(1) or (a)(2) after having been convicted
20 and sentenced for a prior unrelated drug offense described in
21 subsection (a), the person has accumulated one (1) prior unrelated
22 felony drug offense conviction. However, a conviction does not
23 count for purposes of this subsection, if:

24 (1) it has been set aside; or

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

26 (d) If the person was convicted of a drug offense in a jury trial,
27 the jury shall reconvene to hear evidence in the enhancement
28 hearing. If the trial was to the court alone or the judgment was
29 entered on a guilty plea, the court alone shall hear evidence in the
30 enhancement hearing.

31 (e) A person is a repeat drug offender if the jury (if the hearing
32 is by jury) or the court (if the hearing is to the court alone) finds
33 that the state has proved beyond a reasonable doubt that the
34 person had accumulated one (1) prior unrelated felony drug
35 offense conviction.

36 (f) The court may sentence a person found to be a repeat drug
37 offender to an additional fixed term that is the advisory sentence
38 for the underlying offense. However, the additional sentence may
39 not exceed ten (10) years.

40 SECTION 4. IC 35-50-2-14, AS AMENDED BY P.L.125-2009,
41 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2011]: Sec. 14. (a) As used in this section, "sex offense"

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1 means a felony conviction:
 2 (1) under IC 35-42-4-1 through IC 35-42-4-9 or under
 3 IC 35-46-1-3;
 4 (2) for an attempt or conspiracy to commit an offense described
 5 in subdivision (1); or
 6 (3) for an offense under the laws of another jurisdiction, including
 7 a military court, that is substantially similar to an offense
 8 described in subdivision (1) **or (2)**.

9 (b) The state may seek to have a person sentenced as a repeat sexual
 10 offender for a sex offense described in subsection (a)(1) or (a)(2) by
 11 alleging, on a page separate from the rest of the charging instrument,
 12 that the person has accumulated one (1) prior unrelated felony
 13 conviction for a sex offense described in subsection (a).

14 (c) After a person has been convicted and sentenced for a felony
 15 described in subsection (a)(1) or (a)(2) after having been sentenced for
 16 a prior unrelated sex offense described in subsection (a), the person has
 17 accumulated one (1) prior unrelated felony sex offense conviction.
 18 However, a conviction does not count for purposes of this subsection,
 19 if:
 20 (1) it has been set aside; or
 21 (2) it is a conviction for which the person has been pardoned.

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

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

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

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