



January 23, 2012

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## HOUSE BILL No. 1033

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DIGEST OF HB 1033 (Updated January 20, 2012 2:43 pm - DI 69)

**Citations Affected:** IC 35-50.

**Synopsis:** Conversion of Class D felony to Class A misdemeanor. Allows a court to convert a Class D felony to a Class A misdemeanor if: (1) the person is not a sex or violent offender; (2) the offense was a non-violent offense; (3) at least three years have passed since the person completed the sentence; and (4) the person has not been convicted of a new felony. Specifies that a conviction for a Class A misdemeanor that was originally entered as a Class D felony and converted to a Class A misdemeanor under an express sentencing provision is treated as a Class A misdemeanor. Provides that if a person whose Class D felony conviction has been converted to a Class A misdemeanor conviction is convicted of a felony within five years after the conversion, a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction.

**Effective:** July 1, 2012.

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**McMillin, Turner**

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January 9, 2012, read first time and referred to Committee on Courts and Criminal Code.  
January 23, 2012, amended, reported — Do Pass.

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HB 1033—LS 6317/DI 106+



January 23, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

## HOUSE BILL No. 1033

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 35-50-2-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) As used in this  
3 chapter, "Class D felony conviction" means a conviction of a Class D  
4 felony in Indiana and a conviction, in any other jurisdiction at any time,  
5 with respect to which the convicted person might have been imprisoned  
6 for more than one (1) year. However, it does not include a conviction  
7 with respect to which the person has been pardoned, or a conviction of  
8 a Class A misdemeanor **entered** under **IC 35-38-1-1.5 or** section 7(b)  
9 **or 7(c)** of this chapter.  
10 (b) As used in this chapter, "felony conviction" means a conviction,  
11 in any jurisdiction at any time, with respect to which the convicted  
12 person might have been imprisoned for more than one (1) year.  
13 However, it does not include a conviction with respect to which the  
14 person has been pardoned, or a conviction of a Class A misdemeanor  
15 under section 7(b) of this chapter.  
16 (c) As used in this chapter, "minimum sentence" means:  
17 (1) for murder, forty-five (45) years;

HB 1033—LS 6317/DI 106+



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- 1 (2) for a Class A felony, twenty (20) years;  
 2 (3) for a Class B felony, six (6) years;  
 3 (4) for a Class C felony, two (2) years; and  
 4 (5) for a Class D felony, one-half (1/2) year.
- 5 SECTION 2. IC 35-50-2-7, AS AMENDED BY P.L.71-2005,  
 6 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2012]: Sec. 7. (a) A person who commits a Class D felony  
 8 shall be imprisoned for a fixed term of between six (6) months and  
 9 three (3) years, with the advisory sentence being one and one-half (1  
 10 1/2) years. In addition, the person may be fined not more than ten  
 11 thousand dollars (\$10,000).
- 12 (b) Notwithstanding subsection (a), if a person has committed a  
 13 Class D felony, the court may enter judgment of conviction of a Class  
 14 A misdemeanor and sentence accordingly. However, the court shall  
 15 enter a judgment of conviction of a Class D felony if:
- 16 (1) the court finds that:
- 17 (A) the person has committed a prior, unrelated felony for  
 18 which judgment was entered as a conviction of a Class A  
 19 misdemeanor; and  
 20 (B) the prior felony was committed less than three (3) years  
 21 before the second felony was committed;
- 22 (2) the offense is domestic battery as a Class D felony under  
 23 IC 35-42-2-1.3; or  
 24 (3) the offense is possession of child pornography  
 25 (IC 35-42-4-4(c)).
- 26 The court shall enter in the record, in detail, the reason for its action  
 27 whenever it exercises the power to enter judgment of conviction of a  
 28 Class A misdemeanor granted in this subsection.
- 29 **(c) Notwithstanding subsections (a) and (d), the sentencing court  
 30 may convert a Class D felony conviction to a Class A misdemeanor  
 31 conviction if, after a hearing of which the prosecuting attorney has  
 32 been notified, the court makes the following findings:**
- 33 **(1) The person is not a sex or violent offender (as defined in  
 34 IC 11-8-8-5).**
- 35 **(2) The person was not convicted of a Class D felony that  
 36 resulted in bodily injury to another person.**
- 37 **(3) At least three (3) years have passed since the person:**
- 38 **(A) completed the person's sentence; and**  
 39 **(B) satisfied any other obligation imposed on the person as  
 40 part of the sentence;**  
 41 **for the Class D felony.**
- 42 **(4) The person has not been convicted of a felony since the**

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1           **person:**  
2           **(A) completed the person's sentence; and**  
3           **(B) satisfied any other obligation imposed on the person as**  
4           **part of the sentence;**  
5           **for the Class D felony.**  
6           **(d) If a person whose Class D felony conviction has been**  
7           **converted to a Class A misdemeanor conviction under subsection**  
8           **(c) is convicted of a felony within five (5) years after the conversion**  
9           **under subsection (c), a prosecuting attorney may petition a court**  
10           **to convert the person's Class A misdemeanor conviction back to a**  
11           **Class D felony conviction.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1033, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 29, delete "subsection (a)," and insert "**subsections (a) and (d),**".

Page 3, after line 5, begin a new paragraph and insert:

**"(d) If a person whose Class D felony conviction has been converted to a Class A misdemeanor conviction under subsection (c) is convicted of a felony within five (5) years after the conversion under subsection (c), a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction."**

and when so amended that said bill do pass.

(Reference is to HB 1033 as introduced.)

STEUERWALD, Chair

Committee Vote: yeas 9, nays 0.

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