



March 12, 2013

ENGROSSED SENATE BILL No. 31

DIGEST OF SB 31 (Updated March 6, 2013 4:40 pm - DI 69)

Citations Affected: IC 35-34.

Synopsis: Habitual offender charge filing deadline. Allows an indictment or information to be amended to include a habitual offender charge if the amendment is filed at least 30 days before trial. Permits such an amendment to be made at any time if it does not prejudice the substantial rights of the defendant. Provides that if an amendment is made less than 30 days before trial, the court shall grant a continuance to the: (1) state, for good cause shown; or (2) defendant, for any reason. (Current law provides that such an amendment of an indictment or information to include a habitual offender charge must be made: (1) not later than 10 days after the omnibus date; or (2) upon a showing of good cause, at any time before the trial.)

Effective: July 1, 2013.

Head, Holdman, Randolph, Glick

(HOUSE SPONSORS — MCMILLIN, FRIEND)

January 7, 2013, read first time and referred to Committee on Corrections & Criminal Law.
January 10, 2013, amended, reported favorably — Do Pass.
January 22, 2013, read second time, ordered engrossed. Engrossed.
January 24, 2013, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

February 26, 2013, read first time and referred to Committee on Courts and Criminal Code.
March 11, 2013, reported — Do Pass.

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ES 31—LS 6004/DI 106+



March 12, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 31

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 35-34-1-5, AS AMENDED BY P.L.178-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 5. (a) An indictment or information which charges
4 the commission of an offense may not be dismissed but may be
5 amended on motion by the prosecuting attorney at any time because of
6 any immaterial defect, including:
7 (1) any miswriting, misspelling, or grammatical error;
8 (2) any misjoinder of parties defendant or offenses charged;
9 (3) the presence of any unnecessary repugnant allegation;
10 (4) the failure to negate any exception, excuse, or provision
11 contained in the statute defining the offense;
12 (5) the use of alternative or disjunctive allegations as to the acts,
13 means, intents, or results charged;
14 (6) any mistake in the name of the court or county in the title of
15 the action, or the statutory provision alleged to have been
16 violated;
17 (7) the failure to state the time or place at which the offense was

ES 31—LS 6004/DI 106+



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1 committed where the time or place is not of the essence of the
2 offense;

3 (8) the failure to state an amount of value or price of any matter
4 where that value or price is not of the essence of the offense; or

5 (9) any other defect which does not prejudice the substantial
6 rights of the defendant.

7 (b) The indictment or information may be amended in matters of
8 substance and the names of material witnesses may be added, by the
9 prosecuting attorney, upon giving written notice to the defendant at any
10 time:

11 (1) up to:

12 (A) thirty (30) days if the defendant is charged with a felony;
13 or

14 (B) fifteen (15) days if the defendant is charged only with one

15 (1) or more misdemeanors;

16 before the omnibus date; or

17 (2) before the commencement of trial;

18 if the amendment does not prejudice the substantial rights of the
19 defendant. When the information or indictment is amended, it shall be
20 signed by the prosecuting attorney or a deputy prosecuting attorney.

21 (c) Upon motion of the prosecuting attorney, the court may, at any
22 time before, during, or after the trial, permit an amendment to the
23 indictment or information in respect to any defect, imperfection, or
24 omission in form which does not prejudice the substantial rights of the
25 defendant.

26 (d) Before amendment of any indictment or information other than
27 amendment as provided in subsection (b), ~~of this section~~, the court
28 shall give all parties adequate notice of the intended amendment and
29 an opportunity to be heard. Upon permitting such amendment, the court
30 shall, upon motion by the defendant, order any continuance of the
31 proceedings which may be necessary to accord the defendant adequate
32 opportunity to prepare ~~his~~ **the defendant's** defense.

33 (e) An amendment of an indictment or information to include a
34 habitual offender charge under IC 35-50-2-8, IC 35-50-2-8.5, or
35 IC 35-50-2-10 must be made ~~not later than ten (10) days after the~~
36 ~~omnibus date.~~ **at least thirty (30) days before the commencement of**
37 **trial.** However, upon a showing of good cause, the court may permit
38 the filing of a habitual offender charge at any time before the
39 commencement of the trial **if the amendment does not prejudice the**
40 **substantial rights of the defendant. If the court permits the filing**
41 **of a habitual offender charge less than thirty (30) days before the**
42 **commencement of trial, the court shall grant a continuance at the**

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- 1 request of the:
- 2 (1) state, for good cause shown; or
- 3 (2) defendant, for any reason.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 31, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 35, reset in roman "must be made".

Page 2, line 36, after "date." insert "**at least thirty (30) days before the commencement of trial.**".

Page 2, line 36, reset in roman "However, upon a showing of good cause, the court may".

Page 2, line 37, reset in roman "permit the filing of a habitual offender charge at".

Page 2, line 37, delete "may be made".

Page 2, line 39, after "defendant." insert "**If the court permits the filing of a habitual offender charge less than thirty (30) days before the commencement of trial, the court shall grant a continuance at the request of the:**

(1) state, for good cause shown; or

(2) defendant, for any reason.".

and when so amended that said bill do pass.

(Reference is to SB 31 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 9, Nays 0.

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 31, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

MCMILLIN, Chair

Committee Vote: yeas 12, nays 0.



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