

SENATE BILL No. 196

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-2-10.

Synopsis: Habitual substance offender. Excludes misdemeanor possession of marijuana from the habitual substance offender sentencing enhancement if the offense involved the possession of not more than 30 grams of marijuana. Makes a technical correction.

Effective: July 1, 2013.

Randolph

January 7, 2013, read first time and referred to Committee on Corrections & Criminal Law.

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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.

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SENATE BILL No. 196



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 35-50-2-10, AS AMENDED BY P.L.1-2006,
 2 SECTION 551, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) As used in this section:
 4 (1) "Drug" means a drug or a controlled substance (as defined in
 5 IC 35-48-1).
 6 (2) "Substance offense" means a Class A misdemeanor or a felony
 7 in which the possession, use, abuse, delivery, transportation, or
 8 manufacture of alcohol or drugs is a material element of the
 9 crime. The term includes an offense under IC 9-30-5 and an
 10 offense under IC 9-11-2 (before its repeal). **However, the term**
 11 **does not include a conviction for possession of marijuana**
 12 **(IC 35-48-4-11) if the amount of marijuana involved was not**
 13 **more than thirty (30) grams.**
 14 (b) The state may seek to have a person sentenced as a habitual
 15 substance offender for any substance offense by alleging, on a page
 16 separate from the rest of the charging instrument, that the person has
 17 accumulated two (2) prior unrelated substance offense convictions.



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

6 (1) it has been set aside; or

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

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

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

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

22 (1) three (3) years or more have elapsed since the date the person
 23 was discharged from probation, imprisonment, or parole
 24 (whichever is later) for the last prior unrelated substance offense
 25 conviction and the date the person committed the substance
 26 offense for which the person is being sentenced as a habitual
 27 substance offender; or

28 (2) all of the substance offenses for which the person has been
 29 convicted are substance offenses under IC 16-42-19 or
 30 IC 35-48-4, the person has not been convicted of a substance
 31 offense listed in section 2(b)(4) of this chapter, and the total
 32 number of convictions that the person has for:

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

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

35 (C) dealing in a schedule I, II, or III controlled substance
 36 (IC 35-48-4-2);

37 (D) dealing in a schedule IV controlled substance
 38 (IC 35-48-4-3); and

39 (E) dealing in a schedule V controlled substance
 40 (IC 35-48-4-4);

41 does not exceed one (1);

42 then the court may reduce the additional fixed term. However, the court

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1 may not reduce the additional fixed term to less than one (1) year.
2 (g) If a reduction of the additional year fixed term is authorized
3 under subsection (f), the court may also consider the aggravating ~~or~~
4 circumstances in IC 35-38-1-7.1(a) and the mitigating circumstances
5 in IC 35-38-1-7.1(b) to:
6 (1) decide the issue of granting a reduction; or
7 (2) determine the number of years, if any, to be subtracted under
8 subsection (f).

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