

# HOUSE BILL No. 1064

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-50-2-8.

**Synopsis:** Habitual offender requirements. Provides that to be sentenced as a habitual offender (other than for a conviction of a Level 1 through Level 4 felony or murder), a person must have accumulated at least one of the required number of prior unrelated felony convictions within 10 years of accumulating the current offense.

**Effective:** July 1, 2017.

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## Steuerwald

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January 4, 2017, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## HOUSE BILL No. 1064

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.238-2015,
- 2 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2017]: Sec. 8. (a) The state may seek to have a person
- 4 sentenced as a habitual offender for a felony by alleging, on one (1) or
- 5 more pages separate from the rest of the charging instrument, that the
- 6 person has accumulated the required number of prior unrelated felony
- 7 convictions in accordance with this section.
- 8 (b) A person convicted of murder or of a Level 1 through Level 4
- 9 felony is a habitual offender if the state proves beyond a reasonable
- 10 doubt that:
- 11 (1) the person has been convicted of two (2) prior unrelated
- 12 felonies; and
- 13 (2) at least one (1) of the prior unrelated felonies is not a Level 6
- 14 felony or a Class D felony.
- 15 (c) A person convicted of a Level 5 felony is a habitual offender if
- 16 the state proves beyond a reasonable doubt that:
- 17 (1) the person has been convicted of two (2) prior unrelated



- 1 felonies;  
 2 (2) at least one (1) of the prior unrelated felonies is not a Level 6  
 3 felony or a Class D felony; and  
 4 (3) if the person is alleged to have committed a prior unrelated:  
 5 (A) Level 5 felony;  
 6 (B) Level 6 felony;  
 7 (C) Class C felony; or  
 8 (D) Class D felony;  
 9 not more than ten (10) years have elapsed between the time the  
 10 person was released from imprisonment, probation, or parole  
 11 (whichever is latest) **for at least one (1) of the two (2) prior**  
 12 **unrelated felonies** and the time the person committed the current  
 13 offense.
- 14 (d) A person convicted of a felony offense is a habitual offender if  
 15 the state proves beyond a reasonable doubt that:  
 16 (1) the person has been convicted of three (3) prior unrelated  
 17 felonies; and  
 18 (2) if the person is alleged to have committed a prior unrelated:  
 19 (A) Level 5 felony;  
 20 (B) Level 6 felony;  
 21 (C) Class C felony; or  
 22 (D) Class D felony;  
 23 not more than ten (10) years have elapsed between the time the  
 24 person was released from imprisonment, probation, or parole  
 25 (whichever is latest) **for at least one (1) of the three (3) prior**  
 26 **unrelated felonies** and the time the person committed the current  
 27 offense.
- 28 (e) The state may not seek to have a person sentenced as a habitual  
 29 offender for a felony offense under this section if the current offense is  
 30 a misdemeanor that is enhanced to a felony in the same proceeding as  
 31 the habitual offender proceeding solely because the person had a prior  
 32 unrelated conviction. However, a prior unrelated felony conviction may  
 33 be used to support a habitual offender determination even if the  
 34 sentence for the prior unrelated offense was enhanced for any reason,  
 35 including an enhancement because the person had been convicted of  
 36 another offense.
- 37 (f) A person has accumulated two (2) or three (3) prior unrelated  
 38 felony convictions for purposes of this section only if:  
 39 (1) the second prior unrelated felony conviction was committed  
 40 after commission of and sentencing for the first prior unrelated  
 41 felony conviction;  
 42 (2) the offense for which the state seeks to have the person



1 sentenced as a habitual offender was committed after commission  
2 of and sentencing for the second prior unrelated felony  
3 conviction; and

4 (3) for a conviction requiring proof of three (3) prior unrelated  
5 felonies, the third prior unrelated felony conviction was  
6 committed after commission of and sentencing for the second  
7 prior unrelated felony conviction.

8 (g) A conviction does not count for purposes of this section as a  
9 prior unrelated felony conviction if:

10 (1) the conviction has been set aside; or

11 (2) the conviction is one for which the person has been pardoned.

12 (h) If the person was convicted of the felony in a jury trial, the jury  
13 shall reconvene for the sentencing hearing. If the trial was to the court  
14 or the judgment was entered on a guilty plea, the court alone shall  
15 conduct the sentencing hearing under IC 35-38-1-3. The role of the jury  
16 is to determine whether the defendant has been convicted of the  
17 unrelated felonies. The state or defendant may not conduct any  
18 additional interrogation or questioning of the jury during the habitual  
19 offender part of the trial.

20 (i) The court shall sentence a person found to be a habitual offender  
21 to an additional fixed term that is between:

22 (1) six (6) years and twenty (20) years, for a person convicted of  
23 murder or a Level 1 through Level 4 felony; or

24 (2) two (2) years and six (6) years, for a person convicted of a  
25 Level 5 or Level 6 felony.

26 An additional term imposed under this subsection is nonsuspendible.

27 (j) Habitual offender is a status that results in an enhanced sentence.  
28 It is not a separate crime and does not result in a consecutive sentence.  
29 The court shall attach the habitual offender enhancement to the felony  
30 conviction with the highest sentence imposed and specify which felony  
31 count is being enhanced. If the felony enhanced by the habitual  
32 offender determination is set aside or vacated, the court shall  
33 resentence the person and apply the habitual offender enhancement to  
34 the felony conviction with the next highest sentence in the underlying  
35 cause, if any.

36 (k) A prior unrelated felony conviction may not be collaterally  
37 attacked during a habitual offender proceeding unless the conviction  
38 is constitutionally invalid.

39 (l) The procedural safeguards that apply to other criminal charges,  
40 including:

41 (1) the requirement that the charge be filed by information or  
42 indictment; and



- 1 (2) the right to an initial hearing;
- 2 also apply to a habitual offender allegation.

