



February 10, 2017

HOUSE BILL No. 1064

DIGEST OF HB 1064 (Updated February 8, 2017 2:30 pm - DI 84)

Citations Affected: IC 35-50.

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.

Steuerwald, Pierce

January 4, 2017, read first time and referred to Committee on Courts and Criminal Code.
February 9, 2017, reported — Do Pass.

HB 1064—LS 6368/DI 128



February 10, 2017

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

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- 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.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1064, 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.

(Reference is to HB 1064 as introduced.)

WASHBURN

Committee Vote: Yeas 10, Nays 0

