

# HOUSE BILL No. 1142

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-31.5-2-236.8; IC 35-35-3-3; IC 35-38-1-21; IC 35-50-2-11.

**Synopsis:** Sentence enhancement for use of a firearm. Requires the state to seek to have a person who allegedly committed a felony sentenced to an additional fixed term of imprisonment of 15 years if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the felony. Provides that, if the state proves beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the felony, the court is required to sentence the person to an additional fixed term of imprisonment of 15 years. Specifies the additional fixed term of imprisonment is nonsuspendible. Prohibits a plea agreement from being made by a prosecuting attorney to a court if the plea agreement would prohibit: (1) the prosecuting attorney from seeking to have a person sentenced to the additional fixed term of imprisonment of 15 years; or (2) the court from sentencing a person to the additional fixed term of imprisonment of 15 years; if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of a felony. Makes conforming amendments. Repeals superseded provisions.

**Effective:** July 1, 2016.

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January 7, 2016, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

# HOUSE BILL No. 1142

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 35-31.5-2-236.8 IS REPEALED [EFFECTIVE  
2 JULY 1, 2016]. ~~Sec. 236.8: "Police officer"; for purposes of~~  
3 ~~IC 35-50-2-11, has the meaning set forth in IC 35-50-2-11.~~  
4 SECTION 2. IC 35-35-3-3 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) **A plea**  
6 **agreement may not be made by the prosecuting attorney to a court**  
7 **if the plea agreement would prohibit:**  
8 (1) **the prosecuting attorney from seeking to have a person**  
9 **who allegedly committed a felony sentenced to an additional**  
10 **fixed term of imprisonment of fifteen (15) years; or**  
11 (2) **the court from sentencing a person to an additional fixed**  
12 **term of imprisonment of fifteen (15) years;**  
13 **under IC 35-50-2-11 if the state can show beyond a reasonable**  
14 **doubt that the person knowingly or intentionally used a firearm in**  
15 **the commission of the felony.**  
16 (b) No plea agreement may be made by the prosecuting attorney to  
17 a court on a felony charge except:



1 (1) in writing; and

2 (2) before the defendant enters a plea of guilty.

3 The plea agreement shall be shown as filed, and if its contents indicate  
4 that the prosecuting attorney anticipates that the defendant intends to  
5 enter a plea of guilty to a felony charge, the court shall order the  
6 presentence report required by IC 35-38-1-8 and may hear evidence on  
7 the plea agreement.

8 ~~(b)~~ (c) Neither the content of the plea agreement, the presentence  
9 report, nor the hearing shall be a part of the official record of the case  
10 unless the court approves the plea agreement. If the plea agreement is  
11 not accepted, the court shall reject it before the case may be disposed  
12 of by trial or by guilty plea. If the court rejects the plea agreement,  
13 subsequent plea agreements may be filed with the court, subject to the  
14 same requirements that this chapter imposes upon the initial plea  
15 agreement.

16 ~~(c)~~ (d) A plea agreement in a misdemeanor case may be submitted  
17 orally to the court.

18 ~~(d)~~ (e) In a misdemeanor case, if:

19 (1) the court rejects a plea agreement; and

20 (2) the prosecuting attorney or the defendant files a written  
21 motion for change of judge within ten (10) days after the plea  
22 agreement is rejected;

23 the court shall grant the motion for change of judge and transfer the  
24 proceeding to a special judge under the Indiana Rules of Criminal  
25 Procedure. However, there may not be more than one (1) transfer of the  
26 proceeding to a special judge under this subsection.

27 ~~(e)~~ (f) If the court accepts a plea agreement, it shall be bound by its  
28 terms.

29 SECTION 3. IC 35-38-1-21 IS AMENDED TO READ AS  
30 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 21. (a) A court that  
31 receives a petition from the department of correction under  
32 IC 35-38-3-5 may, after notice to the prosecuting attorney of the  
33 judicial circuit in which the defendant's case originated, hold a hearing  
34 for the purpose of determining whether the offender named in the  
35 petition may be placed in home detention under IC 35-38-2.5 instead  
36 of commitment to the department of correction for the remainder of the  
37 offender's minimum sentence.

38 (b) Notwithstanding ~~IC 35-35-3-3(e)~~, **IC 35-35-3-3(f)**, and after a  
39 hearing held under this section, a sentencing court may order the  
40 offender named in the petition filed under IC 35-38-3-5 to be placed in  
41 home detention under IC 35-38-2.5 instead of commitment to the  
42 department of correction for the remainder of the offender's minimum



1 sentence.

2 SECTION 4. IC 35-50-2-11, AS AMENDED BY P.L.238-2015,  
3 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2016]: Sec. 11. (a) As used in this section, "firearm" has the  
5 meaning set forth in IC 35-47-1-5.

6 (b) As used in this section, "offense" means

7 (1) a felony, ~~under IC 35-42 that resulted in death or serious~~  
8 ~~bodily injury;~~

9 (2) kidnapping; or

10 (3) criminal confinement as a Level 2 or Level 3 felony.

11 (c) As used in this section, "police officer" means any of the  
12 following:

13 (1) A state police officer.

14 (2) A county sheriff.

15 (3) A county police officer.

16 (4) A city police officer.

17 (5) A state educational institution police officer appointed under  
18 IC 21-39-4.

19 (6) A school corporation police officer appointed under  
20 IC 20-26-16.

21 (7) A police officer of a public or private postsecondary  
22 educational institution whose board of trustees has established a  
23 police department under IC 21-17-5-2 or IC 21-39-4-2.

24 (8) An enforcement officer of the alcohol and tobacco  
25 commission.

26 (9) A conservation officer.

27 ~~(d)~~ (c) The state ~~may~~ **shall** seek, on a page separate from the rest of  
28 a charging instrument, to have a person who allegedly committed an  
29 offense sentenced to an additional fixed term of imprisonment if the  
30 state can show beyond a reasonable doubt that the person knowingly or  
31 intentionally used a firearm in the commission of the offense.

32 (e) The state ~~may~~ seek, on a page separate from the rest of a  
33 charging instrument, to have a person who allegedly committed a  
34 felony or misdemeanor other than an offense (as defined under  
35 subsection (b)) sentenced to an additional fixed term of imprisonment  
36 if the state can show beyond a reasonable doubt that the person, while  
37 committing the felony or misdemeanor, knowingly or intentionally:

38 (1) pointed a firearm; or

39 (2) discharged a firearm;

40 at an individual whom the person knew, or reasonably should have  
41 known, was a police officer.

42 (f) (d) If the person was convicted of



1           (1) the offense under subsection (d); or  
 2           (2) the felony or misdemeanor under subsection (e);  
 3 in a jury trial, the jury shall reconvene to hear evidence in the  
 4 enhancement hearing. If the trial was to the court, or the judgment was  
 5 entered on a guilty plea, the court alone shall hear evidence in the  
 6 enhancement hearing.  
 7           ~~(g)~~ (e) If the jury (if the hearing is by jury) or the court (if the  
 8 hearing is to the court alone) finds that the state has proved beyond a  
 9 reasonable doubt that the person knowingly or intentionally used a  
 10 firearm in the commission of the offense, ~~under subsection (d)~~; the  
 11 court ~~may~~ **shall** sentence the person to an additional fixed term of  
 12 imprisonment of ~~between five (5) years and twenty (20)~~ **fifteen (15)**  
 13 years.  
 14           (h) If the jury (if the hearing is by jury) or the court (if the hearing  
 15 is to the court alone) finds that the state has proved beyond a  
 16 reasonable doubt that the person, while committing a felony or  
 17 misdemeanor under subsection (e), knowingly or intentionally:  
 18           (1) pointed a firearm; or  
 19           (2) discharged a firearm;  
 20 at an individual whom the person knew, or reasonably should have  
 21 known, was a police officer, the court may sentence the person to an  
 22 additional fixed term of imprisonment of ~~between five (5) and twenty~~  
 23 ~~(20) years~~.  
 24           (i) A person may not be sentenced under subsections (g) and (h) for  
 25 offenses, felonies, and misdemeanors comprising a single episode of  
 26 criminal conduct.  
 27           (f) **An additional fixed term of imprisonment imposed under this**  
 28 **section is nonsuspendible.**

