



February 23, 2018

---

---

# ENGROSSED SENATE BILL No. 64

---

DIGEST OF SB 64 (Updated February 21, 2018 2:19 pm - DI 84)

**Citations Affected:** IC 35-35; IC 35-38.

**Synopsis:** Sentence modification. Requires a court to advise a defendant, before accepting a guilty plea, that the court will be bound by terms of a plea agreement both at the time of sentencing and with respect to sentence modification. Provides that a court may not, without the consent of the prosecuting attorney, reduce the sentence of a person sentenced under a plea agreement if the reduction was not authorized by the plea agreement. Provides that the prohibition against including a waiver of the right to sentence modification in a plea agreement does not prohibit finding that a person has waived the right to have a court modify a sentence in a manner contrary to the plea agreement.

**Effective:** July 1, 2018.

---

---

## Young M

(HOUSE SPONSOR — WASHBURNE)

---

---

January 3, 2018, read first time and referred to Committee on Corrections and Criminal Law.

January 18, 2018, amended, reported favorably — Do Pass.

January 23, 2018, read second time, ordered engrossed. Engrossed.

January 25, 2018, read third time, passed. Yeas 40, nays 8.

### HOUSE ACTION

February 6, 2018, read first time and referred to Committee on Courts and Criminal Code.

February 22, 2018, reported — Do Pass.

---

---

ES 64—LS 6192/DI 106





February 23, 2018

Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 64

---

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 35-35-1-2, AS AMENDED BY P.L.114-2012,  
2 SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2018]: Sec. 2. (a) The court shall not accept a plea of guilty or  
4 guilty but mentally ill at the time of the crime without first determining  
5 that the defendant:  
6 (1) understands the nature of the charge against the defendant;  
7 (2) has been informed that by the defendant's plea the defendant  
8 waives the defendant's rights to:  
9 (A) a public and speedy trial by jury;  
10 (B) confront and cross-examine the witnesses against the  
11 defendant;  
12 (C) have compulsory process for obtaining witnesses in the  
13 defendant's favor; and  
14 (D) require the state to prove the defendant's guilt beyond a  
15 reasonable doubt at a trial at which the defendant may not be  
16 compelled to testify against himself or herself;  
17 (3) has been informed of the maximum possible sentence and

ES 64—LS 6192/DI 106



- 1 minimum sentence for the crime charged and any possible  
 2 increased sentence by reason of the fact of a prior conviction or  
 3 convictions, and any possibility of the imposition of consecutive  
 4 sentences;  
 5 (4) has been informed that the person will lose the right to possess  
 6 a firearm if the person is convicted of a crime of domestic  
 7 violence (IC 35-31.5-2-78); and  
 8 (5) has been informed that if:  
 9 (A) there is a plea agreement as defined by IC 35-31.5-2-236;  
 10 and  
 11 (B) the court accepts the plea;  
 12 the court is bound by the terms of the plea agreement **at the time**  
 13 **of sentencing and with respect to sentence modification under**  
 14 **IC 35-38-1-17.**  
 15 (b) A defendant in a misdemeanor case may waive the rights under  
 16 subsection (a) by signing a written waiver.  
 17 (c) Any variance from the requirements of this section that does not  
 18 violate a constitutional right of the defendant is not a basis for setting  
 19 aside a plea of guilty.  
 20 SECTION 2. IC 35-38-1-17, AS AMENDED BY P.L.13-2016,  
 21 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2018]: Sec. 17. (a) Notwithstanding IC 1-1-5.5-21, this section  
 23 applies to a person who:  
 24 (1) commits an offense; or  
 25 (2) is sentenced;  
 26 before July 1, 2014.  
 27 (b) This section does not apply to a credit restricted felon.  
 28 (c) Except as provided in subsections (k) and (m), this section does  
 29 not apply to a violent criminal.  
 30 (d) As used in this section, "violent criminal" means a person  
 31 convicted of any of the following offenses:  
 32 (1) Murder (IC 35-42-1-1).  
 33 (2) Attempted murder (IC 35-41-5-1).  
 34 (3) Voluntary manslaughter (IC 35-42-1-3).  
 35 (4) Involuntary manslaughter (IC 35-42-1-4).  
 36 (5) Reckless homicide (IC 35-42-1-5).  
 37 (6) Aggravated battery (IC 35-42-2-1.5).  
 38 (7) Kidnapping (IC 35-42-3-2).  
 39 (8) Rape (IC 35-42-4-1).  
 40 (9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).  
 41 (10) Child molesting (IC 35-42-4-3).  
 42 (11) Sexual misconduct with a minor as a Class A felony under



- 1 IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2)  
 2 (for a crime committed before July 1, 2014) or sexual misconduct  
 3 with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a  
 4 Level 2 felony under IC 35-42-4-9(b)(2) (for a crime committed  
 5 after June 30, 2014).
- 6 (12) Robbery as a Class A felony or a Class B felony  
 7 (IC 35-42-5-1) (for a crime committed before July 1, 2014) or  
 8 robbery as a Level 2 felony or a Level 3 felony (IC 35-42-5-1) (for  
 9 a crime committed after June 30, 2014).
- 10 (13) Burglary as Class A felony or a Class B felony  
 11 (IC 35-43-2-1) (for a crime committed before July 1, 2014) or  
 12 burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or  
 13 Level 4 felony (IC 35-43-2-1) (for a crime committed after June  
 14 30, 2014).
- 15 (14) Unlawful possession of a firearm by a serious violent felon  
 16 (IC 35-47-4-5).
- 17 (e) At any time after:
- 18 (1) a convicted person begins serving the person's sentence; and  
 19 (2) the court obtains a report from the department of correction  
 20 concerning the convicted person's conduct while imprisoned;  
 21 the court may reduce or suspend the sentence and impose a sentence  
 22 that the court was authorized to impose at the time of sentencing.  
 23 **However, if the convicted person was sentenced under the terms of**  
 24 **a plea agreement, the court may not, without the consent of the**  
 25 **prosecuting attorney, reduce or suspend the sentence and impose**  
 26 **a sentence not authorized by the plea agreement.** The court must  
 27 incorporate its reasons in the record.
- 28 (f) If the court sets a hearing on a petition under this section, the  
 29 court must give notice to the prosecuting attorney and the prosecuting  
 30 attorney must give notice to the victim (as defined in IC 35-31.5-2-348)  
 31 of the crime for which the convicted person is serving the sentence.
- 32 (g) The court may suspend a sentence for a felony under this section  
 33 only if suspension is permitted under IC 35-50-2-2.2.
- 34 (h) The court may deny a request to suspend or reduce a sentence  
 35 under this section without making written findings and conclusions.
- 36 (i) The court is not required to conduct a hearing before reducing or  
 37 suspending a sentence under this section if:
- 38 (1) the prosecuting attorney has filed with the court an agreement  
 39 of the reduction or suspension of the sentence; and  
 40 (2) the convicted person has filed with the court a waiver of the  
 41 right to be present when the order to reduce or suspend the  
 42 sentence is considered.



1 (j) This subsection applies only to a convicted person who is not a  
2 violent criminal. A convicted person who is not a violent criminal may  
3 file a petition for sentence modification under this section:

4 (1) not more than one (1) time in any three hundred sixty-five  
5 (365) day period; and

6 (2) a maximum of two (2) times during any consecutive period of  
7 incarceration;

8 without the consent of the prosecuting attorney.

9 (k) This subsection applies to a convicted person who is a violent  
10 criminal. A convicted person who is a violent criminal may, not later  
11 than three hundred sixty-five (365) days from the date of sentencing,  
12 file one (1) petition for sentence modification under this section  
13 without the consent of the prosecuting attorney. After the elapse of the  
14 three hundred sixty-five (365) day period, a violent criminal may not  
15 file a petition for sentence modification without the consent of the  
16 prosecuting attorney.

17 (l) A person may not waive the right to sentence modification under  
18 this section as part of a plea agreement. Any purported waiver of the  
19 right to sentence modification under this section in a plea agreement is  
20 invalid and unenforceable as against public policy. This subsection  
21 does not prohibit the finding of a waiver of the right to:

22 **(1) have a court modify a sentence and impose a sentence not**  
23 **authorized by the plea agreement, as described under**  
24 **subsection (e); or**

25 **(2) sentence modification for any other reason, including failure**  
26 **to comply with the provisions of this section.**

27 (m) Notwithstanding subsection (k), a person who commits an  
28 offense after June 30, 2014, and before May 15, 2015, may file one (1)  
29 petition for sentence modification without the consent of the  
30 prosecuting attorney, even if the person has previously filed a petition  
31 for sentence modification.



## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 64, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-35-1-2, AS AMENDED BY P.L.114-2012, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 2. (a) The court shall not accept a plea of guilty or guilty but mentally ill at the time of the crime without first determining that the defendant:

- (1) understands the nature of the charge against the defendant;
- (2) has been informed that by the defendant's plea the defendant waives the defendant's rights to:

- (A) a public and speedy trial by jury;
- (B) confront and cross-examine the witnesses against the defendant;
- (C) have compulsory process for obtaining witnesses in the defendant's favor; and
- (D) require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant may not be compelled to testify against himself or herself;

- (3) has been informed of the maximum possible sentence and minimum sentence for the crime charged and any possible increased sentence by reason of the fact of a prior conviction or convictions, and any possibility of the imposition of consecutive sentences;

- (4) has been informed that the person will lose the right to possess a firearm if the person is convicted of a crime of domestic violence (IC 35-31.5-2-78); and

- (5) has been informed that if:

- (A) there is a plea agreement as defined by IC 35-31.5-2-236; and
- (B) the court accepts the plea;

the court is bound by the terms of the plea agreement **at the time of sentencing and with respect to sentence modification under IC 35-38-1-17.**

(b) A defendant in a misdemeanor case may waive the rights under subsection (a) by signing a written waiver.



(c) Any variance from the requirements of this section that does not violate a constitutional right of the defendant is not a basis for setting aside a plea of guilty."

Page 3, line 27, after "to" insert ":

**(1) have a court modify a sentence and impose a sentence not authorized by the plea agreement, as described under subsection (e); or**

**(2)".**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 64 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 7, Nays 0.

---

#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 64, 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 SB 64 as printed January 19, 2018.)

WASHBURN

Committee Vote: Yeas 10, Nays 0

