

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.

SENATE ENROLLED ACT No. 64

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

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;

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(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.

SECTION 2. IC 35-38-1-17, AS AMENDED BY P.L.13-2016, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 17. (a) Notwithstanding IC 1-1-5.5-21, this section applies to a person who:

(1) commits an offense; or

(2) is sentenced;

before July 1, 2014.

(b) This section does not apply to a credit restricted felon.

(c) Except as provided in subsections (k) and (m), this section does not apply to a violent criminal.

(d) As used in this section, "violent criminal" means a person convicted of any of the following offenses:

(1) Murder (IC 35-42-1-1).

(2) Attempted murder (IC 35-41-5-1).

(3) Voluntary manslaughter (IC 35-42-1-3).

(4) Involuntary manslaughter (IC 35-42-1-4).

(5) Reckless homicide (IC 35-42-1-5).

(6) Aggravated battery (IC 35-42-2-1.5).

(7) Kidnapping (IC 35-42-3-2).

(8) Rape (IC 35-42-4-1).

(9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).

(10) Child molesting (IC 35-42-4-3).

(11) Sexual misconduct with a minor as a Class A felony under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2) (for a crime committed before July 1, 2014) or sexual misconduct with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a Level 2 felony under IC 35-42-4-9(b)(2) (for a crime committed



after June 30, 2014).

(12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1) (for a crime committed before July 1, 2014) or robbery as a Level 2 felony or a Level 3 felony (IC 35-42-5-1) (for a crime committed after June 30, 2014).

(13) Burglary as Class A felony or a Class B felony (IC 35-43-2-1) (for a crime committed before July 1, 2014) or burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony (IC 35-43-2-1) (for a crime committed after June 30, 2014).

(14) Unlawful possession of a firearm by a serious violent felon (IC 35-47-4-5).

(e) At any time after:

- (1) a convicted person begins serving the person's sentence; and
- (2) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned;

the court may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing.

However, if the convicted person was sentenced under the terms of a plea agreement, the court may not, without the consent of the prosecuting attorney, reduce or suspend the sentence and impose a sentence not authorized by the plea agreement. The court must incorporate its reasons in the record.

(f) If the court sets a hearing on a petition under this section, the court must give notice to the prosecuting attorney and the prosecuting attorney must give notice to the victim (as defined in IC 35-31.5-2-348) of the crime for which the convicted person is serving the sentence.

(g) The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.2.

(h) The court may deny a request to suspend or reduce a sentence under this section without making written findings and conclusions.

(i) The court is not required to conduct a hearing before reducing or suspending a sentence under this section if:

- (1) the prosecuting attorney has filed with the court an agreement of the reduction or suspension of the sentence; and
- (2) the convicted person has filed with the court a waiver of the right to be present when the order to reduce or suspend the sentence is considered.

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

- (1) not more than one (1) time in any three hundred sixty-five



(365) day period; and

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

without the consent of the prosecuting attorney.

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

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

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

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

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



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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