



February 5, 2019

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## SENATE BILL No. 76

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DIGEST OF SB 76 (Updated January 31, 2019 3:04 pm - DI 133)

**Citations Affected:** IC 35-48; IC 35-50.

**Synopsis:** Controlled substances. Makes changes to the weight thresholds for certain controlled substance offenses. Makes Level 2 and Level 3 felonies nonsuspendible if the person has a prior unrelated felony conviction other than a felony conviction for a crime involving marijuana, hashish, hash oil, or salvia divinorum.

**Effective:** July 1, 2019.

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### Merritt

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January 3, 2019, read first time and referred to Committee on Rules and Legislative Procedure.

January 31, 2019, amended; reassigned to Committee on Corrections and Criminal Law.

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SB 76—LS 6149/DI 13





February 5, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## SENATE BILL No. 76

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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 35-48-4-1, AS AMENDED BY P.L.252-2017,  
2 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2019]: Sec. 1. (a) A person who:  
4 (1) knowingly or intentionally:  
5 (A) manufactures;  
6 (B) finances the manufacture of;  
7 (C) delivers; or  
8 (D) finances the delivery of;  
9 cocaine or a narcotic drug, pure or adulterated, classified in  
10 schedule I or II; or  
11 (2) possesses, with intent to:  
12 (A) manufacture;  
13 (B) finance the manufacture of;  
14 (C) deliver; or  
15 (D) finance the delivery of;  
16 cocaine or a narcotic drug, pure or adulterated, classified in  
17 schedule I or II;

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1 commits dealing in cocaine or a narcotic drug, a Level 5 felony, except  
2 as provided in subsections (b) through (e).

3 (b) A person may be convicted of an offense under subsection (a)(2)  
4 only if:

5 (1) there is evidence in addition to the weight of the drug that the  
6 person intended to manufacture, finance the manufacture of,  
7 deliver, or finance the delivery of the drug; or

8 (2) the amount of the drug involved is at least twenty-eight (28)  
9 grams.

10 (c) The offense is a Level 4 felony if:

11 (1) the amount of the drug involved is at least one (1) gram but  
12 less than ~~five (5)~~ **seven (7)** grams; **or**

13 (2) the amount of the drug involved is less than one (1) gram and  
14 an enhancing circumstance applies; **or**

15 ~~(3) the drug is heroin and the amount of heroin involved;~~  
16 ~~aggregated over a period of not more than ninety (90) days; is at~~  
17 ~~least three (3) grams but less than seven (7) grams.~~

18 (d) The offense is a Level 3 felony if:

19 (1) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
20 **grams but less than ten (10) twenty-eight (28) grams; or**

21 (2) the amount of the drug involved is at least one (1) gram but  
22 less than ~~five (5)~~ **seven (7)** grams and an enhancing circumstance  
23 applies;.

24 ~~(3) the drug is heroin and the amount of heroin involved;~~  
25 ~~aggregated over a period of not more than ninety (90) days; is at~~  
26 ~~least seven (7) grams but less than twelve (12) grams; or~~

27 ~~(4) the drug is heroin and:~~

28 ~~(A) the amount of heroin involved; aggregated over a period~~  
29 ~~of not more than ninety (90) days; is at least three (3) grams~~  
30 ~~but less than seven (7) grams; and~~

31 ~~(B) an enhancing circumstance applies.~~

32 (e) The offense is a Level 2 felony if:

33 (1) the amount of the drug involved is at least ~~ten (10)~~  
34 **twenty-eight (28) grams; or**

35 (2) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
36 **grams but less than ten (10) twenty-eight (28) grams and an**  
37 **enhancing circumstance applies;.**

38 ~~(3) the drug is heroin and the amount of heroin involved;~~  
39 ~~aggregated over a period of not more than ninety (90) days; is at~~  
40 ~~least twelve (12) grams; or~~

41 ~~(4) the drug is heroin and:~~

42 ~~(A) the amount of heroin involved; aggregated over a period~~



- 1           of not more than ninety (90) days; is at least seven (7) grams  
 2           but less than twelve (12) grams; and  
 3           ~~(B) an enhancing circumstance applies.~~  
 4           SECTION 2. IC 35-48-4-1.1, AS AMENDED BY P.L.252-2017,  
 5           SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6           JULY 1, 2019]: Sec. 1.1. (a) A person who:  
 7           (1) knowingly or intentionally:  
 8                (A) delivers; or  
 9                (B) finances the delivery of;  
 10           methamphetamine, pure or adulterated; or  
 11           (2) possesses, with intent to:  
 12                (A) deliver; or  
 13                (B) finance the delivery of;  
 14           methamphetamine, pure or adulterated;  
 15           commits dealing in methamphetamine, a Level 5 felony, except as  
 16           provided in subsections (b) through (e).  
 17           (b) A person may be convicted of an offense under subsection (a)(2)  
 18           only if:  
 19                (1) there is evidence in addition to the weight of the drug that the  
 20                person intended to deliver or finance the delivery of the drug; or  
 21                (2) the amount of the drug involved is at least twenty-eight (28)  
 22                grams.  
 23           (c) The offense is a Level 4 felony if:  
 24                (1) the amount of the drug involved is at least one (1) gram but  
 25                less than ~~five (5)~~ **seven (7)** grams; or  
 26                (2) the amount of the drug involved is less than one (1) gram and  
 27                an enhancing circumstance applies.  
 28           (d) The offense is a Level 3 felony if:  
 29                (1) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 30                grams but less than ~~ten (10)~~ **twenty-eight (28)** grams; or  
 31                (2) the amount of the drug involved is at least one (1) gram but  
 32                less than ~~five (5)~~ **seven (7)** grams and an enhancing circumstance  
 33                applies.  
 34           (e) The offense is a Level 2 felony if:  
 35                (1) the amount of the drug involved is at least ~~ten (10)~~  
 36                **twenty-eight (28)** grams; or  
 37                (2) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 38                grams but less than ~~ten (10)~~ **twenty-eight (28)** grams and an  
 39                enhancing circumstance applies.  
 40           SECTION 3. IC 35-48-4-1.2, AS ADDED BY P.L.252-2017,  
 41           SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42           JULY 1, 2019]: Sec. 1.2. (a) A person who knowingly or intentionally



1 manufactures or finances the manufacture of methamphetamine, pure  
 2 or adulterated, commits manufacturing methamphetamine, a Level 4  
 3 felony, except as provided in subsections (b) and (c).

4 (b) The offense is a Level 3 felony if:

5 (1) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 6 grams but less than ~~ten (10)~~ **twenty-eight (28)** grams; or

7 (2) the amount of the drug involved is at least one (1) gram but  
 8 less than ~~five (5)~~ **seven (7)** grams and an enhancing circumstance  
 9 applies.

10 (c) The offense is a Level 2 felony if:

11 (1) the amount of the drug involved is at least ~~ten (10)~~  
 12 **twenty-eight (28)** grams;

13 (2) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 14 grams but less than ~~ten (10)~~ **twenty-eight (28)** grams and an  
 15 enhancing circumstance applies;

16 (3) the manufacture of the drug results in serious bodily injury to  
 17 a person other than the manufacturer; or

18 (4) the manufacture of the drug results in the death of a person  
 19 other than the manufacturer.

20 SECTION 4. IC 35-48-4-2, AS AMENDED BY P.L.44-2016,  
 21 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2019]: Sec. 2. (a) A person who:

23 (1) knowingly or intentionally:

24 (A) manufactures;

25 (B) finances the manufacture of;

26 (C) delivers; or

27 (D) finances the delivery of;

28 a controlled substance, pure or adulterated, classified in schedule  
 29 I, II, or III, except marijuana, hash oil, hashish, salvia, or a  
 30 synthetic drug; or

31 (2) possesses, with intent to:

32 (A) manufacture;

33 (B) finance the manufacture of;

34 (C) deliver; or

35 (D) finance the delivery of;

36 a controlled substance, pure or adulterated, classified in schedule  
 37 I, II, or III, except marijuana, hash oil, hashish, salvia, or a  
 38 synthetic drug;

39 commits dealing in a schedule I, II, or III controlled substance, a Level  
 40 6 felony, except as provided in subsections (b) through (f).

41 (b) A person may be convicted of an offense under subsection (a)(2)  
 42 only if:

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- 1 (1) there is evidence in addition to the weight of the drug that the  
 2 person intended to manufacture, finance the manufacture of,  
 3 deliver, or finance the delivery of the drug; or  
 4 (2) the amount of the drug involved is at least twenty-eight (28)  
 5 grams.
- 6 (c) The offense is a Level 5 felony if:  
 7 (1) the amount of the drug involved is at least one (1) gram but  
 8 less than ~~five (5)~~ **seven (7)** grams; or  
 9 (2) the amount of the drug involved is less than one (1) gram and  
 10 an enhancing circumstance applies.
- 11 (d) The offense is a Level 4 felony if:  
 12 (1) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 13 grams but less than ~~ten (10)~~ **twenty-eight (28)** grams; or  
 14 (2) the amount of the drug involved is at least one (1) gram but  
 15 less than ~~five (5)~~ **seven (7)** grams and an enhancing circumstance  
 16 applies.
- 17 (e) The offense is a Level 3 felony if:  
 18 (1) the amount of the drug involved is at least ~~ten (10)~~  
 19 **twenty-eight (28)** grams; ~~but less than twenty-eight (28) grams;~~  
 20 or  
 21 (2) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 22 grams but less than ~~ten (10)~~ **twenty-eight (28)** grams and an  
 23 enhancing circumstance applies.
- 24 (f) The offense is a Level 2 felony if:  
 25 ~~(1) the amount of the drug involved is at least twenty-eight (28)~~  
 26 ~~grams; or~~  
 27 ~~(2) the amount of the drug involved is at least ten (10) grams but~~  
 28 ~~less than twenty-eight (28) grams and an enhancing circumstance~~  
 29 ~~applies.~~
- 30 SECTION 5. IC 35-48-4-3, AS AMENDED BY P.L.44-2016,  
 31 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 2019]: Sec. 3. (a) A person who:  
 33 (1) knowingly or intentionally:  
 34 (A) manufactures;  
 35 (B) finances the manufacture of;  
 36 (C) delivers; or  
 37 (D) finances the delivery of;  
 38 a controlled substance, pure or adulterated, classified in schedule  
 39 IV; or  
 40 (2) possesses, with intent to manufacture or deliver, a controlled  
 41 substance, pure or adulterated, classified in schedule IV;  
 42 commits dealing in a schedule IV controlled substance, a Class A



- 1 misdemeanor, except as provided in subsections (b) through (f).  
 2 (b) A person may be convicted of an offense under subsection (a)(2)  
 3 only if:  
 4 (1) there is evidence in addition to the weight of the drug that the  
 5 person intended to manufacture or deliver the controlled  
 6 substance; or  
 7 (2) the amount of the drug involved is at least twenty-eight (28)  
 8 grams.  
 9 (c) The offense is a Level 6 felony if:  
 10 (1) the amount of the drug involved is at least one (1) gram but  
 11 less than ~~five (5)~~ **seven (7)** grams; or  
 12 (2) the amount of the drug involved is less than one (1) gram and  
 13 an enhancing circumstance applies.  
 14 (d) The offense is a Level 5 felony if:  
 15 (1) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 16 grams but less than ~~ten (10)~~ **twenty-eight (28)** grams; or  
 17 (2) the amount of the drug involved is at least one (1) gram but  
 18 less than ~~five (5)~~ **seven (7)** grams and an enhancing circumstance  
 19 applies.  
 20 (e) The offense is a Level 4 felony if:  
 21 (1) the amount of the drug involved is at least ~~ten (10) grams but~~  
 22 ~~less than~~ twenty-eight (28) grams; or  
 23 (2) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 24 grams but less than ~~ten (10)~~ **twenty-eight (28)** grams and an  
 25 enhancing circumstance applies.  
 26 (f) The offense is a Level 3 felony if:  
 27 ~~(1) the amount of the drug involved is at least twenty-eight (28)~~  
 28 ~~grams; or~~  
 29 ~~(2) the amount of the drug involved is at least ten (10) grams but~~  
 30 ~~less than~~ twenty-eight (28) grams and an enhancing circumstance  
 31 applies.  
 32 SECTION 6. IC 35-48-4-4, AS AMENDED BY P.L.44-2016,  
 33 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2019]: Sec. 4. (a) A person who:  
 35 (1) knowingly or intentionally:  
 36 (A) manufactures;  
 37 (B) finances the manufacture of;  
 38 (C) delivers; or  
 39 (D) finances the delivery of;  
 40 a controlled substance, pure or adulterated, classified in schedule  
 41 V; or  
 42 (2) possesses, with intent to:





- 1 (A) manufacture;  
 2 (B) finance the manufacture of;  
 3 (C) deliver; or  
 4 (D) finance the delivery of;  
 5 a controlled substance, pure or adulterated, classified in schedule  
 6 V;  
 7 commits dealing in a schedule V controlled substance, a Class B  
 8 misdemeanor, except as provided in subsections (b) through (f).  
 9 (b) A person may be convicted of an offense under subsection (a)(2)  
 10 only if:  
 11 (1) there is evidence in addition to the weight of the drug that the  
 12 person intended to manufacture, finance the manufacture of,  
 13 deliver, or finance the delivery of the drug; or  
 14 (2) the amount of the drug involved is at least twenty-eight (28)  
 15 grams.  
 16 (c) The offense is a Class A misdemeanor if:  
 17 (1) the amount of the drug involved is at least one (1) gram but  
 18 less than ~~five (5)~~ **seven (7)** grams; or  
 19 (2) the amount of the drug involved is less than one (1) gram and  
 20 an enhancing circumstance applies.  
 21 (d) The offense is a Level 6 felony if:  
 22 (1) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 23 grams but less than ~~ten (10)~~ **twenty-eight (28)** grams; or  
 24 (2) the amount of the drug involved is at least one (1) gram but  
 25 less than ~~five (5)~~ **seven (7)** grams and an enhancing circumstance  
 26 applies.  
 27 (e) The offense is a Level 5 felony if:  
 28 (1) the amount of the drug involved is at least ~~ten (10)~~ **grams but**  
 29 ~~less than~~ **twenty-eight (28)** grams; or  
 30 (2) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 31 grams but less than ~~ten (10)~~ **twenty-eight (28)** grams and an  
 32 enhancing circumstance applies.  
 33 (f) The offense is a Level 4 felony if:  
 34 (1) the amount of the drug involved is at least ~~twenty-eight (28)~~  
 35 ~~grams; or~~  
 36 (2) ~~the amount of the drug involved is at least ten (10) grams but~~  
 37 ~~less than~~ **twenty-eight (28)** grams and an enhancing circumstance  
 38 applies.  
 39 SECTION 7. IC 35-48-4-6, AS AMENDED BY P.L.168-2014,  
 40 SECTION 98, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 41 JULY 1, 2019]: Sec. 6. (a) A person who, without a valid prescription  
 42 or order of a practitioner acting in the course of the practitioner's



1 professional practice, knowingly or intentionally possesses cocaine  
 2 (pure or adulterated) or a narcotic drug (pure or adulterated) classified  
 3 in schedule I or II, commits possession of cocaine or a narcotic drug,  
 4 a Level 6 felony, except as provided in subsections (b) through (d).

5 (b) The offense is a Level 5 felony if:

6 (1) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 7 but less than ~~ten (10)~~ **twenty-eight (28)** grams; or

8 (2) the amount of the drug involved is less than ~~five (5)~~ **seven (7)**  
 9 grams and an enhancing circumstance applies.

10 (c) The offense is a Level 4 felony if:

11 (1) the amount of the drug involved is at least ~~ten (10)~~ **but less**  
 12 **than** twenty-eight (28) grams; or

13 (2) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 14 but less than ~~ten (10)~~ **twenty-eight (28)** grams and an enhancing  
 15 circumstance applies.

16 (d) The offense is a Level 3 felony if:

17 ~~(1) the amount of the drug involved is at least twenty-eight (28)~~  
 18 ~~grams; or~~

19 ~~(2) the amount of the drug involved is at least ten (10) but less~~  
 20 ~~than~~ twenty-eight (28) grams and an enhancing circumstance  
 21 applies.

22 SECTION 8. IC 35-48-4-6.1, AS AMENDED BY P.L.226-2014(ts),  
 23 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2019]: Sec. 6.1. (a) A person who, without a valid prescription  
 25 or order of a practitioner acting in the course of the practitioner's  
 26 professional practice, knowingly or intentionally possesses  
 27 methamphetamine (pure or adulterated) commits possession of  
 28 methamphetamine, a Level 6 felony, except as provided in subsections  
 29 (b) through (d).

30 (b) The offense is a Level 5 felony if:

31 (1) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 32 but less than ~~ten (10)~~ **twenty-eight (28)** grams; or

33 (2) the amount of the drug involved is less than ~~five (5)~~ **seven (7)**  
 34 grams and an enhancing circumstance applies.

35 (c) The offense is a Level 4 felony if:

36 (1) the amount of the drug involved is at least ~~ten (10)~~ **but less**  
 37 **than** twenty-eight (28) grams; or

38 (2) the amount of the drug involved is at least ~~five (5)~~ **seven (7)**  
 39 but less than ~~ten (10)~~ **twenty-eight (28)** grams and an enhancing  
 40 circumstance applies.

41 (d) The offense is a Level 3 felony if:

42 ~~(1) the amount of the drug involved is at least twenty-eight (28)~~



1           grams; or  
 2           (2) the amount of the drug involved is at least ten (10) but less  
 3           than twenty-eight (28) grams and an enhancing circumstance  
 4           applies.

5           SECTION 9. IC 35-50-2-2.2, AS AMENDED BY P.L.252-2017,  
 6           SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7           JULY 1, 2019]: Sec. 2.2. (a) Except as provided in subsection (b) or  
 8           (c), ~~(d)~~; ~~or (e)~~; the court may suspend any part of a sentence for a  
 9           felony.

10          (b) ~~Except as provided in subsection (d)~~; If a person is convicted of  
 11          a Level 2 felony or a Level 3 felony, ~~except a Level 2 felony or a Level~~  
 12          3 ~~felony concerning a controlled substance under IC 35-48-4~~, and has  
 13          any prior unrelated felony conviction, **other than a conviction for a**  
 14          **felony involving marijuana, hashish, hash oil, or salvia divinorum**,  
 15          the court may suspend only that part of a sentence that is in excess of  
 16          the minimum sentence for the:

17               (1) Level 2 felony; or  
 18               (2) Level 3 felony.

19          ~~(c) If:~~

20               (1) a person has a prior unrelated felony conviction in any  
 21               jurisdiction for dealing in a controlled substance that is not  
 22               marijuana, hashish, hash oil, salvia divinorum, or a synthetic  
 23               drug, including an attempt or conspiracy to commit the offense;  
 24               and  
 25               (2) the person is convicted of a Level 2 felony under  
 26               IC 35-48-4-1.1 or IC 35-48-4-1.2;

27          the court may suspend only that part of a sentence that is in excess of  
 28          the minimum sentence for the Level 2 felony:

29          ~~(d) If a person:~~

30               (1) is convicted of dealing in heroin as a Level 2 or Level 3 felony  
 31               under IC 35-48-4-1 or IC 35-48-4-2; and  
 32               (2) has a prior unrelated felony conviction;

33          the court may suspend only that part of a sentence that is in excess of  
 34          the minimum sentence for the Level 2 or Level 3 felony:

35          ~~(e) (c)~~ The court may suspend only that part of a sentence for  
 36          murder or a Level 1 felony conviction that is in excess of the minimum  
 37          sentence for murder or the Level 1 felony conviction.



COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 76, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Corrections and Criminal Law.

(Reference is to SB 76 as introduced.)

BRAY, Chairperson

