



January 15, 2015

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## SENATE BILL No. 92

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DIGEST OF SB 92 (Updated January 13, 2015 9:15 am - DI ck)

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

**Synopsis:** Deadly weapons. Specifies offenses that are eligible for a sentencing enhancement if a deadly weapon is possessed during the commission of certain offenses. Provides that a sentence may be enhanced when a deadly weapon is possessed during the commission of controlled substance offenses. Provides that sentencing enhancements for the possession of a deadly weapon during the commission of an offense may not be suspended. Provides that a person is a habitual felon if the state proves the person has been convicted of three prior unrelated felonies of any level.

**Effective:** July 1, 2015.

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### Schneider

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January 6, 2015, read first time and referred to Committee on Rules & Legislative Procedure.

January 14, 2015, amended; reassigned to Committee on Corrections & Criminal Law.

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SB 92—LS 6186/DI 13





January 15, 2015

First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE BILL No. 92

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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 35-50-2-8, AS AMENDED BY P.L.168-2014,  
2 SECTION 118, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) The state may seek to have a  
4 person sentenced as a habitual offender for a felony by alleging, on one  
5 (1) or more pages separate from the rest of the charging instrument,  
6 that the person has accumulated the required number of prior unrelated  
7 felony 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:

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- 1 (1) the person has been convicted of two (2) prior unrelated  
 2 felonies;  
 3 (2) at least one (1) of the prior unrelated felonies is not a Level 6  
 4 felony or a Class D felony; and  
 5 (3) if the person is alleged to have committed a prior unrelated:  
 6 (A) Level 5 felony;  
 7 (B) Level 6 felony;  
 8 (C) Class C felony; or  
 9 (D) Class D felony;  
 10 not more than ten (10) years have elapsed between the time the  
 11 person was released from imprisonment, probation, or parole  
 12 (whichever is latest) and the time the person committed the  
 13 current offense.
- 14 (d) A person convicted of a ~~Level 6~~ **Level 6 felony offense** is a habitual  
 15 offender if 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) and the time the person committed the  
 26 current offense.
- 27 (e) The state may not seek to have a person sentenced as a habitual  
 28 offender for a felony offense under this section if the current offense is  
 29 a misdemeanor that is enhanced to a felony in the same proceeding as  
 30 the habitual offender proceeding solely because the person had a prior  
 31 unrelated conviction. However, a prior unrelated felony conviction may  
 32 be used to support a habitual offender determination even if the  
 33 sentence for the prior unrelated offense was enhanced for any reason,  
 34 including an enhancement because the person had been convicted of  
 35 another offense.
- 36 (f) A person has accumulated two (2) or three (3) prior unrelated  
 37 felony convictions for purposes of this section only if:  
 38 (1) the second prior unrelated felony conviction was committed  
 39 after commission of and sentencing for the first prior unrelated  
 40 felony conviction;  
 41 (2) the offense for which the state seeks to have the person  
 42 sentenced as a habitual offender was committed after commission



- 1 of and sentencing for the second prior unrelated felony  
2 conviction; and  
3 (3) for a conviction requiring proof of three (3) prior unrelated  
4 felonies, the third prior unrelated felony conviction was  
5 committed after commission of and sentencing for the second  
6 prior unrelated felony conviction.
- 7 (g) A conviction does not count for purposes of this section as a  
8 prior unrelated felony conviction if:  
9 (1) the conviction has been set aside; or  
10 (2) the conviction is one for which the person has been pardoned.
- 11 (h) If the person was convicted of the felony in a jury trial, the jury  
12 shall reconvene for the sentencing hearing. If the trial was to the court  
13 or the judgment was entered on a guilty plea, the court alone shall  
14 conduct the sentencing hearing under IC 35-38-1-3. The role of the jury  
15 is to determine whether the defendant has been convicted of the  
16 unrelated felonies. The state or defendant may not conduct any  
17 additional interrogation or questioning of the jury during the habitual  
18 offender part of the trial.
- 19 (i) The court shall sentence a person found to be a habitual offender  
20 to an additional fixed term that is between:  
21 (1) six (6) years and twenty (20) years, for a person convicted of  
22 murder or a Level 1 through Level 4 felony; or  
23 (2) two (2) years and six (6) years, for a person convicted of a  
24 Level 5 or Level 6 felony.
- 25 An additional term imposed under this subsection is nonsuspendible.
- 26 (j) Habitual offender is a status that results in an enhanced sentence.  
27 It is not a separate crime and does not result in a consecutive sentence.  
28 The court shall attach the habitual offender enhancement to the felony  
29 conviction with the highest sentence imposed and specify which felony  
30 count is being enhanced. If the felony enhanced by the habitual  
31 offender determination is set aside or vacated, the court shall  
32 resentence the person and apply the habitual offender enhancement to  
33 the felony conviction with the next highest sentence in the underlying  
34 cause, if any.
- 35 (k) A prior unrelated felony conviction may not be collaterally  
36 attacked during a habitual offender proceeding unless the conviction  
37 is constitutionally invalid.
- 38 (l) The procedural safeguards that apply to other criminal charges,  
39 including:  
40 (1) the requirement that the charge be filed by information or  
41 indictment; and  
42 (2) the right to an initial hearing;



1 also apply to a habitual offender allegation.

2 SECTION 2. IC 35-50-2-11, AS AMENDED BY P.L.152-2014,  
3 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2015]: Sec. 11. (a) As used in this section, "~~firearm~~" "**deadly**  
5 **weapon**" has the meaning set forth in ~~IC 35-47-1-5~~: **IC 35-31.5-2-86.**

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 arson for hire (IC 35-43-1-1(b));**

10 (3) ~~criminal confinement as a Level 2 or Level 3 felony;~~ **burglary**  
11 **(IC 35-43-2-1);**

12 **(4) resisting law enforcement as a felony (35-44.1-3-1);**

13 **(5) escape (IC 35-44.1-3-4); or**

14 **(6) rioting (IC 35-45-1-2).**

15 (c) The state may seek, on a page separate from the rest of a  
16 charging instrument, to have a person who allegedly committed an  
17 offense sentenced to an additional fixed term of imprisonment if the  
18 state can show beyond a reasonable doubt that the person knowingly or  
19 intentionally ~~used~~ **possessed** a ~~firearm~~ **deadly weapon** in the  
20 commission of the offense.

21 (d) If the person was convicted of the offense in a jury trial, the jury  
22 shall reconvene to hear evidence in the enhancement hearing. If the  
23 trial was to the court, or the judgment was entered on a guilty plea, the  
24 court alone shall hear evidence in the enhancement hearing.

25 (e) If the jury (if the hearing is by jury) or the court (if the hearing  
26 is to the court alone) finds that the state has proved beyond a  
27 reasonable doubt that the person knowingly or intentionally ~~used~~  
28 **possessed** a ~~firearm~~ **deadly weapon** in the commission of the offense,  
29 the court may sentence the person to an additional fixed term of  
30 imprisonment of between five (5) years and twenty (20) years.

31 **(f) An additional term of imprisonment imposed under this**  
32 **section may not be suspended.**

33 SECTION 3. IC 35-50-2-13, AS AMENDED BY P.L.71-2005,  
34 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
35 JULY 1, 2015]: Sec. 13. (a) The state may seek, on a page separate  
36 from the rest of a charging instrument, to have a person who allegedly  
37 committed an offense of dealing in a controlled substance under  
38 IC 35-48-4-1 through IC 35-48-4-4 sentenced to an additional fixed  
39 term of imprisonment if the state can show beyond a reasonable doubt  
40 that the person knowingly or intentionally:

41 (1) ~~used~~ **possessed** a ~~firearm;~~ **deadly weapon;** or

42 (2) possessed a:



- 1 (A) handgun in violation of IC 35-47-2-1;  
2 (B) sawed-off shotgun in violation of IC 35-47-5-4.1; or  
3 (C) machine gun in violation of IC 35-47-5-8;  
4 while committing the offense.
- 5 (b) If the person was convicted of the offense in a jury trial, the jury  
6 shall reconvene to hear evidence in the enhancement hearing. If the  
7 trial was to the court, or the judgment was entered on a guilty plea, the  
8 court alone shall hear evidence in the enhancement hearing.
- 9 (c) If the jury (if the hearing is by jury) or the court (if the hearing  
10 is to the court alone) finds that the state has proved beyond a  
11 reasonable doubt that the person knowingly or intentionally committed  
12 an offense as described in subsection (a), the court may sentence the  
13 person to an additional fixed term of imprisonment of **not more than at**  
14 **least five (5) years and not more than twenty (20) years** except as  
15 follows:
- 16 (1) If the firearm is a sawed-off shotgun, the court may sentence  
17 the person to an additional fixed term of imprisonment of not  
18 more than ten (10) years.
- 19 (2) If the firearm is a machine gun or is equipped with a firearm  
20 silencer or firearm muffler, the court may sentence the person to  
21 an additional fixed term of imprisonment of not more than twenty  
22 (20) years. The additional sentence under this subdivision is in  
23 addition to any additional sentence imposed under section 11 of  
24 this chapter for use of a **firearm deadly weapon** in the  
25 commission of an offense.
- 26 **(d) An additional term of imprisonment imposed under this**  
27 **section may not be suspended.**



COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 92, 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 & Criminal Law.

(Reference is to SB 92 as introduced.)

LONG, Chairperson

