

## SENATE BILL No. 142

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-3-3; IC 35-46-9-6.

**Synopsis:** DOC commitments and motorboat OWI. Provides that a person convicted of a Level 6 felony may be committed to the department of correction (DOC) if the person has received an enhanced sentence for being a habitual vehicular substance offender. Provides that a person who operates a motorboat while intoxicated (motorboat OWI) shall receive an enhanced penalty if the person has a previous conviction under a repealed version of the crime.

**Effective:** July 1, 2016.

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## Young R Michael

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January 5, 2016, read first time and referred to Committee on Corrections & Criminal Law.

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Second Regular Session 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.

# SENATE BILL No. 142

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 35-38-3-3, AS AMENDED BY P.L.179-2015,  
2 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2016]: Sec. 3. (a) Except as provided by subsection (b), a  
4 person convicted of a misdemeanor may not be committed to the  
5 department of correction.  
6 (b) Upon a request from the sheriff, the commissioner may agree to  
7 accept custody of a misdemeanor:  
8 (1) if placement in the county jail:  
9 (A) places the inmate in danger of serious bodily injury or  
10 death; or  
11 (B) represents a substantial threat to the safety of others;  
12 (2) for other good cause shown; or  
13 (3) if a person has more than five hundred forty-seven (547) days  
14 remaining before the person's earliest release date as a result of:  
15 (A) consecutive misdemeanor sentences; or  
16 (B) a sentencing enhancement applied to a misdemeanor  
17 sentence.



1 (c) After June 30, 2014, and before January 1, 2016, a court may not  
2 commit a person convicted of a Level 6 felony to the department of  
3 correction if the person's earliest possible release date is less than  
4 ninety-one (91) days from the date of sentencing, unless the  
5 commitment is due to the person violating a condition of probation,  
6 parole, or community corrections by committing a new criminal  
7 offense.

8 (d) After December 31, 2015, a court may not commit a person  
9 convicted of a Level 6 felony to the department of correction, unless:

10 (1) the commitment is due to the person violating a condition of  
11 probation, parole, or community corrections by committing a new  
12 criminal offense; or

13 (2) the person: ~~is convicted of:~~

14 (A) **is convicted of** at least two (2) Level 6 felonies that are  
15 ordered to be served consecutively; ~~or~~

16 (B) **is convicted of** a Level 6 felony that is enhanced by an  
17 additional fixed term under IC 35-50-2-8 through  
18 IC 35-50-2-16; ~~or~~

19 (C) **has received an enhanced sentence under**  
20 **IC 9-30-15.5-2;**

21 and the person's earliest possible release date is more than three  
22 hundred sixty-five (365) days after the date of sentencing.

23 A person who may not be committed to the department of correction  
24 may be placed on probation, committed to the county jail, or placed in  
25 community corrections for assignment to an appropriate community  
26 corrections program.

27 (e) After June 30, 2014, and before January 1, 2016, a sheriff is  
28 entitled to a per diem and medical expense reimbursement as described  
29 in P.L.205-2013, SECTION 4 for the cost of incarcerating a person  
30 described in subsections (c) and (d) in a county jail. The sheriff is  
31 entitled to a per diem and medical expense reimbursement only for the  
32 time that the person described in subsections (c) and (d) is incarcerated  
33 in the county jail. The reimbursement:

34 (1) shall be reviewed by the budget committee; and

35 (2) is subject to approval by the budget agency.

36 (f) Subject to appropriation from the general assembly, a sheriff is  
37 entitled to a per diem and medical expense reimbursement from the  
38 department of correction for the cost of incarcerating a person  
39 described in subsections (c) and (d) in a county jail. The sheriff is  
40 entitled to a per diem and medical expense reimbursement only for the  
41 time that the person described in subsections (c) and (d) is incarcerated  
42 in the county jail.



1 SECTION 2. IC 35-46-9-6, AS AMENDED BY P.L.168-2014,  
 2 SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2016]: Sec. 6. (a) Except as provided in subsections (b) and  
 4 (c), a person who operates a motorboat while:

5 (1) having an alcohol concentration equivalent (as defined in  
 6 IC 9-13-2-2.4) to at least eight-hundredths (0.08) gram of alcohol  
 7 per:

8 (A) one hundred (100) milliliters of the person's blood; or

9 (B) two hundred ten (210) liters of the person's breath;

10 (2) having a controlled substance listed in schedule I or II of  
 11 IC 35-48-2 or its metabolite in the person's body; or

12 (3) intoxicated;

13 commits a Class C misdemeanor.

14 (b) The offense is a Level 6 felony if:

15 (1) the person has a previous conviction under:

16 (A) IC 14-1-5 (repealed);

17 **(B) IC 14-15-8-8 (repealed); or**

18 ~~(B)~~ **(C) this chapter; or**

19 (2) the offense results in serious bodily injury to another person.

20 (c) The offense is a Level 5 felony if the offense results in the death  
 21 of another person.

22 (d) It is a defense to a prosecution under subsection (a)(2) that the  
 23 accused person consumed the controlled substance under a valid  
 24 prescription or order of a practitioner (as defined in IC 35-48-1-24)  
 25 who acted in the course of the practitioner's professional practice.

