



March 27, 2015

**ENGROSSED
SENATE BILL No. 174**

DIGEST OF SB 174 (Updated March 25, 2015 5:12 pm - DI 69)

Citations Affected: IC 35-31.5; IC 35-38.

Synopsis: Sentence modification. Makes a person who commits an offense before July 1, 2014, eligible for sentence modification on the same terms as a person sentenced on or after that date. Provides that a violent criminal, as defined, may file one petition for sentence modification without the consent of the prosecuting attorney if the petition is filed within 365 days of sentencing. Allows a person who is not a violent criminal to file two petitions for sentence modification without the consent of the prosecuting attorney. Allows certain offenders who committed an offense after June 30, 2014, and before May 15, 2015, to file an additional petition.

Effective: Upon passage.

**Young R Michael, Steele, Randolph,
Merritt**

(HOUSE SPONSOR — FRIZZELL)

January 6, 2015, read first time and referred to Committee on Corrections & Criminal Law.
January 14, 2015, amended, reported favorably — Do Pass.
January 20, 2015, read second time, ordered engrossed. Engrossed.
January 29, 2015, returned to second reading.
February 3, 2015, re-read second time, amended, ordered engrossed.
February 4, 2015, re-engrossed.
February 5, 2015, returned to second reading; re-read second time.
February 9, 2015, amended, ordered engrossed.
February 10, 2015, re-engrossed. Read third time, passed. Yeas 46, nays 4.

HOUSE ACTION

March 2, 2015, read first time and referred to Committee on Courts and Criminal Code.
March 26, 2015, amended, reported — Do Pass.

ES 174—LS 6119/DI 106



March 27, 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.

ENGROSSED SENATE BILL No. 174

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 35-31.5-2-351.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 351.5. "Violent criminal", for**
4 **purposes of IC 35-38-1-17, has the meaning set forth in**
5 **IC 35-38-1-17.**
6 SECTION 2. IC 35-38-1-17, AS AMENDED BY P.L.168-2014,
7 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 UPON PASSAGE]: Sec. 17. (a) **Notwithstanding IC 1-1-5.5-21, this**
9 **section applies to a person who:**
10 (1) **commits an offense; or**
11 (2) **is sentenced;**
12 **before July 1, 2014.**
13 (b) This section does not apply to a credit restricted felon.
14 (c) **Except as provided in subsections (k) and (m), this section**
15 **does not apply to a violent criminal.**
16 (d) **As used in this section, "violent criminal" means a person**

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1 convicted of any of the following offenses:

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

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

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

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

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

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

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

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

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

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

13 (11) Sexual misconduct with a minor as a Level 1 felony under
14 IC 35-42-4-9(a)(2) or a Level 2 felony under
15 IC 35-42-4-9(b)(2).

16 (12) Robbery as a Level 2 felony or a Level 3 felony
17 (IC 35-42-5-1).

18 (13) Burglary as a Level 1 felony, Level 2 felony, Level 3
19 felony, or Level 4 felony (IC 35-43-2-1).

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

22 ~~(b)~~ (e) Not later than three hundred sixty-five (365) days At any
23 time after:

24 (1) a convicted person begins serving the person's sentence; and

25 (2) the court obtains a report from the department of correction
26 concerning the convicted person's conduct while imprisoned;

27 the court may reduce or suspend the sentence and impose a sentence
28 that the court was authorized to impose at the time of sentencing. The
29 court must incorporate its reasons in the record.

30 ~~(e)~~ (f) If more than three hundred sixty-five (365) days have elapsed
31 since the convicted person began serving the sentence, the court may
32 reduce or suspend the sentence and impose a sentence that the court
33 was authorized to impose at the time of sentencing. The court must
34 incorporate its reasons in the record.

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

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

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



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

3 (1) the prosecuting attorney has filed with the court an agreement
4 of the reduction or suspension of the sentence; and

5 (2) the convicted person has filed with the court a waiver of the
6 right to be present when the order to reduce or suspend the
7 sentence is considered.

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

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

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

16 **without the consent of the prosecuting attorney.**

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

25 ~~(i)~~ **(l)** A person may not waive the right to sentence modification
26 under this section as part of a plea agreement. Any purported waiver of
27 the right to sentence modification under this section in a plea
28 agreement is invalid and unenforceable as against public policy. This
29 subsection does not prohibit the finding of a waiver of the right to
30 sentence modification for any other reason, including failure to comply
31 with the provisions of this section.

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

37 SECTION 3. An emergency is declared for this act.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 174, 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, line 3, delete "JULY 1, 2015]:" and insert "UPON PASSAGE]:".

Page 2, after line 33, begin a new paragraph and insert:
"SECTION 2. **An emergency is declared for this act.**"

and when so amended that said bill do pass.

(Reference is to SB 174 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed SB 174, which is eligible for third reading, be returned to second reading for purposes of amendment.

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Senate Bill 174 be amended to read as follows:

Page 1, line 9, delete "a" and insert "a:
(1)".

Page 1, line 9, delete "felon." and insert "felon; or
(2) **person convicted of one (1) or more of the following offenses:**

- (A) **Murder (IC 35-42-1-1).**
- (B) **Attempted murder (IC 35-41-5-1).**
- (C) **Voluntary manslaughter (IC 35-42-1-3).**
- (D) **Involuntary manslaughter (IC 35-42-1-4).**
- (E) **Reckless homicide (IC 35-42-1-5).**



- (F) Aggravated battery (IC 35-42-2-1.5).
- (G) Kidnapping (IC 35-42-3-2).
- (H) Rape (IC 35-42-4-1).
- (I) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- (J) Child molesting (IC 35-42-4-3).
- (K) 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).
- (L) Robbery as a Level 2 felony or a Level 3 felony (IC 35-42-5-1).
- (M) Burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony (IC 35-43-2-1)."

(Reference is to SB 174 as printed January 15, 2015.)

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Engrossed SB 174, which is eligible for third reading, be returned to second reading for purposes of amendment.

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Senate Bill 174 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-31.5-2-351.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 351.5. "Violent criminal", for purposes of IC 35-38-1-17, has the meaning set forth in IC 35-38-1-17.**"

Page 1, line 7, delete "However, subsection (i) applies only to a".

Page 1, delete line 8.

Page 1, line 9, delete "a:" and insert "a".

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Page 1, line 10, delete "(1)".

Page 1, line 10, delete "felon;" and insert "felon."

Page 1, line 10, delete "or".

Page 1, run in lines 9 through 10.

Page 1, delete line 11, begin a new paragraph, and insert:

"(c) 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 Level 1 felony under IC 35-42-4-9(a)(2) or a Level 2 felony under IC 35-42-4-9(b)(2).

(12) Robbery as a Level 2 felony or a Level 3 felony (IC 35-42-5-1).

(13) Burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony (IC 35-43-2-1).

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

Page 1, delete lines 12 through 16.

Page 2, delete lines 1 through 14.

Page 2, line 15, delete "(c)" and insert "(d)".

Page 2, line 15, strike "Not later than three hundred sixty-five (365) days" and insert "**At any time**".

Page 2, line 22, delete "(d)".

Page 2, line 22, strike "If more than three hundred sixty-five (365) days have elapsed".

Page 2, strike lines 23 through 26.

Page 2, line 42, after "(i)" insert "**This subsection applies only to a convicted person who is not a violent criminal.**".

Page 2, line 42, after "person" insert "**who is not a violent criminal**".

Page 3, line 5, delete "incarceration." and insert "incarceration; **without the consent of the prosecuting attorney.**"



(j) This subsection applies to a convicted person who is a violent criminal. A convicted person who is a violent criminal may file a petition for sentence modification under this section not more than one (1) time without the consent of the prosecuting attorney."

Page 3, line 6, delete "(j)" and insert "(k)".

Page 3, between lines 12 and 13, begin a new paragraph and insert:

"(l) Notwithstanding subsection (j), a convicted person who committed 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."

Renumber all SECTIONS consecutively.

(Reference is to SB 174 as reprinted February 4, 2015.)

YOUNG R MICHAEL

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 174, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 13 and 14, begin a new paragraph and insert:

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

Page 1, line 14, delete "(c)" and insert "(d)".

Page 2, line 20, delete "(d)" and insert "(e)".

Page 2, line 33, delete "(e)" and insert "(f)".

Page 2, line 37, delete "(f)" and insert "(g)".

Page 2, line 39, delete "(g)" and insert "(h)".

Page 2, line 41, delete "(h)" and insert "(i)".

Page 3, line 6, delete "(i)" and insert "(j)".

Page 3, line 15, delete "(j)" and insert "(k)".

Page 3, line 16, delete "may file a" and insert "**may, not later than three hundred sixty-five (365) days from the date of sentencing, file one (1)**".

Page 3, line 17, delete "not more than" and insert "**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."

Page 3, delete line 18.

Page 3, line 19, delete "(k)" and insert "**(l)**".

Page 3, line 26, delete "(l)" and insert "**(m)**".

Page 3, line 26, delete "(j)," and insert "**(k),**".

Page 3, line 26, delete "convicted".

Page 3, line 27, delete "committed" and insert "**commits**".

and when so amended that said bill do pass.

(Reference is to SB 174 as reprinted February 10, 2015.)

WASHBURNE

Committee Vote: yeas 10, nays 0.

