

SENATE BILL No. 215

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-5-1-6.5; IC 35-38-1-7.1; IC 35-48-4-18.

Synopsis: Immunity for certain alcohol and drug offenses. Prohibits a law enforcement officer from taking a person into custody for certain controlled substance offenses if the officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that: (1) the officer has contact with the person because the person requested emergency medical assistance, or acted in concert with another person who requested emergency medical assistance, for an individual who reasonably appeared in need of medical assistance due to alcohol consumption or the use of a controlled substance; and (2) the person meets other requirements. Specifies that a person may not bring an action against a law enforcement officer based on the officer's compliance with or failure to comply with this prohibition. Provides that a person meeting these conditions is immune from criminal prosecution for certain alcohol offenses and offenses relating to controlled substances, and provides a mitigating circumstance for the sentencing of persons to whom the immunity does not apply if the person's arrest or prosecution was facilitated in part because the person requested emergency medical assistance for an individual in need of medical assistance due to the use of alcohol or a controlled substance.

Effective: July 1, 2014.

Stoops

January 9, 2014, read first time and referred to Committee on Corrections & Criminal Law.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 215

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 7.1-5-1-6.5, AS ADDED BY P.L.93-2012,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 6.5. (a) A law enforcement officer may not take
4 a person into custody based solely on the commission of an offense
5 involving alcohol **or a controlled substance** described in subsection
6 (b) if the law enforcement officer, after making a reasonable
7 determination and considering the facts and surrounding
8 circumstances, reasonably believes that all of the following apply:
9 (1) The law enforcement officer has contact with the person
10 because the person either:
11 (A) requested emergency medical assistance; or
12 (B) acted in concert with another person who requested
13 emergency medical assistance;
14 for an individual who reasonably appeared to be in need of
15 medical assistance due to alcohol consumption **or the use of a**
16 **controlled substance.**



- 1 (2) The person described in subdivision (1)(A) or (1)(B):
 2 (A) provided:
 3 (i) the person's full name; and
 4 (ii) any other relevant information requested by the law
 5 enforcement officer;
 6 (B) remained at the scene with the individual who reasonably
 7 appeared to be in need of medical assistance due to alcohol
 8 consumption **or the use of a controlled substance** until
 9 emergency medical assistance arrived; and
 10 (C) cooperated with emergency medical assistance personnel
 11 and law enforcement officers at the scene.
- 12 (b) A person who meets the criteria of subsection (a)(1) and (a)(2)
 13 is immune from criminal prosecution for an offense under:
 14 (1) section 3 of this chapter if the offense involved a state of
 15 intoxication caused by the person's use of alcohol **or a controlled**
 16 **substance**;
 17 (2) section 6 of this chapter if the offense involved the person
 18 being, or becoming, intoxicated as a result of the person's use of
 19 alcohol **or a controlled substance**; and
 20 (3) IC 7.1-5-7-7.
- 21 (c) A person may not initiate or maintain an action against a law
 22 enforcement officer based on the officer's compliance or failure to
 23 comply with this section.
- 24 SECTION 2. IC 35-38-1-7.1, AS AMENDED BY P.L.126-2012,
 25 SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2014]: Sec. 7.1. (a) In determining what sentence to impose
 27 for a crime, the court may consider the following aggravating
 28 circumstances:
 29 (1) The harm, injury, loss, or damage suffered by the victim of an
 30 offense was:
 31 (A) significant; and
 32 (B) greater than the elements necessary to prove the
 33 commission of the offense.
 34 (2) The person has a history of criminal or delinquent behavior.
 35 (3) The victim of the offense was less than twelve (12) years of
 36 age or at least sixty-five (65) years of age at the time the person
 37 committed the offense.
 38 (4) The person:
 39 (A) committed a crime of violence (IC 35-50-1-2); and
 40 (B) knowingly committed the offense in the presence or within
 41 hearing of an individual who:
 42 (i) was less than eighteen (18) years of age at the time the



- 1 person committed the offense; and
2 (ii) is not the victim of the offense.
- 3 (5) The person violated a protective order issued against the
4 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
5 IC 34-4-5.1 before their repeal), a workplace violence restraining
6 order issued against the person under IC 34-26-6, or a no contact
7 order issued against the person.
- 8 (6) The person has recently violated the conditions of any
9 probation, parole, pardon, community corrections placement, or
10 pretrial release granted to the person.
- 11 (7) The victim of the offense was:
12 (A) a person with a disability (as defined in IC 27-7-6-12), and
13 the defendant knew or should have known that the victim was
14 a person with a disability; or
15 (B) mentally or physically infirm.
- 16 (8) The person was in a position having care, custody, or control
17 of the victim of the offense.
- 18 (9) The injury to or death of the victim of the offense was the
19 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 20 (10) The person threatened to harm the victim of the offense or a
21 witness if the victim or witness told anyone about the offense.
- 22 (11) The person:
23 (A) committed trafficking with an inmate under
24 IC 35-44.1-3-5; and
25 (B) is an employee of the penal facility.
- 26 (b) The court may consider the following factors as mitigating
27 circumstances or as favoring suspending the sentence and imposing
28 probation:
29 (1) The crime neither caused nor threatened serious harm to
30 persons or property, or the person did not contemplate that it
31 would do so.
32 (2) The crime was the result of circumstances unlikely to recur.
33 (3) The victim of the crime induced or facilitated the offense.
34 (4) There are substantial grounds tending to excuse or justify the
35 crime, though failing to establish a defense.
36 (5) The person acted under strong provocation.
37 (6) The person has no history of delinquency or criminal activity,
38 or the person has led a law-abiding life for a substantial period
39 before commission of the crime.
40 (7) The person is likely to respond affirmatively to probation or
41 short term imprisonment.
42 (8) The character and attitudes of the person indicate that the



1 person is unlikely to commit another crime.

2 (9) The person has made or will make restitution to the victim of
3 the crime for the injury, damage, or loss sustained.

4 (10) Imprisonment of the person will result in undue hardship to
5 the person or the dependents of the person.

6 (11) The person was convicted of a crime involving the use of
7 force against a person who had repeatedly inflicted physical or
8 sexual abuse upon the convicted person and evidence shows that
9 the convicted person suffered from the effects of battery as a
10 result of the past course of conduct of the individual who is the
11 victim of the crime for which the person was convicted.

12 **(12) The person was convicted of a crime relating to alcohol
13 or a controlled substance and the person's arrest or
14 prosecution was facilitated in part because the person:**

15 **(A) requested emergency medical assistance; or**

16 **(B) acted in concert with another person who requested
17 emergency medical assistance;**

18 **for an individual who reasonably appeared to be in need of
19 medical assistance due to the use of alcohol or a controlled
20 substance.**

21 (c) The criteria listed in subsections (a) and (b) do not limit the
22 matters that the court may consider in determining the sentence.

23 (d) A court may impose any sentence that is:

24 (1) authorized by statute; and

25 (2) permissible under the Constitution of the State of Indiana;
26 regardless of the presence or absence of aggravating circumstances or
27 mitigating circumstances.

28 SECTION 3. IC 35-48-4-18 IS ADDED TO THE INDIANA CODE
29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
30 1, 2014]: **Sec. 18. (a) A law enforcement officer may not take a
31 person into custody based solely on the commission of an offense
32 relating to a controlled substance described in subsection (b) or (c)
33 if the law enforcement officer, after making a reasonable
34 determination and considering the facts and surrounding
35 circumstances, reasonably believes that all the following apply:**

36 **(1) The law enforcement officer has contact with the person
37 because the person:**

38 **(A) requested emergency medical assistance; or**

39 **(B) acted in concert with another person who requested
40 emergency medical assistance;**

41 **for an individual who reasonably appeared to be in need of
42 medical assistance due to the use of alcohol or a controlled**



- 1 substance.
- 2 **(2) The person described in subdivision (1)(A) or (1)(B):**
- 3 **(A) provided:**
- 4 **(i) the person's full name; and**
- 5 **(ii) any other relevant information requested by the law**
- 6 **enforcement officer;**
- 7 **(B) remained at the scene with the individual who**
- 8 **reasonably appeared to be in need of medical assistance**
- 9 **due to the use of alcohol or a controlled substance until**
- 10 **emergency medical assistance arrived; and**
- 11 **(C) cooperated with emergency medical assistance**
- 12 **personnel and law enforcement officers at the scene.**
- 13 **(b) A person who meets the criteria of subsection (a)(1) and**
- 14 **(a)(2) is immune from criminal prosecution or an action to enforce**
- 15 **an infraction for the following offenses:**
- 16 **(1) Possession of cocaine or a narcotic drug classified in**
- 17 **schedule I or II as a Level 6 felony under section 6 of this**
- 18 **chapter.**
- 19 **(2) Possession of methamphetamine as a Level 6 felony under**
- 20 **section 6.1 of this chapter.**
- 21 **(3) Possession of a schedule I, II, III, or IV controlled**
- 22 **substance as a Class A misdemeanor under section 7 of this**
- 23 **chapter.**
- 24 **(4) Possession of paraphernalia under section 8.3 of this**
- 25 **chapter.**
- 26 **(5) Possession of marijuana, hash oil, hashish, or salvia as a**
- 27 **misdemeanor under section 11 of this chapter.**
- 28 **(6) Possession of a synthetic drug or synthetic drug lookalike**
- 29 **substance as an infraction or misdemeanor under section 11.5**
- 30 **of this chapter.**
- 31 **(7) Visiting a common nuisance under section 13 of this**
- 32 **chapter.**
- 33 **(8) Taking a minor or endangered adult to a location used for**
- 34 **the possession, manufacture, or sale of a controlled substance**
- 35 **under section 13.3 of this chapter.**
- 36 **(c) A person who is immune from prosecution or an action to**
- 37 **enforce an infraction under subsection (b) is also immune from**
- 38 **prosecution for a conspiracy or an attempt to commit the offense**
- 39 **or infraction.**
- 40 **(d) A person may not initiate or maintain an action against a**
- 41 **law enforcement officer based on the officer's compliance or**
- 42 **failure to comply with this section.**

