

SENATE BILL No. 336

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-2.

Synopsis: Sentencing. Makes Level 2 through Level 4 felonies nonsuspendible if the person has a prior unrelated felony conviction. Increases the maximum penalty for a Level 1 felony from 40 to 50 years. Makes the penalty for a Level 3 felony six to 20 years, with an advisory sentence of 12 years. (Under current law, the penalty is three to 16 years, with the advisory sentence being nine years.) Raises the minimum penalty for a Level 4 felony from two to four years, and increases the advisory sentence from six to eight years. Increases the maximum penalty for a Level 6 felony from two and one-half years to three years, and raises the advisory sentence from one year to one and one-half years. Makes conforming amendments.

Effective: July 1, 2018.

Merritt

January 4, 2018, read first time and referred to Committee on Corrections and Criminal Law.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 336

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 35-50-2-2.2, AS AMENDED BY P.L.252-2017,
2 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 2.2. (a) Except as provided in subsection (b) **or**
4 (c), ~~(d)~~; **or** ~~(e)~~; the court may suspend any part of a sentence for a
5 felony.

6 (b) ~~Except as provided in subsection (d)~~; If a person is convicted of
7 a Level 2 felony, ~~or~~ a Level 3 felony, **or a Level 4 felony except a**
8 **Level 2 felony or a Level 3 felony concerning a controlled substance**
9 **under IC 35-48-4**; and has any prior unrelated felony conviction, the
10 court may suspend only that part of a sentence that is in excess of the
11 minimum sentence for the:

- 12 (1) Level 2 felony; ~~or~~
- 13 (2) Level 3 felony; **or**
- 14 (3) Level 4 felony.

15 ~~(e)~~ **if:**
16 **(1) a person has a prior unrelated felony conviction in any**
17 **jurisdiction for dealing in a controlled substance that is not**



1 marijuana; hashish; hash oil; salvia divinorum; or a synthetic
 2 drug; including an attempt or conspiracy to commit the offense;
 3 and

4 (2) the person is convicted of a Level 2 felony under
 5 IC 35-48-4-1.1 or IC 35-48-4-1.2;

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

8 (d) If a person:

9 (1) is convicted of dealing in heroin as a Level 2 or Level 3 felony
 10 under IC 35-48-4-1 or IC 35-48-4-2; and

11 (2) has a prior unrelated felony conviction;

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

14 (e) (c) The court may suspend only that part of a sentence for
 15 murder or a Level 1 felony conviction that is in excess of the minimum
 16 sentence for murder or the Level 1 felony conviction.

17 SECTION 2. IC 35-50-2-4, AS AMENDED BY P.L.226-2014(ts),
 18 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2018]: Sec. 4. (a) A person who commits a Class A felony (for
 20 a crime committed before July 1, 2014) shall be imprisoned for a fixed
 21 term of between twenty (20) and fifty (50) years, with the advisory
 22 sentence being thirty (30) years. In addition, the person may be fined
 23 not more than ten thousand dollars (\$10,000).

24 (b) Except as provided in subsection (c); A person who commits a
 25 Level 1 felony (for a crime committed after June 30, 2014) shall be
 26 imprisoned for a fixed term of between twenty (20) and ~~forty (40)~~ fifty
 27 (50) years, with the advisory sentence being thirty (30) years. In
 28 addition, the person may be fined not more than ten thousand dollars
 29 (\$10,000).

30 (e) A person who commits a Level 1 felony child molesting offense
 31 described in:

32 (1) IC 35-31.5-2-72(1); or

33 (2) IC 35-31.5-2-72(2);

34 shall be imprisoned for a fixed term of between twenty (20) and fifty
 35 (50) years; with the advisory sentence being thirty (30) years. In
 36 addition; the person may be fined not more than ten thousand dollars
 37 (\$10,000):

38 SECTION 3. IC 35-50-2-5, AS AMENDED BY P.L.168-2014,
 39 SECTION 114, IS AMENDED TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2018]: Sec. 5. (a) A person who commits a
 41 Class B felony (for a crime committed before July 1, 2014) shall be
 42 imprisoned for a fixed term of between six (6) and twenty (20) years,



1 with the advisory sentence being ten (10) years. In addition, the person
2 may be fined not more than ten thousand dollars (\$10,000).

3 (b) A person who commits a Level 3 felony (for a crime committed
4 after June 30, 2014) shall be imprisoned for a fixed term of between
5 ~~three (3)~~ **six (6)** and ~~sixteen (16)~~ **twenty (20)** years, with the advisory
6 sentence being ~~nine (9)~~ **twelve (12)** years. In addition, the person may
7 be fined not more than ten thousand dollars (\$10,000).

8 SECTION 4. IC 35-50-2-5.5, AS AMENDED BY P.L.168-2014,
9 SECTION 115, IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2018]: Sec. 5.5. A person who commits a Level
11 4 felony shall be imprisoned for a fixed term of between ~~two (2)~~ **four**
12 **(4)** and twelve (12) years, with the advisory sentence being ~~six (6)~~
13 **eight (8)** years. In addition, the person may be fined not more than ten
14 thousand dollars (\$10,000).

15 SECTION 5. IC 35-50-2-7, AS AMENDED BY P.L.13-2016,
16 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2018]: Sec. 7. (a) A person who commits a Class D felony (for
18 a crime committed before July 1, 2014) shall be imprisoned for a fixed
19 term of between six (6) months and three (3) years, with the advisory
20 sentence being one and one-half (1 1/2) years. In addition, the person
21 may be fined not more than ten thousand dollars (\$10,000).

22 (b) A person who commits a Level 6 felony (for a crime committed
23 after June 30, 2014) shall be imprisoned for a fixed term of between six
24 (6) months and ~~two and one-half (2 1/2)~~ **three (3)** years, with the
25 advisory sentence being ~~one (1) year~~ **one and one-half (1 1/2) years**.
26 In addition, the person may be fined not more than ten thousand dollars
27 (\$10,000).

28 (c) Notwithstanding subsections (a) and (b), if a person has
29 committed a Class D felony (for a crime committed before July 1,
30 2014) or a Level 6 felony (for a crime committed after June 30, 2014),
31 the court may enter judgment of conviction of a Class A misdemeanor
32 and sentence accordingly. However, the court shall enter a judgment of
33 conviction of a Class D felony (for a crime committed before July 1,
34 2014) or a Level 6 felony (for a crime committed after June 30, 2014)
35 if:

36 (1) the court finds that:

37 (A) the person has committed a prior, unrelated felony for
38 which judgment was entered as a conviction of a Class A
39 misdemeanor; and

40 (B) the prior felony was committed less than three (3) years
41 before the second felony was committed;

42 (2) the offense is domestic battery as a Class D felony (for a crime



- 1 committed before July 1, 2014) or a Level 6 felony (for a crime
 2 committed after June 30, 2014) under IC 35-42-2-1.3; or
 3 (3) the offense is possession of child pornography
 4 (IC 35-42-4-4(d)).
- 5 The court shall enter in the record, in detail, the reason for its action
 6 whenever it exercises the power to enter judgment of conviction of a
 7 Class A misdemeanor granted in this subsection.
- 8 (d) Notwithstanding subsections (a) and (b), the sentencing court
 9 may convert a Class D felony conviction (for a crime committed before
 10 July 1, 2014) or a Level 6 felony conviction (for a crime committed
 11 after June 30, 2014) to a Class A misdemeanor conviction if, after
 12 receiving a verified petition as described in subsection (e) and after
 13 conducting a hearing of which the prosecuting attorney has been
 14 notified, the court makes the following findings:
- 15 (1) The person is not a sex or violent offender (as defined in
 16 IC 11-8-8-5).
- 17 (2) The person was not convicted of a Class D felony (for a crime
 18 committed before July 1, 2014) or a Level 6 felony (for a crime
 19 committed after June 30, 2014) that resulted in bodily injury to
 20 another person.
- 21 (3) The person has not been convicted of perjury under
 22 IC 35-44.1-2-1 (or IC 35-44-2-1 before its repeal) or official
 23 misconduct under IC 35-44.1-1-1 (or IC 35-44-1-2 before its
 24 repeal).
- 25 (4) At least three (3) years have passed since the person:
 26 (A) completed the person's sentence; and
 27 (B) satisfied any other obligation imposed on the person as
 28 part of the sentence;
 29 for the Class D or Level 6 felony.
- 30 (5) The person has not been convicted of a felony since the
 31 person:
 32 (A) completed the person's sentence; and
 33 (B) satisfied any other obligation imposed on the person as
 34 part of the sentence;
 35 for the Class D or Level 6 felony.
- 36 (6) No criminal charges are pending against the person.
- 37 (e) A petition filed under subsection (d) or (f) must be verified and
 38 set forth:
- 39 (1) the crime the person has been convicted of;
 40 (2) the date of the conviction;
 41 (3) the date the person completed the person's sentence;
 42 (4) any obligations imposed on the person as part of the sentence;



- 1 (5) the date the obligations were satisfied; and
2 (6) a verified statement that there are no criminal charges pending
3 against the person.
4 (f) If a person whose Class D or Level 6 felony conviction has been
5 converted to a Class A misdemeanor conviction under subsection (d)
6 is convicted of a felony not later than five (5) years after the conversion
7 under subsection (d), a prosecuting attorney may petition a court to
8 convert the person's Class A misdemeanor conviction back to a Class
9 D felony conviction (for a crime committed before July 1, 2014) or a
10 Level 6 felony conviction (for a crime committed after June 30, 2014).

