



January 24, 2020

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## HOUSE BILL No. 1132

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DIGEST OF HB 1132 (Updated January 22, 2020 5:32 pm - DI 131)

**Citations Affected:** IC 35-41; IC 35-47; IC 35-50.

**Synopsis:** Criminal law matters. Provides that the alteration or obliteration of certain markings on a firearm is a Level 5 felony. Provides that the possession of a firearm with altered or obliterated markings is a Level 5 felony. Requires a defendant to serve the sum of all executed time imposed under consecutive sentences before serving any suspended part imposed under consecutive sentences. Makes a technical correction. Makes conforming amendments.

**Effective:** July 1, 2020.

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## Steuerwald, McNamara, Hatfield

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January 8, 2020, read first time and referred to Committee on Courts and Criminal Code.  
January 23, 2020, amended, reported — Do Pass.

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HB 1132—LS 6855/DI 123





January 24, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

## HOUSE BILL No. 1132

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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 35-41-3-3 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. (a) A person other  
3 than a law enforcement officer is justified in using reasonable force  
4 against another person to effect an arrest or prevent the other person's  
5 escape if:  
6 (1) a felony has been committed; and  
7 (2) there is probable cause to believe the other person committed  
8 that felony.  
9 However, such a person is not justified in using deadly force unless that  
10 force is justified under section 2 of this chapter.  
11 (b) A law enforcement officer is justified in using reasonable force  
12 if the officer reasonably believes that the force is necessary to effect a  
13 lawful arrest. However, an officer is justified in using deadly force only  
14 if the officer:  
15 (1) has probable cause to believe that that deadly force is  
16 necessary:  
17 (A) to prevent the commission of a forcible felony; or

HB 1132—LS 6855/DI 123



- 1 (B) to effect an arrest of a person who the officer has probable  
 2 cause to believe poses a threat of serious bodily injury to the  
 3 officer or a third person; and  
 4 (2) has given a warning, if feasible, to the person against whom  
 5 the deadly force is to be used.
- 6 (c) A law enforcement officer making an arrest under an invalid  
 7 warrant is justified in using force as if the warrant was valid, unless the  
 8 officer knows that the warrant is invalid.
- 9 (d) A law enforcement officer who has an arrested person in custody  
 10 is justified in using the same force to prevent the escape of the arrested  
 11 person from custody that the officer would be justified in using if the  
 12 officer was arresting that person. However, an officer is justified in  
 13 using deadly force only if the officer:  
 14 (1) has probable cause to believe that deadly force is necessary to  
 15 prevent the escape from custody of a person who the officer has  
 16 probable cause to believe poses a threat of serious bodily injury  
 17 to the officer or a third person; and  
 18 (2) has given a warning, if feasible, to the person against whom  
 19 the deadly force is to be used.
- 20 (e) A guard or other official in a penal facility or a law enforcement  
 21 officer is justified in using reasonable force, including deadly force, if  
 22 the officer has probable cause to believe that the force is necessary to  
 23 prevent the escape of a person who is detained in the penal facility.
- 24 (f) Notwithstanding subsection (b), (d), or (e), a law enforcement  
 25 officer who is a defendant in a criminal prosecution has the same right  
 26 as a person who is not a law enforcement officer to assert self-defense  
 27 under ~~IC 35-41-3-2~~. **section 2 of this chapter.**
- 28 SECTION 2. IC 35-41-3-9 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 9. (a) It is a defense  
 30 that:  
 31 (1) the prohibited conduct of the person was the product of a law  
 32 enforcement officer, or ~~his~~ **the officer's** agent, using persuasion  
 33 or other means likely to cause the person to engage in the  
 34 conduct; and  
 35 (2) the person was not predisposed to commit the offense.
- 36 (b) Conduct merely affording a person an opportunity to commit the  
 37 offense does not constitute entrapment.
- 38 SECTION 3. IC 35-47-2-18, AS AMENDED BY P.L.158-2013,  
 39 SECTION 582, IS AMENDED TO READ AS FOLLOWS  
 40 [EFFECTIVE JULY 1, 2020]: Sec. 18. (a) No person shall:  
 41 (1) change, alter, remove, or obliterate the name of the maker,  
 42 model, manufacturer's serial number, or other mark of



1 identification on any ~~handgun~~; **firearm**; or  
 2 (2) possess any ~~handgun~~ **firearm** on which the name of the  
 3 maker, model, manufacturer's serial number, or other mark of  
 4 identification has been changed, altered, removed, or obliterated;  
 5 except as provided by applicable United States statute.

6 (b) A person who knowingly or intentionally violates this section  
 7 commits a Level 5 felony.

8 SECTION 4. IC 35-47-14-3, AS AMENDED BY P.L.289-2019,  
 9 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 JULY 1, 2020]: Sec. 3. (a) If a law enforcement officer seizes a firearm  
 11 from an individual whom the law enforcement officer believes to be  
 12 dangerous without obtaining a warrant, the law enforcement officer  
 13 shall submit to the circuit or superior court having jurisdiction over the  
 14 individual believed to be dangerous an affidavit describing the basis for  
 15 the law enforcement officer's belief that the individual is dangerous.

16 (b) An affidavit described in subsection (a) shall:

17 **(1) set forth the quantity and type of each firearm seized from**  
 18 **the individual under this section; and**

19 **(2) be submitted to a circuit or superior court having jurisdiction**  
 20 **over the individual believed to be dangerous not later than**  
 21 **forty-eight (48) hours after the seizure of the firearm.**

22 (c) The court shall review the affidavit described in subsection (a)  
 23 as soon as possible.

24 (d) If the court finds that probable cause exists to believe that the  
 25 individual is dangerous, the court shall order the law enforcement  
 26 agency having custody of the firearm to retain the firearm.

27 ~~(e) A law enforcement agency responsible for the seizure of the~~  
 28 ~~firearm under this section shall file a search warrant return with the~~  
 29 ~~court setting forth the:~~

30 ~~(1) quantity; and~~

31 ~~(2) type;~~

32 ~~of each firearm seized from an individual under this section.~~

33 ~~(f) (e) If the court finds that there is no probable cause to believe~~  
 34 ~~that the individual is dangerous, the court shall order the law~~  
 35 ~~enforcement agency having custody of the firearm to return the firearm~~  
 36 ~~to the individual as quickly as practicable, but not later than five (5)~~  
 37 ~~days after the date of the order.~~

38 SECTION 5. IC 35-50-1-2, AS AMENDED BY P.L.184-2019,  
 39 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2020]: Sec. 2. (a) As used in this section, "crime of violence"  
 41 means the following:

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



- 1 (2) Attempted murder (IC 35-41-5-1).  
 2 (3) Voluntary manslaughter (IC 35-42-1-3).  
 3 (4) Involuntary manslaughter (IC 35-42-1-4).  
 4 (5) Reckless homicide (IC 35-42-1-5).  
 5 (6) Battery (IC 35-42-2-1) as a:  
 6 (A) Level 2 felony;  
 7 (B) Level 3 felony;  
 8 (C) Level 4 felony; or  
 9 (D) Level 5 felony.  
 10 (7) Aggravated battery (IC 35-42-2-1.5).  
 11 (8) Kidnapping (IC 35-42-3-2).  
 12 (9) Rape (IC 35-42-4-1).  
 13 (10) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).  
 14 (11) Child molesting (IC 35-42-4-3).  
 15 (12) Sexual misconduct with a minor as a Level 1 felony under  
 16 IC 35-42-4-9(a)(2) or a Level 2 felony under IC 35-42-4-9(b)(2).  
 17 (13) Robbery as a Level 2 felony or a Level 3 felony  
 18 (IC 35-42-5-1).  
 19 (14) Burglary as a Level 1 felony, Level 2 felony, Level 3 felony,  
 20 or Level 4 felony (IC 35-43-2-1).  
 21 (15) Operating a vehicle while intoxicated causing death or  
 22 catastrophic injury (IC 9-30-5-5).  
 23 (16) Operating a vehicle while intoxicated causing serious bodily  
 24 injury to another person (IC 9-30-5-4).  
 25 (17) Child exploitation as a Level 5 felony under IC 35-42-4-4(b)  
 26 or a Level 4 felony under IC 35-42-4-4(c).  
 27 (18) Resisting law enforcement as a felony (IC 35-44.1-3-1).  
 28 (19) Unlawful possession of a firearm by a serious violent felon  
 29 (IC 35-47-4-5).  
 30 (b) As used in this section, "episode of criminal conduct" means  
 31 offenses or a connected series of offenses that are closely related in  
 32 time, place, and circumstance.  
 33 (c) Except as provided in subsection (e) or (f), the court shall  
 34 determine whether terms of imprisonment shall be served concurrently  
 35 or consecutively. The court may consider the:  
 36 (1) aggravating circumstances in IC 35-38-1-7.1(a); and  
 37 (2) mitigating circumstances in IC 35-38-1-7.1(b);  
 38 in making a determination under this subsection. The court may order  
 39 terms of imprisonment to be served consecutively even if the sentences  
 40 are not imposed at the same time. However, except for crimes of  
 41 violence, the total of the consecutive terms of imprisonment, exclusive  
 42 of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10



1 (before its repeal) to which the defendant is sentenced for felony  
 2 convictions arising out of an episode of criminal conduct shall not  
 3 exceed the period described in subsection (d).

4 (d) Except as provided in subsection (c), the total of the consecutive  
 5 terms of imprisonment to which the defendant is sentenced for felony  
 6 convictions arising out of an episode of criminal conduct may not  
 7 exceed the following:

8 (1) If the most serious crime for which the defendant is sentenced  
 9 is a Level 6 felony, the total of the consecutive terms of  
 10 imprisonment may not exceed four (4) years.

11 (2) If the most serious crime for which the defendant is sentenced  
 12 is a Level 5 felony, the total of the consecutive terms of  
 13 imprisonment may not exceed seven (7) years.

14 (3) If the most serious crime for which the defendant is sentenced  
 15 is a Level 4 felony, the total of the consecutive terms of  
 16 imprisonment may not exceed fifteen (15) years.

17 (4) If the most serious crime for which the defendant is sentenced  
 18 is a Level 3 felony, the total of the consecutive terms of  
 19 imprisonment may not exceed twenty (20) years.

20 (5) If the most serious crime for which the defendant is sentenced  
 21 is a Level 2 felony, the total of the consecutive terms of  
 22 imprisonment may not exceed thirty-two (32) years.

23 (6) If the most serious crime for which the defendant is sentenced  
 24 is a Level 1 felony, the total of the consecutive terms of  
 25 imprisonment may not exceed forty-two (42) years.

26 (e) If, after being arrested for one (1) crime, a person commits  
 27 another crime:

28 (1) before the date the person is discharged from probation,  
 29 parole, or a term of imprisonment imposed for the first crime; or

30 (2) while the person is released:

31 (A) upon the person's own recognizance; or

32 (B) on bond;

33 the terms of imprisonment for the crimes shall be served consecutively,  
 34 regardless of the order in which the crimes are tried and sentences are  
 35 imposed.

36 (f) If the factfinder determines under IC 35-50-2-11 that a person  
 37 used a firearm in the commission of the offense for which the person  
 38 was convicted, the term of imprisonment for the underlying offense and  
 39 the additional term of imprisonment imposed under IC 35-50-2-11  
 40 must be served consecutively.

41 **(g) If the court imposes consecutive sentences and suspends part**  
 42 **of one (1) or all sentences, the defendant must serve the total of the**



1 **executed time imposed before serving any suspended part of the**  
 2 **sentences.**

3 SECTION 6. IC 35-50-2-2.2, AS AMENDED BY P.L.252-2017,  
 4 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5 JULY 1, 2020]: Sec. 2.2. (a) Except as provided in subsection (b), (c),  
 6 (d), or (e), the court may suspend any part of a sentence for a felony.

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

12 (1) Level 2 felony; or

13 (2) Level 3 felony.

14 (c) If:

15 (1) a person has a prior unrelated felony conviction in any  
 16 jurisdiction for dealing in a controlled substance that is not  
 17 marijuana, hashish, hash oil, salvia divinorum, or a synthetic  
 18 drug, including an attempt or conspiracy to commit the offense;  
 19 and

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

22 the court may suspend only that part of a sentence that is in excess of  
 23 the minimum sentence for the Level 2 felony.

24 (d) If a person:

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

27 (2) has a prior unrelated felony conviction;

28 the court may suspend only that part of a sentence that is in excess of  
 29 the minimum sentence for the Level 2 or Level 3 felony.

30 (e) The court may suspend only that part of a sentence for murder  
 31 or a Level 1 felony conviction that is in excess of the minimum  
 32 sentence for murder or the Level 1 felony conviction.

33 **(f) If the court imposes consecutive sentences and suspends part**  
 34 **of one (1) or all sentences, the defendant must serve the total of the**  
 35 **executed time imposed before serving any suspended part of the**  
 36 **sentences.**

37 SECTION 7. IC 35-50-2-14, AS AMENDED BY P.L.125-2009,  
 38 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2020]: Sec. 14. (a) As used in this section, "sex offense"  
 40 means a felony conviction:

41 (1) under IC 35-42-4-1 through IC 35-42-4-9 or under  
 42 IC 35-46-1-3;



- 1 (2) for an attempt or conspiracy to commit an offense described  
2 in subdivision (1); or  
3 (3) for an offense under the laws of another jurisdiction, including  
4 a military court, that is substantially similar to an offense  
5 described in subdivision (1).
- 6 (b) The state may seek to have a person sentenced as a repeat sexual  
7 offender for a sex offense described in subsection (a)(1) or (a)(2) by  
8 alleging, on a page separate from the rest of the charging instrument,  
9 that the person has accumulated one (1) prior unrelated felony  
10 conviction for a sex offense described in subsection (a).
- 11 (c) After a person has been convicted and sentenced for a felony  
12 described in subsection ~~(a)(1) or (a)(2) after having been sentenced for~~  
13 ~~a prior unrelated sex offense described in subsection (a)~~, the person has  
14 accumulated one (1) prior unrelated felony sex offense conviction.  
15 However, a conviction does not count for purposes of this subsection,  
16 if:
- 17 (1) it has been set aside; or  
18 (2) it is a conviction for which the person has been pardoned.
- 19 (d) If the person was convicted of the sex offense in a jury trial, the  
20 jury shall reconvene to hear evidence in the enhancement hearing. If  
21 the trial was to the court, or the judgment was entered on a guilty plea,  
22 the court alone shall hear evidence in the enhancement hearing.
- 23 (e) A person is a repeat sexual offender if the jury (if the hearing is  
24 by jury) or the court (if the hearing is to the court alone) finds that the  
25 state has proved beyond a reasonable doubt that the person had  
26 accumulated one (1) prior unrelated felony sex offense conviction.
- 27 (f) The court may sentence a person found to be a repeat sexual  
28 offender to an additional fixed term that is the advisory sentence for the  
29 underlying offense. However, the additional sentence may not exceed  
30 ten (10) years.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1132, 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, delete lines 1 through 17.

Delete pages 2 through 4.

Page 5, delete lines 1 through 23.

Page 6, delete lines 26 through 42.

Page 7, delete lines 1 through 13.

Page 7, delete lines 24 through 42.

Delete pages 8 through 9.

Page 10, delete lines 1 through 27.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1132 as introduced.)

MCNAMARA

Committee Vote: yeas 11, nays 0.

