

## **IC 35-50-2**

### Chapter 2. Death Sentence and Sentences for Felonies and Habitual Offenders

#### **IC 35-50-2-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The following amendments to this chapter apply as follows:

- (1) The amendments described in section 0.2 of this chapter apply as described in section 0.2 of this chapter.
- (2) The amendments made to sections 3 and 9 of this chapter by P.L.332-1987 do not apply to a case in which a death sentence has been imposed before September 1, 1987.
- (3) The amendments made to section 9 of this chapter by P.L.296-1989 do not apply to an offense that is committed before July 1, 1989.
- (4) The amendments made to section 2 of this chapter by P.L.214-1991 apply only to crimes committed after June 30, 1991.
- (5) The amendments made to sections 3 and 9 of this chapter by P.L.250-1993 apply only to murders committed after June 30, 1993.
- (6) The amendments made to section 2 of this chapter by P.L.11-1994 apply only to an offender (as defined in IC 5-2-12-4, as added by P.L.11-1994 and before its repeal) convicted after June 30, 1994.
- (7) The addition of section 13 of this chapter by P.L.148-1995 applies to offenses committed after June 30, 1995.
- (8) The amendments made to section 11 of this chapter by P.L.203-1996 apply to offenses committed after June 30, 1996.
- (9) The amendments made to section 9 of this chapter by P.L.228-1996 apply to crimes committed after June 30, 1996.
- (10) The amendments made to section 9 of this chapter by P.L.261-1997 apply to offenses committed after June 30, 1997.
- (11) The amendments made to section 2 of this chapter by P.L.17-2001 apply only to offenses committed after June 30, 2001.
- (12) The amendments made to section 8 of this chapter by P.L.166-2001 apply only if the offense for which the state seeks to have the person sentenced as a habitual offender was committed after June 30, 2001.
- (13) The amendments made to section 1 of this chapter by P.L.243-2001 apply to crimes committed on and after May 11, 2001. It is the intent of the general assembly that section 1 of this chapter, as it applies to crimes committed before May 11, 2001, be construed without drawing any inference from the passage of P.L.243-2001.
- (14) The amendments made to section 8(b)(3) of this chapter by P.L.291-2001 apply only if the last offense for which the state seeks to have the person sentenced as a habitual offender was

committed after June 30, 2001.

(15) The amendments made to section 10 of this chapter by P.L.291-2001 apply only if the last offense for which the state seeks to have the person sentenced as a habitual substance offender was committed after June 30, 2001. However, a prior unrelated conviction committed before, on, or after July 1, 2001, may be used to qualify an offender as a habitual offender under section 8 of this chapter or as a habitual substance offender under section 10 of this chapter.

(16) The amendments made to section 1 of this chapter by P.L.291-2001 apply to crimes committed on and after May 11, 2001. It is the intent of the general assembly that section 1 of this chapter, as it applies to crimes committed before May 11, 2001, be construed without drawing any inference from the passage of P.L.291-2001.

(17) The amendments made to section 9 of this chapter by P.L.80-2002 apply only to a conviction for murder that occurs after March 20, 2002, including a conviction entered as a result of a retrial of a person, regardless of when the offense occurred.

(18) The amendments made to section 8.5 of this chapter by P.L.53-2005 apply only to offenses committed after June 30, 2005.

(19) The addition of section 16 of this chapter by P.L.40-2009 applies only to a crime committed after June 30, 2009.

(20) The amendments made to section 14 of this chapter by P.L.125-2009 apply only to crimes committed after June 30, 2009.

*As added by P.L.220-2011, SEC.634.*

### **IC 35-50-2-0.2**

#### **Effect of addition of section 7.1 of chapter and amendment of chapter by P.L.328-1985**

Sec. 0.2. (a) The addition of section 7.1 of this chapter (before its repeal) and the amendment of section 8 of this chapter by P.L.328-1985 do not affect any:

- (1) rights or liabilities accrued;
- (2) penalties incurred; or
- (3) proceedings begun;

before September 1, 1985. The rights, liabilities, and proceedings are continued and punishments, penalties, or forfeitures shall be imposed and enforced under section 8 of this chapter as if P.L.328-1985 had not been enacted.

(b) If all the felonies relied upon for sentencing a person as a habitual offender under section 8 of this chapter are felonies that were committed before September 1, 1985, the felonies shall be prosecuted and remain punishable under section 8 of this chapter as if P.L.328-1985 had not been enacted.

*As added by P.L.220-2011, SEC.635.*

### **IC 35-50-2-0.3**

### **Content of juvenile record**

Sec. 0.3. For purposes of section 2.1 of this chapter, as added by P.L.284-1985, the juvenile record includes only those adjudications of delinquency after May 31, 1985.

*As added by P.L.220-2011, SEC.636.*

### **IC 35-50-2-1**

#### **Definitions**

Sec. 1. (a) As used in this chapter, "Class D felony conviction" means a conviction of a Class D felony in Indiana and a conviction, in any other jurisdiction at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year. However, it does not include a conviction with respect to which the person has been pardoned, or a conviction of a Class A misdemeanor under section 7(b) of this chapter.

(b) As used in this chapter, "felony conviction" means a conviction, in any jurisdiction at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year. However, it does not include a conviction with respect to which the person has been pardoned, or a conviction of a Class A misdemeanor under section 7(b) of this chapter.

(c) As used in this chapter, "minimum sentence" means:

- (1) for murder, forty-five (45) years;
- (2) for a Class A felony, twenty (20) years;
- (3) for a Class B felony, six (6) years;
- (4) for a Class C felony, two (2) years; and
- (5) for a Class D felony, one-half (1/2) year.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.114; P.L.334-1983, SEC.1; P.L.98-1988, SEC.8; P.L.243-2001, SEC.2 and P.L.291-2001, SEC.225.*

### **IC 35-50-2-1.3**

#### **Advisory sentences**

Sec. 1.3. (a) For purposes of sections 3 through 7 of this chapter, "advisory sentence" means a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence.

(b) Except as provided in subsection (c), a court is not required to use an advisory sentence.

(c) In imposing:

- (1) consecutive sentences for felony convictions that are not crimes of violence (as defined in IC 35-50-1-2(a)) arising out of an episode of criminal conduct, in accordance with IC 35-50-1-2;
- (2) an additional fixed term to an habitual offender under section 8 of this chapter; or
- (3) an additional fixed term to a repeat sexual offender under section 14 of this chapter;

a court is required to use the appropriate advisory sentence in imposing a consecutive sentence or an additional fixed term.

However, the court is not required to use the advisory sentence in imposing the sentence for the underlying offense.

(d) This section does not require a court to use an advisory sentence in imposing consecutive sentences for felony convictions that do not arise out of an episode of criminal conduct.

*As added by P.L. 71-2005, SEC.5. Amended by P.L. 178-2007, SEC.4.*

#### **IC 35-50-2-1.4**

##### **"Criminal gang" defined**

Sec. 1.4. For purposes of section 15 of this chapter, "criminal gang" means a group with at least three (3) members that specifically:

(1) either:

(A) promotes, sponsors, or assists in; or

(B) participates in; or

(2) requires as a condition of membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

*As added by P.L. 109-2006, SEC.2. Amended by P.L. 192-2007, SEC.12.*

#### **IC 35-50-2-1.5**

##### **"Individual with mental retardation" defined**

Sec. 1.5. As used in this chapter, "individual with mental retardation" has the meaning set forth in IC 35-36-9-2.

*As added by P.L. 158-1994, SEC.4. Amended by P.L. 99-2007, SEC.211.*

#### **IC 35-50-2-1.8**

##### **"Sex offense against a child" defined**

Sec. 1.8. As used in this chapter, "sex offense against a child" means an offense under IC 35-42-4 in which the victim is a child less than eighteen (18) years of age.

*As added by P.L. 53-2005, SEC.1.*

#### **IC 35-50-2-2**

##### **Suspension of sentence; limitations**

Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) Except as provided in subsection (i), with respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:

(1) The crime committed was a Class A felony or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was

discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- (H) except as provided in subsection (i), child molesting (IC 35-42-4-3) as a Class A or Class B felony, unless:
  - (i) the felony committed was child molesting as a Class B felony;
  - (ii) the victim was not less than twelve (12) years old at the time the offense was committed;
  - (iii) the person is not more than four (4) years older than the victim, or more than five (5) years older than the victim if the relationship between the person and the victim was a dating relationship or an ongoing personal relationship (not including a family relationship);
  - (iv) the person did not have a position of authority or substantial influence over the victim; and
  - (v) the person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person;
- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
- (M) escape (IC 35-44-3-5) with a deadly weapon;
- (N) rioting (IC 35-45-1-2) with a deadly weapon;

(O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(P) dealing in methamphetamine (IC 35-48-4-1.1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver the methamphetamine pure or adulterated to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(Q) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(R) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;

(S) an offense under IC 9-30-5-5(b) (operating a vehicle while intoxicated causing death);

(T) aggravated battery (IC 35-42-2-1.5); or

(U) disarming a law enforcement officer (IC 35-44-3-3.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of the sentence of a sex or violent offender (as defined in IC 11-8-8-5) that is suspendible under subsection (b), the court shall place the sex or violent offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) or IC 35-48-4-6.1(b)(1)(B) may not be suspended.

(i) If a person is:

(1) convicted of child molesting (IC 35-42-4-3) as a Class A felony against a victim less than twelve (12) years of age; and

(2) at least twenty-one (21) years of age;

the court may suspend only that part of the sentence that is in excess of thirty (30) years.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.115; Acts 1979, P.L.305, SEC.1; Acts 1982, P.L.204, SEC.39; P.L.334-1983, SEC.2; P.L.284-1985, SEC.3; P.L.211-1986, SEC.1; P.L.98-1988, SEC.9; P.L.351-1989(ss), SEC.4; P.L.214-1991, SEC.2; P.L.240-1991(ss2), SEC.98; P.L.11-1994, SEC.17; P.L.203-1996, SEC.8; P.L.96-1996, SEC.7; P.L.220-1997, SEC.1; P.L.188-1999, SEC.8; P.L.17-2001, SEC.30; P.L.222-2001, SEC.6; P.L.238-2001, SEC.21; P.L.116-2002, SEC.25; P.L.224-2003, SEC.126; P.L.85-2004, SEC.11; P.L.213-2005, SEC.7; P.L.151-2006, SEC.28; P.L.140-2006, SEC.36 and P.L.173-2006, SEC.36; P.L.1-2007, SEC.236; P.L.216-2007, SEC.50; P.L.64-2008, SEC.2.*

### **IC 35-50-2-2.1**

#### **Suspension; persons with juvenile record**

Sec. 2.1. (a) Except as provided in subsection (b) or section 2 of this chapter, the court may not suspend a sentence for a felony for a person with a juvenile record when:

(1) the juvenile record includes findings that the juvenile acts, if committed by an adult, would constitute:

(A) one (1) Class A or Class B felony;

(B) two (2) Class C or Class D felonies; or

(C) one (1) Class C and one (1) Class D felony; and

(2) less than three (3) years have elapsed between commission of the juvenile acts that would be felonies if committed by an adult and the commission of the felony for which the person is being sentenced.

(b) Notwithstanding subsection (a), the court may suspend any part of the sentence for a felony, except as provided in section 2 of this chapter, if it finds that:

(1) the crime was the result of circumstances unlikely to recur;

(2) the victim of the crime induced or facilitated the offense;

(3) there are substantial grounds tending to excuse or justify the crime, though failing to establish a defense; or

(4) the acts in the juvenile record would not be Class A or Class B felonies if committed by an adult, and the convicted person is to undergo home detention under IC 35-38-1-21 instead of the minimum sentence specified for the crime under this chapter.

*As added by P.L.284-1985, SEC.4. Amended by P.L.331-1987, SEC.1; P.L.98-1988, SEC.10.*

### **IC 35-50-2-3**

#### **Murder**

Sec. 3. (a) A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), a person who was:

(1) at least eighteen (18) years of age at the time the murder was committed may be sentenced to:

(A) death; or

(B) life imprisonment without parole; and

(2) at least sixteen (16) years of age but less than eighteen (18) years of age at the time the murder was committed may be sentenced to life imprisonment without parole;

under section 9 of this chapter unless a court determines under IC 35-36-9 that the person is an individual with mental retardation.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.116; P.L.332-1987, SEC.1; P.L.250-1993, SEC.1; P.L.164-1994, SEC.2; P.L.158-1994, SEC.5; P.L.2-1995, SEC.128; P.L.148-1995, SEC.4; P.L.117-2002, SEC.1; P.L.71-2005, SEC.6; P.L.99-2007, SEC.212.*

### **IC 35-50-2-4**

#### **Class A felony**

Sec. 4. A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.117; P.L.164-1994, SEC.3; P.L.148-1995, SEC.5; P.L.71-2005, SEC.7.*

### **IC 35-50-2-5**

#### **Class B felony**

Sec. 5. A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.118; P.L.71-2005, SEC.8.*

### **IC 35-50-2-6**

#### **Class C felony; commission of nonsupport of child as Class D felony**

Sec. 6. (a) A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), if a person has committed nonsupport of a child as a Class C felony under IC 35-46-1-5, upon motion of the prosecuting attorney, the court may enter judgment of conviction of a Class D felony under IC 35-46-1-5 and sentence the person accordingly. The court shall enter in the record detailed reasons for the court's action when the court enters a judgment of conviction of a Class D felony under this subsection.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.119; P.L.167-1990, SEC.1; P.L.213-1996, SEC.5; P.L.71-2005, SEC.9.*

### **IC 35-50-2-7**

#### **Class D felony**

Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:

(1) the court finds that:

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

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

(2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; or

(3) the offense is possession of child pornography (IC 35-42-4-4(c)).

The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.120; Acts 1982, P.L.204, SEC.40; P.L.334-1983, SEC.3; P.L.136-1987, SEC.7; P.L.167-1990, SEC.2; P.L.188-1999, SEC.9; P.L.98-2003, SEC.3; P.L.71-2005, SEC.10.*

### **IC 35-50-2-7.1**

#### **Repealed**

*(Repealed by P.L.164-1993, SEC.14.)*

## **IC 35-50-2-8**

### **Habitual offenders**

Sec. 8. (a) Except as otherwise provided in this section, the state may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions.

(b) The state may not seek to have a person sentenced as a habitual offender for a felony offense under this section if:

(1) the offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction;

(2) the offense is an offense under IC 9-30-10-16 or IC 9-30-10-17; or

(3) all of the following apply:

(A) The offense is an offense under IC 16-42-19 or IC 35-48-4.

(B) The offense is not listed in section 2(b)(4) of this chapter.

(C) The total number of unrelated convictions that the person has for:

(i) dealing in or selling a legend drug under IC 16-42-19-27;

(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);

(iii) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);

(iv) dealing in a schedule IV controlled substance (IC 35-48-4-3); and

(v) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1).

(c) A person has accumulated two (2) prior unrelated felony convictions for purposes of this section only if:

(1) the second prior unrelated felony conviction was committed after sentencing for the first prior unrelated felony conviction; and

(2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated felony conviction.

(d) A conviction does not count for purposes of this section as a prior unrelated felony conviction if:

(1) the conviction has been set aside;

(2) the conviction is one for which the person has been pardoned; or

(3) all of the following apply:

(A) The offense is an offense under IC 16-42-19 or IC 35-48-4.

(B) The offense is not listed in section 2(b)(4) of this chapter.

(C) The total number of unrelated convictions that the person has for:

- (i) dealing in or selling a legend drug under IC 16-42-19-27;
- (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
- (iii) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);
- (iv) dealing in a schedule IV controlled substance (IC 35-48-4-3); and
- (v) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1).

(e) The requirements in subsection (b) do not apply to a prior unrelated felony conviction that is used to support a sentence as a habitual offender. A prior unrelated felony conviction may be used under this section to support a sentence as a habitual offender even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense. However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed), or IC 9-12-3-2 (repealed) may not be used to support a sentence as a habitual offender.

(f) If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3.

(g) A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated felony convictions.

(h) The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.121; Acts 1980, P.L.210, SEC.1; P.L.335-1983, SEC.1; P.L.328-1985, SEC.2; P.L.1-1990, SEC.353; P.L.164-1993, SEC.13; P.L.140-1994, SEC.14; P.L.305-1995, SEC.1; P.L.166-2001, SEC.3; P.L.291-2001, SEC.226; P.L.71-2005, SEC.11.*

### **IC 35-50-2-8.5**

#### **Life imprisonment without parole upon third felony conviction or second sex offense against a child**

Sec. 8.5. (a) The state may seek to have a person sentenced to life imprisonment without parole for any felony described in section 2(b)(4) of this chapter by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions described in section 2(b)(4) of this chapter.

(b) The state may seek to have a person sentenced to life imprisonment without parole for a Class A felony under IC 35-42-4 that is a sex offense against a child by alleging, on a page separate from the rest of the charging instrument, that the person has a prior unrelated Class A felony conviction under IC 35-42-4 that is a sex offense against a child.

(c) If the person was convicted of the felony in a jury trial, the jury shall reconvene to hear evidence on the life imprisonment without parole allegation. If the person was convicted of the felony by trial to the court without a jury or if the judgment was entered to guilty plea, the court alone shall hear evidence on the life imprisonment without parole allegation.

(d) A person is subject to life imprisonment without parole if the jury (in a case tried by a jury) or the court (in a case tried by the court or on a judgment entered on a guilty plea) finds that the state has proved beyond a reasonable doubt that the person:

- (1) has accumulated two (2) prior unrelated convictions for offenses described in section 2(b)(4) of this chapter; or
- (2) has a prior unrelated Class A felony conviction under IC 35-42-4 that is a sex offense against a child.

(e) The court may sentence a person found to be subject to life imprisonment without parole under this section to life imprisonment without parole.

*As added by P.L.158-1994, SEC.6. Amended by P.L.53-2005, SEC.2.*

### **IC 35-50-2-9**

#### **Death penalty sentencing procedure**

Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with mental retardation.

(b) The aggravating circumstances are as follows:

- (1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:
  - (A) Arson (IC 35-43-1-1).
  - (B) Burglary (IC 35-43-2-1).
  - (C) Child molesting (IC 35-42-4-3).
  - (D) Criminal deviate conduct (IC 35-42-4-2).
  - (E) Kidnapping (IC 35-42-3-2).
  - (F) Rape (IC 35-42-4-1).
  - (G) Robbery (IC 35-42-5-1).
  - (H) Carjacking (IC 35-42-5-2).

- (I) Criminal gang activity (IC 35-45-9-3).
- (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- (2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage property.
- (3) The defendant committed the murder by lying in wait.
- (4) The defendant who committed the murder was hired to kill.
- (5) The defendant committed the murder by hiring another person to kill.
- (6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:
  - (A) the victim was acting in the course of duty; or
  - (B) the murder was motivated by an act the victim performed while acting in the course of duty.
- (7) The defendant has been convicted of another murder.
- (8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.
- (9) The defendant was:
  - (A) under the custody of the department of correction;
  - (B) under the custody of a county sheriff;
  - (C) on probation after receiving a sentence for the commission of a felony; or
  - (D) on parole;at the time the murder was committed.
- (10) The defendant dismembered the victim.
- (11) The defendant burned, mutilated, or tortured the victim while the victim was alive.
- (12) The victim of the murder was less than twelve (12) years of age.
- (13) The victim was a victim of any of the following offenses for which the defendant was convicted:
  - (A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.
  - (B) Kidnapping (IC 35-42-3-2).
  - (C) Criminal confinement (IC 35-42-3-3).
  - (D) A sex crime under IC 35-42-4.
- (14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.
- (15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):
  - (A) into an inhabited dwelling; or
  - (B) from a vehicle.
- (16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

- (1) The defendant has no significant history of prior criminal conduct.
- (2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.
- (3) The victim was a participant in or consented to the defendant's conduct.
- (4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.
- (5) The defendant acted under the substantial domination of another person.
- (6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.
- (7) The defendant was less than eighteen (18) years of age at the time the murder was committed.
- (8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (1) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

- (1) the death penalty; or
- (2) life imprisonment without parole;

only if it makes the findings described in subsection (1). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a

statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (l).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

(l) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

- (1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and
- (2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

*As added by Acts 1977, P.L.340, SEC.122. Amended by P.L.336-1983, SEC.1; P.L.212-1986, SEC.1; P.L.332-1987, SEC.2; P.L.320-1987, SEC.2; P.L.296-1989, SEC.2; P.L.138-1989, SEC.6; P.L.1-1990, SEC.354; P.L.230-1993, SEC.5; P.L.250-1993, SEC.2; P.L.158-1994, SEC.7; P.L.306-1995, SEC.1; P.L.228-1996, SEC.1; P.L.216-1996, SEC.25; P.L.261-1997, SEC.7; P.L.80-2002, SEC.1; P.L.117-2002, SEC.2; P.L.1-2003, SEC.97; P.L.147-2003, SEC.1; P.L.1-2006, SEC.550; P.L.99-2007, SEC.213.*

### **IC 35-50-2-10**

#### **Habitual substance offenders**

Sec. 10. (a) As used in this section:

- (1) "Drug" means a drug or a controlled substance (as defined in IC 35-48-1).
- (2) "Substance offense" means a Class A misdemeanor or a felony in which the possession, use, abuse, delivery, transportation, or manufacture of alcohol or drugs is a material element of the crime. The term includes an offense under IC 9-30-5 and an offense under IC 9-11-2 (before its repeal).

(b) The state may seek to have a person sentenced as a habitual substance offender for any substance offense by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated substance offense convictions.

(c) After a person has been convicted and sentenced for a substance offense committed after sentencing for a prior unrelated substance offense conviction, the person has accumulated two (2) prior unrelated substance offense convictions. However, a conviction

does not count for purposes of this subsection if:

(1) it has been set aside; or

(2) it is a conviction for which the person has been pardoned.

(d) If the person was convicted of the substance offense in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing, under IC 35-38-1-3.

(e) A person is a habitual substance offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated substance offense convictions.

(f) The court shall sentence a person found to be a habitual substance offender to an additional fixed term of at least three (3) years but not more than eight (8) years imprisonment, to be added to the term of imprisonment imposed under IC 35-50-2 or IC 35-50-3. If the court finds that:

(1) three (3) years or more have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last prior unrelated substance offense conviction and the date the person committed the substance offense for which the person is being sentenced as a habitual substance offender; or

(2) all of the substance offenses for which the person has been convicted are substance offenses under IC 16-42-19 or IC 35-48-4, the person has not been convicted of a substance offense listed in section 2(b)(4) of this chapter, and the total number of convictions that the person has for:

(A) dealing in or selling a legend drug under IC 16-42-19-27;

(B) dealing in cocaine or a narcotic drug (IC 35-48-4-1);

(C) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);

(D) dealing in a schedule IV controlled substance (IC 35-48-4-3); and

(E) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1);

then the court may reduce the additional fixed term. However, the court may not reduce the additional fixed term to less than one (1) year.

(g) If a reduction of the additional year fixed term is authorized under subsection (f), the court may also consider the aggravating or circumstances in IC 35-38-1-7.1(a) and the mitigating circumstances in IC 35-38-1-7.1(b) to:

(1) decide the issue of granting a reduction; or

(2) determine the number of years, if any, to be subtracted under subsection (f).

*As added by P.L.335-1983, SEC.2. Amended by P.L.327-1985, SEC.5; P.L.98-1988, SEC.11; P.L.1-1990, SEC.355; P.L.96-1996,*

*SEC.8; P.L.97-1996, SEC.5; P.L.2-1997, SEC.77; P.L.291-2001, SEC.227; P.L.71-2005, SEC.12; P.L.213-2005, SEC.5; P.L.1-2006, SEC.551.*

#### **IC 35-50-2-11**

##### **Firearm used in commission of offense; separate charge; additional sentence**

Sec. 11. (a) As used in this section, "firearm" has the meaning set forth in IC 35-47-1-5.

(b) As used in this section, "offense" means:

- (1) a felony under IC 35-42 that resulted in death or serious bodily injury;
- (2) kidnapping; or
- (3) criminal confinement as a Class B felony.

(c) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense.

(d) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(e) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense, the court may sentence the person to an additional fixed term of imprisonment of five (5) years. *As added by P.L.140-1994, SEC.15. Amended by P.L.203-1996, SEC.9; P.L.71-2005, SEC.13.*

#### **IC 35-50-2-12**

##### **Characteristics of incarcerated offenders; publication of findings**

Sec. 12. The Indiana criminal justice institute shall review characteristics of offenders committed to the department of correction over such period of time it deems appropriate and of the offenses committed by those offenders in order to ascertain norms used by the trial courts in sentencing. The Indiana criminal justice institute shall from time to time publish its findings in the Indiana Register and provide its findings to the legislative services agency and the judicial conference of Indiana.

*As added by P.L.164-1994, SEC.4.*

#### **IC 35-50-2-13**

##### **Use of firearms in controlled substance offenses under IC 35-48-4-1 through IC 35-48-4-4**

Sec. 13. (a) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense of dealing in a controlled substance under IC 35-48-4-1 through IC 35-48-4-4 sentenced to an additional fixed term of

imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally:

- (1) used a firearm; or
- (2) possessed a:
  - (A) handgun in violation of IC 35-47-2-1;
  - (B) sawed-off shotgun in violation of IC 35-47-5-4.1; or
  - (C) machine gun in violation of IC 35-47-5-8;while committing the offense.

(b) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(c) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally committed an offense as described in subsection (a), the court may sentence the person to an additional fixed term of imprisonment of not more than five (5) years, except as follows:

- (1) If the firearm is a sawed-off shotgun, the court may sentence the person to an additional fixed term of imprisonment of not more than ten (10) years.
- (2) If the firearm is a machine gun or is equipped with a firearm silencer or firearm muffler, the court may sentence the person to an additional fixed term of imprisonment of not more than twenty (20) years. The additional sentence under this subdivision is in addition to any additional sentence imposed under section 11 of this chapter for use of a firearm in the commission of an offense.

*As added by P.L.148-1995, SEC.6. Amended by P.L.71-2005, SEC.14.*

### **IC 35-50-2-14**

#### **Repeat sexual offender**

Sec. 14. (a) As used in this section, "sex offense" means a felony conviction:

- (1) under IC 35-42-4-1 through IC 35-42-4-9 or under IC 35-46-1-3;
- (2) for an attempt or conspiracy to commit an offense described in subdivision (1); or
- (3) for an offense under the laws of another jurisdiction, including a military court, that is substantially similar to an offense described in subdivision (1).

(b) The state may seek to have a person sentenced as a repeat sexual offender for a sex offense described in subsection (a)(1) or (a)(2) by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated one (1) prior unrelated felony conviction for a sex offense described in subsection (a).

(c) After a person has been convicted and sentenced for a felony described in subsection (a)(1) or (a)(2) after having been sentenced for a prior unrelated sex offense described in subsection (a), the

person has accumulated one (1) prior unrelated felony sex offense conviction. However, a conviction does not count for purposes of this subsection, if:

(1) it has been set aside; or

(2) it is a conviction for which the person has been pardoned.

(d) If the person was convicted of the sex offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(e) A person is a repeat sexual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated one (1) prior unrelated felony sex offense conviction.

(f) The court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the advisory sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years.

*As added by P.L.214-1999, SEC.4. Amended by P.L.71-2005, SEC.15; P.L.6-2006, SEC.9, P.L.140-2006, SEC.37, and P.L.173-2006, SEC.37; P.L.125-2009, SEC.8.*

### **IC 35-50-2-15**

#### **Criminal gang enhancement**

Sec. 15. (a) This section does not apply to an individual who is convicted of a felony offense under IC 35-45-9-3.

(b) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed a felony offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally:

(1) was a member of a criminal gang while committing the offense; and

(2) committed the felony offense at the direction of or in affiliation with a criminal gang.

(c) If the person is convicted of the felony offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(d) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally was a member of a criminal gang while committing the felony offense and committed the felony offense at the direction of or in affiliation with a criminal gang as described in subsection (b), the court shall:

(1) sentence the person to an additional fixed term of imprisonment equal to the sentence imposed for the underlying felony, if the person is sentenced for only one (1) felony; or

(2) sentence the person to an additional fixed term of

imprisonment equal to the longest sentence imposed for the underlying felonies, if the person is being sentenced for more than one (1) felony.

(e) A sentence imposed under this section shall run consecutively to the underlying sentence.

(f) A term of imprisonment imposed under this section may not be suspended.

(g) For purposes of subsection (c), evidence that a person was a member of a criminal gang or committed a felony at the direction of or in affiliation with a criminal gang may include expert testimony pursuant to the Indiana Rules of Evidence that may be admitted to prove that particular conduct, status, and customs are indicative of criminal gang activity. The expert testimony may include the following:

- (1) Characteristics of persons who are members of criminal gangs.
- (2) Descriptions of rivalries between criminal gangs.
- (3) Common practices and operations of criminal gangs.
- (4) Behavior of criminal gangs.
- (5) Terminology used by members of criminal gangs.
- (6) Codes of conduct, including criminal conduct, of particular criminal gangs.
- (7) Types of crimes that are likely to be committed by a particular criminal gang.

*As added by P.L.109-2006, SEC.3.*

### **IC 35-50-2-16**

#### **Termination of a human pregnancy; enhancement**

Sec. 16. (a) The state may seek, on a page separate from the rest of the charging instrument, to have a person who allegedly committed or attempted to commit murder under IC 35-42-1-1(1) or IC 35-42-1-1(2) sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person, while committing or attempting to commit murder under IC 35-42-1-1(1) or IC 35-42-1-1(2), caused the termination of a human pregnancy.

(b) If the person is convicted of the murder or attempted murder in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(c) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person, while committing or attempting to commit murder under IC 35-42-1-1(1) or IC 35-42-1-1(2), caused the termination of a human pregnancy, the court shall sentence the person to an additional fixed term of imprisonment of not less than six (6) or more than twenty (20) years.

(d) A sentence imposed under this section runs consecutively to the underlying sentence.

(e) For purposes of this section, prosecution of the murder or attempted murder under IC 35-42-1-1(1) or IC 35-42-1-1(2) and the enhancement of the penalty for that crime does not require proof that:

- (1) the person committing or attempting to commit the murder had knowledge or should have had knowledge that the victim was pregnant; or
- (2) the defendant intended to cause the termination of a human pregnancy.

*As added by P.L.40-2009, SEC.2.*