

## SENATE BILL No. 227

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-5-1; IC 35-38-1-7.1.

**Synopsis:** Alcohol and medical emergencies. Provides that a person is immune from arrest or prosecution for certain alcohol offenses if the arrest or prosecution is due to the person: (1) reporting a medical emergency; (2) being the victim of a sex offense; or (3) witnessing and reporting a crime. (Current law provides immunity from arrest or prosecution only if the person reports a medical emergency that is due to alcohol consumption.) Establishes a mitigating circumstance for the sentencing of a person convicted of a controlled substance offense 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. Permits a court to defer entering a judgment of conviction for an individual arrested for an alcohol offense if the individual was arrested after a report that the person needed medical assistance due to the use of alcohol if certain conditions are met.

**Effective:** July 1, 2014.

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## Merritt

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January 9, 2014, read first time and referred to Committee on Judiciary.

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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. 227



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 described in subsection (b) if the law enforcement  
6 officer, after making a reasonable determination and considering the  
7 facts and surrounding circumstances, reasonably believes that all of the  
8 following apply:  
9 (1) The law enforcement officer has contact with the person  
10 because the person:  
11 (A) either:  
12 (A) (i) requested emergency medical assistance; or  
13 (B) (ii) acted in concert with another person who requested  
14 emergency medical assistance;  
15 for an individual who reasonably appeared to be in need of  
16 medical assistance; ~~due to alcohol consumption.~~



- 1           **(B) is the victim of a reported sex offense (as defined in**  
 2           **IC 11-8-8-5.2); or**  
 3           **(C) witnessed and reported a crime.**  
 4           (2) The person described in subdivision (1)(A), ~~or~~ (1)(B), ~~or~~  
 5           **(1)(C):**  
 6           (A) provided:  
 7           (i) the person's full name; and  
 8           (ii) any other relevant information requested by the law  
 9           enforcement officer; **and**  
 10           **(B) in the case of a person described in subdivision (1)(A):**  
 11           ~~(B) (i) remained at the scene with the individual who~~  
 12           ~~reasonably appeared to be in need of medical assistance due~~  
 13           ~~to alcohol consumption until emergency medical assistance~~  
 14           ~~arrived; and~~  
 15           ~~(C) (ii) cooperated with emergency medical assistance~~  
 16           ~~personnel and law enforcement officers at the scene.~~  
 17           (b) A person who meets the criteria of subsection (a)(1) and (a)(2)  
 18           is immune from criminal prosecution for an offense under:  
 19           (1) section 3 of this chapter if the offense involved a state of  
 20           intoxication caused by the person's use of alcohol;  
 21           (2) section 6 of this chapter if the offense involved the person  
 22           being, or becoming, intoxicated as a result of the person's use of  
 23           alcohol; and  
 24           (3) IC 7.1-5-7-7.  
 25           (c) A person may not initiate or maintain an action against a law  
 26           enforcement officer based on the officer's compliance or failure to  
 27           comply with this section.  
 28           SECTION 2. IC 7.1-5-1-6.6 IS ADDED TO THE INDIANA CODE  
 29           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 30           1, 2014]: **Sec. 6.6. (a) This section applies only to a person:**  
 31           **(1) arrested for a violation of:**  
 32           **(A) section 3 of this chapter if the offense involved a state**  
 33           **of intoxication caused by the person's use of alcohol;**  
 34           **(B) section 6 of this chapter if the offense involved the**  
 35           **person being, or becoming, intoxicated as a result of the**  
 36           **person's use of alcohol; or**  
 37           **(C) IC 7.1-5-7-7; and**  
 38           **(2) whose arrest was facilitated because another person**  
 39           **reported that the person appeared to be in need of medical**  
 40           **assistance due to the use of alcohol.**  
 41           **(b) If a person described in subsection (a):**  
 42           **(1) does not have a prior conviction for an offense described**



1           **in subsection (a);**  
 2           **(2) pleads guilty to an offense described in subsection (a); and**  
 3           **(3) agrees to be placed in the custody of the court;**  
 4           **the court, without entering a judgment of conviction, shall defer**  
 5           **further proceedings and place the person in the custody of the**  
 6           **court under conditions determined by the court.**

7           **(c) If the person placed in the custody of the court violates the**  
 8           **conditions of custody, the court may enter a judgment of**  
 9           **conviction. However, if the person fulfills the conditions of the**  
 10           **custody, the court shall dismiss the charges against the person.**

11           **(d) There may be only one (1) dismissal under this section with**  
 12           **respect to a person.**

13           SECTION 3. IC 35-38-1-7.1, AS AMENDED BY P.L.126-2012,  
 14           SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15           JULY 1, 2014]: Sec. 7.1. (a) In determining what sentence to impose  
 16           for a crime, the court may consider the following aggravating  
 17           circumstances:

18           (1) The harm, injury, loss, or damage suffered by the victim of an  
 19           offense was:

20           (A) significant; and

21           (B) greater than the elements necessary to prove the  
 22           commission of the offense.

23           (2) The person has a history of criminal or delinquent behavior.

24           (3) The victim of the offense was less than twelve (12) years of  
 25           age or at least sixty-five (65) years of age at the time the person  
 26           committed the offense.

27           (4) The person:

28           (A) committed a crime of violence (IC 35-50-1-2); and

29           (B) knowingly committed the offense in the presence or within  
 30           hearing of an individual who:

31           (i) was less than eighteen (18) years of age at the time the  
 32           person committed the offense; and

33           (ii) is not the victim of the offense.

34           (5) The person violated a protective order issued against the  
 35           person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or  
 36           IC 34-4-5.1 before their repeal), a workplace violence restraining  
 37           order issued against the person under IC 34-26-6, or a no contact  
 38           order issued against the person.

39           (6) The person has recently violated the conditions of any  
 40           probation, parole, pardon, community corrections placement, or  
 41           pretrial release granted to the person.

42           (7) The victim of the offense was:



- 1 (A) a person with a disability (as defined in IC 27-7-6-12), and  
2 the defendant knew or should have known that the victim was  
3 a person with a disability; or  
4 (B) mentally or physically infirm.
- 5 (8) The person was in a position having care, custody, or control  
6 of the victim of the offense.
- 7 (9) The injury to or death of the victim of the offense was the  
8 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 9 (10) The person threatened to harm the victim of the offense or a  
10 witness if the victim or witness told anyone about the offense.
- 11 (11) The person:
- 12 (A) committed trafficking with an inmate under  
13 IC 35-44.1-3-5; and  
14 (B) is an employee of the penal facility.
- 15 (b) The court may consider the following factors as mitigating  
16 circumstances or as favoring suspending the sentence and imposing  
17 probation:
- 18 (1) The crime neither caused nor threatened serious harm to  
19 persons or property, or the person did not contemplate that it  
20 would do so.
- 21 (2) The crime was the result of circumstances unlikely to recur.
- 22 (3) The victim of the crime induced or facilitated the offense.
- 23 (4) There are substantial grounds tending to excuse or justify the  
24 crime, though failing to establish a defense.
- 25 (5) The person acted under strong provocation.
- 26 (6) The person has no history of delinquency or criminal activity,  
27 or the person has led a law-abiding life for a substantial period  
28 before commission of the crime.
- 29 (7) The person is likely to respond affirmatively to probation or  
30 short term imprisonment.
- 31 (8) The character and attitudes of the person indicate that the  
32 person is unlikely to commit another crime.
- 33 (9) The person has made or will make restitution to the victim of  
34 the crime for the injury, damage, or loss sustained.
- 35 (10) Imprisonment of the person will result in undue hardship to  
36 the person or the dependents of the person.
- 37 (11) The person was convicted of a crime involving the use of  
38 force against a person who had repeatedly inflicted physical or  
39 sexual abuse upon the convicted person and evidence shows that  
40 the convicted person suffered from the effects of battery as a  
41 result of the past course of conduct of the individual who is the  
42 victim of the crime for which the person was convicted.



- 1           **(12) The person was convicted of a crime relating to a**  
2           **controlled substance and the person's arrest or prosecution**  
3           **was facilitated in part because the person:**  
4                 **(A) requested emergency medical assistance; or**  
5                 **(B) acted in concert with another person who requested**  
6                 **emergency medical assistance;**  
7           **for an individual who reasonably appeared to be in need of**  
8           **medical assistance due to the use of alcohol or a controlled**  
9           **substance.**
- 10           (c) The criteria listed in subsections (a) and (b) do not limit the  
11           matters that the court may consider in determining the sentence.
- 12           (d) A court may impose any sentence that is:
- 13                 (1) authorized by statute; and
- 14                 (2) permissible under the Constitution of the State of Indiana;
- 15           regardless of the presence or absence of aggravating circumstances or  
16           mitigating circumstances.

