



February 24, 2017

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## SENATE BILL No. 324

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DIGEST OF SB 324 (Updated February 21, 2017 2:51 pm - DI 106)

**Citations Affected:** IC 35-48; IC 35-50.

**Synopsis:** Dealing in heroin. Establishes sentence enhancements applicable if a certain quantity of heroin is sold within a 90 day period. Makes dealing in heroin as a Level 2 or Level 3 felony nonsuspendible if the person has a prior felony conviction.

**Effective:** July 1, 2017.

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### Houchin, Young M, Koch

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January 9, 2017, read first time and referred to Committee on Corrections and Criminal Law.  
February 23, 2017, amended, reported favorably — Do Pass.

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SB 324—LS 6739/DI 124





February 24, 2017

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## SENATE BILL No. 324

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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 35-48-4-1, AS AMENDED BY P.L.44-2016,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]: Sec. 1. (a) A person who:  
4           (1) knowingly or intentionally:  
5               (A) manufactures;  
6               (B) finances the manufacture of;  
7               (C) delivers; or  
8               (D) finances the delivery of;  
9 cocaine or a narcotic drug, pure or adulterated, classified in  
10 schedule I or II; or  
11           (2) possesses, with intent to:  
12               (A) manufacture;  
13               (B) finance the manufacture of;  
14               (C) deliver; or  
15               (D) finance the delivery of;  
16 cocaine or a narcotic drug, pure or adulterated, classified in  
17 schedule I or II;

SB 324—LS 6739/DI 124



1 commits dealing in cocaine or a narcotic drug, a Level 5 felony, except  
2 as provided in subsections (b) through (e).

3 (b) A person may be convicted of an offense under subsection (a)(2)  
4 only if:

5 (1) there is evidence in addition to the weight of the drug that the  
6 person intended to manufacture, finance the manufacture of,  
7 deliver, or finance the delivery of the drug; or

8 (2) the amount of the drug involved is at least twenty-eight (28)  
9 grams.

10 (c) The offense is a Level 4 felony if:

11 (1) the amount of the drug involved is at least one (1) gram but  
12 less than five (5) grams; or

13 (2) the amount of the drug involved is less than one (1) gram and  
14 an enhancing circumstance applies; or

15 **(3) the drug is heroin and the amount of heroin involved,  
16 aggregated over a period of not more than ninety (90) days, is  
17 at least three (3) grams but less than seven (7) grams.**

18 (d) The offense is a Level 3 felony if:

19 (1) the amount of the drug involved is at least five (5) grams but  
20 less than ten (10) grams; or

21 (2) the amount of the drug involved is at least one (1) gram but  
22 less than five (5) grams and an enhancing circumstance applies;

23 **(3) the drug is heroin and the amount of heroin involved,  
24 aggregated over a period of not more than ninety (90) days, is  
25 at least seven (7) grams but less than twelve (12) grams; or**

26 **(4) the drug is heroin and:**

27 **(A) the amount of heroin involved, aggregated over a  
28 period of not more than ninety (90) days, is at least three**

29 **(3) grams but less than seven (7) grams; and**

30 **(B) an enhancing circumstance applies.**

31 (e) The offense is a Level 2 felony if:

32 (1) the amount of the drug involved is at least ten (10) grams; or

33 (2) the amount of the drug involved is at least five (5) grams but  
34 less than ten (10) grams and an enhancing circumstance applies;

35 **(3) the drug is heroin and the amount of heroin involved,  
36 aggregated over a period of not more than ninety (90) days, is  
37 at least twelve (12) grams; or**

38 **(4) the drug is heroin and:**

39 **(A) the amount of heroin involved, aggregated over a  
40 period of not more than ninety (90) days, is at least seven**

41 **(7) grams but less than twelve (12) grams; and**

42 **(B) an enhancing circumstance applies.**



1 SECTION 2. IC 35-50-2-2.2, AS AMENDED BY P.L.10-2016,  
 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2017]: Sec. 2.2. (a) Except as provided in subsection (b), (c),  
 4 ~~or (d), or (e)~~, the court may suspend any part of a sentence for a felony.

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

11 (1) Level 2 felony; or

12 (2) Level 3 felony.

13 (c) If:

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

19 (2) the person is convicted of a Level 2 felony under

20 ~~(A) IC 35-48-4-1 and the offense involves the:~~

21 ~~(i) manufacture;~~

22 ~~(ii) delivery; or~~

23 ~~(iii) financing of the manufacture or delivery;~~

24 ~~of heroin; or~~

25 ~~(B) IC 35-48-4-1.1;~~

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

28 **(d) If a person:**

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

31 **(2) has a prior unrelated felony conviction;**

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

34 ~~(d)~~ (e) The court may suspend only that part of a sentence for  
 35 murder or a Level 1 felony conviction that is in excess of the minimum  
 36 sentence for murder or the Level 1 felony conviction.



## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 324, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 12, strike "or".

Page 2, line 14, delete "." and insert "; **or**

**(3) the drug is heroin and the amount of heroin involved, aggregated over a period of not more than ninety (90) days, is at least three (3) grams but less than seven (7) grams."**

Page 2, line 17, strike "or".

Page 2, line 19, delete "." and insert ";

**(3) the drug is heroin and the amount of heroin involved, aggregated over a period of not more than ninety (90) days, is at least seven (7) grams but less than twelve (12) grams; or**

**(4) the drug is heroin and:**

**(A) the amount of heroin involved, aggregated over a period of not more than ninety (90) days, is at least three**

**(3) grams but less than seven (7) grams; and**

**(B) an enhancing circumstance applies."**

Page 2, delete lines 24 through 27, begin a new line block indented and insert:

**"(3) the drug is heroin and the amount of heroin involved, aggregated over a period of not more than ninety (90) days, is at least twelve (12) grams; or**

**(4) the drug is heroin and:**

**(A) the amount of heroin involved, aggregated over a period of not more than ninety (90) days, is at least seven (7) grams but less than twelve (12) grams; and**

**(B) an enhancing circumstance applies."**

Page 2, delete lines 28 through 42, begin a new paragraph and insert:

"SECTION 2. IC 35-50-2-2.2, AS AMENDED BY P.L.10-2016, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.2. (a) Except as provided in subsection (b), (c), ~~or~~ (d), **or (e)**, the court may suspend any part of a sentence for a felony.

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



for the:

- (1) Level 2 felony; or
- (2) Level 3 felony.

(c) If:

- (1) a person has a prior unrelated felony conviction in any jurisdiction for dealing in a controlled substance that is not marijuana, hashish, hash oil, salvia divinorum, or a synthetic drug, including an attempt or conspiracy to commit the offense; and
- (2) the person is convicted of a Level 2 felony under
  - ~~(A) IC 35-48-4-1 and the offense involves the:~~
    - ~~(i) manufacture;~~
    - ~~(ii) delivery; or~~
    - ~~(iii) financing of the manufacture or delivery;~~
  - of heroin; or
  - ~~(B) IC 35-48-4-1.1;~~

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

**(d) If a person:**

- (1) is convicted of dealing in heroin as a Level 2 or Level 3 felony under IC 35-48-4-1 or IC 35-48-4-2; and**
- (2) has a prior unrelated felony conviction;**

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

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

Delete pages 3 through 6.

and when so amended that said bill do pass.

(Reference is to SB 324 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 5, Nays 3.

