



March 31, 2017

ENGROSSED

SENATE BILL No. 324

DIGEST OF SB 324 (Updated March 29, 2017 4:08 pm - DI 124)

Citations Affected: IC 35-31.5; IC 35-42; 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. Provides that the taking of a controlled substance from: (1) a pharmacist acting in an official capacity; or (2) a pharmacy; is robbery, a Level 4 felony. Provides that: (1) the use of a deadly weapon; or (2) causing bodily injury to any person other than the defendant; during the robbery of: (A) a pharmacist acting in an official capacity; or (B) a pharmacy; is a Level 2 felony. Provides that causing serious bodily injury to any person other than the defendant during a robbery of: (1) a pharmacist acting in an official capacity; or (2) a pharmacy; is a Level 1 felony.

Effective: July 1, 2017.

Houchin, Young M, Koch, Hershman, Bohacek, Buck

(HOUSE SPONSOR — STEUERWALD)

January 9, 2017, read first time and referred to Committee on Corrections and Criminal Law.

February 23, 2017, amended, reported favorably — Do Pass.

February 27, 2017, read second time, ordered engrossed. Engrossed.

February 28, 2017, read third time, passed. Yeas 40, nays 10.

HOUSE ACTION

March 6, 2017, read first time and referred to Committee on Courts and Criminal Code.

March 30, 2017, amended, reported — Do Pass.

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March 31, 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.

ENGROSSED SENATE BILL No. 324

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 35-31.5-2-235.3 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2017]: **Sec. 235.3. "Pharmacist", for**
4 **purposes of IC 35-42-5-1, means an individual who is licensed,**
5 **registered, or otherwise permitted by the laws of Indiana or the**
6 **United States to:**

7 (1) dispense;
8 (2) distribute; or
9 (3) prescribe;
10 a controlled substance as part of the individual's professional
11 practice.

12 SECTION 2. IC 35-31.5-2-235.4 IS ADDED TO THE INDIANA
13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2017]: **Sec. 235.4. "Pharmacy", for purposes**
15 **of IC 35-42-5-1, means a facility or part of a facility used to:**

16 (1) dispense;
17 (2) distribute; or

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1 **(3) store;**
 2 **controlled substances.**

3 SECTION 3. IC 35-42-5-1, AS AMENDED BY P.L.158-2013,
 4 SECTION 450, IS AMENDED TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2017]: Sec. 1. **(a) Except as provided in**
 6 **subsection (b), a person who knowingly or intentionally takes property**
 7 **from another person or from the presence of another person:**

8 (1) by using or threatening the use of force on any person; or

9 (2) by putting any person in fear;

10 commits robbery, a Level 5 felony. However, the offense is a Level 3
 11 felony if it is committed while armed with a deadly weapon or results
 12 in bodily injury to any person other than a defendant, and a Level 2
 13 felony if it results in serious bodily injury to any person other than a
 14 defendant.

15 **(b) A person who knowingly or intentionally takes a controlled**
 16 **substance from a pharmacist acting in an official capacity or from**
 17 **a pharmacy by:**

18 (1) using or threatening the use of force on any person; or

19 (2) putting any person in fear;

20 commits robbery, a Level 4 felony. However, the offense is a Level
 21 2 felony if it is committed while armed with a deadly weapon or
 22 results in bodily injury to any person other than the defendant, and
 23 the offense is a Level 1 felony if it results in serious bodily injury to
 24 any person other than the defendant.

25 SECTION 4. IC 35-48-4-1, AS AMENDED BY P.L.44-2016,
 26 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2017]: Sec. 1. (a) A person who:

28 (1) knowingly or intentionally:

29 (A) manufactures;

30 (B) finances the manufacture of;

31 (C) delivers; or

32 (D) finances the delivery of;

33 cocaine or a narcotic drug, pure or adulterated, classified in
 34 schedule I or II; or

35 (2) possesses, with intent to:

36 (A) manufacture;

37 (B) finance the manufacture of;

38 (C) deliver; or

39 (D) finance the delivery of;

40 cocaine or a narcotic drug, pure or adulterated, classified in
 41 schedule I or II;

42 commits dealing in cocaine or a narcotic drug, a Level 5 felony, except



- 1 as provided in subsections (b) through (e).
 2 (b) A person may be convicted of an offense under subsection (a)(2)
 3 only if:
 4 (1) there is evidence in addition to the weight of the drug that the
 5 person intended to manufacture, finance the manufacture of,
 6 deliver, or finance the delivery of the drug; or
 7 (2) the amount of the drug involved is at least twenty-eight (28)
 8 grams.
 9 (c) The offense is a Level 4 felony if:
 10 (1) the amount of the drug involved is at least one (1) gram but
 11 less than five (5) grams; **or**
 12 (2) the amount of the drug involved is less than one (1) gram and
 13 an enhancing circumstance applies; **or**
 14 **(3) the drug is heroin and the amount of heroin involved,**
 15 **aggregated over a period of not more than ninety (90) days, is**
 16 **at least three (3) grams but less than seven (7) grams.**
 17 (d) The offense is a Level 3 felony if:
 18 (1) the amount of the drug involved is at least five (5) grams but
 19 less than ten (10) grams; **or**
 20 (2) the amount of the drug involved is at least one (1) gram but
 21 less than five (5) grams and an enhancing circumstance applies;
 22 **(3) the drug is heroin and the amount of heroin involved,**
 23 **aggregated over a period of not more than ninety (90) days, is**
 24 **at least seven (7) grams but less than twelve (12) grams; or**
 25 **(4) the drug is heroin and:**
 26 **(A) the amount of heroin involved, aggregated over a**
 27 **period of not more than ninety (90) days, is at least three**
 28 **(3) grams but less than seven (7) grams; and**
 29 **(B) an enhancing circumstance applies.**
 30 (e) The offense is a Level 2 felony if:
 31 (1) the amount of the drug involved is at least ten (10) grams; **or**
 32 (2) the amount of the drug involved is at least five (5) grams but
 33 less than ten (10) grams and an enhancing circumstance applies;
 34 **(3) the drug is heroin and the amount of heroin involved,**
 35 **aggregated over a period of not more than ninety (90) days, is**
 36 **at least twelve (12) grams; or**
 37 **(4) the drug is heroin and:**
 38 **(A) the amount of heroin involved, aggregated over a**
 39 **period of not more than ninety (90) days, is at least seven**
 40 **(7) grams but less than twelve (12) grams; and**
 41 **(B) an enhancing circumstance applies.**
 42 SECTION 5. IC 35-50-2-2.2, AS AMENDED BY P.L.10-2016,



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

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

10 (1) Level 2 felony; or

11 (2) Level 3 felony.

12 (c) If:

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

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

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

20 ~~(i) manufacture;~~

21 ~~(ii) delivery; or~~

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

23 ~~of heroin; or~~

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

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

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

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

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

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

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



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 324, 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, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-31.5-2-235.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 235.3. "Pharmacist", for purposes of IC 35-42-5-1, means an individual who is licensed, registered, or otherwise permitted by the laws of Indiana or the United States to:**

- (1) dispense;
- (2) distribute; or
- (3) prescribe;

a controlled substance as part of the individual's professional practice.

SECTION 2. IC 35-31.5-2-235.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 235.4. "Pharmacy", for purposes of IC 35-42-5-1, means a facility or part of a facility used to:**

- (1) dispense;
- (2) distribute; or
- (3) store;

controlled substances.

SECTION 3. IC 35-42-5-1, AS AMENDED BY P.L.158-2013, SECTION 450, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 1. (a) Except as provided in subsection (b), a person who knowingly or intentionally takes property from another person or from the presence of another person:**

- (1) by using or threatening the use of force on any person; or
- (2) by putting any person in fear;

commits robbery, a Level 5 felony. However, the offense is a Level 3 felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant, and a Level 2 felony if it results in serious bodily injury to any person other than a defendant.

(b) A person who knowingly or intentionally takes a controlled substance from a pharmacist acting in an official capacity or from a pharmacy by:

- (1) using or threatening the use of force on any person; or

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(2) putting any person in fear; commits robbery, a Level 4 felony. However, the offense is a Level 2 felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than the defendant, and the offense is a Level 1 felony if it results in serious bodily injury to any person other than the defendant."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 324 as printed February 24, 2017.)

WASHBURNE

Committee Vote: yeas 8, nays 1.

