

# SENATE BILL No. 64

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-1-17.

**Synopsis:** Sentence modification. Provides that a court may not, without the consent of the prosecuting attorney, reduce the sentence of a person sentenced under a plea agreement if the reduction was not authorized by the plea agreement.

**Effective:** July 1, 2018.

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January 3, 2018, read first time and referred to Committee on Corrections and Criminal Law.

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Second Regular Session 120th General Assembly (2018)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

## SENATE BILL No. 64

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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 35-38-1-17, AS AMENDED BY P.L.13-2016,  
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2018]: Sec. 17. (a) Notwithstanding IC 1-1-5.5-21, this section  
4 applies to a person who:  
5 (1) commits an offense; or  
6 (2) is sentenced;  
7 before July 1, 2014.  
8 (b) This section does not apply to a credit restricted felon.  
9 (c) Except as provided in subsections (k) and (m), this section does  
10 not apply to a violent criminal.  
11 (d) As used in this section, "violent criminal" means a person  
12 convicted of any of the following offenses:  
13 (1) Murder (IC 35-42-1-1).  
14 (2) Attempted murder (IC 35-41-5-1).  
15 (3) Voluntary manslaughter (IC 35-42-1-3).  
16 (4) Involuntary manslaughter (IC 35-42-1-4).  
17 (5) Reckless homicide (IC 35-42-1-5).



- 1 (6) Aggravated battery (IC 35-42-2-1.5).  
 2 (7) Kidnapping (IC 35-42-3-2).  
 3 (8) Rape (IC 35-42-4-1).  
 4 (9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).  
 5 (10) Child molesting (IC 35-42-4-3).  
 6 (11) Sexual misconduct with a minor as a Class A felony under  
 7 IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2)  
 8 (for a crime committed before July 1, 2014) or sexual misconduct  
 9 with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a  
 10 Level 2 felony under IC 35-42-4-9(b)(2) (for a crime committed  
 11 after June 30, 2014).  
 12 (12) Robbery as a Class A felony or a Class B felony  
 13 (IC 35-42-5-1) (for a crime committed before July 1, 2014) or  
 14 robbery as a Level 2 felony or a Level 3 felony (IC 35-42-5-1) (for  
 15 a crime committed after June 30, 2014).  
 16 (13) Burglary as Class A felony or a Class B felony  
 17 (IC 35-43-2-1) (for a crime committed before July 1, 2014) or  
 18 burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or  
 19 Level 4 felony (IC 35-43-2-1) (for a crime committed after June  
 20 30, 2014).  
 21 (14) Unlawful possession of a firearm by a serious violent felon  
 22 (IC 35-47-4-5).  
 23 (e) At any time after:  
 24 (1) a convicted person begins serving the person's sentence; and  
 25 (2) the court obtains a report from the department of correction  
 26 concerning the convicted person's conduct while imprisoned;  
 27 the court may reduce or suspend the sentence and impose a sentence  
 28 that the court was authorized to impose at the time of sentencing.  
 29 **However, if the convicted person was sentenced under the terms of**  
 30 **a plea agreement, the court may not, without the consent of the**  
 31 **prosecuting attorney, reduce or suspend the sentence and impose**  
 32 **a sentence not authorized by the plea agreement.** The court must  
 33 incorporate its reasons in the record.  
 34 (f) If the court sets a hearing on a petition under this section, the  
 35 court must give notice to the prosecuting attorney and the prosecuting  
 36 attorney must give notice to the victim (as defined in IC 35-31.5-2-348)  
 37 of the crime for which the convicted person is serving the sentence.  
 38 (g) The court may suspend a sentence for a felony under this section  
 39 only if suspension is permitted under IC 35-50-2-2.2.  
 40 (h) The court may deny a request to suspend or reduce a sentence  
 41 under this section without making written findings and conclusions.  
 42 (i) The court is not required to conduct a hearing before reducing or



- 1 suspending a sentence under this section if:
- 2 (1) the prosecuting attorney has filed with the court an agreement
- 3 of the reduction or suspension of the sentence; and
- 4 (2) the convicted person has filed with the court a waiver of the
- 5 right to be present when the order to reduce or suspend the
- 6 sentence is considered.
- 7 (j) This subsection applies only to a convicted person who is not a
- 8 violent criminal. A convicted person who is not a violent criminal may
- 9 file a petition for sentence modification under this section:
- 10 (1) not more than one (1) time in any three hundred sixty-five
- 11 (365) day period; and
- 12 (2) a maximum of two (2) times during any consecutive period of
- 13 incarceration;
- 14 without the consent of the prosecuting attorney.
- 15 (k) This subsection applies to a convicted person who is a violent
- 16 criminal. A convicted person who is a violent criminal may, not later
- 17 than three hundred sixty-five (365) days from the date of sentencing,
- 18 file one (1) petition for sentence modification under this section
- 19 without the consent of the prosecuting attorney. After the elapse of the
- 20 three hundred sixty-five (365) day period, a violent criminal may not
- 21 file a petition for sentence modification without the consent of the
- 22 prosecuting attorney.
- 23 (l) A person may not waive the right to sentence modification under
- 24 this section as part of a plea agreement. Any purported waiver of the
- 25 right to sentence modification under this section in a plea agreement is
- 26 invalid and unenforceable as against public policy. This subsection
- 27 does not prohibit the finding of a waiver of the right to sentence
- 28 modification for any other reason, including failure to comply with the
- 29 provisions of this section.
- 30 (m) Notwithstanding subsection (k), a person who commits an
- 31 offense after June 30, 2014, and before May 15, 2015, may file one (1)
- 32 petition for sentence modification without the consent of the
- 33 prosecuting attorney, even if the person has previously filed a petition
- 34 for sentence modification.

