



January 29, 2016

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## HOUSE BILL No. 1211

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DIGEST OF HB 1211 (Updated January 27, 2016 5:33 pm - DI 69)

**Citations Affected:** IC 5-2; IC 35-43; IC 35-48.

**Synopsis:** Methamphetamine and criminal mischief. Requires law enforcement agencies to report fires related to methamphetamine abuse to the Indiana criminal justice institute. Removes methamphetamine manufacturing and the financing of methamphetamine manufacturing from the crime of dealing in methamphetamine. Makes it manufacturing methamphetamine, a Level 4 felony, for a person to knowingly or intentionally: (1) manufacture; or (2) finance the manufacture of; methamphetamine. Makes the offense: (1) a Level 3 felony if the amount of the drug involved is at least 5 grams but less than 10 grams; and (2) a Level 2 felony if the amount of the drug involved is at least 10 grams, an enhancing circumstance applies, the manufacture of the drug results in serious bodily injury to someone other than the manufacturer, or the manufacture of the drug results in the death of another person. Removes methamphetamine manufacturing and the financing of methamphetamine manufacturing from the definition of "enhancing circumstance" for the purposes of criminal law. Includes the attempted manufacture of methamphetamine in the statutory definition of "methamphetamine abuse". Provides that damaging property during: (1) the dealing or manufacture; or (2) the attempted dealing or manufacture; of cocaine, a narcotic drug, or methamphetamine is a Level 6 felony. Provides that damaging a dwelling or structure attached to a dwelling during: (1) the dealing or manufacture; or (2) the attempted dealing or manufacture; of cocaine, a narcotic drug, or methamphetamine is a Level 4 felony in certain instances. Makes it institutional criminal mischief, a Class A  
(Continued next page)

**Effective:** July 1, 2016.

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### Carbaugh, Smaltz, Ober, Moed

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January 7, 2016, read first time and referred to Committee on Courts and Criminal Code.  
January 28, 2016, amended, reported — Do Pass.

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Digest Continued

misdemeanor, for a person to recklessly, knowingly, or intentionally damage property: (1) that is vacant; or (2) after the person has been denied entry to the property by a court order that was issued to the person or to the general public by conspicuous posting on or around the property in areas where a person could observe the order when the property has been designated by a municipality or county enforcement authority to be a vacant property, an abandoned property, or an abandoned structure; without the consent of the owner, possessor, or occupant of the property that is damaged. Makes the offense: (1) a Level 6 felony if the pecuniary loss is at least \$750 but less than \$50,000; and (2) a Level 5 felony if the pecuniary loss is at least \$50,000. Provides that, if the offense involved the use of graffiti, the court may order that the person's operator's license be suspended or invalidated by the bureau of motor vehicles for not more than one year.



January 29, 2016

Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1211

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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 5-2-16-2, AS ADDED BY P.L.151-2006,  
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2016]: Sec. 2. As used in this chapter, "methamphetamine  
4 abuse" means the:  
5 (1) use;  
6 (2) sale;  
7 (3) manufacture **or attempt to manufacture**;  
8 (4) transport; or  
9 (5) delivery;  
10 of methamphetamine or of a methamphetamine precursor, if the  
11 precursor is being used, sold, manufactured, transported, ~~or~~ delivered,  
12 **or processed** to facilitate the manufacture of methamphetamine.  
13 SECTION 2. IC 5-2-16-3, AS ADDED BY P.L.151-2006,  
14 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2016]: Sec. 3. A law enforcement agency that discovers  
16 evidence of:  
17 (1) methamphetamine abuse; **or**

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- 1           **(2) a fire related to methamphetamine abuse;**  
 2 shall report the methamphetamine abuse to the criminal justice institute  
 3 on a form and in the manner prescribed by guidelines adopted by the  
 4 criminal justice institute under IC 5-2-6-18.
- 5           SECTION 3. IC 35-43-1-2, AS AMENDED BY P.L.21-2014,  
 6 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2016]: Sec. 2. (a) A person who recklessly, knowingly, or  
 8 intentionally damages or defaces property of another person without  
 9 the other person's consent commits criminal mischief, a Class B  
 10 misdemeanor. However, the offense is:
- 11           (1) a Class A misdemeanor if the pecuniary loss is at least seven  
 12 hundred fifty dollars (\$750) but less than fifty thousand dollars  
 13 (\$50,000); ~~and~~  
 14           (2) a Level 6 felony if:
- 15           (A) the pecuniary loss is at least fifty thousand dollars  
 16 (\$50,000);  
 17           (B) the damage causes a substantial interruption or impairment  
 18 of utility service rendered to the public;  
 19           (C) the damage is to a public record; ~~or~~  
 20           (D) the damage is to a law enforcement animal (as defined in  
 21 IC 35-46-3-4.5); ~~or~~  
 22           **(E) the offense is committed during the dealing or**  
 23 **manufacture or attempted dealing or manufacture of**  
 24 **cocaine or a narcotic drug (IC 35-48-4-1), the dealing or**  
 25 **attempted dealing of methamphetamine (IC 35-48-4-1.1),**  
 26 **or the manufacturing of or attempted manufacturing of**  
 27 **methamphetamine (IC 35-48-4-1.2); and**  
 28           (3) a Level 4 felony if the offense is committed during the  
 29 dealing or manufacture or attempted dealing or manufacture  
 30 of cocaine or a narcotic drug (IC 35-48-4-1), the dealing or  
 31 attempted dealing of methamphetamine (IC 35-48-4-1.1), or  
 32 the manufacturing of or attempted manufacturing of  
 33 methamphetamine (IC 35-48-4-1.2), and:
- 34           (A) the property damaged by the commission or attempted  
 35 commission of the offense:  
 36           (i) involves the dwelling of another person; and  
 37           (ii) was damaged without the other person's consent; or  
 38           (B) the property of another person is damaged under  
 39 circumstances that endanger human life.
- 40           (b) A person who recklessly, knowingly, or intentionally damages:  
 41           (1) a structure used for religious worship;  
 42           (2) a school or community center;



1 (3) the property of an agricultural operation (as defined in  
2 IC 32-30-6-1);

3 (4) the grounds:

4 (A) adjacent to; and

5 (B) owned or rented in common with;

6 a structure or facility identified in subdivisions (1) through (3); ~~or~~

7 (5) personal property contained in a structure or located at a  
8 facility identified in subdivisions (1) through (3); **or**

9 **(6) property:**

10 **(A) that is vacant; or**

11 **(B) after the person has been denied entry to the property  
12 by a court order that was issued:**

13 **(i) to the person; or**

14 **(ii) to the general public by conspicuous posting on or  
15 around the property in areas where a person could  
16 observe the order when the property has been designated  
17 by a municipality or county enforcement authority to be  
18 a vacant property, an abandoned property, or an  
19 abandoned structure (as defined in IC 36-7-36-1);**

20 without the consent of the owner, possessor, or occupant of the  
21 property that is damaged, commits institutional criminal mischief, a  
22 Class A misdemeanor. However, the offense is a Level 6 felony if the  
23 pecuniary loss (or property damage, in the case of an agricultural  
24 operation) is at least seven hundred fifty dollars (\$750) but less than  
25 fifty thousand dollars (\$50,000), and a Level 5 felony if the pecuniary  
26 loss (or property damage, in the case of an agricultural operation) is at  
27 least fifty thousand dollars (\$50,000).

28 (c) If a person is convicted of an offense under this section that  
29 involves the use of graffiti, the court may, in addition to any other  
30 penalty, order that the person's operator's license be suspended or  
31 invalidated by the bureau of motor vehicles for not more than one (1)  
32 year.

33 (d) The court may rescind an order for suspension or invalidation  
34 under subsection (c) and allow the person to receive a license or permit  
35 before the period of suspension or invalidation ends if the court  
36 determines that the person has removed or painted over the graffiti or  
37 has made other suitable restitution.

38 SECTION 4. IC 35-48-1-16.5, AS AMENDED BY P.L.168-2014,  
39 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
40 JULY 1, 2016]: Sec. 16.5. "Enhancing circumstance" means one (1) or  
41 more of the following:

42 (1) The person has a prior conviction, in any jurisdiction, for



- 1 dealing in a controlled substance that is not marijuana, hashish,  
 2 hash oil, salvia divinorum, or a synthetic drug, including an  
 3 attempt or conspiracy to commit the offense.
- 4 (2) The person committed the offense while in possession of a  
 5 firearm.
- 6 (3) The person committed the offense:  
 7 (A) on a school bus; or  
 8 (B) in, on, or within five hundred (500) feet of:  
 9 (i) school property while a person under eighteen (18) years  
 10 of age was reasonably expected to be present; or  
 11 (ii) a public park while a person under eighteen (18) years  
 12 of age was reasonably expected to be present.
- 13 (4) The person delivered or financed the delivery of the drug to a  
 14 person under eighteen (18) years of age at least three (3) years  
 15 junior to the person.
- 16 ~~(5) The person manufactured or financed the manufacture of the~~  
 17 ~~drug.~~
- 18 ~~(6)~~ (5) The person committed the offense in the physical presence  
 19 of a child less than eighteen (18) years of age, knowing that the  
 20 child was present and might be able to see or hear the offense.
- 21 SECTION 5. IC 35-48-4-1.1, AS AMENDED BY P.L.226-2014(ts),  
 22 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 2016]: Sec. 1.1. (a) A person who:  
 24 (1) knowingly or intentionally:  
 25 ~~(A) manufactures;~~  
 26 ~~(B) finances the manufacture of;~~  
 27 ~~(C) (A) delivers; or~~  
 28 ~~(D) (B) finances the delivery of;~~  
 29 methamphetamine, pure or adulterated; or  
 30 (2) possesses, with intent to:  
 31 (A) manufacture;  
 32 (B) finance the manufacture of;  
 33 (C) deliver; or  
 34 (D) finance the delivery of;  
 35 methamphetamine, pure or adulterated;  
 36 commits dealing in methamphetamine, a Level 5 felony, except as  
 37 provided in subsections (b) through (e).  
 38 (b) A person may be convicted of an offense under subsection (a)(2)  
 39 only if there is evidence in addition to the weight of the drug that the  
 40 person intended to manufacture, finance the manufacture of, deliver,  
 41 or finance the delivery of the drug.  
 42 (c) The offense is a Level 4 felony if:



- 1 (1) the amount of the drug involved is at least one (1) gram but  
 2 less than five (5) grams; or  
 3 (2) the amount of the drug involved is less than one (1) gram and  
 4 an enhancing circumstance applies.  
 5 (d) The offense is a Level 3 felony if:  
 6 (1) the amount of the drug involved is at least five (5) **grams** but  
 7 less than ten (10) grams; or  
 8 (2) the amount of the drug involved is at least one (1) gram but  
 9 less than five (5) grams and an enhancing circumstance applies.  
 10 (e) The offense is a Level 2 felony if:  
 11 (1) the amount of the drug involved is at least ten (10) grams; **or**  
 12 (2) the amount of the drug involved is at least five (5) **grams** but  
 13 less than ten (10) grams and an enhancing circumstance applies.  
 14 **or**  
 15 ~~(3) the person is manufacturing the drug and the manufacture~~  
 16 ~~results in an explosion causing serious bodily injury to a person~~  
 17 ~~other than the manufacturer.~~  
 18 SECTION 6. IC 35-48-4-1.2 IS ADDED TO THE INDIANA CODE  
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 20 1, 2016]: **Sec. 1.2. (a) Except as provided in subsections (b) and (c),**  
 21 **a person who:**  
 22 **(1) knowingly or intentionally:**  
 23 **(A) manufactures; or**  
 24 **(B) finances the manufacture of;**  
 25 **methamphetamine, pure or adulterated, commits manufacturing**  
 26 **methamphetamine, a Level 4 felony.**  
 27 **(b) The offense is a Level 3 felony if the amount of the drug**  
 28 **involved is at least five (5) grams but less than ten (10) grams.**  
 29 **(c) The offense is a Level 2 felony if:**  
 30 **(1) the amount of the drug is at least ten (10) grams;**  
 31 **(2) an enhancing circumstance applies;**  
 32 **(3) the manufacture of the drug results in serious bodily**  
 33 **injury to a person other than the manufacturer; or**  
 34 **(4) the manufacture of the drug results in the death of another**  
 35 **person.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1211, 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 lines 12 and 13, begin a new paragraph and insert:

"SECTION 2. IC 5-2-16-3, AS ADDED BY P.L.151-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. A law enforcement agency that discovers evidence of:

**(1) methamphetamine abuse; or**

**(2) a fire related to methamphetamine abuse;**

shall report the methamphetamine abuse to the criminal justice institute on a form and in the manner prescribed by guidelines adopted by the criminal justice institute under IC 5-2-6-18."

Page 2, line 15, delete "(IC 35-48-4-1) or" and insert "**(IC 35-48-4-1), the dealing or attempted dealing of methamphetamine (IC 35-48-4-1.1), or the manufacturing of or attempted manufacturing of methamphetamine (IC 35-48-4-1.2); and**

**(3) a Level 4 felony if the offense is committed during the dealing or manufacture or attempted dealing or manufacture of cocaine or a narcotic drug (IC 35-48-4-1), the dealing or attempted dealing of methamphetamine (IC 35-48-4-1.1), or the manufacturing of or attempted manufacturing of methamphetamine (IC 35-48-4-1.2), and:"**

Page 2, delete lines 16 through 20.

Page 2, line 35, after "(3);" strike "or".

Page 2, line 37, after "(3);" insert "or

**(6) property:**

**(A) that is vacant; or**

**(B) after the person has been denied entry to the property by a court order that was issued:**

**(i) to the person; or**

**(ii) to the general public by conspicuous posting on or around the property in areas where a person could observe the order when the property has been designated by a municipality or county enforcement authority to be a vacant property, an abandoned property, or an abandoned structure (as defined in IC 36-7-36-1);"**

Page 3, after line 13, begin a new paragraph and insert:

"SECTION 3. IC 35-48-1-16.5, AS AMENDED BY P.L.168-2014,





SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 16.5. "Enhancing circumstance" means one (1) or more of the following:

- (1) The person has a prior 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.
- (2) The person committed the offense while in possession of a firearm.
- (3) The person committed the offense:
  - (A) on a school bus; or
  - (B) in, on, or within five hundred (500) feet of:
    - (i) school property while a person under eighteen (18) years of age was reasonably expected to be present; or
    - (ii) a public park while a person under eighteen (18) years of age was reasonably expected to be present.
- (4) The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.
- ~~(5) The person manufactured or financed the manufacture of the drug.~~
- ~~(6)~~ **(5)** The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

SECTION 4. IC 35-48-4-1.1, AS AMENDED BY P.L.226-2014(ts), SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1.1. (a) A person who:

- (1) knowingly or intentionally:
  - ~~(A) manufactures;~~
  - ~~(B) finances the manufacture of;~~
  - ~~(C)~~ **(A)** delivers; or
  - ~~(D)~~ **(B)** finances the delivery of;
 methamphetamine, pure or adulterated; or
- (2) possesses, with intent to:
  - (A) manufacture;
  - (B) finance the manufacture of;
  - (C) deliver; or
  - (D) finance the delivery of;
 methamphetamine, pure or adulterated;

commits dealing in methamphetamine, a Level 5 felony, except as provided in subsections (b) through (e).

- (b) A person may be convicted of an offense under subsection (a)(2)

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only if there is evidence in addition to the weight of the drug that the person intended to manufacture, finance the manufacture of, deliver, or finance the delivery of the drug.

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

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

(2) the amount of the drug involved is less than one (1) gram and an enhancing circumstance applies.

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

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

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

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

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

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

**or**

(3) ~~the person is manufacturing the drug and the manufacture results in an explosion causing serious bodily injury to a person other than the manufacturer.~~

SECTION 5. IC 35-48-4-1.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2016]: **Sec. 1.2. (a) Except as provided in subsections (b) and (c), a person who:**

**(1) knowingly or intentionally:**

**(A) manufactures; or**

**(B) finances the manufacture of;**

**methamphetamine, pure or adulterated, commits manufacturing methamphetamine, a Level 4 felony.**

**(b) The offense is a Level 3 felony if the amount of the drug involved is at least five (5) grams but less than ten (10) grams.**

**(c) The offense is a Level 2 felony if:**

**(1) the amount of the drug is at least ten (10) grams;**

**(2) an enhancing circumstance applies;**

**(3) the manufacture of the drug results in serious bodily injury to a person other than the manufacturer; or**



**(4) the manufacture of the drug results in the death of another person."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1211 as introduced.)

WASHBURNE

Committee Vote: yeas 9, nays 0.

