

## 2009 MANDATED TRAINING LEGAL UPDATE



**JAMES J. OLSZEWSKI**  
LAW INSTRUCTOR  
NILEA

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### SEARCH WARRANTS

Beer v. State, (04-29-2008)

- Indiana statute does not prohibit “no knock” search warrants !!!
- Don’t get carried away – be careful.
- In this case, a “no knock” warrant was properly issued based on affidavits that the subject possessed weapons & had said he would use them to avoid going back to prison.

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### EVIDENCE

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## SURVEILLANCE VIDEOTAPES

- May be admitted as substantive evidence under what is called the “silent witness” theory.
- There must be a strong showing of authenticity and competency.
- Legally, this is called “laying the proper foundation” for admission of a video.

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## AUTOMATIC OR SELF-ACTIVATED CAMERAS

- More detailed foundation required:
  - How and when was the camera loaded
  - How frequently was the camera activated
  - When were the photographs taken
  - How was the film processed after its removal from the camera
  - What was the chain of custody of the film after removal from the camera

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## SMELL OF MARIJUANA

“Burnt smell” vs. “Raw Smell”

**State v. Holley**

(Ind. App., 12-23-2008)

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### Smell of marijuana (cont.)

- Odor of burnt marijuana is sufficient to constitute probable cause when detected by a trained & experienced police officer.
- If a defense attorney challenges your testimony on the smell of marijuana the prosecution will have to establish the “evidentiary foundation” by establishing your “training & “experience.”

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### Holly marijuana case cont.

- Here, officer testified he had attended one seminar where he was shown what raw marijuana looked like.
- No testimony that he had any formal training regarding the detection of raw marijuana by odor.
- No testimony he had training to distinguish it from other substances.
- **Court suppressed his testimony!**

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### BLOOD DRAW PROTOCOL IC 9-30-6-6

State v. Hunter, (12-30-08)

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## Blood Draw cont.

- IC 9-30-6-6 states: “A physician or a person trained in obtaining bodily substance samples and acting under the direction of or protocol prepared by a physician”
- We must be able to show that a hospital technician 1) was trained in obtaining bodily substances; and 2) acting under the direction of or under a protocol prepared by a physician.
- Necessary for a proper evidentiary foundation.

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## RIGHT TO COUNSEL

1. **Attorney-client Privilege – Prosecutorial Misconduct – Prosecutor Listening to Telephone Communications Between Defendant and Counsel**  
*Bassett v. State*, \_\_ N.E.2d \_\_ (Ind., 10/28/08)



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2. **POLYGRAPH STIPULATION – “CRITICAL STAGE” – WAIVER**  
*Caraway v. State*, 891 N.E.2d 122 (Ind. Ct. App., 7/31/08), *reh’g denied* (10/3/08)

- Defendant not advised of his right to counsel on polygraph stipulation he signed, though he was advised of his *Miranda* rights prior to taking test.
- Appeal from denial of a motion to suppress polygraph results

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**Caraway continued**

“ . . . [W]hen a defendant finds himself in a critical stage, we cannot deny him his right to counsel simply because he has not been formally indicted yet. In sum, we conclude that Caraway’s right to counsel attached immediately prior to Detective Herr’s request to sign the stipulation agreement. Caraway had to stand alone against the State, and make a decision that might damage his defense at trial. At that critical stage, the absence of Caraway’s right to an attorney derogated his right to a fair trial.”

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**Giles v. California**  
128 S.Ct. 2678 (2008)



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**When can you use the Forfeiture by Wrongdoing exception?**

- Does the Defendant waive his Sixth Amendment right by killing a witness against him?
- There must be some showing of *intent* to preclude a witness from testifying before the right is waived.
- Due to the nature of a Domestic abuser to intimidate and isolate a victim proof of an ongoing abusive relationship may be enough to establish the proof necessary to invoke Forfeiture by Wrongdoing.

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***Dana Roberts v. State***  
**894 N.E.2d 1018**  
**(Ind. Ct. App. 10/15/08)**



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Holding: We hold that a party who has rendered a witness unavailable for cross-examination through a criminal act may not object to the introduction of hearsay statements as being inadmissible under the Indiana Rules of Evidence.

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**Amendment to Rules of Evidence  
effective January 1, 2009**

- Rule 804 (b) Hearsay Exceptions:
  - (5) Forfeiture by wrongdoing. A statement offered against a party that has engaged in or encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness for the purpose of preventing the declarant from attending or testifying.

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**BATTERY – ON CHILD – CORPORAL  
PUNISHMENT - DISCIPLINE**  
*Willis v. State*, 866 N.E.2d 374 (Ind. Ct. App.  
2007), *transfer granted* (7/25/07)



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**What is unreasonable  
discipline?**

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**Willis v. State (6-10-08)**  
Ind. Supreme Court

- “Battery on a child” I.C. 35-42-2-1(a)(2)(B)
- A parent has a right to use “reasonable or moderate physical force to control behavior.”
- A parent is privileged to apply such reasonable force or to impose such reasonable confinement upon his child as he reasonably believes to be necessary for proper control, training or education.

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“Reasonableness” Factors to Consider:

- Whether the actor is a parent;
- Age, sex, & physical & mental condition of child;
- Nature of his offense & apparent motive;
- Influence of his example upon other children of same family or group;
- Whether force or confinement is reasonable necessary & appropriate to compel obedience to a proper command;
- Whether it is disproportionate to the offense, unnecessarily degrading, or likely to cause serious or permanent harm

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**Battery – Parental Discipline**  
*Matthew v. State*, 892 N.E.2d 695 (Ind. Ct. App., 8/29/08) (2 -1 decision)

- 2 -1 majority finds sufficient evidence to sustain a battery conviction where the mother struck her 12-year-old daughter with a closed fist repeatedly, followed her into a bathroom and continued to strike her with a closed fist. The dissent felt that *Willis* compelled reversal.

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**TRAFFIC OFFENSES**

**1. Seat Belts – Fastened or Unfastened?**

*State v. Massey*, 887 N.E.2d 151  
(Ind. Ct. App., 5/30/08), *trans. denied*

I.C. 9-19-10-2

“ . . . shall have a safety belt properly fastened about the occupant’s body at all times when the vehicle is in forward motion.”

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**Massey continued**

“Is an occupant who has the lap belt fastened but who is not wearing the shoulder belt across his should violating the statute? The purpose of the seatbelt statute and the language chosen by the legislature lead us to conclude that an occupant must have the lap belt fastened and wear the shoulder strap of the seatbelt across his shoulder to comply with the statute.”

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**OWI Investigation and Field Sobriety Testing**

- **PBTS**
- State v. Whitney (6-30-08)
- Probable cause not required to administer a PBT.
- Odor of alcohol sufficient to justify a brief detention/extension of a lawful stop to determine whether driver consumed alcohol.

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State v Whitney cont.

- Court said Legislature intended PBT to be a screening device not another form of “chemical test.”
- PBTs generally inadmissible at trial because not subject to inspection and certification requirements.
- PBTs can be used to assist officers in determining whether to offer a “chemical test.”
- PBTs are also admissible at suppression hearings to demonstrate probable cause.
- Because of these differences no requirement of probable cause to administer PBT

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Whitney cont.

- **Holding of Court:** PBTs may not be randomly administered – the police officer needs “reasonable suspicion” to offer a PBT.

TIPS:

- Do PBTs
- Don’t do PBT as first field sobriety test
- Don’t stop with PBT. PBT alone will not give probable cause to administer chemical test.
- Do all field sobriety tests
- Odor of alcoholic beverage sufficient for “reasonable suspicion,” but not “probable cause.”

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Tinted Window Statute  
Herbert v. State, (7-25-08)

- Officer initiated a traffic stop based on darkness of car’s window tint and ultimately found cocaine.
- Defendant argued that officer had no formal training in terms of identifying if window tint is too dark!
- **Holding:** No formal training required to determine whether window’s tint is so dark “that the occupants of the vehicle cannot be easily identified or recognized through that window from outside the vehicle,” as required by IC 9-19-19-4(c). Defendant also tried to claim that officer needed an “instrument” or “device” to determine if tint was legal -- Court rejected the argument as well.

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SUSPENDED LICENSE  
TRAFFIC STOP

- Is knowledge that the registered owner of the vehicle has a suspended license enough to constitute reasonable suspicion for an officer to take the minimal action of initiating a traffic stop?

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**ANSWER:**

*MAYBE*

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**State v. Washington**  
Indiana Supreme Court  
(12-31-2008)

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**Issue:**

**When a motorist is stopped for a traffic infraction, can an officer, without reasonable suspicion, inquire as to possible further criminal activity (in this case drug possession).**

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Indiana Constitution permits officer to detain motorist briefly only as is necessary to complete the officer's work related to the illegality for which motorist was stopped.

Indiana Supreme Court has stated that where an officer stops a vehicle for a traffic violation, a request for driver's license, registration, a license plate check a request to search vehicle, and an inquiry whether the driver has any weapons in vehicle are properly within the scope of a reasonable detention.

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**Holding:**

Generally, because questions are neither searches nor seizures, police need not demonstrate justification for each question. Questions that do not increase the length of detention do not make the custody unreasonable or require suppression of evidence found as a result of the answers.

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**Washington cont.**

- Officer asked if Washington had "any weapons, drugs, or anything else that could harm him."
- Washington was not obligated to answer the questions.
- Once he chose to answer the questions and incriminate himself, this provided the basis for the officer's further request for consent to search.

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## PUBLIC INTOXICATION

IC 7.1-5-1-3

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## WHAT IS A "PUBLIC PLACE"?

"Public place" does not only mean a place devoted to the use of the public. It also means a place that "is in point of fact public, as distinguished from private, -- a place that is visited by many persons, and usually accessible to the neighboring public."

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## "Public Place" cont.

- Parked in a driveway behind a vacant house, next to an alley – **Not Public Place**
- Enclosed common hallways & stairways areas inside an apartment building – **Not public Place**
- In a driveway of a friend's house – **Not public Place**
- Porch of a private residence – **Not Public**
- Person parked on private lane entering private property @ 30ft. from county road – **Not Public**

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- Inside an automobile service station or business establishment – **Public Place**
- Outside, unenclosed courtyard area of an apartment complex – **Public Place**
- Person parked in vehicle between two gas pumps – **Public Place**

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**LEGISLATIVE UPDATE**

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- A. Cooling Off Period for Domestic Violence**  
S.E.A. 27, P.L. 44-2008
- New I.C. 35-33-1-1.7
- Facility having custody of
    - person arrested for “crime of domestic violence” (IC 35-41-1-6.3)
  - Must keep person for “at least” 8 hours from time of arrest

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S.E.A. 27 continued

New I.C. 35-33-8-6.5

- Judges may not release on bail for 8 hours

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**Convicted sex offender arrested in teen's murder**  
Updated: May 23, 2007 08:02 AM EDT  
Steve Jefferson/Eyewitness News


Cambridge City - A convicted rapist is back in jail while police investigate the murder of a Indiana teenager. The girl was found murdered Monday night. Investigators believe the suspect abducted her in broad daylight and then bragged about killing her.



Tarra Pickett's body was found in some woods Monday night.

It happened in Cambridge City, Indiana. That's about 50 miles east of Indianapolis in Wayne County.


People in the small town of Cambridge City gathered Tuesday to remember Tarra Pickett. Her father sat in the center of the gathering, overwhelmed with grief.



Engaged sex offender Leonard Dishes is under arrest in connection with the murder.


The 15-year-old mysteriously disappeared around 6:30 Monday evening. She was last seen near South Fourth Street. It was there that family and friends returned Tuesday night to shed tears. Included in that group was Michael Hickmott.

"She was a good girl. She stayed out of trouble and she got good grades," Hickmott said.



Hickmott participated in the search for Tarra. He heard rumors about someone killing a young girl and leaving the body in a wooded area. He says they went to the woods to ease the fears of another friend.

"So John and Papa decided to go into the woods to make Rachel safe. They got in the middle of the woods and there she was," he said.



"It was about 7:30 (p.m.) and I can't believe somebody in the neighborhood didn't hear

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**B. Bail – Sex Offenders**

H.E.A. 1276, P.L. 74-2008

New I.C. 35-33-8-3.5

- Applies to “sexually violent predators”
- This means:
  - sexually violent predator under I.C. 35-38-1-7.5
- and
- arrested for or charged as a “sex or violent” offense under I.C. 11-8-8-5
- Special definition of “sexually violent predator”

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**H.E.A. 1276 continued**

**Court may not admit person to bail unless there has been a bail hearing in open court if**

- **“sexually violent predator” (remember there is a special definition), or**
- **person charged with child molesting, or**
- **person charged with child solicitation (why these last 2 since they would already be included in special definition of “sexually violent predator”?)**

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**H.E.A. 1276 continued**

- **Hearing must usually be held within 48 hours unless “exigent circumstances”**
- **Also, exceptions under I.C. 35-33-8-6 for parolees or probationers**

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**H.E.A. 1276 continued**

- **Court will consider factors in I.C. 35-33-8-4 to determine if bail should exceed stationhouse bail**

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S.E.A. 227

• PROTECTIVE ORDERS [IPAC Request]

- First issue was to overrule case law which holds that a no contact order cannot be issued against person in jail or prison – only as condition of release or probation

See SECTION 6 – Amending I.C. 35-33-8-3.2

(a)(4):

*(4) Require the defendant to refrain from any direct or indirect contact with an individual, including if the defendant has not been released from lawful detention.*

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S.E.A. 227 continued

SECTION 21 - Creating NEW IC 35-38-1-30

*A sentencing court may require that, as a condition of a person's executed sentence, the person shall refrain from any direct or indirect contact with an individual.*

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S.E.A. 227 continued

SECTION 22 - Amends IC 35-46-1-15.1 to create Invasion of Privacy offense for:

- (12) an order issued under IC 35-33-8-3.2; or*
- (13) an order issued under IC 35-38-1-30*

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**D. Violation of Probation and Home Detention**  
S.E.A. 139, P.L. 48-2008

1. First part of Bill is meant to amend I.C. 35-38-2-3 to conform to *Prewitt v. State*, 878 N.E.2d 184 (Ind., 12/18/07)

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S.E.A. 139 continued

- If defendant violates probation or detention court may “impose one (1) or more” of the possible sanctions
  - continue person on probation without modifying terms
  - extend probation
  - order execution of sentence

[SECTION 1]

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S.E.A. 139 continued

2. Supervision in adjacent county

- Amends I.C. 35-38-2.5-5.5 to permit court in county A to “supervise” offender in an adjacent county B on probation or community corrections
- County A would be responsible for expenses of supervision

[SECTION 2]

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**E. CONVICTIONS, ELECTIONS AND PUBLIC OFFICIALS**

S.E.A. 281, P.L. 37-2008

- Amends I.C. 3-8-1-5 [SECTION 1]
- Creates a NEW I.C. 5-8-1-38 [SECTION 2] and repeals I.C. 5-8-1-37 [SECTION 4]
- Resolves some conflicts in previous laws
- Clarifies that for both candidates for public office and those already elected that reduction of sentence from Class D felony to Class A misdemeanor does not affect consequences of conviction

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**S.E.A. 258**

**NEW OFFENSE OF "SEX OFFENDER INTERNET OFFENSE" – I.C. 35-42-4-12 [SECTION 18]**

- Applies only to
  - sexually violent predators
  - persons convicted of a list of specific offenses and
  - required to register as a sex offender
  - has a "Romeo and Juliet" exception

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**S.E.A. 258 continued**

- Person described above who
  - knowingly or intentionally uses
    - "social networking web site" (defined), or
    - instant messaging or chat room program (defined)
  - that the offender knows allows a person who is less than 18
    - to access or use the website or program
  - commits sex offender Internet offense
  - Class A misdemeanor
  - Class D felony for prior conviction under section

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**S.E.A. 258 continued**

**Defense**

- did not know allowed access to persons under 18
- upon discovering this, immediately ceased further use or access

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**S.E.A. 258 continued**  
**TALKING DIRTY TO A KID – [Inappropriate Communication With Child]**  
**I.C. 35-42-4-13 [SECTION 19]**

- Person at least 21 years of age
- knowingly or intentionally
- communicates with person
  - he believes to be a child under 14
- concerning “sexual activity”
  - defined as “sexual intercourse”, deviate sexual conduct, or the fondling or touching of the buttocks, genitals or female breasts
- with intent to gratify sexual desires of either
- inappropriate communication with child
- Class B misdemeanor
- Class A misdemeanor using computer network

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**S.E.A. 258 continued**

**Does not apply:**

- parent, guardian or custodian
- person who acts with permission of child’s parent, guardian or custodian
- person to whom child makes report of abuse or neglect
- person to whom child relates medical symptoms

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**S.E.A. 258 continued**

**FORFEITURE**

**Amends I.C. 35-24-1-1 [SECTION 13] to specifically include computers and cell phones as equipment that could be forfeited if used in violating I.C. 35-42-4**

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**S.E.A. 258 continued**

**SEX OFFENDER PROBATIONERS AND PAROLEES – COMPUTER USE**

- As conditions of parole or probation require
  - consent
    - to search of sex offender’s personal computer at any time
    - to installation on sex offender’s personal computer or “device with Internet capability”, at sex offender’s expense, device to monitor Internet usage
  - prohibit sex offender from
    - accessing certain web sites, chat rooms, or instant messaging programs frequented by children
    - deleting, erasing or tampering with information on personal computer with intent to conceal prohibited activity

[SECTIONS 10 and 16]

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**S.E.A. 258 continued**

**SEX OR VIOLENT OFFENDERS - REGISTRY**

- Sex or violent offender must provide information regarding
  - email address
  - instant messaging user name
  - electronic chat room user name
  - social networking web site user name that offender uses

[SECTION 6]

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**S.E.A. 258 continued**

- If offender registers above information, must sign consent form authorizing
  - search at any time of
    - personal computers, or
    - device with Internet capability, and
  - installation of monitoring device or software at offender's expense

**[SECTION 6]**

- Challenge by ICLU
- Preliminary Injunction – 6-24-08

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**II. OFFENSES**

**A. DISARMING LAW ENFORCEMENT OFFICER --- IC 35-44-3-3.5  
H.E.A. 1074, P.L. 64-2008**

- Mandatory death penalty was added on second reading in the House but removed in the Senate

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**H.E.A. 1074 continued**

- "Officer" defined
- includes "law enforcement officer" (See I.C. 35-41-1-17)

**[SECTION 1]**

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H.E.A. 1074 continued

- Person who
- knows that another person is officer and
- knowingly or intentionally
  - takes or attempts to take a firearm (as defined in IC 35-47-1-5)
  - or “weapon” officer is authorized to carry
  - from “immediate proximity” of officer
    - without consent of officer and
    - while officer engaged in performance of official duties
  - commits disarming law enforcement officer
  - Class C felony
  - Class B felony – serious bodily injury to officer
  - Class A felony
    - results in death of officer, or
    - was a firearm and serious bodily injury

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H.E.A. 1074 continued

- Amends I.C. 35-50-2-2(b)(4)(U) to make minimum sentence non-suspendible

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**LET’S BREAK DOWN THE ELEMENTS  
THAT MUST BE PROVED FOR  
DISARMING OFFICER**

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- Knows that other person is a police officer

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- takes or attempts to take
- what will be a substantial step with specific intent?

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- a firearm ( as defined in IC 35-47-1-5



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or

- “weapon” officer is authorized to carry
- “weapon” not defined

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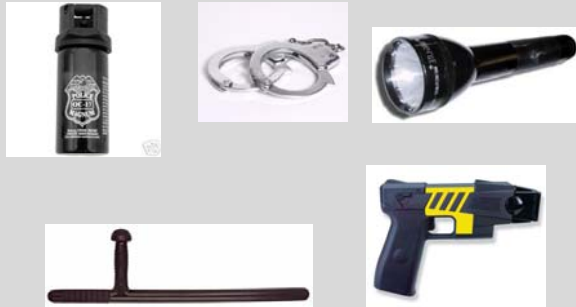
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What is a “weapon”?



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- “Deadly weapon” is defined at IC 35-41-1-8 and includes
  - taser or electronic stun weapons
  - chemical substance that could cause serious bodily injury

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**• Does not include**

- taser,**
- electronic stun weapon,**
- chemical designed to temporarily incapacitate a person, or**
- “another” device designed to temporarily incapacitate a person**

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**• If used by**

- trained law enforcement officer**
- using device in accordance with training, and**
- while lawfully engaged in execution of duties**

**• Since these items are not “deadly weapons” only if properly used by trained officer they would surely be “weapons” within the meaning of the disarming an officer statute**

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**• from “immediate proximity” of officer**

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- while officer engaged in performance of official duties

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**B. MOTORIST/PASSENGER DUTIES AT ACCIDENT SCENE; OWI  
H.E.A. 1052, P.L. 126-2008**

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H.E.A. 1052 continued

OWI

“Crime of violence” definition for purposes of consecutive sentence statute, I.C. 35-50-1-2, will now include:

- OWI causing serious bodily injury to another person
- Resisting law enforcement as a felony [SECTION 12]

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H.E.A. 1052 continued

Enhanced Penalties for Repeat Offenders

- Amends I.C. 9-30-5-3 to create Class C felony if prior conviction was
  - OWI causing death
  - OWI causing serious bodily injury
- No 5 year limitation

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H.E.A. 1052 continued

- Enhanced penalties applies if person violates
    - I.C. 9-30-5-1 (per se)
    - I.C. 9-30-5-2 (OWI)
    - I.C. 9-30-5-3(a)(2) (kid in car)
- [SECTION 9]

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H.E.A. 1052 continued

**Commencement of License Suspension Period**

- Amends I.C. 9-30-5-10 to provide license suspension can begin
  - before period of incarceration, or
  - after a period of incarceration, or
  - both

[SECTION 10]

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H.E.A. 1052 continued

**Leaving Scene Of OWI Causing Serious Bodily Injury**

- Amends I.C. 9-26-1-8 to provide Class B felony to knowingly or intentionally fail to stop after committed OWI serious bodily injury
  - Basic offense is Class A misdemeanor
  - Class D felony if
    - serious bodily injury, or
    - certain priors within 5 years
  - Class C felony if accident involves death of person

[SECTION 7]

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H.E.A. 1052 continued

**Leaving Scene/Rendering Assistance to “Entrapped Persons**

“Entrapment” defined as meaning “a confining circumstance from which escape or relief is difficult or impossible.”

[SECTION 1]

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**H.E.A. 1052 continued**

- **Driver’s Responsibility**
  - I.C. 9-26-1-1 amended to require driver to make arrangements for “the removal of each entrapped person from the vehicle in which the person is entrapped.”

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**H.E.A. 1052 continued**

- **Passenger’s Responsibility**
- **Creates a NEW I.C. 9-26-1-1.5**
  - **Driver physically incapable of determining need or rendering assistance to any injured or entrapped person**
  - **Another occupant in car**
    - **at least 15 and holds a learner’s permit or driver’s license issued under I.C. 9-24-11, or**
    - **18, and**
    - **capable of determining need and rendering reasonable assistance**

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**H.E.A. 1052 continued**

- **other occupant knows driver physically incapable**
- **occupant shall immediately determine need for and render reasonable assistance to each person injured or entrapped**
- **occupant also required to give accident notice**

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H.E.A. 1052 continued

- If more than 1 occupant that might have duty
    - defense that occupant reasonably believed other occupant determined need for and rendered reasonable assistance, or
    - defense that occupant reasonably believed other occupant gave notice
- [SECTION 4]

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H.E.A. 1052 continued

- Bill adds *mens rea* elements to leaving the scene criminal offenses (already case law)
- Adds “knowingly or intentionally” to I.C. 9-26-1-8 [SECTION 7]
  - Adds “intentionally, knowingly, or recklessly” to I.C. 9-26-1-9 [SECTION 8]

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H.E.A. 1052 continued

- New offense for occupants found in I.C. 9-26-1-1.5 is a Class C misdemeanor [SECTION 8]
- I.C. 9-24-10-4 is amended to specifically reference NEW I.C. 9-26-1-1.5 that must be included in test for learner’s permit [SECTION 2]
- Amends Good Samaritan Law, I.C. 34-30-12-1(b) to provide immunity for person who complies with I.C. 9-16-1-1.5 [SECTION 11]

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**D. FAILURE TO REPORT DEAD BODY  
H.E.A. 1144, P.L. 68-2008**

- **Creates NEW I.C. 35-45-19**
  - **Person who**
    - **discovers, or**
    - **has custody of body**
    - **of deceased person**
    - **when it appeared deceased person died:**

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**H.E.A. 1144 continued**

- **by violence, suicide, or accident**
- **suddenly, while in apparent good health**
- **while unattended**
- **from poisoning or overdose of drugs**
- **result of disease that may constitute threat to public health**
- **as a result of**
  - **disease**
  - **injury**
  - **toxic effect**
  - **unusual exertion**
- **incurred within scope of employment**
- **due to SIDS**
- **as a result of diagnostic or therapeutic procedure**
- **“under any other suspicious or unusual circumstances”**

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**H.E.A. 1144 continued**

- **knowingly or intentionally**
- **fails to report to**
  - **public safety officer [defined]**
  - **coroner**
  - **physician**
  - **911 call center**
- **within 3 hours after finding body**
- **commits failure to report a dead body**
- **Class A misdemeanor**

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**H.E.A. 1144 continued**

- Does not apply to
  - driver of vehicle in leaving the scene case, or
  - supersede any law governing reporting of death by hospital, etc.

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**H.E.A. 1144 continued**

Compare to law passed last year, amending I.C. 36-2-14-17

- person who knowingly or intentionally
- fails to immediately notify
  - coroner, or
  - law enforcement agency
- of discovery of dead body who has died
  - “from violence”
  - “in an apparently suspicious, unusual, or unnatural manner, or
  - at less than 3 years of age
- commits a Class B infraction
- Class A misdemeanor if done with intent to hinder criminal investigation
- Class D felony to alter crime scene with intent to hinder investigation

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**E. ARCHITECTURAL SALVAGE MATERIAL AND VALUABLE METAL DEALERS  
H.E.A. 1062, P.L. 63-2008**

Creates NEW Chapter I.C. 24-4-16

- Defines “architectural salvage material” generally as “item originally installed on or in a dwelling, a business, or any other structure and subsequently removed from the dwelling, business, or other structure”
- Includes a list of specific items
- Defines “dealer” for purposes of law

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H.E.A. 1062 continued

- Dealer may not purchase or otherwise obtain architectural salvage material
  - from person less than 18, or
  - “that the dealer believes or should have reason to believe is stolen property acquired as a result of a crime”
- Dealer must keep record book
  - description of property
  - date and time of transaction
  - identity of seller
    - type of government ID used to verify
  - signature of seller

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H.E.A. 1062 continued

- Record book must be retained for at least 2 years after most recent transaction
- Records confidential but open to inspection by law enforcement
- If dealer receives notice from law enforcement agency to hold architectural salvage material, dealer must hold for at least 5 business days after dealer receives notice
- Violation of chapter is Class A infraction

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H.E.A. 1062 continued

- Amends “Valuable Metals Law”, I.C. 25-37.5-1 to make it apply to all “firearms” and “non-firearms” metals
- Defines “ferrous” and “non-ferrous”
- Assigns to Sentencing Policy Study Committee the task of studying the topic of theft of salvaged materials, including valuable metals and architectural salvage materials
- Amends I.C. 36-2-13-5 to permit sheriff to supervise and inspect all pawnbrokers, etc. (but not architectural salvage dealers)
- Amends I.C. 36-8-3-10 to allow police chiefs and captains to supervise and inspect architectural salvage dealers

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**F. OTHER OFFENSES**

**1. Controlled Substances**  
**S.E.A. 305, P.L. 22-2008**  
**Adds drugs and changes chemical names for drugs**  
**IC 35-48-2-4 to 35-48-2-12**

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**2. Inmate Fraud**  
**S.E.A. 10, P.L. 81-2008**

- Creates NEW Offense at I.C. 35-43-5-20
- Inmate who
- with intent of obtaining
  - money, or
  - other property
- from a person who is not an inmate
- knowingly or intentionally
  - makes misrepresentation to person not an inmate and
  - attempts to obtain money or other property, or
  - obtains or attempts to obtain
    - money or other property
    - from person who is not inmate
    - through misrepresentation made by another person
- commits inmate fraud
- Class C felony

“Inmate” defined to include persons in custody of sheriff, county jail or secure juvenile facility

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**S.E.A. 10 continued**

- Creates a NEW I.C. 11-11-2-6
- Authorizes DOC to “freeze” all or part of a confined person’s account if
- DOC has “reasonable suspicion” to believe money was derived from inmate fraud
- Notice to prosecutor
- If prosecutor charges
  - account frozen until “final judgment”
- If no charges filed or person acquitted
  - unfreeze
- Convicted
  - DOC in consultation with P/A tries to locate rightful owner
- If rightful owner not located in 90 days after conviction money goes to crime victim compensation fund
- What about local Jail?

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**3. ALCOHOLIC BEVERAGES  
H.E.A. 1118, P.L. 94-2008**

- **Makes numerous changes regarding alcohol and tobacco, particularly with regard to minors**

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**H.E.A. 1118 continued**

- **Requires ATC to conduct random unannounced inspections of locations where alcoholic beverages are sold but must give 15 days notice (present law is 30 days)**
- **Allows a person 18-21 to purchase alcohol as part of enforcement action**
- **Provides for graduated civil penalties against a permittee for repeat violations of furnishing alcohol to minor**

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**H.E.A. 1118 continued**

- **Amends I.C. 7.1-5-7-1 to increase penalty from Class C infraction to Class C misdemeanor for a minor to knowingly and intentionally use false ID, etc.**
- **Amends I.C. 7.1-5-7-8 to increase penalty from Class C to Class B misdemeanor for knowingly or intentionally selling or furnishing alcoholic beverages to a minor**

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H.E.A. 1118 continued

- Further amends I.C. 7.1-5-7-8 to provide for these enhanced penalties:
  - Class A misdemeanor for prior unrelated conviction, or
  - Class D felony, if
    - consumption, ingestion, or use of the alcoholic beverage
    - is the proximate cause of the serious bodily injury or death of any person

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H.E.A. 1118 continued

Compare Contributing to Delinquency of Minor, I.C. 35-46-1-8:

Class C felony if

- person 21 or over
- knowingly or intentionally
- furnishes alcoholic beverages to a minor in violation of I.C. 7.1-5-7-8
- a person knew or should have known minor was under 18
- consumption, ingestion, or use of alcoholic beverage
  - is the proximate cause of the death of any person

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4. ARCHEOLOGY

H.E.A. 1129, P.L. 26-2008



- Amends laws relating to “burial grounds”
  - redefines “burial ground” to include certain historic sites
  - requires person to cease disturbing ground within 100 feet of discovery of burial object or artifact and notify the DNR within 2 business days. Failure to do so becomes a Class A infraction

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H.E.A. 1129 continued

- Amends I.C. 14-21-1-26 to provide a Class D felony for disturbing human remains
- Amends I.C. 14-21-1-28 to remove specific intent element for Class D felony and simply providing that it is violation to recklessly, knowingly, or intentionally disturb human remains or grave markers while moving, uncovering, or removing artifacts or burial objects without a DNR plan or in violation of a plan

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H.E.A. 1129 continued

- Creates a NEW I.C. 14-21-1-36
  - Person who
    - knowingly or intentionally
    - receives, retains, or disposes of
    - artifact, burial object, or human remains
  - in violation of chapter
- commits possession of looted property Class D felony
- Class C felony if
  - fair market cost of carrying out scientific archaeological investigation of the area that was damaged to obtain the artifact, etc., is at least \$100,000

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9. TITLE 15 RECODIFICATION  
S.B. 190, P.L. 2-2008
- Can you find “Dogs Running At Large” now?

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ALLOWING A DOG TO STRAY  
DOG BITE LIABILITY

IC 15-20-1-4

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