



2022 Trainer's Conference Legal Update

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2022 Legislative Changes

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Human Trafficking: IC 35-42-3.5-1.4

- Increased to a **Level 4 Felony**
- A person who knowingly or intentionally:
 - Pays, or offers or agrees to pay money or other property; or
 - **Offers** a benefit;
 - For a human trafficking victim **with the specific intent to induce or obtain the product or act for which the human trafficking victim was trafficked**
- It is not a defense that the victim consented.
- IC 35-42-3.5-5: law enforcement agency conducting the investigation must notify the **Office of the Attorney General within 30 days after the investigation begins**

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Rape: IC 35-42-4-1



- A person who knowingly or intentionally has sexual intercourse with another person or knowingly or intentionally causes another person to perform or submit to other sexual conduct when:
 - Compelled by force or imminent threat of force
 - Person is unaware sexual intercourse or other sexual conduct is occurring
 - Mental disability or deficiency prevents consent from being lawful, **or**
 - **Disregards victim's attempts to refuse the act through physical, verbal, or other visible conduct**

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Child Exploitation/Child Pornography IC 35-42-4-4



- "Image" has how been defined under Child Exploitation and Child Pornography statute:
 - Picture
 - Drawing
 - Photograph
 - Negative image
 - Undeveloped film
 - Motion picture
 - Videotape
 - **A digitized image**
 - **A computer-generated image**
 - Any pictorial representation

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Child Exploitation/Child Pornography IC 35-42-4-4



Added to Child Exploitation as a Level 5 Felony the following:

- (5) Knowingly or intentionally produces, disseminates, or possesses with intent to disseminate an image that depicts or describes sexual conduct:
- (A) by a child who the person knows is less than 18 years of age;
 - (B) by a child less than 18, or a person who appears to be a child less than 18 years of age, if the representation of the image is obscene; or
 - (C) that is simulated sexual conduct involving a representation that appears to be a child less than 18 years of age if it is obscene **(*it is not a required element under this section that the child depicted actually exists)**

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Child Exploitation/Child Pornography IC 35-42-4-4



Amended Possession of Child Pornography by possessing or accessing an image depicting sexual conduct:

- (1) By a child who the person knows is less than 18 years of age;
- (2) By a child less than 18 years of age, or by a person who appears to be a child less than 18 years of age, if the representation of the image is obscene (as described in IC 35-49-2-1); or
- (3) Simulated sexual conduct involving a representation that appears to be a child less than 18 years of age, if the representation of the image is obscene

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Child Exploitation/Child Pornography IC 35-42-4-4



"Obscene" (IC 35-49-2-1):

1. The average person, applying *contemporary community standards*, finds that the dominant theme of the matter or performance, taken as a whole, appeals to the prurient interest in sex;
2. The matter or performance depicts or describes, in a patently offensive way, sexual conduct; and
3. The matter or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value.

* Images involving sexual conduct with a person under the age of 18 will meet the statutory definition of "obscene".

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Theft: IC 35-43-4-2



Amended:

Theft of a firearm is now a **Level 5 Felony**

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Obstruction of Justice: IC 35-44.1-2-2



Added, as a Level 6 Felony:

A person who knowingly or intentionally induces by threat, coercion, false statement, or offer of goods, services, or anything of value, a witness or informant in a legal proceeding or an administrative or criminal investigation to:

(d) give a false or materially misleading statement

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Escape: IC 35-44.1-3-4



*Level 6 Felony Escape:

*Amended:

- A person who knowingly or intentionally violates home detention order **except a provision regarding possession/consumption of alcohol or drugs in home, missed/late appointments, or failure to pay user fees**

Added:

- Intentionally removes, **disables, or interferes with the operation of** an electronic monitoring device or GPS tracking device

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Intimidation: IC 35-45-2-1



Expanded the definition of "communicates":

IC 35-31.5-2-47.5:

"Communicates" or "communicating" means to make a statement to another person, directly, indirectly, or through an intermediary.

The term includes a statement made to another person, or on behalf of another person, by any medium (in person, in writing, electronically, telephonically, or on a social networking site).

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Electronic Monitoring: IC 35-38-2.7-4



- Tracked individuals charged with/convicted of **crime of violence or crime of domestic or sexual violence**:
- As soon as possible, **but not later than**:
 - **15 minutes** after a warrant has been issued, a local law enforcement agency shall transmit the details to all active units, and
 - **60 minutes after a warrant has been issued**, the LEO agency shall dispatch a LEO to apprehend the tracked individual
- Tracked individuals charged with **all other crimes**:
 - Details disseminated within **60 minutes** after the warrant issued
 - LEO dispatched within **48 hours after warrant issued** to apprehend the tracked individual

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Motor Vehicles: Title 9



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Turn Signals *Effective January 1, 2023



Repealed IC 9-21-8-25, which required an individual to signal 200 or 300 feet prior to a turn.


Amended IC 9-21-8-24:

Before making a movement (a turn or change lanes), a person shall provide notice of the person's intention by giving:

1. a clearly audible horn signal if any pedestrian may be affected by the movement, and
2. an appropriate stop or turn signal

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Motor Vehicle Crash Investigations:
IC 9-26-2-1



Amendment raised the **apparent total property damage to \$2500.00** from \$1000 to require a law enforcement officer to investigate the motor vehicle accident unless the accident results in the injury or death of a person.

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Catalytic Converters/ Salvage Recycler:
IC 9-32-9-14.5



A new section was added:
An automotive salvage recycler may not purchase more than one (1) detached catalytic converter for cash per seller per day (valued under \$25.00).
The section requires the recycler to purchase by check a detached catalytic converter valued at \$25.00 or more and to keep all records of these purchases required by IC 25-37.5-1-2.
Class A infraction if the automotive salvage recycler knowingly or intentionally fails to maintain the required records.

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Updated Cases



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"Highway": Driving While Suspended



Mercado v State, (Ind. Ct. App. November 23, 2022):

Facts: Mercado was driving while suspended prior. The officer received information Mercado would be near a hotel and found Mercado driving on a road referred to as "Carrie Lane". The road was a private service road but appeared to be the same as a publicly maintained road that services three hotels off SR 46, the city had repaired a damaged stop sign, and had paved some potholes.

IC 9-24-19-2: knowing driving privileges are suspended or revoked, operates a motor vehicle upon a highway...

IC 9-13-2-175: "street" or "highway" means the entire width between the boundary lines of every way **publicly** maintained when any part of the way is open to public use for purposes of vehicular travel. The term includes an alley in a city or town.

Held: This was a reasonable mistake of FACT, which does not invalidate the stop, and further, the only way to access Carrie Lane was from SR 46, a publicly maintained way. The Court did not find that the repairs by the city made it a publicly maintained road.

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"Inactive" Return: Driving While Suspended



White v State, (Ind. Ct. App. December 8, 2022):

Facts: Officer ran the license plate and the return from BMV showed the car registration as "inactive" but also listed the expiration date two months in the future. Traffic stop initiated.

IC 9-18.1-2-3: A vehicle operated on a highway must be registered and display proof of registration.

Held: There was no reasonable suspicion of a violation because there is no statute that prohibits an "inactive" registration.

The officer also testified he did not know what the term "inactive" meant, and that it was an administrative term from BMV rather than a legal term in an existing statute.

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Fourth Amendment: Waiver in Contract



State v Ellis, 167 N.E.3d 285 (Ind. 2021):

Contract for community corrections: "You **waive your right against search and seizure**, and shall permit MCCC staff or any law enforcement officer acting on MCCC's behalf, to search your person, residence, motor vehicle, or any location where your personal property may be found, to ensure compliance"

Held: The signed waiver of "the right against search and seizure" in the community corrections contract, clearly expresses to the defendant that a search may be conducted without reasonable suspicion.

*MCCC was able to do a search for any reason with the assistance of law enforcement.

Rule: a person on probation, community corrections, or parole **can waive their Fourth Amendment rights if the language of the contract is clear.**

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Fourth Amendment: Waiver in Contract



State v Fox, 186 N.E.3d 157 (Ind. Ct. App. 2022):

• **Contract** for community corrections sentence: “You **waive your right against search and seizure**, and shall permit MCCC staff or any law enforcement officer acting on MCCC’s behalf, to search your person, residence, motor vehicle, or any location where your personal property may be found, to ensure compliance”

Held: Confirmed that a consensual waiver of 4th Amendment rights to search and seizure is an exception to the warrant requirement.

*Re-affirmed that MCCC was able to do a search for any reason with the assistance of law enforcement **regardless of how the information was obtained**

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Fourth Amendment: Canine sniff on traffic stop



Powers v State, 190 N.E.3d 440 (Ind. Ct. App. 2022):

Facts: Traffic stop for speeding and crossing the center line. Vehicle failed to completely stop at first on the stop, but finally put it in park. Driver “seemed nervous”, visibly trembling hands, shaking, and stumbling over answer to simple questions. Passenger had open sores on her face and arms. Warning was written and then officer had them exit the car for a canine sniff. Passenger admitted to drugs prior to the sniff.

Held: Nervousness **standing alone does not rise to the level of reasonable suspicion** required to lengthen the traffic stop.

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Fourth Amendment: Canine sniff on traffic stop



Guthery v State, 180 N.E.3d 339 (Ind. Ct. App. 2021):

• **Totality of the facts known at the time amounted to reasonable suspicion to delay** the traffic stop for the canine sniff: unusual nervousness, inconsistent stories, reaching into the center console at the time of the stop, disobeying the officer’s orders not to roll the window up or get on his phone.



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Fourth Amendment Canine Sniff of a Motel



Crabtree v State, (Ind. Ct. App. December 1, 2022):

Facts: Warrantless canine sniff of an exterior walkway of a motel, which included the door to Room 233. The canine sniff followed an investigation involving an improper license plate on a truck that contained suspicious items such as a mask, a saw, a knife, and gloves. A canine alerted on the truck. Two individuals described the truck owner with specificity and indicated he was staying in Room 233 (confirmed by motel management). The sniff of the room, and knock-and-talk investigation resulted in a search warrant.

Held: *Litchfield* balancing test found that the canine sniff of the room was reasonable. Low intrusion, higher level of suspicion, and higher level of government needs.

* "Although we have held the **inside** of a hotel room is akin to the home for purposes of Article 1, Section 11, we do not believe this extends to the hotel's **exterior walkway**."

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Fourth Amendment Consent and *Pirtle*



Posso v State, 180 N.E.3d 326 (Ind. Ct. App. 2021):

Valid consent (waiver of the *Pirtle* rights) requires a **knowing and voluntary** waiver for all custody consent searches.

Facts: Father of a young boy who was brought into the hospital with signs of extreme neglect, who later died from his injuries, was questioned by a detective in the hospital room. His motel and van keys were removed, he was read *Miranda*. A written *Pirtle* form was handed to him and he asked what the form was. The detective did not explain the *Pirtle* warnings, read them out loud, and the evidence supported the belief that the defendant did NOT read the form prior to signing. The consensual search was overturned for a lack of a knowing and voluntary consent.

Best practice: **Read aloud** or allow time for review and confirm suspect understood

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Fourth Amendment Consent and *Pirtle*



McCoy v State, 193 N.E.3d 387 (Ind. 2022):

Pirtle warning is required for **all custodial consent** searches, regardless of the subjective intent of the officer.

Facts: Officer responds to a robbery/burglary investigation. McCoy is the alleged victim but also has an open arrest warrant. Officer arrests McCoy on the open warrant (handcuffs) and then asks McCoy if he will escort the officer into the house to document the missing items from the robbery/burglary (search). Drug paraphernalia was observed and a warrant was then obtained.

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Fourth Amendment Consent and *Pirtle*



Pirtle warnings:

- You have the right to deny or withdraw consent to a search at any time.
- You have the right to speak with an attorney for advice about your consent.
- If you cannot afford an attorney, one will be provided to you free of charge, at your request.

Do you understand these rights? Keeping these rights in mind, do you now consent to the search?

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Fourth Amendment Consent and Apparent Authority



Cinamon v State, (Ind. Ct. App. October 25, 2022):

Facts: Male homeowner Stelzel gave consent to a search of his residence. Cinamon (female) was one of three visitors found in the living room of the residence. One of the visitors asked to gather his belongings before exiting the residence and was permitted to do so. The living room search found a "white with black dots purse" sitting on the floor next to a couch. Meth pipe was found inside. Cinamon later claimed the purse.

Apparent authority doctrine: search is lawful if the officer is presented with circumstances from which there is a reasonable belief that the consenting party had authority over the premises (burden of proof on the State).

"Society accepts as objectively reasonable that persons have a legitimate expectation of privacy in their purses and other closed containers that normally hold highly personal items." The officer knew that there had been visitors in that area and did not tell those visitors they could remove their personal belongings prior to the consensual search.

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Forcible Resist: IC 35-44.1-3-1



A person who knowingly or intentionally **forcibly** resists, obstructs, or interferes with a LEO while lawfully engaged in the execution of officer's duties (or authorized service/execution of a civil or criminal process/order of a court)

Runnells v State, 186 N.E.3d 1181 (Ind Ct App 2022):

Held that the facts presented during testimony did not suggest "**strength, power, or violence**" in Runnells' actions to prove beyond a reasonable doubt that he acted forcibly.

Resist in this case was "pulling away" twice.

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Burglary: IC 35-43-2-1



A person who breaks and enters the building or structure of another with intent to commit a felony or theft in it, **while armed with a deadly weapon**, commits a **Level 2 Felony**.

Fix v State, 186 N.E.3d 1134 (Ind. 2022):

A defendant who **arms himself with a weapon inside the house** in which he has already broken and entered, while committing the continuous act of burglary, can be charged with the higher felony level.

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Permitless Carry



IC 35-47-2-3(a):

A person who is:

1. at least 18 years of age, and
 2. is not otherwise prohibited from carrying or possessing a handgun,
- is not required to obtain or possess a license or permit to carry a handgun in Indiana.

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Unlawful Carrying of a Handgun: IC 35-47-2-1.5



• New law that makes it a crime for **PROHIBITED** persons to knowingly or intentionally carry a handgun

• Class A Misdemeanor

- Level 5 Felony if a prohibited person knowingly or intentionally carries a handgun:
 - In, on, or within 500 feet of school property
 - On a school bus
 - With a prior felony conviction **within the past 15 years**
 - With any prior conviction under the new Unlawful Carrying statute, the old Carrying a Handgun without a License statute (IC 35-47-2-1), or use of a false/ altered handgun license (IC 35-47-2-22)

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Unlawful Carrying of a Handgun: Prohibited Persons



1. Felony conviction
2. Fugitive from another state
3. Alien
4. Conviction of "crime of domestic violence, domestic battery, or criminal stalking"
5. Restrained by protective order
6. Under indictment for a felony
7. Adjudicated dangerous, mental defective, or committed to a mental institution
8. Dishonorable discharge from military or National Guard
9. Renounced US citizenship
10. Under 23 years of age with an adjudication as a delinquent child for an act listed under Serious Violent Felon statute

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Unlawful Carrying of a Handgun: Easy



- Prior felony conviction (any crime in any jurisdiction with a maximum sentence greater than 1 year); **did not receive alternative misdemeanor sentencing**
- Pending a felony case in any court
- Currently restrained by a protective order issued under IC 34-26-5 (Indiana Civil Protection Order Act)
 - Family or household member who commits an act of domestic or family violence
 - Person who commits stalking or a sex offense under IC 35-42-4
 - Person who has committed repeated acts of harassment

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Unlawful Carrying of a Handgun: Easy



- Convicted of :
 - Crime of violence under IC 35-31.5-2-78: attempt/ commission of an offense with:
 - An element of physical force or threat with deadly weapon, and
 - Is committed against a family or household member **
 - Domestic battery IC 35-42-2-1.3 **
 - Stalking IC 35-45-10-5

**and the right to possess a firearm has not been restored under IC 35-47-4-7 (5 year waiting period following conviction as well as other conditions)

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Unlawful Carrying of a Handgun: Medium



- A person with an **out-of-state** warrant for a felony or misdemeanor offense or flees another state to avoid testifying in a criminal matter

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Unlawful Carrying of a Handgun: Hard



- Person not lawfully in the United States
- Committed to a mental institution for cognitive or mental defect, mental illness, or involuntarily *not for observation purposes only
- Adjudicated dangerous under IC 35-47-14-6 *Laird Law*
- *Caution: they successfully petitioned for return of a firearm under IC 35-47-14-8

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Unlawful Carrying of a Handgun: Hard



- Adjudicated a mental defective by a court; presents a danger to self or others, or lacks mental capacity to contract or manage own affairs (includes a finding of insanity in a criminal proceeding)
- Dishonorable discharge from military or National Guard
- Renounced citizenship as described in 8 USC 1481
- A person less than 23 years of age with a juvenile adjudication for Serious Violent Felony

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