

SENATE BILL No. 161

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-11-2-31.5; IC 35-31.5-2-106.5; IC 35-48-4.

Synopsis: Methamphetamine matters. Defines "drug related felony", and requires courts to report drug related felonies to the state police department. Requires the state police department to report drug related felonies to the National Precursor Log Exchange (NPLEx) so that NPLEx can generate a stop sale alert to prevent individuals with drug related felonies from purchasing ephedrine or pseudoephedrine. Provides that the offense of possession of a precursor by a methamphetamine offender (which prohibits the possession of pseudoephedrine or ephedrine without a prescription by persons convicted of certain offenses) applies to a person who has been convicted of a drug related felony.

Effective: Upon passage; January 1, 2017.

Young R Michael

January 5, 2016, read first time and referred to Committee on Corrections & Criminal Law.



Second Regular Session 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.

SENATE BILL No. 161

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 10-11-2-31.5 IS ADDED TO THE INDIANA
- 2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 3 [EFFECTIVE JANUARY 1, 2017]: **Sec. 31.5. (a) As used in this**
- 4 **section, "drug related felony" has the meaning set forth in**
- 5 **IC 35-48-4-18.**
- 6 **(b) The superintendent shall do the following:**
- 7 **(1) Receive reports from courts regarding drug related**
- 8 **felonies.**
- 9 **(2) Notify the National Precursor Log Exchange (NPLEx) of**
- 10 **each drug related felony entered within the previous seven (7)**
- 11 **years and provide the following information:**
- 12 **(A) The convicted individual's full name.**
- 13 **(B) The convicted individual's date of birth.**
- 14 **(C) The convicted individual's driver's license number or**
- 15 **state personal identification number.**
- 16 **(D) The date the individual was convicted of the drug**
- 17 **related felony.**



1 **(3) Request that a stop sale alert be generated through the**
 2 **National Precursor Log Exchange (NPLEx) for each**
 3 **individual reported under subdivision (2).**

4 **(4) Notify the National Precursor Log Exchange (NPLEx):**

5 **(A) if the drug related felony of an individual reported**
 6 **under subdivision (2) has been:**

7 **(i) set aside;**

8 **(ii) reversed;**

9 **(iii) expunged; or**

10 **(iv) vacated; and**

11 **(B) if clause (A) applies, that a stop sale alert should not be**
 12 **issued for the individual.**

13 SECTION 2. IC 35-31.5-2-106.5 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE UPON PASSAGE]: **Sec. 106.5. "Drug related felony",**
 16 **for purposes of IC 35-48-4-18, has the meaning set forth in**
 17 **IC 35-48-4-18(a).**

18 SECTION 3. IC 35-48-4-14.5, AS AMENDED BY P.L.168-2014,
 19 SECTION 105, IS AMENDED TO READ AS FOLLOWS
 20 [EFFECTIVE UPON PASSAGE]: Sec. 14.5. (a) As used in this
 21 section, "chemical reagents or precursors" refers to one (1) or more of
 22 the following:

23 (1) Ephedrine.

24 (2) Pseudoephedrine.

25 (3) Phenylpropanolamine.

26 (4) The salts, isomers, and salts of isomers of a substance
 27 identified in subdivisions (1) through (3).

28 (5) Anhydrous ammonia or ammonia solution (as defined in
 29 IC 22-11-20-1).

30 (6) Organic solvents.

31 (7) Hydrochloric acid.

32 (8) Lithium metal.

33 (9) Sodium metal.

34 (10) Ether.

35 (11) Sulfuric acid.

36 (12) Red phosphorous.

37 (13) Iodine.

38 (14) Sodium hydroxide (lye).

39 (15) Potassium dichromate.

40 (16) Sodium dichromate.

41 (17) Potassium permanganate.

42 (18) Chromium trioxide.



- 1 (19) Benzyl cyanide.
 2 (20) Phenylacetic acid and its esters or salts.
 3 (21) Piperidine and its salts.
 4 (22) Methylamine and its salts.
 5 (23) Isosafrole.
 6 (24) Safrole.
 7 (25) Piperonal.
 8 (26) Hydriodic acid.
 9 (27) Benzaldehyde.
 10 (28) Nitroethane.
 11 (29) Gamma-butyrolactone.
 12 (30) White phosphorus.
 13 (31) Hypophosphorous acid and its salts.
 14 (32) Acetic anhydride.
 15 (33) Benzyl chloride.
 16 (34) Ammonium nitrate.
 17 (35) Ammonium sulfate.
 18 (36) Hydrogen peroxide.
 19 (37) Thionyl chloride.
 20 (38) Ethyl acetate.
 21 (39) Pseudoephedrine hydrochloride.
- 22 (b) A person who possesses more than ten (10) grams of ephedrine,
 23 pseudoephedrine, or phenylpropanolamine, pure or adulterated,
 24 commits a Level 6 felony. However, the offense is a Level 5 felony if
 25 the person possessed:
- 26 (1) a firearm while possessing more than ten (10) grams of
 27 ephedrine, pseudoephedrine, or phenylpropanolamine, pure or
 28 adulterated; or
 29 (2) more than ten (10) grams of ephedrine, pseudoephedrine, or
 30 phenylpropanolamine, pure or adulterated, in, on, or within five
 31 hundred (500) feet of:
- 32 (A) school property while a person under eighteen (18) years
 33 of age was reasonably expected to be present; or
 34 (B) a public park while a person under eighteen (18) years of
 35 age was reasonably expected to be present.
- 36 (c) A person who possesses anhydrous ammonia or ammonia
 37 solution (as defined in IC 22-11-20-1) with the intent to manufacture
 38 methamphetamine or amphetamine, schedule II controlled substances
 39 under IC 35-48-2-6, commits a Level 6 felony. However, the offense
 40 is a Level 5 felony if the person possessed:
- 41 (1) a firearm while possessing anhydrous ammonia or ammonia
 42 solution (as defined in IC 22-11-20-1) with intent to manufacture



- 1 methamphetamine or amphetamine, schedule II controlled
 2 substances under IC 35-48-2-6; or
 3 (2) anhydrous ammonia or ammonia solution (as defined in
 4 IC 22-11-20-1) with intent to manufacture methamphetamine or
 5 amphetamine, schedule II controlled substances under
 6 IC 35-48-2-6, in, on, or within five hundred (500) feet of:
 7 (A) school property while a person under eighteen (18) years
 8 of age was reasonably expected to be present; or
 9 (B) a public park while a person under eighteen (18) years of
 10 age was reasonably expected to be present.
- 11 (d) Subsection (b) does not apply to a:
 12 (1) licensed health care provider, pharmacist, retail distributor,
 13 wholesaler, manufacturer, warehouseman, or common carrier or
 14 an agent of any of these persons if the possession is in the regular
 15 course of lawful business activities; or
 16 (2) person who possesses more than ten (10) grams of a substance
 17 described in subsection (b) if the substance is possessed under
 18 circumstances consistent with typical medicinal or household use,
 19 including:
 20 (A) the location in which the substance is stored;
 21 (B) the possession of the substance in a variety of:
 22 (i) strengths;
 23 (ii) brands; or
 24 (iii) types; or
 25 (C) the possession of the substance:
 26 (i) with different expiration dates; or
 27 (ii) in forms used for different purposes.
- 28 (e) A person who possesses two (2) or more chemical reagents or
 29 precursors with the intent to manufacture a controlled substance
 30 commits a Level 6 felony.
- 31 (f) An offense under subsection (e) is a Level 5 felony if the person
 32 possessed:
 33 (1) a firearm while possessing two (2) or more chemical reagents
 34 or precursors with intent to manufacture a controlled substance;
 35 or
 36 (2) two (2) or more chemical reagents or precursors with intent to
 37 manufacture a controlled substance in, on, or within five hundred
 38 (500) feet of:
 39 (A) school property while a person under eighteen (18) years
 40 of age was reasonably expected to be present; or
 41 (B) a public park while a person under eighteen (18) years of
 42 age was reasonably expected to be present.



1 (g) A person who sells, transfers, distributes, or furnishes a chemical
 2 reagent or precursor to another person with knowledge or the intent that
 3 the recipient will use the chemical reagent or precursors to manufacture
 4 a controlled substance commits unlawful sale of a precursor, a Level
 5 6 felony. However, the offense is a Level 5 felony if the person sells,
 6 transfers, distributes, or furnishes more than ten (10) grams of
 7 ephedrine, pseudoephedrine, or phenylpropanolamine.

8 (h) This subsection does not apply to a drug containing ephedrine,
 9 pseudoephedrine, or phenylpropanolamine that is dispensed under a
 10 prescription. A person who:

11 (1) has been convicted of:

12 (A) dealing in methamphetamine (IC 35-48-4-1.1);

13 (B) possession of more than ten (10) grams of ephedrine,
 14 pseudoephedrine, or phenylpropanolamine (subsection (b));

15 (C) possession of anhydrous ammonia or ammonia solution (as
 16 defined in IC 22-11-20-1) with intent to manufacture
 17 methamphetamine or amphetamine (subsection (c));

18 (D) possession of two (2) or more chemical reagents or
 19 precursors with the intent to manufacture a controlled
 20 substance (subsection (e)); **or**

21 (E) unlawful sale of a precursor (subsection (g)); **or**

22 **(F) another drug related felony (as defined in**
 23 **IC 35-48-4-18(a)); and**

24 (2) not later than seven (7) years from the date the person was
 25 sentenced for the offense;

26 knowingly or intentionally possesses ephedrine, pseudoephedrine, or
 27 phenylpropanolamine, pure or adulterated, commits possession of a
 28 precursor by a methamphetamine offender, a Level 6 felony.

29 SECTION 4. IC 35-48-4-14.7, AS AMENDED BY P.L.193-2013,
 30 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JANUARY 1, 2017]: Sec. 14.7. (a) This section does not apply to the
 32 following:

33 (1) Ephedrine or pseudoephedrine dispensed pursuant to a
 34 prescription.

35 (2) The sale of a drug containing ephedrine or pseudoephedrine
 36 to a licensed health care provider, pharmacist, retail distributor,
 37 wholesaler, manufacturer, or an agent of any of these persons if
 38 the sale occurs in the regular course of lawful business activities.
 39 However, a retail distributor, wholesaler, or manufacturer is
 40 required to report a suspicious order to the state police department
 41 in accordance with subsection (g).

42 (3) The sale of a drug containing ephedrine or pseudoephedrine



- 1 by a person who does not sell exclusively to walk-in customers for
 2 the personal use of the walk-in customers. However, if the person
 3 described in this subdivision is a retail distributor, wholesaler, or
 4 manufacturer, the person is required to report a suspicious order
 5 to the state police department in accordance with subsection (g).
 6 (b) The following definitions apply throughout this section:
 7 (1) "Constant video monitoring" means the surveillance by an
 8 automated camera that:
 9 (A) records at least one (1) photograph or digital image every
 10 ten (10) seconds;
 11 (B) retains a photograph or digital image for at least
 12 seventy-two (72) hours;
 13 (C) has sufficient resolution and magnification to permit the
 14 identification of a person in the area under surveillance; and
 15 (D) stores a recorded photograph or digital image at a location
 16 that is immediately accessible to a law enforcement officer.
 17 (2) "Convenience package" means a package that contains a drug
 18 having as an active ingredient not more than sixty (60) milligrams
 19 of ephedrine or pseudoephedrine, or both.
 20 (3) "Ephedrine" means pure or adulterated ephedrine.
 21 (4) "Pharmacy or NPLeX retailer" means:
 22 (A) a pharmacy, as defined in IC 25-26-13-2;
 23 (B) a retailer containing a pharmacy, as defined in
 24 IC 25-26-13-2; or
 25 (C) a retailer that electronically submits the required
 26 information to the National Precursor Log Exchange (NPLeX).
 27 ~~administered by the National Association of Drug Diversion~~
 28 ~~Investigators (NADDI);~~
 29 (5) "Pseudoephedrine" means pure or adulterated
 30 pseudoephedrine.
 31 (6) "Retailer" means a grocery store, general merchandise store,
 32 or other similar establishment. The term does not include a
 33 pharmacy or NPLeX retailer.
 34 (7) "Suspicious order" means a sale or transfer of a drug
 35 containing ephedrine or pseudoephedrine if the sale or transfer:
 36 (A) is a sale or transfer that the retail distributor, wholesaler,
 37 or manufacturer is required to report to the United States Drug
 38 Enforcement Administration;
 39 (B) appears suspicious to the retail distributor, wholesaler, or
 40 manufacturer in light of the recommendations contained in
 41 Appendix A of the report to the United States attorney general
 42 by the suspicious orders task force under the federal



- 1 Comprehensive Methamphetamine Control Act of 1996; or
2 (C) is for cash or a money order in a total amount of at least
3 two hundred dollars (\$200).
4 (8) "Unusual theft" means the theft or unexplained disappearance
5 from a particular pharmacy or NPLeX retailer of drugs containing
6 ten (10) grams or more of ephedrine, pseudoephedrine, or both in
7 a twenty-four (24) hour period.
8 (c) A drug containing ephedrine or pseudoephedrine may be sold
9 only by a pharmacy or NPLeX retailer. Except as provided in
10 subsection (f), a retailer may not sell a drug containing ephedrine or
11 pseudoephedrine.
12 (d) A pharmacy or NPLeX retailer may sell a drug that contains the
13 active ingredient of ephedrine, pseudoephedrine, or both only if the
14 pharmacy or NPLeX retailer complies with the following conditions:
15 (1) The pharmacy or NPLeX retailer does not sell the drug to a
16 person less than eighteen (18) years of age.
17 (2) The pharmacy or NPLeX retailer does not sell drugs
18 containing more than:
19 (A) three and six-tenths (3.6) grams of ephedrine or
20 pseudoephedrine, or both, to one (1) individual on one (1) day;
21 (B) seven and two-tenths (7.2) grams of ephedrine or
22 pseudoephedrine, or both, to one (1) individual in a thirty (30)
23 day period; or
24 (C) sixty-one and two-tenths (61.2) grams of ephedrine or
25 pseudoephedrine, or both, to one (1) individual in a three
26 hundred sixty-five (365) day period.
27 (3) The pharmacy or NPLeX retailer requires:
28 (A) the purchaser to produce a valid government issued photo
29 identification card showing the date of birth of the person;
30 (B) the purchaser to sign a written or electronic log attesting
31 to the validity of the information; and
32 (C) the clerk who is conducting the transaction to initial or
33 electronically record the clerk's identification on the log.
34 Records from the completion of a log must be retained for at least
35 two (2) years. A law enforcement officer has the right to inspect
36 and copy a log or the records from the completion of a log in
37 accordance with state and federal law. A pharmacy or NPLeX
38 retailer may not sell or release a log or the records from the
39 completion of a log for a commercial purpose. The Indiana
40 criminal justice institute may obtain information concerning a log
41 or the records from the completion of a log from a law
42 enforcement officer if the information may not be used to identify



1 a specific individual and is used only for statistical purposes. A
 2 pharmacy or NPLEx retailer that in good faith releases
 3 information maintained under this subsection is immune from
 4 civil liability unless the release constitutes gross negligence or
 5 intentional, wanton, or willful misconduct.

6 (4) The pharmacy or NPLEx retailer maintains a record of
 7 information for each sale of a nonprescription product containing
 8 pseudoephedrine or ephedrine. Required information includes:

9 (A) the name and address of each purchaser;

10 (B) the type of identification presented;

11 (C) the governmental entity that issued the identification;

12 (D) the identification number; and

13 (E) the ephedrine or pseudoephedrine product purchased,
 14 including the number of grams the product contains and the
 15 date and time of the transaction.

16 (5) Beginning January 1, 2012, a pharmacy or NPLEx retailer
 17 shall, except as provided in subdivision (6), before completing a
 18 sale of an over-the-counter product containing pseudoephedrine
 19 or ephedrine, electronically submit the required information to the
 20 National Precursor Log Exchange (NPLEx), ~~administered by the~~
 21 ~~National Association of Drug Diversion Investigators (NADDI)~~;
 22 if the NPLEx system is available to pharmacies or NPLEx
 23 retailers in the state without a charge for accessing the system.
 24 The pharmacy or NPLEx retailer may not complete the sale if the
 25 system generates a stop sale alert, **including a stop sale alert for**
 26 **an individual convicted of a drug related felony reported**
 27 **under IC 10-11-2-31.5.**

28 (6) If a pharmacy or NPLEx retailer selling an over-the-counter
 29 product containing ephedrine or pseudoephedrine experiences
 30 mechanical or electronic failure of the electronic sales tracking
 31 system and is unable to comply with the electronic sales tracking
 32 requirement, the pharmacy or NPLEx retailer shall maintain a
 33 written log or an alternative electronic recordkeeping mechanism
 34 until the pharmacy or NPLEx retailer is able to comply with the
 35 electronic sales tracking requirement.

36 (7) The pharmacy or NPLEx retailer stores the drug behind a
 37 counter in an area inaccessible to a customer or in a locked
 38 display case that makes the drug unavailable to a customer
 39 without the assistance of an employee.

40 (e) A person may not purchase drugs containing more than:

41 (1) three and six-tenths (3.6) grams of ephedrine or
 42 pseudoephedrine, or both, on one (1) day;



1 (2) seven and two-tenths (7.2) grams of ephedrine or
2 pseudoephedrine, or both, in a thirty (30) day period; or

3 (3) sixty-one and two-tenths (61.2) grams of ephedrine or
4 pseudoephedrine, or both, in a three hundred sixty-five (365) day
5 period.

6 These limits apply to the total amount of base ephedrine and
7 pseudoephedrine contained in the products and not to the overall
8 weight of the products.

9 (f) This subsection only applies to convenience packages. A retailer
10 may sell convenience packages under this section without complying
11 with the conditions listed in subsection (d):

12 (1) after June 30, 2013; and

13 (2) before January 1, 2014.

14 A retailer may not sell drugs containing more than sixty (60)
15 milligrams of ephedrine or pseudoephedrine, or both in any one (1)
16 transaction. A retailer who sells convenience packages must secure the
17 convenience packages behind the counter in an area inaccessible to a
18 customer or in a locked display case that makes the drug unavailable
19 to a customer without the assistance of an employee. A retailer may not
20 sell a drug containing ephedrine or pseudoephedrine after December
21 31, 2013.

22 (g) A retail distributor, wholesaler, or manufacturer shall report a
23 suspicious order to the state police department in writing.

24 (h) Not later than three (3) days after the discovery of an unusual
25 theft at a particular retail store, the pharmacy or NPLeX retailer shall
26 report the unusual theft to the state police department in writing. If
27 three (3) unusual thefts occur in a thirty (30) day period at a particular
28 pharmacy or NPLeX retailer, the pharmacy or NPLeX retailer shall, for
29 at least one hundred eighty (180) days after the date of the last unusual
30 theft, locate all drugs containing ephedrine or pseudoephedrine at that
31 particular pharmacy or NPLeX retailer behind a counter in an area
32 inaccessible to a customer or in a locked display case that makes the
33 drug unavailable to customers without the assistance of an employee.

34 (i) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance
35 after February 1, 2005, that is more stringent than this section.

36 (j) A person who knowingly or intentionally violates this section
37 commits a Class C misdemeanor. However, the offense is a Class A
38 misdemeanor if the person has a prior unrelated conviction under this
39 section.

40 (k) A pharmacy or NPLeX retailer that uses the electronic sales
41 tracking system in accordance with this section is immune from civil
42 liability for any act or omission committed in carrying out the duties



1 required by this section, unless the act or omission was due to
 2 negligence, recklessness, or deliberate or wanton misconduct. A
 3 pharmacy or NPLeX retailer is immune from liability to a third party
 4 unless the pharmacy or NPLeX retailer has violated a provision of this
 5 section and the third party brings an action based on the pharmacy's or
 6 NPLeX retailer's violation of this section.

7 (l) The following requirements apply to the NPLeX:

8 (1) Information contained in the NPLeX may be shared only with
 9 law enforcement officials.

10 (2) A law enforcement official may access Indiana transaction
 11 information maintained in the NPLeX for investigative purposes.

12 (3) NADDI may not modify sales transaction data that is shared
 13 with law enforcement officials.

14 (4) At least one (1) time per ~~week~~, ~~NADDI shall forward~~ **day**,
 15 Indiana data contained in the NPLeX ~~including data concerning~~
 16 ~~a transaction that could not be completed due to the issuance of~~
 17 ~~a stop sale alert~~, **for the previous calendar day shall be**
 18 **forwarded** to the state police department.

19 SECTION 5. IC 35-48-4-18 IS ADDED TO THE INDIANA CODE
 20 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 21 **UPON PASSAGE]: Sec. 18. (a) As used in this section, "drug**
 22 **related felony" means a felony conviction for an offense described**
 23 **in:**

24 (1) **sections 1 through 11.5 of this chapter; or**

25 (2) **sections 13 through 14.7 of this chapter.**

26 (b) **The court shall report any conviction for a drug related**
 27 **felony to the state police department for purposes of**
 28 **IC 10-11-2-31.5. The report must contain at least the following**
 29 **information:**

30 (1) **The convicted individual's full name.**

31 (2) **The convicted individual's date of birth.**

32 (3) **The convicted individual's driver's license number or state**
 33 **personal identification number.**

34 (4) **The Indiana Code citation and associated cause number of**
 35 **the drug related felony of which the individual was convicted.**

36 (5) **The date the individual was convicted of the drug related**
 37 **felony.**

38 SECTION 6. **An emergency is declared for this act.**

