

IC 35-33

ARTICLE 33. PRELIMINARY PROCEEDINGS

IC 35-33-1

Chapter 1. Arrest

IC 35-33-1-0.1

Repealed

(Repealed by P.L.63-2012, SEC.41.)

IC 35-33-1-1 Version a

Law enforcement officer; federal enforcement officer

Note: This version of section effective until 1-1-2015. See also following version of this section, effective 1-1-2015.

Sec. 1. (a) A law enforcement officer may arrest a person when the officer has:

- (1) a warrant commanding that the person be arrested;
- (2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony;
- (3) probable cause to believe the person has violated the provisions of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;
- (4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence;
- (5) probable cause to believe the person has committed a:
 - (A) battery resulting in bodily injury under IC 35-42-2-1; or
 - (B) domestic battery under IC 35-42-2-1.3.

The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause;

- (6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy);
- (7) probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license) or IC 35-47-2-22 (counterfeit handgun license);
- (8) probable cause to believe that the person is violating or has violated an order issued under IC 35-50-7;
- (9) probable cause to believe that the person is violating or has violated IC 35-47-6-1.1 (undisclosed transport of a dangerous device);
- (10) probable cause to believe that the person is:
 - (A) violating or has violated IC 35-45-2-5 (interference with the reporting of a crime); and
 - (B) interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5);
- (11) probable cause to believe that the person has committed theft (IC 35-43-4-2);
- (12) a removal order issued for the person by an immigration

court;

(13) a detainer or notice of action for the person issued by the United States Department of Homeland Security; or

(14) probable cause to believe that the person has been indicted for or convicted of one (1) or more aggravated felonies (as defined in 8 U.S.C. 1101(a)(43)).

(b) A person who:

(1) is employed full time as a federal enforcement officer;

(2) is empowered to effect an arrest with or without warrant for a violation of the United States Code; and

(3) is authorized to carry firearms in the performance of the person's duties;

may act as an officer for the arrest of offenders against the laws of this state where the person reasonably believes that a felony has been or is about to be committed or attempted in the person's presence.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.6; P.L.320-1983, SEC.2; P.L.311-1985, SEC.1; P.L.319-1987, SEC.1; P.L.53-1989, SEC.6; P.L.160-1990, SEC.1; P.L.2-1991, SEC.102; P.L.1-1991, SEC.189; P.L.1-1992, SEC.178; P.L.242-1993, SEC.1; P.L.140-1994, SEC.3; P.L.216-1996, SEC.10; P.L.47-2000, SEC.2; P.L.222-2001, SEC.3; P.L.133-2002, SEC.59; P.L.221-2003, SEC.15; P.L.50-2005, SEC.1; P.L.171-2011, SEC.20; P.L.226-2014(ts), SEC.3.

IC 35-33-1-1 Version b

Law enforcement officer; federal enforcement officer

Note: This version of section effective 1-1-2015. See also preceding version of this section, effective until 1-1-2015.

Sec. 1. (a) A law enforcement officer may arrest a person when the officer has:

(1) a warrant commanding that the person be arrested;

(2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony;

(3) probable cause to believe the person has violated the provisions of IC 9-26-1-1.1 or IC 9-30-5;

(4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence;

(5) probable cause to believe the person has committed a:

(A) battery resulting in bodily injury under IC 35-42-2-1; or

(B) domestic battery under IC 35-42-2-1.3.

The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause;

(6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy);

(7) probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license) or IC 35-47-2-22 (counterfeit handgun license);

(8) probable cause to believe that the person is violating or has

- violated an order issued under IC 35-50-7;
- (9) probable cause to believe that the person is violating or has violated IC 35-47-6-1.1 (undisclosed transport of a dangerous device);
- (10) probable cause to believe that the person is:
- (A) violating or has violated IC 35-45-2-5 (interference with the reporting of a crime); and
 - (B) interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5);
- (11) probable cause to believe that the person has committed theft (IC 35-43-4-2);
- (12) a removal order issued for the person by an immigration court;
- (13) a detainer or notice of action for the person issued by the United States Department of Homeland Security; or
- (14) probable cause to believe that the person has been indicted for or convicted of one (1) or more aggravated felonies (as defined in 8 U.S.C. 1101(a)(43)).

(b) A person who:

- (1) is employed full time as a federal enforcement officer;
- (2) is empowered to effect an arrest with or without warrant for a violation of the United States Code; and
- (3) is authorized to carry firearms in the performance of the person's duties;

may act as an officer for the arrest of offenders against the laws of this state where the person reasonably believes that a felony has been or is about to be committed or attempted in the person's presence.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.6; P.L.320-1983, SEC.2; P.L.311-1985, SEC.1; P.L.319-1987, SEC.1; P.L.53-1989, SEC.6; P.L.160-1990, SEC.1; P.L.2-1991, SEC.102; P.L.1-1991, SEC.189; P.L.1-1992, SEC.178; P.L.242-1993, SEC.1; P.L.140-1994, SEC.3; P.L.216-1996, SEC.10; P.L.47-2000, SEC.2; P.L.222-2001, SEC.3; P.L.133-2002, SEC.59; P.L.221-2003, SEC.15; P.L.50-2005, SEC.1; P.L.171-2011, SEC.20; P.L.226-2014(ts), SEC.3; P.L.226-2014(ts), SEC.4.

IC 35-33-1-1.5

Crime involving domestic or family violence; duties of law enforcement officers; confiscation of firearm, ammunition, or deadly weapon

Sec. 1.5. (a) A law enforcement officer responding to the scene of an alleged crime involving domestic or family violence shall use all reasonable means to prevent further violence, including the following:

- (1) Transporting or obtaining transportation for the alleged victim and each child to a designated safe place to meet with a domestic violence counselor, local family member, or friend.
- (2) Assisting the alleged victim in removing toiletries, medication, and necessary clothing.

(3) Giving the alleged victim immediate and written notice of the rights under IC 35-40.

(b) A law enforcement officer may confiscate and remove a firearm, ammunition, or a deadly weapon from the scene if the law enforcement officer has:

(1) probable cause to believe that a crime involving domestic or family violence has occurred;

(2) a reasonable belief that the firearm, ammunition, or deadly weapon:

(A) exposes the victim to an immediate risk of serious bodily injury; or

(B) was an instrumentality of the crime involving domestic or family violence; and

(3) observed the firearm, ammunition, or deadly weapon at the scene during the response.

(c) If a firearm, ammunition, or a deadly weapon is removed from the scene under subsection (b), the law enforcement officer shall provide for the safe storage of the firearm, ammunition, or deadly weapon during the pendency of a proceeding related to the alleged act of domestic or family violence.

As added by P.L.133-2002, SEC.60.

IC 35-33-1-1.7

Mandatory hold on person arrested for domestic violence

Sec. 1.7. (a) A facility having custody of a person arrested for a crime of domestic violence (as described in IC 35-31.5-2-78) shall keep the person in custody for at least eight (8) hours from the time of the arrest.

(b) A person described in subsection (a) may not be released on bail until at least eight (8) hours from the time of the person's arrest.

As added by P.L.44-2008, SEC.1. Amended by P.L.114-2012, SEC.68.

IC 35-33-1-2

Judge

Sec. 2. A judge may arrest, or order the arrest of a person in his presence, when he has probable cause to believe the person has committed a crime.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-1-3

Coroner

Sec. 3. A coroner has the authority to arrest any person when performing the duties of the sheriff under IC 36-2-14-4 and authority to arrest the sheriff under IC 36-2-14-5.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-1-4

Any person

Sec. 4. (a) Any person may arrest any other person if:

- (1) the other person committed a felony in his presence;
- (2) a felony has been committed and he has probable cause to believe that the other person has committed that felony; or
- (3) a misdemeanor involving a breach of peace is being committed in his presence and the arrest is necessary to prevent the continuance of the breach of peace.

(b) A person making an arrest under this section shall, as soon as practical, notify a law enforcement officer and deliver custody of the person arrested to a law enforcement officer.

(c) The law enforcement officer may process the arrested person as if the officer had arrested him. The officer who receives or processes a person arrested by another under this section is not liable for false arrest or false imprisonment.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.7.

IC 35-33-1-5

Definition

Sec. 5. Arrest is the taking of a person into custody, that he may be held to answer for a crime.

As added by P.L.320-1983, SEC.3.

IC 35-33-1-6

Chart to determine detention time before release pending trial

Sec. 6. A law enforcement agency may use the following chart to determine the minimum number of hours that a person arrested for an alcohol-related offense should be detained before his release pending trial:

BLOOD OR HOURS AFTER INITIAL READING
BREATH IS TAKEN
ALCOHOL
LEVEL IN

GRAMS	1	2	3	4	5	6	7	8	9	10	11	12	13	14
.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00	.000	.00	.000	.00
.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00	.000	.00	.000	.00
.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00	.000	.00	.000	.00
.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00	.000	.00
.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00	.000	.00
.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00	.000	.00
.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00
.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00
.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00
.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00
.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00
.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00
.21	.195	.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00
.22	.205	.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01
.23	.215	.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02
.24	.225	.21	.195	.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03
.25	.235	.22	.205	.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04

.26 .245 .23 .215 .20 .185 .17 .155 .14 .125 .11 .095 .08 .065 .05

Note: In order to find when a person will reach the legal blood or breath alcohol level, find the blood or breath alcohol level reading in the left hand column, go across and find where the blood or breath alcohol level reading is an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to below eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath, then read up that column to find the minimum number of hours before the person can be released.

As added by P.L.77-1984, SEC.15. Amended by P.L.33-1997, SEC.21; P.L.1-2000, SEC.18; P.L.175-2001, SEC.17.