

# SENATE BILL No. 328

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-45-1-5.

**Synopsis:** Common nuisance. Reduces the penalty for maintaining a common nuisance from a Level 6 felony to a Class A misdemeanor for a first offense.

**Effective:** July 1, 2019.

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## Bohacek

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January 7, 2019, read first time and referred to Committee on Corrections and Criminal Law.

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First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## SENATE BILL No. 328

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A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 35-45-1-5, AS AMENDED BY P.L.144-2018,  
2 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2019]: Sec. 5. (a) As used in this section, "common nuisance"  
4 means a building, structure, vehicle, or other place that is used for **one**  
5 (1) or more of the following purposes:  
6 (1) To buy an alcoholic beverage in violation of IC 7.1-5-10-5.  
7 (2) To unlawfully use, keep, or sell a legend drug.  
8 (3) To unlawfully:  
9 (A) use;  
10 (B) manufacture;  
11 (C) keep;  
12 (D) offer for sale;  
13 (E) sell;  
14 (F) deliver; or  
15 (G) finance the delivery of;  
16 a controlled substance or an item of drug paraphernalia (as  
17 described in IC 35-48-4-8.5).



- 1 (4) To provide a location for a person to pay, offer to pay, or agree  
 2 to pay money or other property to another person for a human  
 3 trafficking victim or an act performed by a human trafficking  
 4 victim.
- 5 (5) To provide a location for a person to commit a violation of  
 6 IC 35-42-3.5-1 through IC 35-42-3.5-1.4 (human trafficking).
- 7 (b) A person who knowingly or intentionally visits a common  
 8 nuisance described in subsections (a)(1) through (a)(4) commits  
 9 visiting a common nuisance. The offense is a:
- 10 (1) Class B misdemeanor if the common nuisance is used for the  
 11 unlawful:
- 12 (A) sale of an alcoholic beverage as set forth in subsection  
 13 (a)(1);
- 14 (B) use, keeping, or sale of a legend drug as set forth in  
 15 subsection (a)(2); or
- 16 (C) use, manufacture, keeping, offer for sale, sale, delivery, or  
 17 financing the delivery of a controlled substance or item of drug  
 18 paraphernalia (as described in IC 35-48-4-8.5), as set forth in  
 19 subsection (a)(3);
- 20 (2) Class A misdemeanor if:
- 21 (A) the common nuisance is used as a location for a person to  
 22 pay, offer to pay, or agree to pay for a human trafficking victim  
 23 or an act performed by a human trafficking victim as set forth  
 24 in subsection (a)(4); or
- 25 (B) the person knowingly, intentionally, or recklessly takes a  
 26 person less than eighteen (18) years of age or an endangered  
 27 adult (as defined in IC 12-10-3-2) into a common nuisance  
 28 used to unlawfully:
- 29 (i) use;
- 30 (ii) manufacture;
- 31 (iii) keep;
- 32 (iv) offer for sale;
- 33 (v) sell;
- 34 (vi) deliver; or
- 35 (vii) finance the delivery of;
- 36 a controlled substance or an item of drug paraphernalia, as set  
 37 forth in subsection (a)(3); and
- 38 (3) Level 6 felony if the person:
- 39 (A) knowingly, intentionally, or recklessly takes a person less  
 40 than eighteen (18) years of age or an endangered adult (as  
 41 defined in IC 12-10-3-2) into a common nuisance used to  
 42 unlawfully:



- 1 (i) use;  
 2 (ii) manufacture;  
 3 (iii) keep;  
 4 (iv) offer for sale;  
 5 (v) sell;  
 6 (vi) deliver; or  
 7 (vii) finance the delivery of;  
 8 a controlled substance or an item of drug paraphernalia, as set  
 9 forth in subsection (a)(3); and  
 10 (B) has a prior unrelated conviction for a violation of this  
 11 section involving a controlled substance or drug paraphernalia.  
 12 (c) A person who knowingly or intentionally maintains a common  
 13 nuisance commits maintaining a common nuisance, a ~~Level 6 felony~~  
 14 **Class A misdemeanor. However, the offense is a Level 6 felony if**  
 15 **the person has a prior unrelated conviction under this subsection.**  
 16 (d) It is a defense to a prosecution under subsection (c) that:  
 17 (1) the offense involves only the unlawful use or keeping of:  
 18 (A) less than:  
 19 (i) thirty (30) grams of marijuana; or  
 20 (ii) five (5) grams of hash oil, hashish, or salvia; or  
 21 (B) an item of drug paraphernalia (as described in  
 22 IC 35-48-4-8.5) that is designed for use with, or intended to be  
 23 used for, marijuana, hash oil, hashish, or salvia; and  
 24 (2) the person does not have a prior unrelated conviction for a  
 25 violation of subsection (c).

