

SENATE BILL No. 410

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-2.5-7; IC 35-38-2.6-1; IC 35-50-2-2; IC 35-50-3-1.

Synopsis: Community corrections and home detention. Allows a convicted sex offender who is not convicted of a sex crime that is a felony for which a sentence may not be suspended to be placed on home detention or in a community corrections program. Prohibits a court from suspending the sentence of a person convicted of a sex crime unless the person is placed on home detention or, if the offense is a felony, the person is placed in a community corrections program during the term of the person's probation.

Effective: July 1, 1998.

Landske

January 13, 1998, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

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SENATE BILL No. 410



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 35-38-2.5-7, AS AMENDED BY P.L.144-1995,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 7. (a) A court may not order home detention for
4 an offender unless the offender agrees to abide by all of the
5 requirements set forth in the court's order issued under this chapter.

6 (b) A court may not order home detention for an offender who:
7 (1) is being held under a detainer, warrant, or process issued by
8 a court of another jurisdiction; or
9 (2) has been convicted of **a any of the following sex offense**
10 **under IC 35-42-4 or IC 35-46-1-3 offenses:**

- 11 (A) **Sexual battery (IC 35-42-4-8) with a deadly weapon.**
- 12 (B) **Rape (IC 35-42-4-1) as a Class A felony.**
- 13 (C) **Criminal deviate conduct (IC 35-42-4-2) as a Class A**
14 **felony.**
- 15 (D) **Child molesting (IC 35-42-4-3) as a Class A or Class B**
16 **felony.**

17 SECTION 2. IC 35-38-2.6-1, AS AMENDED BY P.L.144-1995,



1 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 1998]: Sec. 1. (a) Except as provided in subsection (b), this
3 chapter applies to the sentencing of a person convicted of a felony
4 whenever any part of the sentence may not be suspended under
5 IC 35-50-2-2 or IC 35-50-2-2.1.

6 (b) This chapter does not apply to persons convicted of any of the
7 following:

8 ~~(1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.~~

9 ~~(2) (1) Offenses related to controlled substances listed in~~
10 ~~IC 35-38-1-7.1 for which a Class A or Class B felony is imposed.~~

11 ~~(3) (2) Any of the felonies listed in IC 35-50-2-2(b)(4).~~

12 SECTION 3. IC 35-50-2-2, AS AMENDED BY P.L.220-1997,
13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 1998]: Sec. 2. (a) The court may suspend any part of a
15 sentence for a felony, except as provided in this section or in section
16 2.1 of this chapter.

17 (b) With respect to the crimes listed in this subsection, the court
18 may suspend only that part of the sentence that is in excess of the
19 minimum sentence:

20 (1) The crime committed was a Class A or Class B felony and the
21 person has a prior unrelated felony conviction.

22 (2) The crime committed was a Class C felony and less than seven
23 (7) years have elapsed between the date the person was
24 discharged from probation, imprisonment, or parole, whichever
25 is later, for a prior unrelated felony conviction and the date the
26 person committed the Class C felony for which the person is
27 being sentenced.

28 (3) The crime committed was a Class D felony and less than three
29 (3) years have elapsed between the date the person was
30 discharged from probation, imprisonment, or parole, whichever
31 is later, for a prior unrelated felony conviction and the date the
32 person committed the Class D felony for which the person is
33 being sentenced. However, the court may suspend the minimum
34 sentence for the crime only if the court orders home detention
35 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
36 sentence specified for the crime under this chapter.

37 (4) The felony committed was:

38 (A) murder (IC 35-42-1-1);

39 (B) battery (IC 35-42-2-1) with a deadly weapon;

40 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

41 (D) kidnapping (IC 35-42-3-2);

42 (E) confinement (IC 35-42-3-3) with a deadly weapon;



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- 1 (F) rape (IC 35-42-4-1) as a Class A felony;
 2 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
 3 felony;
 4 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
 5 felony;
 6 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
 7 with a deadly weapon;
 8 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
 9 injury;
 10 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
 11 or with a deadly weapon;
 12 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
 13 weapon;
 14 (M) escape (IC 35-44-3-5) with a deadly weapon;
 15 (N) rioting (IC 35-45-1-2) with a deadly weapon;
 16 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a
 17 Class A felony;
 18 (P) dealing in a schedule I, II, or III controlled substance
 19 (IC 35-48-4-2) if the amount of controlled substance involved
 20 has an aggregate weight of three (3) grams or more;
 21 (Q) an offense under IC 9-30-5 (operating a vehicle while
 22 intoxicated) and the person who committed the offense has
 23 accumulated at least two (2) prior unrelated convictions under
 24 IC 9-30-5; or
 25 (R) aggravated battery (IC 35-42-2-1.5).
- 26 (c) Except as provided in subsection (e), whenever the court
 27 suspends a sentence for a felony, it shall place the person on probation
 28 under IC 35-38-2 for a fixed period to end not later than the date that
 29 the maximum sentence that may be imposed for the felony will expire.
- 30 (d) The minimum sentence for a person convicted of voluntary
 31 manslaughter may not be suspended unless the court finds at the
 32 sentencing hearing that the crime was not committed by means of a
 33 deadly weapon.
- 34 (e) Whenever the court suspends that part of an offender's (as
 35 defined in IC 5-2-12-4) sentence that is suspendible under subsection
 36 (b), the court shall place the offender on probation under IC 35-38-2 for
 37 not more than ten (10) years.
- 38 (f) An additional term of imprisonment imposed under
 39 IC 35-50-2-11 may not be suspended.
- 40 (g) A term of imprisonment imposed under IC 35-47-10-6 or
 41 IC 35-47-10-7 may not be suspended if the commission of the offense
 42 was knowing or intentional.



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1 **(h) A term of imprisonment imposed for conviction of a sex**
 2 **offense under IC 35-42-4 or IC 35-46-1-3 may be suspended only**
 3 **if:**

- 4 **(1) the sex offense is not described in subsection (b)(4); and**
 5 **(2) the convicted person is placed on home detention under**
 6 **IC 35-38-2.5 or in a community corrections program under**
 7 **IC 35-38-2.6 during the term of the convicted person's**
 8 **probation.**

9 SECTION 4. IC 35-50-3-1 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) The court may
 11 suspend any part of a sentence for a misdemeanor.

12 (b) Except as provided in ~~subsection~~ **subsections (c) and (d)**,
 13 whenever the court suspends a sentence for a misdemeanor, it may
 14 place the person on probation under IC 35-38-2 for a fixed period of
 15 not more than one (1) year.

16 (c) Whenever the court suspends a sentence for a misdemeanor, if
 17 the court finds that the use or abuse of alcohol, drugs, or harmful
 18 substances is a contributing factor or a material element of the offense,
 19 the court may place the person on probation under IC 35-38-2 for a
 20 fixed period of not more than two (2) years. However, a court may not
 21 place a person on probation for a period of more than twelve (12)
 22 months in the absence of a report that substantiates the need for a
 23 period of probation that is longer than twelve (12) months for the
 24 purpose of completing a course of substance abuse treatment. A
 25 probation user's fee that exceeds fifty percent (50%) of the maximum
 26 probation user's fee allowed under IC 35-38-2-1 may not be required
 27 beyond the first twelve (12) months of probation.

28 **(d) A term of imprisonment imposed for conviction of a sex**
 29 **offense under IC 35-42-4 that is imposed for conviction of a**
 30 **misdemeanor may be suspended only if the convicted person is**
 31 **placed on home detention under IC 35-38-2.5 during the term of**
 32 **the convicted person's probation.**

33 SECTION 5. [EFFECTIVE JULY 1, 1998] **IC 35-38-2.5-7,**
 34 **IC 35-38-2.6-1, IC 35-50-2-2, and IC 35-50-3-1, all as amended by**
 35 **this act, apply to sentences imposed or modified after June 30,**
 36 **1998.**

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