

# SENATE MOTION

**MR. PRESIDENT:**

**I move** that Engrossed House Bill 1219 be amended to read as follows:

- 1 Page 4, after line 2, begin a new paragraph and insert:
- 2 "SECTION 4. IC 35-38-1-7.1, AS AMENDED BY P.L.210-1997,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 1998]: Sec. 7.1. (a) In determining what sentence to impose
- 5 for a crime, the court shall consider:
- 6 (1) the risk that the person will commit another crime;
- 7 (2) the nature and circumstances of the crime committed;
- 8 (3) the person's:
- 9 (A) prior criminal record;
- 10 (B) character; and
- 11 (C) condition;
- 12 (4) whether the victim of the crime was less than twelve (12)
- 13 years of age or at least sixty-five (65) years of age;
- 14 (5) whether the person violated a protective order issued against
- 15 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before
- 16 its repeal) or IC 34-4-5.1; and
- 17 (6) any oral or written statement made by a victim of the crime.
- 18 (b) The court may consider the following factors as aggravating
- 19 circumstances or as favoring imposing consecutive terms of
- 20 imprisonment:
- 21 (1) The person has recently violated the conditions of any
- 22 probation, parole, or pardon granted to the person.
- 23 (2) The person has a history of criminal or delinquent activity.
- 24 (3) The person is in need of correctional or rehabilitative
- 25 treatment that can best be provided by commitment of the person
- 26 to a penal facility.
- 27 (4) Imposition of a reduced sentence or suspension of the

1 sentence and imposition of probation would depreciate the seriousness  
2 of the crime.

3 (5) The victim of the crime was less than twelve (12) years of  
4 age or at least sixty-five (65) years of age.

5 (6) The victim of the crime was mentally or physically infirm.

6 (7) The person committed a forcible felony while wearing a  
7 garment designed to resist the penetration of a bullet.

8 (8) The person committed a sex crime listed in subsection (e)  
9 and:

10 (A) the crime created an epidemiologically demonstrated  
11 risk of transmission of the human immunodeficiency virus  
12 (HIV) and involved the sex organ of one (1) person and the  
13 mouth, anus, or sex organ of another person;

14 (B) the person had knowledge that the person was a carrier  
15 of HIV; and

16 (C) the person had received risk counseling as described in  
17 subsection (g).

18 (9) The person committed an offense related to controlled  
19 substances listed in subsection (f) if:

20 (A) the offense involved:

21 (i) the delivery by any person to another person; or

22 (ii) the use by any person on another person;

23 of a contaminated sharp (as defined in IC 16-41-16-2) or  
24 other paraphernalia that creates an epidemiologically  
25 demonstrated risk of transmission of HIV by involving  
26 percutaneous contact;

27 (B) the person had knowledge that the person was a carrier  
28 of the human immunodeficiency virus (HIV); and

29 (C) the person had received risk counseling as described in  
30 subsection (g).

31 (10) The person committed the offense in an area of a  
32 consolidated or second class city that is designated as a public  
33 safety improvement area by the Indiana criminal justice institute  
34 under IC 36-8-19.5.

35 **(11) The injury to or death of the victim of the crime was the**  
36 **result of shaken baby syndrome (as defined in**  
37 **IC 16-41-40-2).**

38 (c) The court may consider the following factors as mitigating  
39 circumstances or as favoring suspending the sentence and imposing  
40 probation:

41 (1) The crime neither caused nor threatened serious harm to  
42 persons or property, or the person did not contemplate that it  
43 would do so.

44 (2) The crime was the result of circumstances unlikely to recur.

45 (3) The victim of the crime induced or facilitated the offense.

46 (4) There are substantial grounds tending to excuse or justify the  
47 crime, though failing to establish a defense.

- 1 (5) The person acted under strong provocation.  
 2 (6) The person has no history of delinquency or criminal activity,  
 3 or the person has led a law-abiding life for a substantial period  
 4 before commission of the crime.  
 5 (7) The person is likely to respond affirmatively to probation or  
 6 short term imprisonment.  
 7 (8) The character and attitudes of the person indicate that the  
 8 person is unlikely to commit another crime.  
 9 (9) The person has made or will make restitution to the victim of  
 10 the crime for the injury, damage, or loss sustained.  
 11 (10) Imprisonment of the person will result in undue hardship to  
 12 the person or the dependents of the person.  
 13 (11) The person was convicted of a crime involving the use of  
 14 force against a person who had repeatedly inflicted physical or  
 15 sexual abuse upon the convicted person and evidence shows that  
 16 the convicted person suffered from the effects of battery as a  
 17 result of the past course of conduct of the individual who is the  
 18 victim of the crime for which the person was convicted.  
 19 (d) The criteria listed in subsections (b) and (c) do not limit the  
 20 matters that the court may consider in determining the sentence.  
 21 (e) For the purposes of this article, the following crimes are  
 22 considered sex crimes:  
 23 (1) Rape (IC 35-42-4-1).  
 24 (2) Criminal deviate conduct (IC 35-42-4-2).  
 25 (3) Child molesting (IC 35-42-4-3).  
 26 (4) Child seduction (IC 35-42-4-7).  
 27 (5) Prostitution (IC 35-45-4-2).  
 28 (6) Patronizing a prostitute (IC 35-45-4-3).  
 29 (7) Incest (IC 35-46-1-3).  
 30 (f) For the purposes of this article, the following crimes are  
 31 considered offenses related to controlled substances:  
 32 (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).  
 33 (2) Dealing in a schedule I, II, or III controlled substance  
 34 (IC 35-48-4-2).  
 35 (3) Dealing in a schedule IV controlled substance  
 36 (IC 35-48-4-3).  
 37 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).  
 38 (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).  
 39 (6) Possession of a controlled substance (IC 35-48-4-7).  
 40 (7) Dealing in paraphernalia (IC 35-48-4-8.5).  
 41 (8) Possession of paraphernalia (IC 35-48-4-8.3).  
 42 (9) Offenses relating to registration (IC 35-48-4-14).  
 43 (g) For the purposes of this section, a person received risk  
 44 counseling if the person had been:  
 45 (1) notified in person or in writing that tests have confirmed the

1 presence of antibodies to the human immunodeficiency virus (HIV) in  
2 the person's blood; and  
3 (2) warned of the behavior that can transmit HIV."  
(Reference is to EHB 1219 as printed February 13, 1998.)

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Senator MEEKS