Reprinted
March 23, 1999

ENGROSSED
HOUSE BILL No. 1305

DIGEST OF HB 1305 (Updated March 22, 1999 3:17 pm - DI 51)

Citations Affected: IC 35-38; IC 35-44; IC 35-50.

Synopsis: Trafficking with an inmate. Allows a court to consider a person's employment at a penal facility as an aggravating circumstance or as favoring consecutive terms of imprisonment if the person committed trafficking with an inmate. Allows a person confined by the department of correction to earn additional credit time for the completion of a vocational education program or substance abuse program approved by the department. Requires earned credit time to be subtracted from the offender's minimum release date. (Current law provides for earned credit time to be subtracted from the sentence imposed for the offense by the court.) Applies the crime of trafficking with an inmate to a violation that occurs in a juvenile facility. Repeals
(Continued next page)

Effective: July 1, 1999.

Smith V, Alderman
(SENATE SPONSORS — MEEKS R, ROGERS)

January 12, 1999, read first time and referred to Committee on Courts and Criminal Code.
February 15, 1999, reported — Do Pass.
February 18, 1999, read second time, ordered engrossed. Engrossed.
February 22, 1999, read third time, passed. Yeas 98, nays 0.

SENATE ACTION

March 3, 1999, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.
March 18, 1999, amended, reported favorably — Do Pass.
March 22, 1999, read second time, amended, ordered engrossed.

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Digest Continued

a provision that allows a trial court to reduce the sentence of an offender who completes a vocational education program, a substance abuse program, or another educational program other than one leading to a GED, a high school degree, an associate's degree, or a bachelor's degree.

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March 23, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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ENGROSSED
HOUSE BILL No. 1305

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:

SECTION 1. IC 35-38-1-7.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court shall consider:

(1) the risk that the person will commit another crime;

(2) the nature and circumstances of the crime committed;

(3) the person's:

(A) prior criminal record;

(B) character; and

(C) condition;

(4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;

(5) whether the person violated a protective order issued against the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and

(6) any oral or written statement made by a victim of the crime.

(b) The court may consider the following factors as aggravating

circumstances or as favoring imposing consecutive terms of imprisonment:

(1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.

(2) The person has a history of criminal or delinquent activity.

(3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.

(4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.

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

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

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

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

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

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

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

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

(A) the offense involved:

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

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

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

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

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

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

(11) The injury to or death of the victim of the crime was the

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result of shaken baby syndrome (as defined in IC 16-41-40-2).

(12) Before the commission of the crime, the person administered to the victim of the crime, without the victim's knowledge, a sedating drug or a drug that had a hypnotic effect on the victim, or the person had knowledge that such a drug had been administered to the victim without the victim's knowledge.

(13) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9; and

(B) is an employee of the penal facility.

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

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

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

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

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

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.

(e) For the purposes of this article, the following crimes are considered sex crimes:

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(1) Rape (IC 35-42-4-1).
(2) Criminal deviate conduct (IC 35-42-4-2).
(3) Child molesting (IC 35-42-4-3).
(4) Child seduction (IC 35-42-4-7).
(5) Prostitution (IC 35-45-4-2).
(6) Patronizing a prostitute (IC 35-45-4-3).
(7) Incest (IC 35-46-1-3).
(8) Sexual misconduct with a minor under IC 35-42-4-9(a).

(f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:

(1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
(2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
(3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
(4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
(5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
(6) Possession of a controlled substance (IC 35-48-4-7).
(7) Dealing in paraphernalia (IC 35-48-4-8.5).
(8) Possession of paraphernalia (IC 35-48-4-8.3).
(9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and
(2) warned of the behavior that can transmit HIV.

SECTION 2. IC 35-44-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. **(a) As used in this section, "juvenile facility" means the following:**

(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.
(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) A person who, without the prior authorization of the person in charge of a penal facility **or juvenile facility** knowingly or intentionally:

(1) delivers, or carries into the penal facility **or juvenile facility** with intent to deliver, an article to an inmate **or child** of the

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facility; ~~or~~

(2) carries, or receives with intent to carry out of the penal facility **or juvenile facility,** an article from an inmate **or child** of the facility; **or**

(3) delivers, or carries to a work site with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew;

commits trafficking with an inmate, a Class A misdemeanor. However, the offense is a Class C felony if the article is a controlled substance or a deadly weapon.

SECTION 3. IC 35-50-6-3.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3.3. (a) In addition to any credit time a person earns under **subsection (b) or** section 3 of this chapter, ~~and in addition to any reduction of sentence a person receives under IC 35-38-1-23,~~ a person earns credit time if the person:

(1) is in credit Class I;

(2) has demonstrated a pattern consistent with rehabilitation; and

(3) successfully completes requirements to obtain one (1) of the following:

(A) A general educational development (GED) diploma under IC 20-10.1-12.1, if the person has not previously obtained a high school diploma.

(B) A high school diploma.

(C) An associate's degree from an approved institution of higher learning (as defined under IC 20-12-21-3).

(D) A bachelor's degree from an approved institution of higher learning (as defined under IC 20-12-21-3).

(b) **In addition to any credit time that a person earns under subsection (a) or section 3 of this chapter**, **a person may earn credit time if, while confined by the department of correction, the person:**

(1) is in credit Class I;

(2) demonstrates a pattern consistent with rehabilitation; and

(3) successfully completes requirements to obtain at least one (1) of the following:

(A) A certificate of completion of a vocational education program approved by the department of correction.

(B) A certificate of completion of a substance abuse program approved by the department of correction.

(c) The department of correction shall establish admissions criteria and other requirements for programs available for earning credit time under subsection (b). A person may not earn credit time under both subsection (a) and subsection (b) for the same program

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of study.

(d) The amount of credit time a person may earn under this section is the following:

(1) Six (6) months for completion of a state of Indiana general educational development (GED) diploma under IC 20-10.1-12.1.

(2) One (1) year for graduation from high school.

(3) One (1) year for completion of an associate's degree.

(4) Two (2) years for completion of a bachelor's degree.

(5) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more vocational education programs approved by the department of correction.

(6) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more substance abuse programs approved by the department of correction.

However, a person who does not have a substance abuse problem that qualifies the person to earn credit in a substance abuse program may earn not more than a total of twelve (12) months of credit, as determined by the department of correction, for the completion of one (1) or more vocational education programs approved by the department of correction. If a person earns more than six (6) months of credit for the completion of one (1) or more vocational education programs, the person is ineligible to earn credit for the completion of one (1) or more substance abuse programs.

~~(c)~~ **(e)** Credit time earned by a person under this section is subtracted from the ~~period of imprisonment imposed on the person by the sentencing court.~~ **minimum release date of the sentence imposed by the court**.

~~(d)~~ **(f)** A person does not earn credit time under subsection (a) unless the person completes at least a portion of the degree requirements after June 30, 1993.

(g) A person does not earn credit time under subsection (b) unless the person completes at least a portion of the program requirements after June 30, 1999.

(h) Subsection (e) applies only to programs initiated after December 31, 1998. Credit time earned by a person under this section for programs initiated before January 1, 1999, shall be subtracted from the period of imprisonment imposed on the person by the sentencing court.

~~(e)~~ **(i)** The maximum amount of credit time a person may earn under

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this section is the lesser of:

(1) four (4) years; or

(2) one-third (1/3) of the person's total applicable credit time.

SECTION 4. IC 35-38-1-23 IS REPEALED [EFFECTIVE JULY 1, 1999].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1305, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

DVORAK, Chair

Committee Vote: yeas 12, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred House Bill No. 1305, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, delete lines 26 through 36, begin a new paragraph and insert:

"SECTION 2. IC 35-50-6-3.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3.3. (a) In addition to any credit time a person earns under **subsection (b) or** section 3 of this chapter, ~~and in addition to any reduction of sentence a person receives under IC 35-38-1-23,~~ a person earns credit time if the person:

(1) is in credit Class I;

(2) has demonstrated a pattern consistent with rehabilitation; and

(3) successfully completes requirements to obtain one (1) of the following:

(A) A general educational development (GED) diploma under IC 20-10.1-12.1, if the person has not previously obtained a high school diploma.

(B) A high school diploma.

(C) An associate's degree from an approved institution of higher learning (as defined under IC 20-12-21-3).

(D) A bachelor's degree from an approved institution of higher learning (as defined under IC 20-12-21-3).

(b) **In addition to any credit time that a person earns under subsection (a) or section 3 of this chapter**, **a person may earn credit time if, while confined by the department of correction, the person:**

(1) is in credit Class I;

(2) demonstrates a pattern consistent with rehabilitation; and

(3) successfully completes requirements to obtain at least one (1) of the following:

(A) A certificate of completion of a vocational education program approved by the department of correction.

(B) A certificate of completion of a substance abuse program approved by the department of correction.

(c) The department of correction shall establish admissions criteria and other requirements for programs available for earning credit time under subsection (b). A person may not earn credit time under both subsection (a) and subsection (b) for the same program of study.

(d) The amount of credit time a person may earn under this section

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is the following:

(1) Six (6) months for completion of a state of Indiana general educational development (GED) diploma under IC 20-10.1-12.1.

(2) One (1) year for graduation from high school.

(3) One (1) year for completion of an associate's degree.

(4) Two (2) years for completion of a bachelor's degree.

(5) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more vocational education programs approved by the department of correction.

(6) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more substance abuse programs approved by the department of correction.

However, a person who does not have a substance abuse problem that qualifies the person to earn credit in a substance abuse program may earn not more than a total of twelve (12) months of credit, as determined by the department of correction, for the completion of one (1) or more vocational education programs approved by the department of correction. If a person earns more than six (6) months of credit for the completion of one (1) or more vocational education programs, the person is ineligible to earn credit for the completion of one (1) or more substance abuse programs.

~~(c)~~ **(e)** Credit time earned by a person under this section is subtracted from the ~~period of imprisonment imposed on the person by the sentencing court.~~ **minimum release date of the sentence imposed by the court.**

~~(d)~~ **(f)** A person does not earn credit time under subsection (a) unless the person completes at least a portion of the degree requirements after June 30, 1993.

(g) A person does not earn credit time under subsection (b) unless the person completes at least a portion of the program requirements after June 30, 1999.

(h) Subsection (e) applies only to programs initiated after December 31, 1998. Credit time earned by a person under this section for programs initiated before January 1, 1999, shall be subtracted from the period of imprisonment imposed on the person by the sentencing court.

~~(e)~~ **(i)** The maximum amount of credit time a person may earn under this section is the lesser of:

(1) four (4) years; or

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(2) one-third (1/3) of the person's total applicable credit time.

SECTION 3. IC 35-38-1-23 IS REPEALED [EFFECTIVE JULY 1, 1999].".

and when so amended that said bill do pass.

(Reference is to HB 1305 as printed February 16, 1999.)

MEEKS R, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Mr. President: I move that Engrossed House Bill 1305 be amended to read as follows:

Page 4, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 2. IC 35-44-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. **(a) As used in this section, "juvenile facility" means the following:**

(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) A person who, without the prior authorization of the person in charge of a penal facility **or juvenile facility** knowingly or intentionally:

(1) delivers, or carries into the penal facility **or juvenile facility** with intent to deliver, an article to an inmate **or child** of the facility; ~~or~~

(2) carries, or receives with intent to carry out of the penal facility **or juvenile facility,** an article from an inmate **or child** of the facility; **or**

(3) delivers, or carries to a work site with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew;

commits trafficking with an inmate, a Class A misdemeanor. However, the offense is a Class C felony if the article is a controlled substance or a deadly weapon.".

Renumber all SECTIONS consecutively.

(Reference is to EHB 1305 as printed March 19, 1999.)

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