



April 6, 1999

**ENGROSSED
HOUSE BILL No. 1747**

DIGEST OF HB 1747 (Updated April 5, 1999 12:45 pm - DI 76)

Citations Affected: IC 31-14; IC 31-37; IC 34-26; IC 35-42; IC 35-48; IC 35-50.

Synopsis: Domestic violence, firearms, and delinquency. Creates the offense of domestic battery, which is a battery resulting in bodily injury against a person who: (1) is or was a spouse of; (2) is or was cohabitating as if a spouse of; or (3) has a child in common with the person who commits the offense. Makes the offense a Class A misdemeanor for a first conviction and a Class D felony for subsequent convictions. Prohibits a court from providing misdemeanor sentencing treatment to a person who is convicted of a subsequent domestic
(Continued next page)

Effective: July 1, 1999.

**Dickinson, Crawford, Atterholt,
Lawson L, Foley**

(SENATE SPONSORS — LUBBERS, SIMPSON)

January 26, 1999, read first time and referred to Committee on Courts and Criminal Code.
February 24, 1999, amended, reported — Do Pass.
March 1, 1999, read second time, amended, ordered engrossed.
March 2, 1999, engrossed. Reengrossed.
March 3, 1999, read third time, recommitted to Committee of One, amended; passed. Yeas 83, nays 14.
March 4, 1999, engrossed.

SENATE ACTION

March 11, 1999, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.
April 5, 1999, amended, reported favorably — Do Pass.

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battery. Requires that if a court finds that a noncustodial parent has been convicted of a domestic battery that was witnessed or heard by the noncustodial parent's child, the court shall limit the noncustodial parent's visitation with the child to supervised visitation for a specified period. Allows a court to order a person against whom a protective order has been issued to refrain from possessing a firearm during a period not longer than the period that the person is under the protective order if the court finds by clear and convincing evidence that the person poses a significant threat of inflicting serious bodily injury upon certain persons. Provides that the court: (1) shall notify the state police department of all protective orders that prohibit a person from possessing a firearm; and (2) may order the confiscation of any firearms which the court finds the respondent to possess during the period that the protective order is in effect. Provides that a court is not required to make certain findings before detaining a child alleged to be a delinquent child if the child is ordered detained in the home of the child's parent, guardian, or custodian, or is released subject to certain conditions placed upon the child's actions or behavior. Allows a court to impose certain conditions upon the child's actions or behavior, including home detention, electronic monitoring, curfew restrictions, and other specified reasonable conditions, before releasing from custody a child who is alleged to be a delinquent child. Provides that a child who is detained in the home of the child's parent, guardian, or custodian or who is subject to certain other conditions of release may not be considered to be detained for purposes of requiring that a fact-finding hearing or waiver hearing must be commenced not later than 20 days after a delinquency petition is filed. Makes the possession of cocaine or a narcotic drug classified in schedule I or II while also in possession of a firearm a nonsuspendible Class C felony.

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April 6, 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.

ENGROSSED HOUSE BILL No. 1747

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 31-14-14-5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
3 **1, 1999]: Sec. 5. If a court finds that a noncustodial parent has been**
4 **convicted of a domestic battery under IC 35-42-2-1.3 that was**
5 **witnessed or heard by the noncustodial parent's child, the court**
6 **shall order that the noncustodial parent's visitation with the child**
7 **must be supervised:**

8 (1) **for at least one (1) year and not more than two (2) years**
9 **immediately following the domestic battery conviction; or**
10 (2) **until the child becomes emancipated;**
11 **whichever occurs first.**

12 SECTION 2. IC 31-37-6-6 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) The juvenile
14 court shall release the child on the child's own recognizance or to the
15 child's parent, guardian, or custodian upon the person's written promise
16 to bring the child before the court at a time specified. However, the

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1 court may order the child detained if the court finds probable cause to
2 believe the child is a delinquent child and that:

- 3 (1) the child is unlikely to appear for subsequent proceedings;
4 (2) detention is essential to protect the child or the community;
5 (3) the parent, guardian, or custodian:
6 (A) cannot be located; or
7 (B) is unable or unwilling to take custody of the child; or
8 (4) the child has a reasonable basis for requesting that the child
9 not be released.

10 **However, the findings under this subsection are not required if the**
11 **child is ordered to be detained in the home of the child's parent,**
12 **guardian, or custodian, or is released subject to any condition**
13 **listed in subsection (c).**

14 (b) If a child is detained for a reason specified in subsection (a)(3)
15 or (a)(4), the child shall be detained under IC 31-37-7-1.

16 (c) **Whenever the court releases a child under this section, the**
17 **court may impose conditions upon the child, including:**

- 18 (1) **home detention;**
19 (2) **electronic monitoring;**
20 (3) **a curfew restriction;**
21 (4) **a protective order;**
22 (5) **a no contact order;**
23 (6) **an order to comply with Indiana law; or**
24 (7) **an order placing any other reasonable conditions on the**
25 **child's actions or behavior.**

26 SECTION 3. IC 31-37-11-2 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) If:

- 28 (1) a child is in detention; and
29 (2) a petition has been filed;

30 a fact-finding hearing or a waiver hearing must be commenced not later
31 than twenty (20) days, excluding Saturdays, Sundays, and legal
32 holidays, after the petition is filed.

33 (b) If:

- 34 (1) a child is not in detention; and
35 (2) a petition has been filed;

36 the hearing must be commenced not later than sixty (60) days,
37 excluding Saturdays, Sundays, and legal holidays, after the petition is
38 filed.

39 (c) **A child who is ordered detained in the home of the child's**
40 **parent, guardian, or custodian or who is subject to other conditions**
41 **of release under IC 31-37-6-6 may not be considered as being**
42 **detained for purposes of this section.**

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1 SECTION 4. IC 34-26-2-12 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12. A court shall set a
 3 date for a hearing concerning a petition described in section 2 of this
 4 chapter not more than thirty (30) days after the date the petition is filed
 5 with the court. At the hearing, if at least one (1) of the allegations
 6 described in the petition is proved by a preponderance of the evidence,
 7 the court:

8 (1) shall order the respondent:

9 (A) to refrain from abusing, harassing, or disturbing the peace
 10 of the petitioner, by either direct or indirect contact;

11 (B) to refrain from abusing, harassing, or disturbing the peace
 12 of a member of the petitioner's household, by either direct or
 13 indirect contact;

14 (C) to refrain from entering the property of the petitioner,
 15 jointly owned or leased property of the petitioner and the
 16 respondent if the respondent is not the sole owner or lessee, or
 17 any other property as specifically described in the petition;

18 (D) to refrain from damaging any property of the petitioner;

19 **and**

20 (E) if the petitioner and respondent are married and if a
 21 proceeding for dissolution of marriage or legal separation is
 22 not pending:

23 (i) to be evicted from the dwelling of the petitioner if the
 24 respondent is not the sole owner or lessee of the petitioner's
 25 dwelling;

26 (ii) to not transfer, encumber, damage, conceal, or otherwise
 27 dispose of property jointly owned with the petitioner or that
 28 is an asset of the marriage;

29 (iii) to pay child support to the custodian of any minor
 30 children of the parties alone or with the other party;

31 (iv) to pay maintenance to the other party; or

32 (v) to perform a combination of the acts described in items
 33 (i) through (iv); and

34 **(2) may order the respondent to refrain from possessing a**
 35 **firearm (as defined in IC 35-47-1-5) during a period not**
 36 **longer than the period that the respondent is under the**
 37 **protective order if the court finds by clear and convincing**
 38 **evidence that the respondent poses a significant threat of**
 39 **inflicting serious bodily injury to the petitioner or a member**
 40 **of the petitioner's household or family.**

41 ~~(2)~~ (3) may order counseling or other social services, including
 42 domestic violence education, for the petitioner, the respondent, or

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1 both, and may order the respondent to pay the costs of obtaining
 2 counseling or other social services for the petitioner, the
 3 respondent, or both.

4 **If the court prohibits the respondent from possessing a firearm**
 5 **under subdivision (2), the court shall notify the state police**
 6 **department of the restriction. The court may also order the**
 7 **confiscation under IC 35-47-3 of any firearms that the court finds**
 8 **the respondent to possess during the period that the protective**
 9 **order is in effect.**

10 SECTION 5. IC 35-42-2-1 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) A person who
 12 knowingly or intentionally touches another person in a rude, insolent,
 13 or angry manner commits battery, a Class B misdemeanor. However,
 14 the offense is:

15 (1) a Class A misdemeanor if:

16 (A) it results in bodily injury to any other person;

17 (B) it is committed against a law enforcement officer or
 18 against a person summoned and directed by the officer while
 19 the officer is engaged in the execution of his official duty; or

20 (C) it is committed against an employee of a penal facility or
 21 a juvenile detention facility (as defined in IC 31-9-2-71) while
 22 the employee is engaged in the execution of the employee's
 23 official duty;

24 (2) a Class D felony if it results in bodily injury to:

25 (A) a law enforcement officer or a person summoned and
 26 directed by a law enforcement officer while the officer is
 27 engaged in the execution of his official duty;

28 (B) a person less than fourteen (14) years of age and is
 29 committed by a person at least eighteen (18) years of age;

30 (C) a person of any age who is mentally or physically disabled
 31 and is committed by a person having the care of the mentally
 32 or physically disabled person, whether the care is assumed
 33 voluntarily or because of a legal obligation;

34 (D) the other person and the person who commits the battery
 35 was previously convicted of a battery in which the victim was
 36 the other person;

37 ~~(E) the other person and the person who commits the battery~~
 38 ~~which was related to domestic violence (as defined in~~
 39 ~~IC 31-9-2-42) was previously convicted of a battery which was~~
 40 ~~related to domestic violence;~~

41 ~~(F)~~ (E) an endangered adult (as defined by IC 35-46-1-1);

42 ~~(G)~~ (F) an employee of the department of correction while the

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- 1 employee is engaged in the execution of the employee's
 2 official duty;
 3 ~~(H)~~ (G) an employee of a school corporation while the
 4 employee is engaged in the execution of the employee's
 5 official duty and the employee is:
 6 (i) on school property;
 7 (ii) within one thousand (1,000) feet of school property; or
 8 (iii) on a school bus;
 9 ~~(H)~~ (H) a correctional professional while the correctional
 10 professional is engaged in the execution of the correctional
 11 professional's official duty;
 12 ~~(I)~~ (I) a person who is a health care provider (as defined in
 13 IC 16-18-2-163) while the health care provider is engaged in
 14 the execution of the health care provider's official duty; or
 15 ~~(K)~~ (J) an employee of a penal facility or a juvenile detention
 16 facility (as defined in IC 31-9-2-71) while the employee is
 17 engaged in the execution of the employee's official duty;
 18 (3) a Class C felony if it results in serious bodily injury to any
 19 other person or if it is committed by means of a deadly weapon;
 20 and
 21 (4) a Class B felony if it results in serious bodily injury to a
 22 person less than fourteen (14) years of age and is committed by a
 23 person at least eighteen (18) years of age.
 24 (b) For purposes of this section:
 25 (1) "law enforcement officer" includes an alcoholic beverage
 26 enforcement officer; and
 27 (2) "correctional professional" means a:
 28 (A) probation officer;
 29 (B) parole officer;
 30 (C) community corrections worker; or
 31 (D) home detention officer.

32 SECTION 6. IC 35-42-2-1.3 IS ADDED TO THE INDIANA CODE
 33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 34 1, 1999]: **Sec. 1.3. A person who knowingly or intentionally touches
 35 a person who:**

- 36 (1) is or was a spouse of the other person;
 37 (2) is or was living as if a spouse of the other person; or
 38 (3) has a child in common with the other person;
 39 **in a rude, insolent, or angry manner that results in bodily injury to
 40 the person described in subdivision (1), (2), or (3) commits
 41 domestic battery, a Class A misdemeanor. However, the offense is
 42 a Class D felony if the person has a previous, unrelated conviction**



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1 **under this section.**

2 SECTION 7. IC 35-48-4-6 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) A person who,
4 without a valid prescription or order of a practitioner acting in the
5 course of **his the practitioner's** professional practice, knowingly or
6 intentionally possesses cocaine (pure or adulterated) or a narcotic drug
7 (pure or adulterated) classified in schedule I or II commits possession
8 of cocaine or a narcotic drug, a Class D felony, except as provided in
9 subsection (b).

10 (b) The offense is:

11 (1) a Class C felony if:

12 (A) the amount of the drug involved (pure or adulterated)
13 weighs three (3) grams or more; **or**

14 (B) **the person was also in possession of a firearm (as**
15 **defined in IC 35-47-1-5);**

16 (2) a Class B felony if the person in possession of the cocaine or
17 narcotic drug possesses less than three (3) grams of pure or
18 adulterated cocaine or narcotic drug:

19 (A) on a school bus; or

20 (B) in, on, or within one thousand (1,000) feet of:

21 (i) school property;

22 (ii) a public park; or

23 (iii) a family housing complex; and

24 (3) a Class A felony if the person possesses the cocaine or
25 narcotic drug in an amount (pure or adulterated) weighing at least
26 three (3) grams:

27 (A) on a school bus; or

28 (B) in, on, or within one thousand (1,000) feet of:

29 (i) school property;

30 (ii) a public park; or

31 (iii) a family housing complex.

32 SECTION 8. IC 35-50-2-2 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The court may
34 suspend any part of a sentence for a felony, except as provided in this
35 section or in section 2.1 of this chapter.

36 (b) With respect to the **following** crimes listed in this subsection,
37 the court may suspend only that part of the sentence that is in excess of
38 the minimum sentence:

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

41 (2) The crime committed was a Class C felony and less than seven

42 (7) years have elapsed between the date the person was

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- 1 discharged from probation, imprisonment, or parole, whichever
 2 is later, for a prior unrelated felony conviction and the date the
 3 person committed the Class C felony for which the person is
 4 being sentenced.
- 5 (3) The crime committed was a Class D felony and less than three
 6 (3) years have elapsed between the date the person was
 7 discharged from probation, imprisonment, or parole, whichever
 8 is later, for a prior unrelated felony conviction and the date the
 9 person committed the Class D felony for which the person is
 10 being sentenced. However, the court may suspend the minimum
 11 sentence for the crime only if the court orders home detention
 12 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
 13 sentence specified for the crime under this chapter.
- 14 (4) The felony committed was:
- 15 (A) murder (IC 35-42-1-1);
 - 16 (B) battery (IC 35-42-2-1) with a deadly weapon;
 - 17 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
 - 18 (D) kidnapping (IC 35-42-3-2);
 - 19 (E) confinement (IC 35-42-3-3) with a deadly weapon;
 - 20 (F) rape (IC 35-42-4-1) as a Class A felony;
 - 21 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
 22 felony;
 - 23 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
 24 felony;
 - 25 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
 26 with a deadly weapon;
 - 27 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
 28 injury;
 - 29 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
 30 or with a deadly weapon;
 - 31 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
 32 weapon;
 - 33 (M) escape (IC 35-44-3-5) with a deadly weapon;
 - 34 (N) rioting (IC 35-45-1-2) with a deadly weapon;
 - 35 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a
 36 Class A felony;
 - 37 (P) dealing in a schedule I, II, or III controlled substance
 38 (IC 35-48-4-2) if the amount of controlled substance involved
 39 has an aggregate weight of three (3) grams or more;
 - 40 (Q) an offense under IC 9-30-5 (operating a vehicle while
 41 intoxicated) and the person who committed the offense has
 42 accumulated at least two (2) prior unrelated convictions under

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1 IC 9-30-5; or

2 (R) aggravated battery (IC 35-42-2-1.5).

3 (c) Except as provided in subsection (e), whenever the court
4 suspends a sentence for a felony, it shall place the person on probation
5 under IC 35-38-2 for a fixed period to end not later than the date that
6 the maximum sentence that may be imposed for the felony will expire.

7 (d) The minimum sentence for a person convicted of voluntary
8 manslaughter may not be suspended unless the court finds at the
9 sentencing hearing that the crime was not committed by means of a
10 deadly weapon.

11 (e) Whenever the court suspends that part of an offender's (as
12 defined in IC 5-2-12-4) sentence that is suspendible under subsection
13 (b), the court shall place the offender on probation under IC 35-38-2 for
14 not more than ten (10) years.

15 (f) An additional term of imprisonment imposed under
16 IC 35-50-2-11 may not be suspended.

17 (g) A term of imprisonment imposed under IC 35-47-10-6 or
18 IC 35-47-10-7 may not be suspended if the commission of the offense
19 was knowing or intentional.

20 **(h) A term of imprisonment imposed for an offense under**
21 **IC 35-48-4-6(b)(1)(B) may not be suspended.**

22 SECTION 9. IC 35-50-2-7 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) A person who
24 commits a Class D felony shall be imprisoned for a fixed term of one
25 and one-half (1 1/2) years, with not more than one and one-half (1 1/2)
26 years added for aggravating circumstances or not more than one (1)
27 year subtracted for mitigating circumstances. In addition, he may be
28 fined not more than ten thousand dollars (\$10,000).

29 (b) Notwithstanding subsection (a), if a person has committed a
30 Class D felony, the court may enter judgment of conviction of a Class
31 A misdemeanor and sentence accordingly. However, the court shall
32 enter a judgment of conviction of a Class D felony if:

33 (1) the court finds that:

34 (A) the person has committed a prior, unrelated felony for
35 which judgment was entered as a conviction of a Class A
36 misdemeanor; and

37 (B) the prior felony was committed less than three (3) years
38 before the second felony was committed;

39 **(2) the offense is domestic battery as a Class D felony under**
40 **IC 35-42-2-1.3;**

41 ~~(2)~~ **(3) the offense is auto theft (IC 35-43-4-2.5); or**

42 ~~(3)~~ **(4) the offense is receiving stolen auto parts (IC 35-43-4-2.5).**

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1 The court shall enter in the record, in detail, the reason for its action
2 whenever it exercises the power to enter judgment of conviction of a
3 Class A misdemeanor granted in this subsection.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1747, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete pages 1 through 4.

Page 5, delete lines 1 through 11.

Page 8, line 18, delete "violent offense" and insert "**forcible felony**".

Page 8, line 18, after "that" insert "**the person knew**".

Page 11, line 5, delete "is" and insert "**the person who commits the offense knew the act would be**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1747 as introduced.)

DVORAK, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1747 be amended to read as follows:

Page 4, line 34, delete "a forcible felony" and insert "**an offense under IC 35-42**".

Page 7, line 17, strike "or".

Page 7, line 20, after "duty;" insert "**or**".

(Reference is to HB 1747 as printed February 25, 1999.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1747 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

Page 2, line 38, delete "(a)".

(Reference is to HB 1747 as printed March 2, 1999 - printer's error.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred House Bill 1747, begs leave to report that said bill has been amended as directed.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred House Bill No. 1747, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 31-14-14-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5. If a court finds that a noncustodial parent has been convicted of a domestic battery under IC 35-42-2-1.3 that was witnessed or heard by the noncustodial parent's child, the court shall order that the noncustodial parent's visitation with the child must be supervised:**

- (1) for at least one (1) year and not more than two (2) years immediately following the domestic battery conviction; or**
- (2) until the child becomes emancipated;**

whichever occurs first.

SECTION 2. IC 31-37-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) The juvenile court shall release the child on the child's own recognizance or to the child's parent, guardian, or custodian upon the person's written promise to bring the child before the court at a time specified. However, the court may order the child detained if the court finds probable cause to believe the child is a delinquent child and that:

- (1) the child is unlikely to appear for subsequent proceedings;
- (2) detention is essential to protect the child or the community;
- (3) the parent, guardian, or custodian:
 - (A) cannot be located; or
 - (B) is unable or unwilling to take custody of the child; or
- (4) the child has a reasonable basis for requesting that the child not be released.

However, the findings under this subsection are not required if the child is ordered to be detained in the home of the child's parent, guardian, or custodian, or is released subject to any condition listed in subsection (c).

(b) If a child is detained for a reason specified in subsection (a)(3) or (a)(4), the child shall be detained under IC 31-37-7-1.

(c) Whenever the court releases a child under this section, the court may impose conditions upon the child, including:

- (1) home detention;**

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- (2) electronic monitoring;**
- (3) a curfew restriction;**
- (4) a protective order;**
- (5) a no contact order;**
- (6) an order to comply with Indiana law; or**
- (7) an order placing any other reasonable conditions on the child's actions or behavior.**

SECTION 3. IC 31-37-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) If:

- (1) a child is in detention; and
- (2) a petition has been filed;

a fact-finding hearing or a waiver hearing must be commenced not later than twenty (20) days, excluding Saturdays, Sundays, and legal holidays, after the petition is filed.

(b) If:

- (1) a child is not in detention; and
- (2) a petition has been filed;

the hearing must be commenced not later than sixty (60) days, excluding Saturdays, Sundays, and legal holidays, after the petition is filed.

(c) A child who is ordered detained in the home of the child's parent, guardian, or custodian or who is subject to other conditions of release under IC 31-37-6-6 may not be considered as being detained for purposes of this section."

Page 2, line 3, after ";" insert "and".

Page 2, delete lines 18 through 21.

Page 2, between lines 21 and 22, begin a new line block indented and insert:

"(2) may order the respondent to refrain from possessing a firearm (as defined in IC 35-47-1-5) during a period not longer than the period that the respondent is under the protective order if the court finds by clear and convincing evidence that the respondent poses a significant threat of inflicting serious bodily injury to the petitioner or a member of the petitioner's household or family."

Page 2, line 22, strike "(2)" and insert "(3)".

Page 2, line 28, delete "(1)(F)" and insert "(2)".

Page 2, line 28, delete "order the firearm to be" and insert **"notify the state police department of the restriction. The court may also order the confiscation under IC 35-47-3 of any firearms that the court finds the respondent to possess"**.

Page 2, delete lines 29 through 30.

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Page 2, line 31, delete "from possessing a firearm".

Page 2, delete lines 33 through 42.

Delete pages 3 through 5.

Page 6, delete lines 1 through 11.

Page 6, strike lines 39 through 42.

Page 7, line 1, strike "(F)" and insert "(E)".

Page 7, line 2, strike "(G)" and insert "(F)".

Page 7, line 5, strike "(H)" and insert "(G)".

Page 7, line 11, strike "(I)" and insert "(H)".

Page 7, line 14, strike "(J)" and insert "(I)".

Page 7, line 16, reset in roman "or".

Page 7, line 17, strike "(K)" and insert "(J)".

Page 7, line 19, delete "or".

Page 7, delete lines 20 through 25.

Page 7, delete lines 40 through 42, begin a new paragraph and insert:

"SECTION 6. IC 35-42-2-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 1.3. A person who knowingly or intentionally touches a person who:**

- (1) is or was a spouse of the other person;**
- (2) is or was living as if a spouse of the other person; or**
- (3) has a child in common with the other person;**

in a rude, insolent, or angry manner that results in bodily injury to the person described in subdivision (1), (2), or (3) commits domestic battery, a Class A misdemeanor. However, the offense is a Class D felony if the person has a previous, unrelated conviction under this section.

SECTION 7. IC 35-48-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) A person who, without a valid prescription or order of a practitioner acting in the course of **his the practitioner's** professional practice, knowingly or intentionally possesses cocaine (pure or adulterated) or a narcotic drug (pure or adulterated) classified in schedule I or II commits possession of cocaine or a narcotic drug, a Class D felony, except as provided in subsection (b).

(b) The offense is:

- (1) a Class C felony if:
 - (A) the amount of the drug involved (pure or adulterated) weighs three (3) grams or more; or**
 - (B) the person was also in possession of a firearm (as defined in IC 35-47-1-5);**



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(2) a Class B felony if the person in possession of the cocaine or narcotic drug possesses less than three (3) grams of pure or adulterated cocaine or narcotic drug:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park; or

(iii) a family housing complex; and

(3) a Class A felony if the person possesses the cocaine or narcotic drug in an amount (pure or adulterated) weighing at least three (3) grams:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park; or

(iii) a family housing complex.

SECTION 8. IC 35-50-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

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

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

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

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

(4) The felony committed was:

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

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- (B) battery (IC 35-42-2-1) with a deadly weapon;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
- (M) escape (IC 35-44-3-5) with a deadly weapon;
- (N) rioting (IC 35-45-1-2) with a deadly weapon;
- (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a Class A felony;
- (P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the amount of controlled substance involved has an aggregate weight of three (3) grams or more;
- (Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; or
- (R) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under

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IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 9. IC 35-50-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of one and one-half (1 1/2) years, with not more than one and one-half (1 1/2) years added for aggravating circumstances or not more than one (1) year subtracted for mitigating circumstances. In addition, he may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:

- (1) the court finds that:
 - (A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and
 - (B) the prior felony was committed less than three (3) years before the second felony was committed;
- (2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3;**
- ~~(2)~~ **(3) the offense is auto theft (IC 35-43-4-2.5); or**
- ~~(3)~~ **(4) the offense is receiving stolen auto parts (IC 35-43-4-2.5).**

The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection."

Delete page 8.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1747 as reprinted March 4, 1999.)

MEEKS R, Chairperson

Committee Vote: Yeas 9, Nays 1.

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