



February 25, 1999

HOUSE BILL No. 1747

DIGEST OF HB 1747 (Updated February 24, 1999 9:38 am - DI 76)

Citations Affected: IC 34-26; IC 35-33; IC 35-38; IC 35-42; IC 35-47.

Synopsis: Domestic violence. Provides that a person against whom a protective order has been issued is prohibited from possessing a firearm during the period that the person is under the protective order if the court finds that the person poses a credible threat to another person. Requires the court to notify the state police department of all protective orders that prohibit a person from possessing a firearm. Provides for the transfer and disposition of firearms under these circumstances. Enumerates duties of a law enforcement officer whenever the officer responds to an allegation of domestic violence. Raises the penalty for battery from a Class A misdemeanor to a Class D felony if the person who commits the offense knew the act would be witnessed or heard by a: (1) minor child or stepchild; or (2) minor child residing within the household of the victim or of the person who commits the offense. Allows a court to consider it an aggravating
(Continued next page)

Effective: July 1, 1999.

**Dickinson, Crawford, Atterholt,
Lawson**

January 26, 1999, read first time and referred to Committee on Courts and Criminal Code.
February 24, 1999, amended, reported — Do Pass.

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circumstance for sentencing purposes that a person committed a forcible felony that the person knew would be witnessed or heard by a: (1) minor child or stepchild; or (2) minor child residing in the household of the victim or of the person who commits the offense.

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February 25, 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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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 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

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respondent if the respondent is not the sole owner or lessee, or any other property as specifically described in the petition; (D) to refrain from damaging any property of the petitioner; (E) if the petitioner and respondent are married and if a proceeding for dissolution of marriage or legal separation is not pending:

- (i) to be evicted from the dwelling of the petitioner if the respondent is not the sole owner or lessee of the petitioner's dwelling;
- (ii) to not transfer, encumber, damage, conceal, or otherwise dispose of property jointly owned with the petitioner or that is an asset of the marriage;
- (iii) to pay child support to the custodian of any minor children of the parties alone or with the other party;
- (iv) to pay maintenance to the other party; or
- (v) to perform a combination of the acts described in items (i) through (iv); and

(F) to refrain from possessing a firearm during the period that the person is under the protective order if the court finds that the respondent poses a credible threat to the petitioner or another person; and

(2) may order counseling or other social services, including domestic violence education, for the petitioner, the respondent, or both, and may order the respondent to pay the costs of obtaining counseling or other social services for the petitioner, the respondent, or both.

If the court prohibits the respondent from possessing a firearm under subdivision (1)(F), the court shall order the firearm to be confiscated in accordance with IC 35-47-3 and shall also notify the state police department of the court's restriction on the respondent from possessing a firearm during the period that the protective order is in effect.

SECTION 2. IC 35-33-5.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 5.5. Duties of Law Enforcement Officer to Domestic Violence Victim

Sec. 1. (a) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including the following:

- (1) Taking action necessary to provide for the safety of the**

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- 1 **victim and any child of the victim.**
- 2 **(2) Transporting or obtaining transportation for the victim**
- 3 **and any child of the victim to a shelter, if appropriate.**
- 4 **(3) Assisting the victim in removing essential personal effects,**
- 5 **if appropriate.**
- 6 **(4) Assisting the victim and any child of the victim in**
- 7 **obtaining medical treatment, including obtaining**
- 8 **transportation to a medical facility, if appropriate.**
- 9 **(5) Giving the victim immediate and adequate notice of the**
- 10 **rights of victims and of the remedies and services available to**
- 11 **victims of domestic violence.**

12 SECTION 3. IC 35-38-1-7.1 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7.1. (a) In determining
 14 what sentence to impose for a crime, the court shall consider:

- 15 (1) the risk that the person will commit another crime;
- 16 (2) the nature and circumstances of the crime committed;
- 17 (3) the person's:
 - 18 (A) prior criminal record;
 - 19 (B) character; and
 - 20 (C) condition;
- 21 (4) whether the victim of the crime was less than twelve (12)
- 22 years of age or at least sixty-five (65) years of age;
- 23 (5) whether the person violated a protective order issued against
- 24 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its
- 25 repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and
- 26 (6) any oral or written statement made by a victim of the crime.

27 (b) The court may consider the following factors as aggravating
 28 circumstances or as favoring imposing consecutive terms of
 29 imprisonment:

- 30 (1) The person has recently violated the conditions of any
- 31 probation, parole, or pardon granted to the person.
- 32 (2) The person has a history of criminal or delinquent activity.
- 33 (3) The person is in need of correctional or rehabilitative
- 34 treatment that can best be provided by commitment of the person
- 35 to a penal facility.
- 36 (4) Imposition of a reduced sentence or suspension of the
- 37 sentence and imposition of probation would depreciate the
- 38 seriousness of the crime.
- 39 (5) The victim of the crime was less than twelve (12) years of age
- 40 or at least sixty-five (65) years of age.
- 41 (6) The victim of the crime was mentally or physically infirm.
- 42 (7) The person committed a forcible felony while wearing a

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1 garment designed to resist the penetration of a bullet.

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

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

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

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

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

13 (A) the offense involved:

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

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

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

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

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

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

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

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

34 **(13) The person committed a forcible felony that the person
35 knew was witnessed or heard by a:**

36 **(A) minor child or stepchild; or**

37 **(B) minor child residing within the household;**

38 **of the victim or of the person who commits the offense.**

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

42 (1) The crime neither caused nor threatened serious harm to

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- 1 persons or property, or the person did not contemplate that it
 2 would do so.
- 3 (2) The crime was the result of circumstances unlikely to recur.
- 4 (3) The victim of the crime induced or facilitated the offense.
- 5 (4) There are substantial grounds tending to excuse or justify the
 6 crime, though failing to establish a defense.
- 7 (5) The person acted under strong provocation.
- 8 (6) The person has no history of delinquency or criminal activity,
 9 or the person has led a law-abiding life for a substantial period
 10 before commission of the crime.
- 11 (7) The person is likely to respond affirmatively to probation or
 12 short term imprisonment.
- 13 (8) The character and attitudes of the person indicate that the
 14 person is unlikely to commit another crime.
- 15 (9) The person has made or will make restitution to the victim of
 16 the crime for the injury, damage, or loss sustained.
- 17 (10) Imprisonment of the person will result in undue hardship to
 18 the person or the dependents of the person.
- 19 (11) The person was convicted of a crime involving the use of
 20 force against a person who had repeatedly inflicted physical or
 21 sexual abuse upon the convicted person and evidence shows that
 22 the convicted person suffered from the effects of battery as a
 23 result of the past course of conduct of the individual who is the
 24 victim of the crime for which the person was convicted.
- 25 (d) The criteria listed in subsections (b) and (c) do not limit the
 26 matters that the court may consider in determining the sentence.
- 27 (e) For the purposes of this article, the following crimes are
 28 considered sex crimes:
- 29 (1) Rape (IC 35-42-4-1).
- 30 (2) Criminal deviate conduct (IC 35-42-4-2).
- 31 (3) Child molesting (IC 35-42-4-3).
- 32 (4) Child seduction (IC 35-42-4-7).
- 33 (5) Prostitution (IC 35-45-4-2).
- 34 (6) Patronizing a prostitute (IC 35-45-4-3).
- 35 (7) Incest (IC 35-46-1-3).
- 36 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).
- 37 (f) For the purposes of this article, the following crimes are
 38 considered offenses related to controlled substances:
- 39 (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 40 (2) Dealing in a schedule I, II, or III controlled substance (IC
 41 35-48-4-2).
- 42 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

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

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

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

13 SECTION 4. IC 35-42-2-1 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) A person who
 15 knowingly or intentionally touches another person in a rude, insolent,
 16 or angry manner commits battery, a Class B misdemeanor. However,
 17 the offense is:

- 18 (1) a Class A misdemeanor if:
 19 (A) it results in bodily injury to any other person;
 20 (B) it is committed against a law enforcement officer or
 21 against a person summoned and directed by the officer while
 22 the officer is engaged in the execution of his official duty; or
 23 (C) it is committed against an employee of a penal facility or
 24 a juvenile detention facility (as defined in IC 31-9-2-71) while
 25 the employee is engaged in the execution of the employee's
 26 official duty;
 27 (2) a Class D felony if it results in bodily injury to:
 28 (A) a law enforcement officer or a person summoned and
 29 directed by a law enforcement officer while the officer is
 30 engaged in the execution of his official duty;
 31 (B) a person less than fourteen (14) years of age and is
 32 committed by a person at least eighteen (18) years of age;
 33 (C) a person of any age who is mentally or physically disabled
 34 and is committed by a person having the care of the mentally
 35 or physically disabled person, whether the care is assumed
 36 voluntarily or because of a legal obligation;
 37 (D) the other person and the person who commits the battery
 38 was previously convicted of a battery in which the victim was
 39 the other person;
 40 (E) the other person and the person who commits the battery
 41 which was related to domestic violence (as defined in
 42 IC 31-9-2-42) was previously convicted of a battery which was



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- 1 related to domestic violence;
 2 (F) an endangered adult (as defined by IC 35-46-1-1);
 3 (G) an employee of the department of correction while the
 4 employee is engaged in the execution of the employee's
 5 official duty;
 6 (H) an employee of a school corporation while the employee
 7 is engaged in the execution of the employee's official duty and
 8 the employee is:
 9 (i) on school property;
 10 (ii) within one thousand (1,000) feet of school property; or
 11 (iii) on a school bus;
 12 (I) a correctional professional while the correctional
 13 professional is engaged in the execution of the correctional
 14 professional's official duty;
 15 (J) a person who is a health care provider (as defined in
 16 IC 16-18-2-163) while the health care provider is engaged in
 17 the execution of the health care provider's official duty; or
 18 (K) an employee of a penal facility or a juvenile detention
 19 facility (as defined in IC 31-9-2-71) while the employee is
 20 engaged in the execution of the employee's official duty;
 21 **(L) the other person and the person who commits the**
 22 **offense knew the act would be witnessed or heard by a:**
 23 **(i) minor child or stepchild; or**
 24 **(ii) minor child residing within the household;**
 25 **of the other person or of the person who commits the**
 26 **offense;**
 27 (3) a Class C felony if it results in serious bodily injury to any
 28 other person or if it is committed by means of a deadly weapon;
 29 and
 30 (4) a Class B felony if it results in serious bodily injury to a
 31 person less than fourteen (14) years of age and is committed by a
 32 person at least eighteen (18) years of age.
 33 (b) For purposes of this section:
 34 (1) "law enforcement officer" includes an alcoholic beverage
 35 enforcement officer; and
 36 (2) "correctional professional" means a:
 37 (A) probation officer;
 38 (B) parole officer;
 39 (C) community corrections worker; or
 40 (D) home detention officer.

41 SECTION 5. IC 35-47-3-1 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. All firearms

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1 confiscated pursuant to statute shall upon:
2 (1) conviction of the person for the offense for which the
3 confiscation was made; **or**
4 (2) **court order for confiscation of the firearm as a result of a**
5 **protective order involving a credible threat against another**
6 **person as described in IC 34-26-2-12(1)(F);**
7 be disposed of in accordance with this chapter.

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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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