Reprinted
March 2, 1999

HOUSE BILL No. 1747

DIGEST OF HB 1747 (Updated March 1, 1999 8:14 pm - 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.
March 1, 1999, read second time, amended, ordered engrossed.

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circumstance for sentencing purposes that a person committed a an offense against another person 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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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:

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

(1) shall order the respondent:

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

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

(C) to refrain from entering the property of the petitioner, jointly owned or leased property of the petitioner and the

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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victim and any child of the victim.

(2) Transporting or obtaining transportation for the victim and any child of the victim to a shelter, if appropriate.

(3) Assisting the victim in removing essential personal effects, if appropriate.

(4) Assisting the victim and any child of the victim in obtaining medical treatment, including obtaining transportation to a medical facility, if appropriate.

(5) Giving the victim immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence.

SECTION 3. 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

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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 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 committed an offense under IC 35-42 that the person knew was witnessed or heard by a:

(A) minor child or stepchild; or

(B) minor child residing within the household;

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

(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

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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:

(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).

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

(1) a Class A misdemeanor if:
(A) it results in bodily injury to any other person;
(B) it is committed against a law enforcement officer or against a person summoned and directed by the officer while the officer is engaged in the execution of his official duty; or
(C) it is committed against an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty;

(2) a Class D felony if it results in bodily injury to:
(A) a law enforcement officer or a person summoned and directed by a law enforcement officer while the officer is engaged in the execution of his official duty;
(B) a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;
(C) a person of any age who is mentally or physically disabled and is committed by a person having the care of the mentally or physically disabled person, whether the care is assumed voluntarily or because of a legal obligation;
(D) the other person and the person who commits the battery was previously convicted of a battery in which the victim was the other person;
(E) the other person and the person who commits the battery which was related to domestic violence (as defined in IC 31-9-2-42) was previously convicted of a battery which was

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

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

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confiscated pursuant to statute shall upon:

(1) conviction of the person for the offense for which the confiscation was made; **or**

(2) court order for confiscation of the firearm as a result of a protective order involving a credible threat against another person as described in IC 34-26-2-12(1)(F);

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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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.)

DICKINSON

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