

# HOUSE BILL No. 1305

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-1-7.1; IC 35-44-3-9.

**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. Makes trafficking with an inmate a Class B felony instead of a Class C felony if the offense involves a deadly weapon.

**Effective:** July 1, 1999.

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## Smith V, Alderman

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January 12, 1999, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

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.

## HOUSE BILL No. 1305

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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 35-38-1-7.1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7.1. (a) In determining  
3 what sentence to impose for a crime, the court shall consider:  
4 (1) the risk that the person will commit another crime;  
5 (2) the nature and circumstances of the crime committed;  
6 (3) the person's:  
7 (A) prior criminal record;  
8 (B) character; and  
9 (C) condition;  
10 (4) whether the victim of the crime was less than twelve (12)  
11 years of age or at least sixty-five (65) years of age;  
12 (5) whether the person violated a protective order issued against  
13 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its  
14 repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and  
15 (6) any oral or written statement made by a victim of the crime.  
16 (b) The court may consider the following factors as aggravating  
17 circumstances or as favoring imposing consecutive terms of



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- 1 imprisonment:
- 2 (1) The person has recently violated the conditions of any
- 3 probation, parole, or pardon granted to the person.
- 4 (2) The person has a history of criminal or delinquent activity.
- 5 (3) The person is in need of correctional or rehabilitative
- 6 treatment that can best be provided by commitment of the person
- 7 to a penal facility.
- 8 (4) Imposition of a reduced sentence or suspension of the
- 9 sentence and imposition of probation would depreciate the
- 10 seriousness of the crime.
- 11 (5) The victim of the crime was less than twelve (12) years of age
- 12 or at least sixty-five (65) years of age.
- 13 (6) The victim of the crime was mentally or physically infirm.
- 14 (7) The person committed a forcible felony while wearing a
- 15 garment designed to resist the penetration of a bullet.
- 16 (8) The person committed a sex crime listed in subsection (e) and:
- 17 (A) the crime created an epidemiologically demonstrated risk
- 18 of transmission of the human immunodeficiency virus (HIV)
- 19 and involved the sex organ of one (1) person and the mouth,
- 20 anus, or sex organ of another person;
- 21 (B) the person had knowledge that the person was a carrier of
- 22 HIV; and
- 23 (C) the person had received risk counseling as described in
- 24 subsection (g).
- 25 (9) The person committed an offense related to controlled
- 26 substances listed in subsection (f) if:
- 27 (A) the offense involved:
- 28 (i) the delivery by any person to another person; or
- 29 (ii) the use by any person on another person;
- 30 of a contaminated sharp (as defined in IC 16-41-16-2) or other
- 31 paraphernalia that creates an epidemiologically demonstrated
- 32 risk of transmission of HIV by involving percutaneous contact;
- 33 (B) the person had knowledge that the person was a carrier of
- 34 the human immunodeficiency virus (HIV); and
- 35 (C) the person had received risk counseling as described in
- 36 subsection (g).
- 37 (10) The person committed the offense in an area of a
- 38 consolidated or second class city that is designated as a public
- 39 safety improvement area by the Indiana criminal justice institute
- 40 under IC 36-8-19.5.
- 41 (11) The injury to or death of the victim of the crime was the
- 42 result of shaken baby syndrome (as defined in IC 16-41-40-2).

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

6 **(13) The person:**

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

9 **(B) is an employee of the penal facility.**

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

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

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

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

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

20 (5) The person acted under strong provocation.

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

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

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

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

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

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

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

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

42 (1) Rape (IC 35-42-4-1).

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- 1 (2) Criminal deviate conduct (IC 35-42-4-2).  
 2 (3) Child molesting (IC 35-42-4-3).  
 3 (4) Child seduction (IC 35-42-4-7).  
 4 (5) Prostitution (IC 35-45-4-2).  
 5 (6) Patronizing a prostitute (IC 35-45-4-3).  
 6 (7) Incest (IC 35-46-1-3).  
 7 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).  
 8 (f) For the purposes of this article, the following crimes are  
 9 considered offenses related to controlled substances:  
 10 (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).  
 11 (2) Dealing in a schedule I, II, or III controlled substance (IC  
 12 35-48-4-2).  
 13 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).  
 14 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).  
 15 (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).  
 16 (6) Possession of a controlled substance (IC 35-48-4-7).  
 17 (7) Dealing in paraphernalia (IC 35-48-4-8.5).  
 18 (8) Possession of paraphernalia (IC 35-48-4-8.3).  
 19 (9) Offenses relating to registration (IC 35-48-4-14).  
 20 (g) For the purposes of this section, a person received risk  
 21 counseling if the person had been:  
 22 (1) notified in person or in writing that tests have confirmed the  
 23 presence of antibodies to the human immunodeficiency virus  
 24 (HIV) in the person's blood; and  
 25 (2) warned of the behavior that can transmit HIV.  
 26 SECTION 2. IC 35-44-3-9 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec 9. A person who,  
 28 without the prior authorization of the person in charge of a penal  
 29 facility, knowingly or intentionally:  
 30 (1) delivers, or carries into the penal facility with intent to deliver,  
 31 an article to an inmate of the facility; or  
 32 (2) carries, or receives with intent to carry out of the penal  
 33 facility, an article from an inmate of the facility;  
 34 commits trafficking with an inmate, a Class A misdemeanor. However,  
 35 the offense is a Class C felony if the article is a controlled substance ~~or~~  
 36 **and a Class B felony if the article is a deadly weapon.**

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