

# HOUSE BILL No. 1903

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 31-30-2-2; IC 31-37; IC 35-48-4-6; IC 35-50-2-2.

**Synopsis:** Juvenile and criminal matters. Provides that whenever the department of correction notifies a court that awarded guardianship of a child to the department of the department's decision to release the child from custody, the court may request that the department reconsider its decision, provided that the court's request is submitted in writing within a specified period. Requires the department of correction to notify the court of its final decision regarding the child's release not more than ten days after the department receives the court's request to reconsider. Allows a court to impose certain reasonable conditions upon a 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  
(Continued next page)

**Effective:** July 1, 1999.

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## Porter, Crawford, Frizzell

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January 26, 1999, read first time and referred to Committee on Courts and Criminal Code.

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Digest Continued

to be a delinquent child. Adds attempt of certain serious offenses to the list of offenses for which a court may award guardianship of a child to the department of correction. Makes the possession of cocaine or a narcotic drug while also in possession of a firearm a nonsuspendible Class C felony.

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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.

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## HOUSE BILL No. 1903

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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 31-30-2-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) If the department  
3 of correction is awarded guardianship of a child under section 1(a)(2)  
4 of this chapter (or IC 31-6-2-3(a)(2) before its repeal), the department  
5 of correction shall notify the court awarding the guardianship when the  
6 department will release the child from the department's custody. The  
7 notification must be sent to the court at least ten (10) days before the  
8 child's release.

9 (b) **The court may request that the department of correction**  
10 **reconsider its decision to release the child from its custody under**  
11 **subsection (a) provided that the court sends a written request to**  
12 **the department not more than five (5) days after the court receives**  
13 **the department's notification. The department of correction shall**  
14 **notify the court of its final decision regarding the child's release**  
15 **not more than ten (10) days after the department receives the**



1 **court's request to reconsider.**

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

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

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

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

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

28 SECTION 3. IC 31-37-19-9 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) This section  
30 applies if a child is a delinquent child under IC 31-37-1.

31 (b) After a determination under IC 5-2-12-4(2), the juvenile court  
32 may, in addition to an order under section 6 of this chapter, and if the  
33 child:

- 34 (1) is at least thirteen (13) years of age and less than sixteen (16)  
35 years of age; and  
36 (2) committed an act that, if committed by an adult, would be:  
37 (A) murder (IC 35-42-1-1);  
38 (B) kidnapping (IC 35-42-3-2);  
39 (C) rape (IC 35-42-4-1);  
40 (D) criminal deviate conduct (IC 35-42-4-2); or  
41 (E) robbery (IC 35-42-5-1) if the robbery was committed while  
42 armed with a deadly weapon or if the robbery resulted in



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1                   bodily injury or serious bodily injury; **or**  
 2                   **(F) attempt (IC 35-41-5-1) to commit any offense listed in**  
 3                   **clauses (A) through (E);**

4                   order wardship of the child to the department of correction for a fixed  
 5                   period that is not longer than the date the child becomes eighteen (18)  
 6                   years of age, subject to IC 11-10-2-10.

7                   (c) Notwithstanding IC 11-10-2-5, the department of correction may  
 8                   not reduce the period ordered under this section (or  
 9                   IC 31-6-4-15.9(b)(8) before its repeal).

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

18                  (b) The offense is:

19                   (1) a Class C felony if:

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

22                   **(B) the person in possession of the cocaine or narcotic drug**  
 23                   **was also in possession of a firearm (as defined in**  
 24                   **IC 35-47-1-5);**

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

28                   (A) on a school bus; or

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

30                   (i) school property;

31                   (ii) a public park; or

32                   (iii) a family housing complex; and

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

36                   (A) on a school bus; or

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

38                   (i) school property;

39                   (ii) a public park; or

40                   (iii) a family housing complex.

41                  SECTION 5. IC 35-50-2-2 IS AMENDED TO READ AS  
 42                  FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The court may

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1 suspend any part of a sentence for a felony, except as provided in this  
2 section or in section 2.1 of this chapter.

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

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

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

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

23 (4) The felony committed was:

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

25 (B) battery (IC 35-42-2-1) with a deadly weapon;

26 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

27 (D) kidnapping (IC 35-42-3-2);

28 (E) confinement (IC 35-42-3-3) with a deadly weapon;

29 (F) rape (IC 35-42-4-1) as a Class A felony;

30 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A  
31 felony;

32 (H) child molesting (IC 35-42-4-3) as a Class A or Class B  
33 felony;

34 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or  
35 with a deadly weapon;

36 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily  
37 injury;

38 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury  
39 or with a deadly weapon;

40 (L) resisting law enforcement (IC 35-44-3-3) with a deadly  
41 weapon;

42 (M) escape (IC 35-44-3-5) with a deadly weapon;

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- 1 (N) rioting (IC 35-45-1-2) with a deadly weapon;  
 2 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a  
 3 Class A felony;  
 4 (P) dealing in a schedule I, II, or III controlled substance  
 5 (IC 35-48-4-2) if the amount of controlled substance involved  
 6 has an aggregate weight of three (3) grams or more;  
 7 (Q) an offense under IC 9-30-5 (operating a vehicle while  
 8 intoxicated) and the person who committed the offense has  
 9 accumulated at least two (2) prior unrelated convictions under  
 10 IC 9-30-5; or  
 11 (R) aggravated battery (IC 35-42-2-1.5).
- 12 (c) Except as provided in subsection (e), whenever the court  
 13 suspends a sentence for a felony, it shall place the person on probation  
 14 under IC 35-38-2 for a fixed period to end not later than the date that  
 15 the maximum sentence that may be imposed for the felony will expire.
- 16 (d) The minimum sentence for a person convicted of voluntary  
 17 manslaughter may not be suspended unless the court finds at the  
 18 sentencing hearing that the crime was not committed by means of a  
 19 deadly weapon.
- 20 (e) Whenever the court suspends that part of an offender's (as  
 21 defined in IC 5-2-12-4) sentence that is suspendible under subsection  
 22 (b), the court shall place the offender on probation under IC 35-38-2 for  
 23 not more than ten (10) years.
- 24 (f) An additional term of imprisonment imposed under  
 25 IC 35-50-2-11 may not be suspended.
- 26 (g) A term of imprisonment imposed under IC 35-47-10-6 or  
 27 IC 35-47-10-7 may not be suspended if the commission of the offense  
 28 was knowing or intentional.
- 29 **(h) A term of imprisonment imposed under**  
 30 **IC 35-48-4-6(b)(1)(B) may not be suspended.**

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