

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:

1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 31-14-14-5 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 1999]: **Sec. 5. If a court finds that a noncustodial parent has been
6 convicted of a domestic battery under IC 35-42-2-1.3 that was
7 witnessed or heard by the noncustodial parent's child, the court
8 shall order that the noncustodial parent's visitation with the child
9 must be supervised:**
10 **(1) for at least one (1) year and not more than two (2) years**
11 **immediately following the domestic battery conviction; or**
12 **(2) until the child becomes emancipated;**
13 **whichever occurs first.**
14 SECTION 2. IC 31-37-6-6 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) The juvenile
16 court shall release the child on the child's own recognizance or to the
17 child's parent, guardian, or custodian upon the person's written promise
18 to bring the child before the court at a time specified. However, the
19 court may order the child detained if the court finds probable cause to
20 believe the child is a delinquent child and that:

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

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

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

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

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

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

- 26 (1) a child is in detention; and
 - 27 (2) a petition has been filed;
- 28 a fact-finding hearing or a waiver hearing must be commenced not later
 29 than twenty (20) days, excluding Saturdays, Sundays, and legal
 30 holidays, after the petition is filed.

- 31 (b) If:
 - 32 (1) a child is not in detention; and
 - 33 (2) a petition has been filed;
- 34 the hearing must be commenced not later than sixty (60) days,
 35 excluding Saturdays, Sundays, and legal holidays, after the petition is
 36 filed.

37 (c) **A child who is ordered detained in the home of the child's**
 38 **parent, guardian, or custodian or who is subject to other conditions**

- 1 **of release under IC 31-37-6-6 may not be considered as being**
 2 **detained for purposes of this section."**
- 3 Page 2, line 3, after ";" insert "**and**".
- 4 Page 2, delete lines 18 through 21.
- 5 Page 2, between lines 21 and 22, begin a new line block indented
 6 and insert:
 7 "**(2) may order the respondent to refrain from possessing a**
 8 **firearm (as defined in IC 35-47-1-5) during a period not**
 9 **longer than the period that the respondent is under the**
 10 **protective order if the court finds by clear and convincing**
 11 **evidence that the respondent poses a significant threat of**
 12 **inflicting serious bodily injury to the petitioner or a member**
 13 **of the petitioner's household or family."**
- 14 Page 2, line 22, strike "(2)" and insert "**(3)**".
- 15 Page 2, line 28, delete "(1)(F)" and insert "**(2)**".
- 16 Page 2, line 28, delete "order the firearm to be" and insert "**notify**
 17 **the state police department of the restriction. The court may also**
 18 **order the confiscation under IC 35-47-3 of any firearms that the**
 19 **court finds the respondent to possess"**.
- 20 Page 2, delete lines 29 through 30.
- 21 Page 2, line 31, delete "from possessing a firearm".
- 22 Page 2, delete lines 33 through 42.
- 23 Delete pages 3 through 5.
- 24 Page 6, delete lines 1 through 11.
- 25 Page 6, strike lines 39 through 42.
- 26 Page 7, line 1, strike "(F)" and insert "**(E)**".
- 27 Page 7, line 2, strike "(G)" and insert "**(F)**".
- 28 Page 7, line 5, strike "(H)" and insert "**(G)**".
- 29 Page 7, line 11, strike "(I)" and insert "**(H)**".
- 30 Page 7, line 14, strike "(J)" and insert "**(I)**".
- 31 Page 7, line 16, reset in roman "or".
- 32 Page 7, line 17, strike "(K)" and insert "**(J)**".
- 33 Page 7, line 19, delete "or".
- 34 Page 7, delete lines 20 through 25.
- 35 Page 7, delete lines 40 through 42, begin a new paragraph and
 36 insert:
 37 "SECTION 6. IC 35-42-2-1.3 IS ADDED TO THE INDIANA
 38 CODE AS A **NEW SECTION TO READ AS FOLLOWS**

1 [EFFECTIVE JULY 1, 1999]: **Sec. 1.3. A person who knowingly or**
 2 **intentionally touches a person who:**

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

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

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

19 (b) The offense is:

20 (1) a Class C felony if:

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

23 (B) **the person was also in possession of a firearm (as**
 24 **defined in 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;

- 1 (ii) a public park; or
 2 (iii) a family housing complex.

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

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

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

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

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

27 (4) The felony committed was:

- 28 (A) murder (IC 35-42-1-1);
 29 (B) battery (IC 35-42-2-1) with a deadly weapon;
 30 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
 31 (D) kidnapping (IC 35-42-3-2);
 32 (E) confinement (IC 35-42-3-3) with a deadly weapon;
 33 (F) rape (IC 35-42-4-1) as a Class A felony;
 34 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
 35 felony;
 36 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
 37 felony;
 38 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or

- 1 with a deadly weapon;
- 2 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 3 injury;
- 4 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 5 or with a deadly weapon;
- 6 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 7 weapon;
- 8 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 9 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 10 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a
- 11 Class A felony;
- 12 (P) dealing in a schedule I, II, or III controlled substance
- 13 (IC 35-48-4-2) if the amount of controlled substance involved
- 14 has an aggregate weight of three (3) grams or more;
- 15 (Q) an offense under IC 9-30-5 (operating a vehicle while
- 16 intoxicated) and the person who committed the offense has
- 17 accumulated at least two (2) prior unrelated convictions under
- 18 IC 9-30-5; or
- 19 (R) aggravated battery (IC 35-42-2-1.5).
- 20 (c) Except as provided in subsection (e), whenever the court
- 21 suspends a sentence for a felony, it shall place the person on probation
- 22 under IC 35-38-2 for a fixed period to end not later than the date that
- 23 the maximum sentence that may be imposed for the felony will expire.
- 24 (d) The minimum sentence for a person convicted of voluntary
- 25 manslaughter may not be suspended unless the court finds at the
- 26 sentencing hearing that the crime was not committed by means of a
- 27 deadly weapon.
- 28 (e) Whenever the court suspends that part of an offender's (as
- 29 defined in IC 5-2-12-4) sentence that is suspendible under subsection
- 30 (b), the court shall place the offender on probation under IC 35-38-2 for
- 31 not more than ten (10) years.
- 32 (f) An additional term of imprisonment imposed under
- 33 IC 35-50-2-11 may not be suspended.
- 34 (g) A term of imprisonment imposed under IC 35-47-10-6 or
- 35 IC 35-47-10-7 may not be suspended if the commission of the offense
- 36 was knowing or intentional.
- 37 **(h) A term of imprisonment imposed for an offense under**
- 38 **IC 35-48-4-6(b)(1)(B) may not be suspended.**

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

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

12 (1) the court finds that:

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

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

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

20 ~~(3)~~ (3) the offense is auto theft (IC 35-43-4-2.5); or

21 ~~(4)~~ (4) the offense is receiving stolen auto parts (IC 35-43-4-2.5).

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

25 Delete page 8.

26 Renumber all SECTIONS consecutively.

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

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 1.

Meeks R

Chairperson