



Reprinted
February 3, 2004

SENATE BILL No. 139

DIGEST OF SB 139 (Updated February 2, 2004 4:01 pm - DI 106)

Citations Affected: IC 11-12; IC 12-23; IC 35-50; noncode.

Synopsis: Forensic diversion program. Repeals the forensic diversion program and requires the forensic diversion study committee to study community based treatment instead of incarceration for offenders who have a mental illness or an addictive disorder. Creates the forensic diversion test program for counties that previously operated a forensic diversion program. Permits certain offenders with a mental illness or addictive disorder to receive treatment in lieu of incarceration if the offender has not committed a violent offense or a drug dealing offense. Permits the execution of nonsuspendible sentences to be stayed while an offender is participating in the test program, and allows the sentence to be waived if the offender successfully completes the program. Requires the test program to be administered by a judge. Makes other changes.

Effective: July 1, 2004.

Long, Bray

January 6, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.
January 15, 2004, reported favorably — Do Pass.
February 2, 2004, read second time, amended, ordered engrossed.

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SB 139—LS 6496/DI 105+



Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

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SENATE BILL No. 139

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 11-12-2-3, AS AMENDED BY P.L.224-2003,
2 SECTION 123, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) A community corrections
4 advisory board shall:
5 (1) formulate:
6 (A) the community corrections plan and the application for
7 financial aid required by section 4 of this chapter; and
8 (B) the forensic diversion **test program plan under**
9 **IC 11-12-3.7-4, if the county operated a forensic diversion**
10 **program on January 1, 2004.** ~~program plan under~~
11 ~~IC 11-12-3.5-2;~~
12 (2) observe and coordinate community corrections programs in
13 the county;
14 (3) make an annual report to the county fiscal body, county
15 executive, or, in a county having a consolidated city, the
16 city-county council, containing an evaluation of the effectiveness
17 of programs receiving financial aid under this chapter and



- 1 recommendations for improvement, modification, or
- 2 discontinuance of these programs;
- 3 (4) ensure that programs receiving financial aid under this chapter
- 4 comply with the standards adopted by the department under
- 5 section 5 of this chapter; and
- 6 (5) recommend to the county executive or, in a county having a
- 7 consolidated city, to the city-county council, the approval or
- 8 disapproval of contracts with units of local government or
- 9 nongovernmental agencies that desire to participate in the
- 10 community corrections plan.

11 Before recommending approval of a contract, the advisory board must
 12 determine that a program is capable of meeting the standards adopted
 13 by the department under section 5 of this chapter.

- 14 (b) A community corrections advisory board shall do the following:
- 15 (1) Adopt bylaws for the conduct of its own business.
- 16 (2) Hold a regular meeting at least one (1) time every three (3)
- 17 months and at other times as needed to conduct all necessary
- 18 business. Dates of regular meetings shall be established at the first
- 19 meeting of each year.
- 20 (3) Comply with the public meeting and notice requirements
- 21 under IC 5-14-1.5.

22 (c) A community corrections advisory board may contain an office
 23 as designated by the county executive or, in a county having a
 24 consolidated city, by the city-county council.

25 SECTION 2. IC 11-12-3.7 IS ADDED TO THE INDIANA CODE
 26 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2004]:

28 **Chapter 3.7. Forensic diversion test program**

29 **Sec. 1. This chapter only applies to a county that operated a**
 30 **forensic diversion program under IC 11-12-3.5 on January 1, 2004.**

31 **Sec. 2. As used in this chapter, "addictive disorder" means a**
 32 **diagnosable chronic substance use disorder of sufficient duration**
 33 **to meet diagnostic criteria within the most recent edition of the**
 34 **Diagnostic and Statistical Manual of Mental Disorders published**
 35 **by the American Psychiatric Association.**

36 **Sec. 3. As used in this chapter, "drug dealing offense" means**
 37 **one (1) or more of the following offenses:**

- 38 (1) Dealing in cocaine, a narcotic drug, or methamphetamine
- 39 (IC 35-48-4-1), unless:
- 40 (A) the person does not have a prior conviction for dealing
- 41 in a controlled substance under IC 35-48-4; and
- 42 (B) the person received only minimal consideration as a

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- result of the drug transaction.
 - (2) Dealing in a schedule I, II, III, IV, or V controlled substance (IC 35-48-4-2 through IC 25-48-4-4), unless:
 - (A) the person does not have a prior conviction for dealing in a controlled substance under IC 35-48-4; and
 - (B) the person received only minimal consideration as a result of the drug transaction.
 - (3) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10), unless:
 - (A) the person does not have a prior conviction for dealing in a controlled substance under IC 35-48-4; and
 - (B) the person received only minimal consideration as a result of the drug transaction.
- Sec. 4. "Forensic diversion test program" means a test program developed to ensure that an adult with a mental illness or an addictive disorder who has been convicted of a crime that is not a violent offense or a drug dealing offense and who does not have a previous conviction for a violent offense or a drug dealing offense receives adequate community based treatment or other services instead of incarceration.
- Sec. 5. "Mental illness" means a diagnosable case of schizophrenia, severe depression, or bipolar disorder that is of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.
- Sec. 6. "Violent offense" means one (1) or more of the following offenses:
- (1) Murder (IC 35-42-1-1).
 - (2) Attempted murder (IC 35-41-5-1).
 - (3) Voluntary manslaughter (IC 35-42-1-3).
 - (4) Involuntary manslaughter (IC 35-42-1-4).
 - (5) Reckless homicide (IC 35-42-1-5).
 - (6) Aggravated battery (IC 35-42-2-1.5).
 - (7) Battery (IC 35-42-2-1) as a Class A felony, Class B felony, or Class C felony.
 - (8) Kidnapping (IC 35-42-3-2).
 - (9) A sex crime (IC 35-42-4).
 - (10) Incest (IC 35-46-1-3).
 - (11) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1).
 - (12) Burglary as a Class A felony or a Class B felony (IC 35-43-2-1).

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- 1 (13) Carjacking (IC 35-42-5-2).
- 2 (14) Assisting a criminal as a Class C felony (IC 35-44-3-2).
- 3 (15) Escape (IC 35-44-3-5) as a Class B felony, Class C felony,
- 4 or Class D felony.
- 5 (16) Trafficking with an inmate as a Class C felony
- 6 (IC 35-44-3-9).
- 7 (17) Causing death when operating a motor vehicle
- 8 (IC 9-30-5-5).
- 9 (18) Criminal confinement (IC 35-42-3-3).
- 10 (19) An attempt or conspiracy to commit a crime listed in this
- 11 subdivision.
- 12 (20) A crime under the laws of another jurisdiction, including
- 13 a military court, that is substantially similar to any of the
- 14 offenses listed in this subdivision.

15 **Sec. 7. (a) A person who:**

- 16 (1) has been diagnosed with:
 - 17 (A) a mental illness by physician licensed in Indiana; or
 - 18 (B) an addictive disorder through the use of an assessment
 - 19 method recognized by the department of mental health as
 - 20 a reliable and accepted tool for diagnosing chronic
 - 21 substance use disorders;
- 22 (2) has been convicted of a crime that is not a:
 - 23 (A) violent offense; or
 - 24 (B) drug dealing offense;
- 25 (3) does not have a previous conviction for a violent offense or
- 26 a drug dealing offense; and
- 27 (4) is:
 - 28 (A) participating in a community corrections program;
 - 29 (B) participating in a community transition program; or
 - 30 (C) on probation;

31 may be permitted to participate in a forensic diversion test
32 program.

33 (b) The court shall order an executed sentence for one (1) or
34 more offenses that are nonsuspendible and that are eligible for the
35 forensic diversion test program. The court may stay the execution
36 of all or part of a nonsuspendible sentence during the time period in
37 which the offender satisfactorily participates in the forensic
38 diversion test program.

39 (c) If the offender satisfactorily completes the forensic diversion
40 test program, the court may order the executed sentence waived.
41 If the offender does not satisfactorily complete the forensic
42 diversion test program, the court shall lift the stay imposed under

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this section and order the sentence executed.

Sec. 8. (a) The judge responsible for administering the forensic diversion test program shall, after consulting with the:

- (1) community corrections advisory board, if there is one in the county;**
- (2) head of the county public defender office, if there is one in the county;**
- (3) head of the probation department; and**
- (4) prosecuting attorney;**

adopt rules governing the operation of the forensic diversion test program.

(b) The judge responsible for administering the forensic diversion test program may, after consulting with the:

- (1) community corrections advisory board, if there is one in the county;**
- (2) head of the county public defender office, if there is one in the county;**
- (3) head of the probation department; and**
- (4) prosecuting attorney;**

alter or amend the rules governing the operation of the forensic diversion test program at any time.

(c) The rules adopted under this section must:

- (1) require that the forensic diversion test program be administered by a judge; and**
- (2) only permit the release of a participant in the forensic diversion test program by a judge.**

(d) The rules adopted under this section may be more restrictive than the forensic diversion test program requirements set forth in this chapter.

Sec. 9. The department may provide funds for forensic diversion test programs for those offenders who were diverted from a mandatory period of incarceration from the department.

Sec. 10. This chapter expires June 30, 2010.

SECTION 3. IC 12-23-5-1, AS AMENDED BY P.L.224-2003, SECTION 125, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. ~~(a)~~ In a criminal proceeding for a misdemeanor or infraction in which:

- (1) the use or abuse of alcohol, drugs, or harmful substances is a contributing factor or a material element of the offense; or**
- (2) the defendant's mental illness other than substance abuse, is a contributing factor;**

the court may take judicial notice of the fact that proper early

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1 intervention, medical, advisory, or rehabilitative treatment of the
2 defendant is likely to decrease the defendant's tendency to engage in
3 antisocial behavior.

4 (b) For purposes of IC 11-12-3.5, in a criminal proceeding in which:
5 (1) the use or abuse of alcohol, drugs, or harmful substances is a
6 contributing factor or a material element of the offense; or
7 (2) the defendant's mental illness other than substance abuse, is
8 a contributing factor;

9 the court shall take judicial notice of the fact that proper early
10 intervention, medical, advisory, or rehabilitative treatment of the
11 defendant is likely to decrease the defendant's tendency to engage in
12 antisocial behavior.

13 SECTION 4. IC 35-50-2-2, AS AMENDED BY P.L.224-2003,
14 SECTION 126, IS AMENDED TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The court may suspend any
16 part of a sentence for a felony, except as provided in this section or in
17 section 2.1 of this chapter.

18 (b) With respect to the following crimes listed in this subsection, the
19 court may suspend only that part of the sentence that is in excess of the
20 minimum sentence unless the court has approved placement of the
21 offender in a forensic diversion **test program under IC 11-12-3.7:**
22 **program under IC 11-12-3.5:**

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

25 (2) The crime committed was a Class C felony and less than seven
26 (7) years have elapsed between the date the person was
27 discharged from probation, imprisonment, or parole, whichever
28 is later, for a prior unrelated felony conviction and the date the
29 person committed the Class C felony for which the person is
30 being sentenced.

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

40 (4) The felony committed was:
41 (A) murder (IC 35-42-1-1);
42 (B) battery (IC 35-42-2-1) with a deadly weapon or battery

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- 1 causing death;
- 2 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- 3 (D) kidnapping (IC 35-42-3-2);
- 4 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 5 (F) rape (IC 35-42-4-1) as a Class A felony;
- 6 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
- 7 felony;
- 8 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
- 9 felony;
- 10 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 11 with a deadly weapon;
- 12 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 13 injury;
- 14 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 15 or with a deadly weapon;
- 16 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 17 weapon;
- 18 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 19 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 20 (O) dealing in cocaine, a narcotic drug, or methamphetamine
- 21 (IC 35-48-4-1) if the court finds the person possessed a firearm
- 22 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 23 person delivered or intended to deliver to a person under
- 24 eighteen (18) years of age at least three (3) years junior to the
- 25 person and was on a school bus or within one thousand (1,000)
- 26 feet of:
- 27 (i) school property;
- 28 (ii) a public park;
- 29 (iii) a family housing complex; or
- 30 (iv) a youth program center;
- 31 (P) dealing in a schedule I, II, or III controlled substance
- 32 (IC 35-48-4-2) if the court finds the person possessed a firearm
- 33 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 34 person delivered or intended to deliver to a person under
- 35 eighteen (18) years of age at least three (3) years junior to the
- 36 person and was on a school bus or within one thousand (1,000)
- 37 feet of:
- 38 (i) school property;
- 39 (ii) a public park;
- 40 (iii) a family housing complex; or
- 41 (iv) a youth program center;
- 42 (Q) an offense under IC 9-30-5 (operating a vehicle while

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1 intoxicated) and the person who committed the offense has
 2 accumulated at least two (2) prior unrelated convictions under
 3 IC 9-30-5; or

4 (R) aggravated battery (IC 35-42-2-1.5).

5 (c) Except as provided in subsection (e), whenever the court
 6 suspends a sentence for a felony, it shall place the person on probation
 7 under IC 35-38-2 for a fixed period to end not later than the date that
 8 the maximum sentence that may be imposed for the felony will expire.

9 (d) The minimum sentence for a person convicted of voluntary
 10 manslaughter may not be suspended unless the court finds at the
 11 sentencing hearing that the crime was not committed by means of a
 12 deadly weapon.

13 (e) Whenever the court suspends that part of an offender's (as
 14 defined in IC 5-2-12-4) sentence that is suspendible under subsection
 15 (b), the court shall place the offender on probation under IC 35-38-2 for
 16 not more than ten (10) years.

17 (f) An additional term of imprisonment imposed under
 18 IC 35-50-2-11 may not be suspended.

19 (g) A term of imprisonment imposed under IC 35-47-10-6 or
 20 IC 35-47-10-7 may not be suspended if the commission of the offense
 21 was knowing or intentional.

22 (h) A term of imprisonment imposed for an offense under
 23 IC 35-48-4-6(b)(1)(B) may not be suspended.

24 SECTION 5. IC 11-12-3.5 IS REPEALED [EFFECTIVE JULY 1,
 25 2004].

26 SECTION 6. [EFFECTIVE JULY 1, 2004] (a) **As used in this**
 27 **SECTION, "committee" refers to the forensic diversion study**
 28 **committee established by subsection (c).**

29 (b) **As used in this SECTION, "forensic diversion program"**
 30 **means a community based program or service that is an alternative**
 31 **to incarceration for persons who:**

- 32 (1) **have a mental illness or an addictive disorder; and**
 33 (2) **are convicted of a crime that does not involve serious**
 34 **bodily injury.**

35 (c) **There is established the forensic diversion study committee.**
 36 **The committee shall study the:**

- 37 (1) **circumstances, if any, under which a forensic diversion**
 38 **program is appropriate; and**
 39 (2) **implementation, if appropriate under subdivision (1), of a**
 40 **forensic diversion program;**

41 **as part of the criminal sentencing structure.**

42 (d) **The committee consists of fifteen (15) members appointed as**

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follows:

(1) Two (2) members of the senate, who may not be affiliated with the same political party, to be appointed by the president pro tempore of the senate.

(2) Two (2) members of the house of representatives, who may not be affiliated with the same political party, to be appointed by the speaker of the house of representatives.

(3) The chief justice of the supreme court or the chief justice's designee.

(4) The commissioner of the department of correction or the commissioner's designee.

(5) The director of the Indiana criminal justice institute or the director's designee.

(6) The executive director of the prosecuting attorneys council of Indiana or the executive director's designee.

(7) The executive director of the public defender of Indiana council or the executive director's designee.

(8) One (1) person with experience in administering community corrections programs appointed by the governor.

(9) One (1) person with experience in administering probation programs appointed by the governor.

(10) Two (2) persons with experience in treating mental illness or addictive disorders to be appointed by the governor.

(11) Two (2) judges who exercise criminal jurisdiction, who may not be affiliated with the same political party, to be appointed by the governor.

(e) The chairman of the legislative council shall appoint a legislative member of the committee to serve as chair of the committee. Whenever there is a new chairman of the legislative council, the new chairman of the legislative council may remove the chair of the committee and appoint another chair.

(f) If a legislative member of the committee ceases to be a member of the chamber from which the member was appointed, the member also ceases to be a member of the committee.

(g) A legislative member of the committee may be removed at any time by the authority who appointed the legislative member.

(h) If a vacancy exists on the committee, the authority who appointed the former member whose position is vacant shall appoint an individual to fill the vacancy.

(i) The committee shall submit a final report of its study to the legislative council before November 1, 2005.

(j) The Indiana criminal justice institute shall provide staff

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- 1 support to the committee.
- 2 (k) Each member of the committee is entitled to receive the
- 3 same per diem, mileage, and travel allowances paid to individuals
- 4 who serve as legislative and lay members, respectively, of interim
- 5 study committees established by the legislative council.
- 6 (l) The affirmative votes of a majority of the members
- 7 appointed to the committee are required for the committee to take
- 8 action on any measure, including the final report.
- 9 (m) The committee:
- 10 (1) shall meet at the call of the chair; and
- 11 (2) may meet at any time before October 15, 2005.
- 12 (n) Except as otherwise specifically provided by this act, the
- 13 committee shall operate under the rules of the legislative council.
- 14 All funds necessary to carry out this SECTION shall be paid from
- 15 appropriations to the legislative council and legislative services
- 16 agency.
- 17 (o) This SECTION expires December 31, 2005.

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COMMITTEE REPORT

Madam President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 139, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 139 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 7, Nays 3.

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SENATE MOTION

Madam President: I move that Senate Bill 139 be amended to read as follows:

Page 1, line 6, reset in roman "(A)" and double block indent.

Page 1, line 8, reset in roman "(B) the forensic diversion" and double block indent.

Page 1, line 8, after "diversion" insert **"test program plan under IC 11-12-3.7-4, if the county operated a forensic diversion program on January 1, 2004."**

Page 2, between lines 21 and 22, begin a new paragraph and insert:

"SECTION 2. IC 11-12-3.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 3.7. Forensic diversion test program

Sec. 1. This chapter only applies to a county that operated a forensic diversion program under IC 11-12-3.5 on January 1, 2004.

Sec. 2. As used in this chapter, "addictive disorder" means a diagnosable chronic substance use disorder of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Sec. 3. As used in this chapter, "drug dealing offense" means one (1) or more of the following offenses:

(1) Dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1), unless:

- (A) the person does not have a prior conviction for dealing in a controlled substance under IC 35-48-4; and**
- (B) the person received only minimal consideration as a result of the drug transaction.**

(2) Dealing in a schedule I, II, III, IV, or V controlled substance (IC 35-48-4-2 through IC 35-48-4-4), unless:

- (A) the person does not have a prior conviction for dealing in a controlled substance under IC 35-48-4; and**
- (B) the person received only minimal consideration as a result of the drug transaction.**

(3) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10), unless:

- (A) the person does not have a prior conviction for dealing in a controlled substance under IC 35-48-4; and**
- (B) the person received only minimal consideration as a result of the drug transaction.**

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Sec. 4. "Forensic diversion test program" means a test program developed to ensure that an adult with a mental illness or an addictive disorder who has been convicted of a crime that is not a violent offense or a drug dealing offense and who does not have a previous conviction for a violent offense or a drug dealing offense receives adequate community based treatment or other services instead of incarceration.

Sec. 5. "Mental illness" means a diagnosable case of schizophrenia, severe depression, or bipolar disorder that is of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Sec. 6. "Violent offense" means one (1) or more of the following offenses:

- (1) Murder (IC 35-42-1-1).**
- (2) Attempted murder (IC 35-41-5-1).**
- (3) Voluntary manslaughter (IC 35-42-1-3).**
- (4) Involuntary manslaughter (IC 35-42-1-4).**
- (5) Reckless homicide (IC 35-42-1-5).**
- (6) Aggravated battery (IC 35-42-2-1.5).**
- (7) Battery (IC 35-42-2-1) as a Class A felony, Class B felony, or Class C felony.**
- (8) Kidnapping (IC 35-42-3-2).**
- (9) A sex crime (IC 35-42-4).**
- (10) Incest (IC 35-46-1-3).**
- (11) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1).**
- (12) Burglary as a Class A felony or a Class B felony (IC 35-43-2-1).**
- (13) Carjacking (IC 35-42-5-2).**
- (14) Assisting a criminal as a Class C felony (IC 35-44-3-2).**
- (15) Escape (IC 35-44-3-5) as a Class B felony, Class C felony, or Class D felony.**
- (16) Trafficking with an inmate as a Class C felony (IC 35-44-3-9).**
- (17) Causing death when operating a motor vehicle (IC 9-30-5-5).**
- (18) Criminal confinement (IC 35-42-3-3).**
- (19) An attempt or conspiracy to commit a crime listed in this subdivision.**
- (20) A crime under the laws of another jurisdiction, including a military court, that is substantially similar to any**

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of the offenses listed in this subdivision.

Sec. 7. (a) A person who:

- (1) has been diagnosed with:**
 - (A) a mental illness by physician licensed in Indiana; or**
 - (B) an addictive disorder through the use of an assessment method recognized by the department of mental health as a reliable and accepted tool for diagnosing chronic substance use disorders;**
- (2) has been convicted of a crime that is not a:**
 - (A) violent offense; or**
 - (B) drug dealing offense;**
- (3) does not have a previous conviction for a violent offense or a drug dealing offense; and**
- (4) is:**
 - (A) participating in a community corrections program;**
 - (B) participating in a community transition program; or**
 - (C) on probation;**

may be permitted to participate in a forensic diversion test program.

(b) The court shall order an executed sentence for one (1) or more offenses that are nonsuspendible and that are eligible for the forensic diversion test program. The court may stay the execution of all or part of a nonsuspendible sentence during the time period in which the offender satisfactorily participates in the forensic diversion test program.

(c) If the offender satisfactorily completes the forensic diversion test program, the court may order the executed sentence waived. If the offender does not satisfactorily complete the forensic diversion test program, the court shall lift the stay imposed under this section and order the sentence executed.

Sec. 8.(a) The judge responsible for administering the forensic diversion test program shall, after consulting with the:

- (1) community corrections advisory board, if there is one in the county;**
- (2) head of the county public defender office, if there is one in the county;**
- (3) head of the probation department; and**
- (4) prosecuting attorney;**

adopt rules governing the operation of the forensic diversion test program.

(b) The judge responsible for administering the forensic diversion test program may, after consulting with the:

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- (1) community corrections advisory board, if there is one in the county;
- (2) head of the county public defender office, if there is one in the county;
- (3) head of the probation department; and
- (4) prosecuting attorney;

alter or amend the rules governing the operation of the forensic diversion test program at any time.

(c) The rules adopted under this section must:

- (1) require that the forensic diversion test program be administered by a judge; and
- (2) only permit the release of a participant in the forensic diversion test program by a judge.

(d) The rules adopted under this section may be more restrictive than the forensic diversion test program requirements set forth in this chapter.

Sec. 9. The department may provide funds for forensic diversion test programs for those offenders who were diverted from a mandatory period of incarceration from the department.

Sec. 10. This chapter expires June 30, 2010."

Page 3, line 8, delete ":".

Page 3, line 8, reset in roman "unless the court has approved placement of the".

Page 3, line 9, reset in roman "offender in a forensic diversion".

Page 3, line 9, after "diversion" insert "**test program under IC 11-12-3.7:**".

Renumber all SECTIONS consecutively.

(Reference is to SB 139 as printed January 16, 2004.)

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