



January 27, 2006

## SENATE BILL No. 300

DIGEST OF SB 300 (Updated January 25, 2006 6:45 pm - DI 106)

**Citations Affected:** IC 5-2; IC 35-41.

**Synopsis:** Victim's compensation fund. Defines "bodily injury" and specifies that the term includes emotional trauma only if the trauma stems directly from the impairment of a physical condition, a visible injury, or physical pain. Provides that compensation to a victim of a violent crime may not be paid to a person who was intoxicated at the time of the crime and contributed to the commission of an unrelated felony. Permits only one victim per crime to receive benefits. Authorizes the division of victim services to award benefits for an injury resulting from criminal use of a motor vehicle only after an information or indictment is filed, and does not permit an award in any case until records are available and the criminal investigation is concluded. Provides that certain information relating to the victim of a crime is confidential. Makes the reimbursement rate for medical services equal to the rate for services provided under Medicaid, and prohibits a health care provider from seeking multiple reimbursement. Permits reimbursement for burial expenses up to \$4,000 and for mental health care up to \$2,000. Requires documentation of certain expenses before a benefit may be awarded. Prohibits an attorney who represents a crime victim at a hearing held by the division from charging a contingency fee of more than 10% or being paid directly by the division. Permits an attorney who obtains a civil judgment on which the state has a lien for the provision of victim services to receive attorney's fees of not more than 15% of the amount received by the state. Makes other changes and conforming amendments. Repeals an obsolete provision relating to attorney's fees.

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**Effective:** July 1, 2006.

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**Long, Bray**

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January 9, 2006, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.  
January 26, 2006, amended, reported favorably — Do Pass.

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SB 300—LS 6805/DI 106+



January 27, 2006

Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

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## SENATE BILL No. 300

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A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

- 1 SECTION 1. IC 5-2-6.1-0.5 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2006]: **Sec. 0.5. As used in section 7 of this chapter, "bodily  
4 injury" means:**  
5 (1) **an impairment of a physical condition;**  
6 (2) **a visible injury;**  
7 (3) **physical pain; or**  
8 (4) **emotional trauma that stems directly from the impairment  
9 of a physical condition, a visible injury, or physical pain.**  
10 SECTION 2. IC 5-2-6.1-2.5 IS ADDED TO THE INDIANA CODE  
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
12 1, 2006]: **Sec. 2.5. As used in this chapter, "emergency shelter care"  
13 means housing in a facility having the primary purpose of  
14 providing temporary or transitional shelter for the homeless or for  
15 a specific population of the homeless.**  
16 SECTION 3. IC 5-2-6.1-5.5 IS ADDED TO THE INDIANA CODE  
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

SB 300—LS 6805/DI 106+



1 1, 2006]: **Sec. 5.5. As used in this chapter, "motor vehicle" has the**  
2 **meaning set forth in IC 7.1-1-3-26.3.**

3 SECTION 4. IC 5-2-6.1-11.5 IS ADDED TO THE INDIANA  
4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
5 [EFFECTIVE JULY 1, 2006]: **Sec. 11.5. A claimant's:**

- 6 (1) **personal information (as defined in IC 9-14-3.5-5); and**
- 7 (2) **medical records;**
- 8 **are confidential.**

9 SECTION 5. IC 5-2-6.1-13 IS AMENDED TO READ AS  
10 FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 13. (a)** Subject to  
11 subsection (b) **and except as provided in subsection (c)**, benefits may  
12 not be awarded:

- 13 (1) if the victim sustained the injury as a result of participating or
- 14 assisting in, or attempting to commit or committing a criminal act;
- 15 **or**
- 16 (2) if the injury occurred while the victim was a resident in a
- 17 county, city, or federal jail or prison or in an institution operated
- 18 by the department of correction;
- 19 (3) **if the victim profited or would have profited from the**
- 20 **criminal act; or**
- 21 (4) **if, at the time the injury occurred, the victim was**
- 22 **intoxicated and contributed to the commission of an unrelated**
- 23 **felony.**

24 (b) If the victim is a dependent child or dependent parent of the  
25 person who commits a violent crime, compensation may be awarded  
26 where justice requires.

27 (c) **Benefits may be awarded to a person described in subsection**  
28 **(a)(4) who is the victim of a sex crime under IC 35-42-4 or a crime**  
29 **of domestic violence (as defined in IC 35-41-1-6.3).**

30 SECTION 6. IC 5-2-6.1-13.5 IS ADDED TO THE INDIANA  
31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
32 [EFFECTIVE JULY 1, 2006]: **Sec. 13.5. The division may not award**  
33 **a benefit to more than one (1) claimant per victim.**

34 SECTION 7. IC 5-2-6.1-14 IS AMENDED TO READ AS  
35 FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 14. (a)** Benefits may  
36 not be awarded to a ~~victim~~ **claimant** under section 12(1), 12(2), 12(3),  
37 12(4), or 15 of this chapter if the victim **or claimant** had a net worth  
38 of greater than two hundred thousand dollars (\$200,000) at the time of  
39 suffering bodily injury.

40 (b) Benefits may not be awarded to a ~~person~~ **claimant** under section  
41 12(5), 12(6), 12(7), or 12(8) of this chapter if the ~~person~~ **victim or**  
42 **claimant** had a net worth of greater than two hundred thousand dollars

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1 (\$200,000) at the time of suffering bodily injury.  
2 SECTION 8. IC 5-2-6.1-15 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 15. (a) If an unmarried  
4 victim of a violent crime dies as a result of the crime, the division ~~shall~~  
5 **may** pay the reasonable expenses incurred for funeral, burial, or  
6 cremation.

7 **(b) The division shall adopt guidelines to determine when the**  
8 **payment of expenses under subsection (a) is appropriate. In**  
9 **adopting guidelines under this subsection, the division shall**  
10 **consider the availability of other sources of compensation,**  
11 **including township assistance and federal programs.**

12 SECTION 9. IC 5-2-6.1-16 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16. (a) A person  
14 eligible for assistance under section 12 of this chapter may file an  
15 application for assistance with the division if the violent crime was  
16 committed in Indiana.

17 (b) The application must be ~~filed~~ **received by the division** not more  
18 than one hundred eighty (180) days after the date the crime was  
19 committed. The division may grant an extension of time for good cause  
20 shown by the claimant. However, **the division may not accept** an  
21 application ~~may not be filed~~ **that is received** more than two (2) years  
22 after the date the crime was committed.

23 (c) The application must be filed in the office of the division in  
24 person, **through the division's web site**, or by **first class or** certified  
25 mail. If requested, the division shall assist a victim in preparing the  
26 application.

27 (d) The division shall accept all applications filed in compliance  
28 with this chapter. **Upon receipt of a complete application**, the  
29 division shall promptly begin the investigation and processing of an  
30 application.

31 SECTION 10. IC 5-2-6.1-17 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 17. (a) The division  
33 may not award compensation under this chapter unless the violent  
34 crime was reported to a law enforcement officer not more than  
35 forty-eight (48) hours after the occurrence of the crime.

36 **(b) The division may not award compensation under this**  
37 **chapter until:**

38 **(1) law enforcement and other records concerning the**  
39 **circumstances of the crime are available; and**

40 **(2) any criminal investigation directly related to the crime has**  
41 **been completed.**

42 **(c) If the crime involved a motor vehicle, the division may not**

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1 **award compensation under this chapter until an information or**  
2 **indictment alleging the commission of a crime has been filed by a**  
3 **prosecuting attorney.**

4 SECTION 11. IC 5-2-6.1-21 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 21. (a) As used in this  
6 chapter, "out-of-pocket loss" means expense or indebtedness  
7 reasonably incurred for medical care or other services resulting from  
8 the bodily injury or death upon which the application is based **that**  
9 **does not exceed the rate for service that the office of Medicaid**  
10 **policy and planning reimburses under the fee for service Medicaid**  
11 **program.**

12 (b) An award may not be made unless the claimant has incurred an  
13 out-of-pocket loss of at least one hundred dollars (\$100).

14 (c) Subject to ~~subsection~~ **subsections (a) and (b)**, the division may  
15 order the payment of compensation under this chapter for any of the  
16 following:

17 (1) Reasonable expenses incurred for necessary medical,  
18 chiropractic, hospital, dental, psychological, optometric,  
19 psychiatric, and ambulance services and prescription drugs and  
20 prosthetic devices.

21 (2) Loss of income the:  
22 (A) victim would have earned had the victim not died or been  
23 injured, **if the victim was employed at the time of the crime;**  
24 **or**  
25 (B) **parent, guardian, or custodian of a victim who is less**  
26 **than eighteen (18) years of age incurred by taking time off**  
27 **work to care for the victim.**

28 **A claimant seeking reimbursement under this subdivision**  
29 **must provide the division with proof of employment and**  
30 **current wages.**

31 (3) Reasonable emergency shelter care expenses, not to exceed  
32 the expenses for thirty (30) days, that are incurred for the claimant  
33 or a dependent of the claimant to avoid contact with a person who  
34 committed the violent crime.

35 (4) Reasonable expense incurred for child care, not to exceed one  
36 thousand dollars (\$1,000), to replace child care the victim would  
37 have supplied had the victim not died or been injured.

38 (5) Loss of financial support the victim would have supplied to  
39 legal dependents had the victim not died or been injured.

40 (6) ~~Reasonable~~ **Documented** expenses incurred for funeral,  
41 burial, or cremation **of the victim that do not exceed four**  
42 **thousand dollars (\$4,000). The division shall disburse**

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**compensation under this subdivision in accordance with guidelines adopted by the division.**

(7) Other actual expenses resulting from the bodily injury or death of the victim, including costs of mental health care, not to exceed ~~one~~ **two** thousand dollars (~~\$1,000~~), **(\$2,000)** for the immediate family of a homicide or sex crime victim, and any other actual expenses that the division determines reasonable.

**(d) If a health care provider accepts payment from the division under this chapter, the health care provider may not require the victim to pay a copayment or an additional fee for the provision of services.**

**(e) A health care provider who seeks compensation from the division under this chapter may not simultaneously seek funding for services provided to a victim from any other source.**

**(f) A health care provider who:**

- (1) has received funding from another source for services provided to a victim; or**
- (2) operates its own program that would pay for the victim's expenses;**

**may not seek compensation from the division.**

SECTION 12. IC 5-2-6.1-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 23. (a) In addition to the subrogation rights under section 22 of this chapter, the state is entitled to a lien in the amount of the award on a recovery made by or on behalf of the victim.

(b) The state may:

- (1) recover the amount under subsection (a) in a separate action; or
- (2) intervene in an action brought by or on behalf of the victim.

(c) If the claimant brings the action, the claimant may deduct from the money owed to the state under the lien the state's pro rata share of the reasonable expenses for the court suit, including attorney's fees **of not more than fifteen percent (15%).**

SECTION 13. IC 5-2-6.1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 28. (a) Not more than ten (10) days after the hearing, the hearing officer shall issue a written ~~determination~~ **decision** supported by findings of fact and conclusions of law based on the record from the hearing, the investigation, and the application of the claimant.

(b) Copies of the determination shall be mailed to the claimant at the address given in the application and to the attorney general.

SECTION 14. IC 5-2-6.1-32 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 32. (a) The division  
2 shall reduce an award made under this chapter by the amount of  
3 benefits received or to be received from the following sources if those  
4 benefits result from or are in any manner attributable to the bodily  
5 injury or death upon which the award is based:

- 6 (1) Benefits from public or private pension programs, including
- 7 Social Security benefits.
- 8 (2) Benefits from proceeds of ~~an insurance policies-~~ **policy.**
- 9 (3) Benefits under IC 22-3-2 through IC 22-3-6.
- 10 (4) Unemployment compensation benefits.
- 11 (5) Benefits from other public funds, **including Medicaid and**
- 12 **Medicare.**

13 Compensation must be further reduced or denied to the extent that the  
14 claimant's loss is recouped from other collateral sources.

15 (b) The division shall further reduce an award under this chapter by  
16 the following:

- 17 (1) The amount of court ordered restitution actually received by
- 18 the victim from the offender.
- 19 (2) Benefits actually received by the victim from a third party on
- 20 behalf of the offender.

21 (c) The division shall determine whether the victim vigorously  
22 pursued recovery against available collateral sources described in this  
23 section.

24 (d) If the division finds that a victim has failed to pursue an  
25 applicable collateral source of recovery, the division shall reduce or  
26 deny an award under this section by the amount that is available to the  
27 victim through the collateral source.

28 (e) **A claimant must exhaust any vacation leave, sick leave,**  
29 **personal leave, or other compensatory time accrued through an**  
30 **employer before applying for benefits. The division may not**  
31 **reimburse the victim for the use of vacation leave, sick leave,**  
32 **personal leave, or other compensatory time.**

33 SECTION 15. IC 5-2-6.1-34 IS AMENDED TO READ AS  
34 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 34. (a) In determining  
35 the amount of the award, the division shall determine whether the  
36 victim contributed to the infliction of the victim's injury or death.

37 (b) If the division finds that the victim ~~did contribute~~ **contributed**  
38 to the infliction of the victim's injury or death, the division may deny  
39 an award. ~~in whole or in part depending upon the extent of the victim's~~  
40 ~~contributory conduct.~~

41 (c) If the division further finds that the victim's contributory conduct  
42 was solely attributable to an effort to:

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- 1 (1) prevent a crime from occurring in the victim's presence; or
- 2 (2) apprehend a person who committed a crime in the victim's
- 3 presence;
- 4 the victim's contributory conduct does not render the victim ineligible
- 5 for compensation.

6 SECTION 16. IC 5-2-6.1-35 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 35. (a) An award to a  
 8 claimant under this chapter:

- 9 (1) may not exceed fifteen thousand dollars (\$15,000); and
- 10 (2) may not cover the first one hundred dollars (\$100) of the
- 11 claim.

12 (b) The part of an award covering an unpaid bill shall be made  
 13 payable ~~jointly to the claimant and to the creditor on that bill.~~ **to the**  
 14 **service provider.**

15 SECTION 17. IC 5-2-6.1-37.5 IS ADDED TO THE INDIANA  
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 17 [EFFECTIVE JULY 1, 2006]: **Sec. 37.5. An attorney who represents**  
 18 **a victim at a hearing conducted by the division related to a claim**  
 19 **under this chapter may not:**

- 20 (1) **charge a claimant a contingency fee for the representation**
- 21 **that exceeds ten percent (10%) of the value of the award; or**
- 22 (2) **receive a direct payment from the division.**

23 SECTION 18. IC 5-2-6.1-39 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 39. (a) When a hospital  
 25 acting under IC 16-21-8 provides emergency services to an alleged sex  
 26 crime victim, the hospital shall furnish ~~the forensic and evidence~~  
 27 **gathering** services without charge. The victim services division of the  
 28 Indiana criminal justice institute shall reimburse a hospital for its costs  
 29 in providing ~~the these~~ services and shall adopt rules and procedures to  
 30 provide for **reasonable** reimbursement. A hospital may not charge the  
 31 victim for services required under this chapter, despite delays in  
 32 reimbursement from the victim services division of the Indiana  
 33 criminal justice institute.

34 (b) Costs incurred by a hospital or other emergency medical facility  
 35 for the examination of the victim of a sex crime (under IC 35-42-4) not  
 36 covered under IC 16-21-8 or incest (under IC 35-46-1-3), if the  
 37 examination is performed for the purposes of gathering evidence for  
 38 possible prosecution, may not be charged to the victim of the crime.  
 39 The costs shall be treated as local costs and charged to the appropriate  
 40 local governmental agency as follows:

- 41 (1) If the treatment or services are provided at a county or city
- 42 hospital, or hospital district facility, the county shall pay the

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1 expenses.

2 (2) If the treatment or services are provided at a private hospital,

3 the expenses are paid by the county in whose jurisdiction the

4 alleged crime was committed.

5 (c) When a licensed medical service provider not covered by

6 subsection (a) or (b) elects to provide emergency services to an alleged

7 victim of one (1) or more of the sex crimes listed in IC 16-21-8-1(b),

8 the medical service provider shall furnish the services without charge.

9 The victim services division of the Indiana criminal justice institute

10 shall reimburse a medical service provider for costs in providing the

11 services listed in subsection (d) **if the following conditions are met:**

12 (1) ~~If the victim or claimant has:~~

13 ~~(A) is at least eighteen (18) years of age:~~

14 ~~(A) the sex crime must be reported the sex crime to a law~~

15 ~~enforcement officer within forty-eight (48) ninety-six (96)~~

16 ~~hours after the crime occurred; and~~

17 ~~(B) has cooperated fully the victim must cooperate to the~~

18 ~~fullest extent possible with law enforcement personnel to~~

19 ~~solve the crime. or~~

20 (2) ~~If the victim services division of the Indiana criminal justice~~

21 ~~institute finds a compelling reason for failure of the victim or~~

22 ~~claimant to report to or cooperate with law enforcement officials:~~

23 ~~is less than eighteen (18) years of age, a report of the sex crime~~

24 ~~must be made to child protective services or a law~~

25 ~~enforcement officer. The division may not deny an application~~

26 ~~for reimbursement under this subdivision solely because the~~

27 ~~victim reported the sex crime more than ninety-six (96) hours~~

28 ~~after the crime's occurrence.~~

29 **If the division finds a compelling reason for failure to report to or**

30 **cooperate with law enforcement officials and justice requires, the**

31 **division may suspend the requirements of this section.**

32 (d) If the requirements of subsection (c) are met, the victim services

33 division of the Indiana criminal justice institute shall reimburse a

34 medical service provider for costs in providing the following services:

35 ~~(1) Appropriate medical care:~~

36 ~~(2) (1) Appropriate procedures for acquiring adequate evidence~~

37 ~~that may be used in a criminal proceeding against a person~~

38 ~~accused of the sex crime.~~

39 ~~(3) (2) Records of the results of examinations and tests made by~~

40 ~~the hospital.~~

41 ~~(4) (3) Appropriate counseling for the victim.~~

42 A medical service provider may not charge the victim for services

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1 because the victim services division of the Indiana criminal justice  
2 institute delays in reimbursing the provider.

3 (e) Costs incurred by a licensed medical service provider for the  
4 examination of the victim of a sex crime (under IC 35-42-4) not  
5 covered under IC 16-21-8 or incest (under IC 35-46-1-3) may not be  
6 charged to the victim of the crime if the examination is performed for  
7 the purposes of gathering evidence for possible prosecution. The costs  
8 are local costs to be paid by the county in which the alleged crime was  
9 committed.

10 SECTION 19. IC 35-41-1-6.3 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6.3. "Crime of domestic  
12 violence," for purposes of IC 3-7-13-5, **IC 5-2-6.1**, and IC 33-28-4-8,  
13 means an offense or the attempt to commit an offense that:

- 14 (1) has as an element the:
  - 15 (A) use of physical force; or
  - 16 (B) threatened use of a deadly weapon; and
- 17 (2) is committed against a:
  - 18 (A) current or former spouse, parent, or guardian of the  
19 defendant;
  - 20 (B) person with whom the defendant shared a child in  
21 common;
  - 22 (C) person who was cohabiting with or had cohabited with the  
23 defendant as a spouse, parent, or guardian; or
  - 24 (D) person who was or had been similarly situated to a spouse,  
25 parent, or guardian of the defendant.

26 SECTION 20. IC 5-2-6.1-37 IS REPEALED [EFFECTIVE JULY  
27 1, 2006].

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## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 300, 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:

Page 1, line 3, after "in" insert "**section 7 of**".

Page 2, line 20, delete ":".

Page 2, delete lines 21 through 22.

Page 2, line 23, delete "(B)".

Page 2, run in lines 20 through 23.

Page 2, line 29, delete "(a)(4)(A)" and insert "**(a)(4)**".

Page 2, line 29, after "IC 35-42-4" insert "**or a crime of domestic violence (as defined in IC 35-41-1-6.3)**".

Page 2, line 33, delete "crime" and insert "**victim**".

Page 3, delete lines 31 through 35.

Page 4, line 6, delete "a court has entered" and insert "**an information or indictment alleging the commission of a crime has been filed by a prosecuting attorney.**".

Page 4, delete lines 7 through 8.

Page 5, line 13, after "payment" insert "**from the division**".

Page 5, line 17, after "division" insert "**under this chapter**".

Page 7, line 24, after "representation" insert "**that exceeds ten percent (10%) of the value of the award**".

Page 9, between lines 13 and 14, begin a new paragraph and insert:  
"SECTION 19. IC 35-41-1-6.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6.3. "Crime of domestic violence," for purposes of IC 3-7-13-5, **IC 5-2-6.1**, and IC 33-28-4-8, means an offense or the attempt to commit an offense that:

- (1) has as an element the:
  - (A) use of physical force; or
  - (B) threatened use of a deadly weapon; and
- (2) is committed against a:
  - (A) current or former spouse, parent, or guardian of the defendant;
  - (B) person with whom the defendant shared a child in common;
  - (C) person who was cohabiting with or had cohabited with the defendant as a spouse, parent, or guardian; or
  - (D) person who was or had been similarly situated to a spouse,

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parent, or guardian of the defendant."  
Renumber all SECTIONS consecutively.  
and when so amended that said bill do pass.  
(Reference is to SB 300 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 0.

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