Reprinted
April 10, 2007

ENGROSSED
SENATE BILL No. 45

DIGEST OF SB 45 (Updated April 9, 2007 9:00 pm - DI 114)

Citations Affected: IC 11-8; IC 11-13; IC 35-34; IC 35-38; IC 35-42; IC 35-50; noncode.

Synopsis: Judicial discretion, sexually violent predators, and criminal procedure. Specifies the procedure for determining who is a sexually violent predator, and revises the definition of "sex offense". Places certain restrictions on sex offenders who are offenders against children.
(Continued next page)

Effective: Upon passage; July 1, 2007.

Bray, Bowser, Delph, Zakas, Drozda, Wyss
(HOUSE SPONSORS — LAWSON L, FOLEY)

January 8, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 8, 2007, amended, reported favorably — Do Pass.
February 13, 2007, read second time, ordered engrossed. Engrossed.
February 20, 2007, read third time, passed. Yeas 45, nays 1.

HOUSE ACTION

March 6, 2007, read first time and referred to Committee on Judiciary.
April 5, 2007, amended, reported — Do Pass.
April 9, 2007, read second time, amended, ordered engrossed.

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Digest Continued

Makes other changes and conforming amendments. Requires a court to issue a sentencing statement after the court has pronounced a sentence for a felony conviction. Provides that a court is not required to use an advisory sentence in imposing consecutive sentences for felony convictions that are not crimes of violence arising out of an episode of criminal conduct. Provides that an indictment or information may be amended at any time before the commencement of trial when the amendment does not prejudice the substantial rights of the defendant. Makes it battery by body waste, a Class D felony, for a person to knowingly or intentionally in a rude, insolent, or angry manner place blood or another body fluid or waste on a probation officer, firefighter, or first responder (in addition to other law enforcement officers or corrections officers) while the victim is engaged in the performance of official duties. Enhances the penalties for committing battery by body waste if the body waste is infected with hepatitis C. (Current law enhances the penalty if the body waste is infected with hepatitis B, HIV, or tuberculosis.) (The introduced version of this bill was prepared by the sentencing policy study committee.)

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Reprinted
April 10, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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ENGROSSED
SENATE BILL No. 45

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:

SECTION 1. IC 11-8-8-5.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5.2. As used in this chapter, "sex offense" means an offense listed in section 5(a) of this chapter.**

SECTION 2. IC 11-8-8-17, AS ADDED BY P.L.140-2006, SECTION 13, AND P.L.173-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. A sex offender who knowingly or intentionally:

(1) fails to register when required to register under this chapter;

(2) fails to register in every location where the sex offender is required to register under this chapter;

(3) makes a material misstatement or omission while registering as a sex offender under this chapter; or

(4) fails to register in person and be photographed at least one (1) time per year as required under this chapter;

commits a Class D felony. However, the offense is a Class C felony if the sex offender has a prior unrelated conviction for an offense:

(1) under this section; or

(2) based on the person's failure to comply with any requirement imposed on a sex offender under this chapter.

SECTION 3. IC 11-13-3-4, AS AMENDED BY P.L.60-2006, SECTION 1, AS AMENDED BY P.L.139-2006, SECTION 2, AND AS AMENDED BY P.L.140-2006, SECTION 15, AND P.L.173-2006, SECTION 15, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A condition to remaining on parole is that the parolee not commit a crime during the period of parole.

(b) The parole board may also adopt, under IC 4-22-2, additional conditions to remaining on parole and require a parolee to satisfy one (1) or more of these conditions. These conditions must be reasonably related to the parolee's successful reintegration into the community and not unduly restrictive of a fundamental right.

(c) If a person is released on parole, the parolee shall be given a written statement of the conditions of parole. Signed copies of this statement shall be:

(1) retained by the parolee;

(2) forwarded to any person charged with the parolee's supervision; and

(3) placed in the parolee's master file.

(d) The parole board may modify parole conditions if the parolee receives notice of that action and had ten (10) days after receipt of the notice to express the parolee's views on the proposed modification. This subsection does not apply to modification of parole conditions after a revocation proceeding under section 10 of this chapter.

(e) As a condition of parole, the parole board may require the parolee to reside in a particular parole area. In determining a parolee's residence requirement, the parole board shall:

(1) consider:

(A) the residence of the parolee prior to the parolee's incarceration; and

(B) the parolee's place of employment; and

(2) assign the parolee to reside in the county where the parolee resided prior to the parolee's incarceration unless assignment on this basis would be detrimental to the parolee's successful reintegration into the community.

(f) As a condition of parole, the parole board may require the parolee to:

(1) periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of tests to detect and confirm the presence

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of a controlled substance (as defined in IC 35-48-1-9); and

(2) have the results of any test under this subsection reported to the parole board by the laboratory.

The parolee is responsible for any charges resulting from a test required under this subsection. However, a person's parole may not be revoked on the basis of the person's inability to pay for a test under this subsection.

(g) As a condition of parole, the parole board:

(1) may require a parolee who is a sex ~~*and violent*~~ offender (as defined in ~~*IC 5-2-12-4)*~~ *IC 11-8-8-5)* to:

(A) participate in a treatment program for sex offenders approved by the parole board; and

(B) avoid contact with any person who is less than sixteen (16) years of age unless the parolee:

(i) receives the parole board's approval; or

(ii) successfully completes the treatment program referred to in clause (A); and

(2) shall:

(A) require a parolee who is ~~*an*~~ *a sex* offender (as defined in ~~*IC 5-2-12-4)*~~ *IC 11-8-8-5)* to register with a ~~*sheriff (or the police chief of a consolidated city)*~~ *local law enforcement authority* under ~~*IC 5-2-12-5,*~~ *IC 11-8-8;*

(B) prohibit the *sex* offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of parole, *unless the sex offender obtains written approval from the parole board;* ~~*and*~~

(C) prohibit a parolee who is ~~*an*~~ *a sex* offender convicted of a sex offense (as defined in IC 35-38-2-2.5) from residing within one (1) mile of the victim of the *sex* offender's sex offense *unless the sex offender obtains a waiver under IC 35-38-2-2.5; and*

(D) prohibit a parolee from owning, operating, managing, being employed by, or volunteering at any attraction designed to be primarily enjoyed by children less than sixteen (16) years of age.

The parole board may not grant a sexually violent predator (as defined in IC 35-38-1-7.5) **or a sex offender who is an offender against children under IC 35-42-4-11** *a waiver under subdivision (2)(B) or (2)(C). If the parole board allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2)(B), the parole board shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order.*

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(h) The address of the victim of a parolee who is ~~an~~ *a sex* offender convicted of a sex offense (as defined in IC 35-38-2-2.5) is confidential, *even if the sex offender obtains a waiver under IC 35-38-2-2.5.*

(i) As a condition of parole, the parole board may require a parolee to participate in a reentry court program.

~~(i)~~ **(j)** *As a condition of parole, the parole board:*

(1) shall require a parolee who is a sexually violent predator under IC 35-38-1-7.5; and

(2) may require a parolee who is a sex offender (as defined in ~~IC 5-2-12-4),~~ IC 11-8-8-5);

to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location.

~~(j)~~ **(k)** *As a condition of parole, the parole board may prohibit, in accordance with ~~IC 35-38-2-2.5,~~ IC 35-38-2-2.6, a parolee who has been convicted of stalking from residing within one thousand (1,000) feet of the residence of the victim of the stalking for a period that does not exceed five (5) years.*

SECTION 4. IC 35-34-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) An indictment or information which charges the commission of an offense may not be dismissed but may be amended on motion by the prosecuting attorney at any time because of any immaterial defect, including:

(1) any miswriting, misspelling, or grammatical error;

(2) any misjoinder of parties defendant or offenses charged;

(3) the presence of any unnecessary repugnant allegation;

(4) the failure to negate any exception, excuse, or provision contained in the statute defining the offense;

(5) the use of alternative or disjunctive allegations as to the acts, means, intents, or results charged;

(6) any mistake in the name of the court or county in the title of the action, or the statutory provision alleged to have been violated;

(7) the failure to state the time or place at which the offense was committed where the time or place is not of the essence of the offense;

(8) the failure to state an amount of value or price of any matter where that value or price is not of the essence of the offense; or

(9) any other defect which does not prejudice the substantial rights of the defendant.

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(b) The indictment or information may be amended in matters of substance ~~or form,~~ and the names of material witnesses may be added, by the prosecuting attorney, upon giving written notice to the defendant, at any time up to:

(1) thirty (30) days if the defendant is charged with a felony; or

(2) fifteen (15) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date **or at any time before the commencement of trial when the amendment does not prejudice the substantial rights of the defendant.** When the information or indictment is amended, it shall be signed by the prosecuting attorney **or a deputy prosecuting attorney.**

(c) Upon motion of the prosecuting attorney, the court may, at any time before, during, or after the trial, permit an amendment to the indictment or information in respect to any defect, imperfection, or omission in form which does not prejudice the substantial rights of the defendant.

(d) Before amendment of any indictment or information other than amendment as provided in subsection (b) of this section, the court shall give all parties adequate notice of the intended amendment and an opportunity to be heard. Upon permitting such amendment, the court shall, upon motion by the defendant, order any continuance of the proceedings which may be necessary to accord the defendant adequate opportunity to prepare his defense.

(e) An amendment of an indictment or information to include a habitual offender charge under IC 35-50-2-8, **IC 35-50-2-8.5, or IC 35-50-2-10** must be made not later than ten (10) days after the omnibus date. However, upon a showing of good cause, the court may permit the filing of a habitual offender charge at any time before the commencement of the trial.

SECTION 5. IC 35-38-1-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.3. After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes.**

SECTION 6. IC 35-38-1-7.5, AS AMENDED BY P.L.173-2006, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.5. (a) As used in this section, "sexually violent predator" means a person who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in any of the offenses described in IC 11-8-8-5. The term includes a person convicted in another jurisdiction who is

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identified as a sexually violent predator under IC 11-8-8-20. The term does not include a person no longer considered a sexually violent predator under subsection (g).

(b) A person who:

(1) being at least eighteen (18) years of age, commits an offense described in:

(A) IC 35-42-4-1;

(B) IC 35-42-4-2;

(C) IC 35-42-4-3 as a Class A or Class B felony;

(D) IC 35-42-4-5(a)(1);

(E) IC 35-42-4-5(a)(2);

(F) IC 35-42-4-5(a)(3);

(G) IC 35-42-4-5(b)(1) as a Class A or Class B felony;

(H) IC 35-42-4-5(b)(2); or

(I) IC 35-42-4-5(b)(3) as a Class A or Class B felony; ~~or~~

(J) an attempt or conspiracy to commit a crime listed in clauses (A) through (I); or

(K) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (J); or

(2) commits an offense described in IC 11-8-8-5 while having a previous unrelated conviction for an offense described in IC 11-8-8-5 for which the person is required to register as an offender under IC 11-8-8;

is a sexually violent predator. **Except as provided in subsection (g), a person is a sexually violent predator by operation of law if an offense committed by the person satisfies the conditions set forth in subdivision (1) or (2), regardless of when the person committed the offense.**

(c) This section applies whenever a court sentences a person for a sex offense listed in IC 11-8-8-5 for which the person is required to register with the local law enforcement authority under IC 11-8-8.

(d) At the sentencing hearing, the court shall ~~determine~~ **indicate on the record** whether the person ~~is~~ **has been convicted of an offense that makes the person** a sexually violent predator under subsection (b).

(e) If ~~the court does not find the~~ **a** person ~~to be~~ **is not** a sexually violent predator under subsection (b), **the prosecuting attorney may request the court to conduct a hearing to determine whether the person is a sexually violent predator under subsection (a). If the court grants the motion,** the court shall ~~consult with a~~ **appoint** ~~board of experts consisting of~~ two (2) ~~board certified~~ psychologists or

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psychiatrists who have expertise in criminal behavioral disorders to ~~determine if the person is a sexually violent predator under subsection (a).~~ **evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychiatrists or psychologists, the court shall determine whether the person is a sexually violent predator under subsection (a). A hearing conducted under this subsection may be combined with the person's sentencing hearing.**

(f) If ~~the court finds that~~ a person is a sexually violent predator:

(1) the person is required to register with the local law enforcement authority as provided in IC 11-8-8; and

(2) the court shall send notice ~~of its finding under this subsection~~ to the department of correction.

(g) A person who is ~~found by a court to be~~ a sexually violent predator may petition the court to consider whether the person should no longer be considered a sexually violent predator. The person may file a petition under this subsection not earlier than ten (10) years after:

(1) the sentencing court makes its ~~finding~~ **determination** under subsection (e); or

(2) a person ~~found to be~~ **who is** a sexually violent predator under subsection (b) is released from incarceration.

A person may file a petition under this subsection not more than one (1) time per year. If a court finds that the person should no longer be considered a sexually violent predator, the court shall send notice to the department of correction that the person is no longer considered a sexually violent predator. Notwithstanding any other law, a condition imposed on a person due to the person's status as a sexually violent predator, including lifetime parole or GPS monitoring, does not apply to a person no longer considered a sexually violent predator.

SECTION 7. IC 35-38-2-2.2, AS AMENDED BY P.L.173-2006, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.2. As a condition of probation for a sex offender (as defined in IC 11-8-8-5), the court shall:

(1) require the sex offender to register with the local law enforcement authority under IC 11-8-8; and

(2) prohibit the sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of probation, unless the sex offender obtains written approval from the court.

If the court allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2), the court shall notify each school within one thousand (1,000) feet of the sex

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offender's residence of the order. **However, a court may not allow a sex offender who is a sexually violent predator (as defined in IC 35-38-1-7.5) or an offender against children under IC 35-42-4-11 to reside within one thousand (1,000) feet of school property.**

SECTION 8. IC 35-38-2-2.5, AS AMENDED BY P.L.173-2006, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. (a) As used in this section, "offender" means an individual convicted of a sex offense.

(b) As used in this section, "sex offense" means any of the following:

(1) Rape (IC 35-42-4-1).
(2) Criminal deviate conduct (IC 35-42-4-2).
(3) Child molesting (IC 35-42-4-3).
(4) Child exploitation (IC 35-42-4-4(b)).
(5) Vicarious sexual gratification (IC 35-42-4-5).
(6) Child solicitation (IC 35-42-4-6).
(7) Child seduction (IC 35-42-4-7).
(8) Sexual battery (IC 35-42-4-8).
(9) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
(10) Incest (IC 35-46-1-3).

(c) A condition of remaining on probation or parole after conviction for a sex offense is that the offender not reside within one (1) mile of the residence of the victim of the offender's sex offense.

(d) An offender:

(1) who will be placed on probation shall provide the sentencing court and the probation department with the address where the offender intends to reside during the period of probation:
(A) at the time of sentencing if the offender will be placed on probation without first being incarcerated; or
(B) before the offender's release from incarceration if the offender will be placed on probation after completing a term of incarceration; or
(2) who will be placed on parole shall provide the parole board with the address where the offender intends to reside during the period of parole.

(e) An offender, while on probation or parole, may not establish a new residence within one (1) mile of the residence of the victim of the offender's sex offense unless the offender first obtains a waiver from the:

(1) court, if the offender is placed on probation; or
(2) parole board, if the offender is placed on parole;

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for the change of address under subsection (f).

(f) The court or parole board may waive the requirement set forth in subsection (c) only if the court or parole board, at a hearing at which the offender is present and of which the prosecuting attorney has been notified, determines that:

(1) the offender has successfully completed a sex offender treatment program during the period of probation or parole;

(2) the offender is in compliance with all terms of the offender's probation or parole; and

(3) good cause exists to allow the offender to reside within one (1) mile of the residence of the victim of the offender's sex offense.

However, the court or parole board may not grant a waiver under this subsection if the offender is a sexually violent predator under IC 35-38-1-7.5 **or if the offender is an offender against children under IC 35-42-4-11.**

(g) If the court or parole board grants a waiver under subsection (f), the court or parole board shall state in writing the reasons for granting the waiver. The court's written statement of its reasons shall be incorporated into the record.

(h) The address of the victim of the offender's sex offense is confidential even if the court or parole board grants a waiver under subsection (f).

SECTION 9. IC 35-42-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) As used in this section, "corrections officer" includes a person employed by:

(1) the department of correction;

(2) a law enforcement agency;

(3) a probation department;

~~(3)~~ **(4)** a county jail; or

~~(4)~~ **(5)** a circuit, superior, county, probate, city, or town court.

(b) As used in this section, "firefighter" means a person who is a:

(1) full-time, salaried firefighter;

(2) part-time, paid firefighter; or

(3) volunteer firefighter (as defined in IC 36-8-12-2).

(c) As used in this section, "first responder" means a person who:

(1) is certified under IC 16-31 and who meets the Indiana emergency medical services commission's standards for first responder certification; and

(2) responds to an incident requiring emergency medical services.

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~~(b)~~ **(d)** As used in this section, "human immunodeficiency virus (HIV)" includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.

~~(c)~~ **(e)** A person who knowingly or intentionally in a rude, insolent, or angry manner places blood or another body fluid or waste on a law enforcement officer, **firefighter, first responder,** or ~~a~~ corrections officer identified as such and while engaged in the performance of official duties or coerces another person to place blood or another body fluid or waste on the law enforcement officer, **firefighter, first responder,** or corrections officer commits battery by body waste, a Class D felony. However, the offense is:

(1) a Class C felony if the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with:

(A) hepatitis B **or hepatitis C;**

(B) HIV; or

(C) tuberculosis;

(2) a Class B felony if:

(A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with hepatitis B **or hepatitis C** and the offense results in the transmission of hepatitis B **or hepatitis C** to the other person; or

(B) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class A felony if:

(A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

~~(d)~~ **(f)** A person who knowingly or intentionally in a rude, an insolent, or an angry manner places human blood, semen, urine, or fecal waste on another person commits battery by body waste, a Class A misdemeanor. However, the offense is:

(1) a Class D felony if the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with:

(A) hepatitis B **or hepatitis C;**

(B) HIV; or

(C) tuberculosis;

(2) a Class C felony if:

(A) the person knew or recklessly failed to know that the

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blood, semen, urine, or fecal waste was infected with hepatitis B **or hepatitis C** and the offense results in the transmission of hepatitis B **or hepatitis C** to the other person; or

(B) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class B felony if:

(A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

SECTION 10. IC 35-42-4-10, AS ADDED BY P.L.6-2006, SECTION 3, AND AS ADDED BY P.L.140-2006, SECTION 31, AND P.L.173-2006, SECTION 31, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) As used in this section, "sexually violent predator" ~~*has the meaning set forth in*~~ *means a person who is a sexually violent predator under* IC 35-38-1-7.5.

(b) A sexually violent predator who knowingly or intentionally works for compensation or as a volunteer:

(1) on school property;

(2) at a youth program center; or

(3) at a public park;

commits unlawful employment near children by a sexual predator, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction based on the person's failure to comply with any requirement imposed on an offender under ~~this chapter.~~ **IC 11-8-8.**

SECTION 11. IC 35-50-2-1.3, AS ADDED BY P.L.71-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1.3. (a) For purposes of sections 3 through 7 of this chapter, "advisory sentence" means a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence.

(b) Except as provided in subsection (c), a court is not required to use an advisory sentence.

(c) In imposing:

(1) consecutive sentences **for felony convictions that are not crimes of violence (as defined in IC 35-50-1-2(a)) arising out of an episode of criminal conduct,** in accordance with IC 35-50-1-2;

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(2) an additional fixed term to an habitual offender under section 8 of this chapter; or

(3) an additional fixed term to a repeat sexual offender under section 14 of this chapter;

a court is required to use the appropriate advisory sentence in imposing a consecutive sentence or an additional fixed term. However, the court is not required to use the advisory sentence in imposing the sentence for the underlying offense.

(d) This section does not require a court to use an advisory sentence in imposing consecutive sentences for felony convictions that do not arise out of an episode of criminal conduct.

SECTION 12. [EFFECTIVE JULY 1, 2007] **IC 35-42-2-6, as amended by this act, applies only to acts committed after June 30, 2007.**

SECTION 13. **An emergency is declared for this act.**

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SENATE MOTION

Madam President: I move that Senator Bowser be added as second author of Senate Bill 45.

BRAY

SENATE MOTION

Madam President: I move that Senator Delph be added as coauthor of Senate Bill 45.

BRAY

SENATE MOTION

Madam President: I move that Senators Zakas and Drozda be added as coauthors of Senate Bill 45.

BRAY

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 45, 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 4, line 41, strike "or", begin a new line double block indented and insert:

"**(J) an attempt or conspiracy to commit a crime listed in clauses (A) through (I); or**

(K) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (J).".

Page 5, line 17, after "(b)," insert "**the prosecuting attorney may request the court to conduct a hearing to determine whether the person is a sexually violent predator under subsection (a). If the court grants the motion,**".

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Page 5, line 17, strike "consult with a" and insert "**appoint**".

Page 5, line 18, strike "board of experts consisting of".

Page 5, line 18, strike "board certified".

Page 5, strike lines 20 through 21 and insert "**evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychiatrists or psychologists, the court shall determine whether the person is a sexually violent predator under subsection (a). A hearing conducted under this subsection may be combined with the person's sentencing hearing.**".

and when so amended that said bill do pass.

(Reference is to SB 45 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Senator Wyss be added as coauthor of Engrossed Senate Bill 45.

BRAY

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 45, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 4. IC 35-34-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) An indictment or information which charges the commission of an offense may not be dismissed but may be amended on motion by the prosecuting attorney at any time because of any immaterial defect, including:

(1) any miswriting, misspelling, or grammatical error;

(2) any misjoinder of parties defendant or offenses charged;

(3) the presence of any unnecessary repugnant allegation;

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(4) the failure to negate any exception, excuse, or provision contained in the statute defining the offense;

(5) the use of alternative or disjunctive allegations as to the acts, means, intents, or results charged;

(6) any mistake in the name of the court or county in the title of the action, or the statutory provision alleged to have been violated;

(7) the failure to state the time or place at which the offense was committed where the time or place is not of the essence of the offense;

(8) the failure to state an amount of value or price of any matter where that value or price is not of the essence of the offense; or

(9) any other defect which does not prejudice the substantial rights of the defendant.

(b) The indictment or information may be amended in matters of substance ~~or form,~~ and the names of material witnesses may be added, by the prosecuting attorney, upon giving written notice to the defendant, at any time up to:

(1) thirty (30) days if the defendant is charged with a felony; or

(2) fifteen (15) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date **or at any time before the commencement of trial when the amendment does not prejudice the substantial rights of the defendant.** When the information or indictment is amended, it shall be signed by the prosecuting attorney **or a deputy prosecuting attorney.**

(c) Upon motion of the prosecuting attorney, the court may, at any time before, during, or after the trial, permit an amendment to the indictment or information in respect to any defect, imperfection, or omission in form which does not prejudice the substantial rights of the defendant.

(d) Before amendment of any indictment or information other than amendment as provided in subsection (b) of this section, the court shall give all parties adequate notice of the intended amendment and an opportunity to be heard. Upon permitting such amendment, the court shall, upon motion by the defendant, order any continuance of the proceedings which may be necessary to accord the defendant adequate opportunity to prepare his defense.

(e) An amendment of an indictment or information to include a habitual offender charge under IC 35-50-2-8, **IC 35-50-2-8.5, or IC 35-50-2-10** must be made not later than ten (10) days after the omnibus date. However, upon a showing of good cause, the court may

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permit the filing of a habitual offender charge at any time before the commencement of the trial.

SECTION 5. IC 35-38-1-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.3. After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes.**".

Page 4, line 41, after "Class A" reset in roman "or".

Page 5, line 4, delete "." and insert "**; or**".

Page 8, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 10. IC 35-50-2-1.3, AS ADDED BY P.L.71-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1.3. (a) For purposes of sections 3 through 7 of this chapter, "advisory sentence" means a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence.

(b) Except as provided in subsection (c), a court is not required to use an advisory sentence.

(c) In imposing:

(1) consecutive sentences **for felony convictions that are not crimes of violence (as defined in IC 35-50-1-2(a)) arising out of an episode of criminal conduct,** in accordance with IC 35-50-1-2;

(2) an additional fixed term to an habitual offender under section 8 of this chapter; or

(3) an additional fixed term to a repeat sexual offender under section 14 of this chapter;

a court is required to use the appropriate advisory sentence in imposing a consecutive sentence or an additional fixed term. However, the court is not required to use the advisory sentence in imposing the sentence for the underlying offense.

(d) This section does not require a court to use an advisory sentence in imposing consecutive sentences for felony convictions that do not arise out of an episode of criminal conduct.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 45 as printed February 9, 2007.)

LAWSON L, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 45 be amended to read as follows:

Page 9, between lines 22 and 23, begin a new paragraph and insert:

"SECTION 9. IC 35-42-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) As used in this section, "corrections officer" includes a person employed by:

(1) the department of correction;

(2) a law enforcement agency;

(3) a probation department;

~~(3)~~ **(4)** a county jail; or

~~(4)~~ **(5)** a circuit, superior, county, probate, city, or town court.

(b) As used in this section, "firefighter" means a person who is a:

(1) full-time, salaried firefighter;

(2) part-time, paid firefighter; or

(3) volunteer firefighter (as defined in IC 36-8-12-2).

(c) As used in this section, "first responder" means a person who:

(1) is certified under IC 16-31 and who meets the Indiana emergency medical services commission's standards for first responder certification; and

(2) responds to an incident requiring emergency medical services.

~~(b)~~ **(d)** As used in this section, "human immunodeficiency virus (HIV)" includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.

~~(c)~~ **(e)** A person who knowingly or intentionally in a rude, insolent, or angry manner places blood or another body fluid or waste on a law enforcement officer, **firefighter, first responder,** or ~~a~~ corrections officer identified as such and while engaged in the performance of official duties or coerces another person to place blood or another body fluid or waste on the law enforcement officer, **firefighter, first responder,** or corrections officer commits battery by body waste, a Class D felony. However, the offense is:

(1) a Class C felony if the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with:

(A) hepatitis B **or hepatitis C;**

(B) HIV; or

(C) tuberculosis;

(2) a Class B felony if:

(A) the person knew or recklessly failed to know that the

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blood, bodily fluid, or waste was infected with hepatitis B **or hepatitis C** and the offense results in the transmission of hepatitis B **or hepatitis C** to the other person; or

(B) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class A felony if:

(A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

~~(d)~~ **(f)** A person who knowingly or intentionally in a rude, an insolent, or an angry manner places human blood, semen, urine, or fecal waste on another person commits battery by body waste, a Class A misdemeanor. However, the offense is:

(1) a Class D felony if the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with:

(A) hepatitis B **or hepatitis C;**

(B) HIV; or

(C) tuberculosis;

(2) a Class C felony if:

(A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with hepatitis B **or hepatitis C** and the offense results in the transmission of hepatitis B **or hepatitis C** to the other person; or

(B) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class B felony if:

(A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.".

Page 10, between lines 21 and 22, begin a new paragraph and insert:

"SECTION 12. [EFFECTIVE JULY 1, 2007] **IC 35-42-2-6, as**

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amended by this act, applies only to acts committed after June 30, 2007.".

Renumber all SECTIONS consecutively.

(Reference is to ESB 45 as printed April 6, 2007.)

TYLER

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