

SENATE MOTION

MADAM PRESIDENT:

I move that House Bill 1386 be amended to read as follows:

- 1 Page 3, after line 31, begin a new paragraph and insert:
2 "SECTION 3. IC 35-38-1-7.5, AS AMENDED BY P.L.173-2006,
3 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2007]: Sec. 7.5. (a) As used in this section, "sexually violent
5 predator" means a person who suffers from a mental abnormality or
6 personality disorder that makes the individual likely to repeatedly
7 engage in any of the offenses described in IC 11-8-8-5. The term
8 includes a person convicted in another jurisdiction who is identified as
9 a sexually violent predator under IC 11-8-8-20. The term does not
10 include a person no longer considered a sexually violent predator under
11 subsection (g).
12 (b) A person who:
13 (1) **except as provided in subsection (h)**, being at least eighteen
14 (18) years of age, commits an offense described in:
15 (A) IC 35-42-4-1;
16 (B) IC 35-42-4-2;
17 (C) IC 35-42-4-3 as a Class A or Class B felony;
18 (D) IC 35-42-4-5(a)(1);
19 (E) IC 35-42-4-5(a)(2);
20 (F) IC 35-42-4-5(a)(3);
21 (G) IC 35-42-4-5(b)(1) as a Class A or Class B felony;
22 (H) IC 35-42-4-5(b)(2); or
23 (I) IC 35-42-4-5(b)(3) as a Class A or Class B felony; or
24 (2) commits an offense described in IC 11-8-8-5 while having a
25 previous unrelated conviction for an offense described in
26 IC 11-8-8-5 for which the person is required to register as an
27 offender under IC 11-8-8;
28 is a sexually violent predator.
29 (c) This section applies whenever a court sentences a person for
30 a sex offense listed in IC 11-8-8-5 for which the person is required to
31 register with the local law enforcement authority under IC 11-8-8.
32 (d) At the sentencing hearing, the court shall determine whether

1 the person is a sexually violent predator under subsection (b).

2 (e) If the court does not find the person to be a sexually violent
3 predator under subsection (b), the court shall consult with a board of
4 experts consisting of two (2) board certified psychologists or
5 psychiatrists who have expertise in criminal behavioral disorders to
6 determine if the person is a sexually violent predator under subsection
7 (a).

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

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

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

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

17 (1) the sentencing court makes its finding under subsection (e);

18 or

19 (2) a person found to be a sexually violent predator under
20 subsection (b) is released from incarceration.

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

29 **(h) A person is not a sexually violent predator under**
30 **subsection (b)(1) if the following conditions apply:**

31 **(1) The person is either:**

32 **(A) not more than four (4) years older than the victim;**
33 **or**

34 **(B) if both the person and the victim were students at**
35 **the time the act occurred, not more than five (5) years**
36 **older than the victim and not more than four (4) grade**
37 **levels above the victim.**

38 **(2) The relationship between the person and the victim was**
39 **a dating relationship or an ongoing personal relationship.**

40 **(3) The offense described under subsection (b)(1) does not**
41 **include the following:**

42 **(A) Rape (IC 35-42-4-1).**

43 **(B) Criminal deviate conduct (IC 35-42-4-2).**

44 **(C) Sexual battery (IC 35-42-4-8).**

45 **(D) An offense committed by using or threatening the**
46 **use of deadly force or while armed with a deadly**
47 **weapon.**

48 **(E) An offense that results in serious bodily injury.**

49 **(F) An offense that is facilitated by furnishing the**
50 **victim, without the victim's knowledge, with a drug (as**
51 **defined in IC 16-42-19-2(1)) or a controlled substance**
52 **(as defined in IC 35-48-1-9) or knowing that the victim**

1 **was furnished with the drug or controlled substance**
 2 **without the victim's knowledge.**

3 **(4) The victim is twelve years of age or older.**

4 **(5) The court finds that the person should not be considered**
 5 **a sexually violent predator.**

6 **A person who is not a sexually violent predator under subsection**
 7 **(b)(1) may still be a sexually violent predator under another**
 8 **provision of this section."**

9 Page 6, between lines 28 and 29, begin a new paragraph and
 10 insert:

11 "SECTION 7. IC 35-50-2-2, AS AMENDED BY P.L.151-2006,
 12 SECTION 28, AS AMENDED BY P.L.140-2006, SECTION 36, AND
 13 AS AMENDED BY P.L.173-2006, SECTION 36, IS CORRECTED
 14 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 15 2007]: Sec. 2. (a) The court may suspend any part of a sentence for a
 16 felony, except as provided in this section or in section 2.1 of this
 17 chapter.

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

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

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

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

39 (4) The felony committed was:

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

41 (B) battery (IC 35-42-2-1) with a deadly weapon or battery
 42 causing death;

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

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

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

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

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

49 (H) child molesting (IC 35-42-4-3) as a Class A or, **except**
 50 **as provided in subsection (i), a Class B felony;**

- 1 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury
 2 or with a deadly weapon;
 3 (J) arson (IC 35-43-1-1) for hire or resulting in serious
 4 bodily injury;
 5 (K) burglary (IC 35-43-2-1) resulting in serious bodily
 6 injury or with a deadly weapon;
 7 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
 8 weapon;
 9 (M) escape (IC 35-44-3-5) with a deadly weapon;
 10 (N) rioting (IC 35-45-1-2) with a deadly weapon;
 11 (O) dealing in cocaine *or* a narcotic drug ~~or~~
 12 ~~methamphetamine~~ (IC 35-48-4-1) if the court finds the
 13 person possessed a firearm (as defined in IC 35-47-1-5) at
 14 the time of the offense, or the person delivered or intended
 15 to deliver to a person under eighteen (18) years of age at
 16 least three (3) years junior to the person and was on a
 17 school bus or within one thousand (1,000) feet of:
 18 (i) school property;
 19 (ii) a public park;
 20 (iii) a family housing complex; or
 21 (iv) a youth program center;
 22 *(P) dealing in methamphetamine (IC 35-48-4-1.1) if the*
 23 *court finds the person possessed a firearm (as defined in*
 24 *IC 35-47-1-5) at the time of the offense, or the person*
 25 *delivered or intended to deliver the methamphetamine pure*
 26 *or adulterated to a person under eighteen (18) years of age*
 27 *at least three (3) years junior to the person and was on a*
 28 *school bus or within one thousand (1,000) feet of:*
 29 *(i) school property;*
 30 *(ii) a public park;*
 31 *(iii) a family housing complex; or*
 32 *(iv) a youth program center;*
 33 ~~(P)~~ *(Q) dealing in a schedule I, II, or III controlled*
 34 *substance (IC 35-48-4-2) if the court finds the person*
 35 *possessed a firearm (as defined in IC 35-47-1-5) at the time*
 36 *of the offense, or the person delivered or intended to deliver*
 37 *to a person under eighteen (18) years of age at least three*
 38 *(3) years junior to the person and was on a school bus or*
 39 *within one thousand (1,000) feet of:*
 40 *(i) school property;*
 41 *(ii) a public park;*
 42 *(iii) a family housing complex; or*
 43 *(iv) a youth program center;*
 44 ~~(Q)~~ *(R) an offense under IC 9-30-5 (operating a vehicle*
 45 *while intoxicated) and the person who committed the*
 46 *offense has accumulated at least two (2) prior unrelated*
 47 *convictions under IC 9-30-5;*
 48 ~~(R)~~ *(S) an offense under IC 9-30-5-5(b) (operating a vehicle*
 49 *while intoxicated causing death); or*
 50 ~~(S)~~ *(T) aggravated battery (IC 35-42-2-1.5).*

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

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

9 (e) Whenever the court suspends that part of ~~an~~ a *sex* offender's
 10 (as defined in ~~IC 5-2-12-4~~ IC 11-8-8-5) sentence that is suspendible
 11 under subsection (b), the court shall place the *sex* offender on probation
 12 under IC 35-38-2 for not more than ten (10) years.

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

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

18 (h) A term of imprisonment imposed for an offense under
 19 IC 35-48-4-6(b)(1)(B) *or* IC 35-48-4-6.1(b)(1)(B) may not be
 20 suspended.

21 **(i) A term of imprisonment imposed for child molesting**
 22 **(IC 35-42-4-3) as a Class B felony may be suspended if all of the**
 23 **following apply:**

24 **(1) The person is either:**

25 **(A) not more than four (4) years older than the victim;**
 26 **or**

27 **(B) if both the person and the victim were students at**
 28 **the time the act occurred, not more than five (5) years**
 29 **older than the victim and not more than four (4) grade**
 30 **levels above the victim.**

31 **(2) The relationship between the person and the victim was**
 32 **a dating relationship or an ongoing personal relationship.**

33 **(3) The victim is twelve years of age or older.**

34 **(4) The court finds that the person's sentence should not be**
 35 **nonsuspendible."**

36 Renumber all SECTIONS consecutively.

(Reference is to EHB 1386 as printed March 13, 2007.)

Senator HUME