

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 223**

Citations Affected: IC 34-10-1-3; IC 34-58-2-1; IC 35-44-3-9.

Synopsis: Various corrections and criminal matters. Conference committee report for ESB 223. Provides that an offender who has filed at least three civil actions that have been dismissed as frivolous may not file a new complaint or petition as an indigent person unless the offender is in immediate danger of serious bodily injury. Makes trafficking with an inmate (which is, without enhancement, a Class A misdemeanor) a Class C felony if the item trafficked is a cellular telephone. Makes it a Class A misdemeanor if a person possesses in or carries into a penal facility or a juvenile facility a controlled substance or a deadly weapon. Requires the sentencing policy study committee to evaluate whether the state should pay all costs of trial in a prosecution for an offense committed at a state correctional facility. **(This conference committee report removes language concerning: (1) mutilation of a corpse; (2) state agencies being prohibited from entering into or renewing a contract for the operation or management of a state correctional facility; and (3) the department of correction being prohibited from contracting with another state to receive persons that would be assigned to a maximum, medium, or minimum security facility.)**

Effective: Upon passage; July 1, 2009.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 223 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 34-10-1-3 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2009]: **Sec. 3. If an offender has filed at least three (3) civil**
5 **actions in which a state court has dismissed the action or a claim**
6 **under IC 34-58-1-2, the offender may not file a new complaint or**
7 **petition as an indigent person under this chapter, unless a court**
8 **determines the offender is in immediate danger of serious bodily**
9 **injury.**
10 SECTION 2. IC 35-44-3-9 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) As used in this
12 section, "juvenile facility" means the following:
13 (1) A secure facility (as defined in IC 31-9-2-114) in which a
14 child is detained under IC 31 or used for a child awaiting
15 adjudication or adjudicated under IC 31 as a child in need of
16 services or a delinquent child.
17 (2) A shelter care facility (as defined in IC 31-9-2-117) in which
18 a child is detained under IC 31 or used for a child awaiting
19 adjudication or adjudicated under IC 31 as a child in need of
20 services or a delinquent child.
21 (b) Except as provided in subsection (d), a person who, without the
22 prior authorization of the person in charge of a penal facility or juvenile

1 facility knowingly or intentionally:

2 (1) delivers, or carries into the penal facility or juvenile facility

3 with intent to deliver, an article to an inmate or child of the

4 facility;

5 (2) carries, or receives with intent to carry out of the penal facility

6 or juvenile facility, an article from an inmate or child of the

7 facility; **or**

8 (3) delivers, or carries to a worksite with the intent to deliver,

9 alcoholic beverages to an inmate or child of a jail work crew or

10 community work crew; **or**

11 **(4) possesses in or carries into a penal facility or a juvenile**

12 **facility:**

13 **(A) a controlled substance; or**

14 **(B) a deadly weapon;**

15 commits trafficking with an inmate, a Class A misdemeanor.

16 (c) If the person who committed the offense under subsection (b) is

17 an employee of:

18 (1) the department of correction; or

19 (2) a penal facility;

20 and the article is a cigarette or tobacco product (as defined in

21 IC 6-7-2-5), the court shall impose a mandatory five thousand dollar

22 (\$5,000) fine under IC 35-50-3-2, in addition to any term of

23 imprisonment imposed under IC 35-50-3-2.

24 (d) The offense under subsection (b) is a Class C felony if the article

25 is:

26 (1) a controlled substance; **or**

27 (2) a deadly weapon; **or**

28 **(3) a cellular telephone or other wireless or cellular**

29 **communications device.**

30 SECTION 3. P.L.216-2007, SECTION 56, IS AMENDED TO

31 READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION

32 56. (a) As used in this SECTION, "committee" refers to the sentencing

33 policy study committee established by subsection (c).

34 (b) The general assembly finds that a comprehensive study of

35 sentencing laws and policies is desirable in order to:

36 (1) ensure that sentencing laws and policies protect the public

37 safety;

38 (2) establish fairness and uniformity in sentencing laws and

39 policies;

40 (3) determine whether incarceration or alternative sanctions are

41 appropriate for various categories of criminal offenses; and

42 (4) maximize cost effectiveness in the administration of

43 sentencing laws and policies.

44 (c) The sentencing policy study committee is established to evaluate

45 sentencing laws and policies as they relate to:

46 (1) the purposes of the criminal justice and corrections systems;

47 (2) the availability of sentencing options; and

48 (3) the inmate population in department of correction facilities.

49 If, based on the committee's evaluation under this subsection, the

50 committee determines changes are necessary or appropriate, the

51 committee shall make recommendations to the general assembly for the

1 modification of sentencing laws and policies and for the addition,
2 deletion, or expansion of sentencing options.

3 (d) The committee shall do the following:

4 (1) Evaluate the existing classification of criminal offenses into
5 felony and misdemeanor categories. In determining the proper
6 category for each felony and misdemeanor, the committee shall
7 consider, to the extent they have relevance, the following:

8 (A) The nature and degree of harm likely to be caused by the
9 offense, including whether the offense involves property,
10 irreplaceable property, a person, a number of persons, or a
11 breach of the public trust.

12 (B) The deterrent effect a particular classification may have on
13 the commission of the offense.

14 (C) The current incidence of the offense in Indiana.

15 (D) The rights of the victim.

16 (2) Recommend structures to be used by a sentencing court in
17 determining the most appropriate sentence to be imposed in a
18 criminal case, including any combination of imprisonment,
19 probation, restitution, community service, or house arrest. The
20 committee shall also consider the following:

21 (A) The nature and characteristics of the offense.

22 (B) The severity of the offense in relation to other offenses.

23 (C) The characteristics of the defendant that mitigate or
24 aggravate the seriousness of the criminal conduct and the
25 punishment deserved for that conduct.

26 (D) The number of the defendant's prior convictions.

27 (E) The available resources and capacity of the department of
28 correction, local confinement facilities, and community based
29 sanctions.

30 (F) The rights of the victim.

31 The committee shall include with each set of sentencing
32 structures an estimate of the effect of the sentencing structures on
33 the department of correction and local facilities with respect to
34 both fiscal impact and inmate population.

35 (3) Review community corrections and home detention programs
36 for the purpose of:

37 (A) standardizing procedures and establishing rules for the
38 supervision of home detainees; and

39 (B) establishing procedures for the supervision of home
40 detainees by community corrections programs of adjoining
41 counties.

42 (4) Determine the long range needs of the criminal justice and
43 corrections systems and recommend policy priorities for those
44 systems.

45 (5) Identify critical problems in the criminal justice and
46 corrections systems and recommend strategies to solve the
47 problems.

48 (6) Assess the cost effectiveness of the use of state and local
49 funds in the criminal justice and corrections systems.

50 (7) Recommend a comprehensive community corrections strategy
51 based on the following:

- 1 (A) A review of existing community corrections programs.
 2 (B) The identification of additional types of community
 3 corrections programs necessary to create an effective
 4 continuum of corrections sanctions.
 5 (C) The identification of categories of offenders who should be
 6 eligible for sentencing to community corrections programs and
 7 the impact that changes to the existing system of community
 8 corrections programs would have on sentencing practices.
 9 (D) The identification of necessary changes in state oversight
 10 and coordination of community corrections programs.
 11 (E) An evaluation of mechanisms for state funding and local
 12 community participation in the operation and implementation
 13 of community corrections programs.
 14 (F) An analysis of the rate of recidivism of clients under the
 15 supervision of existing community corrections programs.
 16 (8) Propose plans, programs, and legislation for improving the
 17 effectiveness of the criminal justice and corrections systems.
 18 (9) Evaluate the use of faith based organizations as an alternative
 19 to incarceration.
 20 (10) Study issues related to sex offenders, including:
 21 (A) lifetime parole;
 22 (B) GPS or other electronic monitoring;
 23 (C) a classification system for sex offenders;
 24 (D) recidivism; and
 25 (E) treatment.
- 26 **(e) In 2009, the committee shall evaluate whether the state**
 27 **should pay all costs of trial in a prosecution for an offense**
 28 **committed at a state correctional facility.**
- 29 ~~(e)~~ **(f)** The committee may study other topics assigned by the
 30 legislative council or as directed by the committee chair. The
 31 committee may meet as often as necessary.
- 32 ~~(f)~~ **(g)** The committee consists of twenty (20) members appointed as
 33 follows:
 34 (1) Four (4) members of the senate, not more than two (2) of
 35 whom may be affiliated with the same political party, to be
 36 appointed by the president pro tempore of the senate.
 37 (2) Four (4) members of the house of representatives, not more
 38 than two (2) of whom may be affiliated with the same political
 39 party, to be appointed by the speaker of the house of
 40 representatives.
 41 (3) The chief justice of the supreme court or the chief justice's
 42 designee.
 43 (4) The commissioner of the department of correction or the
 44 commissioner's designee.
 45 (5) The director of the Indiana criminal justice institute or the
 46 director's designee.
 47 (6) The executive director of the prosecuting attorneys council of
 48 Indiana or the executive director's designee.
 49 (7) The executive director of the public defender council of
 50 Indiana or the executive director's designee.
 51 (8) One (1) person with experience in administering community

- 1 corrections programs, appointed by the governor.
 2 (9) One (1) person with experience in administering probation
 3 programs, appointed by the governor.
 4 (10) Two (2) judges who exercise juvenile jurisdiction, not more
 5 than one (1) of whom may be affiliated with the same political
 6 party, to be appointed by the governor.
 7 (11) Two (2) judges who exercise criminal jurisdiction, not more
 8 than one (1) of whom may be affiliated with the same political
 9 party, to be appointed by the governor.
 10 (12) One (1) board certified psychologist or psychiatrist who has
 11 expertise in treating sex offenders, appointed by the governor to
 12 act as a nonvoting advisor to the committee.
- 13 ~~(g)~~ (h) The chairman of the legislative council shall appoint a
 14 legislative member of the committee to serve as the chairperson of the
 15 committee. Whenever there is a new chairman of the legislative
 16 council, the new chairman may remove the chairperson of the
 17 committee and appoint another chairperson.
- 18 ~~(h)~~ (i) If a legislative member of the committee ceases to be a
 19 member of the chamber from which the member was appointed, the
 20 member also ceases to be a member of the committee.
- 21 ~~(i)~~ (j) A legislative member of the committee may be removed at
 22 any time by the appointing authority who appointed the legislative
 23 member.
- 24 ~~(j)~~ (k) If a vacancy exists on the committee, the appointing authority
 25 who appointed the former member whose position is vacant shall
 26 appoint an individual to fill the vacancy.
- 27 ~~(k)~~ (l) The committee shall submit:
 28 (1) an interim report of the results of its study to the legislative
 29 council before November 1, 2008; and
 30 (2) a final report of the results of its study to the legislative
 31 council before November 1, 2010.
 32 The interim and final reports must be in an electronic format under
 33 IC 5-14-6.
- 34 ~~(l)~~ (m) The Indiana criminal justice institute shall provide staff
 35 support to the committee.
- 36 ~~(m)~~ (n) Each member of the committee is entitled to receive the
 37 same per diem, mileage, and travel allowances paid to individuals who
 38 serve as legislative and lay members, respectively, of interim study
 39 committees established by the legislative council.
- 40 ~~(n)~~ (o) The affirmative votes of a majority of the voting members
 41 appointed to the committee are required for the committee to take
 42 action on any measure, including the final report.
- 43 ~~(o)~~ (p) Except as otherwise specifically provided by this act, the
 44 committee shall operate under the rules of the legislative council. All
 45 funds necessary to carry out this act shall be paid from appropriations
 46 to the legislative council and legislative services agency.
- 47 ~~(p)~~ (q) This SECTION expires December 31, 2010.
 48 SECTION 4. IC 34-58-2-1 IS REPEALED [EFFECTIVE JULY 1,
 49 2009].
 50 SECTION 5. **An emergency is declared for this act.**

(Reference is to ESB 223 as reprinted April 14, 2009.)

Conference Committee Report
on
Engrossed Senate Bill 223

Signed by:

Senator Young R Michael
Chairperson

Representative Tincher

Senator Arnold

Representative Dermody

Senate Conferees

House Conferees