

Adopted Rejected

COMMITTEE REPORT

YES: 10
NO: 0

MR. SPEAKER:

Your Committee on Judiciary, to which was referred Senate Bill 224, 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:

- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2 "SECTION 1. IC 2-5.5-2-5, AS ADDED BY P.L.16-2009,
- 3 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2010]: Sec. 5. The committee shall do the following:
- 5 (1) Evaluate the existing classification of criminal offenses into
- 6 felony and misdemeanor categories. In determining the proper
- 7 category for each felony and misdemeanor, the committee shall
- 8 consider, to the extent they have relevance, the following:
- 9 (A) The nature and degree of harm likely to be caused by the
- 10 offense, including whether the offense involves property,
- 11 irreplaceable property, a person, a number of persons, or a
- 12 breach of the public trust.
- 13 (B) The deterrent effect a particular classification may have on
- 14 the commission of the offense.
- 15 (C) The current incidence of the offense in Indiana.
- 16 (D) The rights of the victim.

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

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

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

8 (C) The characteristics of the defendant that mitigate or
9 aggravate the seriousness of the criminal conduct and the
10 punishment deserved for that conduct.

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

12 (E) The available resources and capacity of the department of
13 correction, local confinement facilities, and community based
14 sanctions.

15 (F) The rights of the victim.

16 The committee shall include with each set of sentencing
17 structures an estimate of the effect of the sentencing structures on
18 the department of correction and local facilities with respect to
19 both fiscal impact and inmate population.

20 (3) Review community corrections and home detention programs
21 for the purpose of:

22 (A) standardizing procedures and establishing rules for the
23 supervision of home detainees; and

24 (B) establishing procedures for the supervision of home
25 detainees by community corrections programs of adjoining
26 counties.

27 (4) Determine the long range needs of the criminal justice and
28 corrections systems and recommend policy priorities for those
29 systems.

30 (5) Identify critical problems in the criminal justice and
31 corrections systems and recommend strategies to solve the
32 problems.

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

35 (7) Recommend a comprehensive community corrections strategy
36 based on the following:

37 (A) A review of existing community corrections programs.

38 (B) The identification of additional types of community

- 1 corrections programs necessary to create an effective
 2 continuum of corrections sanctions.
- 3 (C) The identification of categories of offenders who should be
 4 eligible for sentencing to community corrections programs and
 5 the impact that changes to the existing system of community
 6 corrections programs would have on sentencing practices.
- 7 (D) The identification of necessary changes in state oversight
 8 and coordination of community corrections programs.
- 9 (E) An evaluation of mechanisms for state funding and local
 10 community participation in the operation and implementation
 11 of community corrections programs.
- 12 (F) An analysis of the rate of recidivism of clients under the
 13 supervision of existing community corrections programs.
- 14 (8) Propose plans, programs, and legislation for improving the
 15 effectiveness of the criminal justice and corrections systems.
- 16 (9) Evaluate the use of faith based organizations as an alternative
 17 to incarceration.
- 18 (10) Study issues related to sex offenders, including:
 19 (A) lifetime parole;
 20 (B) GPS or other electronic monitoring;
 21 (C) a classification system for sex offenders;
 22 (D) recidivism; and
 23 (E) treatment.
- 24 **(11) Study and make recommendations regarding the sending**
 25 **of sexually suggestive or sexually explicit material over the**
 26 **Internet or by use of a cellular telephone or similar device,**
 27 **including whether school corporations should adopt policies**
 28 **regarding this topic.**
- 29 SECTION 2. IC 11-8-8-22, AS ADDED BY P.L.216-2007,
 30 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2010]: Sec. 22. (a) As used in this section, "offender" means
 32 a sex offender (as defined in section 4.5 of this chapter) and a sex or
 33 violent offender (as defined in section 5 of this chapter).
- 34 (b) **Subsection (g) this section** applies to an offender required to
 35 register under this chapter if, due to a change in federal or state law
 36 after June 30, 2007, an individual who engaged in the same conduct as
 37 the offender:
 38 (1) would not be required to register under this chapter; or

1 (2) would be required to register under this chapter but under less
2 restrictive conditions than the offender is required to meet.

3 (c) A person to whom this section applies may petition a court to:

4 (1) remove the person's designation as an offender; or

5 (2) require the person to register under less restrictive conditions.

6 **(d) A petition under this section shall be filed in the circuit or**
7 **superior court of the county in which the offender resides. If the**
8 **offender resides in more than one (1) county, the petition shall be**
9 **filed in the circuit or superior court of the county in which the**
10 **offender resides the greatest time. If the offender does not reside**
11 **in Indiana, the petition shall be filed in the circuit or superior court**
12 **of the county where the offender is employed the greatest time. If**
13 **the offender does not reside or work in Indiana, but is a student in**
14 **Indiana, the petition shall be filed in the circuit or superior court**
15 **of the county where the offender is a student. If the offender is not**
16 **a student in Indiana and does not reside or work in Indiana, the**
17 **petition shall be filed in the county where the offender was most**
18 **recently convicted of a crime listed in section 5 of this chapter.**

19 ~~(d)~~ (e) After receiving a petition under this section, the court may:

20 (1) summarily dismiss the petition; or

21 (2) give notice to:

22 (A) the department;

23 (B) the attorney general;

24 (C) the prosecuting attorney of:

25 (i) the county where the petition was filed;

26 (ii) the county where offender was most recently
27 convicted of an offense listed in section 5 of this chapter;

28 and

29 (iii) the county where the offender resides; and

30 (D) the sheriff of the county where the offender resides;

31 and set the matter for hearing. **The date set for a hearing must not be**
32 **less than sixty (60) days after the court gives notice under this**
33 **subsection. If the court fails to issue a notice as required by this**
34 **subsection, an order granting relief to the petitioner may be**
35 **rescinded.**

36 (f) **If a court sets a matter for a hearing under this section, the**
37 **prosecuting attorney of the county in which the action is pending**
38 **shall appear and respond, unless the prosecuting attorney requests**

1 **the attorney general to appear and respond and the attorney**
 2 **general agrees to represent the interests of the state in the matter.**
 3 **If the attorney general agrees to appear, the attorney general shall**
 4 **give notice to:**

5 **(A) the prosecuting attorney; and**

6 **(B) the court.**

7 ~~(e)~~ **(g)** A court may grant a petition under this section if, following
 8 a hearing, the court makes the following findings:

9 (1) The law requiring the petitioner to register as an offender has
 10 changed since the date on which the petitioner was initially
 11 required to register.

12 (2) If the petitioner who was required to register as an offender
 13 before the change in law engaged in the same conduct after the
 14 change in law occurred, the petitioner would:

15 (A) not be required to register as an offender; or

16 (B) be required to register as an offender, but under less
 17 restrictive conditions.

18 (3) If the petitioner seeks relief under this section because a
 19 change in law makes a previously unavailable defense available
 20 to the petitioner, that the petitioner has proved the defense.

21 The court has the discretion to deny a petition under this section, even
 22 if the court makes the findings under this subsection.

23 ~~(f)~~ **(h)** The petitioner has the burden of proof in a hearing under this
 24 section.

25 ~~(g)~~ **(i)** If the court grants a petition under this section, the court shall
 26 notify:

27 (1) the victim of the offense, if applicable;

28 (2) the department of correction; and

29 (3) the local law enforcement authority of the county in which the
 30 petitioner resides.

31 **(j) An offender may base a petition filed under this section on a**
 32 **claim that the application or registration requirements constitute**
 33 **ex post facto punishment.**

34 **(k) A petition filed under this section must:**

35 **(1) be submitted under the penalties of perjury;**

36 **(2) list each of the offender's criminal convictions and state**
 37 **for each conviction:**

38 **(A) the date of the judgment of conviction;**

- 1 **(B) the court that entered the judgment of conviction;**
- 2 **(C) the crime that the offender pled guilty to or was**
- 3 **convicted of; and**
- 4 **(D) whether the offender was convicted of the crime in a**
- 5 **trial or pled guilty to the criminal charges; and**
- 6 **(3) list each jurisdiction in which the offender is required to**
- 7 **register as a sex offender or a violent offender.**
- 8 **(l) The attorney general may initiate an appeal from any order**
- 9 **granting an offender relief under this section.**

10 SECTION 3. IC 20-30-6-16 IS ADDED TO THE INDIANA CODE
 11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 12 1, 2010]: **Sec. 16. A school corporation may offer classes,**
 13 **instruction, or programs regarding the potential risks and**
 14 **consequences of creating and sharing sexually suggestive or**
 15 **sexually explicit materials through cellular telephones, social**
 16 **networking web sites, computer networks, and other digital**
 17 **media."**

18 Delete pages 2 through 4.
 19 Re-number all SECTIONS consecutively.
 (Reference is to SB 224 as printed January 29, 2010.)

and when so amended that said bill do pass.

Representative Lawson L