

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 81**

Citations Affected: IC 2-5.5-5; IC 9-24; IC 9-30-4; IC 35-44-3-3; IC 2-5.5-2; P.L.128-2009, SECTION 3.

Synopsis: Various criminal law matters. Conference committee report for ESB 81. Establishes the 14 member criminal law and sentencing policy study committee (study committee) to evaluate criminal laws and sentencing policies. Repeals laws establishing the sentencing policy study committee. Adds topics for the study committee to study and make recommendations about in the 2010 interim. Provides that the driver's license of a person convicted of resisting law enforcement while using a vehicle and: (1) exceeding the speed limit by at least 20 miles per hour; (2) committing criminal recklessness; or (3) engaging in reckless driving with a vehicle; may be suspended for one year for a first offense and two years for a second or subsequent offense. Provides that if a person receives a sentence that includes: (1) a term of incarceration; and (2) a driver's license suspension; the driver's license suspension begins on the date the person is released from incarceration and not on the date the person is convicted. Specifies in which court a petition for a hardship license must be filed. Requires the court to notify the bureau of motor vehicles of the person's conviction, and specifies that the convicted person has the burden of applying for a new or renewal license and establishing that the one year or two year period has elapsed. Enhances the penalty and prohibits a person from receiving a driver's license if a person has a second unrelated conviction for knowingly or intentionally operating a motor vehicle and has never received a valid driver's license. **(This conference committee report: (1) adds topics for the study committee to study and make recommendations about in the 2010 interim; (2) makes the commissioner of the department of correction a voting member of the study committee; (3) adds the chairman of the parole board as a member of the study committee; and (4) enhances the penalty and prohibits a person from receiving a driver's license if the person has a second unrelated conviction for knowingly or intentionally operating a motor vehicle and has never received a valid driver's license.)**

Effective: Upon passage; July 1, 2010.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 81 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 2-5.5-5 IS ADDED TO THE INDIANA CODE AS
3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2010]:
5 **Chapter 5. Criminal Law and Sentencing Policy Study**
6 **Committee**
7 **Sec. 1. The criminal law and sentencing policy study committee**
8 **is established.**
9 **Sec. 2. The committee consists of fourteen (14) members**
10 **appointed as follows:**
11 **(1) Four (4) members of the senate, not more than two (2) of**
12 **whom may be affiliated with the same political party,**
13 **appointed by the president pro tempore of the senate.**
14 **(2) Four (4) members of the house of representatives, not**
15 **more than two (2) of whom may be affiliated with the same**
16 **political party, appointed by the speaker of the house of**
17 **representatives.**
18 **(3) The executive director of the prosecuting attorneys council**
19 **of Indiana or the executive director's designee.**
20 **(4) The executive director of the public defender council of**
21 **Indiana or the executive director's designee.**
22 **(5) One (1) person who:**

- 1 **(A) has experience in administering probation programs;**
 2 **and**
 3 **(B) is a member of the Probation Officers' Professional**
 4 **Association of Indiana;**
 5 **appointed by the members of the Association.**
 6 **(6) One (1) circuit or superior court judge who exercises**
 7 **criminal or juvenile jurisdiction, appointed by the chief**
 8 **justice of the supreme court.**
 9 **(7) The commissioner of the department of correction.**
 10 **(8) The chairman of the parole board.**

11 **Sec. 3. The chairman of the legislative council shall appoint a**
 12 **legislative member of the committee to serve as chair of the**
 13 **committee. Whenever there is a new chairman of the legislative**
 14 **council, the new chairman may remove the chair of the committee**
 15 **and appoint another chair.**

16 **Sec. 4. If a legislative member of the committee ceases to be a**
 17 **member of the chamber from which the member was appointed,**
 18 **the member also ceases to be a member of the committee.**

19 **Sec. 5. A legislative member of the committee may be removed**
 20 **at any time by the appointing authority who appointed the**
 21 **legislative member.**

22 **Sec. 6. If a vacancy exists on the committee, the appointing**
 23 **authority who appointed the former member whose position is**
 24 **vacant shall appoint an individual to fill the vacancy.**

25 **Sec. 7. The committee shall submit a final report of the results**
 26 **of its study to the legislative council before November 1 of**
 27 **even-numbered years. The report must be in an electronic format**
 28 **under IC 5-14-6.**

29 **Sec. 8. The Indiana criminal justice institute shall provide staff**
 30 **support to the committee to prepare:**

- 31 **(1) minutes of each meeting; and**
 32 **(2) the final report.**

33 **Sec. 9. The legislative services agency shall provide staff support**
 34 **to the committee to:**

- 35 **(1) advise the committee on legal matters, criminal**
 36 **procedures, and legal research; and**
 37 **(2) draft potential legislation.**

38 **Sec. 10. Each member of the committee is entitled to receive the**
 39 **same per diem, mileage, and travel allowances paid to individuals**
 40 **who serve as legislative and lay members, respectively, of interim**
 41 **study committees established by the legislative council.**

42 **Sec. 11. The affirmative votes of a majority of the voting**
 43 **members appointed to the committee are required for the**
 44 **committee to take action on any measure, including the final**
 45 **report.**

46 **Sec. 12. Except as otherwise specifically provided by this**
 47 **chapter, the committee shall operate under the rules of the**
 48 **legislative council. All funds necessary to carry out this chapter**
 49 **shall be paid from appropriations to the legislative council and the**
 50 **legislative services agency.**

51 **Sec. 13. (a) The committee is established to evaluate criminal**

1 laws, sentencing laws, and policies as they relate to:

- 2 (1) the purposes of the criminal justice and corrections
3 systems;
4 (2) the availability of sentencing options; and
5 (3) the inmate population in department of correction
6 facilities.

7 If, based on the committee's evaluation under this subsection, the
8 committee determines that changes are necessary or appropriate,
9 the committee shall make recommendations to the general
10 assembly for the modification of sentencing laws and policies and
11 for the addition, deletion, or expansion of sentencing options.

12 (b) The committee shall do the following:

- 13 (1) Conduct a continuing study of the laws relating to:
14 (A) the investigation of crimes;
15 (B) the prosecution of crimes;
16 (C) criminal procedures;
17 (D) alternative sentencing programs;
18 (E) the department of correction;
19 (F) parole;
20 (G) probation;
21 (H) community corrections;
22 (I) home detention programs;
23 (J) criminal registries;
24 (K) victim rights;
25 (L) the classification of criminal offenses into felony and
26 misdemeanor categories;
27 (M) sex offenders; and
28 (N) juvenile offenders.
29 (2) Study federal requirements or incentives for states to pass
30 certain laws or establish specific programs.
31 (3) Determine the long range needs of the criminal justice and
32 corrections systems and recommend policy priorities for those
33 systems.
34 (4) Identify critical problems in the criminal justice and
35 corrections systems and recommend strategies to solve the
36 problems.
37 (5) Assess the cost effectiveness of the use of state and local
38 funds in the criminal justice and corrections systems.
39 (6) Propose plans, programs, and legislation for improving the
40 effectiveness of the criminal justice and corrections systems.

41 (c) The committee may study other topics assigned by the
42 legislative council or as directed by the committee chair. The
43 committee may meet as often as necessary.

44 SECTION 2. IC 9-24-15-4, AS AMENDED BY P.L.127-2008,
45 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
46 JULY 1, 2010]: Sec. 4. (a) A verified petition filed under section 2 of
47 this chapter must be filed in the circuit court or superior court of the
48 county in which the petitioner resides. However, if at the time the
49 petition is filed:

- 50 (1) the petitioner is a defendant in a pending case concerning the
51 commission of an offense described in IC 9-30-5;

1 (2) the petitioner is on probation after being convicted of
 2 committing an offense described in IC 9-30-5; ~~or~~

3 (3) the petitioner's driving privileges have been suspended under
 4 IC 35-48-4-15 after the petitioner was convicted of committing an
 5 offense described in IC 35-48-4-15(a); **or**

6 **(4) the petitioner's driving privileges have been suspended in**
 7 **accordance with IC 9-30-4-6(b)(3) following the petitioner's**
 8 **conviction in Indiana for a felony;**

9 the petition may be filed only in the circuit court or superior court in
 10 which the case is pending or the petitioner was convicted.

11 (b) The clerk of the court shall docket the verified petition in the
 12 name of the petitioner against the prosecuting attorney of the county.

13 (c) The prosecuting attorney shall appear in person or by deputy and
 14 be heard by the court on the petition.

15 (d) The bureau:

16 (1) serves as a recordkeeper; and

17 (2) is not a party;

18 in a proceeding under this chapter.

19 SECTION 3. IC 9-24-18-1 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) A person, except
 21 a person exempted under IC 9-24-1-7, who

22 ~~(1)~~ **knowingly or intentionally** operates a motor vehicle upon a
 23 highway and

24 ~~(2)~~ has never received a valid driving license

25 commits a Class C misdemeanor. **However, the offense is a Class A**
 26 **misdemeanor if the person has a prior unrelated conviction under**
 27 **this section.**

28 **(b) In addition to any other penalty imposed for a conviction**
 29 **under this section, the court shall recommend that the person be**
 30 **prohibited from receiving a valid driving license for a fixed period**
 31 **of at least ninety (90) days and not more than two (2) years.**

32 **(c) The court shall specify:**

33 **(1) the length of the fixed period of the prohibition; and**

34 **(2) the date the fixed period of the prohibition begins;**

35 **whenever the court makes a recommendation under subsection (b).**

36 **(d) The bureau shall, upon receiving a record of conviction of a**
 37 **person upon a charge of operating a motor vehicle while never**
 38 **having received a valid driving license, prohibit the person from**
 39 **receiving a driving license for a fixed period of at least ninety (90)**
 40 **days and not more than two (2) years. The bureau shall fix this**
 41 **period in accordance with the recommendation of the court that**
 42 **entered the conviction, as provided in subsection (c).**

43 ~~(b)~~ **(e)** In a prosecution under this section, the burden is on the
 44 defendant to prove by a preponderance of the evidence that the
 45 defendant had been issued a driving license or permit that was valid at
 46 the time of the alleged offense.

47 SECTION 4. IC 9-30-4-6 IS AMENDED TO READ AS FOLLOWS
 48 [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) Whenever the bureau
 49 suspends or revokes the current driver's license upon receiving a record
 50 of the conviction of a person for any offense under the motor vehicle
 51 laws not enumerated under subsection (b), the bureau may also suspend

1 any of the certificates of registration and license plates issued for any
 2 motor vehicle registered in the name of the person so convicted.
 3 However, the bureau may not suspend the evidence of registration,
 4 unless otherwise required by law, if the person has given or gives and
 5 maintains during the three (3) years following the date of suspension
 6 or revocation proof of financial responsibility in the future in the
 7 manner specified in this section.

8 (b) The bureau shall suspend or revoke without notice or hearing the
 9 current driver's license and all certificates of registration and license
 10 plates issued or registered in the name of a person who is convicted of
 11 any of the following:

12 (1) Manslaughter or reckless homicide resulting from the
 13 operation of a motor vehicle.

14 (2) Perjury or knowingly making a false affidavit to the
 15 department under this chapter or any other law requiring the
 16 registration of motor vehicles or regulating motor vehicle
 17 operation upon the highways.

18 (3) A felony under Indiana motor vehicle laws or felony in the
 19 commission of which a motor vehicle is used.

20 (4) Three (3) charges of criminal recklessness involving the use
 21 of a motor vehicle within the preceding twelve (12) months.

22 (5) Failure to stop and give information or assistance or failure to
 23 stop and disclose the person's identity at the scene of an accident
 24 that has resulted in death, personal injury, or property damage in
 25 excess of two hundred dollars (\$200).

26 (6) Possession, distribution, manufacture, cultivation, transfer,
 27 use, or sale of a controlled substance or counterfeit substance, or
 28 attempting or conspiring to possess, distribute, manufacture,
 29 cultivate, transfer, use, or sell a controlled substance or
 30 counterfeit substance.

31 (c) The license of a person shall also be suspended upon conviction
 32 in another jurisdiction for any offense described in subsections (b)(1),
 33 (b)(2), (b)(3), (b)(4), and (b)(5), except if property damage is less than
 34 two hundred dollars (\$200), the bureau may determine whether the
 35 driver's license and certificates of registration and license plates shall
 36 be suspended or revoked. The license of a person shall also be
 37 suspended upon conviction in another jurisdiction for any offense
 38 described in subsection (b)(6).

39 (d) A suspension or revocation remains in effect and a new or
 40 renewal license may not be issued to the person and a motor vehicle
 41 may not be registered in the name of the person as follows:

42 (1) Except as provided in subdivisions (2), ~~and~~ (3), **(4), and (5),**
 43 **and subject to section 6.5 of this chapter,** for six (6) months
 44 from the date of conviction or on the date on which the person is
 45 otherwise eligible for a license, whichever is later. Except as
 46 provided in IC 35-48-4-15, this includes a person convicted of a
 47 crime for which the person's license is suspended or revoked
 48 under subsection (b)(6).

49 (2) **Subject to section 6.5 of this chapter,** upon conviction of an
 50 offense described in subsection (b)(1), for a fixed period of not
 51 less than two (2) years and not more than five (5) years, to be

1 fixed by the bureau based upon recommendation of the court
 2 entering a conviction. A new or reinstated license may not be
 3 issued to the person unless that person, within the three (3) years
 4 following the expiration of the suspension or revocation, gives
 5 and maintains in force at all times during the effective period of
 6 a new or reinstated license proof of financial responsibility in the
 7 future in the manner specified in this chapter. However, the
 8 liability of the insurance carrier under a motor vehicle liability
 9 policy that is furnished for proof of financial responsibility in the
 10 future as set out in this chapter becomes absolute whenever loss
 11 or damage covered by the policy occurs, and the satisfaction by
 12 the insured of a final judgment for loss or damage is not a
 13 condition precedent to the right or obligation of the carrier to
 14 make payment on account of loss or damage, but the insurance
 15 carrier has the right to settle a claim covered by the policy. If the
 16 settlement is made in good faith, the amount shall be deductive
 17 from the limits of liability specified in the policy. A policy may
 18 not be canceled or annulled with respect to a loss or damage by an
 19 agreement between the carrier and the insured after the insured
 20 has become responsible for the loss or damage, and a cancellation
 21 or annulment is void. The policy may provide that the insured or
 22 any other person covered by the policy shall reimburse the
 23 insurance carrier for payment made on account of any loss or
 24 damage claim or suit involving a breach of the terms, provisions,
 25 or conditions of the policy. If the policy provides for limits in
 26 excess of the limits specified in this chapter, the insurance carrier
 27 may plead against any plaintiff, with respect to the amount of the
 28 excess limits of liability, any defenses that the carrier may be
 29 entitled to plead against the insured. The policy may further
 30 provide for prorating of the insurance with other applicable valid
 31 and collectible insurance. An action does not lie against the
 32 insurance carrier by or on behalf of any claimant under the policy
 33 until a final judgment has been obtained after actual trial by or on
 34 behalf of any claimant under the policy.

35 **(3) Subject to section 6.5 of this chapter, for the period ordered**
 36 **by a court under IC 35-48-4-15.**

37 **(4) Subject to section 6.5 of this chapter, if the person is**
 38 **convicted of a felony involving the use of a motor vehicle**
 39 **under IC 35-44-3-3(b) and the person:**

40 **(A) exceeded the speed limit by at least twenty (20) miles**
 41 **per hour;**

42 **(B) committed criminal recklessness with a vehicle**
 43 **(IC 35-42-2-2); or**

44 **(C) engaged in aggressive driving (as defined in**
 45 **IC 9-21-8-55(b);**

46 **while committing the felony, for one (1) year after the date the**
 47 **person was convicted. The convicted person has the burden of**
 48 **applying for a new or renewal license and establishing that**
 49 **the one (1) year period described in this subdivision and**
 50 **subject to section 6.5 of this chapter has elapsed.**

51 **(5) Subject to section 6.5 of this chapter, if the person is**

1 convicted of a felony involving the use of a motor vehicle
2 under IC 35-44-3-3(b), the person:

3 (A) exceeded the speed limit by at least twenty (20) miles
4 per hour;

5 (B) committed criminal recklessness with a vehicle
6 (IC 35-42-2-2); or

7 (C) engaged in aggressive driving (as defined in
8 IC 9-21-8-55(b);

9 while committing the felony, and the person has a prior
10 unrelated conviction for a felony under IC 35-44-3-3(b), for
11 two (2) years after the date the person was convicted. The
12 convicted person has the burden of applying for a new or
13 renewal license and establishing that the two (2) year period
14 described in this subdivision and subject to section 6.5 of this
15 chapter has elapsed.

16 (e) The bureau may take action as required in this section upon
17 receiving satisfactory evidence of a conviction of a person in another
18 state.

19 (f) For the purpose of this chapter, "conviction" includes any of the
20 following:

21 (1) A conviction upon a plea of guilty.

22 (2) A determination of guilt by a jury or court, even if:

23 (A) no sentence is imposed; or

24 (B) a sentence is suspended.

25 (3) A forfeiture of bail, bond, or collateral deposited to secure the
26 defendant's appearance for trial, unless the forfeiture is vacated.

27 (4) A payment of money as a penalty or as costs in accordance
28 with an agreement between a moving traffic violator and a traffic
29 violations bureau.

30 (g) A suspension or revocation under this section or under
31 IC 9-25-6-8 stands pending appeal of the conviction to a higher court
32 and may be set aside or modified only upon the receipt by the bureau
33 of the certificate of the court reversing or modifying the judgment that
34 the cause has been reversed or modified. However, if the suspension or
35 revocation follows a conviction in a court of no record in Indiana, the
36 suspension or revocation is stayed pending appeal of the conviction to
37 a court of record.

38 (h) A person aggrieved by an order or act of the bureau under this
39 section or IC 9-25-6-8 may file a petition for a court review.

40 SECTION 5. IC 9-30-4-6.5 IS ADDED TO THE INDIANA CODE
41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 2010]: **Sec. 6.5. If a person receives a sentence that includes:**

43 **(1) a term of incarceration; and**

44 **(2) a license suspension under this chapter;**

45 **the license suspension begins on the date the person is released**
46 **from incarceration and not on the date the person is convicted.**

47 SECTION 6. IC 35-44-3-3, AS AMENDED BY P.L.143-2006,
48 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
49 JULY 1, 2010]: Sec. 3. (a) A person who knowingly or intentionally:

50 (1) forcibly resists, obstructs, or interferes with a law enforcement
51 officer or a person assisting the officer while the officer is

1 lawfully engaged in the execution of the officer's duties;
 2 (2) forcibly resists, obstructs, or interferes with the authorized
 3 service or execution of a civil or criminal process or order of a
 4 court; or
 5 (3) flees from a law enforcement officer after the officer has, by
 6 visible or audible means, including operation of the law
 7 enforcement officer's siren or emergency lights, identified himself
 8 or herself and ordered the person to stop;
 9 commits resisting law enforcement, a Class A misdemeanor, except as
 10 provided in subsection (b).

11 (b) The offense under subsection (a) is a:

- 12 (1) Class D felony if:
 13 (A) the offense is described in subsection (a)(3) and the person
 14 uses a vehicle to commit the offense; or
 15 (B) while committing any offense described in subsection (a),
 16 the person draws or uses a deadly weapon, inflicts bodily
 17 injury on or otherwise causes bodily injury to another person,
 18 or operates a vehicle in a manner that creates a substantial risk
 19 of bodily injury to another person;
 20 (2) Class C felony if, while committing any offense described in
 21 subsection (a), the person operates a vehicle in a manner that
 22 causes serious bodily injury to another person; and
 23 (3) Class B felony if, while committing any offense described in
 24 subsection (a), the person operates a vehicle in a manner that
 25 causes the death of another person.

26 (c) For purposes of this section, a law enforcement officer includes
 27 an enforcement officer of the alcohol and tobacco commission and a
 28 conservation officer of the department of natural resources.

29 (d) If a person uses a vehicle to commit a felony offense under
 30 subsection (b)(1)(B), (b)(2), or (b)(3), as part of the criminal penalty
 31 imposed for the offense, the court shall impose a minimum executed
 32 sentence of at least:

- 33 (1) thirty (30) days, if the person does not have a prior unrelated
 34 conviction under this section;
 35 (2) one hundred eighty (180) days, if the person has one (1) prior
 36 unrelated conviction under this section; or
 37 (3) one (1) year, if the person has two (2) or more prior unrelated
 38 convictions under this section.

39 (e) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, the mandatory
 40 minimum sentence imposed under subsection (d) may not be
 41 suspended.

42 **(f) If a person is convicted of an offense involving the use of a**
 43 **motor vehicle under:**

- 44 **(1) subsection (b)(1)(A), if the person exceeded the speed limit**
 45 **by at least twenty (20) miles per hour while committing the**
 46 **offense;**
 47 **(2) subsection (b)(2); or**
 48 **(3) subsection (b)(3);**

49 **the court may notify the bureau of motor vehicles to suspend or**
 50 **revoke the person's driver's license and all certificates of**
 51 **registration and license plates issued or registered in the person's**

1 **name in accordance with IC 9-30-4-6(b)(3) for the period described**
2 **in IC 9-30-4-6(d)(4) or IC 9-30-4-6(d)(5). The court shall inform**
3 **the bureau whether the person has been sentenced to a term of**
4 **incarceration. At the time of conviction, the court may obtain the**
5 **person's current driver's license and return the license to the**
6 **bureau of motor vehicles.**

7 SECTION 7. THE FOLLOWING ARE REPEALED [EFFECTIVE
8 UPON PASSAGE]: IC 2-5.5-2; P.L.128-2009, SECTION 3.

9 SECTION 8. [EFFECTIVE JULY 1, 2010] **(a) In the 2010 interim,**
10 **the criminal law and sentencing policy study committee, as**
11 **established by IC 2-5.5-5, as added by this act, shall study and**
12 **make recommendations regarding:**

13 **(1) whether individuals on parole should be eligible to receive**
14 **credit time to potentially shorten their period of parole; and**

15 **(2) the sending of sexually suggestive or sexually explicit**
16 **material over the Internet or by use of a cellular telephone or**
17 **similar device by minors, including whether school**
18 **corporations should adopt policies regarding this topic.**

19 **(b) This SECTION expires January 1, 2011.**

20 SECTION 9. **An emergency is declared for this act.**

(Reference is to ESB 81 as reprinted February 23, 2010.)

Conference Committee Report
on
Engrossed Senate Bill 81

Signed by:

Senator Steele
Chairperson

Representative Pierce

Senator Arnold

Representative Clements

Senate Conferees

House Conferees