



March 22, 2013

**ENGROSSED  
HOUSE BILL No. 1108**

DIGEST OF HB 1108 (Updated March 19, 2013 1:47 pm - DI 106)

**Citations Affected:** IC 31-30; IC 35-50.

**Synopsis:** Sentencing alternatives for youthful offenders. Establishes sentencing alternatives for courts with criminal jurisdiction for: (1) offenders who are less than 18 years of age who have been waived from a juvenile court to a court with criminal jurisdiction and who are charged as adult offenders; and (2) offenders who are less than 18 years of age who do not come under the jurisdiction of a juvenile court because the offenders are charged with certain criminal offenses. Provides that if such an offender is convicted of committing a felony or pleads guilty to committing a felony, a criminal court may: (1) impose an appropriate criminal sentence on the offender; (2) suspend the criminal sentence imposed; (3) order the offender to be placed into the custody of the department of correction to be placed in a juvenile facility of the division of youth services, if the department agrees to the placement; and (4) provide that the successful completion of the  
(Continued next page)

**Effective:** July 1, 2013.

**McNamara, Pierce, Steuerwald,  
McMillin, Lawson L**

(SENATE SPONSORS — YOUNG R MICHAEL, STEELE, TAYLOR,  
RANDOLPH)

January 8, 2013, read first time and referred to Committee on Courts and Criminal Code.  
February 7, 2013, amended, reported — Do Pass.  
February 11, 2013, read second time, ordered engrossed.  
February 12, 2013, engrossed. Read third time; passed. Yeas 88, nays 9.

SENATE ACTION

February 25, 2013, read first time and referred to Committee on Corrections and Criminal Law.  
March 21, 2013, amended, reported favorably — Do Pass.

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placement of the offender in the juvenile facility is a condition of the suspended criminal sentence. Provides that when an offender becomes 18 years of age, the sentencing court must hold a review hearing concerning the offender before the offender becomes 19 years of age. Allows the sentencing court, after the review hearing, to: (1) continue the offender's placement in a juvenile facility until the objectives of the sentence imposed on the offender have been met, if the sentencing court finds that the objectives of the sentence imposed on the offender have not been met; (2) discharge the offender if the sentencing court finds that the objectives of the sentence imposed on the offender have been met; (3) order execution of all or part of the offender's suspended criminal sentence in an adult facility of the department of correction; or (4) place the offender in home detention, in a community corrections program, on probation, or in any other appropriate alternative sentencing program. Prohibits a court from modifying the sentences of certain serious offenders following a review hearing if the prosecuting attorney objects.

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March 22, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1108

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 31-30-4 IS ADDED TO THE INDIANA CODE AS  
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2013]:

4 **Chapter 4. Sentencing Alternatives for Certain Offenders Under**  
5 **Criminal Court Jurisdiction**

6 **Sec. 1. This chapter applies to the following:**

7 **(1) An offender who:**

8 **(A) is less than eighteen (18) years of age;**

9 **(B) has been waived to a court with criminal jurisdiction**  
10 **under IC 31-30-3; and**

11 **(C) is charged as an adult offender.**

12 **(2) An offender who:**

13 **(A) is less than eighteen (18) years of age; and**

14 **(B) does not come under the jurisdiction of a juvenile court**  
15 **because the offender is charged with an offense listed in**  
16 **IC 31-30-1-4.**

17 **Sec. 2. (a) Subject to subsection (c), if**

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- 1 (1) an offender is:  
 2 (A) less than eighteen (18) years of age;  
 3 (B) waived to a court with criminal jurisdiction under  
 4 IC 31-30-3 because the offender committed an act that  
 5 would be a felony if committed by an adult; and  
 6 (C) convicted of committing the felony or enters a plea of  
 7 guilty to committing the felony; or  
 8 (2) an offender is:  
 9 (A) less than eighteen (18) years of age;  
 10 (B) charged with a felony over which a juvenile court does  
 11 not have jurisdiction under IC 31-30-1-4; and  
 12 (C) convicted of committing the felony by a court with  
 13 criminal jurisdiction or enters a plea of guilty to  
 14 committing the felony with the court;  
 15 the court may, upon its own motion, a motion of the prosecuting  
 16 attorney, or a motion of the offender's legal representative, impose  
 17 a sentence upon the conviction of the offender under this chapter.  
 18 (b) If a court elects to impose a sentence upon conviction of an  
 19 offender under subsection (a) and, before the offender is sentenced,  
 20 the department of correction determines that there is space  
 21 available for the offender in a juvenile facility of the division of  
 22 youth services of the department, the sentencing court may:  
 23 (1) impose an appropriate criminal sentence on the offender  
 24 under IC 35-50-2;  
 25 (2) suspend the criminal sentence imposed, notwithstanding  
 26 IC 35-50-2-2 and IC 35-50-2-2.1;  
 27 (3) order the offender to be placed into the custody of the  
 28 department of correction to be placed in the juvenile facility  
 29 of the division of youth services; and  
 30 (4) provide that the successful completion of the placement of  
 31 the offender in the juvenile facility is a condition of the  
 32 suspended criminal sentence.  
 33 (c) The court may not impose a sentence on an offender under  
 34 subsection (a) until:  
 35 (1) the prosecuting attorney has notified the victim of the  
 36 felony of the possible imposition of a sentence on the offender  
 37 under this chapter; and  
 38 (2) either:  
 39 (A) the probation department of the court has conducted  
 40 a presentence investigation concerning the offender and  
 41 reported its findings to the court; or  
 42 (B) the department of correction has conducted a

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- 1 diagnostic evaluation of the offender and reported its  
2 findings to the court.
- 3 **Sec. 3. (a) If there is probable cause to believe that an offender**  
4 **described under section 2(b) of this chapter has:**
- 5 (1) violated a condition of the offender's suspended criminal  
6 sentence; or  
7 (2) committed a new offense;
- 8 **the court shall conduct a review hearing to determine if the**  
9 **offender has committed the violation or the new offense unless the**  
10 **offender waives the hearing.**
- 11 (b) **If the court finds by a preponderance of the evidence after**  
12 **a review hearing conducted under subsection (a) that the offender**  
13 **has violated a condition of the offender's suspended criminal**  
14 **sentence or committed a new offense or if the offender waives the**  
15 **hearing, the court may:**
- 16 (1) continue the offender's placement in the juvenile facility  
17 under section 2(b) of this chapter;  
18 (2) order execution of all or part of the offender's previously  
19 suspended criminal sentence in an adult facility recommended  
20 by the department of correction; or  
21 (3) make any other modifications to the sentence imposed on  
22 the offender under section 2(b) of this chapter the court  
23 considers appropriate.
- 24 **Sec. 4. (a) The department of correction may reclassify an**  
25 **offender placed in a juvenile facility under section 2(b) of this**  
26 **chapter and transfer the offender to an appropriate adult facility**  
27 **if the department determines that placement of the offender in any**  
28 **juvenile facility of the division of youth services is no longer**  
29 **appropriate.**
- 30 (b) **If the department of correction reclassifies and transfers an**  
31 **offender under this section:**
- 32 (1) the department shall notify the sentencing court of the  
33 circumstances of the reclassification and transfer; and  
34 (2) the sentencing court:  
35 (A) shall hold a review hearing concerning the  
36 reclassification and transfer of the offender; and  
37 (B) after the hearing is conducted under clause (A), may  
38 order execution of all or part of the offender's suspended  
39 criminal sentence in an adult facility of the department of  
40 correction.
- 41 **Sec. 5. (a) At the request of a sentencing court, the department**  
42 **of correction shall provide a progress report to the sentencing**

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1 court concerning an offender sentenced and placed in a juvenile  
 2 facility under section 2(b) of this chapter. When the offender  
 3 becomes eighteen (18) years of age:

- 4 (1) the department shall notify the sentencing court; and  
 5 (2) the sentencing court shall hold a review hearing  
 6 concerning the offender before the offender becomes nineteen  
 7 (19) years of age.

8 (b) Except as provided in subsection (c), after a hearing  
 9 conducted under subsection (a), the sentencing court may:

- 10 (1) continue the offender's placement in a juvenile facility  
 11 until the objectives of the sentence imposed on the offender  
 12 have been met, if the sentencing court finds that the objectives  
 13 of the sentence imposed on the offender have not been met;  
 14 (2) discharge the offender if the sentencing court finds that  
 15 the objectives of the sentence imposed on the offender have  
 16 been met;  
 17 (3) order execution of all or part of the offender's suspended  
 18 criminal sentence in an adult facility of the department of  
 19 correction; or  
 20 (4) place the offender:  
 21 (A) in home detention under IC 35-38-2.5;  
 22 (B) in a community corrections program under  
 23 IC 35-38-2.6;  
 24 (C) on probation under IC 35-50-7; or  
 25 (D) in any other appropriate alternative sentencing  
 26 program.

27 (c) This subsection applies to an offender convicted of one (1) or  
 28 more of the following offenses:

- 29 (1) Murder (IC 35-42-1-1).  
 30 (2) Attempted murder (IC 35-41-5-1).  
 31 (3) Kidnapping (IC 35-42-3-2).  
 32 (4) Rape as a Class A felony (IC 35-42-4-1(b)).  
 33 (5) Criminal deviate conduct as a Class A felony  
 34 (IC 35-42-4-2(b)).  
 35 (6) Robbery as a Class A felony (IC 35-42-5-1), if:  
 36 (A) the offense was committed while armed with a deadly  
 37 weapon; and  
 38 (B) the offense resulted in bodily injury to any person  
 39 other than a defendant.

40 The court may not modify the original sentence of an offender to  
 41 whom this subsection applies if the prosecuting attorney objects in  
 42 writing to the modification. The prosecuting attorney shall set



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1       forth in writing the prosecuting attorney's reasons for objecting to  
2       the sentence modification.

3       **Sec. 6. (a) At any time before an offender placed in a juvenile**  
4       **facility under section 2(b) of this chapter becomes twenty-one (21)**  
5       **years of age, the department of correction may transfer the**  
6       **offender to an adult facility if the department of correction believes**  
7       **the offender is a safety or security risk to:**

- 8               **(1) the other offenders or the staff at the juvenile facility; or**
- 9               **(2) the public.**

10       **(b) If the department of correction transfers an offender to an**  
11       **adult facility under this section, the department shall notify the**  
12       **sentencing court of the circumstances of the transfer.**

13       **Sec. 7. If the suspension of a criminal sentence is revoked under**  
14       **this chapter, all time served by an offender in a juvenile facility of**  
15       **the division of youth services of the department of correction shall**  
16       **be credited toward any criminal sentence imposed on the offender**  
17       **under this chapter.**

18       SECTION 2. IC 35-50-2-17 IS ADDED TO THE INDIANA CODE  
19       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
20       1, 2013]: **Sec. 17. Notwithstanding any other provision of this**  
21       **chapter, if:**

- 22               **(1) an offender is:**
  - 23                       **(A) less than eighteen (18) years of age;**
  - 24                       **(B) waived to a court with criminal jurisdiction under**  
25                       **IC 31-30-3 because the offender committed an act that**  
26                       **would be a felony if committed by an adult; and**
  - 27                       **(C) convicted of committing the felony or enters a plea of**  
28                       **guilty to committing the felony; or**
- 29               **(2) an offender is:**
  - 30                       **(A) less than eighteen (18) years of age;**
  - 31                       **(B) charged with a felony over which a juvenile court does**  
32                       **not have jurisdiction under IC 31-30-1-4; and**
  - 33                       **(C) convicted of committing the felony by a court with**  
34                       **criminal jurisdiction or enters a plea of guilty to**  
35                       **committing the felony with the court;**

36       **the court may impose a sentence upon the conviction of the**  
37       **offender under IC 31-30-4 concerning sentencing alternatives for**  
38       **certain offenders under criminal court jurisdiction.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1108, 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 1, line 17, delete "If:" and insert "**Subject to subsection (c), if**".

Page 2, delete lines 18 through 23.

Page 2, line 28, delete "and the department agrees to" and insert ",".

Page 2, line 29, delete "place the offender in the juvenile facility,".

Page 2, between lines 39 and 40, begin a new paragraph and insert:

**"(c) The court may not impose a sentence on an offender under subsection (a) until:**

**(1) the prosecuting attorney has notified the victim of the felony of the possible imposition of a sentence on the offender under this chapter; and**

**(2) either:**

**(A) the probation department of the court has conducted a presentence investigation concerning the offender and reported its findings to the court; or**

**(B) the department of correction has conducted a diagnostic evaluation of the offender and reported its findings to the court."**

Page 3, delete lines 25 through 28, begin a new paragraph and insert:

**"(b) If the department of correction reclassifies and transfers an offender under this section:**

**(1) the department shall notify the sentencing court of the circumstances of the reclassification and transfer; and**

**(2) the sentencing court:**

**(A) shall hold a review hearing concerning the reclassification and transfer of the offender; and**

**(B) after the hearing is conducted under clause (A), may order execution of all or part of the offender's suspended criminal sentence in an adult facility of the department of correction."**

Page 3, line 40, after "(1)" insert "**continue the offender's placement in a juvenile facility until the objectives of the sentence imposed on the offender have been met, if the sentencing court finds that the objectives of the sentence imposed on the offender have not been met;**

**(2)".**

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Page 4, line 1, delete "(2)" and insert "(3)".

Page 4, line 4, delete "(3)" and insert "(4)".

Page 4, after line 25, begin a new paragraph and insert:

"SECTION 2. IC 35-50-2-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 17. Notwithstanding any other provision of this chapter, if:**

**(1) an offender is:**

**(A) less than eighteen (18) years of age;**

**(B) waived to a court with criminal jurisdiction under IC 31-30-3 because the offender committed an act that would be a felony if committed by an adult; and**

**(C) convicted of committing the felony or enters a plea of guilty to committing the felony; or**

**(2) an offender is:**

**(A) less than eighteen (18) years of age;**

**(B) charged with a felony over which a juvenile court does not have jurisdiction under IC 31-30-1-4; and**

**(C) convicted of committing the felony by a court with criminal jurisdiction or enters a plea of guilty to committing the felony with the court;**

**the court may impose a sentence upon the conviction of the offender under IC 31-30-4 concerning sentencing alternatives for certain offenders under criminal court jurisdiction."**

and when so amended that said bill do pass.

(Reference is to HB 1108 as introduced.)

MCMILLIN, Chair

Committee Vote: yeas 10, nays 2.

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1108, 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 3, line 27, delete "the offender is no longer amenable to" and insert "**that placement of the offender in any juvenile facility of the division of youth services is no longer appropriate.**"

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Page 3, delete lines 28 through 29.

Page 4, line 8, delete "After" and insert **"Except as provided in subsection (c), after"**.

Page 4, between lines 26 and 27, begin a new paragraph and insert:

**"(c) This subsection applies to an offender convicted of one (1) or more of the following offenses:**

- (1) Murder (IC 35-42-1-1).**
- (2) Attempted murder (IC 35-41-5-1).**
- (3) Kidnapping (IC 35-42-3-2).**
- (4) Rape as a Class A felony (IC 35-42-4-1(b)).**
- (5) Criminal deviate conduct as a Class A felony (IC 35-42-4-2(b)).**
- (6) Robbery as a Class A felony (IC 35-42-5-1), if:**
  - (A) the offense was committed while armed with a deadly weapon; and**
  - (B) the offense resulted in bodily injury to any person other than a defendant.**

**The court may not modify the original sentence of an offender to whom this subsection applies if the prosecuting attorney objects in writing to the modification. The prosecuting attorney shall set forth in writing the prosecuting attorney's reasons for objecting to the sentence modification."**

and when so amended that said bill do pass.

(Reference is to HB 1108 as printed February 8, 2013.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 7, Nays 0.

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