March 8, 2013

ENGROSSED
HOUSE BILL No. 1256

DIGEST OF HB 1256 (Updated March 5, 2013 12:25 pm - DI 106)

Citations Affected: IC 35-44.1.

Synopsis: Unlawful possession of items in penal facilities. Requires a court to impose a fine of at least $500 but not more than $5,000 on a person who is: (1) an employee of the department of correction or a penal facility; and (2) convicted of committing trafficking with an inmate as a Class A misdemeanor; if the article involved was a cigarette or tobacco product. Requires a court to impose a fine of at least $500 but not more than $10,000 on a person who is convicted of committing trafficking with an inmate involving a cellular telephone or other wireless or cellular communications device as a Class C felony. Makes it a Class D felony for a person who is not: (1) an inmate of a penal facility; or (2) a child of a juvenile facility; to knowingly or intentionally possess in, or carry or cause to be brought into, the penal facility or juvenile facility a deadly weapon without the prior authorization of the person in charge of the penal facility or juvenile facility. Makes it a Class A misdemeanor for a person to knowingly or intentionally possess a cellular telephone or other wireless or cellular communications device while incarcerated in any penal facility.

Effective: Upon passage.

Dermody, Lawson L

(SENATE SPONSORS — STEELE, ARNOLD J, RANDOLPH)

January 14, 2013, read first time and referred to Committee on Courts and Criminal Code.
January 31, 2013, amended, reported — Do Pass.
February 4, 2013, read second time, ordered engrossed.
February 5, 2013, engrossed. Read third time, passed. Yeas 99, nays 0.

SENATE ACTION

February 25, 2013, read first time and referred to Committee on Corrections and Criminal Law.
March 7, 2013, reported favorably — Do Pass.

C o p y

March 8, 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.

C o p y

ENGROSSED
HOUSE BILL No. 1256

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

SECTION 1. IC 35-44.1-3-5, AS ADDED BY P.L.126-2012, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As used in this section, "juvenile facility" means the following:

(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) Except as provided in subsection (d), a person who, without the prior authorization of the person in charge of a penal facility or juvenile facility knowingly or intentionally:

(1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the

facility;

(2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility; **or**

(3) delivers, or carries to a worksite with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew; ~~or~~

~~(4) possesses in or carries into a penal facility or a juvenile facility:~~

~~(A) a controlled substance; or~~

~~(B) a deadly weapon;~~

commits trafficking with an inmate, a Class A misdemeanor. **However, the offense is a Class C felony under subdivision (1) or (2) if the article is a controlled substance, a deadly weapon, or a cellular telephone or other wireless or cellular communications device.**

(c) If:

(1) the person who committed the offense under subsection (b) is an employee of:

~~(1)~~ **(A)** the department of correction; or

~~(2)~~ **(B)** a penal facility;

and the article is a cigarette or tobacco product (as defined in IC 6-7-2-5), the court shall ~~impose a mandatory~~ **order the person to pay a fine of at least five hundred dollars ($500) and not more than** five thousand ~~dollar~~ **dollars** ($5,000) ~~fine~~ under IC 35-50-3-2 in addition to any term of imprisonment imposed under IC 35-50-3-2; **or**

(2) a person is convicted of committing a Class C felony under subsection (b)(1) or (b)(2) because the article was a cellular telephone or other wireless or cellular communication device, the court shall order the person to pay a fine of at least five hundred dollars ($500) and not more than ten thousand dollars ($10,000) under IC 35-50-2-6(a) in addition to any term of imprisonment imposed on the person under IC 35-50-2-6(a).

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

~~(1) a controlled substance;~~

~~(2)~~ **A person who:**

(1) is not an inmate of a penal facility or a child of a juvenile facility; and

(2) knowingly or intentionally possesses in, or carries or causes to be brought into, the penal facility or juvenile facility

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a deadly weapon ~~or~~

~~(3) a cellular telephone or other wireless or cellular communications device.~~ **without the prior authorization of the person in charge of the penal facility or juvenile facility;**

commits a Class D felony.

SECTION 2. IC 35-44.1-3-8, AS ADDED BY P.L.126-2012, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. A person who knowingly or intentionally possesses a cellular telephone or other wireless or cellular communications device while incarcerated in a ~~county jail~~ **penal facility** commits a Class A misdemeanor.

SECTION 3. **An emergency is declared for this act.**

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1256, 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, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 35-44.1-3-5, AS ADDED BY P.L.126-2012, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As used in this section, "juvenile facility" means the following:

(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) Except as provided in subsection (d), a person who, without the prior authorization of the person in charge of a penal facility or juvenile facility knowingly or intentionally:

(1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility;

(2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility; **or**

(3) delivers, or carries to a worksite with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew; ~~or~~

~~(4) possesses in or carries into a penal facility or a juvenile facility:~~

~~(A) a controlled substance; or~~

~~(B) a deadly weapon;~~

commits trafficking with an inmate, a Class A misdemeanor. **However, the offense is a Class C felony under subdivision (1) or (2) if the article is a controlled substance, a deadly weapon, or a cellular telephone or other wireless or cellular communications device.**

(c) If:

(1) the person who committed the offense under subsection (b) is an employee of:

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~~(1)~~ **(A)** the department of correction; or

~~(2)~~ **(B)** a penal facility;

and the article is a cigarette or tobacco product (as defined in IC 6-7-2-5), the court shall ~~impose a mandatory~~ **order the person to pay a fine of at least five hundred dollars ($500) and not more than** five thousand ~~dollar~~ **dollars** ($5,000) ~~fine~~ under IC 35-50-3-2 in addition to any term of imprisonment imposed under IC 35-50-3-2; **or**

(2) a person is convicted of committing a Class C felony under subsection (b)(1) or (b)(2) because the article was a cellular telephone or other wireless or cellular communication device, the court shall order the person to pay a fine of at least five hundred dollars ($500) and not more than ten thousand dollars ($10,000) under IC 35-50-2-6(a) in addition to any term of imprisonment imposed on the person under IC 35-50-2-6(a).

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

~~(1) a controlled substance;~~

~~(2)~~ **A person who:**

(1) is not an inmate of a penal facility or a child of a juvenile facility; and

(2) knowingly or intentionally possesses in, or carries or causes to be brought into, the penal facility or juvenile facility a deadly weapon ~~or~~

~~(3) a cellular telephone or other wireless or cellular communications device.~~ **without the prior authorization of the person in charge of the penal facility or juvenile facility;**

commits a Class D felony.".

Page 2, delete lines 1 through 30.

Page 2, line 33, delete "JULY 1, 2013]:" and insert "UPON PASSAGE]:".

Page 2, after line 36, begin a new paragraph and insert:

"SECTION 3. **An emergency is declared for this act.**".

and when so amended that said bill do pass.

(Reference is to HB 1256 as introduced.)

MCMILLIN, Chair

Committee Vote: yeas 11, nays 0.

C o p y

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1256, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1256 as printed February 1, 2013.)

GLICK, Acting Chairperson

Committee Vote: Yeas 9, Nays 0.

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