



February 8, 2013

HOUSE BILL No. 1108

DIGEST OF HB 1108 (Updated February 6, 2013 6:23 pm - DI 69)

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 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 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.

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Effective: July 1, 2013.

**McNamara, Pierce, Steuerwald,
McMillin**

January 8, 2013, read first time and referred to Committee on Courts and Criminal Code.
February 7, 2013, amended, reported — Do Pass.

HB 1108—LS 6483/DI 69+



February 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.

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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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diagnostic evaluation of the offender and reported its findings to the court.

Sec. 3. (a) If there is probable cause to believe that an offender described under section 2(b) of this chapter has:

- (1) violated a condition of the offender's suspended criminal sentence; or**
- (2) committed a new offense;**

the court shall conduct a review hearing to determine if the offender has committed the violation or the new offense unless the offender waives the hearing.

(b) If the court finds by a preponderance of the evidence after a review hearing conducted under subsection (a) that the offender has violated a condition of the offender's suspended criminal sentence or committed a new offense or if the offender waives the hearing, the court may:

- (1) continue the offender's placement in the juvenile facility under section 2(b) of this chapter;**
- (2) order execution of all or part of the offender's previously suspended criminal sentence in an adult facility recommended by the department of correction; or**
- (3) make any other modifications to the sentence imposed on the offender under section 2(b) of this chapter the court considers appropriate.**

Sec. 4. (a) The department of correction may reclassify an offender placed in a juvenile facility under section 2(b) of this chapter and transfer the offender to an appropriate adult facility if the department determines the offender is no longer amenable to treatment within any juvenile facility of the division of youth services.

(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.**

Sec. 5. (a) At the request of a sentencing court, the department 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) After a hearing conducted under subsection (a), the
9 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 Sec. 6. (a) At any time before an offender placed in a juvenile
28 facility under section 2(b) of this chapter becomes twenty-one (21)
29 years of age, the department of correction may transfer the
30 offender to an adult facility if the department of correction believes
31 the offender is a safety or security risk to:

- 32 (1) the other offenders or the staff at the juvenile facility; or
- 33 (2) the public.

34 (b) If the department of correction transfers an offender to an
35 adult facility under this section, the department shall notify the
36 sentencing court of the circumstances of the transfer.

37 Sec. 7. If the suspension of a criminal sentence is revoked under
38 this chapter, all time served by an offender in a juvenile facility of
39 the division of youth services of the department of correction shall
40 be credited toward any criminal sentence imposed on the offender
41 under this chapter.

42 SECTION 2. IC 35-50-2-17 IS ADDED TO THE INDIANA CODE

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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 2 1, 2013]: **Sec. 17. Notwithstanding any other provision of this**
 3 **chapter, if:**
 4 (1) **an offender is:**
 5 (A) **less than eighteen (18) years of age;**
 6 (B) **waived to a court with criminal jurisdiction under**
 7 **IC 31-30-3 because the offender committed an act that**
 8 **would be a felony if committed by an adult; and**
 9 (C) **convicted of committing the felony or enters a plea of**
 10 **guilty to committing the felony; or**
 11 (2) **an offender is:**
 12 (A) **less than eighteen (18) years of age;**
 13 (B) **charged with a felony over which a juvenile court does**
 14 **not have jurisdiction under IC 31-30-1-4; and**
 15 (C) **convicted of committing the felony by a court with**
 16 **criminal jurisdiction or enters a plea of guilty to**
 17 **committing the felony with the court;**
 18 **the court may impose a sentence upon the conviction of the**
 19 **offender under IC 31-30-4 concerning sentencing alternatives for**
 20 **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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