Adopted	Rejected

COMMITTEE REPORT

YES: 13
NO: 0

MR. SPEAKER:

Your Committee on **Courts and Criminal Code**, to which was referred House Bill 1006, 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 36, line 4, after "that" insert "**knowingly**".
Page 61, line 15, after "who" insert "**knowingly**".
Page 81, line 18, delete ", with the consent of the community".
Page 81, line 19, delete "corrections advisory board,".
Page 81, line 23, delete "shall establish" and insert "**that establishes**".
Page 81, line 23, delete "operate" and insert "**operates**".
Page 81, line 24, delete "in" and insert "**shall perform the duties imposed by**".
Page 81, line 25, delete "accordance with".
Page 116, line 22, strike "deviate" and insert "**other**".
Page 116, line 22, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".
Page 116, line 25, strike "deviate" and insert "**other**".
Page 116, line 25, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 140, after line 42, begin a new paragraph and insert:

"SECTION 275. IC 25-1-9-3.5, AS AMENDED BY P.L.114-2012, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3.5. As used in this chapter, "sexual contact" means:

(1) sexual intercourse (as defined in IC 35-31.5-2-302);

(2) ~~deviate~~ **other** sexual conduct (as defined in ~~IC 35-31.5-2-94);~~ **IC 35-31.5-2-221.5);** or

(3) any fondling or touching intended to arouse or satisfy the sexual desires of either the individual performing the fondling or touching or the individual being fondled or touched.".

Page 183, between lines 38 and 39, begin a new paragraph and insert:

"SECTION 330. IC 32-30-7-1, AS AMENDED BY P.L.114-2012, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. As used in this chapter, "indecent nuisance" means a:

(1) place in or upon which prostitution (as described in IC 35-45-4);

(2) public place in or upon which ~~deviate~~ **other** sexual conduct (as defined in ~~IC 35-31.5-2-94)~~ **IC 35-31.5-2-221.5)** or sexual intercourse (as defined in IC 35-31.5-2-302); or

(3) public place in or upon which the fondling of the genitals of a person;

is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose.".

Page 198, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 362. IC 35-31.5-2-94 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 94. "Deviate sexual conduct" means an act involving:~~

~~(1) a sex organ of one (1) person and the mouth or anus of another person; or~~

~~(2) the penetration of the sex organ or anus of a person by an object.~~".

Page 199, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 373. IC 35-31.5-2-221.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 221.5. "Other sexual conduct" means an act involving:**

(1) a sex organ of one (1) person and the mouth or anus of another person; or

(2) the penetration of the sex organ or anus of a person by an object.".

Page 208, between lines 39 and 40, begin a new paragraph and insert:

"SECTION 389. IC 35-38-1-17, AS AMENDED BY P.L.114-2012, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 17. (a) ~~Within three hundred sixty-five (365) days~~ **At any time** after:

(1) a convicted person begins serving the person's sentence;

(2) a hearing is held:

(A) at which the convicted person is present; and

(B) of which the prosecuting attorney has been notified; and

(3) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned;

the court may reduce or suspend the sentence **and impose a sentence that the court was authorized to impose at the time of sentencing.** The court must incorporate its reasons in the record.

~~(b) If more than three hundred sixty-five (365) days have elapsed since the convicted person began serving the sentence and after a hearing at which the convicted person is present, the court may reduce or suspend the sentence, subject to the approval of the prosecuting attorney. However, if in a sentencing hearing for a convicted person conducted after June 30, 2001, the court could have placed the convicted person in a community corrections program as an alternative to commitment to the department of correction, the court may modify the convicted person's sentence under this section without the approval of the prosecuting attorney to place the convicted person in a community corrections program under IC 35-38-2.6.~~

~~(c)~~ **(b)** The court must give notice of the order to reduce or suspend the sentence under this section to the **prosecuting attorney and the** victim (as defined in IC 35-31.5-2-348) of the crime for which the convicted person is serving the sentence.

~~(d)~~ **(c)** The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.

~~(e)~~ **(d)** The court may deny a request to suspend or reduce a sentence under this section without making written findings and conclusions.

~~(f)~~ **(e)** ~~Notwithstanding subsections (a) and (b),~~ The court is not required to conduct a hearing before reducing or suspending a sentence if:

(1) the prosecuting attorney has filed with the court an agreement of the reduction or suspension of the sentence; and

(2) the convicted person has filed with the court a waiver of the right to be present when the order to reduce or suspend the sentence is considered.".

Page 210, delete lines 35 through 41.

Page 211, delete lines 1 through 13.

Page 213, between lines 13 and 14, begin a new paragraph and insert:

"SECTION 397. IC 35-38-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. As used in this chapter:

"Earliest possible release date" means the date, computed as of the date of sentencing, on which a person would be entitled to discharge or release on parole considering:

(1) the term of the sentence;

(2) the term of any other concurrent or consecutive sentence that the person must serve;

(3) credit time that the person has earned before sentencing; and

(4) the maximum amount of credit time that the person would earn if ~~he~~ **the person** remained in a ~~Class I~~ **Class A** credit time assignment during ~~his~~ **the person's** period of commitment.

"Rated capacity" means the number of inmates that can be housed at the facility as determined by the most recent jail inspection report.

"Receiving authority" means:

(1) the department of correction;

(2) a sheriff, if incarceration is authorized in a county jail; or

(3) a facility or place designated by the department of correction.".

Page 218, line 27, delete "Level 2" and insert "**Level 1**".

Page 239, line 22, delete "deviate" and insert "**other**".

Page 239, line 22, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 239, line 26, delete "deviate" and insert "**other**".

Page 239, line 26, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 239, line 28, delete "deviate" and insert "**other**".

Page 239, line 28, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 240, line 23, after "age," insert "**knowingly or intentionally**".

Page 240, line 23, strike "deviate" and insert "**other**".

Page 240, line 24, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 241, line 25, strike "deviate" and insert "**other**".

Page 241, line 26, delete "," and insert "**(as defined in IC 35-31.5-2-221.5),**".

Page 241, line 28, strike "deviate" and insert "**other**".

Page 241, line 28, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 245, line 8, strike "deviate" and insert "**other**".

Page 245, line 8, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 245, line 24, strike "deviate" and insert "**other**".

Page 245, line 24, delete ";" and insert "**(as defined in IC 35-31.5-2-221.5);**".

Page 246, line 4, strike "deviate" and insert "**other**".

Page 246, line 4, delete ";" and insert "**(as defined in IC 35-31.5-2-221.5);**".

Page 246, line 20, strike "deviate" and insert "**other**".

Page 246, line 20, delete ";" and insert "**(as defined in IC 35-31.5-2-221.5);**".

Page 248, line 16, delete "deviate" and insert "**other**".

Page 248, line 17, delete "IC 35-31.5-2-94)" and insert "**IC 35-31.5-2-221.5)**".

Page 249, line 4, strike "deviate" and insert "**other**".

Page 249, line 4, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 254, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 446. IC 35-42-4-13, AS ADDED BY P.L.119-2008, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. (a) This section does not apply to the following:

(1) A parent, guardian, or custodian of a child.

(2) A person who acts with the permission of a child's parent, guardian, or custodian.

(3) A person to whom a child makes a report of abuse or neglect.

(4) A person to whom a child reports medical symptoms that relate to or may relate to sexual activity.

(b) As used in this section, "sexual activity" means sexual intercourse, ~~deviate~~ **other** sexual conduct **(as defined in IC 35-31.5-2-221.5),** or the fondling or touching of the buttocks, genitals, or female breasts.

(c) A person at least twenty-one (21) years of age who knowingly or intentionally communicates with an individual whom the person believes to be a child less than fourteen (14) years of age concerning sexual activity with the intent to gratify the sexual desires of the person or the individual commits inappropriate communication with a child, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)).".

Page 260, line 31, after "a felony" insert "**or theft**".

Page 262, line 21, strike "subdivision" and insert "**subsection**".

Page 278, line 28, delete ":".

Page 303, line 8, strike "deviate" and insert "**other**".

Page 303, line 8, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 303, line 12, strike "deviate" and insert "**other**".

Page 303, line 13, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 303, line 19, strike "deviate" and insert "**other**".

Page 303, line 20, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 306, line 32, strike "deviate" and insert "**other**".

Page 306, line 32, delete ";" and insert "**(as defined in**

IC 35-31.5-2-221.5);".

Page 307, line 17, strike "deviate" and insert "**other**".

Page 307, line 17, delete ";" and insert "**(as defined in IC 35-31.5-2-221.5);**".

Page 308, line 8, strike "deviate" and insert "**other**".

Page 308, line 8, delete ";" and insert "**(as defined in IC 35-31.5-2-221.5);**".

Page 308, line 19, strike "deviate" and insert "**other**".

Page 308, line 20, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 326, line 27, strike "deviate" and insert "**other**".

Page 326, line 27, after "conduct" insert "**(as defined in IC 35-31.5-2-221.5)**".

Page 342, line 15, delete "one thousand (1,000)" and insert "**five hundred (500)**".

Page 364, line 23, after "circumstance"" delete ",".

Page 364, line 24, delete "for purposes of this article,".

Page 389, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 643. IC 35-49-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. "Sexual conduct" means:

(1) sexual intercourse or ~~deviate~~ **other** sexual conduct **(as defined in IC 35-31.5-2-221.5);**

(2) exhibition of the uncovered genitals in the context of masturbation or other sexual activity;

(3) exhibition of the uncovered genitals of a person under sixteen (16) years of age;

(4) sado-masochistic abuse; or

(5) sexual intercourse or ~~deviate~~ **other** sexual conduct **(as defined in IC 35-31.5-2-221.5)** with an animal.".

Page 395, line 25, strike "7(b) or".

Page 395, line 25, after "7(c)" insert "**or 7(d)**".

Page 395, line 32, strike "7(b)" and insert "**7(c)**".

Page 396, delete lines 13 through 42, begin a new paragraph and insert:

"SECTION 643. IC 35-50-2-2 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 2. (a) The court may suspend any part of a sentence for~~

~~a felony; except as provided in this section or in section 2.1 of this chapter.~~

~~(b) Except as provided in subsection (i), with respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:~~

~~(1) The crime committed was a Class A felony or Class B felony and the person has a prior unrelated felony conviction.~~

~~(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.~~

~~(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.~~

~~(4) The felony committed was:~~

~~(A) murder (IC 35-42-1-1);~~

~~(B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;~~

~~(C) sexual battery (IC 35-42-4-8) with a deadly weapon;~~

~~(D) kidnapping (IC 35-42-3-2);~~

~~(E) confinement (IC 35-42-3-3) with a deadly weapon;~~

~~(F) rape (IC 35-42-4-1) as a Class A felony;~~

~~(G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;~~

~~(H) except as provided in subsection (i), child molesting (IC 35-42-4-3) as a Class A or Class B felony, unless:~~

~~(i) the felony committed was child molesting as a Class B felony;~~

~~(ii) the victim was not less than twelve (12) years old at the time the offense was committed;~~

~~(iii) the person is not more than four (4) years older than the victim, or more than five (5) years older than the victim if the relationship between the person and the victim was a dating relationship or an ongoing personal relationship (not including a family relationship);~~

~~(iv) the person did not have a position of authority or substantial influence over the victim; and~~

~~(v) the person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person;~~

~~(I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;~~

~~(J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;~~

~~(K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;~~

~~(L) resisting law enforcement (IC 35-44.1-3-1) with a deadly weapon;~~

~~(M) escape (IC 35-44.1-3-4) with a deadly weapon;~~

~~(N) rioting (IC 35-45-1-2) with a deadly weapon;~~

~~(O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:~~

~~(i) school property;~~

~~(ii) a public park;~~

~~(iii) a family housing complex; or~~

~~(iv) a youth program center;~~

~~(P) dealing in methamphetamine (IC 35-48-4-1.1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver the methamphetamine pure or~~

~~adulterated to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:~~

~~(i) school property;~~

~~(ii) a public park;~~

~~(iii) a family housing complex; or~~

~~(iv) a youth program center;~~

~~(Q) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:~~

~~(i) school property;~~

~~(ii) a public park;~~

~~(iii) a family housing complex; or~~

~~(iv) a youth program center;~~

~~(R) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;~~

~~(S) an offense under IC 9-30-5-5(b) (operating a vehicle while intoxicated causing death);~~

~~(T) aggravated battery (IC 35-42-2-1.5); or~~

~~(U) disarming a law enforcement officer (IC 35-44.1-3-2).~~

~~(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.~~

~~(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.~~

~~(e) Whenever the court suspends that part of the sentence of a sex or violent offender (as defined in IC 11-8-8-5) that is suspendible under subsection (b), the court shall place the sex or violent offender on probation under IC 35-38-2 for not more than ten (10) years.~~

~~(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.~~

~~(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.~~

~~(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) or IC 35-48-4-6.1(b)(1)(B) may not be suspended.~~

~~(i) If a person is:~~

~~(1) convicted of child molesting (IC 35-42-4-3) as a Class A felony against a victim less than twelve (12) years of age; and~~

~~(2) at least twenty-one (21) years of age;~~

~~the court may suspend only that part of the sentence that is in excess of thirty (30) years.~~

SECTION 644. IC 35-50-2-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 2.2. (a) Except as provided in subsection (b), the court may suspend any part of a sentence for a felony.**

(b) If a person has any prior unrelated felony conviction, the court may suspend only that part of a sentence that is in excess of the minimum sentence for:

(1) murder;

(2) a Level 1 felony; or

(3) a Level 2 felony.".

Delete pages 397 through 400.

Page 401, delete lines 1 through 42.

Page 402, delete lines 1 through 2, begin a new paragraph and insert:

"SECTION 649. IC 35-50-2-4, AS AMENDED BY P.L.71-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. A person who commits a Class A **felony (for a crime committed before July 1, 2014) or a Level 1** felony **(for a crime committed after June 30, 2014)** shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

SECTION 650. IC 35-50-2-4.5 IS ADDED TO THE INDIANA

CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 4.5. A person who commits a Level 2 felony shall be imprisoned for a fixed term of between ten (10) and thirty (30) years, with the advisory sentence being seventeen (17) years and six (6) months. In addition, the person may be fined not more than ten thousand dollars ($10,000).**

SECTION 651. IC 35-50-2-5, AS AMENDED BY P.L.71-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. **(a)** A person who commits a Class B felony **(for a crime committed before July 1, 2014)** shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

(b) A person who commits a Level 3 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between three (3) and twenty (20) years, with the advisory sentence being six (6) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

SECTION 652. IC 35-50-2-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 5.5. A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).**

SECTION 653. IC 35-50-2-6, AS AMENDED BY P.L.71-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) A person who commits a Class C felony **(for a crime committed before July 1, 2014)** shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

(b) Notwithstanding subsection (a), if a person has committed nonsupport of a child as a Class C felony under IC 35-46-1-5 **(for a crime committed before July 1, 2014),** upon motion of the prosecuting attorney, the court may enter judgment of conviction of a Class D felony under IC 35-46-1-5 and sentence the person accordingly. The court shall enter in the record detailed reasons for the

court's action when the court enters a judgment of conviction of a Class D felony under this subsection.

(c) A person who commits a Level 5 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being two (2) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

(d) Notwithstanding subsection (c), if a person has committed nonsupport of a child as a Level 5 felony under IC 35-46-1-5 (for a crime committed after June 30, 2014), upon motion of the prosecuting attorney, the court may enter judgment of conviction of a Level 6 felony under IC 35-46-1-5 and sentence the person accordingly. The court shall enter in the record detailed reasons for the court's action when the court enters a judgment of conviction of a Level 6 felony under this subsection.

SECTION 654. IC 35-50-2-7, AS AMENDED BY P.L.69-2012, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) A person who commits a Class D felony **(for a crime committed before July 1, 2014)** shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

(b) A person who commits a Level 6 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between six (6) months and thirty (30) months, with the advisory sentence being one (1) year. In addition, the person may be fined not more than ten thousand dollars ($10,000).

~~(b)~~ **(c)** Notwithstanding ~~subsection~~ **subsections** (a) **and (b),** if a person has committed a Class D felony **(for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014),** the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony **(for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014)** if:

(1) the court finds that:

(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A

misdemeanor; and

(B) the prior felony was committed less than three (3) years before the second felony was committed;

(2) the offense is domestic battery as a Class D felony **(for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014)** under IC 35-42-2-1.3; or

(3) the offense is possession of child pornography (IC 35-42-4-4(c)).

The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.

~~(c)~~ **(d)** Notwithstanding ~~subsection~~ **subsections** (a) **and (b),** the sentencing court may convert a Class D felony conviction **(for a crime committed before July 1, 2014) or a Level 6 felony conviction (for a crime committed after June 30, 2014)** to a Class A misdemeanor conviction if, after receiving a verified petition as described in subsection ~~(d)~~ **(e)** and after conducting a hearing of which the prosecuting attorney has been notified, the court makes the following findings:

(1) The person is not a sex or violent offender (as defined in IC 11-8-8-5).

(2) The person was not convicted of a Class D felony **(for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014)** that resulted in bodily injury to another person.

(3) The person has not been convicted of perjury under ~~IC 35-44-2-1~~ **IC 35-44.1-2-1** or official misconduct under ~~IC 35-44-1-2.~~ **IC 35-44.1-1-1.**

(4) At least three (3) years have passed since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D **or Level 6** felony.

(5) The person has not been convicted of a felony since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as

part of the sentence;

for the Class D **or Level 6** felony.

(6) No criminal charges are pending against the person.

~~(d)~~ **(e)** A petition filed under subsection ~~(c)~~ **(d)** must be verified and set forth:

(1) the crime the person has been convicted of;

(2) the date of the conviction;

(3) the date the person completed the person's sentence;

(4) any obligations imposed on the person as part of the sentence;

(5) the date the obligations were satisfied; and

(6) a verified statement that there are no criminal charges pending against the person.

~~(e)~~ **(f)** If a person whose Class D **or Level 6** felony conviction has been converted to a Class A misdemeanor conviction under subsection ~~(c)~~ **(d)** is convicted of a felony within five (5) years after the conversion under subsection ~~(c),~~ **(d),** a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction **(for a crime committed before July 1, 2014) or a Level 6 felony conviction (for a crime committed after June 30, 2014).**

SECTION 655. IC 35-50-2-8, AS AMENDED BY P.L.71-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) ~~Except as otherwise provided in this section,~~ The state may seek to have a person sentenced as a habitual offender for ~~any~~ **a** felony by alleging, on ~~a page~~ **one (1) or more pages** separate from the rest of the charging instrument, that the person has accumulated ~~two (2)~~ **the required number of** prior unrelated felony convictions **in accordance with this section.**

(b) A person convicted of murder or of a Level 1 through Level 4 felony is a habitual offender if the state proves beyond a reasonable doubt that:

(1) the person has been convicted of two (2) prior unrelated felonies; and

(2) at least one (1) of the prior unrelated felonies is not a Level 6 felony or a Class D felony.

(c) A person convicted of a Level 5 felony is a habitual offender if the state proves beyond a reasonable doubt that:

(1) the person has been convicted of two (2) prior unrelated

felonies;

(2) at least one (1) of the prior unrelated felonies is not a Level 6 felony or a Class D felony; and

(3) if the person is alleged to have committed a prior unrelated:

(A) Level 5 felony;

(B) Level 6 felony;

(C) Class C felony; or

(D) Class D felony;

not more than ten (10) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) and the time the person committed the current offense.

(d) A person convicted of a Level 6 felony is a habitual offender if the state proves beyond a reasonable doubt that:

(1) the person has been convicted of three (3) prior unrelated felonies; and

(2) if the person is alleged to have committed a prior unrelated:

(A) Level 5 felony;

(B) Level 6 felony;

(C) Class C felony; or

(D) Class D felony;

not more than ten (10) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) and the time the person committed the current offense.

~~(b)~~ **(e)** The state may not seek to have a person sentenced as a habitual offender for a felony offense under this section if

~~(1)~~ the **current** offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction. **However, a prior unrelated felony conviction may be used to support a habitual offender determination even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense.**

~~(2) the offense is an offense under IC 9-30-10-16 or~~

~~IC 9-30-10-17; or~~

~~(3) all of the following apply:~~

~~(A) The offense is an offense under IC 16-42-19 or IC 35-48-4.~~

~~(B) The offense is not listed in section 2(b)(4) of this chapter.~~

~~(C) The total number of unrelated convictions that the person has for:~~

~~(i) dealing in or selling a legend drug under IC 16-42-19-27;~~

~~(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);~~

~~(iii) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);~~

~~(iv) dealing in a schedule IV controlled substance (IC 35-48-4-3); and~~

~~(v) dealing in a schedule V controlled substance (IC 35-48-4-4);~~

~~does not exceed one (1).~~

~~(c)~~ **(f)** A person has accumulated two (2) **or three (3)** prior unrelated felony convictions for purposes of this section only if:

(1) the second prior unrelated felony conviction was committed after **commission of and** sentencing for the first prior unrelated felony conviction; ~~and~~

(2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after **commission of and** sentencing for the second prior unrelated felony conviction; **and**

(3) for a conviction requiring proof of three (3) prior unrelated felonies, the third prior unrelated felony conviction was committed after commission of and sentencing for the second prior unrelated felony conviction.

~~(d)~~ **(g)** A conviction does not count for purposes of this section as a prior unrelated felony conviction if:

(1) the conviction has been set aside; **or**

(2) the conviction is one for which the person has been pardoned.

~~or~~

~~(3) all of the following apply:~~

~~(A) The offense is an offense under IC 16-42-19 or IC 35-48-4.~~

~~(B) The offense is not listed in section 2(b)(4) of this chapter.~~

~~(C) The total number of unrelated convictions that the person has for:~~

~~(i) dealing in or selling a legend drug under IC 16-42-19-27;~~

~~(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);~~

~~(iii) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);~~

~~(iv) dealing in a schedule IV controlled substance (IC 35-48-4-3); and~~

~~(v) dealing in a schedule V controlled substance (IC 35-48-4-4);~~

~~does not exceed one (1).~~

~~(e) The requirements in subsection (b) do not apply to a prior unrelated felony conviction that is used to support a sentence as a habitual offender. A prior unrelated felony conviction may be used under this section to support a sentence as a habitual offender even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense. However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed), or IC 9-12-3-2 (repealed) may not be used to support a sentence as a habitual offender.~~

~~(f)~~ **(h)** If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3. **The role of the jury is to determine whether the defendant has been convicted of the unrelated felonies. The state or defendant may not conduct any additional interrogation or questioning of the jury during the habitual offender part of the trial.**

~~(g) A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated felony convictions.~~

~~(h)~~ **(i)** The court shall sentence a person found to be a habitual offender to an additional fixed term that is **between:**

(1) zero (0) and twenty (20) years, for a person convicted of murder or a Level 1 through Level 4 felony; or

(2) zero (0) and six (6) years, for a person convicted of a Level

5 or Level 6 felony.

An additional term imposed under this subsection is nonsuspendible.

~~not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.~~

(j) Habitual offender is a status that results in an enhanced sentence. It is not a separate crime and does not result in a consecutive sentence. The court shall attach the habitual offender enhancement to the felony conviction with the highest sentence imposed and specify which felony count is being enhanced. If the felony enhanced by the habitual offender determination is set aside or vacated, the court shall resentence the person and apply the habitual offender enhancement to the felony conviction with the next highest sentence in the underlying cause, if any.

(k) A prior unrelated felony conviction may not be collaterally attacked during a habitual offender proceeding unless the conviction is constitutionally invalid.

(l) The procedural safeguards that apply to other criminal charges, including:

(1) the requirement that the charge be filed by information or indictment; and

(2) the right to an initial hearing;

also apply to a habitual offender allegation.".

Page 404, line 11, after "as" insert "**a**".

Page 404, line 11, delete "4 felony" and insert "**4 felony,**".

Page 411, between lines 13 and 14, begin a new paragraph and insert:

"SECTION 659. IC 35-50-6-3, AS AMENDED BY P.L.80-2008, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) A person assigned to ~~Class I~~ **Class A** earns one (1) day of credit time for ~~each day~~ **every three (3) days** the person is imprisoned for a crime or confined awaiting trial or sentencing.

(b) A person assigned to ~~Class II~~ **Class B** earns one (1) day of credit time for every ~~two (2)~~ **six (6)** days the person is imprisoned for a crime or confined awaiting trial or sentencing.

(c) A person assigned to ~~Class III~~ **Class C** earns no credit time.

~~(d) A person assigned to Class IV earns one (1) day of credit time~~

~~for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing.~~".

Page 411, line 19, strike "Class I;" and insert "**Class A;**".

Page 411, line 29, strike "associate's" and insert "**associate**".

Page 411, line 32, strike "bachelor's" and insert "**bachelor**".

Page 411, line 38, strike "Class I;" and insert "**Class A;**".

Page 412, line 23, strike "associate's" and insert "**associate**".

Page 412, line 25, strike "bachelor's" and insert "**bachelor**".

Page 415, line 15, strike "Class I." and insert "**Class A.**".

Page 415, line 21, strike "Class II or Class III" and insert "**Class B or Class C**".

Page 416, line 27, delete "(d)".

Page 416, line 27, strike "A person may be reassigned from Class III to Class I".

Page 416, line 27, delete "or".

Page 416, line 27, after "or" strike "Class".

Page 416, line 28, strike "II,".

Page 416, line 28, strike "or from Class II to Class I. A person's assignment to".

Page 416, strike lines 29 through 30.

Page 416, line 31, strike "class.".

Page 417, line 27, after "may" insert "**not**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1006 as introduced.)

and when so amended that said bill do pass.

_____

Representative McMillin