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# HOUSE BILL No. 1523

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-2-2.3; IC 35-47; IC 35-50-2-9.

**Synopsis:** Firearms and murder sentences. Prohibits the issuance of a license to carry a handgun to a person who is on probation or parole. Makes it a Class A misdemeanor for a person who is on probation or parole to knowingly or intentionally possess a firearm. Makes the fact that: (1) a victim of a murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, firefighter, judge, or law enforcement officer; and (2) the murder was motivated by the victim's official status or former official status; an aggravating circumstance when a court is considering sentences for murder.

**Effective:** July 1, 2001.

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## Richardson

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January 11, 2001, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 112th General Assembly (2001)

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 2000 General Assembly.

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## HOUSE BILL No. 1523



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:*

1 SECTION 1. IC 35-38-2-2.3 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2.3. (a) As a condition  
3 of probation, the court may require a person to do a combination of the  
4 following:

- 5 (1) Work faithfully at suitable employment or faithfully pursue a
- 6 course of study or vocational training that will equip the person
- 7 for suitable employment.
- 8 (2) Undergo available medical or psychiatric treatment and
- 9 remain in a specified institution if required for that purpose.
- 10 (3) Attend or reside in a facility established for the instruction,
- 11 recreation, or residence of persons on probation.
- 12 (4) Support the person's dependents and meet other family
- 13 responsibilities.
- 14 (5) Make restitution or reparation to the victim of the crime for
- 15 damage or injury that was sustained by the victim. When
- 16 restitution or reparation is a condition of probation, the court shall
- 17 fix the amount, which may not exceed an amount the person can



- 1 or will be able to pay, and shall fix the manner of performance.  
 2 (6) Execute a repayment agreement with the appropriate  
 3 governmental entity to repay the full amount of public relief or  
 4 assistance wrongfully received, and make repayments according  
 5 to a repayment schedule set out in the agreement.  
 6 (7) Pay a fine authorized by IC 35-50.  
 7 (8) Refrain from possessing a ~~firearm or other~~ deadly weapon  
 8 **other than a firearm** unless granted written permission by the  
 9 court or the person's probation officer.  
 10 (9) Report to a probation officer at reasonable times as directed  
 11 by the court or the probation officer.  
 12 (10) Permit the person's probation officer to visit the person at  
 13 reasonable times at the person's home or elsewhere.  
 14 (11) Remain within the jurisdiction of the court, unless granted  
 15 permission to leave by the court or by the person's probation  
 16 officer.  
 17 (12) Answer all reasonable inquiries by the court or the person's  
 18 probation officer and promptly notify the court or probation  
 19 officer of any change in address or employment.  
 20 (13) Perform uncompensated work that benefits the community.  
 21 (14) Satisfy other conditions reasonably related to the person's  
 22 rehabilitation.  
 23 (15) Undergo home detention under IC 35-38-2.5.  
 24 (16) Undergo a laboratory test or series of tests approved by the  
 25 state department of health to detect and confirm the presence of  
 26 the human immunodeficiency virus (HIV) antigen or antibodies  
 27 to the human immunodeficiency virus (HIV), if:  
 28 (A) the person had been convicted of a sex crime listed in  
 29 IC 35-38-1-7.1(e) and the crime created an epidemiologically  
 30 demonstrated risk of transmission of the human  
 31 immunodeficiency virus (HIV) as described in  
 32 IC 35-38-1-7.1(b)(8); or  
 33 (B) the person had been convicted of an offense related to a  
 34 controlled substance listed in IC 35-38-1-7.1(f) and the offense  
 35 involved the conditions described in IC 35-38-1-7.1(b)(9)(A).  
 36 (17) Refrain from any direct or indirect contact with an  
 37 individual.  
 38 (18) Execute a repayment agreement with the appropriate  
 39 governmental entity or with a person for reasonable costs incurred  
 40 because of the taking, detention, or return of a missing child (as  
 41 defined in IC 10-1-7-2).  
 42 (19) Periodically undergo a laboratory chemical test (as defined

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1 in IC 14-15-8-1) or series of chemical tests as specified by the  
 2 court to detect and confirm the presence of a controlled substance  
 3 (as defined in IC 35-48-1-9). The person on probation is  
 4 responsible for any charges resulting from a test and shall have  
 5 the results of any test under this subdivision reported to the  
 6 person's probation officer by the laboratory.

7 (20) If the person was confined in a penal facility, execute a  
 8 reimbursement plan as directed by the court and make repayments  
 9 under the plan to the authority that operates the penal facility for  
 10 all or part of the costs of the person's confinement in the penal  
 11 facility. The court shall fix an amount that:

12 (A) may not exceed an amount the person can or will be able  
 13 to pay;

14 (B) does not harm the person's ability to reasonably be self  
 15 supporting or to reasonably support any dependent of the  
 16 person; and

17 (C) takes into consideration and gives priority to any other  
 18 restitution, reparation, repayment, or fine the person is  
 19 required to pay under this section.

20 (b) When a person is placed on probation, the person shall be given  
 21 a written statement specifying:

22 (1) the conditions of probation; and

23 (2) that if the person violates a condition of probation during the  
 24 probationary period, a petition to revoke probation may be filed  
 25 before the earlier of the following:

26 (A) One (1) year after the termination of probation.

27 (B) Forty-five (45) days after the state receives notice of the  
 28 violation.

29 (c) As a condition of probation, the court may require that the  
 30 person serve a term of imprisonment in an appropriate facility at the  
 31 time or intervals (consecutive or intermittent) within the period of  
 32 probation the court determines.

33 (d) Intermittent service may be required only for a term of not more  
 34 than sixty (60) days and must be served in the county or local penal  
 35 facility. The intermittent term is computed on the basis of the actual  
 36 days spent in confinement and shall be completed within one (1) year.  
 37 A person does not earn credit time while serving an intermittent term  
 38 of imprisonment under this subsection. When the court orders  
 39 intermittent service, the court shall state:

40 (1) the term of imprisonment;

41 (2) the days or parts of days during which a person is to be  
 42 confined; and

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1 (3) the conditions.

2 (e) Supervision of a person may be transferred from the court that  
3 placed the person on probation to a court of another jurisdiction, with  
4 the concurrence of both courts. Retransfers of supervision may occur  
5 in the same manner. This subsection does not apply to transfers made  
6 under IC 11-13-4 or IC 11-13-5.

7 (f) When a court imposes a condition of probation described in  
8 subsection (a)(17):

- 9 (1) the clerk of the court shall comply with IC 5-2-9; and  
10 (2) the prosecuting attorney shall file a confidential form  
11 prescribed or approved by the division of state court  
12 administration with the clerk.

13 SECTION 2. IC 35-47-2-3 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) A person desiring  
15 a license to carry a handgun shall apply:

- 16 (1) to the chief of police or corresponding law enforcement officer  
17 of the municipality in which he resides;  
18 (2) if that municipality has no such officer, or if the applicant does  
19 not reside in a municipality, to the sheriff of the county in which  
20 he resides after he has obtained an application form prescribed by  
21 the superintendent; or  
22 (3) if he is a resident of another state and has a regular place of  
23 business or employment in Indiana, to the sheriff of the county in  
24 which he has a regular place of business or employment.

25 (b) The law enforcement agency which accepts an application for a  
26 handgun license shall collect a ten dollar (\$10) application fee, five  
27 dollars (\$5) of which shall be refunded if the license is not issued.  
28 Except as provided in subsection (g), the fee shall be:

- 29 (1) deposited into the law enforcement agency's firearms training  
30 fund or other appropriate training activities fund; and  
31 (2) used by the agency for the purpose of:  
32 (A) training law enforcement officers in the proper use of  
33 firearms or other law enforcement duties; or  
34 (B) purchasing for the law enforcement officers employed by  
35 the law enforcement agency firearms, or firearm related  
36 equipment, or both.

37 The state board of accounts shall establish rules for the proper  
38 accounting and expenditure of funds collected under this subsection.

39 (c) The officer to whom the application is made shall ascertain  
40 concerning the applicant his name, full address, length of residence in  
41 the community, whether his residence is located within the limits of  
42 any city or town, occupation, place of business or employment,

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1 criminal record, if any, and convictions (minor traffic offenses  
 2 excepted), age, race, sex, nationality, date of birth, citizenship, height,  
 3 weight, build, color of hair, color of eyes, scars and marks, whether the  
 4 applicant has previously held an Indiana license to carry a handgun  
 5 and, if so, the serial number of the license and year issued, whether his  
 6 license has ever been suspended or revoked, and if so, the year and  
 7 reason for the suspension or revocation, and the applicant's reason for  
 8 desiring a license. The officer to whom the application is made shall  
 9 conduct an investigation into the applicant's official records and verify  
 10 thereby the applicant's character and reputation, and shall in addition  
 11 verify for accuracy the information contained in the application, and  
 12 shall forward this information together with his recommendation for  
 13 approval or disapproval and one (1) set of legible and classifiable  
 14 fingerprints of the applicant to the superintendent.

15 (d) The superintendent may make whatever further investigation he  
 16 deems necessary. Whenever disapproval is recommended, the officer  
 17 to whom the application is made shall provide the superintendent and  
 18 the applicant with his complete and specific reasons, in writing, for the  
 19 recommendation of disapproval.

20 (e) If it appears to the superintendent that the applicant has a proper  
 21 reason for carrying a handgun and is of good character and reputation  
 22 and a proper person to be so licensed, he shall issue to the applicant a  
 23 qualified or an unlimited license to carry any handgun lawfully  
 24 possessed by the applicant. The original license shall be delivered to  
 25 the licensee. A copy shall be delivered to the officer to whom the  
 26 application for license was made. A copy shall be retained by the  
 27 superintendent for at least four (4) years. This license shall be valid for  
 28 a period of four (4) years from the date of issue. The license of police  
 29 officers, sheriffs or their deputies, and law enforcement officers of the  
 30 United States government who have been honorably retired by a  
 31 lawfully created pension board or its equivalent after twenty (20) or  
 32 more years of service, shall be valid for the life of such individuals.  
 33 However, such lifetime licenses are automatically revoked if the  
 34 license holder does not remain a proper person.

35 (f) A license to carry a handgun shall not be issued to any person  
 36 who:

- 37 (1) has been convicted of a felony;
- 38 (2) is under eighteen (18) years of age;
- 39 (3) is under twenty-three (23) years of age if the person has been  
 40 adjudicated a delinquent child for an act that would be a felony if  
 41 committed by an adult; ~~or~~
- 42 (4) has been arrested for a Class A or Class B felony, or any other

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1 felony that was committed while armed with a deadly weapon or  
 2 that involved the use of violence, if a court has found probable  
 3 cause to believe that the person committed the offense charged;  
 4 **or**

5 **(5) is on probation or parole for committing:**

6 **(A) a crime; or**

7 **(B) an act that would be a crime if committed by an adult.**

8 In the case of an arrest under subdivision (4), a license to carry a  
 9 handgun may be issued to a person who has been acquitted of the  
 10 specific offense charged or if the charges for the specific offense are  
 11 dismissed. The superintendent shall prescribe all forms to be used in  
 12 connection with the administration of this chapter.

13 (g) If the law enforcement agency that charges a fee under  
 14 subsection (b) is a city or town law enforcement agency, the fee shall  
 15 be deposited in the law enforcement continuing education fund  
 16 established under IC 5-2-8-2.

17 SECTION 3. IC 35-47-4-6 IS ADDED TO THE INDIANA CODE  
 18 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 19 1, 2001]: **Sec. 6. A person who:**

20 **(1) is on probation or parole for committing:**

21 **(A) a crime; or**

22 **(B) an act that would be a crime if committed by an adult;**

23 **and**

24 **(2) knowingly or intentionally possesses a firearm;**  
 25 **commits unlawful possession of a firearm by a parolee or**  
 26 **probationer, a Class A misdemeanor.**

27 SECTION 4. IC 35-50-2-9 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) The state may  
 29 seek either a death sentence or a sentence of life imprisonment without  
 30 parole for murder by alleging, on a page separate from the rest of the  
 31 charging instrument, the existence of at least one (1) of the aggravating  
 32 circumstances listed in subsection (b). In the sentencing hearing after  
 33 a person is convicted of murder, the state must prove beyond a  
 34 reasonable doubt the existence of at least one (1) of the aggravating  
 35 circumstances alleged. However, the state may not proceed against a  
 36 defendant under this section if a court determines at a pretrial hearing  
 37 under IC 35-36-9 that the defendant is a mentally retarded individual.

38 (b) The aggravating circumstances are as follows:

39 (1) The defendant committed the murder by intentionally killing  
 40 the victim while committing or attempting to commit any of the  
 41 following:

42 (A) Arson (IC 35-43-1-1).

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- 1 (B) Burglary (IC 35-43-2-1).  
 2 (C) Child molesting (IC 35-42-4-3).  
 3 (D) Criminal deviate conduct (IC 35-42-4-2).  
 4 (E) Kidnapping (IC 35-42-3-2).  
 5 (F) Rape (IC 35-42-4-1).  
 6 (G) Robbery (IC 35-42-5-1).  
 7 (H) Carjacking (IC 35-42-5-2).  
 8 (I) Criminal gang activity (IC 35-45-9-3).  
 9 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).  
 10 (2) The defendant committed the murder by the unlawful  
 11 detonation of an explosive with intent to injure person or damage  
 12 property.  
 13 (3) The defendant committed the murder by lying in wait.  
 14 (4) The defendant who committed the murder was hired to kill.  
 15 (5) The defendant committed the murder by hiring another person  
 16 to kill.  
 17 (6) The victim of the murder was a corrections employee,  
 18 probation officer, parole officer, community corrections worker,  
 19 home detention officer, fireman, judge, or law enforcement  
 20 officer, and either:  
 21 (A) the victim was acting in the course of duty; or  
 22 (B) the murder was motivated by:  
 23 (i) an act the victim performed while acting in the course of  
 24 duty; or  
 25 (ii) **the victim's official status or former official status as**  
 26 **a corrections employee, probation officer, parole officer,**  
 27 **community corrections worker, home detention officer,**  
 28 **firefighter, judge, or law enforcement officer.**  
 29 (7) The defendant has been convicted of another murder.  
 30 (8) The defendant has committed another murder, at any time,  
 31 regardless of whether the defendant has been convicted of that  
 32 other murder.  
 33 (9) The defendant was:  
 34 (A) under the custody of the department of correction;  
 35 (B) under the custody of a county sheriff;  
 36 (C) on probation after receiving a sentence for the commission  
 37 of a felony; or  
 38 (D) on parole;  
 39 at the time the murder was committed.  
 40 (10) The defendant dismembered the victim.  
 41 (11) The defendant burned, mutilated, or tortured the victim while  
 42 the victim was alive.

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- 1 (12) The victim of the murder was less than twelve (12) years of  
 2 age.  
 3 (13) The victim was a victim of any of the following offenses for  
 4 which the defendant was convicted:  
 5 (A) Battery as a Class D felony or as a Class C felony under  
 6 IC 35-42-2-1.  
 7 (B) Kidnapping (IC 35-42-3-2).  
 8 (C) Criminal confinement (IC 35-42-3-3).  
 9 (D) A sex crime under IC 35-42-4.  
 10 (14) The victim of the murder was listed by the state or known by  
 11 the defendant to be a witness against the defendant and the  
 12 defendant committed the murder with the intent to prevent the  
 13 person from testifying.  
 14 (15) The defendant committed the murder by intentionally  
 15 discharging a firearm (as defined in IC 35-47-1-5):  
 16 (A) into an inhabited dwelling; or  
 17 (B) from a vehicle.  
 18 (16) The victim of the murder was pregnant and the murder  
 19 resulted in the intentional killing of a fetus that has attained  
 20 viability (as defined in IC 16-18-2-365).  
 21 (c) The mitigating circumstances that may be considered under this  
 22 section are as follows:  
 23 (1) The defendant has no significant history of prior criminal  
 24 conduct.  
 25 (2) The defendant was under the influence of extreme mental or  
 26 emotional disturbance when the murder was committed.  
 27 (3) The victim was a participant in or consented to the defendant's  
 28 conduct.  
 29 (4) The defendant was an accomplice in a murder committed by  
 30 another person, and the defendant's participation was relatively  
 31 minor.  
 32 (5) The defendant acted under the substantial domination of  
 33 another person.  
 34 (6) The defendant's capacity to appreciate the criminality of the  
 35 defendant's conduct or to conform that conduct to the  
 36 requirements of law was substantially impaired as a result of  
 37 mental disease or defect or of intoxication.  
 38 (7) The defendant was less than eighteen (18) years of age at the  
 39 time the murder was committed.  
 40 (8) Any other circumstances appropriate for consideration.  
 41 (d) If the defendant was convicted of murder in a jury trial, the jury  
 42 shall reconvene for the sentencing hearing. If the trial was to the court,

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1 or the judgment was entered on a guilty plea, the court alone shall  
 2 conduct the sentencing hearing. The jury or the court may consider all  
 3 the evidence introduced at the trial stage of the proceedings, together  
 4 with new evidence presented at the sentencing hearing. The court shall  
 5 instruct the jury concerning the statutory penalties for murder and any  
 6 other offenses for which the defendant was convicted, the potential for  
 7 consecutive or concurrent sentencing, and the availability of good time  
 8 credit and clemency. The defendant may present any additional  
 9 evidence relevant to:

10 (1) the aggravating circumstances alleged; or

11 (2) any of the mitigating circumstances listed in subsection (c).

12 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the  
 13 jury shall recommend to the court whether the death penalty or life  
 14 imprisonment without parole, or neither, should be imposed. The jury  
 15 may recommend:

16 (1) the death penalty; or

17 (2) life imprisonment without parole;

18 only if it makes the findings described in subsection (k). The court shall  
 19 make the final determination of the sentence, after considering the  
 20 jury's recommendation, and the sentence shall be based on the same  
 21 standards that the jury was required to consider. The court is not bound  
 22 by the jury's recommendation. In making the final determination of the  
 23 sentence after receiving the jury's recommendation, the court may  
 24 receive evidence of the crime's impact on members of the victim's  
 25 family.

26 (f) If a jury is unable to agree on a sentence recommendation after  
 27 reasonable deliberations, the court shall discharge the jury and proceed  
 28 as if the hearing had been to the court alone.

29 (g) If the hearing is to the court alone, except as provided by  
 30 IC 35-36-9, the court shall:

31 (1) sentence the defendant to death; or

32 (2) impose a term of life imprisonment without parole;

33 only if it makes the findings described in subsection (k).

34 (h) If a court sentences a defendant to death, the court shall order  
 35 the defendant's execution to be carried out not later than one (1) year  
 36 and one (1) day after the date the defendant was convicted. The  
 37 supreme court has exclusive jurisdiction to stay the execution of a  
 38 death sentence. If the supreme court stays the execution of a death  
 39 sentence, the supreme court shall order a new date for the defendant's  
 40 execution.

41 (i) If a person sentenced to death by a court files a petition for  
 42 post-conviction relief, the court, not later than ninety (90) days after the

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1 date the petition is filed, shall set a date to hold a hearing to consider  
 2 the petition. If a court does not, within the ninety (90) day period, set  
 3 the date to hold the hearing to consider the petition, the court's failure  
 4 to set the hearing date is not a basis for additional post-conviction  
 5 relief. The attorney general shall answer the petition for post-conviction  
 6 relief on behalf of the state. At the request of the attorney general, a  
 7 prosecuting attorney shall assist the attorney general. The court shall  
 8 enter written findings of fact and conclusions of law concerning the  
 9 petition not later than ninety (90) days after the date the hearing  
 10 concludes. However, if the court determines that the petition is without  
 11 merit, the court may dismiss the petition within ninety (90) days  
 12 without conducting a hearing under this subsection.

13 (j) A death sentence is subject to automatic review by the supreme  
 14 court. The review, which shall be heard under rules adopted by the  
 15 supreme court, shall be given priority over all other cases. The supreme  
 16 court's review must take into consideration all claims that the:

- 17 (1) conviction or sentence was in violation of the:  
 18 (A) Constitution of the State of Indiana; or  
 19 (B) Constitution of the United States;  
 20 (2) sentencing court was without jurisdiction to impose a  
 21 sentence; and  
 22 (3) sentence:  
 23 (A) exceeds the maximum sentence authorized by law; or  
 24 (B) is otherwise erroneous.

25 If the supreme court cannot complete its review by the date set by the  
 26 sentencing court for the defendant's execution under subsection (h), the  
 27 supreme court shall stay the execution of the death sentence and set a  
 28 new date to carry out the defendant's execution.

29 (k) Before a sentence may be imposed under this section, the jury,  
 30 in a proceeding under subsection (e), or the court, in a proceeding  
 31 under subsection (g), must find that:

- 32 (1) the state has proved beyond a reasonable doubt that at least  
 33 one (1) of the aggravating circumstances listed in subsection (b)  
 34 exists; and  
 35 (2) any mitigating circumstances that exist are outweighed by the  
 36 aggravating circumstance or circumstances.

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