

|         |          |
|---------|----------|
| Adopted | Rejected |
|---------|----------|

# COMMITTEE REPORT

|             |           |
|-------------|-----------|
| <b>YES:</b> | <b>11</b> |
| <b>NO:</b>  | <b>0</b>  |

## MR. SPEAKER:

*Your Committee on Judiciary, to which was referred House Bill 1398, 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:*

- 1 Page 32, delete lines 31 through 42.
- 2 Delete pages 33 through 36.
- 3 Page 37, delete lines 1 through 26.
- 4 Page 63, between lines 14 and 15, begin a new paragraph and insert:
- 5 "SECTION 58. IC 13-14-9-3, AS AMENDED BY P.L.240-2003,
- 6 SECTION 4, AND AS AMENDED BY P.L.282-2003, SECTION 35,
- 7 IS CORRECTED AND AMENDED TO READ AS FOLLOWS
- 8 [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) *Except as provided in*
- 9 *subsection (b)*, the department shall provide notice in the Indiana
- 10 Register of the first public comment period required by section 2 of this
- 11 chapter. A notice provided under this section must do the following:
- 12 (1) Identify the authority under which the proposed rule is to be
- 13 adopted.
- 14 (2) Describe the subject matter and the basic purpose of the
- 15 proposed rule. The description required by this subdivision must:

- 1 (A) include a listing of all alternatives being considered by the  
 2 department at the time of the notice; *and must*  
 3 (B) include:  
 4 (i) a statement indicating whether each alternative listed  
 5 under clause (A) is imposed under federal law;  
 6 (ii) a statement explaining how each alternative listed under  
 7 clause (A) that is not imposed under federal law differs from  
 8 federal law; and  
 9 (iii) any information known to the department about the  
 10 potential fiscal impact of each alternative under clause (A)  
 11 that is not imposed under federal law; and  
 12 (C) set forth the basis for each alternative listed under clause  
 13 (A).
- 14 (3) Describe the relevant statutory or regulatory requirements or  
 15 restrictions relating to the subject matter of the proposed rule that  
 16 exist before the adoption of the proposed rule.
- 17 (4) Request the submission of alternative ways to achieve the  
 18 purpose of the proposed rule.
- 19 (5) Request the submission of comments, including suggestions of  
 20 specific language for the proposed rule.
- 21 (6) Include a detailed statement of the issue to be addressed by  
 22 adoption of the proposed rule.
- 23 (b) *This section does not apply to rules adopted under*  
 24 *IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4."*
- 25 Page 98, between lines 35 and 36, begin a new paragraph and insert:  
 26 "SECTION 119. IC 34-11-8-1 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) This section  
 28 applies if a plaintiff commences an action and:  
 29 (1) the plaintiff fails in the action from any cause except ~~(†)~~  
 30 negligence in the prosecution of the action;  
 31 (2) the action abates or is defeated by the death of a party; or  
 32 (3) a judgment is arrested or reversed on appeal.  
 33 (b) If subsection (a) applies, a new action may be brought not later  
 34 than the later of:  
 35 (1) three (3) years after the date of the determination under  
 36 subsection (a); or  
 37 (2) the last date an action could have been commenced under the  
 38 statute of limitations governing the original action;

1 and be considered a continuation of the original action commenced by  
2 the plaintiff."

3 Page 115, between lines 9 and 10, begin a new paragraph and insert:

4 "SECTION 135. IC 35-50-2-2 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The court  
6 may suspend any part of a sentence for a felony, except as provided in  
7 this section or in section 2.1 of this chapter.

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

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

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

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

29 (4) The felony committed was:

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

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

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

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

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

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

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

- 1 (H) child molesting (IC 35-42-4-3) as a Class A or Class B  
2 felony;
- 3 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or  
4 with a deadly weapon;
- 5 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily  
6 injury;
- 7 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury  
8 or with a deadly weapon;
- 9 (L) resisting law enforcement (IC 35-44-3-3) with a deadly  
10 weapon;
- 11 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 12 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 13 (O) dealing in cocaine, a narcotic drug, or methamphetamine  
14 (IC 35-48-4-1) if the court finds the person possessed a firearm  
15 (as defined in IC 35-47-1-5) at the time of the offense, or the  
16 person delivered or intended to deliver to a person under  
17 eighteen (18) years of age at least three (3) years junior to the  
18 person and was on a school bus or within one thousand (1,000)  
19 feet of:
- 20 (i) school property;
- 21 (ii) a public park;
- 22 (iii) a family housing complex; or
- 23 (iv) a youth program center;
- 24 (P) dealing in a schedule I, II, or III controlled substance (IC  
25 35-48-4-2) if the court finds the person possessed a firearm (as  
26 defined in IC 35-47-1-5) at the time of the offense, or the  
27 person delivered or intended to deliver to a person under  
28 eighteen (18) years of age at least three (3) years junior to the  
29 person and was on a school bus or within one thousand (1,000)  
30 feet of:
- 31 (i) school property;
- 32 (ii) a public park;
- 33 (iii) a family housing complex; or
- 34 (iv) a youth program center;
- 35 (Q) an offense under IC 9-30-5 (operating a vehicle while  
36 intoxicated) and the person who committed the offense has  
37 accumulated at least two (2) prior unrelated convictions under  
38 IC 9-30-5; **or**

- 1           ~~(R)~~ an offense under ~~IC 9-30-5-5~~ (operating a vehicle while  
2           intoxicated causing death) if the person had:
- 3           (i) at least ~~fifteen-hundredths (0.15)~~ gram of alcohol per one  
4           hundred ~~(100)~~ milliliters of the person's blood; or at least  
5           ~~fifteen-hundredths (0.15)~~ gram of alcohol per two hundred  
6           ten ~~(210)~~ liters of the person's breath; or
- 7           (ii) a ~~controlled substance listed in schedule I or II of~~  
8           ~~IC 35-48-2~~ or its metabolite in the person's blood; or
- 9           ~~(S)~~ **(R)** aggravated battery (IC 35-42-2-1.5).
- 10          (c) Except as provided in subsection (e), whenever the court  
11          suspends a sentence for a felony, it shall place the person on probation  
12          under IC 35-38-2 for a fixed period to end not later than the date that  
13          the maximum sentence that may be imposed for the felony will expire.
- 14          (d) The minimum sentence for a person convicted of voluntary  
15          manslaughter may not be suspended unless the court finds at the  
16          sentencing hearing that the crime was not committed by means of a  
17          deadly weapon.
- 18          (e) Whenever the court suspends that part of an offender's (as  
19          defined in IC 5-2-12-4) sentence that is suspendible under subsection  
20          (b), the court shall place the offender on probation under IC 35-38-2 for  
21          not more than ten (10) years.
- 22          (f) An additional term of imprisonment imposed under  
23          IC 35-50-2-11 may not be suspended.
- 24          (g) A term of imprisonment imposed under IC 35-47-10-6 or  
25          IC 35-47-10-7 may not be suspended if the commission of the offense  
26          was knowing or intentional.

- 1 (h) A term of imprisonment imposed for an offense under
- 2 IC 35-48-4-6(b)(1)(B) may not be suspended."
- 3 Renumber all SECTIONS consecutively.  
(Reference is to HB 1398 as introduced.)

**and when so amended that said bill do pass.**

---

Representative Foley