
HOUSE BILL No. 1471

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-37-4-19; IC 35-50.

Synopsis: Child abuse. Makes rape a nonsuspendible offense if the victim is less than 18 years of age. Requires the department of correction (DOC) to make a determination in writing whether a sexually violent predator is a candidate for civil commitment, and requires the department to request the prosecuting attorney in the county of conviction to institute civil commitment proceedings if the DOC determines that the sexually violent predator is a candidate for civil commitment. Specifies that a sexually violent predator may be civilly committed in any county. Permits a court, in a prosecution for a sex crime or crime of violence in which the victim is a child, to admit as evidence under certain conditions, a video recording of an interview of the victim recorded not more than six months after the commission of the offense.

Effective: July 1, 2011.

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January 20, 2011, read first time and referred to Committee on Family, Children and Human Affairs.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1471



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 35-37-4-19 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 19. (a) In a prosecution for a sex crime or crime of**
4 **violence in which the victim is a child, the court may admit as**
5 **evidence a video recording of an interview of the victim recorded**
6 **not more than six (6) months after the commission of the offense**
7 **for any relevant purpose, including to document a physical**
8 **disparity between the victim and the defendant at the time the**
9 **offense was committed.**

10 (b) **The court may order the video recording under subsection**
11 **(a) redacted to remove inadmissible evidence.**

12 SECTION 2. IC 35-50-2-2, AS AMENDED BY P.L.64-2008,
13 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2011]: **Sec. 2. (a) The court may suspend any part of a**
15 **sentence for a felony, except as provided in this section or in section**
16 **2.1 of this chapter.**

17 (b) **Except as provided in subsection (i), with respect to the**



1 following crimes listed in this subsection, the court may suspend only
 2 that part of the sentence that is in excess of the minimum sentence,
 3 unless the court has approved placement of the offender in a forensic
 4 diversion program under IC 11-12-3.7:

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

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

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

22 (4) The felony committed was:

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

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

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

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

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

29 (F) rape (IC 35-42-4-1):

30 (i) as a Class A felony; or

31 (ii) if the victim was less than eighteen (18) years of age
 32 at the time of the offense;

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

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

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

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

41 (iii) the person is not more than four (4) years older than the
 42 victim, or more than five (5) years older than the victim if

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- 1 the relationship between the person and the victim was a
- 2 dating relationship or an ongoing personal relationship (not
- 3 including a family relationship);
- 4 (iv) the person did not have a position of authority or
- 5 substantial influence over the victim; and
- 6 (v) the person has not committed another sex offense (as
- 7 defined in IC 11-8-8-5.2) (including a delinquent act that
- 8 would be a sex offense if committed by an adult) against any
- 9 other person;
- 10 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 11 with a deadly weapon;
- 12 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 13 injury;
- 14 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 15 or with a deadly weapon;
- 16 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 17 weapon;
- 18 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 19 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 20 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the
- 21 court finds the person possessed a firearm (as defined in
- 22 IC 35-47-1-5) at the time of the offense, or the person
- 23 delivered or intended to deliver to a person under eighteen
- 24 (18) years of age at least three (3) years junior to the person
- 25 and was on a school bus or within one thousand (1,000) feet
- 26 of:
- 27 (i) school property;
- 28 (ii) a public park;
- 29 (iii) a family housing complex; or
- 30 (iv) a youth program center;
- 31 (P) dealing in methamphetamine (IC 35-48-4-1.1) if the court
- 32 finds the person possessed a firearm (as defined in
- 33 IC 35-47-1-5) at the time of the offense, or the person
- 34 delivered or intended to deliver the methamphetamine pure or
- 35 adulterated to a person under eighteen (18) years of age at
- 36 least three (3) years junior to the person and was on a school
- 37 bus or within one thousand (1,000) feet of:
- 38 (i) school property;
- 39 (ii) a public park;
- 40 (iii) a family housing complex; or
- 41 (iv) a youth program center;
- 42 (Q) dealing in a schedule I, II, or III controlled substance

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

- 7 (i) school property;
 8 (ii) a public park;
 9 (iii) a family housing complex; or
 10 (iv) a youth program center;

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

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

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

18 (U) disarming a law enforcement officer (IC 35-44-3-3.5).

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

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

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

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

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

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

39 (i) If a person is:

- 40 (1) convicted of child molesting (IC 35-42-4-3) as a Class A
 41 felony against a victim less than twelve (12) years of age; and
 42 (2) at least twenty-one (21) years of age;

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

3 SECTION 3. IC 35-50-6-1, AS AMENDED BY P.L.105-2010,
4 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2011]: Sec. 1. (a) Except as provided in subsection (d) or (e),
6 when a person imprisoned for a felony completes the person's fixed
7 term of imprisonment, less the credit time the person has earned with
8 respect to that term, the person shall be:

9 (1) released on parole for not more than twenty-four (24) months,
10 as determined by the parole board, unless:

- 11 (A) the person is being placed on parole for the first time;
- 12 (B) the person is not being placed on parole for a conviction
- 13 for a crime of violence (as defined in IC 35-50-1-2);
- 14 (C) the person is not a sex offender (as defined in
- 15 IC 11-8-8-4.5); and
- 16 (D) in the six (6) months before being placed on parole, the
- 17 person has not violated a rule of the department of correction
- 18 or a rule of the penal facility in which the person is
- 19 imprisoned;

20 (2) discharged upon a finding by the committing court that the
21 person was assigned to a community transition program and may
22 be discharged without the requirement of parole; or

23 (3) released to the committing court if the sentence included a
24 period of probation.

25 A person described in subdivision (1) shall be released on parole for
26 not more than twelve (12) months, as determined by the parole board.

27 (b) This subsection does not apply to a person described in
28 subsection (d), (e), or (f). A person released on parole remains on
29 parole from the date of release until the person's fixed term expires,
30 unless the person's parole is revoked or the person is discharged from
31 that term by the parole board. In any event, if the person's parole is not
32 revoked, the parole board shall discharge the person after the period set
33 under subsection (a) or the expiration of the person's fixed term,
34 whichever is shorter.

35 (c) A person whose parole is revoked shall be imprisoned for all or
36 part of the remainder of the person's fixed term. However, the person
37 shall again be released on parole when the person completes that
38 remainder, less the credit time the person has earned since the
39 revocation. The parole board may reinstate the person on parole at any
40 time after the revocation.

41 (d) This subsection does not apply to a person who is a sexually
42 violent predator under IC 35-38-1-7.5. When a sex offender (as defined

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1 in IC 11-8-8-4.5) completes the sex offender's fixed term of
2 imprisonment, less credit time earned with respect to that term, the sex
3 offender shall be placed on parole for not more than ten (10) years.

4 (e) This subsection applies to a person who:

- 5 (1) is a sexually violent predator under IC 35-38-1-7.5;
- 6 (2) has been convicted of murder (IC 35-42-1-1); or
- 7 (3) has been convicted of voluntary manslaughter (IC 35-42-1-3).

8 **Except as provided in subsection (j)**, when a person described in this
9 subsection completes the person's fixed term of imprisonment, less
10 credit time earned with respect to that term, the person shall be placed
11 on parole for the remainder of the person's life.

12 (f) This subsection applies to a parolee in another jurisdiction who
13 is a person described in subsection (e) and whose parole supervision is
14 transferred to Indiana from another jurisdiction. In accordance with
15 IC 11-13-4-1(2) (Interstate Compact for Out-of-State Probationers and
16 Parolees) and rules adopted under Article VII (d)(8) of the Interstate
17 Compact for Adult Offender Supervision (IC 11-13-4.5), a parolee who
18 is a person described in subsection (e) and whose parole supervision is
19 transferred to Indiana is subject to the same conditions of parole as a
20 person described in subsection (e) who was convicted in Indiana,
21 including:

- 22 (1) lifetime parole (as described in subsection (e)); and
- 23 (2) the requirement that the person wear a monitoring device (as
24 described in IC 35-38-2.5-3) that can transmit information
25 twenty-four (24) hours each day regarding a person's precise
26 location, if applicable.

27 (g) If a person being supervised on lifetime parole as described in
28 subsection (e) is also required to be supervised by a court, a probation
29 department, a community corrections program, a community transition
30 program, or another similar program upon the person's release from
31 imprisonment, the parole board may:

- 32 (1) supervise the person while the person is being supervised by
33 the other supervising agency; or
 - 34 (2) permit the other supervising agency to exercise all or part of
35 the parole board's supervisory responsibility during the period in
36 which the other supervising agency is required to supervise the
37 person, if supervision by the other supervising agency will be, in
38 the opinion of the parole board:
 - 39 (A) at least as stringent; and
 - 40 (B) at least as effective;
- 41 as supervision by the parole board.

42 (h) The parole board is not required to supervise a person on

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1 lifetime parole during any period in which the person is imprisoned.
 2 However, upon the person's release from imprisonment, the parole
 3 board shall recommence its supervision of a person on lifetime parole.
 4 (i) If a court orders the parole board to place a sexually violent
 5 predator whose sentence does not include a commitment to the
 6 department of correction on lifetime parole under IC 35-38-1-29, the
 7 parole board shall place the sexually violent predator on lifetime parole
 8 and supervise the person in the same manner in which the parole board
 9 supervises a sexually violent predator on lifetime parole whose
 10 sentence includes a commitment to the department of correction.
 11 (j) **This subsection applies only to a person who is a sexually**
 12 **violent predator under IC 35-38-1-7.5. Not earlier than one (1) year**
 13 **before a sexually violent predator is scheduled to complete the**
 14 **person's fixed term of imprisonment, less credit time earned with**
 15 **respect to that term, the department shall determine in writing**
 16 **whether the sexually violent predator is a candidate for civil**
 17 **commitment under IC 12-26. If the department determines that the**
 18 **sexually violent predator is a candidate for civil commitment under**
 19 **IC 12-26, the department shall request in writing that the**
 20 **prosecuting attorney in the county of conviction institute civil**
 21 **commitment proceedings with respect to the sexually violent**
 22 **predator under IC 12-26. A sexually violent predator may be civilly**
 23 **committed in any county. If a sexually violent predator is not**
 24 **civilly committed, the sexually violent predator shall be treated in**
 25 **accordance with subsection (e). At the end of any term of civil**
 26 **commitment under this subsection, the sexually violent predator**
 27 **shall be treated in accordance with subsection (e).**

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