

HOUSE BILL No. 1155

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-13-3; IC 35-42-4-3; IC 35-44-3-13; IC 35-50-6-1.

Synopsis: Child molesting. Provides that a person convicted of child molesting must be: (1) placed on lifetime parole when the person's term of imprisonment is completed; and (2) required to wear a GPS monitoring device. Allows the parole board to require parolees who are sex and violent offenders to wear a GPS monitoring device. Provides that a person who violates a condition of lifetime parole after committing two previous parole violations or after having completed the person's sentence (including any credit time) commits a Class D felony, and that the violation is a Class C felony or Class B felony if the person has a prior unrelated conviction or if the violation involves contact with a child or a victim of the child molesting for which the person was convicted. Specifies that a person convicted of child molesting in another state whose parole is transferred to Indiana is required to be placed on lifetime parole. Provides that, if a person being supervised on lifetime parole is also required to be supervised by a probation department or similar agency, the probation department or similar agency may have sole supervision of the person if the parole board finds that supervision by the probation department or other agency will be at least as stringent and effective as supervision by the parole board. Makes child molesting committed by performing or submitting to sexual intercourse or deviate sexual conduct a Class A felony (instead of a Class B felony). Makes child molesting committed by fondling or touching a child a Class B felony (instead of a Class C felony).

Effective: July 1, 2006.

Budak, Smith J, Ulmer, Bardon

January 5, 2006, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

HOUSE BILL No. 1155

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 11-13-3-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) A person
3 sentenced under IC 35-50 shall be released on parole or discharged
4 from the person's term of imprisonment under IC 35-50 without a
5 parole release hearing.
6 (b) A person sentenced for an offense under laws other than
7 IC 35-50 who is eligible for release on parole, or a person whose parole
8 is revoked and is eligible for reinstatement on parole under rules
9 adopted by the parole board shall, before the date of the person's parole
10 eligibility, be granted a parole release hearing to determine whether
11 parole will be granted or denied. The hearing shall be conducted by one
12 (1) or more of the parole board members. If one (1) or more of the
13 members conduct the hearing on behalf of the parole board, the final
14 decision shall be rendered by the full parole board based upon the
15 record of the proceeding and the hearing conductor's findings. Before
16 the hearing, the parole board shall order an investigation to include the
17 collection and consideration of:

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- (1) reports regarding the person's medical, psychological, educational, vocational, employment, economic, and social condition and history;
- (2) official reports of the person's history of criminality;
- (3) reports of earlier parole or probation experiences;
- (4) reports concerning the person's present commitment that are relevant to the parole release determination;
- (5) any relevant information submitted by or on behalf of the person being considered; and
- (6) such other relevant information concerning the person as may be reasonably available.

(c) Unless the victim has requested in writing not to be notified, the department shall notify a victim of a felony (or the next of kin of the victim if the felony resulted in the death of the victim) or any witness involved in the prosecution of an offender imprisoned for the commission of a felony when the offender is:

- (1) to be discharged from imprisonment;
- (2) to be released on parole under IC 35-50-6-1;
- (3) to have a parole release hearing under this chapter;
- (4) to have a parole violation hearing;
- (5) an escaped committed offender; or
- (6) to be released from departmental custody under any temporary release program administered by the department, including the following:

(A) Placement on minimum security assignment to a program authorized by IC 11-10-1-3 or IC 35-38-3-6 and requiring periodic reporting to a designated official, including a regulated community assignment program.

(B) Assignment to a minimum security work release program.

(d) The department shall make the notification required under subsection (c):

- (1) at least forty (40) days before a discharge, release, or hearing occurs; and
- (2) not later than twenty-four (24) hours after the escape of a committed offender.

The department shall supply the information to a victim (or a next of kin of a victim in the appropriate case) and a witness at the address supplied to the department by the victim (or next of kin) or witness. A victim (or next of kin) is responsible for supplying the department with any change of address or telephone number of the victim (or next of kin).

(e) The probation officer conducting the presentence investigation

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shall inform the victim and witness described in subsection (c), at the time of the interview with the victim or witness, of the right of the victim or witness to receive notification from the department under subsection (c). The probation department for the sentencing court shall forward the most recent list of the addresses or telephone numbers, or both, of victims to the department of correction. The probation department shall supply the department with the information required by this section as soon as possible but not later than five (5) days from the receipt of the information from the victim. A victim (or next of kin) is responsible for supplying the department with the correct address and telephone number of the victim (or next of kin).

(f) Notwithstanding IC 11-8-5-2 and IC 4-1-6, an inmate may not have access to the name and address of a victim and a witness. Upon the filing of a motion by any person requesting or objecting to the release of victim information, witness information, or both that is retained by the department, the court shall review the information that is the subject of the motion in camera before ruling on the motion.

(g) The notice required under subsection (c) must specify whether the prisoner is being discharged, is being released on parole, **is being released on lifetime parole**, is having a parole release hearing, is having a parole violation hearing, or has escaped. The notice must contain the following information:

- (1) The name of the prisoner.
- (2) The date of the offense.
- (3) The date of the conviction.
- (4) The felony of which the prisoner was convicted.
- (5) The sentence imposed.
- (6) The amount of time served.
- (7) The date and location of the interview (if applicable).

(h) The parole board shall adopt rules under IC 4-22-2 and make available to offenders the criteria considered in making parole release determinations. The criteria must include the:

- (1) nature and circumstances of the crime for which the offender is committed;
- (2) offender's prior criminal record;
- (3) offender's conduct and attitude during the commitment; and
- (4) offender's parole plan.

(i) The hearing prescribed by this section may be conducted in an informal manner without regard to rules of evidence. In connection with the hearing, however:

- (1) reasonable, advance written notice, including the date, time, and place of the hearing shall be provided to the person being

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considered;

(2) the person being considered shall be given access, in accord with IC 11-8-5, to records and reports considered by the parole board in making its parole release decision;

(3) the person being considered may appear, speak in the person's own behalf, and present documentary evidence;

(4) irrelevant, immaterial, or unduly repetitious evidence shall be excluded; and

(5) a record of the proceeding, to include the results of the parole board's investigation, notice of the hearing, and evidence adduced at the hearing, shall be made and preserved.

(j) If parole is denied, the parole board shall give the person written notice of the denial and the reasons for the denial. The parole board may not parole a person if it determines that there is substantial reason to believe that the person:

(1) will engage in further specified criminal activity; or

(2) will not conform to appropriate specified conditions of parole.

(k) If parole is denied, the parole board shall conduct another parole release hearing not earlier than five (5) years after the date of the hearing at which parole was denied. However, the board may conduct a hearing earlier than five (5) years after denial of parole if the board:

(1) finds that special circumstances exist for the holding of a hearing; and

(2) gives reasonable notice to the person being considered for parole.

(l) The parole board may parole a person who is outside Indiana on a record made by the appropriate authorities of the jurisdiction in which that person is imprisoned.

(m) If the board is considering the release on parole of an offender who is serving a sentence of life in prison, a determinate term of imprisonment of at least ten (10) years, or an indeterminate term of imprisonment with a minimum term of at least ten (10) years, in addition to the investigation required under subsection (b), the board shall order and consider a community investigation, which must include an investigation and report that substantially reflects the attitudes and opinions of:

(1) the community in which the crime committed by the offender occurred;

(2) law enforcement officers who have jurisdiction in the community in which the crime occurred;

(3) the victim of the crime committed by the offender, or if the victim is deceased or incompetent for any reason, the victim's

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1 relatives or friends; and

2 (4) friends or relatives of the offender.

3 If the board reconsiders for release on parole an offender who was
4 previously released on parole and whose parole was revoked under
5 section 10 of this chapter, the board may use a community investigation
6 prepared for an earlier parole hearing to comply with this subsection.
7 However, the board shall accept and consider any supplements or
8 amendments to any previous statements from the victim or the victim's
9 relatives or friends.

10 (n) As used in this section, "victim" means a person who has
11 suffered direct harm as a result of a violent crime (as defined in
12 IC 5-2-6.1-8).

13 SECTION 2. IC 11-13-3-4 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) A condition to
15 remaining on parole is that the parolee not commit a crime during the
16 period of parole.

17 (b) The parole board may also adopt, under IC 4-22-2, additional
18 conditions to remaining on parole and require a parolee to satisfy one
19 (1) or more of these conditions. These conditions must be reasonably
20 related to the parolee's successful reintegration into the community and
21 not unduly restrictive of a fundamental right.

22 (c) If a person is released on parole, the parolee shall be given a
23 written statement of the conditions of parole. Signed copies of this
24 statement shall be:

25 (1) retained by the parolee;

26 (2) forwarded to any person charged with the parolee's
27 supervision; and

28 (3) placed in the parolee's master file.

29 (d) The parole board may modify parole conditions if the parolee
30 receives notice of that action and had ten (10) days after receipt of the
31 notice to express the parolee's views on the proposed modification.
32 This subsection does not apply to modification of parole conditions
33 after a revocation proceeding under section 10 of this chapter.

34 (e) As a condition of parole, the parole board may require the
35 parolee to reside in a particular parole area. In determining a parolee's
36 residence requirement, the parole board shall:

37 (1) consider:

38 (A) the residence of the parolee prior to the parolee's
39 incarceration; and

40 (B) the parolee's place of employment; and

41 (2) assign the parolee to reside in the county where the parolee
42 resided prior to the parolee's incarceration unless assignment on

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1 this basis would be detrimental to the parolee's successful
2 reintegration into the community.

3 (f) As a condition of parole, the parole board may require the
4 parolee to:

- 5 (1) periodically undergo a laboratory chemical test (as defined in
- 6 IC 14-15-8-1) or series of tests to detect and confirm the presence
- 7 of a controlled substance (as defined in IC 35-48-1-9); and
- 8 (2) have the results of any test under this subsection reported to
- 9 the parole board by the laboratory.

10 The parolee is responsible for any charges resulting from a test
11 required under this subsection. However, a person's parole may not be
12 revoked on the basis of the person's inability to pay for a test under this
13 subsection.

14 (g) As a condition of parole, the parole board:

15 (1) may require a parolee who is a sex and violent offender (as
16 defined in IC 5-2-12-4) to:

17 (A) participate in a treatment program for sex offenders
18 approved by the parole board; and

19 (B) avoid contact with any person who is less than sixteen (16)
20 years of age unless the parolee:

21 (i) receives the parole board's approval; or

22 (ii) successfully completes the treatment program referred to
23 in clause (A); and

24 (2) shall:

25 (A) require a parolee who is an offender (as defined in
26 IC 5-2-12-4) to register with a sheriff (or the police chief of a
27 consolidated city) under IC 5-2-12-5;

28 (B) prohibit the offender from residing within one thousand
29 (1,000) feet of school property (as defined in IC 35-41-1-24.7)
30 for the period of parole, unless the offender obtains written
31 approval from the parole board; and

32 (C) prohibit a parolee who is an offender convicted of a sex
33 offense (as defined in IC 35-38-2-2.5) from residing within
34 one (1) mile of the victim of the offender's sex offense unless
35 the offender obtains a waiver under IC 35-38-2-2.5.

36 If the parole board allows the offender to reside within one thousand
37 (1,000) feet of school property under subdivision (2)(B), the parole
38 board shall notify each school within one thousand (1,000) feet of the
39 offender's residence of the order.

40 (h) The address of the victim of a parolee who is an offender
41 convicted of a sex offense (as defined in IC 35-38-2-2.5) is
42 confidential, even if the offender obtains a waiver under

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1 IC 35-38-2-2.5.

2 (i) As a condition of parole, the parole board:

3 (1) may require a parolee (other than a parolee described in
4 subdivision (2)) who is an offender (as defined in IC 5-2-12-4);
5 and

6 (2) shall require a parolee who has been convicted of child
7 molesting (IC 35-42-4-3) or of an offense in another
8 jurisdiction that is substantially similar to child molesting;
9 to wear a monitoring device (as defined in IC 35-38-2.5-3).

10 SECTION 3. IC 35-42-4-3 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) A person who,
12 with a child under fourteen (14) years of age, performs or submits to
13 sexual intercourse or deviate sexual conduct commits child molesting,
14 a ~~Class B~~ **Class A** felony. However, the offense is a ~~Class A~~ felony if:

15 (1) it is committed by a person at least twenty-one (21) years of
16 age;

17 (2) it is committed by using or threatening the use of deadly force
18 or while armed with a deadly weapon;

19 (3) it results in serious bodily injury; or

20 (4) the commission of the offense is facilitated by furnishing the
21 victim, without the victim's knowledge, with a drug (as defined in
22 IC 16-42-19-2(1)) or a controlled substance (as defined in
23 IC 35-48-1-9) or knowing that the victim was furnished with the
24 drug or controlled substance without the victim's knowledge.

25 (b) A person who, with a child under fourteen (14) years of age,
26 performs or submits to any fondling or touching, of either the child or
27 the older person, with intent to arouse or to satisfy the sexual desires of
28 either the child or the older person, commits child molesting, a ~~Class~~
29 **Class B** felony. However, the offense is a ~~Class A~~ felony if:

30 (1) it is committed by using or threatening the use of deadly force;

31 (2) it is committed while armed with a deadly weapon; or

32 (3) the commission of the offense is facilitated by furnishing the
33 victim, without the victim's knowledge, with a drug (as defined in
34 IC 16-42-19-2(1)) or a controlled substance (as defined in
35 IC 35-48-1-9) or knowing that the victim was furnished with the
36 drug or controlled substance without the victim's knowledge.

37 (c) It is a defense that the accused person reasonably believed that
38 the child was sixteen (16) years of age or older at the time of the
39 conduct.

40 SECTION 4. IC 35-44-3-13 IS ADDED TO THE INDIANA CODE
41 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 2006]: Sec. 13. (a) A person who is being supervised on lifetime

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parole (as described in IC 35-50-6-1) and who knowingly or intentionally violates a condition of lifetime parole commits a Class D felony if, at the time of the violation:

(1) the person's lifetime parole has been revoked two (2) or more times; or

(2) the person has completed the person's sentence, including any credit time the person may have earned.

(b) The offense described in subsection (a) is a Class C felony if:

(1) the person has a prior unrelated conviction under this section; or

(2) the condition of parole that the person violated prohibited the person from having direct or indirect contact with:

(A) a child less than sixteen (16) years of age; or

(B) a victim of the child molesting for which the person was convicted.

(c) The offense described in subsection (a) is a Class B felony if the person has a prior unrelated conviction under this section that involved direct or indirect contact with:

(1) a child less than sixteen (16) years of age; or

(2) a victim of the child molesting for which the person was convicted.

SECTION 5. IC 35-50-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Except as provided in subsection (d) or (e), when a person imprisoned for a felony completes his the person's fixed term of imprisonment, less the credit time he the person has earned with respect to that term, he the person shall be:

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

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

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

(b) Except as provided in subsection (d); This subsection does not apply to a person described in subsection (d), (e), or (f). A person released on parole remains on parole from the date of his release until his the person's fixed term expires, unless his the person's parole is revoked or he the person is discharged from that term by the parole board. In any event, if his the person's parole is not revoked, the parole board shall discharge him the person after the period set under subsection (a) or the expiration of the person's fixed term, whichever

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is shorter.

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

(d) **This subsection does not apply to a person convicted of child molesting (IC 35-42-4-3).** When an offender (as defined in IC 5-2-12-4) completes the offender's fixed term of imprisonment, less credit time earned with respect to that term, the offender shall be placed on parole for not more than ten (10) years.

(e) **This subsection applies to a person convicted of child molesting (IC 35-42-4-3).** When a person convicted of child molesting completes the person's fixed term of imprisonment, less credit time earned with respect to that term, the person shall be placed on parole for the remainder of the person's life.

(f) This subsection applies to a parolee whose parole supervision is transferred to Indiana from another jurisdiction following the person's conviction in another jurisdiction for an offense that is substantially similar to child molesting (IC 35-42-4-3). In accordance with IC 11-13-4-1(2) (Interstate Compact for Out-of-State Probationers and Parolees) and rules adopted under Article VII (d)(8) of the Interstate Compact for Adult Offender Supervision (IC 11-13-4.5), a parolee whose parole supervision is transferred to Indiana following the person's conviction for an offense substantially similar to child molesting is subject to the same conditions of parole as a person convicted of child molesting in Indiana, including:

- (1) lifetime parole (as described in subsection (e)); and
- (2) the requirement that the person wear a monitoring device (as defined in IC 35-38-2.5-3).

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

- (1) supervise the person while the person is being supervised by the other supervising agency; or
- (2) permit the other supervising agency to exercise all or part of the parole board's supervisory responsibility during the period in which the other supervising agency is required to

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1 supervise the person, if supervision by the other supervising
2 agency will be, in the opinion of the parole board:

3 (A) at least as stringent; and

4 (B) at least as effective;

5 as supervision by the parole board.

6 (h) The parole board is not required to supervise a person on
7 lifetime parole during any period in which the person is
8 imprisoned. However, upon the person's release from
9 imprisonment, the parole board shall recommence its supervision
10 of a person on lifetime parole.

11 SECTION 6. [EFFECTIVE JULY 1, 2006] IC 35-42-4-3, as
12 amended by this act, and IC 35-44-3-13, as added by this act, apply
13 only to crimes committed after June 30, 2006.

14 SECTION 7. [EFFECTIVE JULY 1, 2006] IC 35-50-6-1, as
15 amended by this act, applies only to a person:

16 (1) released on parole in Indiana after June 30, 2006; or

17 (2) whose parole is transferred to Indiana from another state
18 after June 30, 2006.

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