



COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1202, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 2, delete lines 10 through 42, begin a new paragraph and
2 insert:
- 3 **"(c) The department shall annually review the inmate**
4 **population of the department's facilities and programs in**
5 **accordance with IC 35-38-1-17.5.**
- 6 SECTION 2. IC 35-38-1-17.5 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2021]: **Sec. 17.5. (a) This section applies to an**
9 **inmate confined to the department of correction serving a sentence**
10 **for the following offenses committed before July 1, 2014:**
- 11 **(1) Theft (IC 35-43-4-2).**
12 **(2) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).**
13 **(3) Dealing in methamphetamine (IC 35-48-4-1.1).**
14 **(4) Dealing in a schedule I, II, or III controlled substance or**
15 **controlled substance analog (IC 35-48-4-2).**
16 **(5) Dealing in a schedule IV controlled substance or controlled**
17 **substance analog (IC 35-48-4-3).**
18 **(6) Dealing in a schedule V controlled substance or controlled**
19 **substance analog (IC 35-48-4-4).**
20 **(7) Possession of cocaine or a narcotic drug (IC 35-48-4-6).**

- 1 **(8) Possession of methamphetamine (IC 35-48-4-6.1).**
2 **(9) Possession of a controlled substance or controlled**
3 **substance analog or obtaining a schedule V controlled**
4 **substance (IC 35-48-4-7).**
5 **(10) Dealing in marijuana, hash oil, hashish, or salvia (IC**
6 **35-48-4-10).**
7 **(11) Possession of marijuana, hash oil, hashish, or salvia (IC**
8 **35-48-4-11).**
9 **(b) This section does not apply to the following:**
10 **(1) An inmate described in IC 11-13-9-1.**
11 **(2) An inmate who is a violent criminal (as defined in**
12 **IC 35-38-1-17).**
13 **(3) An inmate who has a prior unrelated conviction for:**
14 **(A) a violent offense (as defined in IC 11-12-3.7-6);**
15 **(B) battery (IC 35-42-2-1);**
16 **(C) domestic battery (IC 35-42-2-1.3); or**
17 **(D) strangulation (IC 35-42-2-9).**
18 **(4) An inmate who was charged with an offense described in**
19 **subdivisions (1) through (3) that was dismissed pursuant to a**
20 **plea agreement that resulted in the sentence for which the**
21 **offender is currently seeking relief.**
22 **(c) The department of correction shall, at least annually, review**
23 **the inmate population of the department's facilities and programs**
24 **to determine the identities of any inmates described in subsection**
25 **(a) and not disqualified under subsection (b). The department shall**
26 **evaluate the factors listed in IC 11-13-9-4 and recommend either**
27 **no change in the inmate's sentence or a modification of the**
28 **inmate's sentence. The department shall notify the inmate of the**
29 **inmate's status and of the department's recommendation.**
30 **(d) Notwithstanding IC 1-1-5.5-21, an inmate who receives a**
31 **recommendation for sentence modification under this section may**
32 **petition the sentencing court to reduce or suspend the inmate's**
33 **sentence.**
34 **(e) After considering all relevant factors, the sentencing court**
35 **may modify the sentence of an inmate to whom this section applies.**
36 **However, if the inmate was sentenced under the terms of a fixed**
37 **term plea agreement, the court may not, without the consent of the**
38 **prosecuting attorney, reduce or suspend the sentence and impose**
39 **a sentence not authorized by the plea agreement. The court must**
40 **incorporate its reasons in the record.**
41 **(f) If the court sets a hearing on a petition under this section, the**
42 **court must give notice to the prosecuting attorney, and the**

1 prosecuting attorney must give notice to the victim (as defined in
 2 IC 35-31.5-2-348(a)) of the crime for which the inmate is serving
 3 the sentence.

4 (g) The court may deny a request to suspend or reduce a
 5 sentence under this section without making written findings and
 6 conclusions.

7 (h) The court is not required to conduct a hearing before
 8 reducing or suspending a sentence under this section if:

- 9 (1) the prosecuting attorney has filed with the court an
 10 agreement to the reduction or suspension of the sentence; and
 11 (2) the inmate has filed with the court a waiver of the right to
 12 be present when the order to reduce or suspend the sentence
 13 is considered.

14 (i) A person may not waive the right to sentence modification
 15 under this section as part of a plea agreement. Any purported
 16 waiver of the right to sentence modification under this section in a
 17 plea agreement is invalid and unenforceable as against public
 18 policy. This subsection does not prohibit the finding of a waiver of
 19 the right to:

- 20 (1) have a court modify a sentence and impose a sentence not
 21 authorized by the plea agreement; or
 22 (2) sentence modification for any other reason, including
 23 failure to comply with the provisions of this section.

24 (j) An inmate may petition for a modification once under this
 25 section.

26 (k) This section expires July 1, 2026."

27 Delete pages 3 through 4.

28 Renumber all SECTIONS consecutively.

(Reference is to HB 1202 as printed February 4, 2021.)

and when so amended that said bill do pass .

Committee Vote: Yeas 5, Nays 3.

Senator Young M, Chairperson