

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1065

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AN ACT to amend the Indiana Code concerning corrections.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 4-20.5-7-22 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. (a) As used in this section, "local economic development organization" has the meaning set forth in IC 5-28-11.5-2.**

**(b) As used in this section, "regional holding facility lease agreement" means an agreement between the department of correction and a local economic development organization to lease an unused department of correction facility for the purpose of:**

- (1) addressing the issue of jail overcrowding in Indiana;**
- (2) reducing recidivism by offering programs in the facility as described under IC 11-12-6.5-1(d); and**
- (3) obtaining federal funding to operate the facility.**

**(c) The department of correction may enter into a regional holding facility lease agreement with a local economic development organization for not more than forty (40) years. The regional holding facility lease agreement may be renewed.**

**(d) The department of correction may apply for federal grants to implement this section.**

**(e) The department of correction shall adopt rules under IC 4-22-2 to implement this section.**

SECTION 2. IC 5-2-6-3, AS AMENDED BY SEA 238-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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UPON PASSAGE]: Sec. 3. The institute is established to do the following:

- (1) Evaluate state and local programs associated with:
  - (A) the prevention, detection, and solution of criminal offenses;
  - (B) law enforcement; and
  - (C) the administration of criminal and juvenile justice.
- (2) Participate in statewide collaborative efforts to improve all aspects of law enforcement, juvenile justice, and criminal justice in this state.
- (3) Stimulate criminal and juvenile justice research.
- (4) Develop new methods for the prevention and reduction of crime.
- (5) Prepare applications for funds under the Omnibus Act and the Juvenile Justice Act.
- (6) Administer victim and witness assistance funds.
- (7) Administer the traffic safety functions assigned to the institute under IC 9-27-2.
- (8) Compile and analyze information and disseminate the information to persons who make criminal justice decisions in this state.
- (9) Serve as the criminal justice statistical analysis center for this state.
- (10) Identify grants and other funds that can be used by the department of correction to carry out its responsibilities concerning sex or violent offender registration under IC 11-8-8.
- (11) Administer the application and approval process for designating an area of a consolidated or second class city as a public safety improvement area under IC 36-8-19.5.
- (12) Administer funds for the support of any sexual offense services.
- (13) Administer funds for the support of domestic violence programs.
- (14) Administer funds to support assistance to victims of human sexual trafficking offenses as provided in IC 35-42-3.5-4.
- (15) Administer the domestic violence prevention and treatment fund under IC 5-2-6.7.
- (16) Administer the family violence and victim assistance fund under IC 5-2-6.8.
- (17) Monitor and evaluate criminal code reform under IC 5-2-6-24.
- (18) Administer the enhanced enforcement drug mitigation area



fund and pilot program established under IC 5-2-11.5.

(19) Administer the ignition interlock inspection account established under IC 9-30-8-7.

**(20) Identify any federal, state, or local grants that can be used to assist in the funding and operation of regional holding facilities under IC 11-12-6.5.**

SECTION 3. IC 5-23-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a)** The state or a political subdivision may enter into a public-private agreement with an operator under the terms of this article.

**(b) A joint board or separate entity established under IC 36-1-7 for purposes of the design, financing, construction, acquisition, improvement, renovation, equipping, operation, and maintenance of a regional jail under IC 11-12-5.5 may enter into a public-private agreement with an operator under this article.**

SECTION 4. IC 5-23-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. BOT agreements may provide the following:

(1) The design, construction, operation, management, maintenance, or financing of the cost of a public facility shall be partially or entirely the responsibility of the operator.

(2) The governmental body ~~shall~~ **may** lease the public facility and real property owned by the governmental body upon which the public facility is to be located to the operator for a predetermined period. **Except as provided in subdivision (7)**, the BOT agreement must provide for ownership of all improvements by the governmental body, unless the governmental body elects to provide for ownership of the public facility by the operator during the term of the BOT agreement. In this case, ownership reverts back to the governmental body upon the termination of the BOT agreement.

(3) The BOT agreement must identify which costs are to be the responsibility of the operator and which costs are to be the responsibility of the governmental body.

(4) The operator may be authorized to retain a mutually agreed upon percentage of the revenues received in the operation and management of the public facility, or the operator may be paid an amount established by the governmental body, which shall be applied as follows:

(A) Capital outlay costs for the public facility and public service plus interest and principal repayment for any debt incurred.



(B) Costs associated with the operation, management, and maintenance of the public facility.

(C) Payment to the governmental body for reimbursement of the costs of maintenance, law enforcement, and other services if the services are performed by the governmental body under the BOT agreement.

(D) An agreed upon return on investment to the operator.

(5) The operator may pay the governmental body either a lease payment or a percentage of gross revenue per month for the operator's operation and use of the public facility.

(6) The BOT agreement may require a performance bond and provide for the payment of contractors and subcontractors under IC 4-13.6-7, IC 5-16-5, or IC 36-1-12, whichever is applicable.

**(7) If a regional jail (as defined in IC 11-12-5.5-1) is the subject of a BOT agreement under this chapter, the operator and the governmental body may mutually agree that ownership of the regional jail will remain with the operator during the term of the BOT agreement and after termination of the BOT agreement. The governmental body shall pay costs associated with the design, construction, financing, operation, management, and maintenance of the regional jail from funds identified under IC 11-12-5.5-3.**

SECTION 5. IC 6-3.6-2-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 14.5. "Regional jail" has the meaning set forth in IC 11-12-5.5-1.**

SECTION 6. IC 11-8-2-5, AS AMENDED BY P.L.130-2018, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The commissioner shall do the following:

- (1) Organize the department and employ personnel necessary to discharge the duties and powers of the department.
- (2) Administer and supervise the department, including all state owned or operated correctional facilities.
- (3) Except for employees of the parole board, be the appointing authority for all positions in the department.
- (4) Define the duties of a deputy commissioner and a warden.
- (5) Accept committed persons for study, evaluation, classification, custody, care, training, and reintegration.
- (6) Determine the capacity of all state owned or operated correctional facilities and programs and keep all Indiana courts having criminal or juvenile jurisdiction informed, on a quarterly



basis, of the populations of those facilities and programs.

(7) Utilize state owned or operated correctional facilities and programs to accomplish the purposes of the department and acquire or establish, according to law, additional facilities and programs whenever necessary to accomplish those purposes.

(8) Develop policies, programs, and services for committed persons, for administration of facilities, and for conduct of employees of the department.

(9) Administer, according to law, the money or other property of the department and the money or other property retained by the department for committed persons.

(10) Keep an accurate and complete record of all department proceedings, which includes the responsibility for the custody and preservation of all papers and documents of the department.

(11) Make an annual report to the governor according to subsection (c).

(12) Develop, collect, and maintain information concerning offenders, sentencing practices, and correctional treatment as the commissioner considers useful in penological research or in developing programs.

(13) Cooperate with and encourage public and private agencies and other persons in the development and improvement of correctional facilities, programs, and services.

(14) Explain correctional programs and services to the public.

(15) As required under 42 U.S.C. 15483, after January 1, 2006, provide information to the election division to coordinate the computerized list of voters maintained under IC 3-7-26.3 with department records concerning individuals disfranchised under IC 3-7-46.

(16) Make an annual report to the legislative council in an electronic format under IC 5-14-6 before September 1 of each year.

(b) The commissioner may:

(1) when authorized by law, adopt departmental rules under IC 4-22-2;

(2) delegate powers and duties conferred on the commissioner by law to a deputy commissioner or commissioners and other employees of the department;

(3) issue warrants for the return of escaped committed persons (an employee of the department or any person authorized to execute warrants may execute a warrant issued for the return of an escaped person);



(4) appoint personnel to be sworn in as correctional police officers; ~~and~~

**(5) enter into a regional holding facility lease agreement with a local economic development organization as described under IC 4-20.5-7-22; and**

~~(5)~~ **(6)** exercise any other power reasonably necessary in discharging the commissioner's duties and powers.

(c) The annual report of the department shall be transmitted to the governor by September 1 of each year and must contain:

(1) a description of the operation of the department for the fiscal year ending June 30;

(2) a description of the facilities and programs of the department;

(3) an evaluation of the adequacy and effectiveness of those facilities and programs considering the number and needs of committed persons or other persons receiving services; and

(4) any other information required by law.

Recommendations for alteration, expansion, or discontinuance of facilities or programs, for funding, or for statutory changes may be included in the annual report.

SECTION 7. IC 11-12-5.5-1, AS ADDED BY P.L.184-2018, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. ~~As used in~~ **The following definitions apply throughout** this chapter:

**(1) "Regional jail" means a correctional facility (as defined in IC 5-1.2-2-11) for which a regional jail agreement has been entered into under section 2 of this chapter.**

**(2) "Regional jail agreement" means an agreement described in section 2(a) of this chapter.**

SECTION 8. IC 11-12-5.5-2, AS ADDED BY P.L.184-2018, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Subject to the requirements of this chapter, the executive of a county may enter into an agreement under IC 36-1-7 with one (1) or more entities described in IC 36-1-7-1 for the construction, maintenance, or operation of a regional jail.

(b) In the case of a county, the county executive may not enter into a regional jail agreement under this chapter unless the regional jail agreement is first approved by both the county fiscal body and the county sheriff.

**(c) A regional jail may be designed, financed, constructed, operated, or maintained by any means permitted or authorized by law, including the following:**

**(1) IC 5-23.**



**(2) IC 5-30.**

**(3) IC 5-32.**

**(4) IC 36-1-12.**

SECTION 9. IC 11-12-5.5-3, AS ADDED BY P.L.184-2018, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a)** In addition to the provisions required under IC 36-1-7-3, a regional jail agreement must include terms concerning the following:

- (1) The location of the regional jail.
- (2) The acquisition, **design, financing**, construction, leasing, maintenance, repair, operation, termination of operations, and administration of the regional jail.
- (3) The manner in which each participating entity's proportionate share of the funding for the regional jail will be determined.
- (4) The manner in which any:
  - (A) per diem paid by the state; or
  - (B) other reimbursement paid by the state;
 for the costs of incarcerating individuals in a county jail or the costs of medical care expenses incurred for individuals in a county jail will be used by the participating entities.
- (5) Any pledge of local revenue that will be required to carry out the regional jail agreement or to pay bonds issued or leases entered into by a participating entity to carry out the regional jail agreement.
- (6) The standards that will apply to the regional jail.
- (7) The method of determining the inmate programs, activities, and services that will be provided at the regional jail.
- (8) The method of resolving disputes among the participating entities concerning the regional jail agreement, if any such disputes arise.

**(b) Notwithstanding IC 5-23, if a public-private agreement (as defined in IC 5-23-2-13) is entered into to design, finance, construct, maintain, or operate a regional jail, the manner of acquiring, holding, and disposing of real property under the joint agreement may include ownership by the operator of:**

- (1) real property on which the regional jail is constructed;**
- (2) personal property of the regional jail; and**
- (3) all improvements to the regional jail during and after the termination of the public-private agreement.**

SECTION 10. IC 11-12-5.5-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6. A regional jail may provide**



any combination of:

- (1) substance abuse treatment (as defined in IC 11-12-3.8-1.5);
- (2) jail treatment (as described in IC 11-12-2);
- (3) recidivism reduction programs (as described in IC 11-12-2); or
- (4) any other program or service the participating entities determine is necessary or appropriate.

SECTION 11. IC 11-12-6.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 6.5. Regional Holding Facilities**

**Sec. 1. (a)** As used in this chapter, "confined jail offender" means a person convicted of a Level 6 felony and sentenced to a period of imprisonment in a county jail. The term does not include:

- (1) a person convicted of a felony other than a Level 6 felony; or
- (2) a person convicted of an offense under IC 9-30-15.5-1.

**(b)** As used in this chapter, "overcrowded" means that the county jail is at one hundred percent (100%) capacity.

**(c)** As used in this chapter, "prisoner" means a criminal offender who is convicted of a crime and is:

- (1) serving a sentence for a conviction other than a Level 6 felony conviction; and
- (2) committed to the department of correction.

**(d)** As used in this chapter, "regional holding facility" means an existing facility that:

- (1) is currently established and operated by the department for the purpose of housing a confined jail offender from a county jail when the county jail is overcrowded;
- (2) does not include any prisoners from the general prison population who are committed to the department of correction;
- (3) provides treatment and counseling, if necessary, for the following:
  - (A) drug and alcohol abuse; or
  - (B) emotional or mental problems;
- (4) provides education, if necessary, including:
  - (A) remedial programs;
  - (B) programs in preparation for an Indiana high school equivalency diploma under IC 22-4.1-18; or
  - (C) life skills;
- (5) provides vocational assessment designed to evaluate a





participant's skill level and aptitudes for vocational and technical skill development; and

(6) provides other evidence based programs designed to reduce recidivism.

(e) As used in this chapter, "regional holding facility agreement" means an agreement described in section 2 of this chapter.

Sec. 2. (a) Subject to the requirements of this chapter, a county sheriff may contract with the department to transfer a confined jail offender from the county jail to a regional holding facility established and operated by the department if the county jail is overcrowded.

(b) An agreement between the county sheriff and the department may be made under this chapter only if:

(1) the confined jail offender is serving a sentence for a Level 6 felony conviction; and

(2) the commissioner has agreed to accept custody of the confined jail offender under a court order or by order of the county sheriff.

(c) Whenever the county jail is no longer overcrowded, the department may return the confined jail offender from the regional holding facility to the county jail from which the confined jail offender was transferred.

Sec. 3. When a confined jail offender is transferred under this chapter, the sheriff of the county from which the confined jail offender is transferred shall be responsible for transporting the confined jail offender to and from the regional holding facility. If the sheriff is unable to adequately protect the confined jail offender during a transfer, the sheriff may request assistance from any other law enforcement agency.

Sec. 4. The costs of incarcerating a confined jail offender under IC 35-38-3-3(f) shall be used to pay for the confined jail offender housed in either a regional holding facility or a county jail.

Sec. 5. (a) The department shall collect data and report the outcomes of the services provided under this chapter to the legislative council in an electronic format under IC 5-14-6 not later than November 1, 2022.

(b) The report shall include the following:

(1) The number of confined jail offenders served by a regional holding facility.

(2) The average length of time a confined jail offender spent in a regional holding facility.



- (3) The number and type of services provided by the regional holding facility.**
- (4) The number of confined jail offenders demonstrating improvement in functioning, as defined by the department, while receiving treatment services in the regional holding facility.**
- (5) The number of confined jail offenders who did not recidivate.**
- (6) The number of confined jail offender who did recidivate.**
- (7) A summary description of the most effective service provided in the regional holding facility.**
- (8) The number of confined jail offenders arrested upon leaving the regional holding facility and the reason for the arrest, if known.**
- (9) Recommendations to improve the effectiveness and efficiency of the program.**

**Sec. 6.** The state auditor shall semiannually provide to the department and the general assembly, in an electronic format under IC 5-14-6, an itemized record of the per diem and medical expense reimbursements received by a county under section 4 of this chapter.

**Sec. 7.** If a confined jail offender is transferred:

- (1) from a county jail to a regional holding facility, the confined jail offender's commissary account or trust account shall be transferred to the department; or**
- (2) from a regional holding facility to a county jail, the confined jail offender's commissary account or trust account shall be transferred to the county jail.**

**Sec. 8.** A regional holding facility agreement must include terms concerning the standards that will apply to the establishment and operation of a regional holding facility.

**Sec. 9. (a)** The Indiana criminal justice institute shall identify any federal, state, or local grants that can be used to assist in the funding and operation of regional holding facilities.

**(b)** To obtain necessary funding for the establishment and operation of regional holding facilities, or to provide such services through contractual agreements with public and private agencies, the commissioner may accept gifts, grants, and subsidies from any lawful source and apply for and accept federal funds.

**Sec. 10.** This chapter supplements and does not limit the authority of any entity to enter into an agreement under IC 11-12-5.5 concerning regional jails or IC 36-1-7 concerning



regional or multicounty jails.

**Sec. 11. The department shall adopt rules under IC 4-22-2 to implement this chapter.**

SECTION 12. IC 11-12-6.8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 6.8. County Jail Overcrowding Task Force**

**Sec. 1. As used in this chapter, "task force" refers to the county jail overcrowding task force established by section 2 of this chapter.**

**Sec. 2. The county jail overcrowding task force is established.**

**Sec. 3. The task force consists of the following members:**

- (1) The chief justice of Indiana or the chief justice's designee, to serve as chair of the committee.
- (2) One (1) member of the house of representatives to be appointed by the speaker of the house of representatives, to serve as co-vice chair of the committee.
- (3) One (1) member of the house of representatives to be appointed by the minority leader of the house of representatives.
- (4) One (1) member of the senate to be appointed by the president pro tempore of the senate, to serve as co-vice chair of the committee.
- (5) One (1) member of the senate to be appointed by the minority leader of the senate.
- (6) An individual appointed by the governor in consultation with the Association of Indiana Counties.
- (7) An individual appointed by the governor with expertise in mental health and drug treatment.
- (8) An individual appointed by the governor with experience in community corrections.
- (9) The commissioner of the department of correction or the commissioner's designee.
- (10) One (1) member of the Indiana Prosecuting Attorneys Council.
- (11) One (1) member of the public defender council of Indiana.
- (12) One (1) member of the Indiana Sheriff's Association.
- (13) The superintendent of the state police department.

**Sec. 4. (a) A majority of the members of the task force constitutes a quorum.**

**(b) The affirmative vote of at least a majority of the members at**



which a quorum is present is necessary for the task force to take official action other than to meet and take testimony.

(c) The task force shall meet at the call of the chair.

(d) The task force shall hold up to five (5) regional meetings.

Sec. 5. All meetings of the task force shall be open to the public in accordance with and subject to IC 5-14-1.5. All records of the task force shall be subject to the requirements of IC 5-14-3.

Sec. 6. The task force shall do the following:

(1) Conduct a statewide review of jail overcrowding to identify common reasons and possible local, regional, and statewide solutions.

(2) Study the issue of how to reduce recidivism for convicted felons in county jails by offering programs that address:

(A) mental health and drug and alcohol treatment services;

(B) educational programs; and

(C) other evidence based programs designed to reduce recidivism.

Sec. 7. The task force shall submit a report to the:

(1) governor;

(2) chief justice; and

(3) legislative council;

not later than December 1, 2019. The report submitted to the legislative council must be in an electronic format under IC 5-14-6.

Sec. 8. The chapter expires January 1, 2020.

SECTION 13. IC 35-38-3-3, AS AMENDED BY P.L.184-2018, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Except as provided by subsection (b), a person convicted of a misdemeanor may not be committed to the department of correction.

(b) Upon a request from the sheriff, the commissioner may agree to accept custody of a misdemeanant:

(1) if placement in the county jail:

(A) places the inmate in danger of serious bodily injury or death; or

(B) represents a substantial threat to the safety of others;

(2) for other good cause shown; or

(3) if a person has more than five hundred forty-seven (547) days remaining before the person's earliest release date as a result of:

(A) consecutive misdemeanor sentences; or

(B) a sentencing enhancement applied to a misdemeanor sentence.

(c) After June 30, 2014, and before January 1, 2016, a court may not



commit a person convicted of a Level 6 felony to the department of correction if the person's earliest possible release date is less than ninety-one (91) days from the date of sentencing, unless the commitment is due to the person violating a condition of probation, parole, or community corrections by committing a new criminal offense.

(d) ~~After December 31, 2015,~~ A court may not commit a person convicted of a Level 6 felony to the department of correction unless:

(1) the commitment is due to the revocation of the person's sentence for violating probation, parole, or community corrections and the revocation of the person's sentence is due to a new criminal offense; ~~or~~

(2) the person:

(A) is convicted of a Level 6 felony and the sentence for that felony is ordered to be served consecutively to the sentence for another felony;

(B) is convicted of a Level 6 felony that is enhanced by an additional fixed term under IC 35-50-2-8 through IC 35-50-2-16; or

(C) has received an enhanced sentence under IC 9-30-15.5-2; and the person's earliest possible release date is more than three hundred sixty-five (365) days after the date of sentencing; **or**

**(3) the commitment is due to an agreement made between the sheriff and the department of correction under IC 11-12-6.5.**

A person who may not be committed to the department of correction may be placed on probation, committed to the county jail, or placed in community corrections for assignment to an appropriate community corrections program.

(e) Subject to appropriation from the general assembly, a sheriff is entitled to a per diem and medical expense reimbursement from the department of correction for the cost of incarcerating a person described in subsections (c) and (d) in a county jail. The sheriff is entitled to a per diem and medical expense reimbursement only for the time that the person described in subsections (c) and (d) is incarcerated in the county jail.

(f) Per diem and medical expense reimbursements received by a county under this section or received by a county from the state under any other law for the purpose of reimbursing sheriffs for the cost of incarcerating in county jails persons convicted of felonies:

(1) shall be deposited in the county general fund; and

(2) upon appropriation by the county fiscal body, shall be used by the county sheriff only for the purposes of paying the costs of



incarcerating in the county jail persons described in subsections (c) and (d) or other persons convicted of felonies.

(g) The county auditor shall semiannually provide to the county fiscal body and the county sheriff an itemized record of the per diem and medical expense reimbursements received by the county under this section or under any other law for the purpose of reimbursing sheriffs for the cost of incarcerating persons convicted of felonies.

**SECTION 14. [EFFECTIVE UPON PASSAGE] (a) The chief justice of Indiana shall appoint the justice reinvestment advisory council (established by IC 33-38-9.5-2) to conduct a statewide review of bail reform and pretrial issues and to identify common reasons and possible local, regional, and statewide solutions.**

**(b) The justice reinvestment advisory council shall submit a final report containing its findings and recommendations to the:**

- (1) governor;**
- (2) chief justice of Indiana; and**
- (3) legislative council;**

**not later than December 1, 2019. The report to the legislative council must be in an electronic format under IC 5-14-6.**

**(c) This SECTION expires January 1, 2020.**

**SECTION 15. An emergency is declared for this act.**



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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