



March 15, 2019

ENGROSSED HOUSE BILL No. 1078

DIGEST OF HB 1078 (Updated March 12, 2019 4:09 pm - DI 106)

Citations Affected: IC 35-31.5; IC 35-38.

Synopsis: Commitment of Level 6 offenders to DOC. Provides that a court may commit a person convicted of a Level 6 felony to the department of correction (DOC) if the person: (1) is a violent offender; or (2) has two prior unrelated felony convictions.

Effective: July 1, 2019.

Steuerwald, McNamara, Mahan, Goodin

(SENATE SPONSORS — YOUNG M, FREEMAN, HOUCHIN, ZAY)

January 3, 2019, read first time and referred to Committee on Courts and Criminal Code.
January 10, 2019, reported — Do Pass.
January 14, 2019, read second time, ordered engrossed. Engrossed.
January 15, 2019, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 27, 2019, read first time and referred to Committee on Corrections and Criminal Law.
March 14, 2019, amended, reported favorably — Do Pass.

EH 1078—LS 6521/DI 107



March 15, 2019

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.

ENGROSSED HOUSE BILL No. 1078

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 35-31.5-2-290, AS ADDED BY P.L.114-2012,
2 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 290. "Security risk" for purposes of IC 35-38-2.5,
4 ~~has the meaning set forth in IC 35-38-2.5-4.5.~~ **means a person who is:**
5 **(1) a flight risk; or**
6 **(2) a threat to the physical safety of the public.**
7 SECTION 2. IC 35-31.5-2-352, AS ADDED BY P.L.114-2012,
8 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2019]: Sec. 352. "Violent offender" for purposes of
10 IC 35-38-2.5; ~~has the meaning set forth in IC 35-38-2.5-4.7.~~ **means a**
11 **person who is:**
12 **(1) convicted of an offense or attempted offense under**
13 **IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-43-1-1,**
14 **IC 35-44.1-3-4, IC 35-45-10-5, IC 35-47-5-1 (repealed), or**
15 **IC 35-47.5-5;**
16 **(2) charged with an offense or attempted offense listed in**
17 **IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-42-4,**

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- 1 **IC 35-43-1-1, IC 35-44.1-3-4, IC 35-45-10-5, IC 35-46-1-3,**
 2 **IC 35-47-5-1 (repealed), or IC 35-47.5-5; or**
 3 **(3) a security risk as defined by section 290 of this chapter.**
 4 SECTION 3. IC 35-38-2.5-4.5 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4.5. As used in this
 6 chapter, "security risk" means a person who is:
 7 (1) a flight risk; or
 8 (2) a threat to the physical safety of the public: **has the meaning**
 9 **set forth in IC 35-31.5-2-290.**
 10 SECTION 4. IC 35-38-2.5-4.7, AS AMENDED BY P.L.126-2012,
 11 SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2019]: Sec. 4.7. As used in this chapter, "violent offender"
 13 means a person who is:
 14 (1) convicted of an offense or attempted offense under
 15 IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-43-1-1,
 16 IC 35-44.1-3-4, IC 35-45-10-5, IC 35-47-5-1 (repealed); or
 17 IC 35-47.5-5;
 18 (2) charged with an offense or attempted offense listed in
 19 IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-42-4,
 20 IC 35-43-1-1, IC 35-44.1-3-4, IC 35-45-10-5, IC 35-46-1-3,
 21 IC 35-47-5-1 (repealed); or IC 35-47.5-5; or
 22 (3) a security risk as determined under section 10 of this chapter:
 23 **has the meaning set forth in IC 35-31.5-2-352.**
 24 SECTION 5. IC 35-38-3-3, AS AMENDED BY P.L.184-2018,
 25 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2019]: Sec. 3. (a) Except as provided by subsection (b), a
 27 person convicted of a misdemeanor may not be committed to the
 28 department of correction.
 29 (b) Upon a request from the sheriff, the commissioner may agree to
 30 accept custody of a misdemeanor:
 31 (1) if placement in the county jail:
 32 (A) places the inmate in danger of serious bodily injury or
 33 death; or
 34 (B) represents a substantial threat to the safety of others;
 35 (2) for other good cause shown; or
 36 (3) if a person has more than five hundred forty-seven (547) days
 37 remaining before the person's earliest release date as a result of:
 38 (A) consecutive misdemeanor sentences; or
 39 (B) a sentencing enhancement applied to a misdemeanor
 40 sentence.
 41 (c) After June 30, 2014, and before January 1, 2016, a court may not
 42 commit a person convicted of a Level 6 felony to the department of



1 correction if the person's earliest possible release date is less than
 2 ninety-one (91) days from the date of sentencing, unless the
 3 commitment is due to the person violating a condition of probation,
 4 parole, or community corrections by committing a new criminal
 5 offense.

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

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

12 (2) the person:

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

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

19 (C) has received an enhanced sentence under IC 9-30-15.5-2;

20 **(D) is a violent offender as defined in IC 35-31.5-2-352(1);**

21 **or**

22 **(E) has two (2) prior unrelated felony convictions;**

23 and the person's earliest possible release date is more than three
 24 hundred sixty-five (365) days after the date of sentencing.

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

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

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

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

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



1 incarcerating in the county jail persons described in subsections
2 (c) and (d) or other persons convicted of felonies.
3 (g) The county auditor shall semiannually provide to the county
4 fiscal body and the county sheriff an itemized record of the per diem
5 and medical expense reimbursements received by the county under this
6 section or under any other law for the purpose of reimbursing sheriffs
7 for the cost of incarcerating persons convicted of felonies.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1078, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1078 as introduced.)

MCNAMARA

Committee Vote: Yeas 13, Nays 0

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1078, 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:

Page 3, line 20, delete "IC 35-31.5-2-352" and insert "**IC 35-31.5-2-352(1)**".

and when so amended that said bill do pass.

(Reference is to HB 1078 as printed January 11, 2019.)

YOUNG M, Chairperson

Committee Vote: Yeas 7, Nays 1.

