

HOUSE BILL No. 1097

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-1-17.

Synopsis: Sentence modification. Requires a court, in a sentence modification proceeding, to consider whether a criminal penalty has been reduced. Urges the legislative council to assign the topic of sentence modification to an interim study committee.

Effective: July 1, 2020.

Young J

January 7, 2020, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 121st General Assembly (2020)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1097

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 35-38-1-17, AS AMENDED BY P.L.45-2018,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 17. (a) Notwithstanding IC 1-1-5.5-21, this section
4 applies to a person who:
5 (1) commits an offense; or
6 (2) is sentenced;
7 before July 1, 2014.
8 (b) This section does not apply to a credit restricted felon.
9 (c) Except as provided in subsections (k) and (m), this section does
10 not apply to a violent criminal.
11 (d) As used in this section, "violent criminal" means a person
12 convicted of any of the following offenses:
13 (1) Murder (IC 35-42-1-1).
14 (2) Attempted murder (IC 35-41-5-1).
15 (3) Voluntary manslaughter (IC 35-42-1-3).
16 (4) Involuntary manslaughter (IC 35-42-1-4).
17 (5) Reckless homicide (IC 35-42-1-5).



- 1 (6) Aggravated battery (IC 35-42-2-1.5).
 2 (7) Kidnapping (IC 35-42-3-2).
 3 (8) Rape (IC 35-42-4-1).
 4 (9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
 5 (10) Child molesting (IC 35-42-4-3).
 6 (11) Sexual misconduct with a minor as a Class A felony under
 7 IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2)
 8 (for a crime committed before July 1, 2014) or sexual misconduct
 9 with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a
 10 Level 2 felony under IC 35-42-4-9(b)(2) (for a crime committed
 11 after June 30, 2014).
 12 (12) Robbery as a Class A felony or a Class B felony
 13 (IC 35-42-5-1) (for a crime committed before July 1, 2014) or
 14 robbery as a Level 2 felony or a Level 3 felony (IC 35-42-5-1) (for
 15 a crime committed after June 30, 2014).
 16 (13) Burglary as Class A felony or a Class B felony
 17 (IC 35-43-2-1) (for a crime committed before July 1, 2014) or
 18 burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or
 19 Level 4 felony (IC 35-43-2-1) (for a crime committed after June
 20 30, 2014).
 21 (14) Unlawful possession of a firearm by a serious violent felon
 22 (IC 35-47-4-5).
 23 (e) At any time after:
 24 (1) a convicted person begins serving the person's sentence; and
 25 (2) the court obtains a report from the department of correction
 26 concerning the convicted person's conduct while imprisoned;
 27 the court may reduce or suspend the sentence and impose a sentence
 28 that the court was authorized to impose at the time of sentencing.
 29 However, if the convicted person was sentenced under the terms of a
 30 plea agreement, the court may not, without the consent of the
 31 prosecuting attorney, reduce or suspend the sentence and impose a
 32 sentence not authorized by the plea agreement. The court must
 33 incorporate its reasons in the record.
 34 (f) If the court sets a hearing on a petition under this section, the
 35 court must give notice to the prosecuting attorney and the prosecuting
 36 attorney must give notice to the victim (as defined in IC 35-31.5-2-348)
 37 of the crime for which the convicted person is serving the sentence.
 38 (g) The court may suspend a sentence for a felony under this section
 39 only if suspension is permitted under IC 35-50-2-2.2.
 40 (h) The court may deny a request to suspend or reduce a sentence
 41 under this section without making written findings and conclusions.
 42 (i) The court is not required to conduct a hearing before reducing or



- 1 suspending a sentence under this section if:
- 2 (1) the prosecuting attorney has filed with the court an agreement
- 3 of the reduction or suspension of the sentence; and
- 4 (2) the convicted person has filed with the court a waiver of the
- 5 right to be present when the order to reduce or suspend the
- 6 sentence is considered.
- 7 (j) This subsection applies only to a convicted person who is not a
- 8 violent criminal. A convicted person who is not a violent criminal may
- 9 file a petition for sentence modification under this section:
- 10 (1) not more than one (1) time in any three hundred sixty-five
- 11 (365) day period; and
- 12 (2) a maximum of two (2) times during any consecutive period of
- 13 incarceration;
- 14 without the consent of the prosecuting attorney.
- 15 (k) This subsection applies to a convicted person who is a violent
- 16 criminal. A convicted person who is a violent criminal may, not later
- 17 than three hundred sixty-five (365) days from the date of sentencing,
- 18 file one (1) petition for sentence modification under this section
- 19 without the consent of the prosecuting attorney. After the elapse of the
- 20 three hundred sixty-five (365) day period, a violent criminal may not
- 21 file a petition for sentence modification without the consent of the
- 22 prosecuting attorney.
- 23 (l) A person may not waive the right to sentence modification under
- 24 this section as part of a plea agreement. Any purported waiver of the
- 25 right to sentence modification under this section in a plea agreement is
- 26 invalid and unenforceable as against public policy. This subsection
- 27 does not prohibit the finding of a waiver of the right to:
- 28 (1) have a court modify a sentence and impose a sentence not
- 29 authorized by the plea agreement, as described under subsection
- 30 (e); or
- 31 (2) sentence modification for any other reason, including failure
- 32 to comply with the provisions of this section.
- 33 (m) Notwithstanding subsection (k), a person who commits an
- 34 offense after June 30, 2014, and before May 15, 2015, may file one (1)
- 35 petition for sentence modification without the consent of the
- 36 prosecuting attorney, even if the person has previously filed a petition
- 37 for sentence modification.
- 38 **(n) In determining whether to exercise its discretion to grant a**
- 39 **petition for sentence modification, the court:**
- 40 **(1) shall determine whether the penalty for the offense**
- 41 **committed by the person was reduced after the person**
- 42 **committed the offense; and**



- 1 **(2) may base its decision to modify a sentence, in whole or in**
 2 **part, on the reduction in the penalty for the offense.**
 3 **To determine whether a penalty has been reduced, the court shall**
 4 **consider both the term of years that may be imposed for the**
 5 **offense and any change in credit time available to a person**
 6 **convicted of the offense. However, this subsection does not permit**
 7 **the court to modify a sentence if modification is otherwise**
 8 **prohibited by this section. The petitioner bears the burden of**
 9 **proving that a penalty has been reduced.**
- 10 **SECTION 2. [EFFECTIVE JULY 1, 2020] (a) The legislative**
 11 **council is urged to assign to the interim study committee on**
 12 **corrections and the criminal code, or another appropriate interim**
 13 **study committee, the task of studying the issue of sentence**
 14 **modification, particularly in light of the changes to criminal**
 15 **penalties enacted in HEA 1006-2014. The interim study committee**
 16 **shall consider the following:**
- 17 **(1) Whether restricting the ability of offenders sentenced for**
 18 **crimes with penalties that were later reduced to seek sentence**
 19 **modification to obtain the benefit of a later sentence reduction**
 20 **results in disproportionate sentencing.**
- 21 **(2) Whether the reduction of the penalty for an offense**
 22 **reflects a societal reappraisal of the gravity of the offense.**
- 23 **(3) Particularly with respect to offenders sentenced for crimes**
 24 **with penalties that were later reduced, the appropriateness**
 25 **and purpose of statutory restrictions on sentence**
 26 **modification, including:**
- 27 **(A) the restriction on the number of petitions that may be**
 28 **filed;**
- 29 **(B) the prohibition on modifying sentences imposed under**
 30 **a fixed plea agreement; and**
- 31 **(C) the ineligibility of offenders convicted of certain**
 32 **offenses to seek sentence modification.**
- 33 **(b) If an interim study committee is assigned the topic described**
 34 **under subsection (a), the interim study committee shall issue to the**
 35 **legislative council a report containing the interim study**
 36 **committee's findings and recommendations, including any**
 37 **recommended legislation, in an electronic format under IC 5-14-6**
 38 **not later than November 1, 2020.**
- 39 **(c) This SECTION expires January 1, 2021.**

