

HOUSE BILL No. 1202

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-13-9; IC 35-38-1-17.

Synopsis: Sentencing. Provides that the department of correction shall identify an inmate to the parole board and provide the parole board with the inmate's offender progress report as soon as practicable after the inmate has been confined to the custody of the department of correction for: (1) 15 consecutive years; (2) 14 consecutive years if the inmate has received one year of educational credit; (3) 13 consecutive years if the inmate has received two years of educational credit; (4) 12 consecutive years if the inmate has received three years of educational credit; or (5) 11 consecutive years if the inmate has received four years of educational credit. Provides that, after considering certain factors in determining whether to discharge an inmate who is not a violent criminal to parole or release an inmate who is not a violent criminal to the committing court for probation, the parole board shall discharge the inmate to parole or release the inmate to the committing court for probation if the sentence the inmate has served, including any credit time earned or accrued, for an offense committed before July 1, 2014, is greater than the current maximum sentence for the offense on the date the inmate files for a petition for discharge. Provides that an inmate who is not a violent offender whose petition for discharge was denied by the parole board for an offense that was committed before July 1, 2014, may seek further relief by petitioning the court for a sentence modification. Provides that if a person who is not a violent offender petitions for a sentence modification for an offense that was committed before July 1, 2014, the court shall do the following: (1) Consider the current maximum sentence for the offense on the date the person files a petition for sentence modification, including the

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McNamara, Morris

January 7, 2021, read first time and referred to Committee on Courts and Criminal Code.



Digest Continued

minimum sentence, maximum sentence, and advisory sentence. (2) Grant the person's petition for sentence modification and modify the person's sentence if the sentence the person has served or will serve, including any credit time earned or accrued, for an offense committed before July 1, 2014, is greater than the current maximum sentence for the offense on the date the person files for a petition for sentence modification. (3) Discharge the person to parole or release the person to the committing court for probation if the sentence the person has served, including any credit time earned or accrued, for an offense committed before July 1, 2014, is greater than the current maximum sentence for the offense on the date the person files for a petition for sentence modification.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1202

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 11-13-9-2, AS AMENDED BY P.L.74-2015,
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 2. (a) As used in this section, the years of an
4 inmate's confinement are "consecutive" if:
5 (1) the inmate has remained in the continuous custody of the
6 department for the requisite length of time; or
7 (2) the inmate would have remained in the continuous custody of
8 the department for the requisite length of time, but:
9 (A) was released from the custody of the department on the
10 basis of an erroneous court order; and
11 (B) returned to the custody of the department not later than
12 seventy-two (72) hours after the erroneous court order was
13 rescinded.
14 (b) Notwithstanding any other law, as soon as practicable after an
15 inmate has been confined to the custody of the department for:
16 (1) ~~twenty-five (25)~~ **fifteen (15)** consecutive years;
17 (2) ~~twenty-four (24)~~ **fourteen (14)** consecutive years if the inmate



- 1 has received one (1) year of educational credit under
 2 IC 35-50-6-3.3;
 3 (3) ~~twenty-three (23)~~ **thirteen (13)** consecutive years if the inmate
 4 has received two (2) years of educational credit under
 5 IC 35-50-6-3.3;
 6 (4) ~~twenty-two (22)~~ **twelve (12)** consecutive years if the inmate
 7 has received three (3) years of educational credit under
 8 IC 35-50-6-3.3; or
 9 (5) ~~twenty-one (21)~~ **eleven (11)** consecutive years if the inmate
 10 has received four (4) years of educational credit under
 11 IC 35-50-6-3.3;

12 the department shall identify the inmate to the parole board and provide
 13 the parole board with the inmate's offender progress report.

14 SECTION 2. IC 11-13-9-4.5 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 16 1, 2021]: **Sec. 4.5. (a) This section applies to a person who commits
 17 an offense before July 1, 2014.**

18 **(b) This section does not apply to an inmate who is a violent
 19 criminal (as defined in IC 35-38-1-17).**

20 **(c) The parole board shall consider all relevant factors in
 21 determining whether the inmate is to be discharged under this
 22 chapter and must consider a community investigation report
 23 submitted to the parole board. The parole board shall give special
 24 consideration to an inmate who demonstrates one (1) or more of
 25 the following:**

- 26 **(1) A good conduct history during confinement.**
 27 **(2) Proof that the inmate will have suitable living quarters in
 28 a community if the inmate is discharged.**
 29 **(3) Proof that one (1) or more employers in the area in which
 30 the inmate would reside if discharged have offered to employ
 31 the inmate for at least thirty (30) hours a week on the same
 32 terms as the employer employs other employees.**
 33 **(4) Proof that the inmate:**
 34 **(A) is at least a high school graduate; or**
 35 **(B) has obtained:**
 36 **(i) a general equivalency degree; or**
 37 **(ii) a state of Indiana general educational development
 38 (GED) diploma.**

39 **(d) After considering all relevant factors under subsection (c),
 40 the parole board shall discharge an inmate to whom this section
 41 applies to parole or release the inmate to the committing court for
 42 probation if the sentence an inmate has served, including any**



1 **credit time earned or accrued, for an offense committed before**
 2 **July 1, 2014, is greater than the current maximum sentence for the**
 3 **offense on the date the inmate files for a petition for discharge**
 4 **under this chapter. However, the parole board shall not discharge**
 5 **an inmate to parole or release an inmate to the committing court**
 6 **for probation if the inmate's conduct while confined establishes**
 7 **that the inmate has not been properly rehabilitated or continues to**
 8 **pose a significant threat to public safety.**

9 SECTION 3. IC 11-13-9-6, AS ADDED BY P.L.119-2008,
 10 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2021]: Sec. 6. (a) **Except as provided in subsection (b),** if
 12 the parole board denies an inmate's request to be discharged under this
 13 chapter, the inmate may petition for a new review not earlier than one
 14 (1) year after the parole board denies the request.

15 **(b) An inmate whose petition for discharge was denied under**
 16 **section 4.5 of this chapter and who was sentenced for an offense**
 17 **that was committed before July 1, 2014, may seek relief in**
 18 **accordance with IC 35-38-1-17.**

19 SECTION 4. IC 35-38-1-17, AS AMENDED BY P.L.45-2018,
 20 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2021]: Sec. 17. (a) Notwithstanding IC 1-1-5.5-21, this section
 22 applies to a person who:

- 23 (1) commits an offense; or
- 24 (2) is sentenced;

25 before July 1, 2014.

26 (b) This section does not apply to a credit restricted felon.

27 (c) Except as provided in subsections (k) and (m), this section does
 28 not apply to a violent criminal.

29 (d) As used in this section, "violent criminal" means a person
 30 convicted of any of the following offenses:

- 31 (1) Murder (IC 35-42-1-1).
- 32 (2) Attempted murder (IC 35-41-5-1).
- 33 (3) Voluntary manslaughter (IC 35-42-1-3).
- 34 (4) Involuntary manslaughter (IC 35-42-1-4).
- 35 (5) Reckless homicide (IC 35-42-1-5).
- 36 (6) Aggravated battery (IC 35-42-2-1.5).
- 37 (7) Kidnapping (IC 35-42-3-2).
- 38 (8) Rape (IC 35-42-4-1).
- 39 (9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- 40 (10) Child molesting (IC 35-42-4-3).
- 41 (11) Sexual misconduct with a minor as a Class A felony under
- 42 IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2)



1 (for a crime committed before July 1, 2014) or sexual misconduct
 2 with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a
 3 Level 2 felony under IC 35-42-4-9(b)(2) (for a crime committed
 4 after June 30, 2014).

5 (12) Robbery as a Class A felony or a Class B felony (IC
 6 35-42-5-1) (for a crime committed before July 1, 2014) or robbery
 7 as a Level 2 felony or a Level 3 felony (IC 35-42-5-1) (for a crime
 8 committed after June 30, 2014).

9 (13) Burglary as Class A felony or a Class B felony (IC
 10 35-43-2-1) (for a crime committed before July 1, 2014) or
 11 burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or
 12 Level 4 felony (IC 35-43-2-1) (for a crime committed after June
 13 30, 2014).

14 (14) Unlawful possession of a firearm by a serious violent felon
 15 (IC 35-47-4-5).

16 (e) At any time after:

17 (1) a convicted person begins serving the person's sentence; and

18 (2) the court obtains a report from the department of correction
 19 concerning the convicted person's conduct while imprisoned;

20 the court may reduce or suspend the sentence and impose a sentence
 21 that the court was authorized to impose at the time of sentencing.
 22 However, **except as provided in subsection (n)**, if the convicted
 23 person was sentenced under the terms of a plea agreement, the court
 24 may not, without the consent of the prosecuting attorney, reduce or
 25 suspend the sentence and impose a sentence not authorized by the plea
 26 agreement. The court must incorporate its reasons in the record.

27 (f) If the court sets a hearing on a petition under this section, the
 28 court must give notice to the prosecuting attorney and the prosecuting
 29 attorney must give notice to the victim (as defined in IC 35-31.5-2-348)
 30 of the crime for which the convicted person is serving the sentence.

31 (g) The court may suspend a sentence for a felony under this section
 32 only if suspension is permitted under IC 35-50-2-2.2.

33 (h) The court may deny a request to suspend or reduce a sentence
 34 under this section without making written findings and conclusions.

35 (i) The court is not required to conduct a hearing before reducing or
 36 suspending a sentence under this section if:

37 (1) the prosecuting attorney has filed with the court an agreement
 38 of the reduction or suspension of the sentence; and

39 (2) the convicted person has filed with the court a waiver of the
 40 right to be present when the order to reduce or suspend the
 41 sentence is considered.

42 (j) This subsection applies only to a convicted person who is not a



1 violent criminal. A convicted person who is not a violent criminal may
2 file a petition for sentence modification under this section:

- 3 (1) not more than one (1) time in any three hundred sixty-five
4 (365) day period; and
5 (2) a maximum of two (2) times during any consecutive period of
6 incarceration;

7 without the consent of the prosecuting attorney.

8 (k) This subsection applies to a convicted person who is a violent
9 criminal. A convicted person who is a violent criminal may, not later
10 than three hundred sixty-five (365) days from the date of sentencing,
11 file one (1) petition for sentence modification under this section
12 without the consent of the prosecuting attorney. After the elapse of the
13 three hundred sixty-five (365) day period, a violent criminal may not
14 file a petition for sentence modification without the consent of the
15 prosecuting attorney.

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

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

26 (m) Notwithstanding subsection (k), a person who commits an
27 offense after June 30, 2014, and before May 15, 2015, may file one (1)
28 petition for sentence modification without the consent of the
29 prosecuting attorney, even if the person has previously filed a petition
30 for sentence modification.

31 **(n) Notwithstanding subsection (j), a convicted person who is**
32 **not a violent criminal whose request for discharge was denied**
33 **under IC 11-13-9 for an offense committed before July 1, 2014,**
34 **may file not more than one (1) additional petition for sentence**
35 **modification under this section without the consent of the**
36 **prosecuting attorney. This provision applies regardless of whether**
37 **the person:**

- 38 **(1) has previously filed a petition for sentence modification**
39 **under this section; or**
40 **(2) was sentenced under the terms of a plea agreement.**

41 **(o) If a person petitions for a sentence modification for an**
42 **offense described under subsection (n), the court shall do the**



- 1 following:
2 (1) Consider the current maximum sentence for the offense on
3 the date the person files a petition for sentence modification
4 under this section, including the minimum sentence,
5 maximum sentence, and advisory sentence.
6 (2) Grant the person's petition for sentence modification and
7 modify the person's sentence if the sentence the person has
8 served or will serve, including any credit time earned or
9 accrued, for an offense committed before July 1, 2014, is
10 greater than the current maximum sentence for the offense on
11 the date the person files for a petition for sentence
12 modification under subsection (n).
13 (3) Discharge the person to parole or release the person to the
14 committing court for probation if the sentence the person has
15 served, including any credit time earned or accrued, for an
16 offense committed before July 1, 2014, is greater than the
17 current maximum sentence for the offense on the date the
18 person files for a petition for sentence modification under
19 subsection (n).
20 However, the court may not modify the sentence of the person
21 described under this subsection if the person's conduct while
22 confined establishes that the person has not been properly
23 rehabilitated or continues to pose a significant threat to public
24 safety.

