



April 9, 2021

ENGROSSED HOUSE BILL No. 1202

DIGEST OF HB 1202 (Updated April 6, 2021 12:23 pm - DI 106)

Citations Affected: IC 11-13; IC 35-38.

Synopsis: Sentencing. Establishes a procedure to allow certain inmates in the department of correction (department) an additional opportunity to request sentence modification from the sentencing court if the department has recommended sentence modification. Makes conforming amendments.

Effective: July 1, 2021.

McNamara, Morris, Hatfield

(SENATE SPONSORS — BOHACEK, BOOTS, TALLIAN)

January 7, 2021, read first time and referred to Committee on Courts and Criminal Code.
February 4, 2021, amended, reported — Do Pass.
February 8, 2021, read second time, ordered engrossed. Engrossed.
February 16, 2021, read third time, passed. Yeas 89, nays 7.

SENATE ACTION

February 23, 2021, read first time and referred to Committee on Corrections and Criminal Law.
April 8, 2021, amended, reported favorably — Do Pass.

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April 9, 2021

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.

ENGROSSED 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) consecutive years;
17 (2) twenty-four (24) consecutive years if the inmate has received

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- 1 one (1) year of educational credit under IC 35-50-6-3.3;
 2 (3) twenty-three (23) consecutive years if the inmate has received
 3 two (2) years of educational credit under IC 35-50-6-3.3;
 4 (4) twenty-two (22) consecutive years if the inmate has received
 5 three (3) years of educational credit under IC 35-50-6-3.3; or
 6 (5) twenty-one (21) consecutive years if the inmate has received
 7 four (4) years of educational credit under IC 35-50-6-3.3;

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

10 **(c) The department shall annually review the inmate population**
 11 **of the department's facilities and programs in accordance with**
 12 **IC 35-38-1-17.5.**

13 SECTION 2. IC 35-38-1-17.5 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2021]: **Sec. 17.5. (a) This section applies to an**
 16 **inmate confined to the department of correction serving a sentence**
 17 **for the following offenses committed before July 1, 2014:**

- 18 (1) **Theft (IC 35-43-4-2).**
 19 (2) **Dealing in cocaine or a narcotic drug (IC 35-48-4-1).**
 20 (3) **Dealing in methamphetamine (IC 35-48-4-1.1).**
 21 (4) **Dealing in a schedule I, II, or III controlled substance or**
 22 **controlled substance analog (IC 35-48-4-2).**
 23 (5) **Dealing in a schedule IV controlled substance or controlled**
 24 **substance analog (IC 35-48-4-3).**
 25 (6) **Dealing in a schedule V controlled substance or controlled**
 26 **substance analog (IC 35-48-4-4).**
 27 (7) **Possession of cocaine or a narcotic drug (IC 35-48-4-6).**
 28 (8) **Possession of methamphetamine (IC 35-48-4-6.1).**
 29 (9) **Possession of a controlled substance or controlled**
 30 **substance analog or obtaining a schedule V controlled**
 31 **substance (IC 35-48-4-7).**
 32 (10) **Dealing in marijuana, hash oil, hashish, or salvia**
 33 **(IC 35-48-4-10).**
 34 (11) **Possession of marijuana, hash oil, hashish, or salvia**
 35 **(IC 35-48-4-11).**

36 **(b) This section does not apply to the following:**

- 37 (1) **An inmate described in IC 11-13-9-1.**
 38 (2) **An inmate who is a violent criminal (as defined in**
 39 **IC 35-38-1-17).**
 40 (3) **An inmate who has a prior unrelated conviction for:**
 41 (A) **a violent offense (as defined in IC 11-12-3.7-6);**
 42 (B) **battery (IC 35-42-2-1);**



- 1 (C) domestic battery (IC 35-42-2-1.3); or
2 (D) strangulation (IC 35-42-2-9).
- 3 (4) An inmate who was charged with an offense described in
4 subdivisions (1) through (3) that was dismissed pursuant to a
5 plea agreement that resulted in the sentence for which the
6 offender is currently seeking relief.
- 7 (c) The department of correction shall, at least annually, review
8 the inmate population of the department's facilities and programs
9 to determine the identities of any inmates described in subsection
10 (a) and not disqualified under subsection (b). The department shall
11 evaluate the factors listed in IC 11-13-9-4 and recommend either
12 no change in the inmate's sentence or a modification of the
13 inmate's sentence. The department shall notify the inmate of the
14 inmate's status and of the department's recommendation.
- 15 (d) Notwithstanding IC 1-1-5.5-21, an inmate who receives a
16 recommendation for sentence modification under this section may
17 petition the sentencing court to reduce or suspend the inmate's
18 sentence.
- 19 (e) After considering all relevant factors, the sentencing court
20 may modify the sentence of an inmate to whom this section applies.
21 However, if the inmate was sentenced under the terms of a fixed
22 term plea agreement, the court may not, without the consent of the
23 prosecuting attorney, reduce or suspend the sentence and impose
24 a sentence not authorized by the plea agreement. The court must
25 incorporate its reasons in the record.
- 26 (f) If the court sets a hearing on a petition under this section, the
27 court must give notice to the prosecuting attorney, and the
28 prosecuting attorney must give notice to the victim (as defined in
29 IC 35-31.5-2-348(a)) of the crime for which the inmate is serving
30 the sentence.
- 31 (g) The court may deny a request to suspend or reduce a
32 sentence under this section without making written findings and
33 conclusions.
- 34 (h) The court is not required to conduct a hearing before
35 reducing or suspending a sentence under this section if:
36 (1) the prosecuting attorney has filed with the court an
37 agreement to the reduction or suspension of the sentence; and
38 (2) the inmate has filed with the court a waiver of the right to
39 be present when the order to reduce or suspend the sentence
40 is considered.
- 41 (i) A person may not waive the right to sentence modification
42 under this section as part of a plea agreement. Any purported



1 waiver of the right to sentence modification under this section in a
2 plea agreement is invalid and unenforceable as against public
3 policy. This subsection does not prohibit the finding of a waiver of
4 the right to:
5 (1) have a court modify a sentence and impose a sentence not
6 authorized by the plea agreement; or
7 (2) sentence modification for any other reason, including
8 failure to comply with the provisions of this section.
9 (j) An inmate may petition for a modification once under this
10 section.
11 (k) This section expires July 1, 2026.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1202, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 11-13-9-2, AS AMENDED BY P.L.74-2015, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) As used in this section, the years of an inmate's confinement are "consecutive" if:

- (1) the inmate has remained in the continuous custody of the department for the requisite length of time; or
- (2) the inmate would have remained in the continuous custody of the department for the requisite length of time, but:
 - (A) was released from the custody of the department on the basis of an erroneous court order; and
 - (B) returned to the custody of the department not later than seventy-two (72) hours after the erroneous court order was rescinded.

(b) Notwithstanding any other law, as soon as practicable after an inmate has been confined to the custody of the department for:

- (1) twenty-five (25) consecutive years;
- (2) twenty-four (24) consecutive years if the inmate has received one (1) year of educational credit under IC 35-50-6-3.3;
- (3) twenty-three (23) consecutive years if the inmate has received two (2) years of educational credit under IC 35-50-6-3.3;
- (4) twenty-two (22) consecutive years if the inmate has received three (3) years of educational credit under IC 35-50-6-3.3; or
- (5) twenty-one (21) consecutive years if the inmate has received four (4) years of educational credit under IC 35-50-6-3.3;

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

(c) This subsection only applies to section 5.5 of this chapter. Notwithstanding any other law, as soon as practicable after an inmate has been confined to the custody of the department for:

- (1) fifteen (15) consecutive years;**
- (2) fourteen (14) consecutive years if the inmate has received one (1) year of educational credit under IC 35-50-6-3.3;**
- (3) thirteen (13) consecutive years if the inmate has received two (2) years of educational credit under IC 35-50-6-3.3;**
- (4) twelve (12) consecutive years if the inmate has received three (3) years of educational credit under IC 35-50-6-3.3; or**

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(5) eleven (11) consecutive years if the inmate has received four (4) years of educational credit under IC 35-50-6-3.3; the department shall identify the inmate to the parole board and provide the parole board with the inmate's offender progress report.

SECTION 2. IC 11-13-9-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5.5. (a) Notwithstanding IC 1-1-5.5-21, this section applies to a person serving a sentence for the following offenses committed before July 1, 2014:

- (1) Theft (IC 35-43-4-2).**
- (2) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).**
- (3) Dealing in methamphetamine (IC 35-48-4-1.1).**
- (4) Dealing in a schedule I, II, or III controlled substance or controlled substance analog (IC 35-48-4-2).**
- (5) Dealing in a schedule IV controlled substance or controlled substance analog (IC 35-48-4-3).**
- (6) Dealing in a schedule V controlled substance or controlled substance analog (IC 35-48-4-4).**
- (7) Possession of cocaine or a narcotic drug (IC 35-48-4-6).**
- (8) Possession of methamphetamine (IC 35-48-4-6.1).**
- (9) Possession of a controlled substance or controlled substance analog; obtaining a schedule V controlled substance (IC 35-48-4-7).**
- (10) Dealing in marijuana, hash oil, hashish, or salvia (IC 35-48-4-10).**
- (11) Possession of marijuana, hash oil, hashish, or salvia (IC 35-48-4-11).**

(b) This section does not apply to the following:

- (1) An inmate or a person described in section 1 of this chapter.**
- (2) An inmate who is a violent criminal (as defined in IC 35-38-1-17).**
- (3) An inmate who has a prior unrelated conviction for:**
 - (A) a violent offense (as defined in IC 11-12-3.7-6);**
 - (B) battery (IC 35-42-2-1);**
 - (C) domestic battery (IC 35-42-2-1.3); or**
 - (D) strangulation (IC 35-42-2-9).**

(c) Upon recommendation by the warden, the parole board may consider all relevant factors in determining whether the inmate is to be discharged under this section and must consider a community investigation report submitted to the parole board. The parole



board may give special consideration to an inmate who demonstrates one (1) or more of the following:

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

(d) After considering all relevant factors under subsection (c), the parole board may discharge an inmate to whom this section applies and require that the inmate receive post-incarceration reentry services if the sentence an inmate has served, including any credit time earned or accrued, for an offense committed before July 1, 2014, is at least seventy-five percent (75%) of the current advisory sentence for the offense on the date the inmate files for a petition for discharge under this chapter. However, the parole board shall not discharge an inmate as described in this section if the inmate's conduct while confined establishes that the inmate has not been properly rehabilitated or continues to pose a significant threat to public safety.

(e) If an inmate has served a sentence for an offense described in this section that was committed before July 1, 2014, that meets or exceeds seventy-five percent (75%) of the maximum sentence for the same offense that the inmate is currently seeking relief for as described in subsection (d), the parole board may discharge and release the inmate from the inmate's entire sentence."

Delete pages 2 through 6.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1202 as introduced.)

MCNAMARA

Committee Vote: yeas 10, nays 2.

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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:

Page 2, delete lines 10 through 42, begin a new paragraph and insert:

"(c) The department shall annually review the inmate population of the department's facilities and programs in accordance with IC 35-38-1-17.5.

SECTION 2. IC 35-38-1-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 17.5. (a) This section applies to an inmate confined to the department of correction serving a sentence for the following offenses committed before July 1, 2014:**

- (1) Theft (IC 35-43-4-2).**
- (2) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).**
- (3) Dealing in methamphetamine (IC 35-48-4-1.1).**
- (4) Dealing in a schedule I, II, or III controlled substance or controlled substance analog (IC 35-48-4-2).**
- (5) Dealing in a schedule IV controlled substance or controlled substance analog (IC 35-48-4-3).**
- (6) Dealing in a schedule V controlled substance or controlled substance analog (IC 35-48-4-4).**
- (7) Possession of cocaine or a narcotic drug (IC 35-48-4-6).**
- (8) Possession of methamphetamine (IC 35-48-4-6.1).**
- (9) Possession of a controlled substance or controlled substance analog or obtaining a schedule V controlled substance (IC 35-48-4-7).**
- (10) Dealing in marijuana, hash oil, hashish, or salvia (IC 35-48-4-10).**
- (11) Possession of marijuana, hash oil, hashish, or salvia (IC 35-48-4-11).**

(b) This section does not apply to the following:

- (1) An inmate described in IC 11-13-9-1.**
- (2) An inmate who is a violent criminal (as defined in IC 35-38-1-17).**
- (3) An inmate who has a prior unrelated conviction for:**
 - (A) a violent offense (as defined in IC 11-12-3.7-6);**
 - (B) battery (IC 35-42-2-1);**
 - (C) domestic battery (IC 35-42-2-1.3); or**

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(D) strangulation (IC 35-42-2-9).

(4) An inmate who was charged with an offense described in subdivisions (1) through (3) that was dismissed pursuant to a plea agreement that resulted in the sentence for which the offender is currently seeking relief.

(c) The department of correction shall, at least annually, review the inmate population of the department's facilities and programs to determine the identities of any inmates described in subsection (a) and not disqualified under subsection (b). The department shall evaluate the factors listed in IC 11-13-9-4 and recommend either no change in the inmate's sentence or a modification of the inmate's sentence. The department shall notify the inmate of the inmate's status and of the department's recommendation.

(d) Notwithstanding IC 1-1-5.5-21, an inmate who receives a recommendation for sentence modification under this section may petition the sentencing court to reduce or suspend the inmate's sentence.

(e) After considering all relevant factors, the sentencing court may modify the sentence of an inmate to whom this section applies. However, if the inmate was sentenced under the terms of a fixed term plea agreement, the court may not, without the consent of the prosecuting attorney, reduce or suspend the sentence and impose a sentence not authorized by the plea agreement. The court must incorporate its reasons in the record.

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

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

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

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

(i) A person may not waive the right to sentence modification under this section as part of a plea agreement. Any purported waiver of the right to sentence modification under this section in a



plea agreement is invalid and unenforceable as against public policy. This subsection does not prohibit the finding of a waiver of the right to:

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

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

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

Delete pages 3 through 4.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

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

YOUNG M, Chairperson

Committee Vote: Yeas 5, Nays 3.

