

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1287

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AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

SECTION 1. IC 11-14-1-5, AS AMENDED BY P.L.168-2014, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. "Youthful offender" means an offender (as defined in IC 11-8-1-9) who:

- (1) is less than twenty-one (21) years of age;
- (2) has been committed to the department to serve a maximum sentence of not more than eight (8) years;
- (3) has received a suspendible sentence under IC 35-50-2-2 (before its repeal), IC 35-50-2-2.1 (**before its repeal**), or IC 35-50-2-2.2;
- (4) has been sentenced by a court having criminal jurisdiction;
- (5) has never been confined in a state or federal adult correctional facility; and
- (6) has not previously participated in a military or correctional boot camp program.

SECTION 2. IC 31-30-4-2, AS AMENDED BY P.L.168-2014, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Subject to subsection (c), if:

- (1) an offender is:
  - (A) less than eighteen (18) years of age;
  - (B) waived to a court with criminal jurisdiction under

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IC 31-30-3 because the offender committed an act that would be a felony if committed by an adult; and

(C) convicted of committing the felony or enters a plea of guilty to committing the felony; or

(2) an offender is:

(A) less than eighteen (18) years of age;

(B) charged with a felony over which a juvenile court does not have jurisdiction under IC 31-30-1-4; and

(C) convicted of committing the felony by a court with criminal jurisdiction or enters a plea of guilty to committing the felony with the court;

the court may, upon its own motion, a motion of the prosecuting attorney, or a motion of the offender's legal representative, impose a sentence upon the conviction of the offender under this chapter.

(b) If a court elects to impose a sentence upon conviction of an offender under subsection (a) and, before the offender is sentenced, the department of correction determines that there is space available for the offender in a juvenile facility of the division of youth services of the department, the sentencing court may:

(1) impose an appropriate criminal sentence on the offender under IC 35-50-2;

(2) suspend the criminal sentence imposed, notwithstanding IC 35-50-2-2 (before its repeal), IC 35-50-2-2.1 (**before its repeal**), and IC 35-50-2-2.2;

(3) order the offender to be placed into the custody of the department of correction to be placed in the juvenile facility of the division of youth services; and

(4) provide that the successful completion of the placement of the offender in the juvenile facility is a condition of the suspended criminal sentence.

(c) The court may not impose a sentence on an offender under subsection (a) until:

(1) the prosecuting attorney has notified the victim of the felony of the possible imposition of a sentence on the offender under this chapter; and

(2) either:

(A) the probation department of the court has conducted a presentence investigation concerning the offender and reported its findings to the court; or

(B) the department of correction has conducted a diagnostic evaluation of the offender and reported its findings to the court.



SECTION 3. IC 31-39-8-3, AS AMENDED BY P.L.142-2020, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A person may initiate a petition for the expungement of records of a child alleged to be a delinquent child or a child in need of services by filing a verified petition in the juvenile court in the county of the original action. The petition must set forth the following:

- (1) The allegations and date of adjudication, if applicable, of the juvenile delinquency or child in need of services adjudications.
- (2) The court in which juvenile delinquency or child in need of services allegations or petitions were filed.
- (3) The law enforcement agency that employs the charging officer, if known.
- (4) The case number or court cause number.
- (5) Date of birth of the petitioner.
- (6) Petitioner's Social Security number.
- (7) All juvenile delinquency or child in need of services adjudications and criminal convictions occurring after the adjudication of the action sought to be expunged.
- (8) All pending actions under IC 31-34 or IC 31-37 or criminal charges.

(b) A petition described in subsection (a) shall be served on:

- (1) the prosecuting attorney; or
- (2) in the case of a child in need of services case, the department of child services.

(c) The prosecuting attorney or department of child services has thirty (30) days in which to reply or otherwise object to the petition. The court may reduce the time in which a response must be filed for a show of good cause or within its discretion after a hearing is held.

(d) If the prosecuting attorney or department of child services timely files an objection to the petition, the matter shall be set for a hearing. If no objection is filed, the court may set the petition for a hearing or rule on the petition without a hearing.

(e) In considering whether to grant the petition, the juvenile court may review:

- (1) the best interests of the child;
- (2) the age of the person during the person's contact with the juvenile court or law enforcement agency;
- (3) the nature of any allegations;
- (4) whether there was an informal adjustment or an adjudication;
- (5) the disposition of the case;
- (6) the manner in which the person participated in any court



- ordered or supervised services;
- (7) the time during which the person has been without contact with the juvenile court or with any law enforcement agency;
- (8) whether the person acquired a criminal record;
- (9) the person's current status;
- (10) whether the person has been:
- (A) charged with; or
  - (B) convicted of;
- murder or another felony offense as an adult;
- (11) whether the person was waived to an adult criminal court for a reason described in IC 31-30-3;
- (12) whether an adult sentence for the person was not suspended for a reason described in IC 35-50-2-2.1 **(before its repeal)**; and
- (13) whether:
- (A) the person has been adjudicated a delinquent child for committing an act that would be a serious violent felony (as defined in IC 35-47-4-5) if committed by an adult; and
  - (B) the:
    - (i) person is currently suffering from a mental health issue;
    - (ii) mental health issue described in item (i) is chronic or ongoing;
    - (iii) person has received, or is receiving, treatment for a current or chronic mental health issue; or
    - (iv) person is compliant with a treatment regimen recommended by a mental health professional, if applicable.

SECTION 4. IC 35-38-2.5-5, AS AMENDED BY P.L.21-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as provided in section 5.5 of this chapter, as a condition of probation a court may order an offender confined to the offender's home for a period of home detention.

(b) The period of home detention may be consecutive or nonconsecutive, as the court orders. However, the aggregate time actually spent in home detention must not exceed

- (1) ~~the minimum term of imprisonment prescribed for a felony under IC 35-50-2; or~~
- (2) ~~the maximum term of imprisonment prescribed for a misdemeanor under IC 35-50-3;~~

for the crime committed by the offender.

(c) The court may order supervision of an offender's home detention to be provided by the probation department for the court or by a community corrections program that provides supervision of home detention.

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(d) A person's term of confinement on home detention under this chapter is computed on the basis of accrued time on home detention plus any good time credit.

(e) A person confined on home detention as a condition of probation receives one (1) day of accrued time for each day the person is confined on home detention.

(f) In addition to accrued time under subsection (e), a person confined on home detention as a condition of probation is entitled to earn good time credit under IC 35-50-6-3 or IC 35-50-6-3.1. A person confined on home detention as a condition of probation may not earn educational credit under IC 35-50-6-3.3.

(g) A person confined on home detention may be deprived of earned good time credit if the person violates a condition of probation.

SECTION 5. IC 35-38-2.5-13 IS REPEALED [EFFECTIVE UPON PASSAGE]. ~~Sec. 13. An offender who:~~

~~(1) leaves the offender's home in violation of section 6(1) of this chapter or without documented permission from the supervising entity;~~

~~(2) remains outside the offender's home in violation of section 6(1) of this chapter or without documented permission from the supervising entity; or~~

~~(3) travels to a location not authorized under section 6(1) of this chapter or not authorized in writing by the supervising entity;~~

~~commits unauthorized absence from home detention; a Class A misdemeanor.~~

SECTION 6. IC 35-38-2.6-1, AS AMENDED BY P.L.65-2016, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as provided in subsection (b); this chapter applies to the sentencing of a person convicted of a felony whenever any part of the sentence may not be suspended under IC 35-50-2-2.1 or IC 35-50-2-2.2.

~~(b)~~ This chapter does not apply to persons convicted of any of the following offenses whenever any part of the sentence may not be suspended under IC 35-50-2-2.2:

(1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.

**(2) A Level 1 felony.**

~~(2)~~ **(3)** Any of the following felonies:

(A) Murder (IC 35-42-1-1).

(B) A battery offense included in IC 35-42-2 with a deadly weapon or causing death.

(C) Kidnapping (IC 35-42-3-2).

(D) Criminal confinement (IC 35-42-3-3) with a deadly



weapon.

(E) Robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon.

(F) Arson (IC 35-43-1-1) for hire resulting in serious bodily injury.

(G) Burglary (IC 35-43-2-1) resulting in serious bodily injury.

(H) Resisting law enforcement (IC 35-44.1-3-1) with a deadly weapon.

~~(I) Escape (IC 35-44.1-3-4) with a deadly weapon.~~

~~(J) Rioting (IC 35-45-1-2) with a deadly weapon.~~

~~(K) (I) Aggravated battery (IC 35-42-2-1.5).~~

~~(L) (J) Disarming a law enforcement officer (IC 35-44.1-3-2).~~

**(K) A sentence for a crime that is enhanced by criminal organization (IC 35-50-2-15).**

~~(3) An offense under IC 9-30-5-4.~~

~~(4) An offense under IC 9-30-5-5.~~

SECTION 7. IC 35-38-2.6-2, AS AMENDED BY P.L.45-2022, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter, "community corrections program" means a program consisting of residential centers and work release, **home detention**, or electronic monitoring that is:

(1) operated under a community corrections plan of a county and funded at least in part by the state subsidy provided under IC 11-12-2; or

(2) operated by or under contract with a court or county.

SECTION 8. IC 35-38-2.6-3, AS AMENDED BY P.L.45-2022, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The court may, at the time of sentencing, ~~suspend any portion of the sentence and~~ order a person to be placed in a community corrections program as an alternative to commitment to the **county jail or the** department of correction. ~~for the part of the sentence which must be executed under IC 35-50-2-2.1 or IC 35-50-2-2.2. However, if a person has a nonsuspendible sentence, except for a nonsuspendible sentence under IC 35-50-2-2.2, a court may not order the person to serve the nonsuspendible portion of the person's sentence in a community corrections program.~~ The court may impose reasonable terms on the placement or require the director of the community corrections program to impose reasonable terms on the placement. A court shall require a person:

(1) who is described in IC 10-13-6-10(a);

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and



(3) whose sentence does not involve a commitment to the department of correction;  
to provide a DNA sample as a term of placement.

(b) Placement in a community corrections program under this chapter is subject to the availability of residential beds or electronic monitoring units in a community corrections program. However, this subsection does not prohibit placement on home detention without electronic monitoring.

(c) A person placed under this chapter is responsible for the person's own medical care while in the placement program.

(d) The community corrections program shall have access to and use an offender's written presentence report or memorandum from a county probation agency, if applicable, when determining the offender's eligibility for placement.

SECTION 9. IC 35-38-2.6-4 IS REPEALED [EFFECTIVE UPON PASSAGE]. ~~Sec. 4: If the court places a person in a community corrections program under this chapter, the court shall suspend the sentence for a fixed period to end not later than the date the suspended sentence expires.~~

SECTION 10. IC 35-38-2.6-6, AS AMENDED BY P.L.45-2022, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) As used in this section, "home" means the actual living area of the temporary or permanent residence of a person.

(b) A person confined on **work release or home detention** in a community corrections program receives one (1) day of accrued time for each day the person is confined on **work release or home detention. plus any earned good time credit.**

(c) In addition to accrued time under subsection (b), a person who is placed on a level of supervision as part of a community corrections program under this chapter is entitled to earn good time credit under IC 35-50-6-3 and IC 35-50-6-3.1. A person placed on a level of supervision as part of a community corrections program may not earn educational credit under IC 35-50-6-3.3.

(d) The department of correction shall adopt rules under IC 4-22-2, and may adopt emergency rules under IC 4-22-2-37.1, concerning the deprivation of earned good time credit for a person who is placed on a level of supervision as part of a community corrections program under this chapter.

(e) A person who is placed on a level of supervision as part of a community corrections program under this chapter may be deprived of earned good time credit as provided under rules adopted by the



department of correction under IC 4-22-2, including IC 4-22-2-37.1.

SECTION 11. IC 35-38-3-5, AS AMENDED BY P.L.10-2019, SECTION 132, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The department, after diagnosis and classification, shall:

- (1) determine the degree of security (maximum, medium, or minimum) to which a convicted person will be assigned;
- (2) for each offender convicted of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) whose sentence for the Class D felony or Level 6 felony is nonsuspendible at the time of the offense under:

- (A) IC 35-50-2-2.1(a)(1)(B);
- (B) IC 35-50-2-2.1(a)(1)(C); or
- (C) IC 35-50-2-2.1(a)(2);

**(before the repeal of IC 35-50-2-2.1)** determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5;

(3) for each offender:

- (A) committed to the department because the offender has been convicted for the first time of a Class C or Class D felony (for a crime committed before July 1, 2014) or a Level 5 or Level 6 felony (for a crime committed after June 30, 2014); and

(B) whose sentence may be suspended;

determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5;

- (4) notify the trial court and prosecuting attorney if the degree of security assigned differs from the court's recommendations; and
- (5) petition the sentencing court under IC 35-38-1-21 for review of the sentence of an offender who is not a habitual offender sentenced under IC 35-50-2-8 or IC 35-50-2-10 (repealed), and who the department has determined under subdivision (2) to be an appropriate candidate for home detention.

(b) The department may change the degree of security to which the person is assigned. However, if the person is changed to a lesser degree of security during the first two (2) years of the commitment, the department shall notify the trial court and the prosecuting attorney not less than thirty (30) days before the effective date of the changed security assignment.

SECTION 12. IC 35-44.1-3-4, AS AMENDED BY P.L.84-2022, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2023]: Sec. 4. (a) This section does not apply to a child who:

- (1) flees from lawful detention (as defined in IC 35-31.5-2-186) where the child has been placed;
- (2) violates a home detention order imposed on the child;
- (3) removes, disables, or interferes with the operation of an electronic monitoring device or GPS tracking device that the child is required to wear; or
- (4) fails to return to lawful detention following temporary leave granted for a specified purpose or limited period;

due to an allegation or adjudication that the child committed an act described in IC 31-37-2-3 through IC 31-37-2-7 (status offenses), unless the child, while committing the offense, draws or uses a deadly weapon or inflicts bodily injury on another person.

(b) A person, except as provided in subsection (c), who intentionally flees from lawful detention commits escape, a Level 5 felony. However, the offense is a Level 4 felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

(c) A person who:

(1) knowingly or intentionally: ~~violates a home detention order, except for a provision of a home detention order relating to:~~

(A) ~~the possession or consumption of alcohol or a controlled substance in leaves the person's home;~~

(B) ~~tardiness to or missed appointments with supervising staff; remains outside of the person's home;~~ or

(C) ~~the failure to pay user fees; or travels to an unauthorized location;~~

**in violation of a home detention order and without written or documented authorization by the supervising entity; or**

(2) **knowingly or** intentionally removes, disables, or interferes with the operation of an electronic monitoring device or GPS tracking device;

commits escape, a Level 6 felony.

(d) A person who knowingly or intentionally fails to return to lawful detention following temporary leave granted for a specified purpose or limited period commits failure to return to lawful detention, a Level 6 felony. However, the offense is a Level 5 felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

SECTION 13. IC 35-50-2-0.3, AS ADDED BY P.L.220-2011, SECTION 636, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 0.3. For purposes of section 2.1

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of this chapter **(before its repeal)**, as added by P.L.284-1985, the juvenile record includes only those adjudications of delinquency after May 31, 1985.

SECTION 14. IC 35-50-2-2.1 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 2.1: (a) Except as provided in subsection (b), the court may not suspend a sentence for a felony for a person with a juvenile record when:

(1) the juvenile record includes findings that the juvenile acts, if committed by an adult, would constitute:

(A) one (1) Class A or Class B felony;

(B) two (2) Class C or Class D felonies;

(C) one (1) Class C and one (1) Class D felony;

(D) one (1) Level 1, Level 2, Level 3, or Level 4 felony;

(E) two (2) Level 5 or Level 6 felonies; or

(F) one (1) Level 5 and one (1) Level 6 felony; and

(2) less than three (3) years have elapsed between commission of the juvenile acts that would be felonies if committed by an adult and the commission of the felony for which the person is being sentenced:

(b) Notwithstanding subsection (a), the court may suspend any part of the sentence for a felony if it finds that:

(1) the crime was the result of circumstances unlikely to recur;

(2) the victim of the crime induced or facilitated the offense;

(3) there are substantial grounds tending to excuse or justify the crime, though failing to establish a defense; or

(4) the acts in the juvenile record would not be Class A, Class B, Level 1, Level 2, Level 3, or Level 4 felonies if committed by an adult, and the convicted person is to undergo home detention under IC 35-38-1-21 instead of the minimum sentence specified for the crime under this chapter.

SECTION 15. IC 35-50-2-2.2, AS AMENDED BY P.L.119-2021, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2.2. (a) Except as provided in subsection (b) or (c), the court may suspend any part of a sentence for a felony.

(b) If a person is convicted of:

(1) a Level 2 felony; or

(2) a Level 3 felony and has:

(A) any prior unrelated felony conviction, other than a conviction for a felony involving marijuana, hashish, hash oil, or salvia divinorum; or

(B) a prior juvenile adjudication for an act that would constitute a felony if committed by an adult, other than an



**adjudication for an offense involving marijuana, hashish, hash oil, or salvia divinorum, and less than three (3) years have elapsed between commission of the act and the commission of the Level 3 felony for which the person is being sentenced;**

the court may suspend only that part of a sentence that is in excess of the minimum sentence for the ~~(1)~~ Level 2 felony or ~~(2)~~ **the** Level 3 felony.

(c) The court may suspend only that part of a sentence for murder or a Level 1 felony conviction that is in excess of the minimum sentence for murder or the Level 1 felony conviction.

**SECTION 16. 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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