



Reprinted
February 22, 2022

ENGROSSED HOUSE BILL No. 1369

DIGEST OF HB 1369 (Updated February 21, 2022 4:02 pm - DI 106)

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

Synopsis: Sentencing modification. 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. Requires that an inmate who receives sentence modification be placed under supervision of: (1) a community transition program; (2) a court; (3) community corrections program; or (4) a supervised reentry program. Requires the department to annually transmit certain information concerning sentence modification to the Indiana criminal justice institute.

Effective: July 1, 2022.

Morris, McNamara

(SENATE SPONSOR — YOUNG M)

January 11, 2022, read first time and referred to Committee on Courts and Criminal Code.
January 24, 2022, reported — Do Pass.
January 27, 2022, read second time, ordered engrossed.
January 28, 2022, engrossed.
January 31, 2022, read third time, passed. Yeas 90, nays 5.

SENATE ACTION

February 10, 2022, read first time and referred to Committee on Corrections and Criminal Law.
February 17, 2022, amended, reported favorably — Do Pass.
February 21, 2022, read second time, amended, ordered engrossed.

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Reprinted
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Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1369

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, 2022]: 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:**

11 **(1) review the inmate population of the department's facilities**
 12 **and programs in accordance with IC 35-38-1-17.5; and**

13 **(2) before November 1 of each year, transmit to the criminal**
 14 **justice institute for use in the institute's report under**
 15 **IC 5-2-6-24 the following information:**

16 **(A) The number of inmates described in IC 35-38-1-17.5(a)**
 17 **and not disqualified by IC 35-38-1-17.5(b).**

18 **(B) The number of inmates for whom the department:**

19 **(i) recommended; or**

20 **(ii) did not recommend;**

21 **sentence modification under IC 35-38-1-17.5(c).**

22 **(C) The number of inmates whose sentence was modified**
 23 **by the sentencing court.**

24 SECTION 2. IC 35-38-1-17.5 IS ADDED TO THE INDIANA
 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2022]: **Sec. 17.5. (a) This section applies to an**
 27 **inmate confined to the department of correction serving a sentence**
 28 **for the following offenses committed before July 1, 2014:**

29 **(1) Theft (IC 35-43-4-2).**

30 **(2) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).**

31 **(3) Dealing in methamphetamine (IC 35-48-4-1.1).**

32 **(4) Dealing in a schedule I, II, or III controlled substance or**
 33 **controlled substance analog (IC 35-48-4-2).**

34 **(5) Dealing in a schedule IV controlled substance or controlled**
 35 **substance analog (IC 35-48-4-3).**

36 **(6) Dealing in a schedule V controlled substance or controlled**
 37 **substance analog (IC 35-48-4-4).**

38 **(7) Possession of cocaine or a narcotic drug (IC 35-48-4-6).**

39 **(8) Possession of methamphetamine (IC 35-48-4-6.1).**

40 **(9) Possession of a controlled substance or controlled**
 41 **substance analog or obtaining a schedule V controlled**
 42 **substance (IC 35-48-4-7).**



- 1 (10) Dealing in marijuana, hash oil, hashish, or salvia
2 (IC 35-48-4-10).
- 3 (11) Possession of marijuana, hash oil, hashish, or salvia
4 (IC 35-48-4-11).
- 5 **(b) This section does not apply to the following:**
- 6 (1) An inmate described in IC 11-13-9-1.
- 7 (2) An inmate who is a violent criminal (as defined in
8 IC 35-38-1-17).
- 9 (3) An inmate who has a prior unrelated conviction for:
- 10 (A) a violent offense (as defined in IC 11-12-3.7-6);
- 11 (B) battery (IC 35-42-2-1);
- 12 (C) domestic battery (IC 35-42-2-1.3); or
- 13 (D) strangulation (IC 35-42-2-9).
- 14 (4) An inmate who was charged with an offense described in
15 subdivisions (1) through (3) that was dismissed pursuant to a
16 plea agreement that resulted in the sentence for which the
17 offender is currently seeking relief.
- 18 **(c) The department of correction shall, at least annually, review**
19 **the inmate population of the department's facilities and programs**
20 **to determine the identities of any inmates described in subsection**
21 **(a) and not disqualified under subsection (b). The department shall**
22 **evaluate the factors listed in IC 11-13-9-4 and recommend either**
23 **no change in the inmate's sentence or a modification of the**
24 **inmate's sentence. The department shall notify the inmate of the**
25 **inmate's status and of the department's recommendation.**
- 26 **(d) Notwithstanding IC 1-1-5.5-21, an inmate who receives a**
27 **recommendation for sentence modification under this section may**
28 **petition the sentencing court to reduce or suspend the inmate's**
29 **sentence.**
- 30 **(e) After considering all relevant factors, the sentencing court**
31 **may modify the sentence of an inmate to whom this section applies.**
32 **If the court modifies the sentence of an inmate under this section,**
33 **the court shall order the inmate placed:**
- 34 (1) in a community transition program;
- 35 (2) on probation;
- 36 (3) in a community corrections program; or
- 37 (4) in a supervised reentry program.
- 38 **However, if the inmate was sentenced under the terms of a plea**
39 **agreement, the court may not, without the consent of the**
40 **prosecuting attorney, reduce or suspend the sentence and impose**
41 **a sentence not authorized by the plea agreement. The court must**
42 **incorporate its reasons in the record.**



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

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

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

11 (1) the prosecuting attorney has filed with the court an
12 agreement to the reduction or suspension of the sentence; and

13 (2) the inmate has filed with the court a waiver of the right to
14 be present when the order to reduce or suspend the sentence
15 is considered.

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

22 (1) have a court modify a sentence and impose a sentence not
23 authorized by the plea agreement; or

24 (2) sentence modification for any other reason, including
25 failure to comply with the provisions of this section.

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

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



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1369, 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 1369 as introduced.)

MCNAMARA

Committee Vote: Yeas 6, Nays 1

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1369, 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, 2022]: **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).**

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(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

(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. If the court modifies the sentence of an inmate under this section, the court shall order the inmate placed:

(1) in a community transition program;

(2) on probation;

(3) in a community corrections program; or

(4) in a supervised reentry program.

However, if the inmate was sentenced under the terms of a 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.

and when so amended that said bill do pass.

(Reference is to HB 1369 as printed January 24, 2022.)

YOUNG M, Chairperson

Committee Vote: Yeas 6, Nays 1.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1369 be amended to read as follows:

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Page 2, delete lines 10 through 12, begin a new paragraph and insert:

"(c) The department shall annually:

(1) review the inmate population of the department's facilities and programs in accordance with IC 35-38-1-17.5; and

(2) before November 1 of each year, transmit to the criminal justice institute for use in the institute's report under IC 5-2-6-24 the following information:

(A) The number of inmates described in IC 35-38-1-17.5(a) and not disqualified by IC 35-38-1-17.5(b).

(B) The number of inmates for whom the department:

(i) recommended; or

(ii) did not recommend;

sentence modification under IC 35-38-1-17.5(c).

(C) The number of inmates whose sentence was modified by the sentencing court."

(Reference is to EHB 1369 as printed February 18, 2022.)

YOUNG M

