

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.

## SENATE ENROLLED ACT No. 9

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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 11-13-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 4. ~~(a)~~ Every probation department shall annually compile, and make available to the judicial conference of Indiana upon request, accurate statistical information pertaining to its operation, including:

- (1) presentence and predisposition reports prepared;
- (2) investigations and reports regarding cases assigned to that probation department and disposed of prior to trial;
- (3) cases disposed of by termination of supervision, including revocation of probation;
- (4) that probation department's operational costs, including salaries of probation officers and administrative personnel; and
- (5) persons employed.

~~(b)~~ Before January 5 of each year each probation department shall send to the judicial conference the following statistical information concerning home detention for the preceding calendar year:

- ~~(1)~~ The number of persons supervised by the department or by a community corrections program who were placed in home detention under IC 35-38-2.5.
- ~~(2)~~ The number of persons supervised by the department or by a community corrections program who successfully completed a

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period of home detention ordered under IC 35-38-2.5:

(3) The number of persons supervised by the department or by a community corrections program who failed to complete a period of home detention ordered under IC 35-38-2.5; and a description of the subsequent disposition for those persons:

(4) For each person under home detention supervised by the department or by a community corrections program; a description of the most serious offense for which the person was convicted with the resulting sentence including a period of home detention ordered as a condition of probation:

(5) The amount of home detention user fees collected by the department under IC 35-38-2.5:

(6) The amount of home detention user fees deposited into the community corrections home detention fund for the county in which the department is located:

(7) The average expense per person placed in home detention supervised by the department with a monitoring device:

(8) The average expense per person placed in home detention supervised by the department without a monitoring device:

SECTION 2. IC 11-13-1-9, AS AMENDED BY P.L.24-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 9. (a) The judicial conference of Indiana shall:

- (1) keep informed of the work of all probation departments;
- (2) compile and publish statistical and other information that may be of value to the probation service;
- (3) inform courts and probation departments of legislation concerning probation and of other developments in probation;
- (4) submit to the general assembly before January 15 of each year a report in an electronic format under IC 5-14-6 compiling the statistics provided to the judicial conference by ~~probation departments~~ **the local justice reinvestment advisory council** under ~~section 4(b) of this chapter; IC 35-38-2.7-2(3);~~ and
- (5) require probation departments to submit a community supervision collaboration plan as described in IC 11-12-2-4.

(b) The conference may:

- (1) visit and inspect any probation department and confer with probation officers and judges administering probation; and
- (2) require probation departments to submit periodic reports of their work on forms furnished by the conference.

SECTION 3. IC 31-37-2-8 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 8. A child commits a delinquent act if, before**

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becoming eighteen (18) years of age, the child:

- (1) intentionally flees from lawful detention (as defined in IC 35-31.5-2-186) where the child has been placed;
- (2) knowingly or intentionally violates a home detention order imposed on the child;
- (3) intentionally 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) knowingly or intentionally 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 this chapter.

SECTION 4. IC 33-38-9.5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a) The advisory council shall conduct a review of statutes concerning electronic monitoring and home detention and recommend electronic monitoring standards, which may include the following:**

- (1) Administration standards, such as establishing policy, procedure, and reporting requirements.
- (2) Supervision standards, such as establishing the number of individuals supervised by at least one (1) employee of a supervising agency, contacts with tracked individuals, reporting of violations, and any associated fiscal impact relating to these matters.
- (3) Any other issues related to establishing electronic monitoring standards deemed appropriate by the advisory council.

(b) The advisory council shall submit a final report containing findings not later than December 1, 2022, to the legislative council in an electronic format under IC 5-14-6.

(c) This section expires January 1, 2023.

SECTION 5. IC 34-30-2-149.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 149.7. IC 35-38-2.7 (Concerning electronic monitoring standards).**

SECTION 6. IC 35-31.5-2-24.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 24.7. "Backup verification method", for purposes of IC 35-38-2.7, has the meaning set forth in IC 35-38-2.7-1.**

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SECTION 7. IC 35-31.5-2-205, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 205. "Monitoring device", for purposes of **IC 35-33-8-11**, IC 35-38-2.5, and **IC 35-38-2.7**, has the meaning set forth in IC 35-38-2.5-3.

SECTION 8. IC 35-31.5-2-318.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 318.5. "Supervising agency", for purposes of IC 35-38-2.7, has the meaning set forth in IC 35-38-2.7-1.**

SECTION 9. IC 35-31.5-2-337.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 337.3. "Tracked individual", for purposes of IC 35-38-2.7, has the meaning set forth in IC 35-38-2.7-1.**

SECTION 10. IC 35-31.5-2-352.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 352.5. "Vulnerable victim", for purposes of IC 35-38-2.7, has the meaning set forth in IC 35-38-2.7-1.**

SECTION 11. IC 35-33-8-11, AS AMENDED BY P.L.114-2012, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 11. (a) A court may require a person who has been charged with a crime of domestic violence (as described in IC 35-31.5-2-78) to wear a **GPS tracking monitoring** device as a condition of bail.

(b) A court may order a person who is required to wear a **GPS tracking monitoring** device under subsection (a) to pay any costs associated with the **GPS tracking monitoring** device.

SECTION 12. IC 35-38-2.5-2.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2.3. As used in this chapter, "constant supervision" means monitoring a violent offender ~~twenty-four (24) hours each day by means in accordance with the requirements described in section 12(b) of this chapter.~~ **IC 35-38-2.7.**

SECTION 13. IC 35-38-2.5-3, AS AMENDED BY P.L.170-2014, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 3. (a) As used in this chapter, "monitoring device" means an electronic device that:

- (1) can record or transmit information twenty-four (24) hours each day regarding an offender's
  - (A) ~~presence or absence from the offender's home;~~ or
  - (B) precise location;



(2) is minimally intrusive upon the privacy of the offender or other persons residing in the offender's home;

(3) with the written consent of the offender and with the written consent of other persons residing in the home at the time an order for home detention is entered, may record or transmit:

(A) a visual image;

(B) an electronic communication or any sound; or

(C) information regarding the offender's activities while inside the offender's home; and

(4) can notify a probation department, a community corrections program, **the parole board, a pretrial services agency**, or a contract agency if the offender violates the terms of a home detention order.

(b) The term includes any device that can reliably determine the location of an offender and track the locations where the offender has been, including a device that uses a global positioning system satellite service.

(c) The term does not include an unmanned aerial vehicle (as defined in IC 35-31.5-2-342.3).

SECTION 14. IC 35-38-2.5-10, AS AMENDED BY P.L.31-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 10. (a) Each probation department or community corrections program shall establish written criteria and procedures for determining whether an offender or alleged offender that the department or program supervises on home detention qualifies as a violent offender.

(b) A probation department or community corrections program shall use the criteria and procedures established under subsection (a) to establish a record keeping system that allows the department or program to quickly determine whether an offender or alleged offender who violates the terms of a home detention order is a violent offender.

(c) A probation department or a community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall provide all law enforcement agencies (including any contract agencies) having jurisdiction in the place where the probation department or a community corrections program is located with a list of offenders and alleged offenders under home detention supervised by the probation department or the community corrections program. The list must include the following information about each offender and alleged offender:

(1) The offender's name, any known aliases, and the location of the offender's home detention.



- (2) The crime for which the offender was convicted.
- (3) The date the offender's home detention expires.
- (4) The name, address, and telephone number of the offender's supervising probation or community corrections program officer for home detention.
- (5) An indication of whether the offender or alleged offender is a violent offender.

(d) Except as provided under section 6(1) of this chapter, a probation department or community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall, at the beginning of a period of home detention, set the monitoring device and surveillance equipment to minimize the possibility that the offender or alleged offender can enter another residence or structure without a violation.

(e) A probation department or community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall

(1) maintain or contract with a contract agency to maintain constant supervision of each offender and alleged offender **in accordance with IC 35-38-2.7. and**

(2) have adequate staff available twenty-four (24) hours each day to respond if an offender or alleged offender violates the conditions of a home detention order.

(f) A contract agency that maintains supervision of an offender or alleged offender under subsection (e)(1) shall notify the contracting probation department or community corrections program within one (1) hour if the offender or alleged offender violates the conditions of a home detention order. However:

(1) a community corrections advisory board; if the offender is serving home detention as part of a community corrections program; or

(2) a probation department; if the offender or alleged offender is serving home detention as a condition of probation or bail;

may shorten the time in which the contract agency must give notice of a home detention order violation.

(g) **(f)** A probation department or community corrections program may contract with a contract agency under subsection ~~(e)(1)~~ **(e)** only if the contract agency can comply with ~~subsection (f):~~ **the requirements described in IC 35-38-2.7.**

SECTION 15. IC 35-38-2.5-12, AS AMENDED BY P.L.31-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 12. (a) A probation department or community



corrections program charged by a court with supervision of a violent offender placed on home detention under this chapter shall **comply with IC 35-38-2.7.**

(1) cause a local law enforcement agency or contract agency described in section 10 of this chapter to be the initial agency contacted upon determining that the violent offender is in violation of a home detention order;

(2) maintain constant supervision of the violent offender using surveillance equipment and a monitoring device that can transmit information twenty-four (24) hours each day regarding an offender's precise location by either:

(A) using the supervising entity's equipment and personnel; or

(B) contracting with a contract agency; and

(3) have adequate staff available twenty-four (24) hours each day to respond if the violent offender violates the conditions of a home detention order.

(b) A contract agency that maintains supervision of a violent offender under subsection (a)(2) shall notify the contracting probation department or community corrections program within one (1) hour if the violent offender violates the conditions of a home detention order.

However, a:

(1) community corrections advisory board, if the violent offender is serving home detention as part of a community corrections program; or

(2) probation department, if the violent offender is serving home detention as a condition of probation or bail;

may shorten the time in which the contract agency must give notice of a home detention order violation.

(c) **(b)** A probation department or community corrections program may contract with a contract agency under subsection ~~(a)(2)~~ **(a)** only if the contract agency can comply with ~~subsection (b):~~ **the requirements described in IC 35-38-2.7.**

SECTION 16. IC 35-38-2.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

**Chapter 2.7. Electronic Monitoring Standards**

**Sec. 1. The following definitions apply throughout this chapter:**

(1) **"Backup verification method" means a method of determining whether a tracked individual is in an approved location in the event that the tracked individual's monitoring device loses communication with the supervising agency. The term may include making electronic or telephonic contact**



with an employer of a tracked individual.

(2) "Monitoring device" has the meaning set forth in IC 35-38-2.5-3.

(3) "Supervising agency" means:

(A) a court, in the case of an individual who is required to wear a monitoring device as a condition of probation or pretrial release;

(B) a community corrections program, in the case of an individual who is required to wear a monitoring device as a condition of community corrections; or

(C) the parole board, in the case of an individual who is required to wear a monitoring device as a condition of parole.

(4) "Tracked individual" means an individual required to wear a monitoring device.

(5) "Vulnerable victim" means the victim of a crime committed or alleged to have been committed by a tracked individual:

(A) under circumstances suggesting that the tracked individual may disturb, harass, or harm the victim, as determined by a court or the supervising agency;

(B) if the tracked individual is the subject of a protection order, restraining order, or no contact order with respect to the victim; or

(C) that is a crime of domestic or sexual violence (as defined in IC 16-18-2-88.5).

**Sec. 2. A supervising agency must do the following:**

(1) An employee of a supervising agency must provide notification to the supervising agency as soon as possible, but not later than fifteen (15) minutes, after:

(A) the monitoring device of a tracked individual suffers an unexplained or undocumented loss of communication with the employee, and the employee is unable to verify the tracked individual's presence at an approved location by using a backup verification method, if applicable;

(B) a tracked individual enters a prohibited exclusion zone; or

(C) a tracked individual removes, disables, or otherwise interferes with a monitoring device.

In addition, if the tracked individual has committed or is alleged to have committed a crime against a vulnerable victim, the supervising agency shall notify the vulnerable





victim and request local law enforcement to conduct a welfare check on the vulnerable victim in accordance with the protocol developed by the supervising agency under subdivision (5).

(2) Verify in person the location of each tracked individual placed on electronic monitoring due to being charged with or convicted of:

- (A) a crime of violence (as defined in IC 35-50-1-2(a)); or
- (B) a crime of domestic or sexual violence (as defined in IC 16-18-2-88.5);

by making one (1) scheduled in person contact and one (1) unannounced in person contact with the individual in every thirty (30) day period.

(3) Beginning January 1, 2023, transmit a quarterly report to the local justice reinvestment advisory council (established by IC 33-38-9.5-4) that includes information concerning:

- (A) the total number of tracked individuals under supervision, whether they are under pretrial or postdisposition supervision, and the charges they are facing or have been convicted of;
- (B) the number of tracked individuals under supervision assigned to each employee;
- (C) the total costs and fees levied and collected;
- (D) the number of tracked individuals under supervision whose supervision has been terminated and the reason for termination; and
- (E) the number of false location alerts or device malfunctions in the case of each tracked individual under supervision.

The report must be submitted not later than fifteen (15) calendar days after the close of each quarter. The local justice reinvestment advisory council shall transmit each report electronically to the statewide justice reinvestment advisory council (established by IC 33-38-9.5-2), which shall publish the reports quarterly and electronically transmit the reports to the legislative council and to the judicial conference of Indiana. The report to the legislative council must be in an electronic format under IC 5-14-6.

(4) Establish conditions relating to approved and unapproved locations for each tracked individual under the supervising agency's supervision.

(5) Develop and establish a protocol for the supervising



agency to use in contacting a vulnerable victim and local law enforcement with respect to a violation by a tracked individual.

(6) Develop and publish a policy prohibiting certain relationships between a tracked individual and a supervising agency and employees of a supervising agency, including:

(A) personal associations and relationships; and

(B) business relationships.

(7) Develop or approve detailed contingency plans for the supervising agency's operation in case of natural disaster, power outage, loss of telephone service, fire, flood, equipment malfunction, death, incapacitation, or personal emergency of an employee of a supervising agency, and, in the case of a supervising agency's contract with a third party contractor, the financial insolvency of the third party contractor.

(8) Specify a backup verification method for a tracked individual if there is reason to believe that the tracked individual's monitoring device may lose communication with the supervising agency at an approved location. However, a supervising agency has the discretion to establish a backup verification method for any tracked individual regardless of whether the supervising agency has reason to believe that the monitoring device may lose communication at an approved location.

Sec. 3. (a) The supervising agency shall:

(1) inform a vulnerable victim of where the tracked individual is not permitted to be;

(2) if the vulnerable victim wishes to be informed if the tracked individual commits a violation as described in section 2(1)(A) through 2(1)(C) of this chapter, obtain the best manner of contacting the vulnerable victim from the vulnerable victim; and

(3) advise the vulnerable victim that events such as power outages, Internet outages, and natural disasters may interfere with the ability of the supervising agency to notify the vulnerable victim in a timely manner.

(b) Upon notice of a possible violation by a tracked individual as described in section 2(1)(A) through 2(1)(C) of this chapter, the supervising agency shall, as soon as practicable, seek a warrant for the arrest of the tracked individual.

Sec. 4. (a) This subsection applies to a tracked individual who is charged with or convicted of a crime of violence (as defined in



**IC 35-50-1-2(a) or a crime of domestic or sexual violence (as defined in IC 16-18-2-88.5). As soon as possible, but not later than:**

**(1) fifteen (15) minutes after a warrant has been issued for a tracked individual to whom this subsection applies, a local law enforcement agency shall transmit details of the warrant to all active units; and**

**(2) sixty (60) minutes after a warrant has been issued for a tracked individual to whom this subsection applies, a local law enforcement agency shall dispatch a law enforcement officer to apprehend the tracked individual.**

**(b) This subsection applies to a tracked individual who is not charged with or convicted of a crime of violence (as defined in IC 35-50-1-2(a) or a crime of domestic or sexual violence (as defined in IC 16-18-2-88.5). As soon as possible, but not later than:**

**(1) sixty (60) minutes after a warrant has been issued for a tracked individual to whom this subsection applies, a local law enforcement agency shall transmit details of the warrant to all active units; and**

**(2) forty-eight (48) hours after a warrant has been issued for a tracked individual to whom this subsection applies, a local law enforcement agency shall dispatch a law enforcement officer to apprehend the tracked individual.**

**(c) The local law enforcement agency shall keep a record of each dispatch made under this section.**

**Sec. 5. A supervising agency may contract with a third party contractor to maintain consistent constant supervision of each tracked individual only if the third party contractor can comply with the requirements of a supervising agency in this chapter. A contract must specify the duties of the third party contractor and the duties of the supervising agency described in this chapter. A third party contractor:**

**(1) may not employ or be owned by any person convicted of a felony within the previous seven (7) years; and**

**(2) may not employ an individual who was a tracked individual within the previous one (1) year.**

**Sec. 6. (a) This subsection applies to contracts entered into and renewed after June 30, 2022. In addition to any penalties described in the contract, a supervising agency may cancel the contract of a third party contractor that fails to comply with the requirements of this chapter.**

**(b) If:**

**(1) the supervising agency is a court; and**



**(2) the supervising agency has:**

**(A) canceled a contract under this section; or**

**(B) determined that it will not renew its contract with the third party contractor due to the contractor's performance;**

**the supervising agency shall inform the office of judicial administration of its act or determination, along with a description of its reasons. The office of judicial administration shall inform every court that may act as a supervising agency of the identity of the third party contractor, of the act or determination made by the supervising agency, and of the reasons for the act or determination by the supervising agency.**

**Sec. 7. (a) Except as described in subsection (b), the following are immune from civil liability for an act or omission that occurs in connection with the implementation of this chapter:**

**(1) A supervising agency.**

**(2) A law enforcement agency.**

**(3) An employee of a person described in subdivisions (1) through (2).**

**(b) The immunity described in subsection (a) does not apply if the person committed gross negligence or willful or wanton misconduct.**

**SECTION 17. IC 35-44.1-3-4, AS AMENDED BY P.L.158-2013, SECTION 511, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: 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 ~~(b)~~, (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.

~~(b)~~ (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 the person's home;**

(B) **tardiness to or missed appointments with supervising staff; or**

(C) **the failure to pay user fees; or**

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

commits escape, a Level 6 felony.

~~(e)~~ (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 18. An emergency is declared for this act.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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