

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.

## SENATE ENROLLED ACT No. 286

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AN ACT to amend the Indiana Code concerning corrections.

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

SECTION 1. IC 35-38-3-2, AS AMENDED BY P.L.74-2015, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) When a convicted person is sentenced to imprisonment, the court shall, without delay, certify, under the seal of the court or through any electronic means approved by the department of correction, copies of the judgment of conviction and sentence to the receiving authority.

(b) The judgment must include:

- (1) the crime for which the convicted person is adjudged guilty and the classification of the criminal offense;
- (2) the period, if any, for which the person is rendered incapable of holding any office of trust or profit;
- (3) the amount of the fines or costs (including fees) assessed, if any, whether or not the convicted person is indigent, and the method by which the fines or costs (including fees) are to be satisfied;
- (4) the amount of credit time earned for time spent in confinement before sentencing, **including time on pretrial home detention**; and
- (5) the amount to be credited toward payment of the fines or costs (including fees) for time spent in confinement before sentencing.

(c) The judgment may specify the degree of security recommended

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by the court.

(d) A term of imprisonment begins on the date sentence is imposed, unless execution of the sentence is stayed according to law.

SECTION 2. IC 35-50-2-8, AS AMENDED BY P.L.12-2017, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) The state may seek to have a person sentenced as a habitual offender for a felony by alleging, on one (1) or more pages separate from the rest of the charging instrument, that the person has accumulated the required number of prior unrelated felony convictions in accordance with this section.

(b) A person convicted of murder or of a Level 1 through Level 4 felony is a habitual offender if the state proves beyond a reasonable doubt that:

- (1) the person has been convicted of two (2) prior unrelated felonies; and
- (2) at least one (1) of the prior unrelated felonies is not a Level 6 felony or a Class D felony.

(c) A person convicted of a Level 5 felony is a habitual offender if the state proves beyond a reasonable doubt that:

- (1) the person has been convicted of two (2) prior unrelated felonies;
- (2) at least one (1) of the prior unrelated felonies is not a Level 6 felony or a Class D felony; and
- (3) if the person is alleged to have committed a prior unrelated:
  - (A) Level 5 felony;
  - (B) Level 6 felony;
  - (C) Class C felony; or
  - (D) Class D felony;

not more than ten (10) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) for at least one (1) of the two (2) prior unrelated felonies and the time the person committed the current offense.

(d) A person convicted of a felony offense is a habitual offender if the state proves beyond a reasonable doubt that:

- (1) the person has been convicted of three (3) prior unrelated felonies; and
- (2) if the person is alleged to have committed a prior unrelated:
  - (A) Level 5 felony;
  - (B) Level 6 felony;
  - (C) Class C felony; or
  - (D) Class D felony;



not more than ten (10) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) for at least one (1) of the three (3) prior unrelated felonies and the time the person committed the current offense.

(e) The state may not seek to have a person sentenced as a habitual offender for a felony offense under this section if the current offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction. However, a prior unrelated felony conviction may be used to support a habitual offender determination even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense.

(f) A person has accumulated two (2) or three (3) prior unrelated felony convictions for purposes of this section only if:

(1) the second prior unrelated felony conviction was committed after commission of and sentencing for the first prior unrelated felony conviction;

(2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after commission of and sentencing for the second prior unrelated felony conviction; and

(3) for a conviction requiring proof of three (3) prior unrelated felonies, the third prior unrelated felony conviction was committed after commission of and sentencing for the second prior unrelated felony conviction.

(g) A conviction does not count for purposes of this section as a prior unrelated felony conviction if:

(1) the conviction has been set aside; or

(2) the conviction is one for which the person has been pardoned.

(h) If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3. The role of the jury is to determine whether the defendant has been convicted of the unrelated felonies. The state or defendant may not conduct any additional interrogation or questioning of the jury during the habitual offender part of the trial.

(i) The court shall sentence a person found to be a habitual offender to an additional fixed term that is between:

(1) ~~six (6) years and twenty (20) years;~~ **eight (8) years and**



**twenty (20) years**, for a person convicted of murder or a Level 1 through Level 4 felony; or

(2) ~~two (2) years and six (6) years~~; **three (3) years and six (6) years**, for a person convicted of a Level 5 or Level 6 felony.

An additional term imposed under this subsection is nonsuspendible.

(j) Habitual offender is a status that results in an enhanced sentence. It is not a separate crime and does not result in a consecutive sentence. The court shall attach the habitual offender enhancement to the felony conviction with the highest sentence imposed and specify which felony count is being enhanced. If the felony enhanced by the habitual offender determination is set aside or vacated, the court shall resentence the person and apply the habitual offender enhancement to the felony conviction with the next highest sentence in the underlying cause, if any.

(k) A prior unrelated felony conviction may not be collaterally attacked during a habitual offender proceeding unless the conviction is constitutionally invalid.

(l) The procedural safeguards that apply to other criminal charges, including:

- (1) the requirement that the charge be filed by information or indictment; and
- (2) the right to an initial hearing;

also apply to a habitual offender allegation.

SECTION 3. IC 35-50-6-0.5, AS AMENDED BY P.L.45-2022, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 0.5. The following definitions apply throughout this chapter:

(1) "Accrued time" means the amount of time that a person is imprisoned, ~~or~~ confined, **on home detention as a condition of probation, or on home detention in a community corrections program**. In determining the number of days a person has been imprisoned, ~~or~~ confined, **on home detention as a condition of probation, or on home detention in a community corrections program**, a partial calendar day is considered to be one (1) calendar day.

(2) "Calendar day" means the period of elapsed time that begins at midnight and ends twenty-four (24) hours later at the next midnight.

(3) "Credit time" means the sum of a person's accrued time, good time credit, and educational credit.

(4) "Educational credit" means a reduction in a person's term of imprisonment or confinement awarded for participation in an



educational, vocational, rehabilitative, or other program. The term includes an individualized case management plan.

(5) "Good time credit" means a reduction in a person's term of imprisonment or confinement awarded for the person's good behavior while imprisoned, ~~or~~ confined, **or on home detention.**

(6) "Individualized case management plan" means educational credit which consists of a plan designed to address an incarcerated person's risk of recidivism, and may include:

- (A) addiction recovery treatment;
- (B) mental health treatment;
- (C) vocational education programming;
- (D) adult basic education, a high school or high school equivalency diploma, a college diploma, and any other academic educational goal; or
- (E) any other programming or activity that encourages productive pursuits while a person is incarcerated and that may reduce the person's likelihood to recidivate after the person's release from incarceration.

SECTION 4. IC 35-50-6-3.1, AS AMENDED BY P.L.45-2022, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3.1. (a) This section applies to a person who commits an offense after June 30, 2014.

(b) A person assigned to Class A earns one (1) day of good time credit for each calendar day or partial calendar day the person is:

- (1) imprisoned for a crime; ~~or~~
- (2) confined awaiting trial or sentencing; **or**
- (3) **on pretrial home detention.**

(c) A person assigned to Class B earns one (1) day of good time credit for every three (3) calendar days or partial calendar days the person is:

- (1) imprisoned for a crime; ~~or~~
- (2) confined awaiting trial or sentencing; **or**
- (3) **on pretrial home detention.**

(d) A person assigned to Class C earns one (1) day of good time credit for every six (6) calendar days or partial calendar days the person is:

- (1) imprisoned for a crime; ~~or~~
- (2) confined awaiting trial or sentencing; **or**
- (3) **on pretrial home detention.**

(e) A person assigned to Class D earns no good time credit.

(f) ~~A person assigned to Class P earns one (1) day of good time credit for every four (4) calendar days or partial calendar days the~~



person serves on pretrial home detention awaiting trial. A person assigned to Class P does not earn accrued time for time served on pretrial home detention awaiting trial.

SECTION 5. IC 35-50-6-4, AS AMENDED BY P.L.44-2016, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) A person:

- (1) who is not a credit restricted felon; and
- (2) who is imprisoned for a Level 6 felony or a misdemeanor or imprisoned awaiting trial or sentencing for a Level 6 felony or misdemeanor;

is initially assigned to Class A.

(b) A person:

- (1) who is not a credit restricted felon; and
- (2) who is imprisoned for a crime other than a Level 6 felony or misdemeanor or imprisoned awaiting trial or sentencing for a crime other than a Level 6 felony or misdemeanor;

is initially assigned to Class B.

(c) A person who is a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class C. A credit restricted felon may not be assigned to Class A or Class B.

(d) A person who is not a credit restricted felon may be reassigned to Class C or Class D if the person violates any of the following:

- (1) A rule of the department of correction.
- (2) A rule of the penal facility in which the person is imprisoned.
- (3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to a lower credit time class, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

(e) A person who is a credit restricted felon may be reassigned to Class D and a person who is assigned to Class IV may be assigned to Class III if the person violates any of the following:

- (1) A rule of the department of correction.
- (2) A rule of the penal facility in which the person is imprisoned.
- (3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to Class III or Class D, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment



is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

(f) In connection with the hearing granted under subsection (d) or (e), the person is entitled to:

- (1) have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct and the rule the alleged misconduct is alleged to have violated;
- (2) have reasonable time to prepare for the hearing;
- (3) have an impartial decisionmaker;
- (4) appear and speak in the person's own behalf;
- (5) call witnesses and present evidence;
- (6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;
- (7) have the assistance of a lay advocate (the department may require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);
- (8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;
- (9) have immunity if the person's testimony or any evidence derived from the person's testimony is used in any criminal proceedings; and
- (10) have the person's record expunged of any reference to the charge if the person is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(g) Except for a credit restricted felon, a person may be reassigned from:

- (1) Class III to Class I, Class II or Class IV;
- (2) Class II to Class I;
- (3) Class D to Class A, Class B, or Class C;
- (4) Class C to Class A or Class B.

A person's assignment to Class III, Class II, Class C, or Class D shall be reviewed at least once every six (6) months to determine if the person should be reassigned to a higher credit time class. A credit restricted felon may not be reassigned to Class I or Class II or to Class A, Class B, or Class C.

(h) This subsection applies only to a person imprisoned awaiting trial. A person imprisoned awaiting trial is initially assigned to a credit class based on the most serious offense with which the person is



charged. If all the offenses of which a person is convicted have a higher credit time class than the most serious offense with which the person is charged, the person earns credit time for the time imprisoned awaiting trial at the credit time class of the most serious offense of which the person was convicted. However, this section does not apply to any period during which the person is reassigned to a lower credit time class for a disciplinary violation.

~~(i) This subsection applies only to a person placed on pretrial home detention awaiting trial. This subsection does not apply to any other person placed on home detention. A person placed on pretrial home detention awaiting trial is assigned to Class P. A person assigned to Class P may not be reassigned to another credit time class while the person is on pretrial home detention awaiting trial.~~

SECTION 6. IC 35-50-6-5, AS AMENDED BY P.L.74-2015, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) A person may, with respect to the same transaction, be deprived of any part of the educational credit or good time credit the person has earned for any of the following:

- (1) A violation of one (1) or more rules of the department of correction.
- (2) If the person is not committed to the department, a violation of one (1) or more rules of the penal facility in which the person is imprisoned.
- (3) A violation of one (1) or more rules or conditions of a:
  - (A) community transition program; or
  - (B) community corrections program.
- (4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or groundless.
- (5) If the person is a sex or violent offender (as defined in IC 11-8-8-5) and refuses to register before being released from the department as required under IC 11-8-8-7.
- (6) If the person is a sex offender (as defined in IC 11-8-8-4.5) and refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction.

However, the violation of a condition of parole or probation may not be the basis for deprivation, unless the person is confined on home detention as a condition of probation under IC 35-38-2.5-5. Whenever a person is deprived of educational credit or good time credit, the person may also be reassigned to Class II (if the person is not a credit





restricted felon) or Class III, Class C, or Class D.

(b) Before a person may be deprived of educational credit or good time credit, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether deprivation of earned educational credit or good time credit is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in section ~~4(c)~~ 4 of this chapter. The person may waive the person's right to the hearing.

(c) Any part of the educational credit or good time credit of which a person is deprived under this section may be restored.

**(d) This subsection applies only to a person on pretrial home detention. If a person on pretrial home detention violates a condition of home detention, fails to appear as required, or commits escape (IC 35-44.1-3-4), the person shall be deprived of all accrued time earned while on pretrial home detention. The person may also be deprived of educational or good time credit in accordance with this section, if applicable. Before a person may be deprived of accrued time, the person must be granted a hearing to determine whether the person committed the specified violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in section 4 of this chapter. The person may waive the person's right to the hearing.**



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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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