



February 16, 2023

HOUSE BILL No. 1648

DIGEST OF HB 1648 (Updated February 15, 2023 12:28 pm - DI 106)

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

Synopsis: Sentence modification. Establishes an additional sentencing modification procedure for certain individuals and requires that the department of correction annually review inmate records and transmit certain information to specified persons.

Effective: July 1, 2023.

Morris, McNamara, Baird

January 19, 2023, read first time and referred to Committee on Courts and Criminal Code.
February 16, 2023, amended, reported — Do Pass.

HB 1648—LS 6916/DI 139



February 16, 2023

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 BILL No. 1648

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

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, 2023]: 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13 rescinded.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

HB 1648—LS 6916/DI 139



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(o);**

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:**

16 **(A) number of inmates described in IC 35-38-1-17(d) and**
 17 **not disqualified under IC 35-38-1-17(c); and**

18 **(B) number of inmates whose sentence was modified by the**
 19 **sentencing court; and**

20 **(3) in the case of an eligible inmate who meets the criteria of**
 21 **IC 35-38-1-17(o):**

22 **(A) not later than fourteen (14) days after the diagnosis,**
 23 **notify the inmate and the inmate's emergency contact and**
 24 **next of kin that they may prepare and submit on the**
 25 **inmate's behalf a request for a sentence modification, and**
 26 **provide a copy of the inmate's offender progress report to**
 27 **the notified individuals; and**

28 **(B) not later than thirty (30) days after the date of**
 29 **diagnosis, provide the defendant's emergency contact and**
 30 **next of kin with an opportunity to visit the defendant in**
 31 **person, virtually, or telephonically.**

32 **(d) Notwithstanding any other provision of the law, an offender**
 33 **progress report must include a complete summary of all**
 34 **rehabilitative:**

35 **(1) programs;**

36 **(2) work;**

37 **(3) education; and**

38 **(4) certifications;**

39 **completed by an inmate during the inmate's confinement to the**
 40 **custody of the department.**

41 **(e) The department shall provide an inmate with a copy of the**
 42 **inmate's offender progress report at least sixty (60) days before**



1 **submitting the offender progress report to the parole board under**
 2 **this section.**

3 **(f) The department shall release an offender progress report to**
 4 **the supervising authority tasked with supervising an inmate**
 5 **released from the custody of the department to parole, probation,**
 6 **or a community transition program.**

7 SECTION 2. IC 35-38-1-17, AS AMENDED BY P.L.45-2018,
 8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2023]: Sec. 17. (a) Notwithstanding IC 1-1-5.5-21, this section
 10 applies to a person who:

- 11 (1) commits an offense; or
 12 (2) is sentenced;

13 before July 1, 2014.

14 (b) This section does not apply to a credit restricted felon.

15 (c) Except as provided in subsections (k), ~~and~~ (m), **and (n)**, this
 16 section does not apply to a violent criminal.

17 (d) As used in this section, "violent criminal" means a person
 18 convicted of any of the following offenses:

- 19 (1) Murder (IC 35-42-1-1).
 20 (2) Attempted murder (IC 35-41-5-1).
 21 (3) Voluntary manslaughter (IC 35-42-1-3).
 22 (4) Involuntary manslaughter (IC 35-42-1-4).
 23 (5) Reckless homicide (IC 35-42-1-5).
 24 (6) Aggravated battery (IC 35-42-2-1.5).
 25 (7) Kidnapping (IC 35-42-3-2).
 26 (8) Rape (IC 35-42-4-1).
 27 (9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
 28 (10) Child molesting (IC 35-42-4-3).
 29 (11) Sexual misconduct with a minor as a Class A felony under
 30 IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2)
 31 (for a crime committed before July 1, 2014) or sexual misconduct
 32 with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a
 33 Level 2 felony under IC 35-42-4-9(b)(2) (for a crime committed
 34 after June 30, 2014).
 35 (12) Robbery as a Class A felony or a Class B felony (IC
 36 35-42-5-1) (for a crime committed before July 1, 2014) or robbery
 37 as a Level 2 felony or a Level 3 felony (IC 35-42-5-1) (for a crime
 38 committed after June 30, 2014).
 39 (13) Burglary as Class A felony or a Class B felony (IC
 40 35-43-2-1) (for a crime committed before July 1, 2014) or
 41 burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or
 42 Level 4 felony (IC 35-43-2-1) (for a crime committed after June



- 1 30, 2014).
- 2 (14) Unlawful possession of a firearm by a serious violent felon
- 3 (IC 35-47-4-5).
- 4 (e) At any time after:
- 5 (1) a convicted person begins serving the person's sentence; and
- 6 (2) the court obtains a report from the department of correction
- 7 concerning the convicted person's conduct while imprisoned;
- 8 the court may reduce or suspend the sentence and impose a sentence
- 9 that the court was authorized to impose at the time of sentencing,
- 10 **except as provided in subsection (n)**. However, if the convicted
- 11 person was sentenced under the terms of a plea agreement, the court
- 12 may not, without the consent of the prosecuting attorney, reduce or
- 13 suspend the sentence and impose a sentence not authorized by the plea
- 14 agreement. The court must incorporate its reasons in the record.
- 15 (f) If the court sets a hearing on a petition under this section, the
- 16 court must give notice to the prosecuting attorney and the prosecuting
- 17 attorney must give notice to the victim (as defined in IC 35-31.5-2-348)
- 18 of the crime for which the convicted person is serving the sentence.
- 19 (g) The court may suspend a sentence for a felony under this section
- 20 only if suspension is permitted under IC 35-50-2-2.2.
- 21 (h) The court may deny a request to suspend or reduce a sentence
- 22 under this section without making written findings and conclusions.
- 23 (i) The court is not required to conduct a hearing before reducing or
- 24 suspending a sentence under this section if:
- 25 (1) the prosecuting attorney has filed with the court an agreement
- 26 of the reduction or suspension of the sentence; and
- 27 (2) the convicted person has filed with the court a waiver of the
- 28 right to be present when the order to reduce or suspend the
- 29 sentence is considered.
- 30 (j) This subsection applies only to a convicted person who is not a
- 31 violent criminal. A convicted person who is not a violent criminal may
- 32 file a petition for sentence modification under this section:
- 33 (1) not more than one (1) time in any three hundred sixty-five
- 34 (365) day period; and
- 35 (2) a maximum of two (2) times during any consecutive period of
- 36 incarceration;
- 37 without the consent of the prosecuting attorney.
- 38 (k) This subsection applies to a convicted person who is a violent
- 39 criminal. A convicted person who is a violent criminal may, not later
- 40 than three hundred sixty-five (365) days from the date of sentencing,
- 41 file one (1) petition for sentence modification under this section
- 42 without the consent of the prosecuting attorney. After the elapse of the



1 three hundred sixty-five (365) day period, a violent criminal may not
 2 file a petition for sentence modification without the consent of the
 3 prosecuting attorney.

4 (l) A person may not waive the right to sentence modification under
 5 this section as part of a plea agreement. Any purported waiver of the
 6 right to sentence modification under this section in a plea agreement is
 7 invalid and unenforceable as against public policy. This subsection
 8 does not prohibit the finding of a waiver of the right to:

- 9 (1) have a court modify a sentence and impose a sentence not
 10 authorized by the plea agreement, as described under subsection
 11 (e); or
 12 (2) sentence modification for any other reason, including failure
 13 to comply with the provisions of this section.

14 (m) Notwithstanding subsection (k), a person who commits an
 15 offense after June 30, 2014, and before May 15, 2015, may file one (1)
 16 petition for sentence modification without the consent of the
 17 prosecuting attorney, even if the person has previously filed a petition
 18 for sentence modification.

19 (n) **Notwithstanding subsections (j) and (k), a person may file a**
 20 **petition for a suspension or reduction of the person's sentence**
 21 **without the consent of the prosecuting attorney, even if the person**
 22 **has previously filed a petition for sentence modification, under this**
 23 **section if:**

24 (1) **a physician employed or contracted by the department of**
 25 **correction determines that a person:**

26 (A) **has a terminal illness with a life expectancy of eighteen**
 27 **(18) months or less, or a disease or condition with an end**
 28 **of life trajectory, including metastatic solid tumor cancer,**
 29 **amyotrophic lateral sclerosis (ALS), end-stage organ**
 30 **disease, and advanced end-stage dementia; or**

31 (B) **has an incurable, progressive illness or has suffered a**
 32 **debilitating injury from which the person will not recover.**

33 **A person qualifies under this clause if the person:**

34 (i) **is unable to complete basic activities of daily living**
 35 **and is totally confined to a bed or chair; or**

36 (ii) **has limited ability for self care and is confined to a**
 37 **bed or chair for more than fifty percent (50%) of the**
 38 **person's waking hours; or**

39 (2) **the person is at least sixty-five (65) years of age, is in the**
 40 **custody of the department of correction for an offense**
 41 **committed before the person was sixty (60) years of age, and**
 42 **has served:**



1 (A) at least:

2 (i) ten (10) years in the custody of the department of
3 correction; or

4 (ii) fifty percent (50%) of the sentence imposed;
5 whichever is less, if the person is suffering from chronic or
6 serious medical conditions related to the aging process,
7 deteriorating mental or physical health that has
8 substantially diminished the person's ability to function in
9 a correctional facility and for which correctional treatment
10 promises no substantial improvement to the person's
11 physical or mental condition; or

12 (B) at least:

13 (i) ten (10) years in the custody of the department of
14 correction; or

15 (ii) seventy-five (75%) of the sentence imposed,
16 whichever is less.

17 A person may only petition for a modification one (1) time under
18 this subsection without the consent of the prosecuting attorney,
19 unless there is demonstrable evidence of a change in the person's
20 medical condition that was not available at the time the person
21 filed the person's last petition. Under this subsection, the court may
22 reduce or suspend the sentence below a sentence that the court was
23 authorized to impose at the time of sentencing with the consent of
24 the prosecuting attorney. However, if the person was sentenced
25 under the terms of a plea agreement, the court may not, without
26 the consent of the prosecuting attorney, reduce or suspend the
27 sentence and impose a sentence not authorized by the plea
28 agreement. In making this determination, the court must consider
29 the suitability of the person's reentry plans if the sentence is
30 modified, including proof that the person will have suitable living
31 quarters if discharged from the department and will receive the
32 medical care or treatment required. The court must incorporate its
33 reasons in the record.

34 (o) The department of correction shall, at least annually, review
35 the inmate population of the department's facilities and programs
36 to determine the identities of any inmates described in subsection
37 (n) and not disqualified under subsection (b) and notify the
38 identified inmate. Not later than thirty (30) days from the
39 identification of an appropriate inmate, the department shall,
40 unless otherwise requested by the inmate, notify:

41 (1) the public defender or privately retained counsel;

42 (2) the inmate's emergency contact or next of kin; and



1 **(3) the prosecutor in the county of conviction;**
2 **of the inmate's eligibility for a sentence modification under this**
3 **section.**
4 **(p) Not later than thirty (30) days after the a filing of a petition**
5 **under subsection (n), the court shall:**
6 **(1) grant the request to suspend or reduce a sentence;**
7 **(2) deny the request without written findings and conclusions;**
8 **or**
9 **(3) hold a hearing on the matter.**
10 **The court is not required to conduct a hearing before reducing or**
11 **suspending a sentence under subsection (i).**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1648, 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:

Delete the amendment AM164801 adopted by the House Committee on Courts and Criminal Code on February 8, 2023.

Delete the amendment AM164803 adopted by the House Committee on Courts and Criminal Code on February 8, 2023.

Delete the motion to amend the language in AM164803 offered by Chair McNamara and adopted by the House Committee on Courts and Criminal Code on February 8, 2023.

Delete the amendment AM164805 adopted by the House Committee on Courts and Criminal Code on February 8, 2023.

Page 2, delete lines 10 through 18, 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(o);

(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:

(A) number of inmates described in IC 35-38-1-17(d) and not disqualified under IC 35-38-1-17(c); and

(B) number of inmates whose sentence was modified by the sentencing court; and

(3) in the case of an eligible inmate who meets the criteria of IC 35-38-1-17(o):

(A) not later than fourteen (14) days after the diagnosis, notify the inmate and the inmate's emergency contact and next of kin that they may prepare and submit on the inmate's behalf a request for a sentence modification, and provide a copy of the inmate's offender progress report to the notified individuals; and

(B) not later than thirty (30) days after the date of diagnosis, provide the defendant's emergency contact and next of kin with an opportunity to visit the defendant in person, virtually, or telephonically."

Page 2, line 31, delete "If the offender progress report has an error or".

Page 2, delete lines 32 through 34.

Page 2, delete lines 39 through 42, begin a new paragraph and



insert:

"SECTION 2. IC 35-38-1-17, AS AMENDED BY P.L.45-2018, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 17. (a) Notwithstanding IC 1-1-5.5-21, this section applies to a person who:

- (1) commits an offense; or
- (2) is sentenced;

before July 1, 2014.

(b) This section does not apply to a credit restricted felon.

(c) Except as provided in subsections (k), ~~and~~ (m), **and** (n), this section does not apply to a violent criminal.

(d) As used in this section, "violent criminal" means a person convicted of any of the following offenses:

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Voluntary manslaughter (IC 35-42-1-3).
- (4) Involuntary manslaughter (IC 35-42-1-4).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Aggravated battery (IC 35-42-2-1.5).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Rape (IC 35-42-4-1).
- (9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- (10) Child molesting (IC 35-42-4-3).
- (11) Sexual misconduct with a minor as a Class A felony under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2) (for a crime committed before July 1, 2014) or sexual misconduct with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a Level 2 felony under IC 35-42-4-9(b)(2) (for a crime committed after June 30, 2014).
- (12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1) (for a crime committed before July 1, 2014) or robbery as a Level 2 felony or a Level 3 felony (IC 35-42-5-1) (for a crime committed after June 30, 2014).
- (13) Burglary as Class A felony or a Class B felony (IC 35-43-2-1) (for a crime committed before July 1, 2014) or burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony (IC 35-43-2-1) (for a crime committed after June 30, 2014).
- (14) Unlawful possession of a firearm by a serious violent felon (IC 35-47-4-5).

(e) At any time after:

- (1) a convicted person begins serving the person's sentence; and



(2) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned; the court may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing, **except as provided in subsection (n)**. However, if the convicted person 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) of the crime for which the convicted person is serving the sentence.

(g) The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.2.

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

(i) 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 of the reduction or suspension of the sentence; and
- (2) the convicted person has filed with the court a waiver of the right to be present when the order to reduce or suspend the sentence is considered.

(j) This subsection applies only to a convicted person who is not a violent criminal. A convicted person who is not a violent criminal may file a petition for sentence modification under this section:

- (1) not more than one (1) time in any three hundred sixty-five (365) day period; and
- (2) a maximum of two (2) times during any consecutive period of incarceration;

without the consent of the prosecuting attorney.

(k) This subsection applies to a convicted person who is a violent criminal. A convicted person who is a violent criminal may, not later than three hundred sixty-five (365) days from the date of sentencing, file one (1) petition for sentence modification under this section without the consent of the prosecuting attorney. After the elapse of the three hundred sixty-five (365) day period, a violent criminal may not file a petition for sentence modification without the consent of the prosecuting attorney.

(l) 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, as described under subsection (e); or
- (2) sentence modification for any other reason, including failure to comply with the provisions of this section.

(m) Notwithstanding subsection (k), a person who commits an offense after June 30, 2014, and before May 15, 2015, may file one (1) petition for sentence modification without the consent of the prosecuting attorney, even if the person has previously filed a petition for sentence modification.

(n) Notwithstanding subsections (j) and (k), a person may file a petition for a suspension or reduction of the person's sentence without the consent of the prosecuting attorney, even if the person has previously filed a petition for sentence modification, under this section if:

(1) a physician employed or contracted by the department of correction determines that a person:

(A) has a terminal illness with a life expectancy of eighteen (18) months or less, or a disease or condition with an end of life trajectory, including metastatic solid tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced end-stage dementia; or

(B) has an incurable, progressive illness or has suffered a debilitating injury from which the person will not recover.

A person qualifies under this clause if the person:

(i) is unable to complete basic activities of daily living and is totally confined to a bed or chair; or

(ii) has limited ability for self care and is confined to a bed or chair for more than fifty percent (50%) of the person's waking hours; or

(2) the person is at least sixty-five (65) years of age, is in the custody of the department of correction for an offense committed before the person was sixty (60) years of age, and has served:

(A) at least:

(i) ten (10) years in the custody of the department of correction; or

(ii) fifty percent (50%) of the sentence imposed;

whichever is less, if the person is suffering from chronic or



serious medical conditions related to the aging process, deteriorating mental or physical health that has substantially diminished the person's ability to function in a correctional facility and for which correctional treatment promises no substantial improvement to the person's physical or mental condition; or

(B) at least:

(i) ten (10) years in the custody of the department of correction; or

(ii) seventy-five (75%) of the sentence imposed,

whichever is less.

A person may only petition for a modification one (1) time under this subsection without the consent of the prosecuting attorney, unless there is demonstrable evidence of a change in the person's medical condition that was not available at the time the person filed the person's last petition. Under this subsection, the court may reduce or suspend the sentence below a sentence that the court was authorized to impose at the time of sentencing with the consent of the prosecuting attorney. However, if the person 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. In making this determination, the court must consider the suitability of the person's reentry plans if the sentence is modified, including proof that the person will have suitable living quarters if discharged from the department and will receive the medical care or treatment required. The court must incorporate its reasons in the record.

(o) 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 (n) and not disqualified under subsection (b) and notify the identified inmate. Not later than thirty (30) days from the identification of an appropriate inmate, the department shall, unless otherwise requested by the inmate, notify:

(1) the public defender or privately retained counsel;

(2) the inmate's emergency contact or next of kin; and

(3) the prosecutor in the county of conviction;

of the inmate's eligibility for a sentence modification under this section.

(p) Not later than thirty (30) days after the a filing of a petition under subsection (n), the court shall:



- (1) grant the request to suspend or reduce a sentence;**
- (2) deny the request without written findings and conclusions;**
- or**
- (3) hold a hearing on the matter.**

The court is not required to conduct a hearing before reducing or suspending a sentence under subsection (i)."

Delete pages 3 through 9.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1648 as introduced and amended by the House Committee on Courts and Criminal Code on February 8, 2023.)

MCNAMARA

Committee Vote: yeas 8, nays 3.

