

# HOUSE BILL No. 1250

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-3-3.

**Synopsis:** Misdemeanant transfer from correctional facilities. Provides that whenever state correctional facilities are filled to capacity with felons: (1) a county may not commit a misdemeanor to a state correctional facility; (2) a county may not receive a per diem for a misdemeanor committed to the county jail or another local sentencing option because a state correctional facility is unavailable; (3) a misdemeanor confined by a state correctional facility may be returned for confinement by the county that committed the misdemeanor to the state correctional facility; and (4) a county will be charged a per diem for each misdemeanor transferred to a state correctional facility or rejected by the county for transfer back to the county correctional facility.  
(Continued next page)

**Effective:** July 1, 1998.

---

---

**Gulling, Sturtz**

---

---

January 13, 1998, read first time and referred to Committee on Courts and Criminal Code.

---

---

C  
O  
P  
Y



Digest Continued

facility after the county has received notice of the unavailability of space in state correctional facilities. Allows a county to transfer misdemeanants and receive per diem when the county receives notice that space is available in the state correctional facility.

C  
o  
p  
y



Introduced

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

## HOUSE BILL No. 1250

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 35-38-3-3 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) Except as  
3 provided by subsections (b) and (c), a person convicted of a  
4 misdemeanor may not be committed to the department of correction if  
5 there are fewer than sixty (60) days remaining before his earliest  
6 possible release date. However, if the commissioner of the department  
7 of correction gives notice to a sheriff that he will pay a per diem under  
8 IC 11-8-3-3, then a person may not be committed to the department of  
9 correction unless there are more than one hundred eighty (180) days  
10 remaining before his earliest possible release date.

11 (b) If the inmate population of a local facility is equal to or in excess  
12 of its rated capacity, a person convicted of a misdemeanor who has  
13 more than sixty (60) but fewer than one hundred eighty (180) days  
14 remaining before his earliest possible release date may be committed  
15 to the department of correction. However, before a sheriff transfers the

1998

IN 1250—LS 7101/DI 69+



C  
O  
P  
Y

1 custody of a person under this subsection, the sheriff shall give notice  
2 to the department that the inmate population of the local facility is  
3 equal to or in excess of its rated capacity.

4 (c) If the county executive decides that the county should not house  
5 persons convicted of misdemeanors who have more than sixty (60)  
6 days remaining before their earliest possible release dates, then those  
7 persons may be committed to the department of correction. However,  
8 notice of the county executive's decision must be transmitted to the  
9 commissioner of the department of correction not more than ten (10)  
10 days after the sheriff has received notice under subsection (a).

11 (d) **Notwithstanding subsections (a), (b), and (c), if the**  
12 **commissioner of the department of correction determines that all**  
13 **available capacity in facilities operated by the department of**  
14 **correction is needed to accommodate persons convicted of felonies:**

15 (1) **the commissioner may give notice to the sheriff of a county**  
16 **concerning the department's available capacity; and**

17 (2) **after the sheriff of the county receives the notice, a person**  
18 **convicted of a misdemeanor in the county may not be**  
19 **committed to the department of correction.**

20 **Notwithstanding IC 11-8-3-3, after the sheriff of a county receives**  
21 **notice under this subsection, the department of correction may not**  
22 **pay a per diem under IC 11-8-3-3 for a person convicted of a**  
23 **misdemeanor who is committed to the county jail or another local**  
24 **sentencing option in the county after the date the sheriff receives**  
25 **the notice. If a county commits a person convicted of a**  
26 **misdemeanor to the department of correction after the sheriff of**  
27 **the county receives notice under this subsection, the county shall be**  
28 **charged a per diem as determined under the formula established**  
29 **by IC 11-8-3-3(c) while the person remains at a facility operated by**  
30 **the department of correction.**

31 (e) **Notwithstanding subsections (a), (b), and (c), if the**  
32 **commissioner of the department of correction determines that all**  
33 **available capacity in facilities operated by the department of**  
34 **correction is needed to accommodate persons convicted of felonies:**

35 (1) **the commissioner may give notice to the sheriff of a county**  
36 **concerning the department's available capacity; and**

37 (2) **not more than five (5) working days after the date the**  
38 **sheriff of the county receives the notice, the county shall**  
39 **accept custody of persons convicted of misdemeanors in the**  
40 **county who are transferred from facilities operated by the**  
41 **department of correction.**

42 **Notwithstanding IC 11-8-3-3, after the sheriff of a county receives**

C  
O  
P  
Y



1 notice under this subsection, the department of correction may not  
2 pay a per diem under IC 11-8-3-3 for a person convicted of a  
3 misdemeanor who is committed to the county jail, another local  
4 penal facility, or another local sentencing option in the county after  
5 the date the sheriff receives the notice. A person who is returned to  
6 the department of correction may be eligible for placement in a  
7 local jail or alternative sentencing option. If a county does not  
8 accept custody of a person transferred from the department of  
9 correction under this subsection, the county shall be charged a per  
10 diem as determined under the formula established by  
11 IC 11-8-3-3(c) while the person remains at a facility operated by  
12 the department of correction.

13 (f) If the commissioner of the department of correction  
14 determines that the capacity of facilities operated by the  
15 department of correction is sufficient to house persons in addition  
16 to persons convicted of felonies:

17 (1) the commissioner shall give notice to a sheriff of a county  
18 who was given notice under subsection (d) or (e) concerning  
19 the department's available capacity;

20 (2) after the sheriff of a county receives the notice, persons  
21 convicted of misdemeanors in the county may be committed  
22 to the department of correction; and

23 (3) the department of correction may pay per diem to counties  
24 as provided under IC 11-8-3-3.

C  
O  
P  
Y

