

# HOUSE BILL No. 1938

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 11-13-1-3; IC 12-7-2; IC 12-26-17.

**Synopsis:** Involuntary commitment. Provides that a sex offender may be involuntarily committed to a state inpatient psychiatric institution or state correctional facility for treatment.

**Effective:** July 1, 2003.

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January 23, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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## HOUSE BILL No. 1938



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

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

- 1 SECTION 1. IC 11-13-1-3 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. A probation officer
- 3 shall:
- 4 (1) conduct prehearing and presentence investigations and
- 5 prepare reports as required by law;
- 6 (2) assist the courts in making pretrial release decisions;
- 7 (3) assist the courts, prosecuting attorneys, and other law
- 8 enforcement officials in making decisions regarding the diversion
- 9 of charged individuals to appropriate noncriminal alternatives;
- 10 (4) furnish each person placed on probation under his supervision
- 11 a written statement of the conditions of his probation and instruct
- 12 him regarding those conditions;
- 13 (5) supervise and assist persons on probation consistent with
- 14 conditions of probation imposed by the court;
- 15 (6) bring to the court's attention any modification in the
- 16 conditions of probation considered advisable;
- 17 (7) notify the court when a violation of a condition of probation



1 occurs;

2 (8) cooperate with public and private agencies and other persons  
3 concerned with the treatment or welfare of persons on probation,  
4 and assist them in obtaining services from those agencies and  
5 persons;

6 (9) keep accurate records of cases investigated by him and of all  
7 cases assigned to him by the court and make these records  
8 available to the court upon request;

9 (10) collect and disburse money from persons under his  
10 supervision according to the order of the court, and keep accurate  
11 and complete accounts of those collections and disbursements;

12 (11) assist the court in transferring supervision of a person on  
13 probation to a court in another jurisdiction; ~~and~~

14 **(12) supervise a sex offender under IC 12-26-17-12 and notify**  
15 **the court when a violation of the conditional release occurs;**  
16 **and**

17 ~~(12)~~ **(13)** perform other duties required by law or as directed by  
18 the court.

19 SECTION 2. IC 12-7-2-129.4 IS ADDED TO THE INDIANA  
20 CODE AS A NEW SECTION TO READ AS FOLLOWS  
21 [EFFECTIVE JULY 1, 2003]: **Sec. 129.4. "Mental abnormality", for**  
22 **purposes of IC 12-26-17, means a congenital or an acquired**  
23 **condition that:**

24 **(1) affects the emotional or volitional capacity of a person;**

25 **(2) predisposes a person to commit an offense under**  
26 **IC 35-42-4 or IC 35-46-1-3; and**

27 **(3) makes a person a danger to the health and safety of others.**

28 SECTION 3. IC 12-7-2-176.5 IS ADDED TO THE INDIANA  
29 CODE AS A NEW SECTION TO READ AS FOLLOWS  
30 [EFFECTIVE JULY 1, 2003]: **Sec. 176.5. "Sex offender", for**  
31 **purposes of IC 12-26-17, means a person who is:**

32 **(1) charged with or confined for conviction of an offense**  
33 **under IC 35-42-4 or IC 35-46-1-3; and**

34 **(2) diagnosed with a mental abnormality or personality**  
35 **disorder that makes the person likely to engage in repeat**  
36 **offenses described in subdivision (1).**

37 SECTION 4. IC 12-26-17 IS ADDED TO THE INDIANA CODE  
38 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
39 JULY 1, 2003]:

40 **Chapter 17. Commitment of Sex Offenders**

41 **Sec. 1. (a) The department of correction or a prosecuting**  
42 **attorney may request the commitment of a sex offender by filing a**

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1 petition with the attorney general.

2 (b) A petition under subsection (a) must include:

3 (1) the name and Social Security number of the person alleged  
4 to be a sex offender;

5 (2) each charge, if any, pending against the person alleged to  
6 be a sex offender;

7 (3) the criminal history of the person alleged to be a sex  
8 offender;

9 (4) the earliest possible release date if the person alleged to be  
10 a sex offender is confined by the department of correction;  
11 and

12 (5) the facts supporting the petitioner's belief that the person  
13 should be committed under this chapter.

14 (c) If a person alleged to be a sex offender is confined by the  
15 department of correction, the petition must be filed at least sixty  
16 (60) days before the person's earliest possible release date.

17 Sec. 2. (a) The attorney general shall establish a review team to  
18 review each petition filed under section 1 of this chapter.

19 (b) The review team shall issue written findings to the attorney  
20 general not later than thirty (30) days after receiving the petition.

21 (c) The written findings must include an opinion as to whether  
22 the person is a sex offender and facts to support that  
23 determination.

24 Sec. 3. (a) The attorney general may file a separate petition  
25 requesting commitment of the alleged sex offender in the circuit  
26 court in the jurisdiction in which the alleged sex offender is:

27 (1) charged with an offense; or

28 (2) confined for conviction of an offense;

29 under IC 35-42-4 or IC 35-46-1-3 if the review team issues written  
30 findings that the person is a sex offender.

31 (b) A petition filed by the attorney general under subsection (a)  
32 must incorporate the findings of the review team and include  
33 information required in section 1(b) of this chapter.

34 (c) A petition filed by the attorney general under this section  
35 must be filed not later than thirty (30) days after receipt of the  
36 written findings of the review team.

37 Sec. 4. (a) A judge who receives a petition filed by the attorney  
38 general under section 3 of this chapter shall preliminarily  
39 determine whether probable cause exists that the person named in  
40 the petition is a sex offender. If the judge determines probable  
41 cause exists, a hold shall be placed on the person under the cause  
42 number assigned to the commitment action under this chapter.

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1           **(b) A person against whom probable cause is found under**  
 2 **subsection (a) has a right to notice and an opportunity to be heard**  
 3 **at a hearing to contest the probable cause finding. Notice must be**  
 4 **given and the hearing must occur not later than seventy-two (72)**  
 5 **hours after the probable cause determination is made by the court.**

6           **(c) The following must occur at the probable cause hearing**  
 7 **under this section:**

8           **(1) The court shall verify the identity of the person against**  
 9 **whom probable cause is found.**

10           **(2) The person against whom probable cause is found shall be**  
 11 **informed of the right to:**

12           **(A) be represented by counsel;**

13           **(B) present evidence;**

14           **(C) cross-examine witnesses who testify against the person;**  
 15 **and**

16           **(D) view and copy the petition, the written statement issued**  
 17 **by the review team, and any other nonconfidential reports**  
 18 **in the court's file.**

19           **(d) The court, after all evidence is presented at the probable**  
 20 **cause hearing under this section, shall determine whether probable**  
 21 **cause exists that the person named in the petition is a sex offender.**

22           **(e) If probable cause is found, the court shall order the person**  
 23 **to be:**

24           **(1) detained in a penal facility (as defined in IC 35-41-1-21);**  
 25 **and**

26           **(2) evaluated by a psychiatrist or psychologist.**

27           **Sec. 5. (a) The court shall conduct a trial to determine whether**  
 28 **the person is a sex offender not later than sixty (60) days after a**  
 29 **probable cause finding.**

30           **(b) A person alleged to be a sex offender under this chapter has**  
 31 **the rights set forth in section 4(c)(2) of this chapter.**  
 32 **Notwithstanding IC 34-10-1, if the court determines the person is**  
 33 **indigent, the court shall appoint counsel at the court's expense.**  
 34 **Additionally, if the court determines the person is indigent, the**  
 35 **court shall appoint necessary mental health or other expert**  
 36 **witnesses to assist in the person's defense at the court's expense.**

37           **(c) The attorney general shall represent the state at the trial and**  
 38 **bears the burden of proof.**

39           **(d) The person alleged to be a sex offender or the attorney**  
 40 **general has the right to demand a trial by jury. The demand may**  
 41 **be made at any time up to fifteen (15) days before the trial date.**  
 42 **Unless otherwise agreed to by the parties and approved by the**

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1 court, a jury must consist of twelve (12) members.

2 **Sec. 6. (a) A judgment may be entered to commit a person as**  
 3 **provided in subsection (b) only if the:**

4 **(1) jury, if the trial is by jury, unanimously finds; or**

5 **(2) judge, if the trial is by judge, finds;**

6 **beyond a reasonable doubt that the person is a sex offender.**

7 **(b) A person found to be a sex offender shall be committed to**  
 8 **the custody of the division of mental health and addiction for**  
 9 **treatment in a state inpatient psychiatric institution or state**  
 10 **correctional facility.**

11 **(c) The division of mental health and addiction shall develop and**  
 12 **implement treatment for the sex offender.**

13 **(d) A sex offender who is arrested or taken into custody for a**  
 14 **probation or parole violation must be returned to the institution or**  
 15 **facility for continued treatment upon resolution of the criminal**  
 16 **matters.**

17 **Sec. 7. (a) A sex offender who is committed to a state inpatient**  
 18 **psychiatric institution or state correctional facility must receive a**  
 19 **psychological or psychiatric examination not later than one (1)**  
 20 **year after the date the sex offender is committed to an institution**  
 21 **or facility. The examination must primarily address the status of**  
 22 **the sex offender's mental abnormality or personality disorder.**

23 **(b) The court that entered judgment under section 6 of this**  
 24 **chapter shall conduct a review hearing at which the examination**  
 25 **must be made a part of the record. The sex offender has the rights**  
 26 **set forth in section 4(c)(2) of this chapter. Notwithstanding**  
 27 **IC 34-10-1, if the court determines the sex offender is indigent, the**  
 28 **court shall appoint counsel at the court's expense.**

29 **(c) The attorney general shall represent the state at the review**  
 30 **hearing and bears the burden of proof.**

31 **(d) The attorney general and the sex offender may present**  
 32 **evidence in addition to the examination conducted under**  
 33 **subsection (a), including an independent psychological or**  
 34 **psychiatric evaluation of the sex offender. If the court determines**  
 35 **the sex offender is indigent, the court may appoint mental health**  
 36 **or other expert witnesses for the sex offender at the court's**  
 37 **expense.**

38 **(e) If the court following the hearing finds beyond a reasonable**  
 39 **doubt that the sex offender's mental abnormality or personality**  
 40 **disorder has been treated so that, in the opinion of the court, the**  
 41 **sex offender is not a danger to commit an offense under IC 35-42-4**  
 42 **or IC 35-46-1-3, the court shall order the sex offender to be placed**

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1 in a halfway house or work release program.

2 (f) A sex offender who is released to a halfway house or work  
3 release program under subsection (e) must participate in a  
4 treatment program developed by the division of mental health and  
5 addiction as a condition of remaining at the halfway house or in the  
6 work release program.

7 (g) A sex offender who is denied release to a halfway house or  
8 work release program is entitled to a new hearing based upon a  
9 separate psychological or psychiatric examination and the other  
10 rights in this section not later than one (1) year after the date the  
11 court enters an order denying the sex offender's release under this  
12 section.

13 **Sec. 8. (a)** A halfway house or work release program that  
14 receives a sex offender under section 7 of this chapter shall file a  
15 notice with the court that entered judgment under section 6 of this  
16 chapter if a sex offender violates a rule of the halfway house or  
17 work release program.

18 (b) The court shall conduct a hearing based upon the notice. The  
19 court following the hearing may:

20 (1) order a sex offender to be recommitted to the state  
21 inpatient psychiatric institution or state correctional facility  
22 from which the sex offender was released; or

23 (2) impose additional requirements on the sex offender as a  
24 condition of remaining in the current placement or program;  
25 if the court finds by a preponderance of the evidence that the sex  
26 offender violated a rule of the halfway house or work release  
27 program.

28 (c) The court shall give the attorney general notice of a hearing  
29 under this section. The attorney general shall represent the state at  
30 the hearing and bears the burden of proof.

31 (d) The sex offender has the rights set forth in section 4(c)(2) of  
32 this chapter. Notwithstanding IC 34-10-1, if the court determines  
33 the sex offender is indigent, the court shall appoint counsel at the  
34 court's expense.

35 (e) A sex offender may be held in a penal facility (as defined in  
36 IC 35-41-1-21) pending a hearing under subsection (b) if the sex  
37 offender is a danger to the health and safety of other persons in the  
38 halfway house or work release program.

39 **Sec. 9. (a)** A sex offender who is committed to a state inpatient  
40 psychiatric institution or state correctional facility may petition a  
41 court for a modification of the original terms of the commitment.

42 (b) The court shall set a hearing for modification if the court

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1 determines that the petition alleges facts that demonstrate a  
2 substantial change of circumstances that warrant a reconsideration  
3 of the original terms of the commitment.

4 (c) The court shall give the attorney general notice of a hearing  
5 under this section. The attorney general shall represent the state at  
6 the hearing.

7 (d) The sex offender has the rights set forth in section 4(c)(2) of  
8 this chapter and bears the burden of proof. Notwithstanding  
9 IC 34-10-1, if the court determines the sex offender is indigent, the  
10 court shall appoint counsel at the court's expense.

11 (e) The court following the hearing may modify the original  
12 terms of the commitment:

13 (1) to allow release to a halfway house or work release  
14 program if the court finds beyond a reasonable doubt that the  
15 sex offender's mental abnormality or personality disorder has  
16 been treated so that, in the opinion of the court, the sex  
17 offender is not a danger to commit an offense under  
18 IC 35-42-4 or IC 35-46-1-3; or

19 (2) so that the sex offender remains committed to a state  
20 inpatient psychiatric institution or state correctional facility  
21 but the terms and conditions of the commitment are changed  
22 if the court finds by a preponderance of the evidence that a  
23 substantial change of circumstances warrants a modification  
24 of the original terms of the commitment.

25 **Sec. 10.** (a) The director of the state inpatient psychiatric  
26 institution or superintendent of the state correctional facility shall  
27 file a petition in the court that entered judgment under section 6 of  
28 this chapter requesting release of the sex offender if the director or  
29 superintendent and the division of mental health and addiction  
30 jointly determine the sex offender's mental abnormality or  
31 personality disorder has been treated so that the sex offender is not  
32 a danger to commit an offense under IC 35-42-4 or IC 35-46-1-3.

33 (b) The court shall provide the attorney general with a copy of  
34 the petition and a notice of a hearing under this section. The  
35 attorney general shall represent the state at the hearing.

36 (c) The sex offender has the rights set forth in section 4(c)(2) of  
37 this chapter. Notwithstanding IC 34-10-1, if the court determines  
38 the sex offender is indigent, the court shall appoint counsel at the  
39 court's expense.

40 (d) The attorney general and the sex offender have the right to  
41 present additional evidence at the hearing as set forth in section  
42 7(d) of this chapter.

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1 (e) The court following the hearing may release the sex offender  
2 to a halfway house or work release program if the court finds  
3 beyond a reasonable doubt that the sex offender's mental  
4 abnormality or personality disorder has been treated so that the  
5 sex offender is not a danger to commit an offense under IC 35-42-4  
6 or IC 35-46-1-3.

7 (f) A sex offender who is released to a halfway house or work  
8 release program must participate in continued treatment as  
9 determined by the division of mental health and addiction under  
10 section 7(f) of this chapter.

11 Sec. 11. (a) Each victim (as defined in IC 35-40-4-8) of an offense  
12 under IC 35-42-4 or IC 35-46-1-3 committed by the sex offender  
13 shall be notified by the attorney general before the:

14 (1) release to a halfway house or work release center; and  
15 (2) conditional release;  
16 of the sex offender.

17 (b) Each victim under subsection (a) has the right to appear and  
18 testify at any hearing under this chapter.

19 Sec. 12. (a) A halfway house or work release program may file  
20 a petition with the court that entered judgment under section 6 of  
21 this chapter requesting conditional release of the sex offender from  
22 the halfway house or work release program if the halfway house or  
23 work release program and the division of mental health and  
24 addiction jointly determine the sex offender's mental abnormality  
25 or personality disorder has been treated so that the sex offender is  
26 not a danger to commit an offense under IC 35-42-4 or  
27 IC 35-46-1-3.

28 (b) The court shall provide the attorney general with a copy of  
29 the petition and a notice of a hearing under this section. The  
30 attorney general shall represent the state at the hearing.

31 (c) The sex offender has the rights set forth in section 4(c)(2) of  
32 this chapter. Notwithstanding IC 34-10-1, if the court determines  
33 the sex offender is indigent, the court shall appoint counsel at the  
34 court's expense.

35 (d) The attorney general and the sex offender have the right to  
36 present additional evidence at the hearing as set forth in section  
37 7(d) of this chapter.

38 (e) The court following the hearing may conditionally release  
39 the sex offender from the halfway house or work release program  
40 under the following conditions if the court finds beyond a  
41 reasonable doubt that the sex offender's mental abnormality or  
42 personality disorder has been treated so that the sex offender is not

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1 a danger to commit an offense under IC 35-42-4 or IC 35-46-1-3:

2 (1) The sex offender must participate in continued treatment  
3 as determined by the division of mental health and addiction.

4 (2) The sex offender shall maintain employment approved by  
5 the court or seek employment approved by the court.

6 (3) The sex offender shall refrain from contact with persons  
7 designated by the court.

8 (4) The sex offender shall reside in a place approved by the  
9 court.

10 (5) A probation officer or community corrections officer in  
11 the county in which the sex offender resides under subdivision

12 (4) shall monitor the sex offender and file a notice with the  
13 court if the sex offender violates any term of the conditional  
14 release.

15 (6) Any other conditions the court determines to be necessary.

16 (f) If the court receives a notice of a violation under subsection  
17 (e)(5), the court shall set the matter for a hearing. The hearing  
18 shall be conducted in the same manner as set forth in section 8 of  
19 this chapter.

20 Sec 13. (a) A sex offender who is conditionally released under  
21 section 12 of this chapter and who does not violate the terms of the  
22 conditional release for five (5) years is eligible to be discharged.

23 (b) The court, not later than thirty (30) days after the five (5)  
24 years have elapsed, shall order a psychologist or psychiatrist to  
25 examine the sex offender and submit a written report to the court  
26 before a discharge hearing under this section. The report must  
27 include a determination whether in the opinion of the psychologist  
28 or psychiatrist the sex offender's mental abnormality or  
29 personality disorder has been treated so that the sex offender is not  
30 a danger to commit an offense under IC 35-42-4 or IC 35-46-1-3.

31 (c) A copy of the report shall be provided to the attorney general  
32 and the sex offender before the discharge hearing.

33 (d) The court shall give the attorney general notice of a hearing  
34 under this section. The attorney general shall represent the state at  
35 the hearing.

36 (e) The sex offender has the rights set forth in section 4(c)(2) of  
37 this chapter. Notwithstanding IC 34-10-1, if the court determines  
38 the sex offender is indigent, the court shall appoint counsel at the  
39 court's expense.

40 (f) The attorney general and the sex offender have the right to  
41 present additional evidence at the hearing as set forth in section  
42 7(d) of this chapter.

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(g) The court following the hearing may discharge the sex offender if the court finds beyond a reasonable doubt that the sex offender's mental abnormality or personality disorder has been treated so that the sex offender is not a danger to commit an offense under IC 35-42-4 or IC 35-46-1-3.

Sec. 14. A court at any hearing under this chapter may order a sex offender placed in any facility, institution, or other program authorized under this chapter if the court determines that the:

- (1) sex offender's mental abnormality or personality disorder has been treated so that the sex offender is not a danger to commit an offense under IC 35-42-4 or IC 35-46-1-3; or
- (2) sex offender has violated a term, condition, or rule of the current placement.

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