

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 2004 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1112

AN ACT to amend the Indiana Code concerning corrections.

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

SECTION 1. IC 11-10-14 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 14. Transitional Dormitories

Sec. 1. Before January 1, 2007, the department may provide a transitional dormitory at any security facility approved by the commissioner.

Sec. 2. (a) A transitional dormitory may provide programming and training in the following areas:

- (1) Drug addiction and alcoholism treatment.**
- (2) Employment skills and vocations.**
- (3) Personal responsibility.**
- (4) Faith and religion.**
- (5) Peer support.**
- (6) Motivation.**

(b) Except as provided in subsection (c), the department shall:

- (1) use volunteers recruited under section 4(b)(2) of this chapter; and**
- (2) provide other staff;**

necessary for the operation of a transitional dormitory.

(c) The department may contract with a faith based

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organization to provide staff necessary for the operation of a transitional dormitory.

Sec. 3. (a) An offender who wishes to reside in a transitional dormitory must submit a written application to the director of the transitional dormitory. An application must be on a form prescribed by the department.

(b) The director shall review each application and, not more than thirty (30) days after receipt of the application, issue a written decision to the offender.

(c) The director may determine eligibility based on the following criteria:

- (1) A preference shall be given to an offender who has less than twenty-four (24) months until the offender's expected release date.
- (2) Previous disciplinary action taken against an offender under IC 11-11-5-3.
- (3) Security risks presented by admitting an offender to a transitional dormitory.
- (4) An offender's demonstrated interest in the programs offered by a transitional dormitory.
- (5) An offender's previous attempts to reside in a transitional dormitory at any penal facility.
- (6) Other criteria developed by the department.

(d) An offender being treated under IC 11-10-4 is ineligible for placement in a transitional dormitory unless a psychiatrist treating the offender certifies to the director at or near the time the offender submits an application under subsection (a) that the offender can meaningfully participate in the programs offered by a transitional dormitory.

Sec. 4. (a) The department shall select a person to be the director of each transitional dormitory. The department may select a person to be a director who is employed by a faith based organization.

(b) The director's responsibilities include the following:

- (1) Implement each program component.
- (2) Recruit volunteers to provide instruction and training in the transitional dormitory with an emphasis on recruiting volunteers for religious programs.
- (3) Oversee the day to day operations of the transitional dormitory.
- (4) Provide information requested by the superintendent regarding an offender or a program.

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- (5) Remove an offender from the transitional dormitory for:**
 - (A) population management concerns;**
 - (B) misconduct;**
 - (C) security or safety concerns;**
 - (D) mental health concerns; or**
 - (E) lack of meaningful participation in the programs and training.**

Sec. 5. (a) The department shall submit an evaluation report to the legislative council on the faith based transitional dormitory program one (1) year after its inception and continue to provide a report to the legislative council on or before December 1 of each year.

(b) The report described in subsection (a) must be in an electronic format under IC 5-14-6.

(c) The report described in subsection (a) must contain the following:

- (1) An extensive evaluation of the faith based transitional dormitory program.**
- (2) Statistics that include the number of inmates who:**
 - (A) have enrolled in a faith based transitional dormitory program;**
 - (B) have completed a faith based transitional dormitory program; and**
 - (C) have been released from the department and did not participate in a faith based transitional dormitory program.**
- (3) The results of a survey of the employees of faith based transitional dormitories. The survey must ask the employees their opinions concerning the progress of the faith based transitional dormitories, how the program could improve, and how the program is successful.**

SECTION 2. IC 11-12-5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) As used in this section, "medical care expenses" refers to expenses relating to the following services provided to a county jail inmate:

- (1) Medical care.**
- (2) Dental care.**
- (3) Eye care.**
- (4) Any other health care related service.**

(b) Notwithstanding section 6 of this chapter and subject to subsection (c), as a term of a sentence, a court may order a county

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jail inmate to reimburse a county for all or a portion of medical care expenses incurred by the county in providing medical care to the inmate.

(c) A county jail inmate may not be required to reimburse a county for medical care expenses under this section if:

- (1) all the charges for which the inmate was detained in the county jail are dismissed; or
- (2) the inmate is acquitted of all charges for which the inmate was detained in the county jail.

(d) In determining the amount of reimbursement that an inmate may be required to pay under subsection (b), the court shall consider the inmate's ability to pay.

(e) If a court orders a county jail inmate to reimburse a county for medical care expenses under subsection (b), the amount of the medical care expenses shall be reduced by the amount of any copayment the inmate was required to make for the medical care expenses under IC 11-10-3-5 or section 5 of this chapter.

SECTION 3. IC 35-38-1-7.1, AS ADDED BY SEA 96-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court may consider ~~any~~ **the following** aggravating circumstances:

- (1) **The harm, injury, loss, or damage suffered by the victim of an offense was:**
 - (A) significant; and
 - (B) greater than the elements necessary to prove the commission of the offense.
- (2) **The person has a history of criminal or delinquent behavior.**
- (3) **The victim of the offense was less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense.**
- (4) **The person:**
 - (A) committed a crime of violence (IC 35-50-1-2); and
 - (B) knowingly committed the offense in the presence or within hearing of an individual who:
 - (i) was less than eighteen (18) years of age at the time the person committed the offense; and
 - (ii) is not the victim of the offense.
- (5) **The person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence**

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restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person.

(6) The person has recently violated the conditions of any probation, parole, pardon, community corrections placement, or pretrial release granted to the person.

(7) The victim of the offense was mentally or physically infirm.

(8) The person was in a position having care, custody, or control of the victim of the offense.

(9) The injury to or death of the victim of the offense was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(10) The person threatened to harm the victim of the offense or a witness if the victim or witness told anyone about the offense.

(11) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9; and

(B) is an employee of the penal facility.

(b) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or

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sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(c) The criteria listed in ~~subsection~~ **subsections (a) and (b)** do not limit the ~~aggravating circumstances or mitigating circumstances~~ **matters** that the court may consider in determining the sentence.

(d) A court may impose any sentence that is:

- (1) authorized by statute; and
- (2) permissible under the Constitution of the State of Indiana; regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

SECTION 4. IC 35-50-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) As used in this section, "crime of violence" means:

- (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);
- (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);
- (12) robbery as a Class A felony or a Class B felony (IC 35-42-5-1);
- (13) burglary as a Class A felony or a Class B felony (IC 35-43-2-1); or
- (14) causing death when operating a motor vehicle (IC 9-30-5-5).

(b) As used in this section, "episode of criminal conduct" means offenses or a connected series of offenses that are closely related in time, place, and circumstance.

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:

- (1) ~~aggravating and circumstances in IC 35-38-1-7.1(a); and~~
- (2) ~~mitigating circumstances in IC 35-38-1-7.1(b); and~~
~~IC 35-38-1-7.1(c);~~

in making a determination under this subsection. The court may order

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terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the **presumptive advisory** sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(d) If, after being arrested for one (1) crime, a person commits another crime:

- (1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; or
- (2) while the person is released:
 - (A) upon the person's own recognizance; or
 - (B) on bond;

the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

(e) If ~~a court~~ **the factfinder** determines under IC 35-50-2-11 that a person used a firearm in the commission of the offense for which the person was convicted, the term of imprisonment for the underlying offense and the additional term of imprisonment imposed under IC 35-50-2-11 must be served consecutively.

SECTION 5. IC 35-50-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) As used in this section:

- (1) "Drug" means a drug or a controlled substance (as defined in IC 35-48-1).
- (2) "Substance offense" means a Class A misdemeanor or a felony in which the possession, use, abuse, delivery, transportation, or manufacture of alcohol or drugs is a material element of the crime. The term includes an offense under IC 9-30-5 and an offense under IC 9-11-2 (before its repeal). ~~July 1, 1991).~~

(b) The state may seek to have a person sentenced as a habitual substance offender for any substance offense by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated substance offense convictions.

(c) After a person has been convicted and sentenced for a substance offense committed after sentencing for a prior unrelated substance offense conviction, the person has accumulated two (2) prior unrelated substance offense convictions. However, a conviction does not count

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for purposes of this subsection if:

(1) it has been set aside; or

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

(d) If the person was convicted of the substance offense 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.

(e) A person is a habitual substance offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated substance offense convictions.

(f) The court shall sentence a person found to be a habitual substance offender to an additional fixed term of at least three (3) years but not more than eight (8) years imprisonment, to be added to the term of imprisonment imposed under IC 35-50-2 or IC 35-50-3. If the court finds that:

(1) three (3) years or more have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last prior unrelated substance offense conviction and the date the person committed the substance offense for which the person is being sentenced as a habitual substance offender; or

(2) all of the substance offenses for which the person has been convicted are substance offenses under IC 16-42-19 or IC 35-48-4, the person has not been convicted of a substance offense listed in section 2(b)(4) of this chapter, and the total number of convictions that the person has for:

(A) dealing in or selling a legend drug under IC 16-42-19-27;

(B) dealing in cocaine or a narcotic drug (IC 35-48-4-1);

(C) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);

(D) dealing in a schedule IV controlled substance (IC 35-48-4-3); and

(E) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1);

then the court may reduce the additional fixed term. However, the court may not reduce the additional fixed term to less than one (1) year.

(g) If a reduction of the additional year fixed term is authorized under subsection (f), the court may also consider the aggravating ~~or~~ **circumstances in IC 35-38-1-7.1(a) and the** mitigating circumstances

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in ~~IC 35-38-1-7.1~~ **IC 35-38-1-7.1(b)** to:

- (1) decide the issue of granting a reduction; or
- (2) determine the number of years, if any, to be subtracted under subsection (f).

SECTION 6. IC 35-38-2.6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to the sentencing of a person convicted of:

- (1) a felony whenever any part of the sentence may not be suspended under IC 35-50-2-2 or IC 35-50-2-2.1; ~~or~~
- (2) a misdemeanor whenever any part of the sentence may not be suspended; ~~or~~

(3) an offense described in IC 35-50-2-2(b)(4)(Q) (operating a vehicle while intoxicated with at least two (2) prior unrelated convictions), if the person:

(A) is required to serve the nonsuspendible part of the sentence in a community corrections:

- (i) work release program; or**
- (ii) program that uses electronic monitoring as a part of the person's supervision; and**

(B) participates in a court approved substance abuse program.

(b) This chapter does not apply to persons convicted of any of the following:

- (1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.
- (2) **Except as provided in subsection (a)(3)**, any of the felonies listed in IC 35-50-2-2(b)(4).
- (3) **An offense under IC 9-30-5-4.**
- (4) **An offense under IC 9-30-5-5.**

SECTION 7. IC 35-50-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:

- (1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.
- (2) The crime committed was a Class C felony and less than seven
- (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever

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is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
- (M) escape (IC 35-44-3-5) with a deadly weapon;
- (N) rioting (IC 35-45-1-2) with a deadly weapon;
- (O) dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:
 - (i) school property;

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- (ii) a public park;
 - (iii) a family housing complex; or
 - (iv) a youth program center;
- (P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
 - (ii) a public park;
 - (iii) a family housing complex; or
 - (iv) a youth program center;
- (Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;

- (R) an offense under IC 9-30-5-5(b) (operating a vehicle while intoxicated causing death); if the person had:
- (i) at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood; or at least fifteen-hundredths (0.15) gram of alcohol per two hundred ten (210) liters of the person's breath; or
 - (ii) a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or
- (S) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or

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IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 8. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "department" refers to the department of correction established by IC 11-8-2-1.

(b) As used in this SECTION, "commissioner" refers to the commissioner of the department of correction appointed under IC 11-8-2-4.

(c) Not later than September 1, 2005, the commissioner shall report progress on entering into a contract with a faith based organization to create a pilot project to operate faith based transitional dormitories at state operated correctional facilities.

(d) Not later than November 1, 2005, the commissioner shall report the status on implementing a pilot project and report a target date for the commencement of the pilot project. A report under subsection (c) and this subsection must be in an electronic format under IC 5-14-6.

(e) This SECTION expires December 31, 2005.

SECTION 9. IC 35-37-2.5 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 10. An emergency is declared for this act.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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