



January 25, 2008

SENATE BILL No. 4

DIGEST OF SB 4 (Updated January 23, 2008 4:26 pm - DI 106)

Citations Affected: IC 35-41; IC 35-50; noncode.

Synopsis: Reduction of credit time for certain sex offenders. Creates department of correction credit Class IV for felons convicted of certain serious child molesting offenses and certain murders involving sex offenses. Specifies that persons in credit Class IV earn one day of credit for each six days of incarceration. Provides that persons in credit Class IV may be placed in a credit class where they earn no credit, but may not be placed in a credit class where they earn more credit.

Effective: July 1, 2008.

Drozda, Weatherwax

January 8, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 24, 2008, amended, reported favorably — Do Pass.

C
o
p
y

SB 4—LS 6047/DI 107+



January 25, 2008

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

C
O
P
Y

SENATE BILL No. 4



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 35-41-1-5.5 IS ADDED TO THE INDIANA CODE
- 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2008]: **Sec. 5.5. "Credit restricted felon" means a person who has**
- 4 **been convicted of at least one (1) of the following offenses:**
- 5 (1) **Child molesting involving intercourse or deviate sexual**
- 6 **conduct (IC 35-42-4-3(a)), if:**
- 7 (A) **the offense is committed by a person at least**
- 8 **twenty-one (21) years of age; and**
- 9 (B) **the victim is less than twelve (12) years of age.**
- 10 (2) **Child molesting (IC 35-42-4-3) resulting in serious bodily**
- 11 **injury or death.**
- 12 (3) **Murder (IC 35-42-1-1), if:**
- 13 (A) **the person killed the victim while committing or**
- 14 **attempting to commit child molesting (IC 35-42-4-3);**
- 15 (B) **the victim was the victim of a sex crime under**
- 16 **IC 35-42-4 for which the person was convicted; or**
- 17 (C) **the victim of the murder was listed by the state or**

SB 4—LS 6047/DI 107+



1 known by the person to be a witness against the person in
2 a prosecution for a sex crime under IC 35-42-4 and the
3 person committed the murder with the intent to prevent
4 the person from testifying.

5 SECTION 2. IC 35-50-6-3 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) A person
7 assigned to Class I earns one (1) day of credit time for each day ~~he~~ **the**
8 **person** is imprisoned for a crime or confined awaiting trial or
9 sentencing.

10 (b) A person assigned to Class II earns one (1) day of credit time for
11 every two (2) days ~~he~~ **the person** is imprisoned for a crime or confined
12 awaiting trial or sentencing.

13 (c) A person assigned to Class III earns no credit time.

14 **(d) A person assigned to Class IV earns one (1) day of credit for**
15 **every six (6) days the person is imprisoned for a crime or confined**
16 **awaiting trial or sentencing.**

17 SECTION 3. IC 35-50-6-4 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A person **who is**
19 **not a credit restricted felon and who is** imprisoned for a crime or
20 imprisoned awaiting trial or sentencing is initially assigned to Class I.

21 **(b) A person who is a credit restricted felon and who is**
22 **imprisoned for a crime or imprisoned awaiting trial or sentencing**
23 **is initially assigned to Class IV. A credit restricted felon may not**
24 **be assigned to Class I or Class II.**

25 ~~(b)~~ **(c) A person who is not assigned to Class IV** may be reassigned
26 to Class II or Class III if ~~he~~ **the person** violates any of the following:

- 27 (1) A rule of the department of correction.
- 28 (2) A rule of the penal facility in which ~~he~~ **the person** is
29 imprisoned.
- 30 (3) A rule or condition of a community transition program.

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

37 **(d) A person who is assigned to Class IV may be reassigned to**
38 **Class III if the person violates any of the following:**

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

C
o
p
y



1 **However, a violation of a condition of parole or probation may not**
2 **be the basis for reassignment. Before a person may be reassigned**
3 **to Class III, the person must be granted a hearing to determine the**
4 **person's guilt or innocence and, if found guilty, whether**
5 **reassignment is an appropriate disciplinary action for the**
6 **violation. The person may waive the right to the hearing.**

7 ~~(c)~~ (e) In connection with the hearing granted under subsection ~~(b)~~;
8 (c) or (d), the person is entitled to:

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

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

33 ~~(d)~~ (f) A person may be reassigned from Class III to Class I, ~~or~~ Class
34 II, **or Class IV**, or from Class II to Class I. A person's assignment to
35 Class III or Class II shall be reviewed at least once every six (6) months
36 to determine if ~~he~~ **the person** should be reassigned to a higher credit
37 time class. **A credit restricted felon may not be reassigned to Class**
38 **I or Class II.**

39 SECTION 4. IC 35-50-6-5, AS AMENDED BY P.L.173-2006,
40 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2008]: Sec. 5. (a) A person may, with respect to the same
42 transaction, be deprived of any part of the credit time the person has

C
o
p
y



- 1 earned for any of the following:
- 2 (1) A violation of one (1) or more rules of the department of
- 3 correction.
- 4 (2) If the person is not committed to the department, a violation
- 5 of one (1) or more rules of the penal facility in which the person
- 6 is imprisoned.
- 7 (3) A violation of one (1) or more rules or conditions of a
- 8 community transition program.
- 9 (4) If a court determines that a civil claim brought by the person
- 10 in a state or an administrative court is frivolous, unreasonable, or
- 11 groundless.
- 12 (5) If the person is a sex offender (as defined in IC 11-8-8-5) and
- 13 refuses to register before being released from the department as
- 14 required under IC 11-8-8-7.
- 15 (6) If the person is a sex offender (as defined in IC 11-8-8-5) and
- 16 refuses to participate in a sex offender treatment program
- 17 specifically offered to the sex offender by the department of
- 18 correction while the person is serving a period of incarceration
- 19 with the department of correction.
- 20 However, the violation of a condition of parole or probation may not be
- 21 the basis for deprivation. Whenever a person is deprived of credit time,
- 22 **he the person** may also be reassigned to Class II (**if the person is not**
- 23 **a credit restricted felon**) or Class III.
- 24 (b) Before a person may be deprived of earned credit time, the
- 25 person must be granted a hearing to determine the person's guilt or
- 26 innocence and, if found guilty, whether deprivation of earned credit
- 27 time is an appropriate disciplinary action for the violation. In
- 28 connection with the hearing, the person is entitled to the procedural
- 29 safeguards listed in ~~section 4(c)~~ **section 4(e)** of this chapter. The person
- 30 may waive the person's right to the hearing.
- 31 (c) Any part of the credit time of which a person is deprived under
- 32 this section may be restored.
- 33 **SECTION 5. [EFFECTIVE JULY 1, 2008] IC 35-41-1-5.5, as**
- 34 **added by this act, and IC 35-50-6-3, IC 35-50-6-4, and**
- 35 **IC 35-50-6-5, all as amended by this act, apply only to persons**
- 36 **convicted after June 30, 2008.**

C
O
P
Y



SENATE MOTION

Madam President: I move that Senator Weatherwax be added as coauthor of Senate Bill 4.

DROZDA

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 4, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 10.

Page 11, delete lines 1 through 30.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 4 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 0.

C
O
P
Y

