CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 340

Citations Affected: IC 11-11-5-1; IC 11-12-2; IC 11-13-3-3; IC 27-10-2; IC 35-33-8-7; IC 35-38; IC 35-50-6.

Synopsis: Parole, probation, community corrections, and bail. Conference committee report for ESB 340. Makes conducting a community investigation by the parole board mandatory for certain individuals. Reduces the standard period of parole from two years to one year unless the parolee: (1) is a repeat parolee; (2) is being placed on parole for a conviction for a crime of violence; (3) is a sex offender; or (4) has violated a DOC rule in the six months prior to release. Provides that department of correction (department) rules concerning the maintenance of order and discipline among committed persons applies to persons placed in a community corrections program or assigned to a community transition program. Repeals a provision that requires a county that receives a grant from the department commissioner for the establishment and operation of a community corrections program to be charged a sum for certain persons committed to the department and confined in a state correctional facility. Requires that a community corrections plan must include a method to evaluate each component of the program to determine the overall use of department approved best practices for the program. Provides that the department must require community corrections programs to submit an evaluation of the use of department approved best practices for community correction program components in proposed budget requests. Provides that, for the purposes of the law concerning home detention, a home includes the residence of another person who is not part of the social unit formed by an offender's immediate family. Establishes certain standards and criteria for direct placement of offenders in community corrections programs. Specifies that, for purposes of the law concerning direct placement in community corrections programs: (1) "home" means the actual living area of the temporary or permanent residence of a person; and (2) a person who is placed in a community corrections program under the law is entitled to earn credit time. Allows a person to be deprived of credit time for violating a rule or condition of a community corrections program. Makes changes to the Indiana bail law concerning: (1) notices to sureties and bond agents; and (2) failure to appear. Provides that the requirement that courts include the costs of incarceration in a sentencing order expires June 30, 2012. Urges the legislative council to assign to the sentencing policy study committee the issue of whether a court should include the costs of incarceration in a sentencing order. **(This conference committee report: Narrows the**

requirements for when the parole board is required to conduct a community investigation. Removes a provision requiring the sentencing policy study committee to study and make recommendations regarding whether individuals on parole should be eligible to receive credit time to potentially shorten their period of parole. Removes a provision making it discretionary for a sexually violent predator to be subject to electronic monitoring. Provides that the requirement that courts include the costs of incarceration in a sentencing order expires June 30, 2012. Urges the legislative council to assign to the sentencing policy study committee the issue of whether a court should include the costs of incarceration in a sentencing order.)

Effective: Upon passage; July 1, 2010.

Adopted Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 340 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 11-11-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. **(a) This chapter applies to persons:**

(1) placed in a community corrections program; or

(2) assigned to a community transition program.

(b) This chapter does not apply to persons released on parole.

SECTION 2. IC 11-12-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) For the purpose of encouraging counties to develop a coordinated local corrections-criminal justice system and providing effective alternatives to imprisonment at the state level, the commissioner shall, out of funds appropriated for such purposes, make grants to counties for the establishment and operation of community corrections programs. Appropriations intended for this purpose may not be used by the department for any other purpose. Money appropriated to the department of correction for the purpose of making grants under this chapter and ~~charges made against a county~~ **any financial aid payments suspended** under section ~~9,~~ **6 of this chapter** do not revert to the state general fund at the close of any fiscal year, but remain available to the department of correction for its use in making grants

under this chapter.

(b) The commissioner shall give priority in issuing community corrections grants to programs that provide alternative sentencing projects for persons with mental illness, addictive disorders, mental retardation, and developmental disabilities.

SECTION 3. IC 11-12-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) A county or group of counties seeking financial aid under this chapter must apply to the commissioner in a manner and form prescribed by the commissioner. The application must include a community corrections plan that has been approved by the community corrections board and the county executive or, in a county having a consolidated city, by the city-county council. No county may receive financial aid until its application is approved by the commissioner.

(b) A community corrections plan must comply with rules adopted under section 5 of this chapter and must include:

(1) a description of each program for which financial aid is sought;

(2) the purpose, objective, administrative structure, staffing, and duration of the program;

(3) a method to evaluate each component of the program to determine the overall use of department approved best practices for the program;

~~(3)~~ **(4)** the program's total operating budget, including all other sources of anticipated income;

~~(4)~~ **(5)** the amount of community involvement and client participation in the program;

~~(5)~~ **(6)** the location and description of facilities that will be used in the program; and

~~(6)~~ **(7)** the manner in which counties that jointly apply for financial aid under this chapter will operate a coordinated community corrections program.

(c) A community corrections plan must be annually updated, approved by the county executive or, in a city having a consolidated city, by the city-county council, and submitted to the commissioner.

(d) No amendment to or substantial modification of an approved community corrections plan may be placed in effect until the department and county executive, or in a county having a consolidated city, the city-county council, have approved the amendment or modification.

(e) A copy of the final plan as approved by the department shall be made available to the board in a timely manner.

SECTION 4. IC 11-12-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) The department shall do the following:

(1) Provide consultation and technical assistance to counties to aid in the development of community corrections plans.

(2) Provide training for community corrections personnel and board members to the extent funds are available.

(3) Adopt under IC 4-22-2 rules governing application by counties for financial aid under this chapter, including the content

of community corrections plans.

(4) Adopt under IC 4-22-2 rules governing the disbursement of monies to a county and the county's certification of expenditures.

(5) Adopt under IC 4-22-2 minimum standards for the establishment, operation, and evaluation of programs receiving financial aid under this chapter. (These standards must be sufficiently flexible to foster the development of new and improved correctional practices.)

(6) Examine and either approve or disapprove applications for financial aid. The department's approval or disapproval must be based on this chapter and the rules adopted under this chapter.

(7) Keep the budget agency informed of the amount of appropriation needed to adequately fund programs under this chapter.

(8) Adopt under IC 4-22-2 a formula or other method of determining a participating county's share of funds appropriated for purposes of this chapter. This formula or method must be approved by the budget agency before the formula is adopted and must be designed to accurately reflect a county's correctional needs and ability to pay.

(9) Keep counties informed of money appropriated for the purposes of this chapter.

(10) Provide an approved training curriculum for community corrections field officers.

(11) Require community corrections programs to submit in proposed budget requests an evaluation of the use of department approved best practices for each community corrections program component.

(b) The commissioner may do the following:

(1) Visit and inspect any program receiving financial aid under this chapter.

(2) Require a participating county or program to submit information or statistics pertinent to the review of applications and programs.

(3) Expend up to three percent (3%) of the money appropriated to the department for community correction grants to provide technical assistance, consultation, and training to counties and to monitor and evaluate program delivery.

(c) Notwithstanding any law prohibiting advance payments, the department of correction may advance grant money to a county or group of counties in order to assist a community corrections program. However, not more than twenty-five percent (25%) of the amount awarded to a county or group of counties may be paid in advance.

(d) The commissioner shall disburse no more funds to any county under this chapter than are required to fund the community corrections plan.

SECTION 5. IC 11-13-3-3, AS AMENDED BY P.L.173-2006, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) A person sentenced under IC 35-50 shall be released on parole or discharged from the person's term of imprisonment under IC 35-50 without a parole release hearing.

(b) A person sentenced for an offense under laws other than IC 35-50 who is eligible for release on parole, or a person whose parole is revoked and is eligible for reinstatement on parole under rules adopted by the parole board shall, before the date of the person's parole eligibility, be granted a parole release hearing to determine whether parole will be granted or denied. The hearing shall be conducted by one (1) or more of the parole board members. If one (1) or more of the members conduct the hearing on behalf of the parole board, the final decision shall be rendered by the full parole board based upon the record of the proceeding and the hearing conductor's findings. Before the hearing, the parole board shall order an investigation to include the collection and consideration of:

(1) reports regarding the person's medical, psychological, educational, vocational, employment, economic, and social condition and history;

(2) official reports of the person's history of criminality;

(3) reports of earlier parole or probation experiences;

(4) reports concerning the person's present commitment that are relevant to the parole release determination;

(5) any relevant information submitted by or on behalf of the person being considered; and

(6) such other relevant information concerning the person as may be reasonably available.

(c) Unless the victim has requested in writing not to be notified, the department shall notify a victim of a felony (or the next of kin of the victim if the felony resulted in the death of the victim) or any witness involved in the prosecution of an offender imprisoned for the commission of a felony when the offender is:

(1) to be discharged from imprisonment;

(2) to be released on parole under IC 35-50-6-1;

(3) to have a parole release hearing under this chapter;

(4) to have a parole violation hearing;

(5) an escaped committed offender; or

(6) to be released from departmental custody under any temporary release program administered by the department, including the following:

(A) Placement on minimum security assignment to a program authorized by IC 11-10-1-3 or IC 35-38-3-6 and requiring periodic reporting to a designated official, including a regulated community assignment program.

(B) Assignment to a minimum security work release program.

(d) The department shall make the notification required under subsection (c):

(1) at least forty (40) days before a discharge, release, or hearing occurs; and

(2) not later than twenty-four (24) hours after the escape of a committed offender.

The department shall supply the information to a victim (or a next of kin of a victim in the appropriate case) and a witness at the address supplied to the department by the victim (or next of kin) or witness. A victim (or next of kin) is responsible for supplying the department with

any change of address or telephone number of the victim (or next of kin).

(e) The probation officer conducting the presentence investigation shall inform the victim and witness described in subsection (c), at the time of the interview with the victim or witness, of the right of the victim or witness to receive notification from the department under subsection (c). The probation department for the sentencing court shall forward the most recent list of the addresses or telephone numbers, or both, of victims to the department of correction. The probation department shall supply the department with the information required by this section as soon as possible but not later than five (5) days from the receipt of the information from the victim. A victim (or next of kin) is responsible for supplying the department with the correct address and telephone number of the victim (or next of kin).

(f) Notwithstanding IC 11-8-5-2 and IC 4-1-6, an inmate may not have access to the name and address of a victim and a witness. Upon the filing of a motion by any person requesting or objecting to the release of victim information, witness information, or both that is retained by the department, the court shall review the information that is the subject of the motion in camera before ruling on the motion.

(g) The notice required under subsection (c) must specify whether the prisoner is being discharged, is being released on parole, is being released on lifetime parole, is having a parole release hearing, is having a parole violation hearing, or has escaped. The notice must contain the following information:

(1) The name of the prisoner.
(2) The date of the offense.
(3) The date of the conviction.
(4) The felony of which the prisoner was convicted.
(5) The sentence imposed.
(6) The amount of time served.
(7) The date and location of the interview (if applicable).

(h) The parole board shall adopt rules under IC 4-22-2 and make available to offenders the criteria considered in making parole release determinations. The criteria must include the:

(1) nature and circumstances of the crime for which the offender is committed;
(2) offender's prior criminal record;
(3) offender's conduct and attitude during the commitment; and
(4) offender's parole plan.

(i) The hearing prescribed by this section may be conducted in an informal manner without regard to rules of evidence. In connection with the hearing, however:

(1) reasonable, advance written notice, including the date, time, and place of the hearing shall be provided to the person being considered;
(2) the person being considered shall be given access, in accord with IC 11-8-5, to records and reports considered by the parole board in making its parole release decision;
(3) the person being considered may appear, speak in the person's own behalf, and present documentary evidence;

(4) irrelevant, immaterial, or unduly repetitious evidence shall be excluded; and

(5) a record of the proceeding, to include the results of the parole board's investigation, notice of the hearing, and evidence adduced at the hearing, shall be made and preserved.

(j) If parole is denied, the parole board shall give the person written notice of the denial and the reasons for the denial. The parole board may not parole a person if it determines that there is substantial reason to believe that the person:

(1) will engage in further specified criminal activity; or

(2) will not conform to appropriate specified conditions of parole.

(k) If parole is denied, the parole board shall conduct another parole release hearing not earlier than five (5) years after the date of the hearing at which parole was denied. However, the board may conduct a hearing earlier than five (5) years after denial of parole if the board:

(1) finds that special circumstances exist for the holding of a hearing; and

(2) gives reasonable notice to the person being considered for parole.

(l) The parole board may parole a person who is outside Indiana on a record made by the appropriate authorities of the jurisdiction in which that person is imprisoned.

(m) If the board is considering the release on parole of an offender who is serving a sentence of life in prison, a determinate term of imprisonment of at least ten (10) years, or an indeterminate term of imprisonment with a minimum term of at least ten (10) years, in addition to the investigation required under subsection (b), **except as provided in subsection (n),** the board ~~shall~~ **may** order and consider a community investigation, which ~~must~~ **may** include an investigation and report that substantially reflects the attitudes and opinions of:

(1) the community in which the crime committed by the offender occurred;

(2) law enforcement officers who have jurisdiction in the community in which the crime occurred;

(3) the victim of the crime committed by the offender, or if the victim is deceased or incompetent for any reason, the victim's relatives or friends; and

(4) friends or relatives of the offender.

If the board reconsiders for release on parole an offender who was previously released on parole and whose parole was revoked under section 10 of this chapter, the board may use a community investigation prepared for an earlier parole hearing to comply with this subsection. However, the board shall accept and consider any supplements or amendments to any previous statements from the victim or the victim's relatives or friends.

(n) The board shall conduct the community investigation described in subsection (m) if:

(1) the person was convicted of a crime of violence (as defined in IC 35-50-1-2); or

(2) the person is a sex offender (as defined in IC 11-8-8-4.5).

~~(n)~~ **(o)** As used in this section, "victim" means a person who has

suffered direct harm as a result of a violent crime (as defined in IC 5-2-6.1-8).

SECTION 7. IC 27-10-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) An undertaking is valid if it states:

(1) the court where the defendant is to appear;

(2) the amount of the bail; and

(3) that it was made before an official legally authorized to take the bond.

(b) A surety remains liable on an undertaking despite:

(1) any lack of the surety's qualifications as required by section 4 of this chapter;

(2) any other agreement that is expressed in the undertaking;

(3) any failure of the defendant to join in the undertaking; or

(4) any other defect of form or record, or any other irregularity, except as to matters covered by subsection (a).

(c) Any undertaking written after August 31, 1985, shall expire thirty-six (36) months after it is posted for the release of a defendant from custody. This section does not apply to cases in which a bond has been declared to be forfeited ~~or in which the defendant is a fugitive from the jurisdiction after thirty-six (36) months.~~ **and the surety and bail agent have been notified as described in section 12 of this chapter.**

SECTION 8. IC 27-10-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) The court shall give the bail agent or insurer legal **written** notice of the defendant's trial or hearing **for purposes of entering a plea** at least seventy-two (72) hours before the defendant's appearance is required unless the appearance is scheduled within seventy-two (72) hours from the execution of the bond.

(b) The defendant's failure to appear constitutes a breach of the undertaking. The court before which the cause is pending shall make a record of the breach at which time section 12 of this chapter then applies.

SECTION 9. IC 27-10-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 12. (a) **Only** if a defendant does not appear as provided in the bond:

(1) the court shall:

(A) issue a warrant for the defendant's arrest; and

(B) order the bail agent and the surety to surrender the defendant to the court immediately;

(2) the clerk shall, **less than thirty (30) days after the defendant's failure to appear,** mail notice of the order to both:

(A) the bail agent; and

(B) the surety;

at each of the addresses indicated in the bonds; and

(3) if the defendant later is arrested or otherwise appears:

(A) the court shall order that the surety be released from the bond; and

(B) after the court issues an order under clause (A), the surety's original undertaking shall be reinstated if the surety

files a written request for the reinstatement of the undertaking with the court.

This subsection may not be construed to prevent a court from revoking or resetting bail.

(b) The bail agent or surety must:

(1) produce the defendant; or

(2) prove within three hundred sixty-five (365) days:

(A) that the appearance of the defendant was prevented:

(i) by the defendant's illness or death;

(ii) because the defendant was at the scheduled time of appearance or currently is in the custody of the United States, a state, or a political subdivision of the United States or a state; ~~or~~

(iii) because the required notice was not given; **or**

(iv) because authorities have refused to extradite the defendant, by a preponderance of the evidence; and

(B) the defendant's absence was not with the consent or connivance of the sureties.

(c) If the bail agent or surety does not comply with the terms of subsection (b) within one hundred twenty (120) days after the mailing of the notice required under subsection (a)(2), a late surrender fee shall be assessed against the bail agent or surety as follows:

(1) If compliance occurs more than one hundred twenty (120) days but not more than one hundred eighty (180) days after the mailing of notice, the late surrender fee is twenty percent (20%) of the face value of the bond.

(2) If compliance occurs more than one hundred eighty (180) days but not more than two hundred ten (210) days after the mailing of notice, the late surrender fee is thirty percent (30%) of the face value of the bond.

(3) If compliance occurs more than two hundred ten (210) days but not more than two hundred forty (240) days after the mailing of notice, the late surrender fee is fifty percent (50%) of the face value of the bond.

(4) If compliance occurs more than two hundred forty (240) days but not more than three hundred sixty-five (365) days after the mailing of notice, the late surrender fee is eighty percent (80%) of the face value of the bond.

(5) If the bail agent or surety does not comply with the terms of subsection (b) within three hundred sixty-five (365) days of the mailing of notice required under subsection (a)(2), the late surrender fee is eighty percent (80%) of the face value of the bond.

All late surrender fees are due as of the date of compliance with subsection (b) or three hundred sixty-five (365) days after the mailing of notice required under subsection (a)(2), whichever is earlier, and shall be paid by the surety when due. If the surety fails to pay, then the late surrender fees shall be paid by the commissioner as provided in subsection (f).

(d) If the bail agent or surety does not comply with the terms of subsection (b) within three hundred sixty-five (365) days of the mailing

of notice required by subsection (a)(2), the court shall declare forfeited an amount equal to twenty percent (20%) of the face value of the bond. The court shall immediately enter judgment on the forfeiture, without pleadings and without change of judge or change of venue, and assess against the bail agent or surety all actual costs resulting from the defendant's failure to appear. These costs include jury fees, witness fees, and any other documented costs incurred by the court.

(e) Proceedings relative to the bond, forfeiture of a bond, judgment on the forfeiture, execution of judgment, or stay of proceedings shall be in the court in which the bond was posted. Costs and late surrender fee assessed against a bail agent or surety under subsection (c) shall be satisfied without further order of the court as provided in subsection (f). The court may waive the late surrender fee or extend the period for payment beyond the statutorily permitted period, or both, if the following conditions are met:

(1) A written request is filed with the court and the prosecutor.

(2) The surety or bail agent provides evidence satisfactory to the court that diligent efforts were made to locate the defendant.

(f) In the case of an insurer, if the fees, costs, or judgment is not paid, then the clerk shall mail the notice to the commissioner. The commissioner shall:

(1) within ten (10) days of receipt of the notice forward a copy by certified mail to the insurer;

(2) forty-five (45) days after receipt of the notice from the clerk, if the commissioner has not been notified by the clerk that the fees or judgment or both have been paid, pay the late surrender fee assessment, costs, and any judgment of forfeiture ordered by the court from funds the insurer has on deposit with the department of insurance;

(3) upon paying the assessment, costs, and judgment, if any, from funds on deposit, immediately revoke the license of the insurer, if the satisfaction causes the deposit remaining to be less than the amount required by this article; and

(4) within ten (10) days after revoking a license, notify the insurer and the insurer's agents and the clerk of each county in Indiana of the revocation and the insurer shall be prohibited from conducting a bail bond business in Indiana until the deposit has been replenished.

(g) The notice mailed by the clerk to the commissioner pursuant to the terms of subsection (f) shall include:

(1) the date on which the defendant originally failed to appear as provided in the bond;

(2) the date of compliance with subsection (b), if compliance was achieved within three hundred sixty-five (365) days after the mailing of the notice required by subsection (a)(2);

(3) the amount of the bond;

(4) the dollar amount of the late surrender fee due;

(5) the amount of costs resulting from the defendant's failure to appear; and

(6) if applicable, the dollar amount of the judgment of forfeiture entered by the court.

(h) Any surety on a bond may appeal to the court of appeals as in other civil cases without moving for a new trial, and on the appeal the evidence, if any, shall be reviewed.

(i) Fifty percent (50%) of the late surrender fees collected under this chapter shall be deposited in the police pension trust fund established under IC 36-8-10-12 and the remaining fifty percent (50%) shall be deposited in the county extradition fund established under IC 35-33-14.

SECTION 10. IC 35-33-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) If a defendant:

(1) was admitted to bail under section 3.2(a)(2) of this chapter; and

(2) has failed to appear before the court as ordered;

the court shall, **except as provided in subsection (b) or section 8(b) of this chapter, declare the bond forfeited not earlier than one hundred twenty (120) days after the defendant's failure to appear and** issue a warrant for the defendant's arrest.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 3.2(a)(2) of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

(c) Any proceedings concerning the bond, or its forfeiture, judgment, or execution of judgment, shall be held in the court that admitted the defendant to bail.

(d) After a bond has been forfeited under subsection **(a) or** (b), the clerk shall mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear, the court shall immediately enter judgment, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail bond, and the clerk shall record the judgment.

(e) If a bond is forfeited and the court has entered a judgment under subsection (d), the clerk shall transfer to the state common school fund:

(1) any amount remaining on deposit with the court (less the fees retained by the clerk); and

(2) any amount collected in satisfaction of the judgment.

(f) The clerk shall return a deposit, less the administrative fee, made under section 3.2(a)(2) of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.

SECTION 11. IC 35-38-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) When the defendant appears for sentencing, the court shall inform the defendant of the verdict of the jury or the finding of the court. The court shall afford counsel for the defendant an opportunity to speak on behalf of

the defendant. The defendant may also make a statement personally in the defendant's own behalf and, before pronouncing sentence, the court shall ask the defendant whether the defendant wishes to make such a statement. Sentence shall then be pronounced, unless a sufficient cause is alleged or appears to the court for delay in sentencing.

(b) **This subsection expires June 30, 2012.** A court that sentences a person to a term of imprisonment shall include the total costs of incarceration in the sentencing order. The court may not consider Class I credit under IC 35-50-6-3 in the calculation of the total costs of incarceration.

SECTION 12. IC 35-38-2.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. As used in this chapter, "home" means:

(1) the interior living area of the temporary or permanent residence of an offender; or

(2) if the offender's residence is a multi-family dwelling, the unit in which the offender resides, and not the:

(A) halls or common areas outside the unit where the offender resides; or

(B) other units, occupied or unoccupied, in the multi-family dwelling.

The term includes a hospital, health care facility, hospice, group home, maternity home, residential treatment facility, and boarding house. The term does not include a public correctional facility. ~~or the residence of another person who is not part of the social unit formed by the offender's immediate family.~~

SECTION 13. IC 35-38-2.6-4.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 4.2. (a) A community corrections program shall establish written criteria and procedures for determining if an offender or alleged offender is eligible for direct placement supervision under this chapter.**

(b) The criteria and procedures established under subsection (a) must establish a record keeping system that allows the department or community corrections program to quickly determine if an offender or alleged offender is in violation of the terms of a direct placement order issued under this chapter.

(c) A community corrections program charged by a court with supervision of offenders and alleged offenders ordered to be placed directly in a community corrections program under this chapter shall provide all law enforcement agencies, including any contract agency (as defined in IC 35-38-2.5-2.5), having jurisdiction in the place where a community corrections program is located a list of offenders and alleged offenders under direct placement supervision. The list must include the following information about each offender and alleged offender:

(1) The offender's name, any known aliases, and the location of the offender's direct placement under this chapter.

(2) The crime for which the offender was convicted.

(3) The date the offender's direct placement expires.

(4) The name, address, and telephone number of the

offender's supervising community corrections program officer for direct placement under this chapter.

(5) An indication of whether the offender is a violent offender.

(d) Except as provided in IC 35-38-2.5-6(1), a community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo direct placement under this chapter shall, at the beginning of a period of the direct placement, set any monitoring device (as defined in IC 35-38-2.5-3) and surveillance equipment to minimize the possibility that the offender or alleged offender may enter another residence or structure without the detection of a violation.

(e) A community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo direct placement under this chapter shall:

(1) maintain or contract with a contract agency to maintain constant supervision of each offender and alleged offender as described in subsection (f); and

(2) have adequate staff available twenty-four (24) hours each day to respond if an offender or alleged offender violates the conditions of the direct placement order under this chapter.

A community corrections program may contract with a contract agency under this subsection only if the contract agency is able to comply with subsection (f).

(f) A contract agency:

(1) that maintains supervision of an offender or alleged offender under subsection (e)(1) shall follow the rules set by the local community corrections advisory board as a part of community corrections program direct placement written criteria and procedures; and

(2) shall notify the contracting community corrections program within one (1) hour if the offender or alleged offender violates the conditions of the direct placement order. However, if a shorter notification time is required by the community corrections program, a community corrections advisory board must require a contract agency to comply with the shorter notification requirement for a direct placement order violation as if the offender were serving a direct placement order as part of a community corrections program.

(g) A community corrections program or contract agency charged by a court with supervision of an offender or alleged offender placed under direct placement under this chapter shall cause a local law enforcement agency or contract agency described in this section to be the initial agency contacted upon determining that the offender is in violation of a direct placement order.

SECTION 14. IC 35-38-2.6-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4.5. If a court places a person on home detention as part of a community corrections program, the placement must comply with **all applicable provisions in** IC 35-38-2.5. ~~including the supervision, monitoring, and unauthorized absence provisions of IC 35-38-2.5-10, IC 35-38-2.5-12, and~~

~~IC 35-38-2.5-13.~~

SECTION 15. IC 35-38-2.6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) As used in this subsection, "home" means the actual living area of the temporary or permanent residence of a person. ~~The term does not include a:~~

~~(1) hospital;~~

~~(2) health care facility;~~

~~(3) hospice;~~

~~(4) group home;~~

~~(5) maternity home;~~

~~(6) residential treatment facility;~~

~~(7) boarding house; or~~

~~(8) public correctional facility.~~

A person who is placed in a community corrections program under this chapter is entitled to earn credit time under IC 35-50-6. ~~unless the person is placed in the person's home.~~

(b) A person who is placed in a community corrections program under this chapter may be deprived of earned credit time as provided under rules adopted by the department of correction under IC 4-22-2.

SECTION 16. IC 35-50-6-1, AS AMENDED BY P.L.216-2007, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Except as provided in subsection (d) or (e), when a person imprisoned for a felony completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to that term, the person shall be:

(1) released on parole for not more than twenty-four (24) months, as determined by the parole board, **unless:**

(A) the person is being placed on parole for the first time;

(B) the person is not being placed on parole for a conviction for a crime of violence (as defined in IC 35-50-1-2);

(C) the person is not a sex offender (as defined in IC 11-8-8-4.5); and

(D) in the six (6) months before being placed on parole, the person has not violated a rule of the department of correction or a rule of the penal facility in which the person is imprisoned;

(2) discharged upon a finding by the committing court that the person was assigned to a community transition program and may be discharged without the requirement of parole; or

(3) released to the committing court if the sentence included a period of probation.

A person described in subdivision (1) shall be released on parole for not more than twelve (12) months, as determined by the parole board.

(b) This subsection does not apply to a person described in subsection (d), (e), or (f). A person released on parole remains on parole from the date of release until the person's fixed term expires, unless the person's parole is revoked or the person is discharged from that term by the parole board. In any event, if the person's parole is not revoked, the parole board shall discharge the person after the period set

under subsection (a) or the expiration of the person's fixed term, whichever is shorter.

(c) A person whose parole is revoked shall be imprisoned for all or part of the remainder of the person's fixed term. However, the person shall again be released on parole when the person completes that remainder, less the credit time the person has earned since the revocation. The parole board may reinstate the person on parole at any time after the revocation.

(d) This subsection does not apply to a person who is a sexually violent predator under IC 35-38-1-7.5. When a sex offender (as defined in IC 11-8-8-4.5) completes the sex offender's fixed term of imprisonment, less credit time earned with respect to that term, the sex offender shall be placed on parole for not more than ten (10) years.

(e) This subsection applies to a person who:

(1) is a sexually violent predator under IC 35-38-1-7.5;

(2) has been convicted of murder (IC 35-42-1-1); or

(3) has been convicted of voluntary manslaughter (IC 35-42-1-3).

When a person described in this subsection completes the person's fixed term of imprisonment, less credit time earned with respect to that term, the person shall be placed on parole for the remainder of the person's life.

(f) This subsection applies to a parolee in another jurisdiction who is a person described in subsection (e) and whose parole supervision is transferred to Indiana from another jurisdiction. In accordance with IC 11-13-4-1(2) (Interstate Compact for Out-of-State Probationers and Parolees) and rules adopted under Article VII (d)(8) of the Interstate Compact for Adult Offender Supervision (IC 11-13-4.5), a parolee who is a person described in subsection (e) and whose parole supervision is transferred to Indiana is subject to the same conditions of parole as a person described in subsection (e) who was convicted in Indiana, including:

(1) lifetime parole (as described in subsection (e)); and

(2) the requirement that the person wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location, if applicable.

(g) If a person being supervised on lifetime parole as described in subsection (e) is also required to be supervised by a court, a probation department, a community corrections program, a community transition program, or another similar program upon the person's release from imprisonment, the parole board may:

(1) supervise the person while the person is being supervised by the other supervising agency; or

(2) permit the other supervising agency to exercise all or part of the parole board's supervisory responsibility during the period in which the other supervising agency is required to supervise the person, if supervision by the other supervising agency will be, in the opinion of the parole board:

(A) at least as stringent; and

(B) at least as effective;

as supervision by the parole board.

(h) The parole board is not required to supervise a person on lifetime parole during any period in which the person is imprisoned. However, upon the person's release from imprisonment, the parole board shall recommence its supervision of a person on lifetime parole.

(i) If a court orders the parole board to place a sexually violent predator whose sentence does not include a commitment to the department of correction on lifetime parole under IC 35-38-1-29, the parole board shall place the sexually violent predator on lifetime parole and supervise the person in the same manner in which the parole board supervises a sexually violent predator on lifetime parole whose sentence includes a commitment to the department of correction.

SECTION 17. IC 35-50-6-5, AS AMENDED BY P.L.80-2008, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) A person may, with respect to the same transaction, be deprived of any part of the credit time the person has earned for any of the following:

(1) A violation of one (1) or more rules of the department of correction.

(2) If the person is not committed to the department, a violation of one (1) or more rules of the penal facility in which the person is imprisoned.

(3) A violation of one (1) or more rules or conditions of a:

(A) community transition program; **or**

(B) community corrections program.

(4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or groundless.

(5) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to register before being released from the department as required under IC 11-8-8-7.

(6) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction.

However, the violation of a condition of parole or probation may not be the basis for deprivation. Whenever a person is deprived of credit time, the person may also be reassigned to Class II (if the person is not a credit restricted felon) or Class III.

(b) Before a person may be deprived of earned credit time, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether deprivation of earned credit time is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in section 4(e) of this chapter. The person may waive the person's right to the hearing.

(c) Any part of the credit time of which a person is deprived under this section may be restored.

SECTION 18. [EFFECTIVE UPON PASSAGE] **(a) The general assembly urges the legislative council to assign to the sentencing policy study committee the issue of whether a sentencing court**

should include the total costs of incarceration in its sentencing order.

(b) This section expires December 31, 2010.

SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2010]: IC 11-12-2-9; IC 35-41-1-26.8.

SECTION 20. **An emergency is declared for this act.**

(Reference is to ESB 340 as reprinted February 23, 2010.)

Conference Committee Report
on
Engrossed Senate Bill 340

Signed by:

Senator Bray Chairperson	Representative Lawson L
Senator Lanane	Representative Leonard
Senate Conferees	**House Conferees**