

## **IC 35-38-2.5**

### **Chapter 2.5. Home Detention**

#### **IC 35-38-2.5-1**

##### **Offenders to which chapter applies**

Sec. 1. This chapter applies to adult offenders and to juveniles who have committed a delinquent act that would be a crime if committed by an adult.

*As added by P.L.98-1988, SEC.6.*

#### **IC 35-38-2.5-2**

##### **"Home"**

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.

*As added by P.L.98-1988, SEC.6. Amended by P.L.117-1990, SEC.5; P.L.137-2001, SEC.1; P.L.105-2010, SEC.11.*

#### **IC 35-38-2.5-2.3**

##### **"Constant supervision"**

Sec. 2.3. As used in this chapter, "constant supervision" means monitoring a violent offender twenty-four (24) hours each day by means described in section 12(b) of this chapter.

*As added by P.L.137-2001, SEC.2.*

#### **IC 35-38-2.5-2.5**

##### **"Contract agency"**

Sec. 2.5. As used in this chapter, "contract agency" means an agency or a company that contracts with a community corrections program or a probation department to monitor an offender or alleged offender using a monitoring device.

*As added by P.L.31-2005, SEC.1.*

#### **IC 35-38-2.5-3**

##### **"Monitoring device"**

Sec. 3. (a) As used in this chapter, "monitoring device" means an electronic device that:

- (1) can record or transmit information twenty-four (24) hours each day regarding an offender's:
  - (A) presence or absence from the offender's home; or
  - (B) precise location;

(2) is minimally intrusive upon the privacy of the offender or other persons residing in the offender's home;

(3) with the written consent of the offender and with the written consent of other persons residing in the home at the time an order for home detention is entered, may record or transmit:

(A) a visual image;

(B) an electronic communication or any sound; or

(C) information regarding the offender's activities while inside the offender's home; and

(4) can notify a probation department, a community corrections program, or a contract agency if the offender violates the terms of a home detention order.

(b) The term includes any device that can reliably determine the location of an offender and track the locations where the offender has been, including a device that uses a global positioning system satellite service.

(c) The term does not include an unmanned aerial vehicle (as defined in IC 35-31.5-2-342.3).

*As added by P.L.98-1988, SEC.6. Amended by P.L.31-2005, SEC.2; P.L.170-2014, SEC.25.*

#### **IC 35-38-2.5-4**

##### **"Offender"**

Sec. 4. As used in this chapter, "offender" has the meaning set forth in IC 11-8-1-9.

*As added by P.L.98-1988, SEC.6.*

#### **IC 35-38-2.5-4.5**

##### **"Security risk"**

Sec. 4.5. As used in this chapter, "security risk" means a person who is:

(1) a flight risk; or

(2) a threat to the physical safety of the public.

*As added by P.L.137-2001, SEC.3.*

#### **IC 35-38-2.5-4.7**

##### **"Violent offender"**

Sec. 4.7. As used in this chapter, "violent offender" means a person who is:

(1) convicted of an offense or attempted offense under IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-43-1-1, IC 35-44.1-3-4, IC 35-45-10-5, IC 35-47-5-1 (repealed), or IC 35-47.5-5;

(2) charged with an offense or attempted offense listed in IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-42-4, IC 35-43-1-1, IC 35-44.1-3-4, IC 35-45-10-5, IC 35-46-1-3, IC 35-47-5-1 (repealed), or IC 35-47.5-5; or

(3) a security risk as determined under section 10 of this chapter.

*As added by P.L.137-2001, SEC.4. Amended by P.L.123-2002,*

*SEC.32; P.L.55-2003, SEC.2; P.L.31-2005, SEC.3; P.L.126-2012, SEC.51.*

#### **IC 35-38-2.5-5**

##### **Home detention as condition of probation**

Sec. 5. (a) Except as provided in section 5.5 of this chapter, as a condition of probation a court may order an offender confined to the offender's home for a period of home detention lasting at least sixty (60) days.

(b) The period of home detention may be consecutive or nonconsecutive, as the court orders. However, the aggregate time actually spent in home detention must not exceed:

(1) the minimum term of imprisonment prescribed for a felony under IC 35-50-2; or

(2) the maximum term of imprisonment prescribed for a misdemeanor under IC 35-50-3;

for the crime committed by the offender.

(c) The court may order supervision of an offender's home detention to be provided by the probation department for the court or by a community corrections program that provides supervision of home detention.

(d) A person's term of confinement on home detention under this chapter is computed on the basis of the actual days the person spends on home detention plus any earned credit time.

(e) A person confined on home detention as a condition of probation accrues one (1) day of credit for each day the person is confined on home detention.

(f) In addition to credit accrued for time served under subsection (e), a person confined on home detention as a condition of probation is entitled to earn credit time under IC 35-50-6-3 and IC 35-50-6-3.1. A person confined on home detention as a condition of probation may not earn educational credit time under IC 35-50-6-3.3.

(g) A person confined on home detention may be deprived of earned credit time if the person violates a condition of probation.

*As added by P.L.98-1988, SEC.6. Amended by P.L.20-1994, SEC.2; P.L.137-2001, SEC.5; P.L.166-2001, SEC.2; P.L.168-2014, SEC.59.*

#### **IC 35-38-2.5-5.5**

##### **Home detention**

Sec. 5.5. (a) Except as provided in subsection (b), a court in one (1) county may not place an offender who resides in another county on home detention in the other county unless:

(1) the offender is eligible for home detention in the county in which the person resides; and

(2) supervision of the offender will be conducted by the probation department or community corrections program located in the county in which the offender resides.

(b) If the offender described in subsection (a) resides in a county that is adjacent to the county in which the sentencing court is located, the supervision of the offender may be conducted by either the:

- (1) probation department; or
  - (2) community corrections program;
- located in the county in which the sentencing court is located.
- (c) All home detention fees described in section 8 of this chapter shall be collected by the probation department or community corrections program that supervises the offender.
- (d) A probation department or community corrections program that supervises an offender on home detention is responsible for the expenses of the supervision.
- As added by P.L. 137-2001, SEC. 6. Amended by P.L. 48-2008, SEC. 2.*

#### **IC 35-38-2.5-6**

##### **Orders for home detention; contents**

Sec. 6. An order for home detention of an offender under section 5 of this chapter must include the following:

- (1) A requirement that the offender be confined to the offender's home at all times except when the offender is:
  - (A) working at employment approved by the court or traveling to or from approved employment;
  - (B) unemployed and seeking employment approved for the offender by the court;
  - (C) undergoing medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the offender by the court;
  - (D) attending an educational institution or a program approved for the offender by the court;
  - (E) attending a regularly scheduled religious service at a place of worship; or
  - (F) participating in a community work release or community restitution or service program approved for the offender by the court.
- (2) Notice to the offender that violation of the order for home detention may subject the offender to prosecution for the crime of escape under IC 35-44.1-3-4.
- (3) A requirement that the offender abide by a schedule prepared by the probation department, or by a community corrections program ordered to provide supervision of the offender's home detention, specifically setting forth the times when the offender may be absent from the offender's home and the locations the offender is allowed to be during the scheduled absences.
- (4) A requirement that the offender is not to commit another crime during the period of home detention ordered by the court.
- (5) A requirement that the offender obtain approval from the probation department or from a community corrections program ordered to provide supervision of the offender's home detention before the offender changes residence or the schedule described in subdivision (3).
- (6) A requirement that the offender maintain:
  - (A) a working telephone in the offender's home; and

(B) if ordered by the court, a monitoring device in the offender's home or on the offender's person, or both.

(7) A requirement that the offender pay a home detention fee set by the court in addition to the probation user's fee required under IC 35-38-2-1 or IC 31-40. However, the fee set under this subdivision may not exceed the maximum fee specified by the department of correction under IC 11-12-2-12.

(8) A requirement that the offender abide by other conditions of probation set by the court under IC 35-38-2-2.3.

(9) A requirement that an offender:

(A) who is convicted of an offense described in IC 10-13-6-10;

(B) who has not previously provided a DNA sample in accordance with IC 10-13-6; and

(C) whose sentence does not involve a commitment to the department of correction;

provide a DNA sample.

*As added by P.L.98-1988, SEC.6. Amended by P.L.1-1991, SEC.199; P.L.240-1991(ss2), SEC.95; P.L.1-1997, SEC.147; P.L.32-2000, SEC.24; P.L.140-2006, SEC.28 and P.L.173-2006, SEC.28; P.L.1-2007, SEC.228; P.L.126-2012, SEC.52.*

#### **IC 35-38-2.5-7**

##### **Home detention; where permitted**

Sec. 7. (a) A court may not order home detention for an offender unless the offender agrees to abide by all of the requirements set forth in the court's order issued under this chapter.

(b) A court may not order home detention for an offender who is being held under a detainer, warrant, or process issued by a court of another jurisdiction.

(c) A court may not order home detention for an offender who has been convicted of a sex offense under IC 35-42-4 or IC 35-46-1-3 unless:

(1) the home detention is supervised by a court approved home detention program; and

(2) the conditions of home detention:

(A) include twenty-four (24) hour per day supervision of the offender; and

(B) require the use of surveillance equipment and a monitoring device that can transmit information twenty-four (24) hours each day regarding an offender's precise location.

*As added by P.L.98-1988, SEC.6. Amended by P.L.144-1995, SEC.3; P.L.55-2003, SEC.3; P.L.31-2005, SEC.4.*

#### **IC 35-38-2.5-8**

##### **Home detention fees**

Sec. 8. (a) All home detention fees collected by a county based probation department shall be transferred to the county treasurer who shall deposit the fees into the county supplemental adult or juvenile probation services fund. The expenses of administering a home

detention program, including the purchase of monitoring devices and other supervision expenses shall be paid from the fund.

(b) All home detention fees collected by the probation department of a city or town court shall be transferred to the fiscal officer of the city or town who shall deposit the fees into the local supplemental adult or juvenile probation services fund. The expenses of administering a home detention program, including the purchase of monitoring devices and other supervision expenses shall be paid from the fund.

(c) All home detention fees collected by a community corrections program, except any funds received by a community corrections program under IC 11-12, shall be deposited into the community corrections home detention fund established for the county under IC 11-12-7-1. The expenses of administering a community corrections home detention program, including the purchase of monitoring devices and other supervision expenses shall be paid from the fund.

*As added by P.L.98-1988, SEC.6. Amended by P.L.104-1997, SEC.7.*

#### **IC 35-38-2.5-9**

##### **Responsibility for food, housing, and related costs**

Sec. 9. An offender ordered to undergo home detention under section 5 of this chapter is responsible for providing food, housing, clothing, medical care, and other treatment expenses. The offender is eligible to receive government benefits allowable for persons on probation, parole, or other conditional discharge from confinement.

*As added by P.L.98-1988, SEC.6.*

#### **IC 35-38-2.5-10**

##### **Violation of home detention; violent offender status; contract agencies**

Sec. 10. (a) Each probation department or community corrections program shall establish written criteria and procedures for determining whether an offender or alleged offender that the department or program supervises on home detention qualifies as a violent offender.

(b) A probation department or community corrections program shall use the criteria and procedures established under subsection (a) to establish a record keeping system that allows the department or program to quickly determine whether an offender or alleged offender who violates the terms of a home detention order is a violent offender.

(c) A probation department or a community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall provide all law enforcement agencies (including any contract agencies) having jurisdiction in the place where the probation department or a community corrections program is located with a list of offenders and alleged offenders under home detention supervised by the probation department or the community corrections program. 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 home detention.
- (2) The crime for which the offender was convicted.
- (3) The date the offender's home detention expires.
- (4) The name, address, and telephone number of the offender's supervising probation or community corrections program officer for home detention.
- (5) An indication of whether the offender or alleged offender is a violent offender.

(d) Except as provided under section 6(1) of this chapter, a probation department or community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall, at the beginning of a period of home detention, set the monitoring device and surveillance equipment to minimize the possibility that the offender or alleged offender can enter another residence or structure without a violation.

(e) A probation department or community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall:

- (1) maintain or contract with a contract agency to maintain constant supervision of each offender and alleged offender; and
- (2) have adequate staff available twenty-four (24) hours each day to respond if an offender or alleged offender violates the conditions of a home detention order.

(f) A contract agency that maintains supervision of an offender or alleged offender under subsection (e)(1) shall notify the contracting probation department or community corrections program within one (1) hour if the offender or alleged offender violates the conditions of a home detention order. However:

- (1) a community corrections advisory board, if the offender is serving home detention as part of a community corrections program; or
  - (2) a probation department, if the offender or alleged offender is serving home detention as a condition of probation or bail;
- may shorten the time in which the contract agency must give notice of a home detention order violation.

(g) A probation department or community corrections program may contract with a contract agency under subsection (e)(1) only if the contract agency can comply with subsection (f).

*As added by P.L. 98-1988, SEC. 6. Amended by P.L. 137-2001, SEC. 7; P.L. 1-2002, SEC. 146; P.L. 31-2005, SEC. 5.*

#### **IC 35-38-2.5-11**

##### **Monitoring devices; information to offender**

Sec. 11. Before entering an order for home detention that requires the use of a monitoring device described in section 3(3) of this chapter the court shall inform the offender and other persons residing in the home of the nature and extent of electronic surveillance

provided by the monitoring device in the home.  
*As added by P.L.98-1988, SEC.6.*

#### **IC 35-38-2.5-12**

##### **Supervision of violent offender on home detention**

Sec. 12. (a) A probation department or community corrections program charged by a court with supervision of a violent offender placed on home detention under this chapter shall:

- (1) cause a local law enforcement agency or contract agency described in section 10 of this chapter to be the initial agency contacted upon determining that the violent offender is in violation of a home detention order;
- (2) maintain constant supervision of the violent offender using surveillance equipment and a monitoring device that can transmit information twenty-four (24) hours each day regarding an offender's precise location by either:
  - (A) using the supervising entity's equipment and personnel;
  - or
  - (B) contracting with a contract agency; and
- (3) have adequate staff available twenty-four (24) hours each day to respond if the violent offender violates the conditions of a home detention order.

(b) A contract agency that maintains supervision of a violent offender under subsection (a)(2) shall notify the contracting probation department or community corrections program within one (1) hour if the violent offender violates the conditions of a home detention order. However, a:

- (1) community corrections advisory board, if the violent offender is serving home detention as part of a community corrections program; or
  - (2) probation department, if the violent offender is serving home detention as a condition of probation or bail;
- may shorten the time in which the contract agency must give notice of a home detention order violation.

(c) A probation department or community corrections program may contract with a contract agency under subsection (a)(2) only if the contract agency can comply with subsection (b).

*As added by P.L.137-2001, SEC.8. Amended by P.L.31-2005, SEC.6.*

#### **IC 35-38-2.5-13**

##### **Unauthorized absence from home detention**

Sec. 13. An offender who:

- (1) leaves the offender's home in violation of section 6(1) of this chapter or without documented permission from the supervising entity;
- (2) remains outside the offender's home in violation of section 6(1) of this chapter or without documented permission from the supervising entity; or
- (3) travels to a location not authorized under section 6(1) of this chapter or not authorized in writing by the supervising entity;

commits unauthorized absence from home detention, a Class A misdemeanor.

*As added by P.L.137-2001, SEC.9.*