



February 20, 2004

**ENGROSSED
SENATE BILL No. 475**

DIGEST OF SB 475 (Updated February 17, 2004 5:43 pm - DI 105)

Citations Affected: IC 11-8; IC 11-10; IC 11-11; IC 35-38.

Synopsis: Community transition program and prisoner visitation. Provides a range of dates under which a person is eligible for release to a community transition program. Provides that a person may be disciplined for refusing to participate in a community transition program. Provides that a person who is eligible for release to a community transition program may object to the person's placement in the program. Provides that a person convicted of murder may be assigned to a community transition program. Provides that the department of correction may restrict visitation between a person less than 18 years of age and certain incarcerated sex offenders.

Effective: July 1, 2004.

**Kenley, Bowser, Howard, Waterman,
Brodén**

(HOUSE SPONSORS — KUZMAN, ULMER)

January 13, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.

January 29, 2004, reported favorably — Do Pass.

February 3, 2004, read second time, ordered engrossed. Engrossed.

February 4, 2004, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 6, 2004, read first time and referred to Committee on Courts and Criminal Code.

February 19, 2004, amended, reported — Do Pass.

**C
o
p
y**

ES 475—LS 6919/DI 105+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 475

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

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

1 SECTION 1. IC 11-8-1-5.6, AS AMENDED BY P.L.291-2001,
2 SECTION 223, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2004]: Sec. 5.6. "Community transition
4 program commencement date" means the following:

5 (1) **Not earlier than** sixty (60) days **and not later than thirty**
6 **(30) days** before an offender's expected release date, if the most
7 serious offense for which the person is committed is a Class D
8 felony.

9 (2) **Not earlier than** ninety (90) days **and not later than thirty**
10 **(30) days** before an offender's expected release date, if the most
11 serious offense for which the person is committed is a Class C
12 felony and subdivision (3) does not apply.

13 (3) **Not earlier than** one hundred twenty (120) days **and not**
14 **later than thirty (30) days** before an offender's expected release
15 date, if:

16 (A) the most serious offense for which the person is committed
17 is a Class C felony;

ES 475—LS 6919/DI 105+



C
O
P
Y

1 (B) all of the offenses for which the person was concurrently
 2 or consecutively sentenced are offenses under IC 16-42-19 or
 3 IC 35-48-4; and
 4 (C) none of the offenses for which the person was concurrently
 5 or consecutively sentenced are listed in IC 35-50-2-2(b)(4).
 6 (4) **Not earlier than** one hundred twenty (120) days **and not**
 7 **later than thirty (30) days** before an offender's expected release
 8 date, if the most serious offense for which the person is
 9 committed is a Class A or Class B felony and subdivision (5) does
 10 not apply.
 11 (5) **Not earlier than** one hundred eighty (180) days **and not later**
 12 **than thirty (30) days** before an offender's expected release date,
 13 if:
 14 (A) the most serious offense for which the person is committed
 15 is a Class A or Class B felony;
 16 (B) all of the offenses for which the person was concurrently
 17 or consecutively sentenced are offenses under IC 16-42-19 or
 18 IC 35-48-4; and
 19 (C) none of the offenses for which the person was concurrently
 20 or consecutively sentenced are listed in IC 35-50-2-2(b)(4).
 21 SECTION 2. IC 11-10-11.5-1, AS AMENDED BY P.L.90-2000,
 22 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2004]: Sec. 1. This chapter applies to a person:
 24 (1) who is committed to the department under IC 35-50 for one
 25 (1) or more felonies; ~~other than murder~~; and
 26 (2) against whom a court imposed a sentence of at least two (2)
 27 years.
 28 SECTION 3. IC 11-10-11.5-2, AS AMENDED BY P.L.90-2000,
 29 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2004]: Sec. 2. (a) Not earlier than sixty (60) days and not later
 31 than forty-five (45) days before an offender's community transition
 32 program commencement date, the department shall give written notice
 33 of the offender's eligibility for a community transition program to each
 34 court that sentenced the offender for a period of imprisonment that the
 35 offender is still actively serving. The notice must include the following
 36 information:
 37 (1) The person's name.
 38 (2) A description of the offenses for which the person was
 39 committed to the department.
 40 (3) The person's expected release date.
 41 (4) The person's community transition program commencement
 42 date **designated by the department.**

C
o
p
y



- 1 (5) The person's current security and credit time classifications.
- 2 (6) A report summarizing the person's conduct while committed
- 3 to the department.
- 4 (7) Any other information that the department determines would
- 5 assist the sentencing court in determining whether to issue an
- 6 order under IC 35-38-1-24 or IC 35-38-1-25.

7 **(b) However,** If the offender's expected release date changes as the
 8 result of the ~~gain~~ or loss of credit time after notice is sent to each court
 9 under this section, the offender may become ineligible for a community
 10 transition program.

11 **(c) If the offender's expected release date changes as the result**
 12 **of the gain of credit time after notice is sent to each court under**
 13 **this section, the offender may be assigned to a community**
 14 **transition program if the department determines that:**

- 15 **(1) a sufficient amount of time exists to allow a court under**
- 16 **IC 35-38-1-24 or IC 35-38-1-25 to consider a written**
- 17 **statement described in section 4.5 of this chapter; and**
- 18 **(2) an offender will have at least thirty (30) days remaining on**
- 19 **the offender's sentence after the court's consideration of a**
- 20 **written statement under subdivision (1), calculated as follows:**

21 **(A) Beginning on the date the department will assign the**
 22 **offender to a minimum security classification and place the**
 23 **offender in a community transition program.**

24 **(B) Ending with the recalculated expected release date.**

25 **(d)** The department shall notify each court whenever the department
 26 finds that an offender is ineligible for the program because of a change
 27 in the person's credit time.

28 SECTION 4. IC 11-10-11.5-4.5, AS ADDED BY P.L.90-2000,
 29 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2004]: Sec. 4.5. (a) Before the department may assign an
 31 offender to a minimum security classification and place the offender in
 32 a community transition program, the department shall notify:

33 **(1) the offender and any victim of the offender's crime of the right**
 34 **to submit a written statement regarding the offender's assignment**
 35 **to the community transition program; and**

36 **(2) the offender of the right to submit a written statement**
 37 **objecting to the offender's placement in a community**
 38 **transition program;**

39 to each court that sentenced the offender to a period of imprisonment
 40 that the offender is actively serving. If the name or address of a victim
 41 of the offender's crime changes after the offender is sentenced for the
 42 offense, and the offender's sentence may result in the offender's

C
o
p
y



1 assignment to the community transition program, the victim is
2 responsible for notifying the department of the name or address change.

3 (b) An offender or a victim of the offender's crime who wishes to
4 submit a written statement under ~~this section~~ **subsection (a)(1)** must
5 submit the statement to each court **and the department** not later than
6 ten (10) working days after receiving notice from the department under
7 subsection (a).

8 (c) **An offender's written statement objecting to the offender's**
9 **placement in a community transition program under subsection**
10 **(a)(2) must be submitted to each court and the department:**

11 (1) **not later than ten (10) working days after receiving notice**
12 **from the department under subsection (a); or**

13 (2) **before the offender is transported under section 7 of this**
14 **chapter;**

15 **whichever occurs first.**

16 SECTION 5. IC 11-10-11.5-5, AS AMENDED BY P.L.90-2000,
17 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2004]: Sec. 5. (a) This section applies to a person if the most
19 serious offense for which the person is committed is a Class C or Class
20 D felony.

21 (b) Unless the department has received:

22 (1) an order under IC 35-38-1-24; or

23 (2) a warrant order of detainer seeking the transfer of the person
24 to a county or another jurisdiction;

25 the department shall assign a person to a minimum security
26 classification and place the person in a community transition program
27 beginning with the ~~person's~~ community transition program
28 commencement date **designated by the department** until the person
29 completes the person's fixed term of imprisonment, less the credit time
30 the person has earned with respect to the term.

31 SECTION 6. IC 11-10-11.5-7, AS ADDED BY P.L.273-1999,
32 SECTION 208, IS AMENDED TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2004]: Sec. 7. Not later than ~~the first seven (7)~~
34 regular business ~~day~~ **days** after a person is assigned to a community
35 transition program under this chapter, the department shall:

36 (1) comply with the procedures in IC 11-10-12-1(a)(1) and
37 IC 11-10-12-1(a)(2); and

38 (2) transport the person to:

39 (A) the sheriff of the county where the person's case
40 originated; ~~or to~~

41 (B) any other person ordered by the sentencing court; ~~or~~

42 (C) **a person or an entity designated by the supervising**

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

authority of the community transition program to which the person is assigned.

The department may, upon request of the person, issue the work clothing described in IC 11-10-12-1(b).

SECTION 7. IC 11-10-11.5-8, AS AMENDED BY P.L.90-2000, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) The person **or entity** receiving the offender under section 7 of this chapter shall transfer the offender to the intake person for the community transition program.

(b) As soon as is practicable after receiving the offender, the community transition program shall

~~(1)~~ provide the offender with a reasonable opportunity to review the rules and conditions applicable to the offender's assignment in the program. ~~and~~

~~(2)~~ obtain the offender's written agreement to abide by all of the rules and conditions of the program.

(c) ~~The department may take disciplinary action under IC 11-11-5 against an offender who:~~

~~(1) has been assigned to a minimum security classification and placed in a community transition program; and~~

~~(2) refuses to participate in the community transition program. shall provide an offender with a written document stating that any offender who is assigned to a community transition program participates in the program on a voluntary basis. An offender must agree in writing that the offender's participation in the program is voluntary, before the offender may be allowed to participate in the program.~~

SECTION 8. IC 11-10-11.5-11.5, AS ADDED BY P.L.90-2000, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2004]: Sec. 11.5. (a) **Except as provided in section 4.5 of this chapter**, an offender is **not** entitled to refuse to be placed into a community transition program. However, if the offender ~~does not refuse the placement and agrees in writing to voluntarily participate, as required by section 8 of this chapter, the offender is considered to participate in the community transition program on a voluntary basis.~~ **may request that an assignment to a community transition program be delayed if the offender will be enrolled in department programming on the community transition program commencement date designated by the department.**

(b) The community transition program, **following a hearing and** upon a finding of probable cause that the offender has failed to comply with a rule or condition under section 11 of this chapter, ~~shall cause the~~

C
O
P
Y



- 1 department to: **may:**
- 2 (1) **request a court to issue a warrant ordering the department**
- 3 **to immediately:**
- 4 (A) **return the offender to the department; and or**
- 5 ~~(2)~~ (B) **reassign the offender to a program or facility**
- 6 **administered by the department; or**
- 7 (2) **take disciplinary action against an offender who violates**
- 8 **rules of conduct. Disciplinary action under this subdivision**
- 9 **may include the loss of earned credit time under IC 35-50-6-5.**
- 10 (c) **An offender who is returned to the department under**
- 11 **subsection (b) is not eligible for assignment to another community**
- 12 **transition program for the duration of the sentence or sentences**
- 13 **the offender is actively serving.**

14 SECTION 9. IC 11-11-3-9 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) A person may be
 16 prohibited from visiting a confined person, or the visit may be
 17 restricted to an extent greater than allowed under section 8 of this
 18 chapter, if the department has reasonable grounds to believe that the
 19 visit would threaten the security of the facility or program or the safety
 20 of individuals.

21 (b) **The department may restrict any person less than eighteen**
 22 **(18) years of age from visiting an offender, if:**

- 23 (1) **the offender has been:**
- 24 (A) **convicted of a sex offense under IC 35-42-4; or**
- 25 (B) **adjudicated delinquent as a result of an act that would**
- 26 **be considered a sex offense under IC 35-42-4 if committed**
- 27 **by an adult; and**
- 28 (2) **the victim of the sex offense was less than eighteen (18)**
- 29 **years of age at the time of the offense.**

30 (c) If the department prohibits or restricts visitation between a
 31 confined person and another person under this section, it shall notify
 32 the confined person of that prohibition or restriction. The notice must
 33 be in writing and include the reason for the action, the name of the
 34 person who made the decision, and the fact that the action may be
 35 challenged through the grievance procedure.

36 (d) **The department shall establish written guidelines for**
 37 **implementing this section.**

38 SECTION 10. IC 35-38-1-25, AS AMENDED BY P.L.90-2000,
 39 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2004]: Sec. 25. (a) This section applies to a person if the most
 41 serious offense for which the person is committed is **murder**, a Class
 42 **A felony**, or a Class B felony.

COPY



1 (b) A sentencing court may sentence a person or modify the
 2 sentence of a person to assign the person to a community transition
 3 program for any period that begins after the person's community
 4 transition program commencement date (as defined in IC 11-8-1-5.6)
 5 and ends when the person completes the person's fixed term of
 6 imprisonment, less the credit time the person has earned with respect
 7 to the term, if the court makes specific findings of fact that support a
 8 determination that it is in the best interests of justice to make the
 9 assignment. The order may include any other condition that the court
 10 could impose if the court had placed the person on probation under
 11 IC 35-38-2 or in a community corrections program under IC 35-38-2.6.

12 (c) The court may make a determination under this section without
 13 a hearing. The court shall consider any written statement presented to
 14 the court by a victim of the offender's crime or by an offender under
 15 IC 11-10-11.5-4.5. The court in its discretion may consider statements
 16 submitted by a victim after the time allowed for the submission of
 17 statements under IC 11-10-11.5-4.5.

18 (d) The court shall make written findings for a determination under
 19 this section, whether or not a hearing was held.

20 (e) Not later than five (5) days after making a determination under
 21 this section, the court shall send a copy of the order to the:

- 22 (1) prosecuting attorney where the person's case originated; and
- 23 (2) department of correction.

C
O
P
Y



SENATE MOTION

Madam President: I move that Senator Howard be added as coauthor of Senate Bill 475.

KENLEY

SENATE MOTION

Madam President: I move that Senator Bowser be added as second author and Senators Waterman and Broden be added as coauthors of Senate Bill 475.

KENLEY

C
O
P
Y



COMMITTEE REPORT

Madam President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 475, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 475 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 0.

**C
o
p
y**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 475, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 7, before "However," begin a new paragraph and insert **"(b)"**.

Page 3, line 7, after "However," delete **"(b)"**.

Page 3, line 10, after "program" insert **"."**.

Page 6, between lines 13 and 14, begin a new paragraph and insert:
"SECTION 9. IC 11-11-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) A person may be prohibited from visiting a confined person, or the visit may be restricted to an extent greater than allowed under section 8 of this chapter, if the department has reasonable grounds to believe that the visit would threaten the security of the facility or program or the safety of individuals.

(b) The department may restrict any person less than eighteen (18) years of age from visiting an offender, if:

(1) the offender has been:

(A) convicted of a sex offense under IC 35-42-4; or

(B) adjudicated delinquent as a result of an act that would be considered a sex offense under IC 35-42-4 if committed by an adult; and

(2) the victim of the sex offense was less than eighteen (18) years of age at the time of the offense.

(c) If the department prohibits or restricts visitation between a confined person and another person under this section, it shall notify the confined person of that prohibition or restriction. The notice must be in writing and include the reason for the action, the name of the person who made the decision, and the fact that the action may be challenged through the grievance procedure.

(d) The department shall establish written guidelines for implementing this section."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 475 as printed January 30, 2004.)

DVORAK, Chair

Committee Vote: yeas 13, nays 0.

ES 475—LS 6919/DI 105+



C
O
P
Y