

HOUSE BILL No. 1356

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-1; IC 35-50-6.

Synopsis: Credit time for child molesters. Provides that a person convicted of child molesting involving intercourse or deviate sexual conduct is not eligible to earn "good time" credit. Makes conforming amendments.

Effective: July 1, 2013.

Kubacki, McMillin, Heuer

January 22, 2013, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1356



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 35-38-1-7.8, AS ADDED BY P.L.147-2012,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 7.8. (a) At the time of sentencing, a court shall
4 determine whether a person is a credit restricted felon (as defined in
5 IC 35-31.5-2-72) **or a person required to be permanently assigned**
6 **to Class III under IC 35-50-6-4(c).**
7 (b) A determination under subsection (a) must be based upon:
8 (1) evidence admitted at trial that is relevant to the credit
9 restricted status;
10 (2) evidence introduced at the sentencing hearing; ~~or~~
11 (3) a factual basis provided as part of a guilty plea; ~~or~~
12 **(4) the judgment of conviction.**
13 (c) Upon determining that a defendant is a credit restricted felon **or**
14 **a person permanently assigned to Class III**, a court shall advise the
15 defendant of the consequences of this determination.
16 SECTION 2. IC 35-38-1-31, AS ADDED BY P.L.147-2012,
17 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2013]: Sec. 31. (a) If a court imposes on a person convicted
 2 of a felony a sentence that involves a commitment to the department of
 3 correction, the court shall complete an abstract of judgment in an
 4 electronic format approved by the department of correction and the
 5 division of state court administration. The abstract of judgment must
 6 include, but not be limited to:

- 7 (1) each offense the person is convicted of;
 8 (2) the sentence, including whether the sentence includes a
 9 suspended sentence, probation, or direct commitment to
 10 community corrections; ~~and~~
 11 (3) whether the person is a credit restricted felon; **and**
 12 **(4) whether the person is required to be permanently assigned**
 13 **to Class III under IC 35-50-6-4(c).**

14 (b) If a person convicted of a felony is committed to the department
 15 of correction by a court as a result of a violation of the terms of
 16 probation or other community placement, the court shall state in the
 17 abstract of judgment the specific reasons for revocation if probation,
 18 parole, or a community corrections placement has been revoked.

19 SECTION 3. IC 35-50-6-4, AS AMENDED BY P.L.80-2008,
 20 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2013]: Sec. 4. (a) A person who is not a credit restricted felon
 22 **or permanently assigned to Class III** and who is imprisoned for a
 23 crime or imprisoned awaiting trial or sentencing is initially assigned to
 24 Class I.

25 (b) A person who is a credit restricted felon and who is imprisoned
 26 for a crime or imprisoned awaiting trial or sentencing is initially
 27 assigned to Class IV, **unless the person is required to be**
 28 **permanently assigned to Class III under subsection (c).** A credit
 29 restricted felon may not be assigned to Class I or Class II.

30 **(c) A person who is imprisoned following a conviction for child**
 31 **molesting under IC 35-42-4-3(a), including a credit restricted felon,**
 32 **is permanently assigned to Class III. A person permanently**
 33 **assigned to Class III may not be reassigned to Class I, II, or IV.**

34 **(d) A person who is not assigned to Class IV or permanently**
 35 **assigned to Class III under subsection (c)** may be reassigned to Class
 36 II or Class III if the person violates any of the following:

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

40 However, a violation of a condition of parole or probation may not be
 41 the basis for reassignment. Before a person may be reassigned to a
 42 lower credit time class, the person must be granted a hearing to

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1 determine the person's guilt or innocence and, if found guilty, whether
 2 reassignment is an appropriate disciplinary action for the violation. The
 3 person may waive the right to the hearing.

4 ~~(d)~~ (e) A person who is assigned to Class IV may be reassigned to
 5 Class III if the person violates any of the following:

- 6 (1) A rule of the department of correction.
- 7 (2) A rule of the penal facility in which the person is imprisoned.
- 8 (3) A rule or condition of a community transition program.

9 However, a violation of a condition of parole or probation may not be
 10 the basis for reassignment. Before a person may be reassigned to Class
 11 III, the person must be granted a hearing to determine the person's guilt
 12 or innocence and, if found guilty, whether reassignment is an
 13 appropriate disciplinary action for the violation. The person may waive
 14 the right to the hearing.

15 ~~(e)~~ (f) In connection with the hearing granted under subsection ~~(e)~~
 16 (d) or ~~(d)~~, (e), the person is entitled to:

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

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

41 ~~(f)~~ (g) **Except as provided in subsection (c)**, a person may be
 42 reassigned from Class III to Class I, Class II, or Class IV, or from Class

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1 II to Class I. A person's assignment to Class III or Class II shall be
 2 reviewed at least once every six (6) months to determine if the person
 3 should be reassigned to a higher credit time class. A credit restricted
 4 felon **or person permanently assigned to Class III under subsection**
 5 **(c)** may not be reassigned to Class I or Class II.

6 SECTION 4. IC 35-50-6-5, AS AMENDED BY P.L.105-2010,
 7 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2013]: Sec. 5. (a) A person may, with respect to the same
 9 transaction, be deprived of any part of the credit time the person has
 10 earned for any of the following:

- 11 (1) A violation of one (1) or more rules of the department of
 12 correction.
 13 (2) If the person is not committed to the department, a violation
 14 of one (1) or more rules of the penal facility in which the person
 15 is imprisoned.
 16 (3) A violation of one (1) or more rules or conditions of a:
 17 (A) community transition program; or
 18 (B) community corrections program.
 19 (4) If a court determines that a civil claim brought by the person
 20 in a state or an administrative court is frivolous, unreasonable, or
 21 groundless.
 22 (5) If the person is a sex offender (as defined in IC 11-8-8-5) and
 23 refuses to register before being released from the department as
 24 required under IC 11-8-8-7.
 25 (6) If the person is a sex offender (as defined in IC 11-8-8-5) and
 26 refuses to participate in a sex offender treatment program
 27 specifically offered to the sex offender by the department of
 28 correction while the person is serving a period of incarceration
 29 with the department of correction.

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

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

42 (c) Any part of the credit time of which a person is deprived under

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1 this section may be restored.

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