

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1078

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AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

SECTION 1. IC 35-31.5-2-290, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 290. "Security risk" for purposes of ~~IC 35-38-2.5~~, has the meaning set forth in ~~IC 35-38-2.5-4.5~~. **means a person who is:**

- (1) a flight risk; or**
- (2) a threat to the physical safety of the public.**

SECTION 2. IC 35-31.5-2-352, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 352. "Violent offender" for purposes of ~~IC 35-38-2.5~~, has the meaning set forth in ~~IC 35-38-2.5-4.7~~. **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offense under IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-43-1-1, IC 35-44.1-3-4, IC 35-45-10-5, IC 35-47-5-1 (repealed), or IC 35-47.5-5;**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IC 35-42-2-1, IC 35-42-2-1.3, IC 35-42-4, IC 35-43-1-1, IC 35-44.1-3-4, IC 35-45-10-5, IC 35-46-1-3, IC 35-47-5-1 (repealed), or IC 35-47.5-5; or**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 defined by section 290 of this chapter.**

SECTION 3. IC 35-38-2.5-4.5 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2019]: 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. **has the meaning set forth in IC 35-31.5-2-290.**

SECTION 4. IC 35-38-2.5-4.7, AS AMENDED BY P.L.126-2012, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: 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. **has the meaning set forth in IC 35-31.5-2-352.**

SECTION 5. IC 35-38-3-3, AS AMENDED BY P.L.184-2018, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) Except as provided by subsection (b), a person convicted of a misdemeanor may not be committed to the department of correction.

(b) Upon a request from the sheriff, the commissioner may agree to accept custody of a misdemeanorant:

- (1) if placement in the county jail:
  - (A) places the inmate in danger of serious bodily injury or death; or
  - (B) represents a substantial threat to the safety of others;
- (2) for other good cause shown; or
- (3) if a person has more than five hundred forty-seven (547) days remaining before the person's earliest release date as a result of:
  - (A) consecutive misdemeanor sentences; or
  - (B) a sentencing enhancement applied to a misdemeanor sentence.

(c) After June 30, 2014, and before January 1, 2016, a court may not commit a person convicted of a Level 6 felony to the department of correction if the person's earliest possible release date is less than ninety-one (91) days from the date of sentencing, unless the commitment is due to the person violating a condition of probation, parole, or community corrections by committing a new criminal



offense.

(d) After December 31, 2015, a court may not commit a person convicted of a Level 6 felony to the department of correction unless:

(1) the commitment is due to the revocation of the person's sentence for violating probation, parole, or community corrections and the revocation of the person's sentence is due to a new criminal offense; or

(2) the person:

(A) is convicted of a Level 6 felony and the sentence for that felony is ordered to be served consecutively to the sentence for another felony;

(B) is convicted of a Level 6 felony that is enhanced by an additional fixed term under IC 35-50-2-8 through IC 35-50-2-16; **or**

(C) has received an enhanced sentence under IC 9-30-15.5-2;

**(D) is a violent offender as defined in IC 35-31.5-2-352(1);**

**or**

**(E) has two (2) prior unrelated felony convictions;**

and the person's earliest possible release date is more than three hundred sixty-five (365) days after the date of sentencing.

A person who may not be committed to the department of correction may be placed on probation, committed to the county jail, or placed in community corrections for assignment to an appropriate community corrections program.

(e) Subject to appropriation from the general assembly, a sheriff is entitled to a per diem and medical expense reimbursement from the department of correction for the cost of incarcerating a person described in subsections (c) and (d) in a county jail. The sheriff is entitled to a per diem and medical expense reimbursement only for the time that the person described in subsections (c) and (d) is incarcerated in the county jail.

(f) Per diem and medical expense reimbursements received by a county under this section or received by a county from the state under any other law for the purpose of reimbursing sheriffs for the cost of incarcerating in county jails persons convicted of felonies:

(1) shall be deposited in the county general fund; and

(2) upon appropriation by the county fiscal body, shall be used by the county sheriff only for the purposes of paying the costs of incarcerating in the county jail persons described in subsections (c) and (d) or other persons convicted of felonies.

(g) The county auditor shall semiannually provide to the county fiscal body and the county sheriff an itemized record of the per diem



and medical expense reimbursements received by the county under this section or under any other law for the purpose of reimbursing sheriffs for the cost of incarcerating persons convicted of felonies.



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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