



March 31, 2017

ENGROSSED SENATE BILL No. 38

DIGEST OF SB 38 (Updated March 29, 2017 4:11 pm - DI 124)

Citations Affected: IC 11-13; IC 35-38; IC 35-44.1.

Synopsis: Lifetime parole. Requires a sexually violent predator released on lifetime parole to be placed on 24 hour GPS monitoring, subject to a sex offender risk assessment and funds specifically appropriated to the department of correction for this purpose. Requires the parole board to inform the county sheriff and prosecuting attorney: (1) that an offender has been placed on lifetime parole; and (2) whether the offender is required to wear a GPS monitoring device as a condition of parole. Provides that a person placed on lifetime parole who violates a condition of parole involving a child or a victim commits criminal parole violation by a sexual predator. (Under current law, a person commits the offense only if the person has two previous parole violations or if the person has completely served the person's sentence.) Prohibits a sex or violent offender from expunging a misdemeanor conviction.

Effective: July 1, 2017.

**Zakas, Young M, Freeman,
Bohacek, Taylor G, Koch, Tomes,
Houchin, Merritt, Delph**

(HOUSE SPONSOR — STEUERWALD)

January 3, 2017, read first time and referred to Committee on Rules and Legislative Procedure.

January 4, 2017, amended. Reassigned to Committee on Corrections and Criminal Law.

February 9, 2017, amended, reported favorably — Do Pass.

February 13, 2017, read second time, ordered engrossed. Engrossed.

February 14, 2017, read third time, passed. Yeas 31, nays 19.

HOUSE ACTION

February 28, 2017, read first time and referred to Committee on Courts and Criminal Code.

March 30, 2017, amended, reported — Do Pass.

ES 38—LS 6281/DI 13



March 31, 2017

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 38

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 11-13-3-4, AS AMENDED BY P.L.209-2015,
2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 4. (a) A condition to remaining on parole is that
4 the parolee not commit a crime during the period of parole.
5 (b) The parole board may also adopt, under IC 4-22-2, additional
6 conditions to remaining on parole and require a parolee to satisfy one
7 (1) or more of these conditions. These conditions must be reasonably
8 related to the parolee's successful reintegration into the community and
9 not unduly restrictive of a fundamental right.
10 (c) If a person is released on parole, the parolee shall be given a
11 written statement of the conditions of parole. Signed copies of this
12 statement shall be:
13 (1) retained by the parolee;
14 (2) forwarded to any person charged with the parolee's
15 supervision; and
16 (3) placed in the parolee's master file.
17 (d) The parole board may modify parole conditions if the parolee

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1 receives notice of that action and had ten (10) days after receipt of the
 2 notice to express the parolee's views on the proposed modification.
 3 This subsection does not apply to modification of parole conditions
 4 after a revocation proceeding under section 10 of this chapter.

5 (e) As a condition of parole, the parole board may require the
 6 parolee to reside in a particular parole area. In determining a parolee's
 7 residence requirement, the parole board shall:

8 (1) consider:

9 (A) the residence of the parolee prior to the parolee's
 10 incarceration; and

11 (B) the parolee's place of employment; and

12 (2) assign the parolee to reside in the county where the parolee
 13 resided prior to the parolee's incarceration unless assignment on
 14 this basis would be detrimental to the parolee's successful
 15 reintegration into the community.

16 (f) As a condition of parole, the parole board may require the
 17 parolee to:

18 (1) periodically undergo a laboratory chemical test (as defined in
 19 IC 9-13-2-22) or series of tests to detect and confirm the presence
 20 of a controlled substance (as defined in IC 35-48-1-9); and

21 (2) have the results of any test under this subsection reported to
 22 the parole board by the laboratory.

23 The parolee is responsible for any charges resulting from a test
 24 required under this subsection. However, a person's parole may not be
 25 revoked on the basis of the person's inability to pay for a test under this
 26 subsection.

27 (g) As a condition of parole, the parole board:

28 (1) may require a parolee who is a sex offender (as defined in
 29 IC 11-8-8-4.5) to:

30 (A) participate in a treatment program for sex offenders
 31 approved by the parole board; and

32 (B) avoid contact with any person who is less than sixteen (16)
 33 years of age unless the parolee:

34 (i) receives the parole board's approval; or

35 (ii) successfully completes the treatment program referred to
 36 in clause (A); and

37 (2) shall:

38 (A) require a parolee who is a sex or violent offender (as
 39 defined in IC 11-8-8-5) to register with a local law
 40 enforcement authority under IC 11-8-8;

41 (B) prohibit a parolee who is a sex offender from residing
 42 within one thousand (1,000) feet of school property (as defined



- 1 in IC 35-31.5-2-285) for the period of parole, unless the sex
 2 offender obtains written approval from the parole board;
 3 (C) prohibit a parolee who is a sex offender convicted of a sex
 4 offense (as defined in IC 35-38-2-2.5) from residing within
 5 one (1) mile of the victim of the sex offender's sex offense
 6 unless the sex offender obtains a waiver under IC 35-38-2-2.5;
 7 (D) prohibit a parolee who is a sex offender from owning,
 8 operating, managing, being employed by, or volunteering at
 9 any attraction designed to be primarily enjoyed by children
 10 less than sixteen (16) years of age;
 11 (E) require a parolee who is a sex offender to consent:
 12 (i) to the search of the sex offender's personal computer at
 13 any time; and
 14 (ii) to the installation on the sex offender's personal
 15 computer or device with Internet capability, at the sex
 16 offender's expense, of one (1) or more hardware or software
 17 systems to monitor Internet usage; and
 18 (F) prohibit the sex offender from:
 19 (i) accessing or using certain web sites, chat rooms, or
 20 instant messaging programs frequented by children; and
 21 (ii) deleting, erasing, or tampering with information on the
 22 sex offender's personal computer with intent to conceal an
 23 activity prohibited by item (i).
- 24 The parole board may not grant a sexually violent predator (as defined
 25 in IC 35-38-1-7.5) or a sex offender who is an offender against children
 26 under IC 35-42-4-11 a waiver under subdivision (2)(B) or (2)(C). If the
 27 parole board allows the sex offender to reside within one thousand
 28 (1,000) feet of school property under subdivision (2)(B), the parole
 29 board shall notify each school within one thousand (1,000) feet of the
 30 sex offender's residence of the order.
- 31 (h) The address of the victim of a parolee who is a sex offender
 32 convicted of a sex offense (as defined in IC 35-38-2-2.5) is
 33 confidential, even if the sex offender obtains a waiver under
 34 IC 35-38-2-2.5.
- 35 (i) As a condition of parole, the parole board may require a parolee
 36 to participate in a reentry court program.
- 37 (j) As a condition of parole, the parole board ~~(H)~~ shall require a
 38 parolee who is a sexually violent predator under IC 35-38-1-7.5 ~~and (2)~~
 39 ~~may require a parolee or~~ who is a sex or violent offender (as defined in
 40 IC 11-8-8-5) to wear a monitoring device (as described in
 41 IC 35-38-2.5-3) that can transmit information twenty-four (24) hours
 42 each day regarding a person's precise location, **subject to a validated**



1 **sex offender risk assessment, and** subject to the amount appropriated
2 to the department for a monitoring program as a condition of parole.

3 (k) As a condition of parole, the parole board may prohibit, in
4 accordance with IC 35-38-2-2.6, a parolee who has been convicted of
5 stalking from residing within one thousand (1,000) feet of the residence
6 of the victim of the stalking for a period that does not exceed five (5)
7 years.

8 (l) As a condition of parole, the parole board may prohibit a parolee
9 convicted of an offense under IC 35-46-3 from owning, harboring, or
10 training an animal, and, if the parole board prohibits a parolee
11 convicted of an offense under IC 35-46-3 from having direct or indirect
12 contact with an individual, the parole board may also prohibit the
13 parolee from having direct or indirect contact with any animal
14 belonging to the individual.

15 (m) As a condition of parole, the parole board may require a parolee
16 to receive:

- 17 (1) addiction counseling;
- 18 (2) inpatient detoxification;
- 19 (3) case management;
- 20 (4) daily living skills; and
- 21 (5) medication assisted treatment, including a federal Food and
22 Drug Administration approved long acting, nonaddictive
23 medication for the treatment of opioid or alcohol dependence.

24 (n) A parolee may be responsible for the reasonable expenses, as
25 determined by the department, of the parolee's participation in a
26 treatment or other program required as a condition of parole under this
27 section. However, a person's parole may not be revoked solely on the
28 basis of the person's inability to pay for a program required as a
29 condition of parole under this section.

30 **(o) When an offender is placed on lifetime parole, the parole
31 board shall inform the sheriff and the prosecuting attorney of the
32 county in which the offender committed the offense:**

- 33 **(1) that the offender has been placed on lifetime parole; and**
- 34 **(2) whether the offender is required to wear a monitoring
35 device as described in subsection (j).**

36 SECTION 2. IC 35-38-9-2, AS AMENDED BY P.L.142-2015,
37 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2017]: Sec. 2. (a) Except as provided in subsection (b) and
39 section 8.5 of this chapter, this section applies only to a person
40 convicted of a misdemeanor, including a Class D felony (for a crime
41 committed before July 1, 2014) or a Level 6 felony (for a crime
42 committed after June 30, 2014) reduced to a misdemeanor.



1 (b) This section does not apply to **the following**:

- 2 (1) A person convicted of two (2) or more felony offenses that:
 3 (1) (A) involved the unlawful use of a deadly weapon; and
 4 (2) (B) were not committed as part of the same episode of
 5 criminal conduct.

6 (2) **A sex or violent offender (as defined in IC 11-8-8-5).**

7 (c) Not earlier than five (5) years after the date of conviction (unless
 8 the prosecuting attorney consents in writing to an earlier period), the
 9 person convicted of the misdemeanor may petition a court to expunge
 10 all conviction records, including records contained in:

- 11 (1) a court's files;
 12 (2) the files of the department of correction;
 13 (3) the files of the bureau of motor vehicles; and
 14 (4) the files of any other person who provided treatment or
 15 services to the petitioning person under a court order;

16 that relate to the person's misdemeanor conviction.

17 (d) A person who files a petition to expunge conviction records shall
 18 file the petition in a circuit or superior court in the county of
 19 conviction.

20 (e) If the court finds by a preponderance of the evidence that:

- 21 (1) the period required by this section has elapsed;
 22 (2) no charges are pending against the person;
 23 (3) the person has paid all fines, fees, and court costs, and
 24 satisfied any restitution obligation placed on the person as part of
 25 the sentence; and
 26 (4) the person has not been convicted of a crime within the
 27 previous five (5) years (or within a shorter period agreed to by the
 28 prosecuting attorney if the prosecuting attorney has consented to
 29 a shorter period under subsection (c));

30 the court shall order the conviction records described in subsection (c)
 31 expunged in accordance with section 6 of this chapter.

32 SECTION 3. IC 35-44.1-3-9, AS AMENDED BY P.L.74-2015,
 33 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2017]: Sec. 9. (a) A person who is being supervised on
 35 lifetime parole (as described in IC 35-50-6-1) and who knowingly or
 36 intentionally violates a condition of lifetime parole that involves direct
 37 or indirect contact with a child less than sixteen (16) years of age or
 38 with the victim of a crime that was committed by the person commits
 39 **criminal parole violation by a sexual predator**, a Level 6 felony. ~~if~~
 40 ~~at the time of the violation:~~

- 41 (1) the person's lifetime parole has been revoked two (2) or more
 42 times; or



1 (2) the person has completed the person's sentence; including any
2 educational credit or good time credit the person may have
3 earned.
4 (b) The offense described in subsection (a) is a Level 5 felony if the
5 person has a prior unrelated conviction under this section.



COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill 38, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

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

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Corrections and Criminal Law.

(Reference is to SB38 as introduced.)

LONG, Chairperson

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 38, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 37, delete ":".

Page 3, line 38, strike "(1)".

Page 3, line 39, delete ";".

Page 3, line 39, strike "and".

Page 3, line 40, strike "(2) may require a parolee" and insert "**or**".

Page 3, line 41, delete ";".

Page 3, run in lines 37 through 42.

Page 4, line 2, delete "." and insert "**, subject to a validated sex offender risk assessment, and**".

Page 4, line 2, reset in roman "subject to the amount appropriated to the".

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Page 4, reset in roman line 3.

Page 4, line 32, delete "superintendent" and insert "**sheriff**".

and when so amended that said bill do pass.

(Reference is to SB 38 as printed January 5, 2017.)

YOUNG M, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 38, 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 4, between lines 35 and 36, begin a new paragraph and insert:

"SECTION 2. IC 35-38-9-2, AS AMENDED BY P.L.142-2015, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. (a) Except as provided in subsection (b) and section 8.5 of this chapter, this section applies only to a person convicted of a misdemeanor, including a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) reduced to a misdemeanor.

(b) This section does not apply to **the following**:

- (1) A person convicted of two (2) or more felony offenses that:
 (†) (A) involved the unlawful use of a deadly weapon; and
 (‡) (B) were not committed as part of the same episode of criminal conduct.

(2) **A sex or violent offender (as defined in IC 11-8-8-5).**

(c) Not earlier than five (5) years after the date of conviction (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the misdemeanor may petition a court to expunge all conviction records, including records contained in:

- (1) a court's files;
- (2) the files of the department of correction;
- (3) the files of the bureau of motor vehicles; and
- (4) the files of any other person who provided treatment or services to the petitioning person under a court order;

that relate to the person's misdemeanor conviction.

(d) A person who files a petition to expunge conviction records shall



file the petition in a circuit or superior court in the county of conviction.

(e) If the court finds by a preponderance of the evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a crime within the previous five (5) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));

the court shall order the conviction records described in subsection (c) expunged in accordance with section 6 of this chapter."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 38 as printed February 10, 2017.)

WASHBURNE

Committee Vote: yeas 9, nays 0.

