



January 7, 2022

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## SENATE BILL No. 94

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DIGEST OF SB 94 (Updated January 4, 2022 4:03 pm - DI 140)

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

**Synopsis:** Sentence modification. Establishes a procedure to allow certain inmates in the department of correction (department) an additional opportunity to request sentence modification from the sentencing court if the department has recommended sentence modification. Makes conforming amendments.

**Effective:** July 1, 2022.

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## Bohacek

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January 4, 2022, read first time and referred to Committee on Corrections and Criminal Law.  
January 6, 2022, reported favorably — Do Pass.

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SB 94—LS 6067/DI 131





January 7, 2022

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

## SENATE BILL No. 94

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

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

- 1 SECTION 1. IC 11-13-9-2, AS AMENDED BY P.L.74-2015,  
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2022]: Sec. 2. (a) As used in this section, the years of an  
4 inmate's confinement are "consecutive" if:  
5 (1) the inmate has remained in the continuous custody of the  
6 department for the requisite length of time; or  
7 (2) the inmate would have remained in the continuous custody of  
8 the department for the requisite length of time, but:  
9 (A) was released from the custody of the department on the  
10 basis of an erroneous court order; and  
11 (B) returned to the custody of the department not later than  
12 seventy-two (72) hours after the erroneous court order was  
13 rescinded.  
14 (b) Notwithstanding any other law, as soon as practicable after an  
15 inmate has been confined to the custody of the department for:  
16 (1) twenty-five (25) consecutive years;  
17 (2) twenty-four (24) consecutive years if the inmate has received

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1 one (1) year of educational credit under IC 35-50-6-3.3;  
 2 (3) twenty-three (23) consecutive years if the inmate has received  
 3 two (2) years of educational credit under IC 35-50-6-3.3;  
 4 (4) twenty-two (22) consecutive years if the inmate has received  
 5 three (3) years of educational credit under IC 35-50-6-3.3; or  
 6 (5) twenty-one (21) consecutive years if the inmate has received  
 7 four (4) years of educational credit under IC 35-50-6-3.3;  
 8 the department shall identify the inmate to the parole board and provide  
 9 the parole board with the inmate's offender progress report.

10 **(c) The department shall annually review the inmate population**  
 11 **of the department's facilities and programs in accordance with**  
 12 **IC 35-38-1-17.5.**

13 SECTION 2. IC 35-38-1-17.5 IS ADDED TO THE INDIANA  
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 15 [EFFECTIVE JULY 1, 2022]: **Sec. 17.5. (a) This section applies to an**  
 16 **inmate confined to the department of correction serving a sentence**  
 17 **for the following offenses committed before July 1, 2014:**

- 18 (1) **Theft (IC 35-43-4-2).**
- 19 (2) **Dealing in cocaine or a narcotic drug (IC 35-48-4-1).**
- 20 (3) **Dealing in methamphetamine (IC 35-48-4-1.1).**
- 21 (4) **Dealing in a schedule I, II, or III controlled substance or**  
 22 **controlled substance analog (IC 35-48-4-2).**
- 23 (5) **Dealing in a schedule IV controlled substance or controlled**  
 24 **substance analog (IC 35-48-4-3).**
- 25 (6) **Dealing in a schedule V controlled substance or controlled**  
 26 **substance analog (IC 35-48-4-4).**
- 27 (7) **Possession of cocaine or a narcotic drug (IC 35-48-4-6).**
- 28 (8) **Possession of methamphetamine (IC 35-48-4-6.1).**
- 29 (9) **Possession of a controlled substance or controlled**  
 30 **substance analog or obtaining a schedule V controlled**  
 31 **substance (IC 35-48-4-7).**
- 32 (10) **Dealing in marijuana, hash oil, hashish, or salvia (IC**  
 33 **35-48-4-10).**
- 34 (11) **Possession of marijuana, hash oil, hashish, or salvia (IC**  
 35 **35-48-4-11).**

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

- 37 (1) **An inmate described in IC 11-13-9-1.**
- 38 (2) **An inmate who is a violent criminal (as defined in**  
 39 **IC 35-38-1-17).**
- 40 (3) **An inmate who has a prior unrelated conviction for:**  
 41 (A) **a violent offense (as defined in IC 11-12-3.7-6);**  
 42 (B) **battery (IC 35-42-2-1);**



1 (C) domestic battery (IC 35-42-2-1.3); or

2 (D) strangulation (IC 35-42-2-9).

3 (4) An inmate who was charged with an offense described in  
4 subdivisions (1) through (3) that was dismissed pursuant to a  
5 plea agreement that resulted in the sentence for which the  
6 offender is currently seeking relief.

7 (c) The department of correction shall, at least annually, review  
8 the inmate population of the department's facilities and programs  
9 to determine the identities of any inmates described in subsection  
10 (a) and not disqualified under subsection (b). The department shall  
11 evaluate the factors listed in IC 11-13-9-4 and recommend either  
12 no change in the inmate's sentence or a modification of the  
13 inmate's sentence. The department shall notify the inmate of the  
14 inmate's status and of the department's recommendation.

15 (d) Notwithstanding IC 1-1-5.5-21, an inmate who receives a  
16 recommendation for sentence modification under this section may  
17 petition the sentencing court to reduce or suspend the inmate's  
18 sentence.

19 (e) After considering all relevant factors, the sentencing court  
20 may modify the sentence of an inmate to whom this section applies.  
21 However, if the inmate was sentenced under the terms of a plea  
22 agreement, the court may not, without the consent of the  
23 prosecuting attorney, reduce or suspend the sentence and impose  
24 a sentence not authorized by the plea agreement. The court must  
25 incorporate its reasons in the record.

26 (f) If the court sets a hearing on a petition under this section, the  
27 court must give notice to the prosecuting attorney, and the  
28 prosecuting attorney must give notice to the victim (as defined in  
29 IC 35-31.5-2-348(a)) of the crime for which the inmate is serving  
30 the sentence.

31 (g) The court may deny a request to suspend or reduce a  
32 sentence under this section without making written findings and  
33 conclusions.

34 (h) The court is not required to conduct a hearing before  
35 reducing or suspending a sentence under this section if:

36 (1) the prosecuting attorney has filed with the court an  
37 agreement to the reduction or suspension of the sentence; and

38 (2) the inmate has filed with the court a waiver of the right to  
39 be present when the order to reduce or suspend the sentence  
40 is considered.

41 (i) A person may not waive the right to sentence modification  
42 under this section as part of a plea agreement. Any purported



1 waiver of the right to sentence modification under this section in a  
2 plea agreement is invalid and unenforceable as against public  
3 policy. This subsection does not prohibit the finding of a waiver of  
4 the right to:  
5 (1) have a court modify a sentence and impose a sentence not  
6 authorized by the plea agreement; or  
7 (2) sentence modification for any other reason, including  
8 failure to comply with the provisions of this section.  
9 (j) An inmate may petition for a modification once under this  
10 section.  
11 (k) This section expires July 1, 2026.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 94, 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 to SB 94 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 7, Nays 2

