

### IC 35-38-3

#### **Chapter 3. Commitment to the Department of Correction and Maximum, Medium, and Minimum Security Assignments**

### IC 35-38-3-1

#### **Definitions**

Sec. 1. As used in this chapter:

"Earliest possible release date" means the date, computed as of the date of sentencing, on which a person would be entitled to discharge or release on parole considering:

- (1) the term of the sentence;
- (2) the term of any other concurrent or consecutive sentence that the person must serve;
- (3) credit time that the person has earned before sentencing; and
- (4) the maximum amount of credit time that the person would earn if the person remained in a Class I, Class A, or Class B credit time assignment during the person's period of commitment.

"Rated capacity" means the number of inmates that can be housed at the facility as determined by the most recent jail inspection report.

"Receiving authority" means:

- (1) the department of correction;
- (2) a sheriff, if incarceration is authorized in a county jail; or
- (3) a facility or place designated by the department of correction.

*As added by P.L.311-1983, SEC.3. Amended by P.L.158-2013, SEC.401; P.L.168-2014, SEC.61.*

### IC 35-38-3-2

#### **Certification of judgment of conviction and sentence to receiving authority; contents of judgment; commencement of term of imprisonment**

Sec. 2. (a) When a convicted person is sentenced to imprisonment, the court shall, without delay, certify, under the seal of the court or through any electronic means approved by the department of correction, copies of the judgment of conviction and sentence to the receiving authority.

(b) The judgment must include:

- (1) the crime for which the convicted person is adjudged guilty and the classification of the criminal offense;
- (2) the period, if any, for which the person is rendered incapable of holding any office of trust or profit;
- (3) the amount of the fines or costs (including fees) assessed, if any, whether or not the convicted person is indigent, and the method by which the fines or costs (including fees) are to be satisfied;
- (4) the amount of credit time earned for time spent in confinement before sentencing; and

(5) the amount to be credited toward payment of the fines or costs (including fees) for time spent in confinement before sentencing.

(c) The judgment may specify the degree of security recommended by the court.

(d) A term of imprisonment begins on the date sentence is imposed, unless execution of the sentence is stayed according to law. *As added by P.L.311-1983, SEC.3. Amended by P.L.119-2008, SEC.17; P.L.106-2010, SEC.12; P.L.74-2015, SEC.24.*

### **IC 35-38-3-3**

#### **No commitment of misdemeanants and Level 6 felons to the department of correction; exceptions; sheriff's per diem for offenders not committed to the department**

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 misdemeanor:

(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 person violating a condition of probation, parole, or community corrections by committing a new criminal offense; or

(2) the person:

(A) is convicted of at least two (2) Level 6 felonies that are ordered to be served consecutively;

(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; 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) After June 30, 2014, and before January 1, 2016, a sheriff is entitled to a per diem and medical expense reimbursement as described in P.L.205-2013, SECTION 4 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. The reimbursement:

- (1) shall be reviewed by the budget committee; and
- (2) is subject to approval by the budget agency.

(f) 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.

*As added by P.L.311-1983, SEC.3. Amended by P.L.242-1999, SEC.10; P.L.168-2014, SEC.62; P.L.179-2015, SEC.17; P.L.26-2016, SEC.2.*

#### **IC 35-38-3-4**

##### **Duties of sheriff**

Sec. 4. (a) The sheriff shall:

- (1) transport the convicted person to a receiving authority;
  - (2) deliver the person to the receiving authority;
  - (3) deliver a copy of the judgment of conviction and sentence;
- and
- (4) take from the receiving authority a receipt for the convicted person.

(b) The sheriff shall transport the convicted person within five (5) days after the day of sentencing, unless the court orders the sheriff to transport the person within some other specified period.

*As added by P.L.311-1983, SEC.3.*

#### **IC 35-38-3-5**

##### **Determination of degree of security assigned to convicted person; change of degree; persons convicted of murder**

Sec. 5. (a) The department, after diagnosis and classification, shall:

- (1) determine the degree of security (maximum, medium, or minimum) to which a convicted person will be assigned;

(2) for each offender convicted of 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) whose sentence for the Class D felony or Level 6 felony is nonsuspendible at the time of the offense under:

- (A) IC 35-50-2-2.1(a)(1)(B);
- (B) IC 35-50-2-2.1(a)(1)(C); or
- (C) IC 35-50-2-2.1(a)(2);

determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5;

(3) for each offender:

- (A) committed to the department because the offender has been convicted for the first time of a Class C or Class D felony (for a crime committed before July 1, 2014) or a Level 5 or Level 6 felony (for a crime committed after June 30, 2014); and
- (B) whose sentence may be suspended;

determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5;

(4) notify the trial court and prosecuting attorney if the degree of security assigned differs from the court's recommendations; and

(5) petition the sentencing court under IC 35-38-1-21 for review of the sentence of an offender who is not a habitual offender sentenced under IC 35-50-2-8 or IC 35-50-2-10 (repealed), and who the department has determined under subdivision (2) to be an appropriate candidate for home detention.

(b) The department may change the degree of security to which the person is assigned. However, if the person is changed to a lesser degree security during the first two (2) years of the commitment, the department shall notify the trial court and the prosecuting attorney not less than thirty (30) days before the effective date of the changed security assignment.

*As added by P.L.311-1983, SEC.3. Amended by P.L.182-1988, SEC.1; P.L.98-1988, SEC.7; P.L.164-1993, SEC.9; P.L.158-2013, SEC.402.*

### **IC 35-38-3-6**

#### **Classification of penal facilities and programs**

Sec. 6. (a) The department shall:

(1) classify all penal facilities and programs to which convicted persons may be assigned for supervision or custodial care according to:

- (A) maximum, medium, or minimum security function; and
- (B) treatment program available; and

(2) furnish the classifications to all judges with general criminal jurisdiction.

(b) A maximum security assignment constitutes an assignment of

a convicted person to a penal facility and correctional program that are designed to insure that the person remains within a walled or fenced facility where entry and exit of any person occurs only through department supervised gates and where periodic inmate population accounting and supervision by the department occurs each day.

(c) A medium security assignment constitutes an assignment of a convicted person to a penal facility and correctional program that are designed to insure that if the person is permitted outside the supervised gates of a walled or fenced facility, the department will provide continuous staff supervision and the person will be accounted for throughout the day.

(d) A minimum security assignment constitutes an assignment of a convicted person to a work release center or program, to intermittent service of a sentence, or to a program requiring weekly reporting to a designated official. Assignment to minimum security need not involve a penal facility.

*As added by P.L.311-1983, SEC.3.*