

SENATE BILL No. 303

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-44.1-3-4; IC 35-45-1-5; IC 35-50.

Synopsis: Criminal law matters. Provides that the crime of escape does not include the intentional removal of an electronic monitoring device or GPS tracking device. Reduces the penalty for maintaining a common nuisance from a Level 6 felony to a Class A misdemeanor. Provides that to use a prior unrelated conviction in determining a sentence enhancement for a habitual offender or a repeat sex offender, there may not be more than seven years from the time the person was released from imprisonment, probation, or parole for the prior unrelated felony conviction and the time the person committed the current offense. Eliminates the provision that awards one day of good time credit for every four days of time served on pretrial home detention. Eliminates the provision that prohibits a person from being reassigned to a different credit time class while being monitored on pretrial home detention. Specifies that a person placed on home detention while awaiting trial is initially assigned to a credit class based on the most serious offense with which the person is charged.

Effective: July 1, 2019.

Randolph Lonnie M

January 7, 2019, read first time and referred to Committee on Corrections and Criminal Law.



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.

SENATE BILL No. 303

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 35-44.1-3-4, AS AMENDED BY P.L.158-2013,
2 SECTION 511, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) A person, except as provided
4 in subsection (b), who intentionally flees from lawful detention
5 commits escape, a Level 5 felony. However, the offense is a Level 4
6 felony if, while committing it, the person draws or uses a deadly
7 weapon or inflicts bodily injury on another person.
8 (b) A person who knowingly or intentionally violates a home
9 detention order ~~or intentionally removes an electronic monitoring~~
10 ~~device or GPS tracking device~~ commits escape, a Level 6 felony.
11 (c) A person who knowingly or intentionally fails to return to lawful
12 detention following temporary leave granted for a specified purpose or
13 limited period commits failure to return to lawful detention, a Level 6
14 felony. However, the offense is a Level 5 felony if, while committing
15 it, the person draws or uses a deadly weapon or inflicts bodily injury on
16 another person.
17 SECTION 2. IC 35-45-1-5, AS AMENDED BY P.L.144-2018,



SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) As used in this section, "common nuisance"

means a building, structure, vehicle, or other place that is used for **one**

(1) or more of the following purposes:

(1) To buy an alcoholic beverage in violation of IC 7.1-5-10-5.

(2) To unlawfully use, keep, or sell a legend drug.

(3) To unlawfully:

(A) use;

(B) manufacture;

(C) keep;

(D) offer for sale;

(E) sell;

(F) deliver; or

(G) finance the delivery of;

a controlled substance or an item of drug paraphernalia (as described in IC 35-48-4-8.5).

(4) To provide a location for a person to pay, offer to pay, or agree to pay money or other property to another person for a human trafficking victim or an act performed by a human trafficking victim.

(5) To provide a location for a person to commit a violation of IC 35-42-3.5-1 through IC 35-42-3.5-1.4 (human trafficking).

(b) A person who knowingly or intentionally visits a common nuisance described in subsections (a)(1) through (a)(4) commits visiting a common nuisance. The offense is a:

(1) Class B misdemeanor if the common nuisance is used for the unlawful:

(A) sale of an alcoholic beverage as set forth in subsection (a)(1);

(B) use, keeping, or sale of a legend drug as set forth in subsection (a)(2); or

(C) use, manufacture, keeping, offer for sale, sale, delivery, or financing the delivery of a controlled substance or item of drug paraphernalia (as described in IC 35-48-4-8.5), as set forth in subsection (a)(3);

(2) Class A misdemeanor if:

(A) the common nuisance is used as a location for a person to pay, offer to pay, or agree to pay for a human trafficking victim or an act performed by a human trafficking victim as set forth in subsection (a)(4); or

(B) the person knowingly, intentionally, or recklessly takes a person less than eighteen (18) years of age or an endangered



1 adult (as defined in IC 12-10-3-2) into a common nuisance
 2 used to unlawfully:
 3 (i) use;
 4 (ii) manufacture;
 5 (iii) keep;
 6 (iv) offer for sale;
 7 (v) sell;
 8 (vi) deliver; or
 9 (vii) finance the delivery of;
 10 a controlled substance or an item of drug paraphernalia, as set
 11 forth in subsection (a)(3); and
 12 (3) Level 6 felony if the person:
 13 (A) knowingly, intentionally, or recklessly takes a person less
 14 than eighteen (18) years of age or an endangered adult (as
 15 defined in IC 12-10-3-2) into a common nuisance used to
 16 unlawfully:
 17 (i) use;
 18 (ii) manufacture;
 19 (iii) keep;
 20 (iv) offer for sale;
 21 (v) sell;
 22 (vi) deliver; or
 23 (vii) finance the delivery of;
 24 a controlled substance or an item of drug paraphernalia, as set
 25 forth in subsection (a)(3); and
 26 (B) has a prior unrelated conviction for a violation of this
 27 section involving a controlled substance or drug paraphernalia.
 28 (c) A person who knowingly or intentionally maintains a common
 29 nuisance commits maintaining a common nuisance, a ~~Level 6 felony~~.
 30 **Class A misdemeanor.**
 31 (d) It is a defense to a prosecution under subsection (c) that:
 32 (1) the offense involves only the unlawful use or keeping of:
 33 (A) less than:
 34 (i) thirty (30) grams of marijuana; or
 35 (ii) five (5) grams of hash oil, hashish, or salvia; or
 36 (B) an item of drug paraphernalia (as described in
 37 IC 35-48-4-8.5) that is designed for use with, or intended to be
 38 used for, marijuana, hash oil, hashish, or salvia; and
 39 (2) the person does not have a prior unrelated conviction for a
 40 violation of subsection (c).
 41 SECTION 3. IC 35-50-2-8, AS AMENDED BY P.L.12-2017,
 42 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2019]: Sec. 8. (a) The state may seek to have a person sentenced as a habitual offender for a felony by alleging, on one (1) or more pages separate from the rest of the charging instrument, that the person has accumulated the required number of prior unrelated felony convictions in accordance with this section.

(b) A person convicted of murder or of a Level 1 through Level 4 5 felony is a habitual offender if the state proves beyond a reasonable doubt that:

(1) the person has been convicted of two (2) prior unrelated felonies; ~~and~~

(2) at least one (1) of the prior unrelated felonies is not a Level 6 felony or a Class D felony; ~~and~~

(3) not more than seven (7) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) for the two (2) prior unrelated felonies and the time the person committed the current offense.

~~(c)~~ A person convicted of a Level 5 felony is a habitual offender if the state proves beyond a reasonable doubt that:

~~(1)~~ the person has been convicted of two (2) prior unrelated felonies;

~~(2)~~ at least one (1) of the prior unrelated felonies is not a Level 6 felony or a Class D felony; ~~and~~

~~(3)~~ if the person is alleged to have committed a prior unrelated:

~~(A)~~ Level 5 felony;

~~(B)~~ Level 6 felony;

~~(C)~~ Class C felony; ~~or~~

~~(D)~~ Class D felony;

~~not more than ten (10) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) for at least one (1) of the two (2) prior unrelated felonies and the time the person committed the current offense.~~

~~(d)~~ **(c)** A person convicted of a felony offense is a habitual offender if the state proves beyond a reasonable doubt that:

(1) the person has been convicted of three (3) prior unrelated felonies; ~~and~~

(2) if the person is alleged to have committed a prior unrelated:

(A) Level 5 felony;

(B) Level 6 felony;

(C) Class C felony; ~~or~~

(D) Class D felony;



not more than ten (10) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) for at least one (1) of the three (3) prior unrelated felonies and the time the person committed the current offense.

(2) not more than seven (7) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) for the three (3) prior unrelated felonies and the time the person committed the current offense.

~~(c)~~ (d) The state may not seek to have a person sentenced as a habitual offender for a felony offense under this section if the current offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction. However, a prior unrelated felony conviction may be used to support a habitual offender determination even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense.

~~(f)~~ (e) A person has accumulated two (2) or three (3) prior unrelated felony convictions for purposes of this section only if:

(1) the second prior unrelated felony conviction was committed after commission of and sentencing for the first prior unrelated felony conviction;

(2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after commission of and sentencing for the second prior unrelated felony conviction; and

(3) for a conviction requiring proof of three (3) prior unrelated felonies, the third prior unrelated felony conviction was committed after commission of and sentencing for the second prior unrelated felony conviction.

~~(g)~~ (f) A conviction does not count for purposes of this section as a prior unrelated felony conviction if:

(1) the conviction has been set aside; or

(2) the conviction is one for which the person has been pardoned.

~~(h)~~ (g) If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3. The role of the jury is to determine whether the defendant has been convicted of the unrelated felonies. The state or defendant may not conduct any



1 additional interrogation or questioning of the jury during the habitual
2 offender part of the trial.

3 ~~(i)~~ **(h)** The court shall sentence a person found to be a habitual
4 offender to an additional fixed term that is between:

5 (1) six (6) years and twenty (20) years, for a person convicted of
6 murder or a Level 1 through Level 4 felony; or

7 (2) two (2) years and six (6) years, for a person convicted of a
8 Level 5 or Level 6 felony.

9 An additional term imposed under this subsection is nonsuspendible.

10 ~~(j)~~ **(i)** Habitual offender is a status that results in an enhanced
11 sentence. It is not a separate crime and does not result in a consecutive
12 sentence. The court shall attach the habitual offender enhancement to
13 the felony conviction with the highest sentence imposed and specify
14 which felony count is being enhanced. If the felony enhanced by the
15 habitual offender determination is set aside or vacated, the court shall
16 resentence the person and apply the habitual offender enhancement to
17 the felony conviction with the next highest sentence in the underlying
18 cause, if any.

19 ~~(k)~~ **(j)** A prior unrelated felony conviction may not be collaterally
20 attacked during a habitual offender proceeding unless the conviction
21 is constitutionally invalid.

22 ~~(l)~~ **(k)** The procedural safeguards that apply to other criminal
23 charges, including:

24 (1) the requirement that the charge be filed by information or
25 indictment; and

26 (2) the right to an initial hearing;

27 also apply to a habitual offender allegation.

28 SECTION 4. IC 35-50-2-14, AS AMENDED BY P.L.125-2009,
29 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2019]: Sec. 14. (a) As used in this section, "sex offense"
31 means a felony conviction:

32 (1) under IC 35-42-4-1 through IC 35-42-4-9 or under
33 IC 35-46-1-3;

34 (2) for an attempt or conspiracy to commit an offense described
35 in subdivision (1); or

36 (3) for an offense under the laws of another jurisdiction, including
37 a military court, that is substantially similar to an offense
38 described in subdivision (1).

39 (b) The state may seek to have a person sentenced as a repeat sexual
40 offender for a sex offense described in subsection (a)(1) or (a)(2) by
41 alleging, on a page separate from the rest of the charging instrument,
42 that:



(1) the person has accumulated one (1) prior unrelated felony conviction for a sex offense described in subsection (a); **and**
(2) not more than seven (7) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) for the prior unrelated felony and the time the person committed the current offense.

(c) After a person has been convicted and sentenced for a felony described in subsection (a)(1) or (a)(2) after having been sentenced for a prior unrelated sex offense described in subsection (a), the person has accumulated one (1) prior unrelated felony sex offense conviction. However, a conviction does not count for purposes of this subsection, if:

(1) it has been set aside; or

(2) it is a conviction for which the person has been pardoned.

(d) If the person was convicted of the sex offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(e) A person is a repeat sexual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that:

(1) the person had accumulated one (1) prior unrelated felony sex offense conviction; and

(2) not more than seven (7) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) for the prior unrelated felony and the time the person committed the current offense.

(f) The court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the advisory sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years.

SECTION 5. IC 35-50-6-3.1, AS AMENDED BY P.L.44-2016, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3.1. (a) This section applies to a person who commits an offense after June 30, 2014.

(b) A person assigned to Class A earns one (1) day of good time credit for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.

(c) A person assigned to Class B earns one (1) day of good time credit for every three (3) days the person is imprisoned for a crime or confined awaiting trial or sentencing.

(d) A person assigned to Class C earns one (1) day of good time



1 credit for every six (6) days the person is imprisoned for a crime or
2 confined awaiting trial or sentencing.

3 (e) A person assigned to Class D earns no good time credit.

4 ~~(f) A person assigned to Class P earns one (1) day of good time~~
5 ~~credit for every four (4) days the person serves on pretrial home~~
6 ~~detention awaiting trial.~~

7 SECTION 6. IC 35-50-6-4, AS AMENDED BY P.L.44-2016,
8 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2019]: Sec. 4. (a) A person:

10 (1) who is not a credit restricted felon; and

11 (2) who is imprisoned for a Level 6 felony or a misdemeanor or
12 imprisoned awaiting trial or sentencing for a Level 6 felony or
13 misdemeanor;

14 is initially assigned to Class A.

15 (b) A person:

16 (1) who is not a credit restricted felon; and

17 (2) who is imprisoned for a crime other than a Level 6 felony or
18 misdemeanor or imprisoned awaiting trial or sentencing for a
19 crime other than a Level 6 felony or misdemeanor;

20 is initially assigned to Class B.

21 (c) A person who is a credit restricted felon and who is imprisoned
22 for a crime or imprisoned awaiting trial or sentencing is initially
23 assigned to Class C. A credit restricted felon may not be assigned to
24 Class A or Class B.

25 (d) A person who is not a credit restricted felon may be reassigned
26 to Class C or Class D if the person violates any of the following:

27 (1) A rule of the department of correction.

28 (2) A rule of the penal facility in which the person is imprisoned.

29 (3) A rule or condition of a community transition program.

30 However, a violation of a condition of parole or probation may not be
31 the basis for reassignment. Before a person may be reassigned to a
32 lower credit time class, the person must be granted a hearing to
33 determine the person's guilt or innocence and, if found guilty, whether
34 reassignment is an appropriate disciplinary action for the violation. The
35 person may waive the right to the hearing.

36 (e) A person who is a credit restricted felon may be reassigned to
37 Class D and a person who is assigned to Class IV may be assigned to
38 Class III if the person violates any of the following:

39 (1) A rule of the department of correction.

40 (2) A rule of the penal facility in which the person is imprisoned.

41 (3) A rule or condition of a community transition program.

42 However, a violation of a condition of parole or probation may not be



the basis for reassignment. Before a person may be reassigned to Class III or Class D, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

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

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

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

(g) Except for a credit restricted felon, a person may be reassigned from:

- (1) Class III to Class I, Class II or Class IV;
- (2) Class II to Class I;
- (3) Class D to Class A, Class B, or Class C; **or**
- (4) Class C to Class A or Class B.

A person's assignment to Class III, Class II, Class C, or Class D shall be reviewed at least once every six (6) months to determine if the person should be reassigned to a higher credit time class. A credit restricted felon may not be reassigned to Class I or Class II or to Class A, Class B, or Class C.



1 (h) This subsection applies only to a person imprisoned **or placed**
2 **on home detention while** awaiting trial. A person imprisoned **or**
3 **placed on home detention while** awaiting trial is initially assigned to
4 a credit class based on the most serious offense with which the person
5 is charged. If all the offenses of which a person is convicted have a
6 higher credit time class than the most serious offense with which the
7 person is charged, the person earns credit time for the time imprisoned
8 **or placed on home detention while** awaiting trial at the credit time
9 class of the most serious offense of which the person was convicted.
10 However, this section does not apply to any period during which the
11 person is reassigned to a lower credit time class for a disciplinary
12 violation.

13 (i) This subsection applies only to a person placed on pretrial home
14 detention awaiting trial. This subsection does not apply to any other
15 person placed on home detention. A person placed on pretrial home
16 detention awaiting trial is assigned to Class P. A person assigned to
17 Class P may not be reassigned to another credit time class while the
18 person is on pretrial home detention awaiting trial.

