

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1108

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AN ACT to amend the Indiana Code concerning family law and juvenile law.

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

SECTION 1. IC 31-30-4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

**Chapter 4. Sentencing Alternatives for Certain Offenders Under Criminal Court Jurisdiction**

**Sec. 1. This chapter applies to the following:**

- (1) **An offender who:**
  - (A) **is less than eighteen (18) years of age;**
  - (B) **has been waived to a court with criminal jurisdiction under IC 31-30-3; and**
  - (C) **is charged as an adult offender.**
- (2) **An offender who:**
  - (A) **is less than eighteen (18) years of age; and**
  - (B) **does not come under the jurisdiction of a juvenile court because the offender is charged with an offense listed in IC 31-30-1-4.**

**Sec. 2. (a) Subject to subsection (c), if:**

- (1) **an offender is:**
  - (A) **less than eighteen (18) years of age;**
  - (B) **waived to a court with criminal jurisdiction under IC 31-30-3 because the offender committed an act that would be a felony if committed by an adult; and**
  - (C) **convicted of committing the felony or enters a plea of**

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guilty to committing the felony; or

(2) an offender is:

(A) less than eighteen (18) years of age;

(B) charged with a felony over which a juvenile court does not have jurisdiction under IC 31-30-1-4; and

(C) convicted of committing the felony by a court with criminal jurisdiction or enters a plea of guilty to committing the felony with the court;

the court may, upon its own motion, a motion of the prosecuting attorney, or a motion of the offender's legal representative, impose a sentence upon the conviction of the offender under this chapter.

(b) If a court elects to impose a sentence upon conviction of an offender under subsection (a) and, before the offender is sentenced, the department of correction determines that there is space available for the offender in a juvenile facility of the division of youth services of the department, the sentencing court may:

(1) impose an appropriate criminal sentence on the offender under IC 35-50-2;

(2) suspend the criminal sentence imposed, notwithstanding IC 35-50-2-2 and IC 35-50-2-2.1;

(3) order the offender to be placed into the custody of the department of correction to be placed in the juvenile facility of the division of youth services; and

(4) provide that the successful completion of the placement of the offender in the juvenile facility is a condition of the suspended criminal sentence.

(c) The court may not impose a sentence on an offender under subsection (a) until:

(1) the prosecuting attorney has notified the victim of the felony of the possible imposition of a sentence on the offender under this chapter; and

(2) either:

(A) the probation department of the court has conducted a presentence investigation concerning the offender and reported its findings to the court; or

(B) the department of correction has conducted a diagnostic evaluation of the offender and reported its findings to the court.

Sec. 3. (a) If there is probable cause to believe that an offender described under section 2(b) of this chapter has:

(1) violated a condition of the offender's suspended criminal sentence; or

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(2) committed a new offense;  
 the court shall conduct a review hearing to determine if the offender has committed the violation or the new offense unless the offender waives the hearing.

(b) If the court finds by a preponderance of the evidence after a review hearing conducted under subsection (a) that the offender has violated a condition of the offender's suspended criminal sentence or committed a new offense or if the offender waives the hearing, the court may:

- (1) continue the offender's placement in the juvenile facility under section 2(b) of this chapter;
- (2) order execution of all or part of the offender's previously suspended criminal sentence in an adult facility recommended by the department of correction; or
- (3) make any other modifications to the sentence imposed on the offender under section 2(b) of this chapter the court considers appropriate.

Sec. 4. (a) The department of correction may reclassify an offender placed in a juvenile facility under section 2(b) of this chapter and transfer the offender to an appropriate adult facility if the department determines that placement of the offender in any juvenile facility of the division of youth services is no longer appropriate.

(b) If the department of correction reclassifies and transfers an offender under this section:

- (1) the department shall notify the sentencing court of the circumstances of the reclassification and transfer; and
- (2) the sentencing court:
  - (A) shall hold a review hearing concerning the reclassification and transfer of the offender; and
  - (B) after the hearing is conducted under clause (A), may order execution of all or part of the offender's suspended criminal sentence in an adult facility of the department of correction.

Sec. 5. (a) At the request of a sentencing court, the department of correction shall provide a progress report to the sentencing court concerning an offender sentenced and placed in a juvenile facility under section 2(b) of this chapter. When the offender becomes eighteen (18) years of age:

- (1) the department shall notify the sentencing court; and
- (2) the sentencing court shall hold a review hearing concerning the offender before the offender becomes nineteen



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(19) years of age.

(b) Except as provided in subsection (c), after a hearing conducted under subsection (a), the sentencing court may:

(1) continue the offender's placement in a juvenile facility until the objectives of the sentence imposed on the offender have been met, if the sentencing court finds that the objectives of the sentence imposed on the offender have not been met;

(2) discharge the offender if the sentencing court finds that the objectives of the sentence imposed on the offender have been met;

(3) order execution of all or part of the offender's suspended criminal sentence in an adult facility of the department of correction; or

(4) place the offender:

(A) in home detention under IC 35-38-2.5;

(B) in a community corrections program under IC 35-38-2.6;

(C) on probation under IC 35-50-7; or

(D) in any other appropriate alternative sentencing program.

(c) This subsection applies to an offender over whom a juvenile court lacks jurisdiction under IC 31-30-1-4 who is convicted of one (1) or more of the following offenses:

(1) Murder (IC 35-42-1-1).

(2) Attempted murder (IC 35-41-5-1).

(3) Kidnapping (IC 35-42-3-2).

(4) Rape as a Class A felony (IC 35-42-4-1(b)).

(5) Criminal deviate conduct as a Class A felony (IC 35-42-4-2(b)).

(6) Robbery as a Class A felony (IC 35-42-5-1), if:

(A) the offense was committed while armed with a deadly weapon; and

(B) the offense resulted in bodily injury to any person other than a defendant.

The court may not modify the original sentence of an offender to whom this subsection applies if the prosecuting attorney objects in writing to the modification. The prosecuting attorney shall set forth in writing the prosecuting attorney's reasons for objecting to the sentence modification.

Sec. 6. (a) At any time before an offender placed in a juvenile facility under section 2(b) of this chapter becomes twenty-one (21) years of age, the department of correction may transfer the

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offender to an adult facility if the department of correction believes the offender is a safety or security risk to:

- (1) the other offenders or the staff at the juvenile facility; or
- (2) the public.

(b) If the department of correction transfers an offender to an adult facility under this section, the department shall notify the sentencing court of the circumstances of the transfer.

**Sec. 7.** If the suspension of a criminal sentence is revoked under this chapter, all time served by an offender in a juvenile facility of the division of youth services of the department of correction shall be credited toward any criminal sentence imposed on the offender under this chapter.

SECTION 2. IC 35-50-2-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 17.** Notwithstanding any other provision of this chapter, if:

- (1) an offender is:
  - (A) less than eighteen (18) years of age;
  - (B) waived to a court with criminal jurisdiction under IC 31-30-3 because the offender committed an act that would be a felony if committed by an adult; and
  - (C) convicted of committing the felony or enters a plea of guilty to committing the felony; or
- (2) an offender is:
  - (A) less than eighteen (18) years of age;
  - (B) charged with a felony over which a juvenile court does not have jurisdiction under IC 31-30-1-4; and
  - (C) convicted of committing the felony by a court with criminal jurisdiction or enters a plea of guilty to committing the felony with the court;

the court may impose a sentence upon the conviction of the offender under IC 31-30-4 concerning sentencing alternatives for certain offenders under criminal court jurisdiction.

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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

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