

CHAPTER SEVEN

COMMITMENT

I. RECORD OF JUDGMENT AND SENTENCE

With very little exception, the trial court has no authority over the defendant after it pronounces sentence; jurisdiction over the defendant goes to the Department of Corrections (“DOC”). Moore v. State, 686 N.E.2d 861, 863 (Ind. Ct. App. 1997).

A. REQUIREMENTS

1. Certification

After a 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. Ind. Code § 35-38-3-2(a). A receiving authority is defined as: (1) the DOC; (2) a sheriff, if incarceration is authorized in a county jail; or (3) a facility or place designated by the DOC. Ind. Code § 35-38-3-1.

2. Mandatory contents of judgment

Pursuant to Ind. Code § 35-38-3-2(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.

B. ATTACKING INCOMPLETE JUDGMENTS

Any technical irregularity in the manner of entering the judgment of commitment does not render that judgment void and must be asserted in the court where the judgment was entered. Gross v. State, 444 N.E.2d 296, 301 (Ind. 1983).

Bailer v. Dowd, 40 N.E.2d 325, 327 (Ind. 1942) (a defendant may prevent commitment until irregularities in the judgment are fixed, unless waived for failing to assert it in the court where the defendant was convicted and prior to the execution of writ).

PRACTICE POINTER: Robinson v. State, 805 N.E.2d 783 (Ind. 2004), held that a motion to correct sentence is available at any time to correct a sentencing error that is clearly “erroneous on its face,” although it cannot be used to challenge defects in an abstract of judgment.

Any technical irregularity in a prior judgment cannot be attacked in a habitual offender proceeding because to do so would constitute a collateral attack on the judgment of a prior court. Such attack is not permitted.

Pinkston v. State, 436 N.E.2d 306, 310 (Ind. 1982) (prior judgments which failed to include amount to be credited toward payment of fines and costs for time spent in confinement before sentencing could not be attacked in a habitual offender proceeding).

However, Indiana Trial Rule 58 requires that an abstract of judgment include a judicial signature in order to be considered a final record of a trial court's ruling. An unsigned abstract of judgment cannot be used to prove a prior felony conviction for the purposes of serious violent felon or habitual offender determinations. Abdullah v. State, 847 N.E.2d 1031 (Ind. Ct. App. 2006).

C. DEGREE OF SECURITY

1. Classifications

Pursuant to Ind. Code § 35-38-3-6(a)(1), the DOC shall classify all penal facilities and programs to which convicted persons may be assigned for supervision or custodial care according to:

- (1) Maximum, medium, or minimum-security function; and
- (2) Treatment program available.

Pursuant to Ind. Code § 35-38-3-6(a)(2), the DOC shall furnish the classifications to all judges with general criminal jurisdiction.

a. Maximum security

A maximum-security assignment constitutes an assignment of a convicted person to a penal facility and correctional program that are designed to ensure that the person remains within a walled or fenced facility where entry and exit of any person occurs only through DOC supervised gates and where periodic inmate population accounting and supervision by the DOC occurs each day. Ind. Code § 35-38-3-6(b).

b. Medium security

A medium security assignment constitutes an assignment of a convicted person to a penal facility and correctional program that are designed to ensure that if the person is permitted outside the supervised gates of a walled or fenced facility, the DOC will provide continuous staff supervision and the person will be accounted for throughout the day. Ind. Code § 35-38-3-6(c).

c. Minimum security

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. Ind. Code § 35-38-3-6(d).

2. Court's recommendation

The record of the judgment may also include a recommendation by the court as to the degree of security. Ind. Code § 35-38-3-2(c). However, the ultimate placement decision is left to the DOC. Because an institutional assignment is a function vested by the legislature in the DOC, a trial court's order that the defendant be imprisoned in a particular facility is not erroneous but is largely superfluous. Barnes v. State, 435 N.E.2d 235, 242 (Ind. 1982). The classification board at the reception and diagnostic center may consider the judge's order; however, formal recommendation for placement is up to the recommendation board and the final decision belongs to the Department of Correction. Dorton v. State, 419 N.E.2d 1289, 1301 (Ind. 1981).

Griffin v. State, 461 N.E.2d 1123 (Ind. 1984) (trial court has no power to comply with prosecutor's recommendation that defendant be incarcerated out-of-state; once DOC has custody, DOC decides in what facility to house defendant).

Marsh v. State, 271 Ind. 454, 393 N.E.2d 757 (1979) (where court in pronouncing sentence committed defendant "to the Indiana Department of Corrections for assignment to the Maximum Security Division of Dr. Norman Beatty Memorial Hospital," such assignment of defendant was not erroneous but largely superfluous because, while it was reasonable to assume that classification board of reception and diagnostic center would consider such order, place and nature of incarceration was up to classification board with final decision in hands of DOC), *overruled on other grounds by* Beattie v. State 924 N.E.2d 643 (Ind. 2010).

Parker v. State, 542 N.E.2d 1026 (Ind.Ct.App. 1989) (court could not compel Indiana DOC to release defendant to Kentucky officials for incarceration there regardless of defendant's understanding of guilty plea; specific performance is not remedy when it is beyond court's power).

3. Temporary Assignment to the DOC for Evaluation under IC 11-10-1-4

Unless notified by the DOC that adequate space is unavailable, a court may order an offender who is to be sentenced by it and is subject to commitment to the DOC to be temporarily committed to the DOC, for not more than thirty days, for evaluation, classification and determination of proposed assignment under IC 11-10-1-2 and IC 11-10-1-3. The DOC shall forward to the court its written findings and recommendations.

4. DOC's decision

The DOC, after diagnosis and classification, shall determine the degree of security (maximum, medium, or minimum¹) to which the defendant will be assigned. Ind. Code § 35-38-3-5(a)(1).

a. No right to particular institution

A person convicted of a crime in Indiana has no identifiable right to assignment to a particular institution and his conviction sufficiently extinguishes his liberty interest to empower the State to confine him in any of its prisons. Barnes v. State, 435 N.E.2d 235, 242 (Ind. 1982).

The fact that there is a mere potential for inadequate individual care and security of a prisoner, even one that could be especially vulnerable or a target for abuse, is not a question of constitutional dimension, and is thus not a challenge to a decision to house a defendant to any particular facility. Reed v. State, 479 N.E.2d 1248 (Ind. 1985).

b. Differs from court's recommendation

The DOC must notify the trial court and the prosecuting attorney if the degree of security assigned differs from the court's recommendations. Ind. Code § 35-38-3-5(a)(4).

c. Home detention

(1) Non-suspendible Class D felony or Level 6 felony

The DOC, after diagnosis and classification, shall determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5 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): (1) whose sentence for the Class D felony or the Level 6 felony is non-suspendible under IC 35-50-2-2(b)(3) due to prior unrelated 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); or (2) whose sentence for the Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) is non-suspendible under IC 35-50-2-2.1(a)(1)(A) thru (F) or IC 35-50-2-2.1(a)(2). Ind. Code § 35-38-3-5(a)(2); Ind. Code § 35-38-3-5(a)(3).

(2) Suspendible Class C or Class D felony or Level 5 or Level 6 felony

The DOC, after diagnosis and classification, shall, for each offender committed to the DOC because the offender has been convicted for the first time of a Class C or a Class D felony or a Level 5 or Level 6 felony and whose sentence may be suspended, determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5. Ind. Code § 35-38-3-5(a)(3).

¹ The DOC decides on the security classification and assignment based on the factors set forth in IC 11-10-1-3.

5. Transfers to different degree of security

The DOC may transfer an offender to a different degree of security.

a. Lesser degree of security

The DOC may change the degree of security to which the inmate is assigned. However, if the defendant's degree of security is changed to a lesser degree than originally assigned within the first two years of commitment, the DOC must notify the trial court and the prosecuting attorney within thirty days before the effective date of the changed security assignment. Ind. Code § 35-38-3-5(b).

b. Transfer of juvenile to adult facility under IC 11-10-2-10

The commissioner may transfer a committed delinquent offender to an adult facility or program according to the following requirements:

- (1) The offender must be seventeen years of age or older at the time of transfer.
- (2) The DOC must determine that:
 - (a) either the offender is incorrigible to the degree that his presence at a facility or program for delinquent offenders is seriously detrimental to the welfare of other offenders, or the transfer is necessary for the offender's own physical safety or the physical safety of others; and
 - (b) there is no other action reasonably available to alleviate the problem.
- (3) No offender may be transferred to the Indiana state prison or the Pendleton Correctional Facility.

The offender is under the full custody of the adult facility or program to which he is transferred until he is returned to a facility or program for delinquent offenders, except that his parole or discharge from the DOC shall be determined under IC 11-13-6. Ind. Code § 11-10-2-10.

c. No due process implications

(1) Considered for lesser security

The decision to change security classification of prisoners who had served two years was solely within discretion of the DOC, so any expectation an inmate may have had in being considered for a lower security clearance was too insubstantial to rise to the level of due process protection. Kincaid v. Duckworth, 689 F.2d 702, 704 (7th Cir. 1982).

(2) Transferred to higher security

Transfer of an inmate, through no fault of his own, to a prison with a greater degree of security and restrictions does not violate due process. Stuck v. Aikens, 760 F.Supp. 740, 745-46 (N.D. Ind. 1991).

D. COPY TO DOC

Pursuant to Ind. Code § 35-38-1-14, if a convicted person is sentenced to a term of imprisonment, the court shall send to the DOC a copy of:

- (1) the presentence report;
- (2) any presentence memorandum filed by the convicted person;
- (3) the report of any physical or mental examination made incident to the question of sentence;
- (4) any record made pursuant to Ind. Code § 35-35-2 or Ind. Code § 35-35-3;
- (5) the abstract of judgment;
- (6) the judgment of conviction; and
- (7) the sentencing order.

II. COMMITMENT TO COUNTY FACILITIES

A. IN GENERAL,

A court has the power to commit a defendant to the county jail instead of the DOC. A defendant does not have an absolute right to be committed to the DOC as opposed to the county jail. Once a defendant is ordered committed to the DOC, the locale of imprisonment is for the determination of the DOC, but a trial court is not required to commit a defendant to the DOC, and may, instead, order the defendant committed to the county jail. Brock v. State, 558 N.E.2d 872, 875-76 (Ind. Ct. App. 1990).

Although a defendant may be denied access to recreation, education, counseling, or other rehabilitative services in a county jail that would otherwise be provided in the DOC, such denial is not in violation of the ban on cruel and unusual punishment, and there is no length of time that is considered more constitutionally conducive to incarceration at a county jail versus the DOC. Lindsey v. State, 877 N.E.2d 190, 197-98 (Ind. Ct. App. 2007) (upholding an 8-year sentence to a county jail).

B. MISDEMEANORS

Pursuant to Ind. Code § 35-38-3-3(a), a person convicted of a misdemeanor may not be committed to the DOC.

However, pursuant to Ind. Code § 35-38-3-3(b), upon a request from the sheriff, the commissioner may agree to accept custody of a misdemeanant:

- (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. LEVEL 6 FELONIES

1. After June 30, 2014, and before January 1, 2016 (IC 35-38-3-3(c))

A person convicted of a Level 6 felony may not be committed to the DOC if the person's earliest possible release date is less than 91 days 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. Ind. Code § 35-38-3-3(c).

"Earliest possible release date" includes credit time the person has earned before sentencing and the maximum amount of credit time that the person would earn if the person remained in the same credit time assignment during the person's period of commitment. See Ind. Code § 35-38-3-1.

2. After December 31, 2015 (Ind. Code § 35-38-3-3(d))

A court may not commit a person convicted of a Level 6 felony to the DOC unless:

- (1) the commitment is due to the revocation of the person's sentence for violating probation, parole, or community corrections and the revocation of the person's sentence is due to a new criminal offense;
- (2) the person is convicted of a Level 6 felony that was committed in a penal facility; or
- (3) the person:
 - (a) is convicted of a Level 6 felony and the sentence for that felony is ordered to be served consecutively to the sentence for another felony;
 - (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;
 - (c) has received an enhanced sentence under IC 9-30-15.5-2;
 - (d) is a violent offender as defined in IC 35-31.5-2-352(1); or
 - (e) has two (2) prior unrelated felony convictions;
 - and the person's earliest possible release date is more than 365 days after the date of sentencing; or
- (4) the commitment is due to an agreement made between the sheriff and the DOC under IC 11-12-6.5.

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. Ind. Code § 35-38-3-3(d).

3. Sheriff entitled to per diem and medical expense reimbursement

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 § 4 for the cost of incarcerating a person described in subsections (c) and (d) in the county jail, but only for the time that the person is actually incarcerated in the county jail. The reimbursement shall be reviewed by

the budget committee and is subject to the approval by the budget agency. Ind. Code § 35-38-3-3(e).

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 the person described in subsections (c) and (d) is incarcerated in the county jail. Ind. Code § 35-38-3-3(f).

OPEN QUESTIONS: Is community transition (CTP) included in calculating the EPRD?

Will the prohibition against sending level 6 felons to DOC cause judges to increase sentences above EPRD thresholds?

Will State reimbursements to Sheriffs cause increase in use of jail over probation/community corrections?

Will the requirement that probation/parole/CC violator may not be sent to the DOC unless for a new crime, result in an increase in new crimes charged as reason for violation?

III. TRANSPORTATION TO THE DEPARTMENT OF CORRECTION

The sheriff is required to deliver the defendant and a copy of the judgment of conviction and sentence to the DOC. Ind. Code § 35-38-3-4(a).

A. RECEIPT REQUIRED

The sheriff is to take from the receiving authority a receipt for the convicted person. Ind. Code § 35-38-3-4(a)(4).

B. TIME LIMITS

The sheriff shall transport the convicted person to a receiving authority within five days after the day of sentencing unless the court orders the sheriff to transport the person within some other specified period. Ind. Code § 35-38-3-4(b). See Stephenson v. State, 179 N.E. 633, 640 (1932) (a judge is allowed to hold a defendant in county jail pending a motion for a new trial).

Brock v. State, 558 N.E.2d 872, 875-76 (Ind.Ct.App. 1990) (defendant does not have an absolute right to be committed to the DOC; sheriff must transfer convicted person to “receiving authority,” which may be sheriff in a county jail or DOC; thus, incarceration in a county jail was not improper despite trial court’s reference to incarceration in DOC at sentencing hearing).

Stephenson v. State, 205 Ind. 141, 161, 179 N.E. 633, 640 (1932) (distinguishing Ex Parte Huffman, 181 Ind. 241, 104 N.E. 511 (1914), refusal of court to permit defendant, convicted of murder, to remain in county jail pending motion for new trial, did not deprive defendant of constitutional right to be heard where he was returned when court ruled on motion).

Ex Parte Huffman, 181 Ind. 241, 104 N.E. 511 (1914) (notwithstanding statute providing that sheriff must deliver prisoner within five days, court would not be authorized to order prisoner taken to prison pending determination of his motion for new trial).

C. OFFENSE LIMITS - LEVEL 6 FELONIES

A person convicted of a Level 6 felony may not be committed to the DOC if the person's earliest possible release date is less than 91 days from the date of sentencing (366 days for persons convicted after July 1, 2015), unless the commitment is due to the person violating a condition of probation, parole, or community corrections by committing a new criminal offense. Ind. Code 35-38-3-3(c) and (d). "Earliest possible release date" includes credit time the person has earned before sentencing and maximum amount of credit time that the person would earn if the person remained in the same credit time assignment during the person's period of commitment. See Ind. Code 35-38-3-1.

After June 30, 2014, county sheriffs are entitled to a per diem and medical expense reimbursement for the cost of incarcerating the Level 6 felons in the county jail. The reimbursement shall be reviewed by the budget committee and is subject to the approval by the budget agency. Ind. Code 35-38-3-3(e).

D. DEATH PENALTY CASES

A person who receives a death sentence is to be transported by the sheriff to the warden of the prison immediately upon receiving a death warrant. The receipt issued for the defendant shall be delivered by the sheriff to the clerk of the sentencing court. Ind. Code § 35-38-6-3.

IV. COMMENCEMENT OF SENTENCE

A. UPON DATE OF SENTENCE

A term of imprisonment begins on the date sentence is imposed unless execution of the sentence is stayed according to law. Ind. Code § 35-38-3-2(d).

B. EXCEPTIONS

1. Consecutive sentences

Where a defendant is serving consecutive sentences, his actual release from the DOC, not the end of his executed sentence, triggers the probationary phase of his sentence. In other words, the defendant does not serve his probationary period simultaneously with the consecutive executed sentence. Hart v. State, 889 N.E.2d 1266 (Ind. Ct. App. 2008).

2. Stay pending appeal

Ind. Code § 35-33-9-5 authorizes the court to stay the sentence of a defendant who is admitted to bail pending appeal. If the appeal is dismissed or the judgment affirmed, imprisonment commences to run from the time the defendant surrenders according to the terms of the bond.

Ind. Code § 35-50-2-9(h) gives the Indiana Supreme Court exclusive jurisdiction to stay the execution of a death sentence pending appeal.

3. Intermittent term of imprisonment

Ind. Code § 35-38-2-2.3(c) authorizes intermittent terms of imprisonment as a condition of probation.

C. DELAY IN COMMENCEMENT

The trial court loses jurisdiction over defendant after certification of affirmance of conviction, if it does not act to initiate commencement of sentence imposed within reasonable time. Woods v. State, 583 N.E.2d 1211, 1213 (Ind. 1992).

Woods v. State, 583 N.E.2d 1211 (Ind. 1992) (five-and-half year delay in commencement of sentence caused trial court to lose jurisdiction; ordering execution of sentence would violate principles of equity because defendant stayed out of legal trouble, resided at same address, remained steadily employed, raised two children, and developed health problems during five-and-half year period).

Layne v. State, 172 Ind.App. 570, 361 N.E.2d 170 (1977) (delay of six months from final appeal until order for execution of sentence was not long enough to lose jurisdiction; however, this case follows Smith v. Howard, 206 Ind. 496, 190 N.E. 169 (1934), which was modified by Woods).

Hull v. State, 799 N.E.2d 1178 (Ind.Ct.App. 2003) (in imposing enhanced executed sentences of sixty-five (65) years for each of two (2) murder convictions, trial court erred in ordering ten (10) years of sentence for count II to be served consecutively to sixty-five (65) year sentence for count I; there is no statutory authority for ten (10)-year delay in commencement of sentence for count II, and thus, sentence was illegal).

Beliles v. State, 663 N.E.2d 1168 (Ind.Ct.App. 1996) (delay in correcting judgment to reflect actual agreed upon sentence which was longer than sentence in incorrect judgment was not reversible error where defendant was not prejudiced beyond frustrated expectation of being released from prison; defendant was in prison properly serving sentence, although he had made plans to be released).

V. GUILTY BUT MENTALLY ILL

If a defendant who is found guilty but mentally ill at the time of the crime is committed to the DOC, he shall be further evaluated and then treated in such a manner as is psychiatrically indicated for his mental illness. The treatment may be provided by the DOC or the division of mental health and addiction. Ind. Code § 35-36-2-5(c). However, this statute does not impose any duty additional to the DOC's duty under IC 11-10-4-1 *et. seq.* to furnish necessary medical attention to all inmates, including the mentally ill. See generally Whitt v. State, 497 N.E.2d 1059, 1061 (Ind. 1986) and Truman v. State, 481 N.E.2d 1089, 1090 (Ind. 1986).

Georgopolus v. State, 735 N.E.2d 1138, 1141 (Ind. 2000) (wherever defendant is found guilty but mentally ill at time of crime, court shall sentence defendant in same manner as defendant found guilty of offense; however, physician must evaluate guilty but mentally ill defendant before trial court may sentence him, and at DOC, guilty but mentally ill defendant must be further evaluated and treated as is psychiatrically indicated for his mental illness).

VI. TEMPORARY LEAVE

A. AUTHORITY UNDER IC 11-10-9-2(a)

The DOC may grant an offender a temporary leave from a correctional facility or program for a designated purpose and period of time, in Indiana, either alone or accompanied by a DOC employee or other custodial agent:

- (1) to visit a close relative who is seriously ill;
- (2) to attend the funeral of a close relative;
- (3) to obtain medical, psychiatric, or psychological services;
- (4) to make arrangements for employment, admittance to an educational or vocational training institution or program or participation in any other activity authorized by the DOC;
- (5) to secure a residence or make other preparation for release or discharge;
- (6) to appear before any group whose purpose is to obtain an understanding of crime or corrections, including appearances on television or radio;
- (7) to return to his home or other place authorized by the DOC during what appears to be his terminal illness; or
- (8) for any other purpose the DOC determines to be in the best interest of the offender and the public.

Ind. Code § 11-10-9-2(a).

B. LENGTH OF LEAVE

All temporary leaves other than one granted for terminal illness are limited to five days or less. Ind. Code § 11-10-9-2(b).

C. WRITTEN AUTHORIZATION REQUIRED

Before an offender is released under this chapter, the DOC shall give him a written authorization for temporary leave which specifies the conditions of that leave. At all times while on leave, the offender must keep the authorization in his possession. Ind. Code § 11-10-9-2(c).

D. DOC EMPLOYEE MUST ACCOMPANY

An offender must be accompanied by a DOC employee or other custodial agent while on temporary leave unless he has been assigned a minimum-security classification described in Ind. Code § 35-38-3-6. Ind. Code § 11-10-9-2(d).

E. DOC'S DECISION

1. DOC's discretion

Prison officials must be accorded broad discretion in determining whether prisoners will be allowed to temporarily leave an institution during their sentence. Merritt v. Broglin, 891 F.2d 169, 174 (7th Cir. 1989). In addition, the DOC may establish directives governing the

implementation of this chapter, including an offender's eligibility for, and conduct while on, temporary leave. Ind. Code § 11-10-9-2(e). For purposes of IC 4-22-2, the term "directive" as used in this subsection relates solely to internal policy and procedure not having the force of law. Id.

PRACTICE POINTER: 210 IAC § 1-5-1 contains administrative rules concerning the conditions under which inmates may temporarily leave the institution as well as the procedures for requesting such leave.

2. No due process implications

Indiana's Administrative Code and the correctional facility's directive do not create a liberty interest that entitles prisoners to constitutional due process protections. Merritt v. Broglin, 891 F.2d 169, 173 (7th Cir. 1989) (prisoner did not have liberty interest in attending his stepfather's funeral, where administrative provisions governing such leave of absence were more consistent with internal procedure than creation of substantive rights).

F. JUVENILES

Ind. Code § 11-10-10-1 et. seq., Temporary Release - Delinquent Offenders, provides temporary release from juvenile facilities for similar reasons as stated above.

G. FAILURE TO RETURN TO LAWFUL DETENTION

A person who knowingly or intentionally fails to return to lawful detention following temporary leave granted for a specified purpose or limited period commits failure to return to lawful detention, a Level 6 felony. Ind. Code § 35-44.1-3-4(c).

VII. RELEASE PROCEDURES

Ind. Code § 11-10-12-5.7 establishes basic procedures for committed offenders concerning their release from a correctional facility. For example, the DOC must provide offenders with internet access and employment counseling at least ninety days prior to their release from prison. Ind. Code § 11-10-12-6 (imposing a requirement on the DOC to provide offenders anticipating release with internet access and employment counseling at least 90 days before they will be released). The DOC is also required to transport the released offenders to either their designated place of residence, an Indiana city or town nearest their designated place of residence, or to a place chosen by the commissioner. Ind. Code § 11-10-12-2.

However, the statutes do not require the DOC to find housing for mentally ill offenders upon their release. See Ind. Code § 11-10-12-5.7 (discussing general release procedures for mentally ill offenders and explaining that the DOC is responsible for ensuring that mentally ill offenders will be able to access the treatment that was obtained for them at the time that they are released from the DOC); See also Your Rights as an Adult Receiving Treatment in a Mental Health Facility in Indiana, IND. PROTECTION AND ADVOC. SERV. (Feb. 2013), http://in.gov/idr/files/0482-1036_IPAS-RightsBooklet02-13LASER.pdf [<https://perma.cc/D7GN-74SJ>] (identifying the United States Code provisions that require certain conditions upon release for the mentally ill).

In 2021, Ind. Code § 11-10-12-5.7 was amended to permit, under certain circumstances, an offender committed to the DOC to be held within a treatment facility operated by the department for not more

than 14 days beyond the offender's mandatory release date if: (1) the offender consents; or (2) a court has ordered the offender to be committed to a treatment setting outside the department.

Along with Indiana's general release statutes, Indiana has made other attempts at reducing recidivism, such as forensic diversion programs (see Chapter 5, Sentencing Alternatives).

VIII. WORK AND EDUCATIONAL RELEASE

A. AUTHORITY

1. Establishment of Program under Ind. Code § 11-10-8-2(a)

The DOC shall establish a minimum-security release program in which eligible committed offenders may be temporarily released from custody to:

- (1) work;
- (2) conduct a business or other self-employed occupation, including housekeeping or attending to family needs;
- (3) attend an academic or vocational training institution or program;
- (4) obtain medical, psychiatric, or psychological treatment, including treatment for drug addiction or alcoholism; or
- (5) accomplish other purposes consistent with programs of the DOC.

2. DOC's decision – no due process implications

Use of the permissive term “may” in IC 11-10-8-3 and IC 11-10-8-2 makes any decision to grant or deny educational training or work release discretionary with prison administrators, and denial of a request for such training does not infringe on any constitutionally protected liberty interest or due process implications. Hendrix v. Evens, 715 F.Supp. 897, 908-09 (N.D. Ind. 1989). See also Young v. Hunt, 507 F.Supp. 785, 789 (N.D. Ind. 1981).

However, pursuant to Ind. Code § 11-10-8-5, the DOC shall establish directives governing:

- (1) eligibility and selection of prospective employers for participation in the work release program;
- (2) eligibility and selection of institutions and programs for participation in the study release program;
- (3) eligibility and selection of hospitals, clinics or other agencies or individuals for participation in the medical release program;
- (4) the procedure by which an offender may apply for participation in minimum security release program;
- (5) custody of an offender during the time he is not actively engaged in the activity to which he is assigned;
- (6) conduct of an offender participating in a minimum-security release program, including sanctions for violations of rules of conduct;
- (7) accounting procedures for the disposition of a participating offender's hearings;

- (8) an offender's voluntary or involuntary removal from a minimum-security release program;
- (9) departmental assistance in obtaining medical treatment or suitable employment, academic or vocational training in the programs authorized by this chapter; and
- (10) any additional matters concerning the general administration of programs authorized by this chapter.

The term "directive" as used in this section relates solely to internal policy and procedure not having the force of law. Ind. Code § 11-10-8-5(b).

B. ELIGIBILITY

1. Minimum security classification

Pursuant to Ind. Code § 11-10-8-3(a), before an offender may be assigned to a minimum-security release program:

- (1) the offender must be assigned to a minimum security classification in accord with IC 35-38-3 (any change in the degree of security, from minimum to a higher degree, whether the change occurs before or after assignment to a release program, renders the offender ineligible for participation in the release program, and the DOC shall take appropriate action for the offender's immediate removal from the release program and reassignment to a facility or program consistent with the offender's degree of security assignment); and
- (2) the DOC must find that:
 - (a) the offender is likely to respond affirmatively to the program;
 - (b) it is reasonably unlikely that the offender will commit another crime while assigned to the program; and
 - (c) the offender demonstrates reading and writing skills that meet minimum literacy standards:
 - (i) developed by the DOC; and
 - (ii) established under rules adopted by the DOC under IC 4-22-2.

2. Violent crimes and sex offenses

An offender convicted of a violent crime (as defined in IC 5-2-6.1-8) or a sex offense under IC 35-42-4 or IC 35-46-1-3 is not eligible to participate in a minimum-security assignment that constitutes an assignment of the offender to a program requiring weekly reporting to a designated official. Ind. Code § 11-10-8-2(b).

However, IC 35-38-2.5-7(c) authorizes home detention for a person convicted of a sex offense under IC 35-42-4 or IC 35-46-1-3 if:

- (1) the home detention is supervised by a court approved home detention program; and

- (2) the conditions of home detention include 24-hour per day supervision of the offender and require the use of surveillance equipment and a monitoring device that can transmit information 24 hours each day regarding an offender's precise location.

3. Exception to literacy requirement

An offender is exempt from the minimum literacy requirement if the DOC determines that the offender is unable to meet the minimum literacy standards as a result of a disability, or the length of the offender's sentence prevents the offender from achieving the minimum literacy standards before the expiration of the offender's sentence. Ind. Code § 11-10-8-3(b).

C. NOTICE TO VICTIMS

Before the DOC assigns an offender to a work release program, it must notify any victim of the offender's crime of the right to submit a written statement to:

- (1) A sentencing court in accordance with IC 11-10-11.5-4.5 if the offender is under consideration for assignment to a community transition program; and
- (2) the DOC, if the offender is under consideration for assignment to any other work release program.

Ind. Code § 11-10-8-9

D. CONDITIONS

Like a probationer, an individual on work release may waive his Fourth Amendment protections as a condition of work release. However, any subsequent search has to be reasonable, and a condition of work release that purports to require participant to submit to search or seizure without reasonable suspicion is overly broad. Green v. State, 719 N.E.2d 426 (Ind. Ct. App. 1999) (*citing Purdy v. State*, 708 N.E.2d 20 (Ind. Ct. App. 1999)). For a detailed analysis of the limitations on waiving Fourth Amendment protections, see Chapter 12, *Probation*, Subsection II.G.5, *Consent to search provision*.

Green v. State, 719 N.E.2d 426 (Ind.Ct.App. 1999) (defendant's presence in area which is allegedly used to grow marijuana did not constitute reasonable suspicion to justify investigatory stop; fact that defendant waived Fourth Amendment protections in work release conditions did not relieve police of reasonable suspicion requirements).

E. DISTRIBUTION OF EARNINGS

1. In general

Pursuant to Ind. Code § 11-10-8-6(a), the earnings of an offender employed in a work release program under this chapter, less payroll deductions required by law and court ordered deductions for satisfaction of a judgment against the offender, shall be surrendered to the DOC or its designated representative. The remaining earnings shall be distributed in the following order:

- (1) State and federal income taxes and Social Security deductions not otherwise withheld;

- (2) The cost of membership in an employee organization;
- (3) Ten percent of the offender's gross earnings, to be deposited in the violent crime victim's compensation fund established by IC 5-2-6.1-40;
- (4) Not less than fifteen percent of the offender's gross earnings, if that amount of the gross is available after the above deductions, to be given to the offender or retained by the DOC. If retained by the DOC, the amount, with accrued interest, must be returned to the offender not later than at the time of his release on parole or discharge;
- (5) The expense of room and board, as fixed by the DOC and the state budget agency, in facilities operated by the DOC, or, if the offender is housed in a facility not operated by the DOC, the amount paid by the DOC to the operator of the facility or other appropriate authority for room and board and other incidentals as established by agreement between the DOC and the appropriate facility;
- (6) Transportation cost to and from work, and other work related incidental expenses;
- (7) Court ordered costs or fines imposed as a result of conviction of an offense under Indiana law, unless the costs or fines are being paid through other means.
- (8) If an offender is eligible for an offender reentry administrative account under IC 11-10-15, at least ten percent (10%) and not more than twenty percent (20%) of the offender's gross earnings, to be deposited in the offender's reentry administrative account.

2. Child support and other obligations

Pursuant to Ind. Code § 11-10-8-6(b), after the amounts prescribed above are deducted, the DOC may, out of the remaining amount:

- (1) When directed by the offender or ordered by the court, pay for the support of the offender's dependents (if his dependents are receiving welfare assistance, the appropriate county office of the division of family resources or welfare department in another state shall be notified of these disbursements); and
- (2) with the consent of the offender, pay to his victims or others any unpaid obligations of the offender.

3. Offender's portion

Any amount remaining after the above disbursements shall be given to the offender in accord with IC 11-10-8-6(a)(4) above. Ind. Code § 11-10-8-6(c).

4. Waiver of room and board

The DOC may, when special circumstances warrant or for just cause, waive the collection of room and board charges by or on behalf of a facility operated by the DOC or, if the offender is housed in a facility not operated by the DOC, authorize payment of room and board charges from other available funds. Ind. Code § 11-10-8-6(d).

F. PROBLEMS AND ACCIDENTS DURING EMPLOYMENT

1. Supervision over employment conditions

The department of labor shall exercise the same supervision over conditions of employment for offenders under this chapter as the department of labor does over conditions of employment for persons who are not committed. Ind. Code § 11-10-8-7.

2. Not agent of DOC

An offender employed under this chapter by an employer other than the DOC is not an agent, employee or involuntary servant of the DOC while working or going to or from the employment. Ind. Code § 11-10-8-8.

IX. COMMUNITY TRANSITION PROGRAM

A. DESCRIPTION

A county or combination of counties shall establish a community transition program as part of its community corrections program. If a county does not participate in a community corrections program, each court with felony jurisdiction in the county shall provide community transition program services through the probation department for the court. Ind. Code § 11-12-10-1. A community transition program for a county must provide services that improve an offender's chance of making a successful transition from commitment to employment and participation in the community without the commission of further crimes. The program may include any of the services described in IC 11-12-1-2.5. Ind. Code § 11-12-10-2. For statutes dealing with funding, see Ind. Code § 11-12-10-3, 4, 4.5.

Community transition program means the assignment of a person committed to DOC to:

- (1) A community corrections program; or
- (2) in a county or combination of counties that does not have a community corrections program, a program of supervision by the probation department of a court

for a period after a person's community transition program commencement date until the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term. Ind. Code § 11-8-1-5.5.

B. DEFINITIONS

1. Community Corrections Program

A community corrections program has the meaning set forth in IC 11-12-1-1. Ind. Code § 11-8-1-5.4. A community corrections program means a community based program that provides preventive services, services to offenders, services to person charged with a crime or an act of delinquency, services to persons diverted from the criminal or delinquency process, services to persons sentenced to imprisonment, or services to victims of crime or delinquency, and is operated under a community corrections plan of a county and funded at least in part by the state subsidy provided in IC 11-12-2. Ind. Code § 11-12-1-1. For a more detailed discussion on direct placement in a community corrections program, see Chapter 5, *Sentencing Alternatives*, Subsection III, *Direct Placement in Community Corrections*.

2. Expected Release Date

Pursuant to Ind. Code § 11-8-1-8.5, “expected release date” means the most likely date on which a person would be entitled under IC 35-50-6-1(a)(2) or IC 35-50-6-1(a)(3) to release to the committing court for probation or release on parole considering:

- (1) the term of 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;
- (4) credit time that the person has earned on and after sentencing; and
- (5) the amount to credit time that the person would earn if the person remains in the credit time class in which the person is currently assigned during the person’s period of imprisonment.

3. Confined

Pursuant to Ind. Code § 11-8-1-6, “confined” has the same meaning as “committed” except it does not refer to any part of:

- (1) parole;
- (2) a minimum-security assignment to a program requiring periodic reporting to a designated official; or
- (3) intermittent service of a term of imprisonment

that does not entail imprisonment in a correctional or penal facility.

4. Offender

Pursuant to Ind. Code § 11-8-1-9, “offender” means a criminal offender, which is a person of any age who is convicted of a crime or a delinquent offender, which is a person who is adjudged delinquent by a juvenile court.

5. Discharge

Pursuant to Ind. Code § 11-8-1-8, “discharge” means termination of a commitment to the DOC.

6. Drug or alcohol abuse counseling programs

Pursuant to Ind. Code § 11-12-1-2.5, “drug or alcohol abuse counseling programs” may include:

- (1) Addiction counseling,
- (2) inpatient detoxification, and
- (3) medication assisted treatment, including using a FDA approved long acting, non-addictive medication for the treatment of alcohol or opioid dependence.

C. ELIGIBILITY

A person who is committed to the department under IC 35-50 for one or more felonies, and against whom the court has imposed at least a two-year sentence, may be eligible for the community transition program. Ind. Code § 11-10-11.5-1.

However, an offender who resides outside of Indiana is not eligible for the community transition program. Ind. Code § 11-10-11.5-3.5.

D. LENGTH OF PLACEMENT

A person assigned to a community transition program shall remain in the assignment until the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term, unless the community transition program causes the person to be returned to the department for reassignment from the community transition program to a program or facility administered by the department under IC 11-10-11.5-11.5(b). Ind. Code § 11-10-11.5-9. Ind. Code § 11-10-12-2 does not apply to a person who completes an assignment in a community transition program. Id.

1. Commencement Date

Commencement date is based upon the most serious offense to which a defendant has been convicted and is governed under IC 11-8-1-5.6.

a. Class D or Level 6 felony

Not earlier than sixty (60) days and not later than thirty (30) days before an offender's expected release date. Ind. Code § 11-8-1-5.6(a)(1).

b. Class C or Level 5 felony and violent offense

Not earlier than ninety (90) days and not later than thirty (30) days before an offender's expected release date. Ind. Code § 11-8-1-5.6(a)(2).

c. Class C or Level 5 felony AND non-violent drug offenses under IC 16-42-19 or IC 35-48-4 and none of the offenses are non-suspendible under IC 35-50-2-2.2

Not earlier than one hundred twenty (120) days and not later than thirty (30) days before an offender's expected release date. Ind. Code § 11-8-1-5.6(a)(3).

d. Class A or B or Level 1 - 4 felony and violent offense

Not earlier than one hundred twenty (120) days and not later than thirty (30) days before an offender's expected release date, as long as Ind. Code § 11-8-1-5.6(5) does not apply. Ind. Code § 11-8-1-5.6(a)(4).

e. Class A or B or Level 1-4 felony AND non-violent drug Offenses under IC 16-42-19 or Ind. Code § 35-48-4 and none of the offenses are non-suspendible under Ind. Code § 35-50-2-2.2

Not earlier than one hundred and eighty (180) days and not later than thirty (30) days before an offender's expected release date. Ind. Code § 11-8-1-5.6(a)(5).

2. Credit time

A person assigned to a community transition program continues to earn credit time during the person's assignment to a community transition program. Ind. Code § 11-10-11.5-10.

E. CONDITIONS

1. Notice of conditions

As soon as is practicable after receiving the offender, the community transition program shall provide the offender with a reasonable opportunity to review the rules and conditions applicable to the offender's assignment in the program. Ind. Code § 11-10-11.5-8(b).

2. Any felony

Pursuant to Ind. Code § 11-10-11.5-11, while assigned to a community transition program, a person must comply with:

- (1) the rules concerning the conduct of persons in the community transition program, including rules related to payments described in IC 11-10-11.5-12 that are adopted by the community corrections advisory board establishing the program or, in counties that are not served by a community corrections program, that are jointly adopted by the courts in the county with felony jurisdiction; and
- (2) any conditions established by the sentencing court for the person.

3. Murder, Class A or B or Level 1-4 felony

The court's order for community transition program for individual who committed murder, Class A or B felony or a Level 1-4 felony may include any other condition that the court could impose if the court had placed the person on probation under IC 35-38-2 or in a community corrections program under IC 35-38-2.6. Ind. Code § 35-38-1-25(b).

4. Sex Offenders under IC 11-10-11.5-11(b).

As a rule of the community transition program, a person convicted of a sex offense (as defined in IC 11-8-8-5.2) may not use a social networking web site (as defined in IC 35-31.5-2-307) or an instant messaging or chat room program (as defined in IC 35-31.5-2-173) to communicate, directly or through an intermediary, with a child less than sixteen (16) years of age. However, the rules of the community transition program may permit the offender to communicate using a social networking web site or an instant messaging or chat room program with:

- (1) the offender's own child, stepchild, or sibling; or
- (2) another relative of the offender specifically named in the rules applicable to that person.

5. Earnings

Pursuant to Ind. Code § 11-10-11.5-12, any earnings of a person employed while in a community transition program, less payroll deductions required by law and court ordered

deductions for satisfaction of a judgment against that person, may be collected by the community transition program at the discretion of the community transition program. Unless otherwise ordered by the sentencing court, if the community transition program collects the earnings under this section, the remaining earnings shall be distributed in the following order:

- (1) To pay state and federal income taxes and Social Security deductions not otherwise withheld.
- (2) To pay the cost of membership in an employee organization.
- (3) Not less than twenty-five percent (25 %) of the person's gross earnings, if that amount of the gross is available after the above deductions, to be given to that person or retained for the person, with accrued interest, until the person's release or discharge.
- (4) To pay for the person's room and board or electronic monitoring provided by the community transition program.
- (5) To pay transportation costs to and from work and other work related incidental expenses incurred by the community transition program.
- (6) To pay court ordered costs, fines, or restitution.

After the amounts prescribed in IC 11-10.11.5-12(a) are deducted, the remaining amount may be used to:

- (1) when directed by the person or ordered by the court, pay for the support of the person's dependents (if the person's dependents are receiving welfare assistance, the appropriate office of family and children or welfare department in another state shall be notified of such disbursements); and
- (2) with the consent of the person, pay to the person's victims or others any unpaid obligations of that person.

Any remaining amount shall be given to the person or retained for the person according to IC 11-10-11.5-12(a)(3). Ind. Code § 11-10-11.5-12(c).

The collection of room and board or electronic monitoring costs under subsection IC 11-10-11.5-12(a)(4) may be waived. Ind. Code § 11-10-11.5-12(d).

6. Violations of conditions

Pursuant to Ind. Code § 11-10-11.5-11.5(b), the community transition program, following a hearing and upon a finding of probable cause that the offender has failed to comply with a rule or condition under Ind. Code § 11-10-11.5-11 may:

- (1) request a court to issue a warrant ordering the department to immediately:
 - (a) return the offender to the department; or
 - (b) reassign the offender to a program or facility administered by the department;or;
- (2) take disciplinary action against an offender who violates rules of conduct. Disciplinary action under this subdivision may include the loss of earned credit time under Ind. Code § 35-50-6-5.

An offender who is returned to the department, under IC 11-10-11.5-11.5 (b), is not eligible for assignment to another community transition program for the duration of the sentence or sentences the offender is actively serving. Ind. Code § 11-10-11.5-11.5(c).

F. EFFECT OF PLACEMENT IN PROGRAM

Except for sex offenders (defined in IC 11-8-8-4.5), when a person imprisoned for a felony completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to that term, the person shall be discharged, upon a finding by the committing court that the person was assigned to a community transition program and may be discharged without the requirement of parole. Ind. Code § 35-50-6-1(a)(2).

G. PROCEDURE FOR PLACEMENT

1. Notice

a. Sentencing court

Pursuant to Ind. Code § 11-10-11.5-2, not earlier than sixty (60) days and not later than forty-five (45) days before an offender's community transition program commencement date, the department shall give the court that sentenced the offender written notice of the offender's eligibility for a community transition program to each court that sentenced the offender for a period of imprisonment that the offender is still actively serving. The notice must include the following information:

- (1) the person's name;
- (2) a description of the offenses for which the person was committed to the department;
- (3) the person's expected release date;
- (4) the person's community transition program commencement date designated by the department;
- (5) the person's current security and credit time classifications;
- (6) a report summarizing the person's conduct while committed to the department; and
- (7) any other information that the department determines would assist the sentencing court in determining whether to issue an order under IC 35-38-1-24 or IC 35-38-1-25.

If the offender's expected release date changes as the result of the loss of educational credit or good time credit after notice is sent to each court the offender may become ineligible for the community transitions program. Ind. Code § 11-10-11.5-2(b). The department shall notify each court whenever the department finds that an offender is ineligible for the program because of a change in the person's credit time. Ind. Code § 11-10-11.5-2(d).

Pursuant to Ind. Code § 11-10-11.5-2(c), if the offender's expected release date changes as a result of the gain of educational credit or good time credit after notice is sent to each court, the offender may be assigned to a community transition program if the department determines that:

- (1) a sufficient amount of time exists to allow a court under IC 35-38-1-24 or IC 35-38-1-25 to consider a written statement described in Ind. Code § 11-10-11.5-4.5; and
- (2) an offender will have at least thirty (30) days remaining on the offender's sentence after the court's consideration of a written statement under subdivision (1), calculated as follows:
 - (a) Beginning on the date the department will assign the offender to a minimum-security classification and place the offender in a community transition program.
 - (b) Ending with the recalculated expected release date.

The department shall provide any other information requested by the sentencing court. Ind. Code § 11-10-11.5-3.

b. Prosecutor

The department shall send a copy of the notice required under Ind. Code § 11-10-11.5-2 to the prosecuting attorney where the person's case originated. The notice under this section need not include the information described in Ind. Code § 11-10-11.5-2(6) [report summarizing the person's conduct while committed to the department] through Ind. Code § 11-10-11.5-2(7) [any other information that the department determines would assist court] and IC 11-10-11.5-3 [information requested by court]. However, upon request to the sentencing court, the court receiving the notice shall permit the prosecuting attorney to review and obtain copies of any information included in the notice. Ind. Code § 11-10-11.5-4.

c. Victim and Offender

Before the DOC may assign an offender to a minimum security classification and place the offender in a community transition program, it shall notify the offender and any victim of the offender's crime of the right to submit a written statement regarding the offender's assignment to the community transition program and the offender of the right to submit a written statement objecting to the offender's placement in the community transition program, to each court that sentenced the offender to a period of imprisonment that the offender is actively serving. Ind. Code § 11-10-11.5-4.5(a).

The written statement of the offender or a victim of the offender's crime must be submitted to each court and the DOC not later than ten (10) working days after receiving notice from the DOC. Ind. Code § 11-10-11.5-4.5(b).

An offender's written statement objecting to the offender's placement in a community transition program must be submitted to each court and the department not later than ten (10) working days after receiving notice from the department under subsection (a), or before the offender is transported under IC 11-10-11.5-7. Ind. Code § 11-10-11.5-4.5(c).

2. Assignment

a. County

If an offender who is eligible to be assigned to a community transition program is sentenced by more than one court, the offender must be considered for assignment to a community transition program located in the community where the court has imposed the sentence with the longest period of imprisonment that the offender is actively serving is located. Ind. Code § 11-10-11.5-3.6. However, before an offender may be assigned to a community transition program, each court that sentenced the offender to a period of imprisonment that the offender is actively serving must agree to the assignment. Id.

b. Class C or D felony or Level 5 or 6 felony

Unless the department has received a denial of assignment to community transition program by the sentencing court under IC 35-38-1-24 or a warrant order of detainer seeking the transfer of the person to a county or another jurisdiction, the department shall assign a person to a minimum security classification and place the person in a community transition program beginning with the community transition program commencement date designated by the department until the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term. Ind. Code § 11-10-11.5-5.

Not later than forty-five days after receiving a notice under IC 11-10-11.5-2, the sentencing court may order the DOC to retain control over a person until the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term, if the court makes specific findings that support a determination: (1) that placement of the person in a community transition program places the person in danger of serious bodily injury or death or represents a substantial threat to the safety of others; or (2) of other good cause. Ind. Code § 35-38-1-24(b).

(1) Hearing

The court may make a determination under this section without a hearing. Ind. Code § 35-38-1-24(c). The court shall consider any written statement presented to the court by a victim of the offender's crime or by an offender under Ind. Code § 11-10-11.5-4.5. Id. The court in its discretion may consider statements submitted by a victim after the time allowed for the submission of statements under Ind. Code § 11-10-11.5-4.5. Id.

(2) Findings

The court shall make written findings for a determination under this section, whether or not a hearing was held. Ind. Code § 35-38-1-24(d).

Not later than five days after making a determination under this section, the court shall send a copy of the order to the: (1) prosecuting attorney where the person's case originated; and (2) DOC. Ind. Code § 35-38-1-24(e).

c. Murder, Class A or B felony or Level 1, 2, 3 or 4 felony

A sentencing court may sentence a person or modify the sentence of a person to assign the person to a community transition program for any period that begins after the person's community transition program commencement date (as defined in IC 11-8-1-5.6) and ends when the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term, if the court makes specific findings of fact that support a determination that it is in the best interests of justice to make the assignment. IC 35-38-1-25(b). The order may include any other condition that the court could impose if the court had placed the person on probation under IC 35-38-2 or in a community corrections program under Ind. Code § 35-38-2.6. Id.

(1) Hearing

The court may make a determination under this section without a hearing. IC 35-38-1-25(c). The court shall consider a written statement presented to the court by a victim of the offender's crime or by an offender under IC 11-10-11.5-4.5. Id. The court in its discretion may consider statements submitted by a victim after the time allowed for the submission of statements under Ind. Code § 11-10-11.5-4.5.

(2) Findings

The court shall make written findings for a determination under this section, whether or not a hearing was held. Ind. Code § 35-38-1-25(d).

Not later than five days after making a determination under this section, the court shall send a copy of the order to the: (1) prosecuting attorney where the person's case originated; and (2) DOC. Ind. Code § 35-38-1-25(e).

(3) Role of department

If the sentencing court orders the department to assign a person to a community transition program under IC 35-38-1-25, the department shall assign a minimum security classification and place the person in a community transition program beginning with the date specified in the sentencing court's order until the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term. Ind. Code § 11-10-11.5-6.

d. Transportation

Not later than the seven (7) regular business days after a person is assigned to a community transition program under this chapter, the department shall: (1) comply with the procedures in Ind. Code § 11-10-12-1(a)(1) and Ind. Code § 11-10-12-1(a)(2); and (2) transport the person to the sheriff of the county where the person's case originated, any other person ordered by the sentencing court, or a person or an entity designated by the supervising authority of the community transition program to which the person is assigned. Ind. Code § 11-10-11.5-7. The department may, upon request of the person, issue the work clothing described in Ind. Code § 11-10-12-1(b). Id.

The person or entity receiving the offender under IC 11-10-11.5-7 shall transfer the offender to the intake person for the community transition program. Ind. Code § 11-10-11.5-8(a).

e. Participation

Except as provided in IC 11-10-11.5-4.5 (offender's objection to placement in program), an offender is not entitled to refuse to be placed into a community transition program. Ind. Code 11-10-11.5-11.5(a). However, the offender may request that an assignment to a community transition program be delayed if the offender will be enrolled in department programming on the community transition program commencement date designated by the department. Id.

The department may take disciplinary action under Ind. Code § 11-11-5 against an offender who has been assigned to a minimum-security classification and placed in a community transition program and refuses to participate in the community transition program. Ind. Code § 11-10-11.5-8(c).

f. Release

For procedures concerning release from a community transition program, see Ind. Code § 11-10-12-1 et seq.