**IC 35-38**

# ARTICLE 38. PROCEEDINGS FOLLOWING DISMISSAL, VERDICT, OR FINDING

**IC 35-38-1**

## Chapter 1. Entry of Judgment and Sentencing

**IC 35-38-1-0.1**

**Application of certain amendments to chapter**

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 7.1 of this chapter by P.L.280-2001 apply to all convictions for a crime entered after May 11, 2001.

(2) Notwithstanding the amendments made to IC 10-13-6-10, IC 10-13-6-11, IC 35-38-2-2.3, IC 35-38-2.5-6, and IC 35-38-2.6-3, and the addition of section 27 of this chapter by P.L.140-2006, a probation department, community corrections department, or other agency supervising an offender on conditional release is not required to collect a DNA sample before October 1, 2006. However, a probation department, community corrections department, or other agency supervising an offender on conditional release is authorized to collect a DNA sample before October 1, 2006, and a DNA sample collected before October 1, 2006, may be analyzed and placed in the convicted offender data base.

(3) Notwithstanding the amendments made to IC 10-13-6-10, IC 10-13-6-11, IC 35-38-2-2.3, IC 35-38-2.5-6, and IC 35-38-2.6-3, and the addition of section 27 of this chapter by P.L.173-2006, a probation department, community corrections department, or other agency supervising an offender on conditional release is not required to collect a DNA sample before October 1, 2006. However, a probation department, community corrections department, or other agency supervising an offender on conditional release is authorized to collect a DNA sample before October 1, 2006, and a DNA sample collected before October 1, 2006, may be analyzed and placed in the convicted offender data base.

*As added by P.L.220-2011, SEC.586. Amended by P.L.63-2012, SEC.42.*

**IC 35-38-1-1**

**Judgment of conviction; pronouncement of sentence**

Sec. 1. (a) Except as provided in section 1.5 of this chapter, after a verdict, finding, or plea of guilty, if a new trial is not granted, the court shall enter a judgment of conviction.

(b) When the court pronounces the sentence, the court shall advise the person that the person is sentenced for not less than the earliest release date and for not more than the maximum possible release

date.
*As added by P.L.311-1983, SEC.3. Amended by P.L.148-1995, SEC.3; P.L.98-2003, SEC.1.*

**IC 35-38-1-1.3**
**Statement of reasons for imposing particular sentence**

Sec. 1.3. After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes.
*As added by P.L.178-2007, SEC.2.*

**IC 35-38-1-1.5 Version a**
**Converting Class D felony to Class A misdemeanor**

*Note: This version of section amended by P.L.159-2013, SEC.1. See also following version of this section amended by P.L.158-2013, SEC.393, effective 7-1-2014.*

Sec. 1.5. (a) A court may enter judgment of conviction as a Class D felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor if the person fulfills certain conditions. A court may enter a judgment of conviction as a Class D felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor only if the person pleads guilty to a Class D felony that qualifies for consideration as a Class A misdemeanor under IC 35-50-2-7, and the following conditions are met:

(1) The prosecuting attorney consents.

(2) The person agrees to the conditions set by the court.

(b) For a judgment of conviction to be entered under subsection (a), the court, the prosecuting attorney, and the person must all agree to the conditions set by the court under subsection (a).

(c) The court is not required to convert a judgment of conviction entered as a Class D felony to a Class A misdemeanor if, after a hearing, the court finds:

(1) the person has violated a condition set by the court under subsection (a); or

(2) the period that the conditions set by the court under subsection (a) are in effect expires before the person successfully completes each condition.

However, the court may not convert a judgment of conviction entered as a Class D felony to a Class A misdemeanor if the person commits a new offense before the conditions set by the court under subsection (a) expire.

(d) The court shall enter judgment of conviction as a Class A misdemeanor if the person fulfills the conditions set by the court under subsection (a).

(e) The entry of a judgment of conviction under this section does not affect the application of any statute requiring the suspension of a person's driving privileges.

(f) This section may not be construed to diminish or alter the rights of a victim (as defined in IC 35-40-4-8) in a sentencing

proceeding under this chapter.
*As added by P.L.98-2003, SEC.2. Amended by P.L.159-2013, SEC.1.*

**IC 35-38-1-1.5 Version b**
**Converting Level 6 felony to Class A misdemeanor**

*Note: This version of section amended by P.L.158-2013, SEC.393, effective 7-1-2014. See also preceding version of this section amended by P.L.159-2013, SEC.1.*

Sec. 1.5. (a) A court may enter judgment of conviction as a Level 6 felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor within three (3) years if the person fulfills certain conditions. A court may enter a judgment of conviction as a Level 6 felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor only if the person pleads guilty to a Level 6 felony that qualifies for consideration as a Class A misdemeanor under IC 35-50-2-7, and the following conditions are met:

(1) The prosecuting attorney consents.

(2) The person agrees to the conditions set by the court.

(b) For a judgment of conviction to be entered under subsection (a), the court, the prosecuting attorney, and the person must all agree to the conditions set by the court under subsection (a).

(c) The court is not required to convert a judgment of conviction entered as a Level 6 felony to a Class A misdemeanor if, after a hearing, the court finds:

(1) the person has violated a condition set by the court under subsection (a); or

(2) the period that the conditions set by the court under subsection (a) are in effect expires before the person successfully completes each condition.

However, the court may not convert a judgment of conviction entered as a Level 6 felony to a Class A misdemeanor if the person commits a new offense before the conditions set by the court under subsection (a) expire.

(d) The court shall enter judgment of conviction as a Class A misdemeanor if the person fulfills the conditions set by the court under subsection (a).

(e) The entry of a judgment of conviction under this section does not affect the application of any statute requiring the suspension of a person's driving privileges.

(f) This section may not be construed to diminish or alter the rights of a victim (as defined in IC 35-40-4-8) in a sentencing proceeding under this chapter.
*As added by P.L.98-2003, SEC.2. Amended by P.L.158-2013, SEC.393.*

**IC 35-38-1-2**
**"Victim representative" defined; sentencing; date; hearing for increased penalty; imprisonment pending sentencing**

Sec. 2. (a) As used in this chapter, "victim representative" means

a person designated by a sentencing court who is:

(1) a spouse, parent, child, sibling, or other relative of; or

(2) a person who has had a close personal relationship with;

the victim of a felony who is deceased, incapacitated, or less than eighteen (18) years of age.

(b) Upon entering a conviction, the court shall set a date for sentencing within thirty (30) days, unless for good cause shown an extension is granted. If a presentence report is not required, the court may sentence the defendant at the time the judgment of conviction is entered. However, the court may not pronounce sentence at that time without:

(1) inquiring as to whether an adjournment is desired by the defendant; and

(2) informing the victim, if present, of a victim's right to make a statement concerning the crime and the sentence.

When an adjournment is requested, the defendant shall state its purpose and the court may allow a reasonable time for adjournment.

(c) If:

(1) the state in the manner prescribed by IC 35-34-1-2.5 sought an increased penalty by alleging that the person was previously convicted of the offense; and

(2) the person was convicted of the subsequent offense in a jury trial;

the jury shall reconvene for the sentencing hearing. The person shall be sentenced to receive the increased penalty if the jury (or the court, if the trial is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had a previous conviction for the offense.

(d) If the felony is nonsuspendible under IC 35-50-2-2, the judge shall order the defendant, if the defendant has previously been released on bail or recognizance, to be imprisoned in the county or local penal facility pending sentencing.

(e) Upon entering a conviction for a felony, the court shall designate a victim representative if the victim is deceased, incapacitated, or less than eighteen (18) years of age.

*As added by P.L.311-1983, SEC.3. Amended by P.L.50-1984, SEC.8; P.L.131-1985, SEC.14; P.L.36-1990, SEC.11.*

**IC 35-38-1-2.5**

**Crime of deception**

Sec. 2.5. (a) As used in this section, "crime of deception" means any offense in which a person assumes the identity of another person, professes to be another person, uses the identifying information of another person, or falsely suggests that the person is acting with the authority of another person. The term includes an offense under IC 35-43-5.

(b) This section applies to an offender who has been convicted of a crime of deception.

(c) During or after the sentencing of a person convicted of a crime of deception, the court may, upon motion by the state or upon

application by a victim or a victim's representative, issue an order:

(1) describing the person whose credit history may be affected by the offender's crime of deception, with sufficient identifying information to assist another person in correcting the credit history; and

(2) stating that the person described in subdivision (1) was the victim of a crime of deception that may have affected the person's credit history.

(d) The order described in subsection (c) may be used to correct the credit history of any person described in the order.

*As added by P.L.22-2003, SEC.3.*

**IC 35-38-1-3**

**Presentence hearing**

Sec. 3. Before sentencing a person for a felony, the court must conduct a hearing to consider the facts and circumstances relevant to sentencing. The person is entitled to subpoena and call witnesses and to present information in his own behalf. The court shall make a record of the hearing, including:

(1) a transcript of the hearing;

(2) a copy of the presentence report; and

(3) if the court finds aggravating circumstances or mitigating circumstances, a statement of the court's reasons for selecting the sentence that it imposes.

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

**IC 35-38-1-4**

**Presence of defendant when sentence pronounced; pronouncement of sentence against defendant corporation**

Sec. 4. (a) The defendant must be personally present at the time sentence is pronounced. If the defendant is not personally present when sentence is to be pronounced, the court may issue a warrant for his arrest.

(b) Sentence may be pronounced against a defendant corporation in the absence of counsel, if counsel fails to appear on the date of sentencing after reasonable notice.

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

**IC 35-38-1-5**

**Informing defendant of verdict and court's finding; defendant's statement; inclusion of cost of incarceration in sentencing order**

Sec. 5. When the defendant appears for sentencing, the court shall inform the defendant of the verdict of the jury or the finding of the court. The court shall afford counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant may also make a statement personally in the defendant's own behalf and, before pronouncing sentence, the court shall ask the defendant whether the defendant wishes to make such a statement. Sentence shall then be pronounced, unless a sufficient cause is alleged or appears to the court for delay in sentencing.

*As added by P.L.311-1983, SEC.3. Amended by P.L.85-2004, SEC.6; P.L.105-2010, SEC.10; P.L.13-2013, SEC.137.*

**IC 35-38-1-6**

**Judgment and sentence when defendant charged and found guilty of offense and included offense**

Sec. 6. Whenever:

(1) a defendant is charged with an offense and an included offense in separate counts; and

(2) the defendant is found guilty of both counts;

judgment and sentence may not be entered against the defendant for the included offense.

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

**IC 35-38-1-7**

**Repealed**

*(Repealed by P.L.1-1990, SEC.344.)*

**IC 35-38-1-7.1**

**Considerations in imposing sentence**

Sec. 7.1. (a) In determining what sentence to impose for a crime, the court may consider the following aggravating circumstances:

(1) The harm, injury, loss, or damage suffered by the victim of an offense was:

(A) significant; and

(B) greater than the elements necessary to prove the commission of the offense.

(2) The person has a history of criminal or delinquent behavior.

(3) The victim of the offense was less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense.

(4) The person:

(A) committed a crime of violence (IC 35-50-1-2); and

(B) knowingly committed the offense in the presence or within hearing of an individual who:

(i) was less than eighteen (18) years of age at the time the person committed the offense; and

(ii) is not the victim of the offense.

(5) The person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person.

(6) The person has recently violated the conditions of any probation, parole, pardon, community corrections placement, or pretrial release granted to the person.

(7) The victim of the offense was:

(A) a person with a disability (as defined in IC 27-7-6-12), and the defendant knew or should have known that the victim was a person with a disability; or

(B) mentally or physically infirm.

(8) The person was in a position having care, custody, or control of the victim of the offense.

(9) The injury to or death of the victim of the offense was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(10) The person threatened to harm the victim of the offense or a witness if the victim or witness told anyone about the offense.

(11) The person:

(A) committed trafficking with an inmate under IC 35-44.1-3-5; and

(B) is an employee of the penal facility.

(b) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(c) The criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence.

(d) A court may impose any sentence that is:

(1) authorized by statute; and

(2) permissible under the Constitution of the State of Indiana;

regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

*As added by P.L.1-1990, SEC.345. Amended by P.L.1-1991, SEC.195; P.L.2-1993, SEC.181; P.L.21-1994, SEC.2; P.L.1-1997, SEC.145; P.L.210-1997, SEC.1; P.L.1-1998, SEC.195; P.L.51-1998, SEC.4; P.L.71-1998, SEC.1; P.L.31-1998, SEC.1; P.L.183-1999,*

*SEC.1; P.L.17-2001, SEC.12; P.L.280-2001, SEC.51; P.L.133-2002, SEC.61; P.L.221-2003, SEC.16; P.L.71-2005, SEC.3; P.L.213-2005, SEC.3; P.L.119-2008, SEC.14; P.L.126-2012, SEC.50.*

**IC 35-38-1-7.5 Version a**
**Sexually violent predators**

*Note: This version of section amended by P.L.214-2013, SEC.33. See also following version of this section amended by P.L.158-2013, SEC.394, effective 7-1-2014.*

Sec. 7.5. (a) As used in this section, "sexually violent predator" means a person who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense (as defined in IC 11-8-8-5.2). The term includes a person convicted in another jurisdiction who is identified as a sexually violent predator under IC 11-8-8-20. The term does not include a person no longer considered a sexually violent predator under subsection (g).

(b) A person who:

(1) being at least eighteen (18) years of age, commits an offense described in:

(A) IC 35-42-4-1;

(B) IC 35-42-4-2 (before its repeal on July 1, 2014);

(C) IC 35-42-4-3 as a Class A or Class B felony;

(D) IC 35-42-4-5(a)(1);

(E) IC 35-42-4-5(a)(2);

(F) IC 35-42-4-5(a)(3);

(G) IC 35-42-4-5(b)(1) as a Class A or Class B felony;

(H) IC 35-42-4-5(b)(2);

(I) IC 35-42-4-5(b)(3) as a Class A or Class B felony;

(J) an attempt or conspiracy to commit a crime listed in clauses (A) through (I); or

(K) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (J);

(2) commits a sex offense (as defined in IC 11-8-8-5.2) while having a previous unrelated conviction for a sex offense for which the person is required to register as a sex or violent offender under IC 11-8-8;

(3) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a previous unrelated adjudication as a delinquent child for an act that would be a sex offense if committed by an adult, if, after considering expert testimony, a court finds by clear and convincing evidence that the person is likely to commit an additional sex offense; or

(4) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a previous unrelated adjudication as a delinquent child for an act that would be a sex offense if committed by an adult, if the person was required to register as a sex or violent offender under IC 11-8-8-5(b)(2);

is a sexually violent predator. Except as provided in subsection (g)

or (h), a person is a sexually violent predator by operation of law if an offense committed by the person satisfies the conditions set forth in subdivision (1) or (2) and the person was released from incarceration, secure detention, probation, or parole for the offense after June 30, 1994.

(c) This section applies whenever a court sentences a person or a juvenile court issues a dispositional decree for a sex offense (as defined in IC 11-8-8-5.2) for which the person is required to register with the local law enforcement authority under IC 11-8-8.

(d) At the sentencing hearing, the court shall indicate on the record whether the person has been convicted of an offense that makes the person a sexually violent predator under subsection (b).

(e) If a person is not a sexually violent predator under subsection (b), the prosecuting attorney may request the court to conduct a hearing to determine whether the person (including a child adjudicated to be a delinquent child) is a sexually violent predator under subsection (a). If the court grants the motion, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person is a sexually violent predator under subsection (a). A hearing conducted under this subsection may be combined with the person's sentencing hearing.

(f) If a person is a sexually violent predator:

(1) the person is required to register with the local law enforcement authority as provided in IC 11-8-8; and

(2) the court shall send notice to the department of correction.

(g) This subsection does not apply to a person who has two (2) or more unrelated convictions for an offense described in IC 11-8-8-4.5 for which the person is required to register under IC 11-8-8. A person who is a sexually violent predator may petition the court to consider whether the person should no longer be considered a sexually violent predator. The person may file a petition under this subsection not earlier than ten (10) years after:

(1) the sentencing court or juvenile court makes its determination under subsection (e); or

(2) the person is released from incarceration or secure detention.

A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered a sexually violent predator. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person should no longer be considered a sexually violent predator under subsection (a). If a court finds that the person should no longer be considered a

sexually violent predator, the court shall send notice to the department of correction that the person is no longer considered a sexually violent predator or an offender against children. Notwithstanding any other law, a condition imposed on a person due to the person's status as a sexually violent predator, including lifetime parole or GPS monitoring, does not apply to a person no longer considered a sexually violent predator.

(h) A person is not a sexually violent predator by operation of law under subsection (b)(1) if all of the following conditions are met:

(1) The victim was not less than twelve (12) years of age at the time the offense was committed.

(2) The person is not more than four (4) years older than the victim.

(3) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.

(4) The offense committed by the person was not any of the following:

(A) Rape (IC 35-42-4-1).

(B) Criminal deviate conduct (IC 35-42-4-2) (before its repeal on July 1, 2014).

(C) An offense committed by using or threatening the use of deadly force or while armed with a deadly weapon.

(D) An offense that results in serious bodily injury.

(E) An offense that is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(5) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

(6) The person did not have a position of authority or substantial influence over the victim.

(7) The court finds that the person should not be considered a sexually violent predator.

*As added by P.L.56-1998, SEC.17. Amended by P.L.1-1999, SEC.77; P.L.238-2001, SEC.18; P.L.116-2002, SEC.20; P.L.6-2006, SEC.5; P.L.140-2006, SEC.21 and P.L.173-2006, SEC.21; P.L.216-2007, SEC.37; P.L.214-2013, SEC.33.*

**IC 35-38-1-7.5 Version b**
**Sexually violent predators**

*Note: This version of section amended by P.L.158-2013, SEC.394, effective 7-1-2014. See also preceding version of this section amended by P.L.214-2013, SEC.33.*

Sec. 7.5. (a) As used in this section, "sexually violent predator"

means a person who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense (as defined in IC 11-8-8-5.2). The term includes a person convicted in another jurisdiction who is identified as a sexually violent predator under IC 11-8-8-20. The term does not include a person no longer considered a sexually violent predator under subsection (g).

(b) A person who:

(1) being at least eighteen (18) years of age, commits an offense described in:

(A) IC 35-42-4-1;

(B) IC 35-42-4-2 (repealed);

(C) IC 35-42-4-3 as a Class A or Class B felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014);

(D) IC 35-42-4-5(a)(1);

(E) IC 35-42-4-5(a)(2);

(F) IC 35-42-4-5(a)(3);

(G) IC 35-42-4-5(b)(1) as a Class A or Class B felony (for a crime committed before July 1, 2014) or Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014);

(H) IC 35-42-4-5(b)(2);

(I) IC 35-42-4-5(b)(3) as a Class A or Class B felony (for a crime committed before July 1, 2014) or a Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014);

(J) an attempt or conspiracy to commit a crime listed in clauses (A) through (I); or

(K) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (J);

(2) commits a sex offense (as defined in IC 11-8-8-5.2) while having a previous unrelated conviction for a sex offense for which the person is required to register as a sex or violent offender under IC 11-8-8;

(3) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a previous unrelated adjudication as a delinquent child for an act that would be a sex offense if committed by an adult, if, after considering expert testimony, a court finds by clear and convincing evidence that the person is likely to commit an additional sex offense; or

(4) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a previous unrelated adjudication as a delinquent child for an act that would be a sex offense if committed by an adult, if the person was required to register as a sex or violent offender under IC 11-8-8-5(b)(2);

is a sexually violent predator. Except as provided in subsection (g) or (h), a person is a sexually violent predator by operation of law if an offense committed by the person satisfies the conditions set forth

in subdivision (1) or (2) and the person was released from incarceration, secure detention, or probation for the offense after June 30, 1994.

(c) This section applies whenever a court sentences a person or a juvenile court issues a dispositional decree for a sex offense (as defined in IC 11-8-8-5.2) for which the person is required to register with the local law enforcement authority under IC 11-8-8.

(d) At the sentencing hearing, the court shall indicate on the record whether the person has been convicted of an offense that makes the person a sexually violent predator under subsection (b).

(e) If a person is not a sexually violent predator under subsection (b), the prosecuting attorney may request the court to conduct a hearing to determine whether the person (including a child adjudicated to be a delinquent child) is a sexually violent predator under subsection (a). If the court grants the motion, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person is a sexually violent predator under subsection (a). A hearing conducted under this subsection may be combined with the person's sentencing hearing.

(f) If a person is a sexually violent predator:

(1) the person is required to register with the local law enforcement authority as provided in IC 11-8-8; and

(2) the court shall send notice to the department of correction.

(g) This subsection does not apply to a person who has two (2) or more unrelated convictions for an offense described in IC 11-8-8-4.5 for which the person is required to register under IC 11-8-8. A person who is a sexually violent predator may petition the court to consider whether the person should no longer be considered a sexually violent predator. The person may file a petition under this subsection not earlier than ten (10) years after:

(1) the sentencing court or juvenile court makes its determination under subsection (e); or

(2) the person is released from incarceration or secure detention.

A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered a sexually violent predator. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person should no longer be considered a sexually violent predator under subsection (a). If a court finds that the person should no longer be considered a sexually violent predator, the court shall send notice to the department of correction that the person is no longer considered a

sexually violent predator. Notwithstanding any other law, a condition imposed on a person due to the person's status as a sexually violent predator, including lifetime parole or GPS monitoring, does not apply to a person no longer considered a sexually violent predator.

(h) A person is not a sexually violent predator by operation of law under subsection (b)(1) if all of the following conditions are met:

(1) The victim was not less than twelve (12) years of age at the time the offense was committed.

(2) The person is not more than four (4) years older than the victim.

(3) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.

(4) The offense committed by the person was not any of the following:

(A) Rape (IC 35-42-4-1).

(B) Criminal deviate conduct (IC 35-42-4-2) (repealed).

(C) An offense committed by using or threatening the use of deadly force or while armed with a deadly weapon.

(D) An offense that results in serious bodily injury.

(E) An offense that is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(5) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

(6) The person did not have a position of authority or substantial influence over the victim.

(7) The court finds that the person should not be considered a sexually violent predator.

*As added by P.L.56-1998, SEC.17. Amended by P.L.1-1999, SEC.77; P.L.238-2001, SEC.18; P.L.116-2002, SEC.20; P.L.6-2006, SEC.5; P.L.140-2006, SEC.21 and P.L.173-2006, SEC.21; P.L.216-2007, SEC.37; P.L.158-2013, SEC.394.*

**IC 35-38-1-7.7**

**Crime of domestic violence; sentence procedures**

Sec. 7.7. (a) At the time of sentencing, a court shall determine whether a person has committed a crime of domestic violence (as defined in IC 35-31.5-2-78).

(b) A determination under subsection (a) must be based upon:

(1) evidence introduced at trial; or

(2) a factual basis provided as part of a guilty plea.

(c) Upon determining that a defendant has committed a crime of domestic violence, a court shall advise the defendant of the

consequences of this finding.

(d) A judge shall record a determination that a defendant has committed a crime of domestic violence on a form prepared by the division of state court administration.

*As added by P.L.195-2003, SEC.4. Amended by P.L.114-2012, SEC.76.*

**IC 35-38-1-7.8**

**Credit restricted felons**

Sec. 7.8. (a) At the time of sentencing, a court shall determine whether a person is a credit restricted felon (as defined in IC 35-31.5-2-72).

(b) A determination under subsection (a) must be based upon:

(1) evidence admitted at trial that is relevant to the credit restricted status;

(2) evidence introduced at the sentencing hearing; or

(3) a factual basis provided as part of a guilty plea.

(c) Upon determining that a defendant is a credit restricted felon, a court shall advise the defendant of the consequences of this determination.

*As added by P.L.147-2012, SEC.7.*

**IC 35-38-1-8 Version a**

**Presentence report to be considered by court before sentencing; advisement of victim of right to make statement**

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.*

Sec. 8. (a) Except as provided in subsection (c), a defendant convicted of a felony may not be sentenced before a written presentence report is prepared by a probation officer and considered by the sentencing court. Delay of sentence until a presentence report is prepared does not constitute an indefinite postponement or suspension of sentence.

(b) A victim present at sentencing in a felony or misdemeanor case shall be advised by the court of a victim's right to make a statement concerning the crime and the sentence.

(c) A court may sentence a person convicted of a Class D felony without considering a written presentence report prepared by a probation officer. However, if a defendant is committed to the department of correction or a community corrections program under IC 35-38-2.6, the probation officer shall prepare a report that meets the requirements of section 9 of this chapter to be sent with the offender to the department in lieu of the presentence investigation report required by section 14 of this chapter.

*As added by P.L.311-1983, SEC.3. Amended by P.L.131-1985, SEC.16; P.L.240-1991(ss2), SEC.90; P.L.104-1997, SEC.6.*

**IC 35-38-1-8 Version b**

**Presentence report to be considered by court before sentencing; advisement of victim of right to make statement**

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

Sec. 8. (a) Except as provided in subsection (c), a defendant convicted of a felony may not be sentenced before a written presentence report is prepared by a probation officer and considered by the sentencing court. Delay of sentence until a presentence report is prepared does not constitute an indefinite postponement or suspension of sentence.

(b) A victim present at sentencing in a felony or misdemeanor case shall be advised by the court of a victim's right to make a statement concerning the crime and the sentence.

(c) A court may sentence a person convicted of a Level 6 felony without considering a written presentence report prepared by a probation officer. However, if a defendant is committed to the department of correction or a community corrections program under IC 35-38-2.6, the probation officer shall prepare a report that meets the requirements of section 9 of this chapter to be sent with the offender to the department in lieu of the presentence investigation report required by section 14 of this chapter.

*As added by P.L.311-1983, SEC.3. Amended by P.L.131-1985, SEC.16; P.L.240-1991(ss2), SEC.90; P.L.104-1997, SEC.6; P.L.158-2013, SEC.395.*

**IC 35-38-1-8.5**

**Presentence investigation; notice to victim; victim impact statement; contents**

Sec. 8.5. (a) A probation officer who is conducting a presentence investigation shall send written notification of the following to each victim or each victim representative designated by the court under section 2(e) of this chapter:

(1) The date, time, and place of the sentencing hearing set by the court.

(2) The right of the victim or victim representative to make an oral or written statement to the court at the sentencing hearing.

(3) The right of the victim or victim representative to submit or refuse to submit to the probation officer a written or oral statement of the impact of the crime upon the victim for inclusion by the probation officer in a victim impact statement.

(b) The notification required by subsection (a) must be sent at least seven (7) days before the date of the sentencing hearing to the last known address of the victim or the victim representative.

(c) The probation officer shall prepare a victim impact statement for inclusion in the convicted person's presentence report. The victim impact statement consists of information about each victim and the consequences suffered by a victim or a victim's family as a result of the crime.

(d) Unless the probation officer certifies to the court under section 9 of this chapter that a victim or victim representative could not be contacted or elected not to submit a statement to the probation officer concerning the crime, the victim impact statement required under this

section must include the following information about each victim:

(1) A summary of the financial, emotional, and physical effects of the crime on the victim and the victim's family.

(2) Personal information concerning the victim, excluding telephone numbers, place of employment, and residential address.

(3) Any written statements submitted by a victim or victim representative to the probation officer.

(4) If the victim desires restitution, the basis and amount of a request for victim restitution.

(e) A victim or victim representative is not required to submit a statement or to cooperate in the preparation of the victim impact statement required under this section.

*As added by P.L.36-1990, SEC.12. Amended by P.L.216-1996, SEC.12.*

**IC 35-38-1-9**

**"Recommendation" and "victim"; presentence investigation matters; certification by probation officer when no written statements submitted**

Sec. 9. (a) As used in this chapter, "recommendation" has the meaning set forth in IC 35-31.5-2-272, and "victim" has the meaning set forth in IC 35-31.5-2-348.

(b) The presentence investigation consists of the gathering of information with respect to:

(1) the circumstances attending the commission of the offense;

(2) the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education, and personal habits;

(3) the impact of the crime upon the victim; and

(4) whether the convicted person is licensed or certified in a profession regulated by IC 25.

(c) The presentence investigation may include any matter that the probation officer conducting the investigation believes is relevant to the question of sentence, and must include:

(1) any matters the court directs to be included;

(2) any written statements submitted to the prosecuting attorney by a victim under IC 35-35-3;

(3) any written statements submitted to the probation officer by a victim; and

(4) preparation of the victim impact statement required under section 8.5 of this chapter.

(d) If there are no written statements submitted to the probation officer, the probation officer shall certify to the court:

(1) that the probation officer has attempted to contact the victim; and

(2) that if the probation officer has contacted the victim, the probation officer has offered to accept the written statements of the victim or to reduce the victim's oral statements to writing, concerning the sentence, including the acceptance of any

recommendation.

(e) A presentence investigation report prepared by a probation officer must include the information and comply with any other requirements established in the rules adopted under IC 11-13-1-8.

*As added by P.L.311-1983, SEC.3. Amended by P.L.36-1990, SEC.13; P.L.240-1991(ss2), SEC.91; P.L.216-1996, SEC.13; P.L.155-2011, SEC.10; P.L.114-2012, SEC.77.*

**IC 35-38-1-9.5**

**Confidential information; convicted person carrier of human immunodeficiency virus (HIV); sex crimes and controlled substances**

Sec. 9.5. A probation officer shall obtain confidential information from the state department of health under IC 16-41-8-1 to determine whether a convicted person was a carrier of the human immunodeficiency virus (HIV) when the crime was committed if the person is:

(1) convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or

(2) convicted of an offense relating to controlled substances and the offense involved:

(A) the delivery by any person to another person; or

(B) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

*As added by P.L.123-1988, SEC.25. Amended by P.L.184-1989, SEC.24; P.L.1-1990, SEC.346; P.L.2-1992, SEC.876; P.L.2-1993, SEC.182; P.L.125-2007, SEC.4.*

**IC 35-38-1-10**

**Presentence investigation; physical or mental examination**

Sec. 10. The court may order that the convicted person:

(1) undergo a thorough physical or mental examination in a designated facility as part of the presentence investigation; and

(2) remain in the facility for examination for not more than ninety (90) days.

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

**IC 35-38-1-10.5**

**Screening test for dangerous diseases; sex crimes and controlled substances; confirmatory test; presentence investigation; marital privilege; mental health service provider's civil and criminal immunity**

Sec. 10.5. (a) The court:

(1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(A) convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated

risk of transmission of the human immunodeficiency virus (HIV); or

(B) convicted of an offense relating to controlled substances and the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact; and

(2) may order that a person undergo a screening test for a dangerous disease (as defined in IC 16-41-8-5) in accordance with IC 16-41-8-5.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

(1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and

(2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

(1) makes a report required to be made under this section; or

(2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

*As added by P.L.123-1988, SEC.26. Amended by P.L.184-1989, SEC.25; P.L.1-1990, SEC.347; P.L.2-1992, SEC.877; P.L.2-1993, SEC.183; P.L.1-1998, SEC.196; P.L.71-1998, SEC.2; P.L.125-2007, SEC.5; P.L.125-2009, SEC.5.*

**IC 35-38-1-10.6**

**Crime victims; notice that criminal had antibodies for human immunodeficiency virus (HIV); counseling**

Sec. 10.6. (a) The state department of health shall notify victims of an offense relating to a criminal sexual act or an offense relating to controlled substances if tests conducted under section 10.5 of this chapter or IC 16-41-8-5 confirm that the person tested had antibodies

for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

*As added by P.L.123-1988, SEC.27. Amended by P.L.1-1990, SEC.348; P.L.2-1992, SEC.878; P.L.71-1998, SEC.3; P.L.125-2007, SEC.6; P.L.125-2009, SEC.6.*

**IC 35-38-1-10.7**

**Repealed**

*(Repealed by P.L.125-2009, SEC.9.)*

**IC 35-38-1-11**

**Presentence memorandum by convicted person**

Sec. 11. At any time before sentencing, the convicted person may file with the court a written memorandum setting forth any information he considers pertinent to the question of sentence. The convicted person may attach written statements by others in support of facts alleged in the memorandum.

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

**IC 35-38-1-12**

**Presentence investigation; advising defendant of contents and conclusions; copy of presentence report; opportunity for victim to make statement; sources of confidential information**

Sec. 12. (a) Before imposing sentence, the court shall:

(1) advise the defendant or his counsel and the prosecuting attorney of the factual contents and conclusions of the presentence investigation; or

(2) provide the defendant or his counsel and the prosecuting attorney with a copy of the presentence report.

The court also shall offer the victim, if present, an opportunity to make a statement concerning the crime and the sentence.

(b) The sources of confidential information need not be disclosed. The court shall furnish the factual contents of the presentence investigation or a copy of the presentence report sufficiently in advance of sentencing so that the defendant will be afforded a fair opportunity to controvert the material included.

*As added by P.L.311-1983, SEC.3. Amended by P.L.131-1985, SEC.17.*

**IC 35-38-1-13**

**Confidentiality of presentence report or memoranda**

Sec. 13. (a) Any:

(1) presentence report or memoranda; and

(2) report of a physical or mental examination;

submitted to the court in connection with sentencing shall be kept confidential.

(b) The materials specified in subsection (a) may not be made available to any person or public or private agency other than:

(1) the convicted person and his counsel;

(2) the prosecuting attorney;
(3) a probation department;
(4) the community corrections program in which an offender is placed under IC 35-38-2.6; and
(5) the Indiana criminal justice institute established under IC 5-2-6;

except where specifically required or permitted by statute or upon specific authorization by the court and the convicted person.
*As added by P.L.311-1983, SEC.3. Amended by P.L.135-1993, SEC.5; P.L.292-1995, SEC.1.*

**IC 35-38-1-14**
**Imprisonment; transmission of certain information to department of correction**

Sec. 14. (a) If a convicted person is sentenced to a term of imprisonment, the court shall send 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 under IC 35-35-2 or IC 35-35-3;
(5) the abstract of judgment;
(6) the judgment of conviction; and
(7) the sentencing order;

to the department of correction.

(b) Copies of the information sent to the department of correction under subsection (a) may be sent through any electronic means approved by the department of correction.
*As added by P.L.311-1983, SEC.3. Amended by P.L.119-2008, SEC.15.*

**IC 35-38-1-15**
**Erroneous sentence; nature; correction**

Sec. 15. If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.
*As added by P.L.311-1983, SEC.3.*

**IC 35-38-1-16**
**Certified copies of corrected or modified sentence**

Sec. 16. Whenever:
(1) a court corrects an erroneous sentence or modifies a previously imposed sentence; and
(2) the convicted person is incarcerated or is to be incarcerated by the department of correction;

the court shall immediately send certified copies of the corrected or

modified sentence to the department of correction.
*As added by P.L.311-1983, SEC.3.*

**IC 35-38-1-17 Version a**
**Reduction or suspension of sentence**

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.*

Sec. 17. (a) Within three hundred sixty-five (365) days after:

(1) a convicted person begins serving the person's sentence;

(2) a hearing is held:

(A) at which the convicted person is present; and

(B) of which the prosecuting attorney has been notified; and

(3) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned;

the court may reduce or suspend the sentence. The court must incorporate its reasons in the record.

(b) If more than three hundred sixty-five (365) days have elapsed since the convicted person began serving the sentence and after a hearing at which the convicted person is present, the court may reduce or suspend the sentence, subject to the approval of the prosecuting attorney. However, if in a sentencing hearing for a convicted person conducted after June 30, 2001, the court could have placed the convicted person in a community corrections program as an alternative to commitment to the department of correction, the court may modify the convicted person's sentence under this section without the approval of the prosecuting attorney to place the convicted person in a community corrections program under IC 35-38-2.6.

(c) The court must give notice of the order to reduce or suspend the sentence under this section to the victim (as defined in IC 35-31.5-2-348) of the crime for which the convicted person is serving the sentence.

(d) The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.

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

(f) Notwithstanding subsections (a) and (b), the court is not required to conduct a hearing before reducing or suspending a sentence if:

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

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

*As added by P.L.311-1983, SEC.3. Amended by P.L.317-1985, SEC.1; P.L.204-1986, SEC.1; P.L.240-1991(ss2), SEC.92; P.L.291-2001, SEC.224; P.L.2-2005, SEC.123; P.L.1-2010, SEC.141; P.L.114-2012, SEC.78.*

**IC 35-38-1-17 Version b**

**Sentence modification; conditions**

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

Sec. 17. (a) At any time after:

(1) a convicted person begins serving the person's sentence;

(2) a hearing is held:

(A) at which the convicted person is present; and

(B) of which the prosecuting attorney has been notified; and

(3) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned;

the court may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing. The court must incorporate its reasons in the record.

(b) The court must give notice of the order to reduce or suspend the sentence under this section to the prosecuting attorney and the victim (as defined in IC 35-31.5-2-348) of the crime for which the convicted person is serving the sentence.

(c) The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.2.

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

(e) The court is not required to conduct a hearing before reducing or suspending a sentence if:

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

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

*As added by P.L.311-1983, SEC.3. Amended by P.L.317-1985, SEC.1; P.L.204-1986, SEC.1; P.L.240-1991(ss2), SEC.92; P.L.291-2001, SEC.224; P.L.2-2005, SEC.123; P.L.1-2010, SEC.141; P.L.114-2012, SEC.78; P.L.158-2013, SEC.396.*

**IC 35-38-1-18**

**Fines and costs; suspension of fines; commitment instead of fine; default**

Sec. 18. (a) Except as provided in subsection (b), whenever the court imposes a fine, it shall conduct a hearing to determine whether the convicted person is indigent. If the person is not indigent, the court shall order:

(1) that the person pay the entire amount at the time sentence is pronounced;

(2) that the person pay the entire amount at some later date;

(3) that the person pay specified parts at designated intervals; or

(4) at the request of the person, commitment of the person to the county jail for a period of time set by the court in lieu of a fine. If the court orders a person committed to jail under this subdivision, the person's total confinement for the crime that resulted in the conviction must not exceed the maximum term

of imprisonment prescribed for the crime under IC 35-50-2 or IC 35-50-3.

(b) A court may impose a fine and suspend payment of all or part of the fine until the convicted person has completed all or part of the sentence. If the court suspends payment of the fine, the court shall conduct a hearing at the time the fine is due to determine whether the convicted person is indigent. If the convicted person is not indigent, the court shall order the convicted person to pay the fine:

(1) at the time the fine is due; or

(2) in a manner set forth in subsection (a)(2) through (a)(4).

(c) If a court suspends payment of a fine under subsection (b), the court retains jurisdiction over the convicted person until the convicted person has paid the entire amount of the fine.

(d) Upon any default in the payment of the fine:

(1) an attorney representing the county may bring an action on a debt for the unpaid amount;

(2) the court may direct that the person, if the person is not indigent, be committed to the county jail and credited toward payment at the rate of twenty dollars ($20) for each twenty-four (24) hour period the person is confined, until the amount paid plus the amount credited equals the entire amount due; or

(3) the court may institute contempt proceedings or order the convicted person's wages, salary, and other income garnished in accordance with IC 24-4.5-5-105 to enforce the court's order for payment of the fine.

*As added by P.L.311-1983, SEC.3. Amended by P.L.204-1986, SEC.2; P.L.305-1987, SEC.35; P.L.137-1989, SEC.11; P.L.156-2007, SEC.4.*

**IC 35-38-1-19**
**Repealed**

*(Repealed by P.L.50-1984, SEC.5.)*

**IC 35-38-1-20**
**Repealed**

*(Repealed by P.L.305-1987, SEC.38.)*

**IC 35-38-1-21**
**Home detention; petition and hearing**

Sec. 21. (a) A court that receives a petition from the department of correction under IC 35-38-3-5 may, after notice to the prosecuting attorney of the judicial circuit in which the defendant's case originated, hold a hearing for the purpose of determining whether the offender named in the petition may be placed in home detention under IC 35-38-2.5 instead of commitment to the department of correction for the remainder of the offender's minimum sentence.

(b) Notwithstanding IC 35-35-3-3(e), and after a hearing held under this section, a sentencing court may order the offender named in the petition filed under IC 35-38-3-5 to be placed in home detention under IC 35-38-2.5 instead of commitment to the

department of correction for the remainder of the offender's minimum sentence.
*As added by P.L.98-1988, SEC.4.*

**IC 35-38-1-22**
**Juveniles; service of misdemeanor sentences in juvenile detention facilities**

Sec. 22. A court that imposes a sentence for conviction of a misdemeanor upon a person who is less than eighteen (18) years of age may enter an order requiring that the convicted person serve the sentence in a juvenile detention facility established under IC 31-31-8 (or IC 31-6-9-5 before its repeal). However, before an order may be entered under this section, the court must secure the written approval of the judge of the juvenile court allowing the detention of the person in the juvenile detention facility.
*As added by P.L.173-1988, SEC.2. Amended by P.L.271-1989, SEC.2; P.L.73-1992, SEC.11; P.L.1-1997, SEC.146.*

**IC 35-38-1-23**
**Repealed**

*(Repealed by P.L.183-1999, SEC.4.)*

**IC 35-38-1-24 Version a**
**Community transition program; Class C or Class D felony**

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.*

Sec. 24. (a) This section applies to a person if the most serious offense for which the person is committed is a Class C or Class D felony.

(b) Not later than forty-five (45) days after receiving a notice under IC 11-10-11.5-2, the sentencing court may order the department of correction 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:

(A) places the person in danger of serious bodily injury or death; or

(B) represents a substantial threat to the safety of others; or

(2) of other good cause.

If the court issues an order under this section, the department of correction may not assign a person to a community transition program.

(c) The court may make a determination under this section without a hearing. The court shall consider any 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. The court in its discretion may consider statements submitted by a victim after the time allowed for the submission of statements under IC 11-10-11.5-4.5.

(d) The court shall make written findings for a determination under this section, whether or not a hearing was held.

(e) Not later than five (5) 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) department of correction.

*As added by P.L.273-1999, SEC.210. Amended by P.L.90-2000, SEC.17.*

**IC 35-38-1-24 Version b**

**Community transition program; Level 5 or Level 6 felony**

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

Sec. 24. (a) This section applies to a person if the most serious offense for which the person is committed is a Class C or Class D felony (for a crime committed before July 1, 2014) or a Level 5 or Level 6 felony (for a crime committed after June 30, 2014).

(b) Not later than forty-five (45) days after receiving a notice under IC 11-10-11.5-2, the sentencing court may order the department of correction 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:

(A) places the person in danger of serious bodily injury or death; or

(B) represents a substantial threat to the safety of others; or

(2) of other good cause.

If the court issues an order under this section, the department of correction may not assign a person to a community transition program.

(c) The court may make a determination under this section without a hearing. The court shall consider any 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. The court in its discretion may consider statements submitted by a victim after the time allowed for the submission of statements under IC 11-10-11.5-4.5.

(d) The court shall make written findings for a determination under this section, whether or not a hearing was held.

(e) Not later than five (5) 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) department of correction.

*As added by P.L.273-1999, SEC.210. Amended by P.L.90-2000, SEC.17; P.L.158-2013, SEC.397.*

**IC 35-38-1-25 Version a**

**Community transition program; murder or Class A or B felony**

*Note: This version of section effective until 7-1-2014. See also*

*following version of this section, effective 7-1-2014.*

Sec. 25. (a) This section applies to a person if the most serious offense for which the person is committed is murder, a Class A felony, or a Class B felony.

(b) 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. 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 IC 35-38-2.6.

(c) The court may make a determination under this section without a hearing. The court shall consider any 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. The court in its discretion may consider statements submitted by a victim after the time allowed for the submission of statements under IC 11-10-11.5-4.5.

(d) The court shall make written findings for a determination under this section, whether or not a hearing was held.

(e) Not later than five (5) 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) department of correction.

*As added by P.L.273-1999, SEC.211. Amended by P.L.90-2000, SEC.18; P.L.85-2004, SEC.39.*

**IC 35-38-1-25 Version b**

**Community transition program; murder and Level 1 through Level 4 felony**

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

Sec. 25. (a) This section applies to a person if the most serious offense for which the person is committed is murder, a Class A felony, or a Class B felony (for a crime committed before July 1, 2014), or a Level 1, Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014).

(b) 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. 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 IC 35-38-2.6.

(c) The court may make a determination under this section without a hearing. The court shall consider any 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. The court in its discretion may consider statements submitted by a victim after the time allowed for the submission of statements under IC 11-10-11.5-4.5.

(d) The court shall make written findings for a determination under this section, whether or not a hearing was held.

(e) Not later than five (5) 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) department of correction.

*As added by P.L.273-1999, SEC.211. Amended by P.L.90-2000, SEC.18; P.L.85-2004, SEC.39; P.L.158-2013, SEC.398.*

**IC 35-38-1-26**

**Repealed**

*(Repealed by P.L.90-2000, SEC.25.)*

**IC 35-38-1-27**

**Persons required to provide a DNA sample as a condition of a sentence**

Sec. 27. (a) If a court imposes a sentence that does not involve a commitment to the department of correction, the court shall require a person:

(1) convicted of an offense described in IC 10-13-6-10; and

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6;

to provide a DNA sample as a condition of the sentence.

(b) If a person described in subsection (a) is confined at the time of sentencing, the court shall order the person to provide a DNA sample immediately after sentencing.

(c) If a person described in subsection (a) is not confined at the time of sentencing, the agency supervising the person after sentencing shall establish the date, time, and location for the person to provide a DNA sample. However, the supervising agency must require that the DNA sample be provided not more than seven (7) days after sentencing. A supervising agency's failure to obtain a DNA sample not more than seven (7) days after sentencing does not permit a person required to provide a DNA sample to challenge the requirement that the person provide a DNA sample at a later date.

(d) A person's failure to provide a DNA sample is grounds for revocation of the person's probation, community corrections placement, or other conditional release.

*As added by P.L.140-2006, SEC.22 and P.L.173-2006, SEC.22.*

**IC 35-38-1-28**

**Fingerprinting required after sentencing; exception; transmission of fingerprints to prosecuting attorney and department of correction; immunity**

Sec. 28. (a) Except as provided in subsection (c), immediately after sentencing a defendant for an offense, the court shall order the defendant to be fingerprinted by an individual qualified to take fingerprints. The fingerprints may be recorded in any reliable manner, including by the use of a digital fingerprinting device.

(b) The court shall order a law enforcement officer to provide the fingerprints to the prosecuting attorney and the state police department, in hard copy or in an electronic format approved by the security and privacy council established by IC 10-13-3-34.

(c) The court is not required to order the defendant to be fingerprinted if the defendant was previously arrested and processed at the county jail.

(d) A clerk, court, law enforcement officer, or prosecuting attorney is immune from civil liability for an error or omission in the transmission of fingerprints, case history data, or sentencing data, unless the error or omission constitutes willful or wanton misconduct or gross negligence.

*As added by P.L.216-2007, SEC.38.*

**IC 35-38-1-29**

**Lifetime parole for sexually violent predators not committed to the department of correction**

Sec. 29. (a) This section applies only to a sexually violent predator, including a person who is a sexually violent predator by operation of law for committing an offense under IC 35-38-1-7.5(b).

(b) If a court imposes a sentence on a person described in subsection (a) that does not involve a commitment to the department of correction, the court shall order the parole board to place the person on lifetime parole and supervise the person in the same manner that the parole board supervises a sexually violent predator who has been released from imprisonment and placed on lifetime parole under IC 35-50-6-1(e).

(c) If a person described in subsection (b) is also required to be supervised by a court, a probation department, a community corrections program, a community transition program, or another similar program upon the person's release from imprisonment, the parole board may:

(1) supervise the person while the person is being supervised by the other supervising agency; or

(2) permit the other supervising agency to exercise all or part of the parole board's supervisory responsibility during the period in which the other supervising agency is required to supervise the person;

in accordance with IC 35-50-6-1(g).

*As added by P.L.216-2007, SEC.39.*

**IC 35-38-1-30**

**Sentence; refrain from contact**

Sec. 30. A sentencing court may require that, as a condition of a person's executed sentence, the person shall refrain from any direct or indirect contact with an individual.

*As added by P.L.104-2008, SEC.21.*

**IC 35-38-1-31**

**Abstracts of judgment**

Sec. 31. (a) If a court imposes on a person convicted of a felony a sentence that involves a commitment to the department of correction, the court shall complete an abstract of judgment in an electronic format approved by the department of correction and the division of state court administration. The abstract of judgment must include, but not be limited to:

(1) each offense the person is convicted of;

(2) the sentence, including whether the sentence includes a suspended sentence, probation, or direct commitment to community corrections; and

(3) whether the person is a credit restricted felon.

(b) If a person convicted of a felony is committed to the department of correction by a court as a result of a violation of the terms of probation or other community placement, the court shall state in the abstract of judgment the specific reasons for revocation if probation, parole, or a community corrections placement has been revoked.

*As added by P.L.147-2012, SEC.8.*