CHAPTER TEN

CREDIT TIME

I. DEFINITIONS

Ind. Code § 35-50-6-0.5 sets out the following definitions:

(1) "Accrued time" means the amount of time that a person is imprisoned or confined.

(2) "Credit time" means the sum of a person's accrued time, good time credit, and educational credit.

(3) "Educational credit" means a reduction in a person's term of imprisonment or confinement awarded for participation in an educational, vocational, rehabilitative, or other program.

(4) "Good time credit" means a reduction in a person's term of imprisonment or confinement awarded for the person's good behavior while imprisoned or confined.

(5) "Individualized case management plan" means educational credit which consists of a plan designed to address an incarcerated person's risk of recidivism, and may include:

(a) addiction recovery treatment;

(b) mental health treatment;

(c) vocational education programming;

(d) adult basic education, a high school or high school equivalency diploma, a college diploma, and any other academic educational goal; or

(e) any other programming or activity that encourages productive pursuits while a person is incarcerated and that may reduce the person's likelihood to recidivate after the person's release from incarceration.

Ind. Code § 35-50-6-0.6 provides that the adoption of these definitions by statute in 2015 is intended as a clarification, and does not affect any time accrued before July 1, 2015, by a person charged with or convicted of a crime.

Credit time is applied to determine an inmate's release date from prison, but it does not reduce the actual sentence. Miller v. Walker, 655 N.E.2d 47, 48 n. 3 (Ind. 1995). Although credit time can get an offender out of prison early, upon a parole violation the balance of the actual sentence must be served and there is no reduction in the fixed sentence; credit time that accrued prior to the initial release to parole is "lost." Indiana DOC v. Bogus, 754 N.E.2d 27 (Ind.Ct.App. 2001). This is true for both good behavior credit time and educational credit. Id.

II. JURISDICTION

A. DEPARTMENT OF CORRECTIONS (DOC)

"The manner in which a sentence is served once the prisoner has been committed to the [DOC] is a matter of discretion of that department together with the parole board and the clemency commission and their interactions with the Governor." Like v. State, 760 N.E.2d 1188 (Ind.Ct.App. 2002) (*quoting* Propes v. State, 587 N.E.2d 1291, 1293 (Ind. 1992), *cert. den'd*, 505 U.S. 1226, 112 S.Ct. 3046 (1992)).

The DOC, and not the trial court, has the authority to deny a person who is placed in community corrections earned credit time. Campbell v. State, 714 N.E.2d 678 (Ind.Ct.App. 1999), *aff'd on reh'g,* 716 N.E.2d 577. However, the DOC must act within the bounds the legislature has set.

> Shepard v. State, 84 N.E.3d 1171 (Ind. 2017) (because the community corrections director lacked authority to deprive defendant of good time credit he had earned, the trial court's determination as to defendant's good time credit was reversed; the trial court erred because in absence of rules promulgated by DOC, the program director had no authority to take away defendant's credit time).

B. COURTS

The courts have a duty to correct an erroneous sentence at any time. A sentence in which the individual has been denied credit he deserves is erroneous. The courts must make certain that the DOC is following the guidelines set by the legislature. Weaver v. State, 725 N.E.2d 945 (Ind.Ct.App. 2000) (res judicata cannot bar consideration of erroneous sentence).

For a detailed discussion as to the procedures for challenging the erroneous denial of credit time, see Chapter 11.II.B, *Modification and Correction of Sentence; Correction of Erroneous Sentence; Procedural Mechanisms.*

III. CLASSIFICATIONS

A. INITIAL ASSIGNMENTS

A person imprisoned for a crime earns good time credit irrespective of the degree of security to which the person is assigned. Ind. Code § 35-50-6-6(a).

> Jones v. State, 847 N.E.2d 190 (Ind.Ct.App. 2006) (defendant was incarcerated for committing an act of indirect criminal contempt under civil code, and not "imprisoned for a crime" as contemplated by IC 35-50-6-4, thus statute did not apply to her, and 200-day "flat" sentence did not violate good time credit statutes).

1. Offense(s) committed before 7/1/2014

a. Non credit-restricted felons

For offenses committed before 7/1/2014, a person who is not a credit restricted felony and who is imprisoned for a crime or imprisoned awaiting trial, or sentencing is initially assigned to Class I. Ind. Code § 35-50-6-4(a) (prior to 2014 amendment).

(1) Class I

A person assigned to Class I earns one day of good time credit for each day he is imprisoned for a crime or confinement awaiting trial or sentencing. Ind. Code § 35-50-6-3(a).

(2) Class II

A person assigned to Class II earns one day of good time credit for every two days he is imprisoned for a crime or confinement awaiting trial or sentencing. Ind. Code § 35-50-6-3(b).

(3) Class III

A person assigned to Class III earns no good time credit. Ind. Code § 35-50-6-3(c).

(4) Class IV

A person assigned to Class IV earns one day of good time credit for every six days the person is imprisoned for a crime or confined awaiting trial or sentencing.

b. Credit restricted felons

(1) Definition

Pursuant to Ind. Code § 35-31.5-2-72, a "credit restricted felon" means a person who has been convicted of at least one of the following offenses:

(1) Child molesting involving sexual intercourse, deviate sexual conduct (Ind. Code § 35-42-4-3(a), before its amendment on July 1, 2014) for a crime committed before July 1, 2014, or other sexual conduct (as defined in Ind. Code § 35-31.5-2-221.5) for a crime committed after June 30, 2014, if:

   (a) the offense is committed by a person at least twenty-one (21) years of age; and
   (b) the victim is less than twelve (12) years of age.

(2) Child molesting (Ind. Code § 35-42-4-3) resulting in serious bodily injury or death.

(3) Murder (Ind. Code § 35-42-1-1), if:

   (a) the person killed the victim while committing or attempting to commit child molesting (Ind. Code § 35-42-4-3);
   (b) the victim was the victim of a sex crime under IC 35-42-4 for which the person was convicted; or
   (c) the victim of the murder was listed by the state or known by the person to be a witness against the person in a prosecution for a sex crime under IC 35-42-4 and the person committed the murder with the intent to prevent the victim from testifying.

The victim must have been under the age of twelve at the time of the offense for Ind. Code § 35-31.5-2-71(1) to be applicable. And the statute does not impose credit restricted felon status on defendants convicted of attempted child molestation. Boling v. State, 982 N.E.2d 1055 (Ind. Ct. App. 2013).

Young v. State, 973 N.E.1225 (Ind. Ct. App. 2012) (evidence did not support finding that defendant had sexual intercourse with victim before her twelfth birthday.)

(2) Class IV -- 1 day of credit for 6 days served

A person who is a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial, or sentencing is initially assigned to Class IV. Ind. Code § 35-50-6-4(b) (prior to 2014 amendment). A credit restricted felon may not be assigned to Class I or Class II. Ind. Code § 35-50-6-4(g).

A person assigned to class IV earns one (1) day of good time credit for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing. Ind. Code § 35-50-6-3(d).

(3) Applicable only to those who committed offense after July 1, 2008

Application of the 2008 credit restricted felon statute to a defendant who committed his offense prior to the effective date, July 1, 2008, of the statutes violates the constitutional prohibition against *ex post* facto laws. Upton v. State, 904 N.E.2d 700 (Ind.Ct.App. 2009).

(4) Persons Awaiting Trial and Sentencing

Ind. Code § 35-50-6-4 provides that a credit restricted felon imprisoned awaiting trial is initially assigned to Credit Class C. This applies to someone awaiting trial on a charge that would make him a credit restricted felon, even though he is not technically a credit restricted felon at the time. Buchanan v. State, 956 N.E.2d 124 (Ind. Ct. App. 2011).

c. Reassignment/Review

Except for a credit restricted felon, a person may be reassigned from Class III to Class I, Class II, or Class IV, or from Class II to Class I. A person's assignment to Class III or Class II shall be reviewed at least once every six months to determine if he should be reassigned to a higher credit time class. A credit restricted felon may not be reassigned to Class I or Class II. Ind. Code § 35-50-6-4(g).

2. Offense(s) committed after 7/1/2014

a. Non-credit-restricted felons

A person who is not a credit restricted felon and who is imprisoned for a Level 6 felony or a misdemeanor or imprisoned awaiting trial or sentencing for a Level 6 felony or misdemeanor is initially assigned to Class A. Ind. Code § 35-50-6-4(a).

A person who is not a credit restricted felon and who is imprisoned for a crime other than a Level 6 felony or misdemeanor or imprisoned awaiting trial or sentencing for a crime other than a Level 6 felony or misdemeanor is initially assigned to Class B. Ind. Code § 35-50-6-4(b).

(1) Class A

A person assigned to Class A earns one day of good time credit for each day the person is imprisoned for a crime or confined awaiting trial or sentencing. Ind. Code § 35-50-6-3.1(a).

(2) Class B

A person assigned to Class B earns one day of good time credit for every three days the person is imprisoned for a crime or confined awaiting trial or sentencing. Ind. Code § 35-50-6-3.1(b).

(3) Class C

A person assigned to Class C earns one day of good time credit for every six days the person is imprisoned for a crime or confined awaiting trial or sentencing. Ind. Code § 35-50-6-3.1(c).

(4) Class D

A person assigned to Class D earns no good time credit. Ind. Code § 35-50-6-3.1(e).

(5) Class P

A person assigned to Class P earns one day of good time credit for every four days the person serves on pretrial home detention awaiting trial. A person assigned to Class P does not earn accrued time for time served on pretrial home detention awaiting trial. Ind. Code § 35-50-6-3.1(f).

b. Credit-restricted felons

(1) Definition

Pursuant to Ind. Code § 35-31.5-2-72, a "credit restricted felon" means a person who has been convicted of at least one of the following offenses:

(1) Child molesting involving sexual intercourse, deviate sexual conduct (IC 35-42-4-3(a), before its amendment on July 1, 2014) for a crime committed before July 1, 2014, or other sexual conduct (as defined in Ind. Code § 35-31.5-2-221.5) for a crime committed after June 30, 2014, if:
   (a) the offense is committed by a person at least twenty-one (21) years of age; and
   (b) the victim is less than twelve (12) years of age.
(2) Child molesting (Ind. Code § 35-42-4-3) resulting in serious bodily injury or death.

(3) Murder (Ind. Code § 35-42-1-1), if:

(a) the person killed the victim while committing or attempting to commit child molesting (Ind. Code § 35-42-4-3);

(b) the victim was the victim of a sex crime under IC 35-42-4 for which the person was convicted; or

(c) the victim of the murder was listed by the state or known by the person to be a witness against the person in a prosecution for a sex crime under IC 35-42-4 and the person committed the murder with the intent to prevent the victim from testifying.

The fact that defendant was engaged in conduct that meets the statutory definition of "credit restricted felon" does not mean that he was convicted of such conduct, which is what the statute requires.

McCoy v. State, 96 N.E.3d 95 (Ind.Ct.App. 2018) (after defendant pled guilty to child molesting by "fondling or touching," trial court erred in designating him a credit-restricted felon, even though evidence was presented at guilty plea hearing that molestation included oral sex and other sexual conduct).

The victim must have been under the age of twelve at the time of the offense for Ind. Code § 35-31.5-2-72(1) to be applicable. Young v. State, 973 N.E.2d 1225 (Ind. Ct. App. 2012) (evidence did not support finding that defendant had sexual intercourse with victim before her twelfth birthday).

The statute does not impose credit restricted felon status on defendants convicted of attempted child molestation. Boling v. State, 982 N.E.2d 1055 (Ind. Ct. App. 2013).

(2) Class C – 1 day of credit for 6 days served

A person who is a credit restricted felon is initially assigned to Class C. A credit restricted felon may not be assigned to Class A or Class B. Ind. Code § 35-50-6-4(c).

A person who is assigned to Class C earns one day of good time credit for every six days the person is imprisoned for a crime or confined awaiting trial or sentencing. Ind. Code § 35-50-6-3.1(d).

c. Persons imprisoned awaiting trial

A person imprisoned awaiting trial is initially assigned to a credit class based on the most serious offense with which the person is charged. If all the offenses of which a person is convicted have a higher credit time class than the most serious offense with which the person is charged, the person earns credit time for the time imprisoned awaiting trial at the credit time class of the most serious offense of which the person was convicted. However, this section does not apply to any period during which the person is reassigned to a lower credit time class for a disciplinary violation. Ind. Code § 35-50-6-4(h).

Ind. Code § 35-50-6-4 provides that a credit restricted felon imprisoned awaiting trial is initially assigned to Credit Class C. This applies to someone awaiting trial on a charge that would make him a credit restricted felon, even though he is not technically a credit restricted felon at the time. Buchanan v. State, 956 N.E.2d 124 (Ind. Ct. App. 2011).

d. Reassignment/Review

Except for a credit restricted felon, a person may be reassigned from Class D to Class A, Class B, or Class C, or Class C to Class A or Class B. Ind. Code § 35-50-6-4(g). A person's assignment to Class C, or Class D shall be reviewed at least once every six months to determine if the person should be reassigned to a higher credit time class. Id. A credit restricted felon may not be reassigned to Class A or Class B. Id.

B. EFFECT OF INMATE'S BEHAVIOR

Credit time is a bonus created by statute and deprivation of credit time does nothing more than take away that bonus. State v. Mullins, 647 N.E.2d 676, 678 (Ind.Ct.App. 1995).

1. Reassignment

a. To lower classification

(1) Noncredit restricted felons

A person who is not a credit restricted felon may be reassigned to Class C or Class D if he violates any of the following: (1) a rule of the DOC; (2) a rule of the penal facility in which he is imprisoned; or (3) a rule of the community transition program. However, a violation of a condition of parole or probation may not be the basis for reassignment. Ind. Code § 35-50-6-4(d).

Note: As amended in 2014, Ind. Code § 35-50-6-4 does not provide for reassignment from Class I or II to a lower classification. This was an apparent oversight. Ind. Code § 35-50-6-5 provides that if a person is deprived of educational credit or good time credit, they may also be reassigned from Class I or II to a lower credit class. See 2.d. below.

(2) Credit restricted felons

A person who is a credit restricted felon may be reassigned to Class D and a person who is assigned to Class IV may be reassigned to Class III if the person violates any of the following: a rule of the department of correction; a rule of the penal facility in which the person is imprisoned; a rule or condition of a community transition program. Ind.Code 35-50-6-4(3).

(3) Mandatory hearing

Before a person may be reassigned to a lower time-earning class, he must be granted a hearing to determine guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. Ind. Code § 35-50-6-4(d) and (e).

A person may waive his right to the hearing. Ind. Code § 35-50-6-4(d) and (e).

(a) Procedural safeguards

In connection with the hearing granted pursuant to Ind. Code § 35-50-6-4(d) and (e), the person is entitled to:

(1) have not less than twenty-four hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct and the rule the misconduct is alleged to have violated;

(2) have reasonable time to prepare for the hearing;

(3) have an impartial decision-maker;

(4) appear and speak on his/her own behalf;

(5) call witnesses and present evidence;

(6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;

(7) have the assistance of a lay advocate (the DOC may require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);

(8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;

(9) have immunity if his testimony or any evidence derived from his testimony is used in any criminal proceedings; and

(10) have his record expunged of any reference to the charge if he is found not guilty or if a finding of guilt is later overturned.

Ind.Code 35-50-6-4(f).

Depriving a person of credit time without the minimum procedural safeguards violates that person's right to due process. See Sweeney v. Parke, 113 F.3d 716, 718 (7th Cir. 1997); and Dunn v. Jenkins, 268 Ind. 478, 377 N.E.2d 868, 876 (1978).

Sweeney v. Parke, 113 F.3d 716 (7th Cir. 1997) (state prisoner accused of tampering with lock on his cell door was afforded due process in connection with his disciplinary hearing even though prisoner contended that he had been denied access to cell block's logbook, that his request for continuance should have been granted, and that he had not been allowed to call witnesses; record did not reflect that prisoner had requested access to logbook prior to or at hearing, prisoner was not entitled to more than twenty-four hours to plan his defense, and prisoner did not request witnesses at time he was notified of hearing).

Portee v. Knight, 93 Fed. Appx. 997, 2004 U.S. App. LEXIS 6030, 2004 WL 635266 (7th Cir. 2004) (a complete denial of outside witnesses would be a violation of due process, but where inmate was not diligent in pursuing his witnesses in a timely fashion, it was not error for the prison to refuse to postpone his hearing).

(b) Burden of proof

Any finding of guilt must be supported by preponderance of the evidence presented at the hearing. Ind. Code § 35-50-6-4(f).

Sweeney v. Parke, 113 F.3d 716 (7th Cir. 1997) (evidence was sufficient to support reducing prisoner's earned credit time because prisoner had tampered with lock on cell door where sergeant testified that he had observed blanket

lying across railing and covering half of upper range of cell block, that he had walked up stairs and saw prisoner walk into his cell and attempt to close cell door without any guards noticing, that he had found prisoner's door unsecured and that prisoner had previously been secured in his cell three hours earlier).

Groves v. State, 823 N.E.2d 1229 (Ind.Ct.App. 2005) (trial court did not abuse its discretion by classifying the defendant's credit time as Class III at sentencing, where State charged him with another count of intimidation based on the defendant's threat to kill victim during his initial hearing).

b. To higher classification

Except for a credit restricted felon, a person may be reassigned from Class III to Class I or II, from Class II to Class I, from Class D to Class A, Class B, or Class C, or from Class C to Class A or Class B Ind. Code § 35-50-6-4(g).

A person's assignment to Class III, Class II, Class C, or Class D shall be reviewed at least once every six months to determine if the person should be reassigned to a higher credit time class. Ind. Code § 35-50-6-4(g).

A credit restricted felon may not be reassigned to Class I or Class II, or to Class A, Class B, or Class C. Ind. Code § 35-50-6-4(g). Due process does not require a hearing where the inmate is being reassigned to a higher time-earning class or is not being demoted or deprived. Dunn v. Jenkins, 268 Ind. 478, 377 N.E.2d 868, 876 (1978).

2. Deprivation of good time credit

a. Grounds

Indiana prison inmates have a protected liberty interest in earned good time credits, and credit time cannot be deprived without due process. McPherson v. McBride, 188 F.3d 784, 785 (7th Cir. 1999). Pursuant to Ind. Code § 35-50-6-5(a), a person may, with respect to the same transaction, be deprived of any part of the educational or good time credit he has earned for any of the following:

(1) A violation of one or more rules of the DOC;

(2) If the person is not committed to the DOC, a violation of one or more rules of the penal facility in which the person is imprisoned;

(3) A violation of one or more rules or conditions of the community transition program or community corrections program;

(4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or groundless.

Parks v. Madison County, et. al., 783 N.E.2d 711 (Ind.Ct.App. 2002) (IC 35-50-6-5(a)(4), which deprives defendant of earned credit time for filing frivolous, unreasonable, or groundless civil claim, is not unconstitutional; Court rejected defendant's argument that statute violates equal protection, due process, First Amendment, and that it is open to arbitrary retaliatory enforcement due to unconstitutional vagueness).

(5) If the person is a sex or violent offender (as defined in Ind. Code § 11-8-8-5) and refuses to register before being released from the department as required under IC 11-8-8-7.

(6) If the person is a sex offender (as defined in Ind. Code § 11-8-8-4.5) and refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction.

However, a violation of a condition of parole or probation may not be the basis for deprivation unless the person is confined on home detention as a condition of probation under IC 35-38-2.5-5. Ind. Code § 35-50-6-5(a).

Rodgers v. State, 705 N.E.2d 1039 (Ind.Ct.App. 1999) (subsequent probation violation could not be reason for depriving defendant of education credit time already earned).

Tumbleson v. State, 706 N.E.2d 217 (Ind.Ct.App. 1999) (defendant's violation of pretrial release conditions was not proper reason to deprive defendant of Class I credit time).

b. Sex offender refusal to admit guilt

The Indiana Supreme Court has held that requiring participation in the SOMM (sex offender management and monitoring program) in the DOC or as a condition of parole is not unconstitutional. Bleeke v. Lemmon, 6 N.E.3d 907 (Ind. 2014). Bleeke argued that requiring participation in the program, which in turn requires that the participant admit guilt with respect to the underlying offense, violated his Fifth Amendment privilege against compelled self-incrimination. Id. at 916. However, the Court reasoned that the program is "highly relevant to [Bleeke's] successful reintegration into society" And that good time credits are not "constitutionally required." Id. at 937. Participation while in prison earns credit time toward early release on parole, and participation while on parole allows him to continue on parole rather than being returned to prison to serve out the remainder of him fixed term. In neither situation is Bleeke compelled to admit guilt or have his fix term extended.

Lacy v. Butts, 922 F.3d 371, 375, 378 (7th Cir. 2019) (Fifth Amendment applies to prisoner who was required to admit offense for admission to program because consequences of refusing to do so was severe enough).

c. Mandatory hearing

Before a person may be deprived of educational or good time credit the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether deprivation of educational or good time credit is an appropriate disciplinary action for the violation. In connection with the hearing the person is entitled to the procedural safeguards listed in Ind. Code § 35-50-6-4(f). The person may waive the person's right to the hearing. Ind. Code § 35-50-6-5(b). For a more detailed discussion, see above section on reassignment hearing.

d. In addition to reassignment

Whenever a person is deprived of educational or good time credit the person may also be reassigned to Class II (if not a credit restricted felon) or Class III, Class C or Class D. Ind. Code § 35-50-6-5(a).

e. No retroactive application

Bates v. State, 426 N.E.2d 404 (Ind. 1981) (defendant was entitled to good time credit for time he spent awaiting trial on unrelated charges in county jail, where incarceration occurred prior to effective date of Ind. Code § 35-50-6-5 permitting deprivation of good time credit for pretrial detainees who violate rules of prison).

f. Role of sentencing judge

Whereas a judge can recommend deprivation of credit time, the judge cannot deprive defendant of credit time; rather, the DOC, after conducting a hearing as to whether the defendant violated rules of the DOC or the facility in which he is imprisoned and whether the violation justifies deprivation of credit time, may deprive the defendant of credit time. See Tumbleson v. State, 706 N.E.2d 217 (Ind.Ct.App. 1999).

3. Restoration of earned good time credit

a. Deprivation or reclassification prior to hearing

When an inmate is charged with a new crime or has allegedly violated a rule of the penal institution to which she is confined, the inmate may immediately be assigned to Class III and may have all earned credit time suspended pending disposition of the allegations. Ind. Code § 35-50-6-7(a).

An inmate classified as Class III under IC 35-50-6-7(a) shall be denied release on parole or discharge until he is in the actual custody of the DOC or county jail to which he was sentenced, and a hearing is held on the allegations. Ind. Code § 35-50-6-7(b). The DOC or sheriff may waive the hearing if the person is restored to his former credit time class and receives all previously earned credit time and any credit time that he would have earned if he had not been assigned to Class III. Ind. Code § 35-50-6-7(b).

Note: This code section was not updated to reflect the new credit time classifications for inmates incarcerated for offenses committed on or after July 1, 2014. Those inmates may not be deprived of earned credit time or reclassified prior to the hearing required by Ind. Code § 35-50-6-5(b).

b. Favorable disposition

Any part of the educational or good time credit of which a person is deprived for a violation of a rule may be restored. Ind. Code § 35-50-6-5(c).

A person who is assigned to Class III and later found not guilty of the alleged misconduct shall have all earned credit time restored and shall be reassigned to the same credit time class that he was in before his assignment to Class III. In addition, the person shall be

credited with any credit time that he would have earned if he had not been assigned to Class III. Ind. Code 35-50-6-7(c).

Young v. Indiana Dept. of Correction, 22 N.E.3d 716 (Ind.Ct.App. 2014) (credit time restoration policy which limits restoration to time period while inmate is still serving the same sentence does not result in disparate treatment and therefore does not violate equal protection).

C. APPEALS

A person who has been reassigned to a lower credit time class or has been deprived of educational or good time credit may appeal the decision to the commissioner of the DOC or sheriff. Ind. Code § 35-50-6-5.5. Review of a decision made by a sheriff in a disciplinary hearing includes review of whether statutorily mandated procedural safeguards were given and followed and whether the decision was supported by the preponderance of the evidence. Smith v. Stoner, 594 F. Supp. 1091 (N.D. Ind. 1984).

Absent statutory authority, Indiana courts have declined to review decisions of penal institutions taking away good time credit. Hasty v. Broglin, 531 N.E.2d 200, 201 (Ind. 1988).

Blanck v. Ind. Dep't of Correction, 829 N.E.2d 505 (Ind. 2005) (neither Ind. Code § 11-11-5-4, which prohibits DOC from imposing certain disciplinary actions, nor "Open Courts" provision of Article 1, Section 12 of Indiana Constitution create subject matter jurisdiction over claims seeking judicial review of DOC discipline decisions).

Holmes-Bey v. Butts, 20 N.E.3d 578 (Ind.Ct.App. 2014) (trial court should have dismissed instead of denied defendant's petition to challenge DOC reduction of credit time; such decisions are not subject to judicial review).

However, where the gravamen of the prisoner's claims of erroneous deprivation of credit time is based on the constitutionality of the DOC's policy, Indiana courts do have jurisdiction to review the DOC's decision to deprive credit time. State v. Moore, 909 N.E.2d 1053 (Ind.Ct.App. 2009).

State v. Moore, 909 N.E.2d 1053 (Ind.Ct.App. 2009) (although prisoner requested restoration of credit time and privileges imposed as part of DOC's discipline, the gravamen of his claims was based on the constitutionality of sex offender treatment requirements; DOC cannot violate a prisoner's constitutional right against self-incrimination, impose sanctions because the prisoner asserts his rights, and then hide behind the shibboleth of "no review of prison disciplinary matter"; thus, trial court has subject matter jurisdiction).

Markham v. Clark, 978 F.2d 993 (7th Cir. 1992) (Indiana does not provide a judicial remedy to persons who lose their appeals to the prison authorities from a disciplinary sanction).

Bates v. State, 426 N.E.2d 404 (Ind. 1981) (defendant's complaint that disciplinary hearing held on alleged infractions of jail rules by defendant did not comport with statutory requirements was not subject to judicial review in state court).

But see:

McGee v. State, 790 N.E.2d 1067 (Ind.Ct.App. 2003) (trial court may review credit time determinations; it is not inconsistent with Post-Conviction Rule 1 to allow post-conviction

review of credit time determinations when immediate relief is not relief sought). See also Young v. State, 888 N.E.2d 1255 (Ind. 2008).

D. CREDIT FOR TIME ERRONEOUSLY AT LIBERTY

Indiana's credit time statutes only concern credit time while an inmate is imprisoned or confined—not time for prisoners who are erroneously released. However, the doctrine of credit for time erroneously at liberty allows a prisoner who is released through no fault of his own to have his sentence continue to run while he is at liberty. In Temme v. State, ___N.E.3d___ (Ind. 2021), the Indiana Supreme Court held that as long as the defendant bears no active responsibility in his early release, he or she is entitled to credit while erroneously at liberty as if still incarcerated. However, the defendant's projected release date serves as a firm backstop. When it discovers an error, the State must petition a trial court to recommit the defendant to resume his or her sentence if, after calculating credit time, any sentence remains to be served.

IV. PRESENTENCE CREDIT

A. COMPUTING TIME

1. Accrued Time Credit for time served

A defendant is entitled to credit for time served subsequent to arrest. Bond v. State, 273 Ind. 233, 403 N.E.2d 812, 819 (1980); Franks v. State, 262 Ind. 649, 323 N.E.2d 221, 224 (1975). The defendant is entitled to credit for the number of days spent in confinement from the date of arrest for the offense to the date of sentencing for that same offense. Dewees v. State, 444 N.E.2d 332, 333 (Ind.Ct.App. 1983). The date of sentencing is not included in calculating the number of days served prior to sentencing. Ind. Code § 35-38-3-2(d); Moon v. State, 110 N.E.3d 1156 (Ind.Ct.App. 2018). However, hours spent in pretrial incarceration count as one day for purposes of calculating accrued time. Adkins v. State, 120 N.E.3d 1058 (Ind. Ct. App. 2019).

> Davenport v. State, 689 N.E.2d 1226 (Ind. 1997) (defendant was entitled to credit for time period between arrest and sentencing although abstract incorrectly stated amount of credit time earned).
>
> Willoughby v. State, 626 N.E.2d 601 (Ind. 1993) (defendant was entitled to pretrial confinement credit from date he was served with warrant based on notice of probation violation until date of sentencing and not from earlier date that notice of probation violation was filed in county until date of sentencing).

Pre-sentence jail time credit is a matter of statutory right, not a matter of judicial discretion. Weaver v. State, 725 N.E.2d 945, 948 (Ind.Ct.App. 2000).

> Williams v. State, 178 Ind.App. 163, 381 N.E.2d 1256, 1259 (1978) (trial court had no discretion, under IC 35-8-2.5-1 (repealed, now Ind. Code § 35-50-6-3 and 4) to refuse to grant credit for time served prior to trial even though the defendant escaped after jury's verdict).

Credit for time served accrued while confined awaiting trial or sentencing is applied only to the sentence for the offense for which the presentence time was served.

Dolan v. State, 420 N.E.2d 1364, 1373 (Ind.Ct.App. 1981) (when a defendant is confined during the same time period for multiple offenses and they are tried separately, the defendant is entitled to a full credit for each offense, but credit cannot be given for time served on wholly unrelated offenses).

Moreover, a defendant may not receive pretrial credit time in a probation violation sentencing for a disposition of an unrelated pending charge. Tate v. State, 813 N.E.2d 437 (Ind. Ct. App. 2005) (in probation violation sentencing, trial court lacked authority to save pretrial detention credit time and apply it upon disposition of unrelated pending charge).

2. Good time credit

A person imprisoned for a crime or imprisoned awaiting trial or sentencing for an offense committed prior to July 1, 2014, is initially assigned to Class I. Ind. Code § 35-50-6-4(a) (prior to 2014 amendment). Such an inmate may receive one day good time credit for every one day the person serves prior to trial or sentencing. Ind. Code § 35-50-6-3(b).

A person imprisoned awaiting trial or sentencing for an offense committed on or after July 1, 2014, is initially assigned to a credit class based on the most serious offense with which the person is charged. Ind. Code § 35-50-6-4(h). So a person imprisoned awaiting trial or sentencing for a Level 6 felony or a misdemeanor is assigned to Credit Class A, Ind. Code § 35-50-6-4(a), and earns one day of good time credit for each day served. Ind. Code § 35-50-6-3.1(b).

A person who is not a credit restricted felon and who is imprisoned awaiting trial or sentencing for anything other than a level 6 felony or misdemeanor is assigned to Credit Class B, Ind. Code § 35-50-6-4(b), and earns one day of good time credit for every three days served. Ind. Code § 35-50-6-3.1(c). A credit restricted felon who is imprisoned awaiting trial or sentencing is initially assigned to Class C and earns one day of good time credit for every six days served. Ind. Code § 35-50-6-3.1(d). A credit restricted felon may not be assigned to Class A or Class B. Ind. Code § 35-50-6-4(c).

A person imprisoned awaiting trial on more than one charge is initially assigned to a credit class based on the most serious offense charged. Ind. Code § 35-50-6-3(h). If all of the offenses for which the person is convicted have a higher credit time class than the most serious offense charged, the person earns good time credit for the time imprisoned awaiting trial at the credit class of the most serious offense of which the person was convicted. Id.

An inmate may be deprived of his pretrial good time credit although a sentencing judge only has the authority to recommend to the DOC or sheriff reclassification or deprivation of credit time. Leavell v. State, 181 Ind.App. 69, 391 N.E.2d 246, 251 (1979). But the trial court's recommendations will be deemed a final sentencing determination. Robinson v. State, 805 N.E.2d 783, 791 n.6 (the characterization of a trial court's credit time determination as a "recommendation" is a "relic from prior times"). Any designation of good time credit for time served prior to sentencing is subject to modification thereafter by the DOC pursuant to statutory procedures. Id.

The trial court's sentencing judgment must report not only the number of days confined while imprisoned before sentence, but also must separately designate credit time earned. See Ind. Code § 35-38-3-2; Bonds v. State, 165 N.E.3d 1011 (Ind.Ct.App. 2021). However, omitting such a designation will be presumed to designate credit time days equal to days of pre-

sentence confinement. Robinson v. State, 805 N.E.2d 783 (Ind. 2004) (under current statutes, presumption would be full good time credit earned at the appropriate statutory rate).

Washington v. State, 805 N.E.2d 795 (Ind. 2004) (where trial court's order of judgment states that defendant is given credit "for 140 days pretrial confinement time," presumption is that he is entitled to additional 140 days credit time).(under current statutes, presumption would be full good time credit earned at the appropriate statutory rate).

Rudisel v. State, 31 N.E.3d 984 (Ind.Ct.App. 2015) (where sentencing judgment acknowledged 109 days defendant had served but did not expressly award credit for those days, it was proper to automatically credit her with 109 days).

Portee v. State, 806 N.E.2d 358 (Ind.Ct.App. 2004) (where sentencing judgment indicated that defendant was confined prior to sentencing for 158 days, it is presumed that defendant received proper credit time from DOC); See also Pettiford v. State, 805 N.E.2d 783 (Ind.Ct.App. 2004).

Groves v. State, 823 N.E.2d 1229 (Ind.Ct.App. 2005) (trial court's classification of the defendant's credit time to Class III did not address credit for time spent in confinement before sentencing, thus the defendant should receive credit for pre-sentence time served).

A defendant cannot waive pretrial credit time by agreement. Senn v. State, 766 N.E.2d 1190 (Ind. Ct. App. 2002).

Tumbleson v. State, 706 N.E.2d 217 (Ind.Ct.App. 1999) (court improperly denied defendant credit time for seventy-six days he spent incarcerated prior to sentencing).

When an offender is sentenced and receives credit for time served, earned credit time, or both, that time is applied to the new sentence immediately, before application of prospective earned credit time, in order to determine the defendant's earliest release date. Neff v. State, 888 N.E.2d 1249 (Ind. 2008).

The doctrine of res judicata will not bar court from properly restoring pretrial credit time. Weaver v. State, 725 N.E.2d 945 (Ind. Ct. App. 2000).

PRACTICE POINTER: A sufficiently ambiguous sentencing judgment may constitute an erroneous sentence on the face of the judgement if it does not reflect whether the credit time refers to time served, credit time under a certain class, or credit time following a reduction in credit time class or deprivation of credit time. Crow v. State, 805 N.E.2d 780 (Ind. 2004) (sentencing judgment stating only that defendant is entitled to 179 days of credit time is sufficiently ambiguous as to constitute an erroneous sentence on the face of the judgement). Thus, a motion to correct sentence may be appropriate to ensure proper application of defendant's credit time. For a more detailed discussion on motions to correct facially erroneous sentences, see Chapter 11, Modification and Correction of Sentence, Subsection II.B.4, *Motion to correct erroneous sentence: facially erroneous sentences*.

3. Pre-trial credit time towards probation

If an individual is sentenced only to probation, the court must credit the probationary period with good time earned during pre-trial incarceration because the court cannot suspend a sentence that has already been executed. Williams v. State, 759 N.E.2d 661 (Ind.Ct.App.

2001) (disagreeing with Sutton v. State, 562 N.E.2d 1310, 1313 (Ind.Ct.App. 1990)), *cert. den'd on other issue*, 502 U.S. 987, 112 S.Ct. 598. However, an individual whose suspended sentence is ordered executed as punishment for probation revocation is not entitled to credit for time served prior to original sentencing if the individual already received credit. Blanton v. State, 754 N.E.2d 7 (Ind.Ct.App. 2001).

Double jeopardy requires time served on probation to be credited toward a new sentence of probation imposed for the same conviction after the defendant successfully petitions for post-conviction relief. Kincaid v. State, 778 N.E.2d 789 (Ind. 2002).

Harding v. State, 27 N.E.3d 330 (Ind.Ct.App. 2015) (trial court incorrectly calculated the amount of credit time defendant had accrued prior to the revocation of his probation as well as the sentence imposed after the revocation).

B. REQUIREMENTS

The determination of defendant's pretrial credit is dependent upon: (1) pretrial confinement; and (2) pretrial confinement being result of criminal charge for which the sentence is being imposed. Ind. Code § 35-50-6-3 and 3.1; See also Duncan v. State, 274 Ind. 457, 412 N.E.2d 770 (1980) and Willoughby v. State, 626 N.E.2d 601, 602 (Ind.Ct.App. 1993).

1. Confinement

The term "confined" should not be strictly limited to conventional penal detention situations. Wilson v. State, 679 N.E.2d 1333, 1336 (Ind.Ct.App. 1997).

a. Home detention

Absent legislative direction, a defendant is only entitled to good time credit toward sentence for pre-trial time served in a prison, jail or other facility which imposes a substantially similar restrictions upon personal liberty. State v. Purcell, 721 N.E.2d 220 (Ind. 1999).

A person placed on pretrial home detention awaiting trial is assigned to Class P. Ind. Code § 35-50-6-4(i). A person assigned to Class P may not be reassigned to another credit time class while the person is on pretrial home detention awaiting trial. Id. A person assigned to Class P earns one day of good time credit for every four days the person serves on pretrial home detention awaiting trial. A person assigned to Class P does not earn accrued time for time served on pretrial home detention awaiting trial. Ind. Code § 35-50-6-3.1(f).

b. Commitment to mental health or treatment institution

A defendant is entitled to credit for time spent in a psychiatric hospital if the stay at the hospital was ordered by the court as simply another form of imprisonment under which she would ultimately be subject to the supervision and control of the State as a consequence of her pending criminal charges unless and until bond was posted, and if defendant is therefore not free to leave the hospital or faced return to prison upon completion of her treatment there. On the other hand, defendant would not be entitled to credit if the hospitalization was not ordered by the court with the understanding that her confinement upon her pending charges would simply continue in another environment,

and if her liberty was not restricted by the control of the State. Wilson v. State, 679 N.E.2d 1333, 1336 (Ind.Ct.App. 1997).

State v. Davis, 898 N.E.2d 281 (Ind. 2008) (defendant who was found incompetent to stand trial and confined to a psychiatric institution under the jurisdiction of the DMHA had earned sufficient credit time to satisfy potential sentence, so that trial court did not abuse its discretion in dismissing charges).

Reno v. Koray, 515 U.S. 50, 115 S.Ct. 2021 (1995) (time spent by prisoner at community treatment center while "released" on bail pursuant to Bail Reform Act was not "official detention" within meaning of statute entitling defendant to credit toward service of term of imprisonment for any time he has spent in official detention prior to date sentence commences).

Oswalt v. State, 749 N.E.2d 612 (Ind.Ct.App. 2001) (defendant was not entitled to credit for time served against his sentence for 180 days he spent in substance abuse treatment program where completion of program was condition of his probation).

Dixon v. State, 685 N.E.2d 715 (Ind.Ct.App. 1997) (given their less restrictive and voluntary nature, voluntary rehabilitation programs do not constitute "confinement" within the meaning of Ind. Code § 35-50-6-3, and thus, defendants who enter them do not qualify for good time credit).

c. Pre-waiver juvenile detention

State ex rel. W.A. v. Marion County Superior Court, 704 N.E.2d 477 (Ind. 1998) (because juvenile on informal home detention still faces significant restrictions, though not to degree of one placed in facility, informal home detention, as well as formal home detention, qualifies as detention for purposes of time requirements for hearing).

d. Juvenile detention

J.D. v. State, 853 N.E.2d 945 (Ind. 2006) (juvenile court's broad authority to fashion dispositional alternatives extends to discretion over how much, if any, of the time the juvenile has spent in pre-sentence confinement is entitled to credit).

e. Custody of bond agent

Murfitt v. State, 812 N.E.2d 809 (Ind.Ct.App. 2005) (defendant was not entitled to pre-trial credit for time he was released on bond, despite argument that his liberty was restricted by being in bond agent's custody).

f. Pretrial diversion drug court program

Meadows v. State, 2 N.E.3d 788 (Ind. Ct. App. 2013) (trial court did not abuse its discretion in denying credit time for time spent on electronic monitoring during a pretrial deferral drug court program. Statutes did not require credit or good time credit for this time, and trial court was within its discretion not to award credit time to defendant who failed to comply with deferral conditions); see also Perry v. State, 13 N.E.3d 909 (Ind.Ct.App. 2014); but see House v. State, 901 N.E.2d 598 (Ind.Ct.App. 2014).

g. Resulted from charge on which defendant is being sentenced

Where a person is incarcerated awaiting trial on more than one charge and is sentenced to concurrent terms for the separate crimes, he is entitled to receive credit time against each separate term. However, where the person receives consecutive terms he or she is only allowed credit time against the total or aggregate of the terms. Bennett v. State, 802 N.E.2d 919 (Ind. 2004); Corn v. State 659 N.E.2d 554, 558-59 (Ind. 1995); Hall v. State, 944 N.E.2d 538 (Ind. Ct. App. 2011); Stephens v. State, 735 N.E.2d 278 (Ind.Ct.App. 2000); Ragon v. State, 654 N.E.2d 906, 907 (Ind.Ct.App. 1995); Simms v. State, 421 N.E.2d 698, 702 (Ind.Ct.App. 1981). This rule of law may be applied retroactively without violating the *Ex Post* Facto Clause. Bryant v. State, 446 N.E.2d 364, 365 (Ind.Ct.App. 1983).

A defendant is not entitled to credit for time served prior to sentencing where he/she is incarcerated and waiting for trial on separate charges and information on instant charge has not yet been filed. Duncan v. State, 274 Ind. 457, 412 N.E.2d 770 (1980).

> Payne v. State, 838 N.E.2d 503 (Ind. Ct. App. 2005) (defendant would improperly receive "double or extra credit" if court permitted full credit against both battery and criminal deviate conduct sentences from date of his "arrest" for criminal deviate conduct charge while incarcerated for battery; although sentences did not run directly consecutive to each other, that is practical effect of what happened).

The fact that consecutive sentences are discretionary rather than mandatory does not change the rule that a person can receive credit time only against the aggregate. Hall v. State, 944 N.E.2d 538 (Ind. Ct. App. 2011).

> Diedrich v. State, 744 N.E.2d 1004 (Ind.Ct.App. 2001) (because defendant was sentenced to consecutive sentences when he committed the second offense while on bond, he was not entitled to full credit against each sentence even though he was confined for both offenses at the same time).
>
> Bischoff v. State, 704 N.E.2d 129 (Ind.Ct.App. 1998) (court in OWI case did not err in refusing to grant defendant jail time credit in OWI case for time served as result of incarceration for handgun case; defendant failed to demonstrate that time he spent confined in Wabash County handgun case after he was served with Huntington County arrest warrant for probation revocation on OWI case was result of OWI case).
>
> Ragon v. State, 654 N.E.2d 906 (Ind.Ct.App. 1995) (where defendant was given two consecutive prison sentences for convictions from two separate causes, defendant was not entitled to double award of presentence credit for time spent in jail detained on charges from both causes). See also Stephens v. State, 735 N.E.2d 278 (Ind.Ct.App. 2000).
>
> Lanham v. State, 540 N.E.2d 612 (Ind.Ct.App. 1989) (defendant was not entitled to credit for pretrial confinement on both sentences imposed upon separate convictions where sentences were set to run consecutively).

If a defendant is released on bond and subsequently arrested for an unrelated offense and detained, the defendant is not entitled to good time credit for the time spent detained for

the new charge, even if the new charge is subsequently dismissed. Dewees v. State, 444 N.E.2d 332, 334 (Ind. Ct. App. 1983).

Occasionally, an award of "double" credit may be appropriate in situations where the new charge makes a difference as to whether the defendant would be eligible for pretrial release.

> Muff v. State, 647 N.E.2d 681 (Ind.Ct.App. 1995) (where defendant was arrested and subsequently bonded out on count 1 and then was arrested on count 2 which resulted in revocation of bond on count 1, defendant was entitled to credit for pretrial time served against both sentences; if not for arrest on count 2, defendant would not have been incarcerated on count 1).

But see:

> Stephens v. State, 735 N.E.2d 278 (Ind.Ct.App. 2000) (arguing that Muff has been implicitly *overruled* by Corn v. State, 659 N.E.2d 554 (Ind. 1995), and that where defendant is out on bond when arrested for unrelated offense, defendant is not entitled to double presentence credit time because the sentences are mandatory consecutive). See also Diedrich v. State, 744 N.E.2d 1004 (Ind.Ct.App.2001).

h. Dismissed charges

(1) Pursuant to pre-trial amendment

A defendant only receives credit for pretrial confinement resulting from the criminal charge for which the sentence is being imposed. Thus, a defendant is not entitled to credit for presentence time served on wholly unrelated offenses. James v. State, 872 N.E.2d 669 (Ind.Ct.App. 2007). However, where a re-filed charge is based on the same set of facts as the dismissed charges for which the defendant was incarcerated pending trial, the defendant is entitled to pre-trial credit because the dismissed charge and the ultimate conviction are not wholly unrelated. Id.

(2) Pursuant to plea agreement

In Brown v. State, 907 N.E.2d 591 (Ind.Ct.App. 2009), each Court of Appeals judge on the panel had a different opinion as to when a defendant receives pre-sentence credit time for charges on which he was incarcerated pre-sentence but were dismissed pursuant to a plea agreement.

1. The lead opinion held that whether a defendant earns credit time for charges dismissed by a plea agreement turns on whether those charges and the charges on which the sentence is imposed are based on the same set of underlying facts. Thus, Brown was not entitled to credit for the time he served between March 6th and April 10th on unrelated charges which were ultimately dismissed pursuant to a plea agreement. However, he was entitled to the time he served after he was served his warrant in jail on April 10th for the charges to which he ultimately pled.

2. Baker, C.J., dissented on the basis that Brown was not entitled to any pre-sentence credit time because he was being held on the March 6th charges

which were ultimately dismissed, and not as the result of the April 10th charges. While the parties could have allowed for pretrial credit time pursuant to the plea agreement, they did not do so.

3. Kirsch, J., dissented on the basis that Brown was entitled to presentence credit time for the entire time served. He reasoned that where a trial court is sentencing pursuant to plea agreement that resolves multiple charges, including the charge for which the defendant is being held in jail, that credit time should be accorded against the sentence ultimately imposed in the absence of a provision in the plea agreement to the contrary.

Thus, under Judge Kirsch's reasoning, a defendant pleading guilty is entitled to credit for the entire time served awaiting the plea, regardless of the charges to which he ultimately pleas.

See also Purdue v. State, 51 N.E.3d 432 (Ind. Ct. App. 2016) (defendant is entitled to credit time for pre-trial incarceration for cases that may have been dismissed pursuant to a plea agreement if the defendant pleads guilty to another related case).

i. Probation violations

Because Ind. Code § 35-50-1-2 requires the sentence on a probation violation to be served consecutively to the sentence for a crime which occurred while on probation, a defendant will never be entitled to earn pretrial time for the probation violation while also earning credit time for the new arrest.

Grayson v. State, 593 N.E.2d 1200 (Ind.Ct.App. 1992) (defendant was entitled to pretrial detention credit against his sentence for drug crime or for sentence imposed on revocation of probation but was not permitted to "double dip" by receiving credit applied against each of individual sentences).

However, the defendant may earn pretrial credit time for a probation violation sentence while earning credit time on a previous unrelated conviction.

Dolan v. State, 420 N.E.2d 1364 (Ind.Ct.App. 1981) (where defendant was serving sentence for unrelated charge when he was served with arrest warrant for probation violation, defendant was entitled to credit time on probation violation from date of arrest warrant to sentencing for probation violation, while still earning credit for unrelated charge, because court did not order probation violation sentence to run consecutively to unrelated charge).

j. Subsequent crime committed while imprisoned

Where an inmate commits a crime while serving a sentence or awaiting sentencing on an unrelated crime, the defendant is not entitled to credit for the time he was in jail awaiting sentence on the subsequent crime. To do so would allow the two mandatory consecutive sentences to run concurrently. Emerson v. State, 498 N.E.2d 1301, 1302-03 (Ind.Ct.App. 1986).

Corn v. State, 659 N.E.2d 554 (Ind. 1995) (trial court did not err in denying defendant credit time for days spent awaiting trial for armed takeover of prison where

defendant was currently serving sentence when he committed additional crime and his additional sentence was to run consecutively to sentence which put him in jail).

Ellis v. State, 634 N.E.2d 771 (Ind.Ct.App. 1994) (because defendant's confinement prior to his sentencing for escape resulted from his conviction for wholly unrelated offense, trial court did not err by not crediting defendant for presentence time served for escape charge later filed).

Jorgensen v. State, 559 N.E.2d 616 (Ind.Ct.App. 1990) (defendant was not entitled to separate credit on escape charge for pretrial incarceration after she surrendered until date of her sentencing on escape charge, where trial court granted defendant presentence confinement credit on her underlying murder sentences and escape and murder charges were to be served consecutively). See also Emerson v. State, 498 N.E.2d 1301 (Ind.Ct.App. 1986).

k. Sentenced by different courts

In instances where one court is imposing a sentence which may run consecutive to a sentence imposed on an unrelated charge, credit is to be applied for confinement for the specific charge for which the defendant is being sentenced. Hall v. State, 944 N.E.2d 538 (Ind. Ct. App. 2011). Each court is responsible for only crediting time in confinement as result of charge for which that court is sentencing defendant. Willoughby v. State, 626 N.E.2d 601, 602 (criticizing suggestion in Grayson v. State, 593 N.E.2d 1200 (Ind.Ct.App. 1992) that sentencing court may compensate for another court that failed to give defendant credit for time served on other conviction for which defendant was simultaneously incarcerated).

Thus, credit time for consecutive sentences from multiple counties apply to the aggregate sentence. Swihart v. State, 71 N.E.3d 60 (Ind. Ct. App. 2017) (defendant was not entitled to 229 days of credit time in his Grant County case when that time was applied to a consecutively served Madison County sentence; trial court imposed concurrent sentences for two offenses but ran them consecutively to the Madison County sentence; trial court awarded 124 days of credit time for pre-trial detention but properly denied D's request for additional 229 days as that time was already credited to his Madison County sentence).

Further, a trial court is not required to grant credit time for time served in another state.

Carneal v. State, 859 N.E.2d 1255 (Ind. Ct. App. 2007) (trial court did not abuse its discretion by refusing to grant credit time for time served in Illinois despite an Illinois plea agreement that Illinois sentence was to run concurrent with Indiana sentence).

l. Exception: effect of reversal of one conviction

Where conviction to which credit time was originally attributed is reversed, credit time should be attributed to remaining conviction which was originally ordered to be served consecutively. Jenkins v. State, 492 N.E.2d 666, 669 (Ind. 1986).

V. CREDIT TIME FOR ALTERNATIVE SENTENCES, PROBATION AND PAROLE

A. DIRECT COMMITMENT TO COMMUNITY CORRECTIONS

A person confined on home detention in a community corrections program receives one day of accrued time for each day the person is confined on home detention, plus any earned good credit time. Ind. Code § 35-38-2.6-6(b). Further, a person who is placed in a community corrections program under this chapter is also entitled to earn good time credit under IC 35-50-6-3, and IC 35-50-6-3.1. Ind. Code § 35-38-2.6-6(c). However, a person confined on home detention as part of a community corrections program may not earn educational credit under IC 35-50-6-3.3. Ind. Code § 35-38-2.6-6(c).

In lieu of a violation, the program director of the community corrections program does not have the statutory authority to revoke a defendant's credit time. Shepard v. State, 84 N.E.3d 1171 (Ind. 2017).

1. Work release: Good time credit

Campbell v. State, 714 N.E.2d 678 (Ind.Ct.App. 1999), *aff'd on reh'g,* 716 N.E.2d 577, *overruled in part on other grounds by* Robinson v. State, 805 N.E.2d 783 (Ind. 2004) (defendant who was ordered to serve sentence in community corrections' work release program was entitled good time credit for time he spent in program prior to his revocation and placement in DOC).

In 2010, Ind. Code § 35-38-2.6-6 was amended to provide that a person placed in a community corrections program under this chapter is entitled to earn good time credit under IC 35-50-6.

In 2014, Ind. Code § 35.38-2.6-6 was amended to clarify that good time credit is earned pursuant to Ind. Code § 35-50-6-3 and 3.1 and is earned is in addition to credit for actual time served.

2. Home detention

Pursuant to Ind. Code § 35-38-2.6-6(a), "home" means the actual living area of the temporary or permanent residence of a person.

a. Prior to July 1, 2010: Actual time served

Prior to July 1, 2010, Ind. Code § 35-38-2.6.6(a) read: A person who is placed in a community corrections program under this chapter is entitled to earn good time credit under IC 35-50-6, unless the person is placed in the person's home.

A defendant who is ordered to serve his sentence on home detention through direct placement in the community corrections program does not receive two for one credit time ("good time credit") but does receive day for day credit for time served. State v. Purcell, 721 N.E.2d 220 (Ind. 1999), *vacating but agreeing with* 700 N.E.2d 815 (Ind.Ct.App. 1998).

b. After July 1, 2010: Good time credit

As of July 1, 2010, Ind. Code § 35-38-2.6-6(a) was amended to remove the home detention exception to awarding credit time, and to provide that a person placed in a community corrections program under this chapter is entitled to earn good time credit under IC 35-50-6. This amendment applies only to individuals placed on home detention in a community corrections program after July 1, 2010. Cottingham v. State, 971 N.E.2d 82 (Ind. 2012).

c. After July 1, 2014: Actual time served plus good time credit

As of July 1, 2014, Ind. Code § 35-38-2.6-6 was amended to clarify that a person placed on home detention in a community corrections program receives one day of accrued time for each day confined on home detention and is entitled to earn good time credit under IC 35-50-6-3 and 3.1 in addition to this time served credit. Ind. Code § 35-38-2.6-6(b) and (c). However, a person confined on home detention may not receive educational credit. Ind. Code § 35-38-2.6-6(c).

3. Deprivation of credit time

A person who is placed in a community corrections program under this chapter may be deprived of earned credit time as provided under rules adopted by the department of correction under IC 4-22-2. Ind. Code § 35-38-2.6-6(d); Ind. Code § 35-50-6-5(a)(3)(B). The DOC, not the trial court, has the authority to deny a person who is placed in community corrections earned credit time. Campbell v. State, 714 N.E.2d 678 (Ind.Ct.App. 1999), *aff'd on reh'g,* 716 N.E.2d 577, *overruled in part on other grounds by* Robinson v. State, 805 N.E.2d 783 (Ind. 2004); Pharr v. State, 2 N.E.3.10 (Ind. Ct. App. 2013).

Shepard v. State, 84 N.E.3d 1171 (Ind. 2017) (because the community corrections director lacked authority to deprive defendant of good time credit he had earned, the trial court's determination as to defendant's good time credit was reversed; the trial court erred because in absence of rules promulgated by DOC, the program director had no authority to take away defendant's credit time).

B. PROBATION

1. No good time credit or credit for time served

Except as set forth under IC 35-38-2.5-5 (home detention as a condition of probation), a person does not earn credit time while on probation. Ind. Code § 35-50-6-6(a).

Burton v. State, 547 N.E.2d 882 (Ind.Ct.App. 1989) (defendant who was confined to treatment center as condition of probation did not receive credit time for confinement).

Reed v. State, 844 N.E.2d 223 (Ind.Ct.App. 2006) (no error in denying credit time for days spent on daily reporting probation).

2. Exceptions

a. Home detention and work release

(1) Home detention

(a) Prior to July 1, 2001: No credit time

Prior to July 1, 2001, a long line of cases held that a probationer on home detention was not entitled to credit for actual time served. E.g., Palmer v. State, 774 N.E.2d 46 (Ind. 2002); Via v. State, 738 N.E.2d 684 (Ind.Ct.App. 2001); Wharff v. State, 691 N.E.2d 205 (Ind.Ct.App. 1998); Barton v. State, 598 N.E.2d 623 (Ind.Ct.App. 1992).

(b) After July 1, 2001: Actual time served

The legislature amended Ind. Code § 35-38-2.5-5 as of July 1, 2001, to provide credit for actual time served on home detention as a condition of probation. Oswalt v. State, 749 N.E.2d 612, 615 n.5 (Ind.Ct.App. 2001).

The 2001 amendment clarified that the legislature has always intended to provide credit for actual time served on home detention as a condition of probation. Thus, regardless of whether the probationer was placed on home detention prior to the amendment, the probationer is still entitled to day-for-day credit for the time spent on home detention. Palmer v. State, 774 N.E.2d 46 (Ind. 2002); Martin v. State, 774 N.E.2d 43 (Ind. 2002); Stith v. State, 766 N.E.2d 1266 (Ind.Ct.App. 2002); Senn v. State, 766 N.E.2d 1190 (Ind.Ct.App. 2002).

Brattain v. State, 777 N.E.2d 774 (Ind.Ct.App. 2002) (denial of credit for time served on work release and home detention as condition of probation was not error because trial court's imposition of only two years of previously suspended sentence did not exceed total sentence imposed).

(c) Good time credit

Note: In Peterink v. State, 971 N.E.2d 735 (Ind. Ct. App. 2012), *summarily affirmed* on this issue on transfer, 982 N.E.2d 1009 (Ind. 2013), the Court of Appeals held that the statute was ambiguous as to whether a person placed on home detention as a condition of probation received good time credit. The Court resolved this ambiguity in favor of the accused.

(d) After July 1, 2014: Actual time served and good time credit

In 2014, the legislature amended Ind. Code § 35-38-2.5-5 to clarify that a person placed on home detention as a condition of probation accrued both credit for time served and good time credit. Ind. Code § 35-38-2.5-5(f).

(2) Work release: Actual time served

A defendant should receive credit for time served on work release as condition of probation as he is subjected to a restriction of liberty equivalent to or even greater

than a person serving home detention as a condition of probation. Senn v. State, 766 N.E.2d 1190 (Ind.Ct.App. 2002).

(3) Equal Protection/ Proportionality arguments

It can be argued that a person on work release as a condition of probation is entitled to good time credit just as they would be under a direct commitment to community corrections. See Ind. Code § 35-38-2-6.6(c). Further, if the defendant can establish that the county in which she is serving her work release treats those on work release as a condition of probation and those on work release as a direct commitment identically, it is a violation of the Equal Privileges and Immunities Clause of the Indiana Constitution to deny the probationer credit time. Work release is work release. Just as home detention is treated the same whether it is part of community corrections or a condition of probation, and so should work release. See Ind. Code § 35-38-2.5-5 and Ind. Code § 35-38-2.6-6. See also Dishroon v. State, 722N.E.2d 385 (Ind.Ct.App. 2000). Although this argument has been rejected in the context of pre-trial home detention, Lewis v. State, 898 N.E.2d 1286 (Ind.Ct.App. 2009), arguably Lewis is wrong and distinguishable.

Further, as set forth in Ind. Code § 35-36-2.6-1 et seq., work release is a hybrid punishment in which the defendant serves a suspended sentence but receives credit time. Thus, some courts have noted that there is no distinction between work release as an executed sentence and work release as a condition of probation. Shaffer v. State, 755 N.E.2d 1193 (Ind.Ct.App. 2001); Gardener v. State, 678 N.E.2d 398, 401 (Ind.Ct.App. 1997) ("the bright line between suspended-sentence punishments and executed-sentence punishments has been blurred by the implementation of the new alternative programs. Therefore, it may no longer be appropriate to make broad-sweeping assertions of punishments in either category."); but see State v. Purcell, 721 N.E.2d 220 (Ind. 1999).

Finally, the fact that a person who is on work release as a condition of probation would only earn day-for-day while a person who is on home detention would also earn good time credit may violate the Proportionality Clause, Article I, Section 16, of the Indiana Constitution. See, e.g., State v. Moss-Dwyer, 686 N.E.2d 109, 112 (Ind. 1997).

3. Incarceration as condition of probation

When a defendant is incarcerated in a penal facility as a condition of probation, she will be treated as any other individual incarcerated and will be able to receive good time credit as well as credit for time served. See Sutton v. State, 562 N.E.2d 1310, 1313 (Ind.Ct.App. 1990); Williams v. State, 759 N.E.2d 661 (Ind.Ct.App. 2001) (disagreeing with Sutton that a trial court does not have to credit probation with pre-trial incarceration).

However, intermittent terms of incarceration as a condition of bond is computed on the basis of the actual days spent in confinement. Ind. Code § 35-38-2-2.3(d). The defendant does not earn good time credit while serving a term of imprisonment under intermittent service as a condition of probation. Ind. Code § 35-38-2-2.3(d); Sales v. State, 464 N.E.2d 1336, 1339 (Ind.Ct.App. 1984).

4. Other Confinements

Whether a defendant's current placement is considered a confinement or not, thus entitling him or her to accrue time towards their sentence and/or earn credit time, courts examine several factors including: (1) whether the placement was requested by the defendant or otherwise voluntary; (2) the degree of freedom of movement; (3) degree of direct supervision by the DOC, court, or other state actor; and (4) the degree of autonomy and privacy enjoyed by the defendant in the conduct of his everyday life. See Oswalt v. State, 749 N.E.2d 612, 615 (Ind. Ct. App. 2001); Dixon v. State, 685 N.E.2d 715, 718 (Ind. Ct. App. 1997); and Reed v. State, 844 N.E.2d 223, 225 (Ind. Ct. App. 2006).

Thus, under these standards, defendants will ordinarily not be entitled to credit time for time spent in a halfway house, because their liberty interest will likely not be sufficiently restricted such that they were "confined." Hickman v. State, 81 N.E.3d 1083 (Ind. Ct. App. 2017).

Ryan v. State, 42 N.E.3d 1019 (Ind. Ct. App. 2017) (defendant not entitled to credit time while released on appeal bond).

C. PAROLE

A person does not earn good time credit while on parole. Ind. Code § 35-50-6-6(a).

A person imprisoned upon revocation of parole is initially assigned to the same credit time class to which the person was assigned at the time the person was released on parole. Ind. Code § 35-50-6-6(b).

A person who, upon revocation of parole, is imprisoned on an intermittent basis does not earn credit time for the days spent on parole outside the institution. Ind. Code § 35-50-6-6(c).

Upon a parole violation, the balance of the actual sentence must be served and there is no reduction in the fixed sentence; this applies for regular credit time and educational credit, despite the fact that credit time can get an offender out of prison early. Indiana DOC v. Bogus, 754 N.E.2d 27 (Ind. Ct. App. 2001).

A deprivation of credit time upon a parole violation does not violate due process, since the parolee had previously received their earned credit time when they were released on parole and was obligated to stay until either their fixed term expired or they successfully completed parole.

Boyd v. Broglin, 519 N.E.2d 541 (Ind. 1988) (although parole board's re-incarceration of parolee pursuant to finding of violation deprived parolee of earned credit time, procedure did not violate due process; parolee received benefit of his earned credit time when he was released on parole and remained obligated to stay until either his fixed term expired or he successfully completed parole).

For more discussion of parole, see Chapter 13, *Parole*.

D. WAIVER OF CREDIT TIME

A defendant can waive his statutory right to earn credit time during any incarceration in order to participate in drug court. House v. State, 901 NE.2d 598 (Ind.Ct.App. 2009). However, the plea

agreement must specifically provide for waiver of credit time. McAllister v. State, 913 N.E.2d 778 (Ind.Ct.App. 2009).

House v. State, 901 NE.2d 598 (Ind.Ct.App. 2009) (defendant is entitled to credit for time spent incarcerated prior to signing agreement waiving right to earn credit time, but after his signing the agreement, defendant is not entitled to credit for time spent in jail due to violations of the rules of drug court).

McAllister v. State, 913 N.E.2d 778 (Ind.Ct.App. 2009) (although trial court believed that plea agreement did not provide for credit time for the county jail sentence, there was no such waiver in the agreement; trial court who already accepted the plea agreement had no discretion to deny defendant pre-trial credit time and could not modify agreement after accepting it).

VI. TIME SERVED IN OTHER JURISDICTIONS/EXTRADITION HOLD

The credit time statutes, Ind. Code § 35-50-6-3 and Ind. Code § 35-50-6-3.1, do not distinguish imprisonment or confinement in Indiana from that in a foreign jurisdiction. The test for determining whether the defendant receives credit for time served in another jurisdiction is the same as in cases not involving another jurisdiction: (1) whether the defendant was confined or imprisoned, and (2) whether the confinement or imprisonment was the result of the criminal charge for which sentence is now imposed. Nutt v. State, 451 N.E.2d. 342, 345 (Ind.Ct.App. 1983).

A. CONFINEMENT

A "hold" placed on a defendant in custody in another jurisdiction pending extradition is equivalent to an arrest. Nutt v. State, 451 N.E.2d 342, 346 (Ind.Ct.App. 1983).

Cohen v. State, 560 N.E.2d 1246 (Ind. 1990) (defendant was not entitled to pretrial confinement credit for time during which he was confined in Illinois and after detainer from Indiana was filed with county sheriff, but only for time after Indiana took temporary custody over defendant where defendant provided no evidence to show that detainers served as "hold" which would have caused Illinois to retain custody over him even if there were no Illinois charges pending).

Alvarez v. State, 147 N.E.3d 374 (Ind. Ct. App. 2020) (defendant in federal custody under United States Immigration and Customs Enforcement (ICE) and transported to face local charges for which he has previously posted bond and was released is not entitled to credit time spent in local jail prior to entry of his judgment and conviction on the local charges; pretrial confinement in the local jail was not a result of the criminal charges for which the trial court here was imposing sentence).

Richeson v. State, 648 N.E.2d 384 (Ind.Ct.App. 1995) (because defendant provided no evidence to show that Porter County detainer served as "hold" which would have caused Lake County to retain custody over him even where no Lake County charges pending, detainer placed on defendant by Porter County while serving in Lake County jail did not start credit time running for offense charged in Porter County).

B. RESULTED FROM CHARGE FOR WHICH SENTENCE IS BEING IMPOSED

Generally, Indiana defendants are not entitled to credit on Indiana sentences while incarcerated in another state or county for a different offense. Penick v. State, 659 N.E.2d 484, 489 (Ind. 1995); Carrion v. State, 619 N.E.2d 972, 973 (Ind.Ct.App. 1993). However, if the defendant proves that the other jurisdiction is holding her solely on the Indiana charges, the defendant will receive credit for time served in the other jurisdiction.

Dorsey v. State, 490 N.E.2d. 260 (Ind. 1986), *overruled on other grounds by* Wright v. State, 658 N.E.2d 563 (Ind. 1995) (because record was unclear as to whether defendant was being held by out-of-state authorities solely based upon Indiana charges for which sentence was imposed, defendant did not sustain his burden of establishing that his out-of-state confinement was direct result of Indiana criminal charges).

Black v. State, 577 N.E.2d 979 (Ind.Ct.App. 1991) (time spent incarcerated in jail under misdemeanor charges in one county could not be credited against sentence imposed in another county on unrelated charges).

Bertucci v. State, 528 N.E.2d 90 (Ind.Ct.App. 1988) (defendant was not entitled to pretrial credit for time spent incarcerated in Illinois and federal prison because confinement in Illinois and federal prison was for crimes unrelated to his Indiana charges and was not direct result of his Indiana charges).

Woodson v. State, 178 Ind.App. 692, 383 N.E.2d 1096 (1978) (where defendant was incarcerated for robbery conviction in Indiana, he was not entitled to credit for time during which he was escapee from Indiana and was incarcerated in another state for another crime).

But see:

Ramirez v. State, 455 N.E.2d 609 (Ind.Ct.App. 1983), *aff'd*, 471 U.S. 147, 105 S.Ct. 1860 (where sentences on defendant's Indiana convictions were presumed to run concurrently with Michigan sentence, defendant was entitled to three hundred and twenty-two days of credit for time he spent in jail awaiting trial and sentencing on Indiana charge although he also apparently received credit against his Michigan sentence for that time).

Nutt v. State, 451 N.E.2d. 342, 345 (Ind. Ct. App. 1983) (defendant was allowed credit against sentence for presentence time served in Texas while extradition was pending and after Texas charges had been dropped where defendant's detention after Texas charges were dropped was result of Indiana charge for which he was sentenced).

Maciaszek v. State, 75 N.E.3d 1089 (Ind. Ct. App. 2017) (defendant was entitled to pre-sentencing credit for the time he was incarcerated in Indiana pending resolution of his Indiana charges, even though he was also serving time for an unrelated conviction in New Hampshire).

VII. EDUCATIONAL CREDIT

In addition to accrued credit for time served and good time credit, Ind. Code § 35-50-6-3.3 provides for individuals to earn educational credit for completion of certain diplomas, degrees and DOC programs.

A. ELIGIBILITY

DOC inmates in credit Class I, Class A, or Class B are generally eligible to earn educational credit for completion of education or other specified programs. Ind. Code § 35-50-6-3.3(a) and (b).

In addition to an inmate in the DOC, a person in a community corrections program may earn education credit time. Rodgers v. State, 705 N.E.2d 1039 (Ind.Ct.App. 1999). However, a person on home detention as part of a community corrections program may not earn educational credit, Ind. Code § 35-38-2.6-6(c), nor may a person on home detention as a condition of probation. Ind. Code § 35-38-2.5-5.

Education time credit may not be applied to future incarcerations.

> Pollard v. State, 78 N.E.3d 663 (Ind. Ct. App. 2017) (trial court properly denied defendant's request to "bank" education credit time earned for his 2011 completion of a bachelor's degree to his re-incarceration for a parole violation).

1. Repeat Sex Offenders ineligible

A person may not earn educational credit under IC 35-50-6-3.3 if the person:

(1) commits an offense listed in Ind. Code § 11-8-8-4.5 while the person is required to register as a sex or violent offender under IC 11-8-8-7; and

(2) is committed to the DOC after being convicted of the offense listed in Ind. Code § 11-8-8-4.5.

Ind. Code § 35-5-6-3.3(n).

2. Completed education program

In addition to any educational credit a person earns under IC 35-50-6-3.3(b) or good time credit earned under IC 35-50-6-3 or 3.1, a person in credit Class I, A, or B that has demonstrated a pattern consistent with rehabilitation earns educational credit if the person successfully completes requirements to obtain at least one of the following:

(a) a general educational development (GED) diploma under IC 20-20-6 (before its repeal) or IC 22-4.1-18, if the person has not previously obtained a high school diploma;

(b) a high school diploma, if the person has not previously obtained a general education development (GED) diploma;

(c) an associate's degree from an approved postsecondary educational institution (as defined under IC 21-7-13-6(a)) earned during the person's incarceration; or

(d) a bachelor's degree from an approved postsecondary educational institution (as defined under IC 21-7-13-6(a)) earned during the person's incarceration.

Ind. Code 35-50-6-3.3(a).

Hawkins v. State, 973 N.E.2d 619 (Ind. Ct. App. 2012) (Amendment of Ind. Code § 31-12-3-13 to eliminate funding for post-secondary education for inmates convicted of felonies, and DOC's subsequent decision to allow inmates who had only one semester left to complete degrees while not providing for inmates who needed more than one semester, was not a violation of equal protection. Two groups were not similarly situated, and decision to use limited funds to help those closest to completing degrees was rationally related to legitimate purpose of encouraging rehabilitation despite budgetary constraints).

3. Completed vocational, substance abuse, literacy & life skills or reformative program

Prior to July 1, 1999, a person's sentence could be reduced for completion of an educational, vocational, or substance abuse program under IC 35-38-1-23. However, the General Assembly repealed Ind. Code § 35-38-1-23 effective July 1, 1999, and replaced it with Ind. Code § 35-50-6-3.3(b). Thus, inmates who completed a vocational or substance abuse program prior to July 1, 1999, will be entitled to petition for a reduction of their sentence under IC 35-38-1-23 in addition to earning credit time under IC 35-50-6-3.3(a). Those inmates who completed a vocational or substance abuse program after July 1, 1999, will only receive good time credit under IC 35-50-6-3.3(b).

Since July 1, 1999, pursuant to Ind. Code § 35-50-6-3.3(b), in addition to any educational or good time credit that a person earns under IC 35-50-6-3.3(a) or IC 35-50-6-3 or 3.1, a person in credit Class I, A, or B that has demonstrated a pattern consistent with rehabilitation earns educational credit if the person successfully completes requirements for at least one of the following:

(a) To obtain a certificate of completion of a career and technical or vocational educational program approved by the DOC;

(b) To obtain a certificate of completion of a substance abuse program approved by the DOC;

(c) To obtain a certificate of completion of a literacy and basic life skills program approved by the DOC;

(d) To obtain a certificate of completion of reformative program approved by the DOC;

(e) An individualized case management plan approved by the department of correction.

The DOC shall establish admissions criteria and other requirements for programs available for earning educational credit under IC 35-50-6-3.3(b). A person may not earn educational credit under this section for the same program of study. The DOC, in consultation with the department of workforce development, shall approve a program only if the program is likely to lead to an employable occupation. Ind. Code § 35-50-6-3.3(c).

4. Behavior consistent with rehabilitation

The plain language of the phrase "has demonstrated a pattern" limits the time period for evaluating an inmate's behavior to the time period before he receives his diploma or degree, since the common, ordinary meaning of the phrase "has demonstrated" refers to past conduct. Rodgers v. State, 705 N.E.2d 1039 (Ind.Ct.App. 1999).

Wilson v. State, 799 N.E.2d 51 (Ind.Ct.App. 2003) (fact that a defendant had no disciplinary convictions during time he worked on a degree does not compel a post-conviction court to find the defendant demonstrated a pattern consistent with rehabilitation).

Diaz v. State, 753 N.E.2d 724 (Ind.Ct.App. 2001) (fact that statute requires pattern of behavior consistent with rehabilitation means, at least, that inmate's record must remain free of disciplinary convictions while he was participating in program; trial court properly denied defendant's petition for post-conviction relief in which he asserted he was entitled to education credit time because defendant committed attempted battery while obtaining GED which showed his behavior was inconsistent with rehabilitation).

Rodgers v. State, 705 N.E.2d 1039 (Ind.Ct.App. 1999) (trial court could not deprive defendant education credit time based on subsequent probation violations, claiming that his behavior did not demonstrate pattern of conduct consistent with rehabilitation).

In order to deny a defendant educational credit based on a pattern of behavior which was inconsistent with rehabilitation, the court must make the finding on the record.

Tumbleson v. State, 706 N.E.2d 217 (Ind.Ct.App. 1999) (fact that court states it took into consideration defendant obtaining GED while incarcerated awaiting trial and sentencing but still sentenced defendant to maximum sentences was improper; defendant was entitled to education credit time unless court found pattern of behavior inconsistent with rehabilitation).

5. Completed after specified date

A person does not earn educational credit under IC 35-50-6-3.3(a) unless the person completes at least a portion of the degree requirements after June 30, 1993. Ind. Code § 35-50-6-3.3(g). A person does not earn educational credit under IC 35-50-6-3.3(b) unless the person completes at least a portion of the program requirements after June 30, 1999. Ind. Code § 35-50-6-3.3(h).

Miller v. Bryant, 644 N.E.2d 188 (Ind.Ct.App. 1994) (prisoner who had not actually received degree as of effective date was not entitled to early release, because all other requirements had been completed before effective date).

6. Diploma from out-of-state school

In 2011, Ind. Code § 35-50-6-3.3 was amended to require that, for a person to earn educational credit for successfully completing a high school diploma through correspondence courses, each course must be approved by DOC before the person begins the course. Correspondence courses may only be approved if the entity administering the course is recognized and accredited by the department of education in the state where the entity is located. Ind. Code § 35-50-6-3.3(o).

Prior to that, McGee v. State, 790 N.E.2d 1067 (Ind.Ct.App. 2003) held that there is no basis in either language of Ind. Code § 35-50-6-3.3(a)(3)(B) or purpose behind it for DOC's policy of denying credit time for a high school diploma not earned in Indiana, assuming that requirements for earning out-of-state diploma are similar to Indiana's requirements.

7. Individualized case management plans

The DOC shall, before May 1, 2023, submit a report to the legislative council, in an electronic format under IC 5-14-6, concerning the implementation of the individualized case management plan. The report must include the following:

(1) The ratio of case management staff to offenders participating in the individualized case management plan as of January 1, 2023.
(2) The average number of days awarded to offenders participating in the individualized case management plan from January 1, 2022, through December 31, 2022.
(3) The percentage of the prison population currently participating in an individualized case management plan as of January 1, 2023.
(4) Any other data points or information related to the status of the implementation of the individualized case management plan.

This subsection expires June 30, 2023. Ind. Code § 35-50-6-3.3(p).

B. COMPUTING CREDIT

1. Starting point

Educational credit time earned by a person under IC 35-50-6-3.3 is subtracted from the release date that would otherwise apply to the person after subtracting all other credit time earned by the person, with one exception set out below. Ind. Code § 35-50-6-3.3(f).

Educational credit time earned by a person under IC 35-50-6-3.3(a) for a diploma or degree completed before July 1, 1999, shall be subtracted from the release date that would otherwise apply to the person after subtracting all other credit time earned by the person, unless the person was convicted of one of the following crimes:

(a) Rape;
(b) Criminal deviate conduct (before its repeal);
(c) Child molesting;
(d) Child exploitation;
(e) Vicarious sexual gratification;
(f) Child solicitation;
(g) Child seduction;
(h) Sexual misconduct with a minor as a Class A felony, Class B felony, or Class C felony for a crime committed before July 1, 2014, or Level 1, Level 2, or Level 4 for a crime committed after June 30, 2014;
(i) Incest;
(j) Sexual battery;
(k) Kidnapping, if the victim is less than eighteen years of age; or
(l) Criminal confinement, if the victim is less than eighteen years of age.

If convicted of one of these crimes, any educational credit time earned under subsection (a) prior to July 1, 1999, shall be subtracted from the period of imprisonment imposed on the person by the sentencing court. Ind. Code § 35-50-6-3.3(i)(2).

Cotton v. Ellsworth, 788 N.E.2d 867 (Ind.Ct.App. 2003) (1999 amendments to Ind. Code § 35-50-6-3.3 allow education credit time to be reduced from earliest release date rather than period of imprisonment; under the doctrine of amelioration, where the inmate had pre-1999 education credit plus the maximum allowable post-1999 credit, the DOC should strike the pre-1999 credit in order to give the inmate the benefit of the full four years of his or her post-1999 educational credits).

Indiana DOC v. Bogus, 754 N.E.2d 27 (Ind.Ct.App. 2001) (disagreeing with Renfroe, infra, because educational credit is taken from earliest release date, defendant could not shorten his fixed sentence when he violated parole; thus, when defendant violated parole, he was not entitled to use remainder of education good time credit earned prior to early release).

Renfroe v. State, 736 N.E.2d 797 (Ind.Ct.App. 2000) (prior to 1999 amendment, even though defendant earned his GED one month before his earliest release date, DOC was still required to credit defendant's sentence with six months; thus, when parole was revoked, defendant was credited with education time), *aff'd on reh'g*, 743 N.E.2d 299 (to prevent ex post facto problem, when determining whether defendant gets education credit time subtracted from earliest release date or sentence imposed by court, version of Ind. Code § 35-50-6-3.3 that was in effect either at time of conviction or at time defendant earned GED, and not current version, controls).

Budd v. State, 935 N.E.2d 746 (Ind. Ct. App. 2010), *clarified on reh'g,* 937 N.E.2d 867 (Ind. Ct. App. 2010) (difference in how earned credit time is applied for persons convicted of sex offenses compared to those not convicted of sex offenses is not a violation of equal protection. There is a rational basis for different standard for sex offenders, as they are viewed as having a high risk of recidivism).

2. Application of credit time

Pursuant to Ind. Code § 35-50-6-3.3(f), educational credit earned by a person under this section is subtracted from the release date that would otherwise apply to the person by the sentencing court after subtracting all other credit time earned by the person.

Pursuant to Ind. Code § 35-50-6-3.3(k), the amount of educational credit earned under IC 35-50-6-3.3 by a person serving a sentence for stalking (Ind. Code § 35-45-10-5), a felony against a person under IC 35-42, or for a crime listed in Ind. Code § 11-8-8-5, is reduced to the extent that application of the credit time would otherwise result in:

(1) post-conviction release (as defined in Ind. Code § 35-40-4-6); or

(2) assignment of the person to a community transition program; in less than forty-five (45) days after the person earns the credit time.

3. Amount of credit earned

a. Statutory limitations

Pursuant to Ind. Code § 35-50-6-3.3(d), the amount of educational credit a person may earn under this section is as follows:

(1) Six months for completion of a State of Indiana general educational development (GED) diploma under IC 20-20-6 (before its repeal) or IC 22-4.1-18.

(2) One year for graduation from high school.

(3) Not more than one year for completion of an associate's degree.

(4) Not more than two years for completion of a bachelor's degree.

(5) Not more than a total of one year of credit, as determined by the DOC, for the completion of one or more career and technical or vocational programs approved the DOC.

(6) Not more than a total of six months of credit, as determined by the DOC, for the completion of one or more substance abuse programs approved by the DOC.

(7) Not more than a total of six months credit, as determined by the DOC, for the completion of one or more literacy and basic life skills programs approved by the DOC.

(8) Not more than a total of six months credit time, as determined by the DOC, for completion of one (1) or more reformative programs approved by the DOC. However, a person who is serving a sentence for an offense listed under IC 11-8-8-4.5 may not earn credit time under this subdivision.

(9) An amount determined by the DOC under a policy adopted by the DOC concerning the individualized case management plan, not to exceed the maximum amount described in subsection (j).

However, a person who does not have a substance abuse problem that qualifies the person to earn credit in a substance abuse program may earn not more than a total of twelve months of educational credit, as determined by the DOC, for the completion of one or more vocational education programs approved by the DOC. If a person earns more than six months of educational credit for the completion of one or more vocational education programs, the person is ineligible to earn educational credit for the completion of one or more substance abuse programs.

Denney v. State, 773 N.E.2d 300 (Ind.Ct.App. 2002) (regardless of whether inmate completes one vocation course or multiple vocational courses, pursuant to statutory limitation, inmate cannot receive more than six months credit for all courses).

Fuller, et. al. v. Meloy, 848 N.E.2d 1172 (Ind.Ct.App. 2006) (court *affirmed* denial of three months additional credit time after inmates' completion of vocational program; statute explicitly places determination of amount of credit time to be awarded within discretion of department of correction while limiting amount of credit time to a total of six months)

Credit time earned under this section must be directly proportional to the time served and course work completed while incarcerated. DOC shall adopt rules under IC 4-22-2 necessary to implement this subsection. Ind. Code § 35-50-6-3.3(e).1

Pursuant to Ind. Code § 35-50-6-3.3(j), the maximum amount of educational credit a person may earn under this section is the lesser of:

(1) two years; or

(2) one-third of the person's total applicable credit time.

Eckhardt v. State, 687 N.E.2d 374 (Ind.Ct.App. 1997) (phrase "total applicable credit" under statute providing for reduction of prison sentence for prisoners who successfully complete certain educational programs is not limited to credit time for good behavior but rather includes both educational credit and credit time for good behavior).

b. Multiple educational degrees: DOC guidelines

In response to invitations for legislative clarification in Partlow and Moshenek, infra, the legislature amended Ind. Code § 35-50-6-3.3 in 2003 to allow a person to earn educational credit for multiple degrees at the same educational level only in accordance with guidelines approved by the DOC. Ind. Code § 35-50-6-3.3(l). Thus, the holdings of these two cases may be limited by DOC guidelines passed pursuant to Ind. Code § 35-50-6-3.3(l). However, the language of subsection (l) does not allow the DOC to completely bar credit time for multiple degrees at the same educational level, but only to set guidelines for their use.

Partlow v. Superintendent, 756 N.E.2d 978 (Ind.Ct.App. 2001) (even though inmate's two bachelor's degree were both in general studies, both were in furtherance of inmate's education and therefore educational credit should have been granted for both degrees).

Moshenek v. Anderson, 781 N.E.2d 811 (Ind.Ct.App. 1999) (inmate who completed two separate associate's degrees should have been granted one year for each degree, for a total educational credit of two years; because the purpose of this statute is to encourage educational attainment, there is no reason to deny an inmate credit for multiple degrees of the same educational level under the statute).

Pursuant to Ind.Code 35-50-6-3.3(m), a person may not earn educational credit:

(1) for general educational development (GED) diploma if the person has previously earned a high school diploma; or

(2) for a high school diploma if the person has previously earned a general education al development (GED) diploma.

C. PROCEDURE FOR OBTAINING EDUCATIONAL CREDIT

1. Programs completed before sentencing

The trial court is the proper authority to determine whether a person who completes an educational degree before sentencing is entitled to educational credit. The trial court is in a better position than DOC to make this determination and can seek input from the jailing authority. Murphy v. State, 942 N.E.2d 818 (Ind. 2011); see also Robinson v. State, 18 N.E.3d 1026 (Ind.Ct.App. 2014).

2. Programs completed through community corrections program

Where the defendant is not serving his sentence through the DOC, but through a county-based community corrections program, the trial court, in consultation with community corrections, is in the better position to determine whether defendant is entitled to educational credit.

> Robinson v. State, 18 N.E.3d 1026 (Ind.Ct.App. 2014) (trial court erroneously believed it could not award educational credit to defendant serving his sentence on home detention; court remanded for further proceedings to determine whether defendant had demonstrated a pattern consistent with rehabilitation).

3. Programs completed after sentencing

Application for educational credit must be made to and the initial ruling thereon made by the DOC when the educational achievement was accomplished after sentencing. The post-conviction court's role is limited to merely reviewing such decisions after they have been made by the DOC.

In order for a trial court to have jurisdiction over a petition for education credit time, the petitioner must present all evidence of his diploma and credentials of the school that awarded it, that he meets each requirement of any necessary statute and that he exhausted the DOC grievance procedures along with evidence of the DOC grievance procedures. Young v. State, 888 N.E.2d 1255 (Ind. 2008). A trial court may not dismiss for lack of subject matter jurisdiction before making a determination that the defendant has failed to exhaust administrative remedies. Burks-Bey v. State, 903 N.E.2d 1041 (Ind. Ct. App. 2009).

> Samuels v. State, 849 N.E.2d 689 (Ind. Ct. App. 2006) (because defendant failed to show that he exhausted administrative remedies through DOC, court of appeals dismissed his appeal from denial of petition for PCR). See also Members v. State, 851 N.E.2d 979 (Ind. Ct. App. 2006); Watkins v. State, 869 NE.2d 497 (Ind. Ct. App. 2007).
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> Stevens v. State, 895 N.E.2d 418 (Ind. Ct. App. 2008) (defendant exhausted his administrative remedies by filing a grievance with DOC after denial of education credit time and appealing from classification action).

The petitioner must also comply with the post-conviction rules as the petition will be treated as one for post-conviction relief. Id.; Moshenek v. Anderson, 718 N.E.2d 811 (Ind.Ct.App. 1999); see also Diaz v. State, 753 N.E.2d 724 (Ind.Ct.App. 2001).

Wilson v. State, 785 N.E.2d 1152 (Ind.Ct.App. 2003) (trial court erred in denying defendant's petition seeking educational credit before State was given reasonable time to file answer; defendant's motion should have been treated as petition for post-conviction relief and as such, State should have had 30 days to respond to petition).

A trial court has no jurisdiction to rule on a motion for good time credit while appeal of sentence is pending. Jernigan v. State, 894 N.E.2d 1044 (Ind. Ct. App. 2008).

NOTE: The case law prior to Young, *supra*, held if the inmate is arguing that he is entitled to immediate release if he is properly awarded education credit time, the inmate should file his petition as a writ of habeas corpus in the county in which she is incarcerated. Partlow v. State, 756 N.E.2d 978 (Ind.Ct.App. 2001); McGee v. State, 790 N.E.2d 1067 (Ind.Ct.App. 2003). The court must treat an erroneously labeled petition for post-conviction relief or motion to correct erroneous sentence as one for habeas corpus. Partlow v. State, 756 N.E.2d 978 (Ind. Ct. App. 2001). Further, the court must treat an erroneously labeled petition for habeas corpus relief as one for post-conviction relief. Miller v. Lowrance, 629 N.E.2d 846 (Ind. 1994).

D. EX POST FACTO IMPLICATIONS

The DOC cannot deny an inmate education credit time based on a change in policy or statute occurring after the date the inmate committed his offense.

Paul v. State, 888 N.E.2d 818 (Ind.Ct.App. 2008) (application of revised law on educational time credit for associate's degrees violated defendant's constitutional protections against *ex post* facto laws).

Hawkins v. State, 973 N.E.2d 619 (Ind. Ct. App. 2012) (Amendment to Ind. Code § 21-12-3-13, which eliminated funding for post-secondary education for inmates convicted of felonies did not create *ex post* facto problem because it applied prospectively only and did not increase his actual sentence or alter the definition of his criminal conduct).