



February 26, 2016

ENGROSSED HOUSE BILL No. 1105

DIGEST OF HB 1105 (Updated February 23, 2016 12:20 pm - DI 106)

Citations Affected: IC 35-41.

Synopsis: Prosecutions for rape and criminal deviate conduct. Specifies that certain exceptions to the statute of limitations for rape as a Level 3 felony also apply to rape as a Class B felony (for crimes committed before July 1, 2014). Provides that a prosecution for criminal deviate conduct as a Class B felony for an offense committed before the crime was repealed on July 1, 2014, that would otherwise be barred may be commenced not later than five years after the earliest of the date on which: (1) the state first discovers evidence sufficient to charge the offender with the offense through DNA analysis; (2) the state first becomes aware of the existence of a recording that provides evidence sufficient to charge the offender with the offense; or (3) a person confesses to the offense.

Effective: July 1, 2016.

Hale, Olthoff, Kirchhofer, McNamara

(SENATE SPONSORS — CRIDER, BASSLER, CHARBONNEAU)

January 7, 2016, read first time and referred to Committee on Courts and Criminal Code.

January 21, 2016, amended, reported — Do Pass.

January 25, 2016, read second time, ordered engrossed.

January 26, 2016, engrossed. Read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 3, 2016, read first time and referred to Committee on Corrections & Criminal Law.

February 25, 2016, reported favorably — Do Pass.

EH 1105—LS 6080/DI 106



February 26, 2016

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1105

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

- 1 SECTION 1. IC 35-41-4-2, AS AMENDED BY P.L.72-2015,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 2. (a) Except as otherwise provided in this section,
4 a prosecution for an offense is barred unless it is commenced:
5 (1) within five (5) years after the commission of the offense, in
6 the case of a Class B, Class C, or Class D felony (for a crime
7 committed before July 1, 2014) or a Level 3, Level 4, Level 5, or
8 Level 6 felony (for a crime committed after June 30, 2014); or
9 (2) within two (2) years after the commission of the offense, in the
10 case of a misdemeanor.
11 (b) A prosecution for a Class B or Class C felony (for a crime
12 committed before July 1, 2014) or a Level 3, Level 4, or Level 5 felony
13 (for a crime committed after June 30, 2014) that would otherwise be
14 barred under this section may be commenced within one (1) year after
15 the earlier of the date on which the state:
16 (1) first discovers evidence sufficient to charge the offender with
17 the offense through DNA (deoxyribonucleic acid) analysis; or

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- 1 (2) could have discovered evidence sufficient to charge the
 2 offender with the offense through DNA (deoxyribonucleic acid)
 3 analysis by the exercise of due diligence.
- 4 (c) A prosecution for a Class A felony (for a crime committed
 5 before July 1, 2014) or a Level 1 felony or Level 2 felony (for a crime
 6 committed after June 30, 2014) may be commenced at any time.
- 7 (d) A prosecution for murder may be commenced:
 8 (1) at any time; and
 9 (2) regardless of the amount of time that passes between:
 10 (A) the date a person allegedly commits the elements of
 11 murder; and
 12 (B) the date the alleged victim of the murder dies.
- 13 (e) A prosecution for the following offenses is barred unless
 14 commenced before the date that the alleged victim of the offense
 15 reaches thirty-one (31) years of age:
 16 (1) IC 35-42-4-3(a) (Child molesting).
 17 (2) IC 35-42-4-5 (Vicarious sexual gratification).
 18 (3) IC 35-42-4-6 (Child solicitation).
 19 (4) IC 35-42-4-7 (Child seduction).
 20 (5) IC 35-46-1-3 (Incest).
- 21 (f) A prosecution for forgery of an instrument for payment of
 22 money, or for the uttering of a forged instrument, under IC 35-43-5-2,
 23 is barred unless it is commenced within five (5) years after the maturity
 24 of the instrument.
- 25 (g) If a complaint, indictment, or information is dismissed because
 26 of an error, defect, insufficiency, or irregularity, a new prosecution may
 27 be commenced within ninety (90) days after the dismissal even if the
 28 period of limitation has expired at the time of dismissal, or will expire
 29 within ninety (90) days after the dismissal.
- 30 (h) The period within which a prosecution must be commenced does
 31 not include any period in which:
 32 (1) the accused person is not usually and publicly resident in
 33 Indiana or so conceals himself or herself that process cannot be
 34 served;
 35 (2) the accused person conceals evidence of the offense, and
 36 evidence sufficient to charge the person with that offense is
 37 unknown to the prosecuting authority and could not have been
 38 discovered by that authority by exercise of due diligence; or
 39 (3) the accused person is a person elected or appointed to office
 40 under statute or constitution, if the offense charged is theft or
 41 conversion of public funds or bribery while in public office.
- 42 (i) For purposes of tolling the period of limitation only, a



- 1 prosecution is considered commenced on the earliest of these dates:
- 2 (1) The date of filing of an indictment, information, or complaint
- 3 before a court having jurisdiction.
- 4 (2) The date of issuance of a valid arrest warrant.
- 5 (3) The date of arrest of the accused person by a law enforcement
- 6 officer without a warrant, if the officer has authority to make the
- 7 arrest.
- 8 (j) A prosecution is considered timely commenced for any offense
- 9 to which the defendant enters a plea of guilty, notwithstanding that the
- 10 period of limitation has expired.
- 11 (k) The following apply to the specified offenses:
- 12 (1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of
- 13 funeral trust funds) is barred unless commenced within five (5)
- 14 years after the date of death of the settlor (as described in
- 15 IC 30-2-9).
- 16 (2) A prosecution for an offense under IC 30-2-10-9(b) (misuse
- 17 of funeral trust funds) is barred unless commenced within five (5)
- 18 years after the date of death of the settlor (as described in
- 19 IC 30-2-10).
- 20 (3) A prosecution for an offense under IC 30-2-13-38(f) (misuse
- 21 of funeral trust or escrow account funds) is barred unless
- 22 commenced within five (5) years after the date of death of the
- 23 purchaser (as defined in IC 30-2-13-9).
- 24 (l) A prosecution for an offense under IC 23-14-48-9 is barred
- 25 unless commenced within five (5) years after the earlier of the date on
- 26 which the state:
- 27 (1) first discovers evidence sufficient to charge the offender with
- 28 the offense; or
- 29 (2) could have discovered evidence sufficient to charge the
- 30 offender with the offense by the exercise of due diligence.
- 31 (m) A prosecution for a sex offense listed in IC 11-8-8-4.5 that is
- 32 committed against a child and that is not:
- 33 (1) a Class A felony (for a crime committed before July 1, 2014)
- 34 or a Level 1 felony or Level 2 felony (for a crime committed after
- 35 June 30, 2014); or
- 36 (2) listed in subsection (e);
- 37 is barred unless commenced within ten (10) years after the commission
- 38 of the offense, or within four (4) years after the person ceases to be a
- 39 dependent of the person alleged to have committed the offense,
- 40 whichever occurs later.
- 41 (n) A prosecution for rape (IC 35-42-4-1) as a **Class B felony (for**
- 42 **a crime committed before July 1, 2014) or as a Level 3 felony (for**



1 **a crime committed after June 30, 2014)** that would otherwise be
2 barred under this section may be commenced not later than five (5)
3 years after the earlier of the date on which:

4 (1) the state first discovers evidence sufficient to charge the
5 offender with the offense through DNA (deoxyribonucleic acid)
6 analysis;

7 (2) the state first becomes aware of the existence of a recording
8 (as defined in IC 35-31.5-2-273) that provides evidence sufficient
9 to charge the offender with the offense; or

10 (3) a person confesses to the offense.

11 **(o) A prosecution for criminal deviate conduct (IC 35-42-4-2)**
12 **(repealed) as a Class B felony for a crime committed before July 1,**
13 **2014, that would otherwise be barred under this section may be**
14 **commenced not later than five (5) years after the earliest of the**
15 **date on which:**

16 (1) the state first discovers evidence sufficient to charge the
17 offender with the offense through DNA (deoxyribonucleic
18 acid) analysis;

19 (2) the state first becomes aware of the existence of a
20 recording (as defined in IC 35-31.5-2-273) that provides
21 evidence sufficient to charge the offender with the offense; or

22 (3) a person confesses to the offense.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1105, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, after line 10, begin a new paragraph and insert:

"(o) A prosecution for criminal deviate conduct (IC 35-42-4-2) (repealed) as a Class B felony for a crime committed before July 1, 2014, that would otherwise be barred under this section may be commenced not later than five (5) years after the earliest of the date on which:

- (1) the state first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis;**
- (2) the state first becomes aware of the existence of a recording (as defined in IC 35-31.5-2-273) that provides evidence sufficient to charge the offender with the offense; or**
- (3) a person confesses to the offense."**

and when so amended that said bill do pass.

(Reference is to HB 1105 as introduced.)

WASHBURNE

Committee Vote: yeas 12, nays 0.

 COMMITTEE REPORT

Madam President: The Senate Committee on Corrections & Criminal Law, to which was referred House Bill No. 1105, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB1105 as printed January 22, 2016.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 6, Nays 0

