



February 4, 2021

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## HOUSE BILL No. 1198

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DIGEST OF HB 1198 (Updated February 3, 2021 7:20 pm - DI 131)

**Citations Affected:** IC 31-30; IC 35-41; IC 35-50.

**Synopsis:** Adult and juvenile court jurisdiction. Provides that a complaint, indictment, or information for certain sex crimes shall be filed in adult criminal court if the accused person: (1) was at least 14 years of age but less than 18 years of age at the time of the offense; and (2) is at least 21 years of age at the time of filing the complaint, indictment, or information. Provides that a prosecution for certain sex crimes must be commenced not later than one year after certain information is discovered if the accused person: (1) was less than 18 years of age at the time of the offense; and (2) is at least 21 years of age at the time of filing the complaint, indictment, or information. Provides that a court may suspend any part of a sentence for certain offenses filed in adult court.

**Effective:** July 1, 2021.

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### McNamara, Steuerwald, Negele

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January 7, 2021, read first time and referred to Committee on Courts and Criminal Code.  
February 4, 2021, amended, reported — Do Pass.

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HB 1198—LS 6649/DI 143





February 4, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## HOUSE BILL No. 1198

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 31-30-1-4, AS AMENDED BY P.L.28-2016,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2021]: Sec. 4. (a) The juvenile court does not have jurisdiction  
4 over an individual for an alleged violation of:  
5 (1) IC 35-41-5-1(a) (attempted murder);  
6 (2) IC 35-42-1-1 (murder);  
7 (3) IC 35-42-3-2 (kidnapping);  
8 (4) IC 35-42-4-1 (rape);  
9 (5) IC 35-42-4-2 (criminal deviate conduct) (before its repeal);  
10 (6) IC 35-42-5-1 (robbery) if:  
11 (A) the robbery was committed while armed with a deadly  
12 weapon; or  
13 (B) the robbery results in bodily injury or serious bodily  
14 injury;  
15 (7) IC 35-42-5-2 (carjacking) (before its repeal);  
16 (8) IC 35-47-2-1 (carrying a handgun without a license), if  
17 charged as a felony;

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- 1 (9) IC 35-47-10 (children and firearms), if charged as a felony; or  
 2 (10) any offense that may be joined under IC 35-34-1-9(a)(2) with  
 3 any crime listed in this subsection;  
 4 if the individual was at least sixteen (16) years of age but less than  
 5 eighteen (18) years of age at the time of the alleged violation.
- 6 (b) Once an individual described in subsection (a) has been charged  
 7 with any offense listed in subsection (a), the court having adult  
 8 criminal jurisdiction shall retain jurisdiction over the case if the  
 9 individual pleads guilty to or is convicted of any offense listed in  
 10 subsection (a)(1) through (a)(9).
- 11 (c) If:
- 12 (1) an individual described in subsection (a) is charged with one
  - 13 (1) or more offenses listed in subsection (a);
  - 14 (2) all the charges under subsection (a)(1) through (a)(9) resulted
  - 15 in an acquittal or were dismissed; and
  - 16 (3) the individual pleads guilty to or is convicted of any offense
  - 17 other than an offense listed in subsection (a)(1) through (a)(9);
- 18 the court having adult criminal jurisdiction may withhold judgment and  
 19 transfer jurisdiction to the juvenile court for adjudication and  
 20 disposition. In determining whether to transfer jurisdiction to the  
 21 juvenile court for adjudication and disposition, the court having adult  
 22 criminal jurisdiction shall consider whether there are appropriate  
 23 services available in the juvenile justice system, whether the child is  
 24 amenable to rehabilitation under the juvenile justice system, and  
 25 whether it is in the best interests of the safety and welfare of the  
 26 community that the child be transferred to juvenile court. All orders  
 27 concerning release conditions remain in effect until a juvenile court  
 28 detention hearing, which must be held not later than forty-eight (48)  
 29 hours, excluding Saturdays, Sundays, and legal holidays, after the order  
 30 of transfer of jurisdiction.
- 31 **(d) A court having adult criminal jurisdiction, and not a juvenile**  
 32 **court, has jurisdiction over an individual for an alleged violation**  
 33 **of:**
- 34 (1) IC 35-42-4-3 (child molesting);
  - 35 (2) IC 35-42-4-5 (vicarious sexual gratification);
  - 36 (3) IC 35-42-4-6 (child solicitation);
  - 37 (4) IC 35-42-4-7 (child seduction);
  - 38 (5) IC 35-42-4-9 (sexual misconduct with a minor); or
  - 39 (6) IC 35-46-1-3 (incest);
- 40 **if the individual was at least fourteen (14) years of age but less than**  
 41 **eighteen (18) years of age at the time of the alleged violation but at**  
 42 **least twenty-one (21) years of age at the time of filing.**



1 SECTION 2. IC 31-30-1-11 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 11. (a) Except as  
 3 provided in ~~section~~ **sections 4 and 9** of this chapter, if a court having  
 4 criminal jurisdiction determines that a defendant is alleged to have  
 5 committed a crime before the defendant is eighteen (18) years of age,  
 6 the court shall immediately transfer the case, together with certified  
 7 copies of all papers, documents, and testimony, to the juvenile court.  
 8 The juvenile court shall proceed as if it had received a referral under  
 9 IC 31-37-8.

10 (b) The court having criminal jurisdiction shall release the child on  
 11 the child's own recognizance or to the child's parent, guardian, or  
 12 custodian upon that person's written promise to bring the child before  
 13 the juvenile court at a specified time. However, the court may order the  
 14 child detained if the court finds probable cause to believe that the child  
 15 committed an act that would be a crime if committed by an adult and  
 16 that:

- 17 (1) the child is unlikely to appear before the juvenile court for
- 18 subsequent proceedings;
- 19 (2) detention is essential to protect the child or the community;
- 20 (3) the parent, guardian, or custodian:
- 21 (A) cannot be located; or
- 22 (B) is unable or unwilling to take custody of the child; or
- 23 (4) the child has a reasonable basis for requesting that he or she
- 24 not be released.

25 If the child is detained for a reason specified by subdivision (3) or (4),  
 26 the child must be detained in accordance with IC 31-37-7-1.

27 (c) If the child is not released, the child shall be delivered to a place  
 28 designated by the juvenile court. The court having criminal jurisdiction  
 29 shall promptly notify the child's parent, guardian, or custodian and an  
 30 intake officer of where the child is being held and the reasons for the  
 31 child's detention.

32 (d) A child transferred to the juvenile court under this section (or  
 33 IC 31-6-2-2 before its repeal) may not be released on bail.

34 SECTION 3. IC 35-41-4-2, AS AMENDED BY P.L.31-2020,  
 35 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36 JULY 1, 2021]: Sec. 2. (a) Except as otherwise provided in this section,  
 37 a prosecution for an offense is barred unless it is commenced:

- 38 (1) within five (5) years after the commission of the offense, in  
 39 the case of a Class B, Class C, or Class D felony (for a crime  
 40 committed before July 1, 2014) or a Level 3, Level 4, Level 5, or  
 41 Level 6 felony (for a crime committed after June 30, 2014); or
- 42 (2) within two (2) years after the commission of the offense, in the



- 1 case of a misdemeanor.
- 2 (b) A prosecution for a Class B or Class C felony (for a crime  
3 committed before July 1, 2014) or a Level 3, Level 4, or Level 5 felony  
4 (for a crime committed after June 30, 2014) that would otherwise be  
5 barred under this section may be commenced within one (1) year after  
6 the earlier of the date on which the state:
- 7 (1) first discovers evidence sufficient to charge the offender with  
8 the offense through DNA (deoxyribonucleic acid) analysis; or  
9 (2) could have discovered evidence sufficient to charge the  
10 offender with the offense through DNA (deoxyribonucleic acid)  
11 analysis by the exercise of due diligence.
- 12 (c) Except as provided in subsection (e), a prosecution for a Class  
13 A felony (for a crime committed before July 1, 2014) or a Level 1  
14 felony or Level 2 felony (for a crime committed after June 30, 2014)  
15 may be commenced at any time.
- 16 (d) A prosecution for murder may be commenced:
- 17 (1) at any time; and  
18 (2) regardless of the amount of time that passes between:
- 19 (A) the date a person allegedly commits the elements of  
20 murder; and  
21 (B) the date the alleged victim of the murder dies.
- 22 (e) Except as provided in subsection (p), a prosecution for the  
23 following offenses is barred unless commenced before the date that the  
24 alleged victim of the offense reaches thirty-one (31) years of age:
- 25 (1) IC 35-42-4-3 (child molesting).  
26 (2) IC 35-42-4-5 (vicarious sexual gratification).  
27 (3) IC 35-42-4-6 (child solicitation).  
28 (4) IC 35-42-4-7 (child seduction).  
29 (5) IC 35-42-4-9 (sexual misconduct with a minor).  
30 (6) IC 35-46-1-3 (incest).
- 31 (f) A prosecution for forgery of an instrument for payment of  
32 money, or for the uttering of a forged instrument, under IC 35-43-5-2,  
33 is barred unless it is commenced within five (5) years after the maturity  
34 of the instrument.
- 35 (g) If a complaint, indictment, or information is dismissed because  
36 of an error, defect, insufficiency, or irregularity, a new prosecution may  
37 be commenced within ninety (90) days after the dismissal even if the  
38 period of limitation has expired at the time of dismissal, or will expire  
39 within ninety (90) days after the dismissal.
- 40 (h) The period within which a prosecution must be commenced does  
41 not include any period in which:
- 42 (1) the accused person is not usually and publicly resident in



- 1 Indiana or so conceals himself or herself that process cannot be  
 2 served;
- 3 (2) the accused person conceals evidence of the offense, and  
 4 evidence sufficient to charge the person with that offense is  
 5 unknown to the prosecuting authority and could not have been  
 6 discovered by that authority by exercise of due diligence; or  
 7 (3) the accused person is a person elected or appointed to office  
 8 under statute or constitution, if the offense charged is theft or  
 9 conversion of public funds or bribery while in public office.
- 10 (i) For purposes of tolling the period of limitation only, a  
 11 prosecution is considered commenced on the earliest of these dates:
- 12 (1) The date of filing of an indictment, information, or complaint  
 13 before a court having jurisdiction.
- 14 (2) The date of issuance of a valid arrest warrant.
- 15 (3) The date of arrest of the accused person by a law enforcement  
 16 officer without a warrant, if the officer has authority to make the  
 17 arrest.
- 18 (j) A prosecution is considered timely commenced for any offense  
 19 to which the defendant enters a plea of guilty, notwithstanding that the  
 20 period of limitation has expired.
- 21 (k) The following apply to the specified offenses:
- 22 (1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of  
 23 funeral trust funds) is barred unless commenced within five (5)  
 24 years after the date of death of the settlor (as described in  
 25 IC 30-2-9).
- 26 (2) A prosecution for an offense under IC 30-2-10-9(b) (misuse  
 27 of funeral trust funds) is barred unless commenced within five (5)  
 28 years after the date of death of the settlor (as described in  
 29 IC 30-2-10).
- 30 (3) A prosecution for an offense under IC 30-2-13-38(f) (misuse  
 31 of funeral trust or escrow account funds) is barred unless  
 32 commenced within five (5) years after the date of death of the  
 33 purchaser (as defined in IC 30-2-13-9).
- 34 (l) A prosecution for an offense under IC 23-2-6, IC 23-2.5,  
 35 IC 23-14-48-9, or IC 23-19 is barred unless commenced within five (5)  
 36 years after the earlier of the date on which the state:
- 37 (1) first discovers evidence sufficient to charge the offender with  
 38 the offense; or
- 39 (2) could have discovered evidence sufficient to charge the  
 40 offender with the offense by the exercise of due diligence.
- 41 (m) A prosecution for a sex offense listed in IC 11-8-8-4.5 that is  
 42 committed against a child and that is not:



- 1 (1) a Class A felony (for a crime committed before July 1, 2014)  
 2 or a Level 1 felony or Level 2 felony (for a crime committed after  
 3 June 30, 2014); or  
 4 (2) listed in subsection (e);  
 5 is barred unless commenced within ten (10) years after the commission  
 6 of the offense, or within four (4) years after the person ceases to be a  
 7 dependent of the person alleged to have committed the offense,  
 8 whichever occurs later.
- 9 (n) A prosecution for rape (IC 35-42-4-1) as a Class B felony (for a  
 10 crime committed before July 1, 2014) or as a Level 3 felony (for a  
 11 crime committed after June 30, 2014) that would otherwise be barred  
 12 under this section may be commenced not later than five (5) years after  
 13 the earlier of the date on which:  
 14 (1) the state first discovers evidence sufficient to charge the  
 15 offender with the offense through DNA (deoxyribonucleic acid)  
 16 analysis;  
 17 (2) the state first becomes aware of the existence of a recording  
 18 (as defined in IC 35-31.5-2-273) that provides evidence sufficient  
 19 to charge the offender with the offense; or  
 20 (3) a person confesses to the offense.
- 21 (o) A prosecution for criminal deviate conduct (IC 35-42-4-2)  
 22 (repealed) as a Class B felony for a crime committed before July 1,  
 23 2014, that would otherwise be barred under this section may be  
 24 commenced not later than five (5) years after the earliest of the date on  
 25 which:  
 26 (1) the state first discovers evidence sufficient to charge the  
 27 offender with the offense through DNA (deoxyribonucleic acid)  
 28 analysis;  
 29 (2) the state first becomes aware of the existence of a recording  
 30 (as defined in IC 35-31.5-2-273) that provides evidence sufficient  
 31 to charge the offender with the offense; or  
 32 (3) a person confesses to the offense.
- 33 (p) A prosecution for an offense described in subsection (e) that  
 34 would otherwise be barred under this section may be commenced not  
 35 later than five (5) years after the earliest of the date on which:  
 36 (1) the state first discovers evidence sufficient to charge the  
 37 offender with the offense through DNA (deoxyribonucleic acid)  
 38 analysis;  
 39 (2) the state first becomes aware of the existence of a recording  
 40 (as defined in IC 35-31.5-2-273) that provides evidence sufficient  
 41 to charge the offender with the offense; or  
 42 (3) a person confesses to the offense.





1           **(q) A prosecution for an offense filed in adult criminal court**  
 2 **under IC 31-30-1-4(d), where at the time of filing a complaint,**  
 3 **indictment, or information the offender is at least twenty-one (21)**  
 4 **years of age, must be commenced not later than one (1) year after**  
 5 **the earliest date on which:**

6           **(1) the state first discovered evidence sufficient to charge the**  
 7 **offender with the offense through DNA (deoxyribonucleic**  
 8 **acid) analysis;**

9           **(2) the state first became aware of the existence of a statement**  
 10 **or recording (as defined in IC 35-31.5-2-273) that provides**  
 11 **evidence sufficient to charge the offender with the offense;**

12           **(3) the person confesses to the offense; or**

13           **(4) the victim discloses the nature of the offense involving the**  
 14 **person.**

15           SECTION 4. IC 35-50-2-2.2, AS AMENDED BY P.L.142-2020,  
 16 SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 17 JULY 1, 2021]: Sec. 2.2. (a) Except as provided in subsection (b), (c),  
 18 (d), or (e), the court may suspend any part of a sentence for a felony.

19           (b) Except as provided in subsection (d), if a person is convicted of  
 20 a Level 2 felony or a Level 3 felony, except a Level 2 felony or a Level  
 21 3 felony concerning a controlled substance under IC 35-48-4, and has  
 22 any prior unrelated felony conviction, the court may suspend only that  
 23 part of a sentence that is in excess of the minimum sentence for the:

24           (1) Level 2 felony; or

25           (2) Level 3 felony.

26           (c) If:

27           (1) a person has a prior unrelated felony conviction for dealing in  
 28 a controlled substance that is not marijuana, hashish, hash oil, or  
 29 salvia divinorum; and

30           (2) the person is convicted of a Level 2 felony under  
 31 IC 35-48-4-1.1 or IC 35-48-4-1.2;

32 the court may suspend only that part of a sentence that is in excess of  
 33 the minimum sentence for the Level 2 felony.

34           (d) If a person:

35           (1) is convicted of dealing in heroin as a Level 2 or Level 3 felony  
 36 under IC 35-48-4-1 or IC 35-48-4-2; and

37           (2) has a prior unrelated felony conviction;

38 the court may suspend only that part of a sentence that is in excess of  
 39 the minimum sentence for the Level 2 or Level 3 felony.

40           (e) The court may suspend only that part of a sentence for murder  
 41 or a Level 1 felony conviction that is in excess of the minimum  
 42 sentence for murder or the Level 1 felony conviction.



1           **(f) The court may suspend any part of a sentence for an offense**  
2           **filed in adult court under IC 31-30-1-4(d).**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1198, 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 2, line 40, after "was" insert "**at least fourteen (14) years of age but**".

Page 7, line 11, delete "or".

Page 7, line 12, delete "offense." and insert "**offense; or**".

Page 7, between lines 12 and 13, begin a new line block indented and insert:

**"(4) the victim discloses the nature of the offense involving the person."**

and when so amended that said bill do pass.

(Reference is to HB 1198 as introduced.)

MCNAMARA

Committee Vote: yeas 9, nays 3.

