

HOUSE BILL No. 1264

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-11-2-15; IC 34-18-2-18; IC 34-24-5; IC 35-31.5-2-161.2; IC 35-41-4-2; IC 35-45-21-6.

Synopsis: Fertility fraud. Provides that a physician who treats a patient of that physician for infertility: (1) by using the physician's own spermatozoon or ovum, without the patient's consent; or (2) by using donated human reproductive material without the consent of the donor; commits fertility fraud, a Level 6 felony. Provides that a prosecution for criminal fertility fraud that would otherwise be barred by the statute of limitations may be brought 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. Establishes a cause of action for civil fertility fraud and provides that a prevailing plaintiff may be awarded actual damages or liquidated damages of \$10,000. Specifies that the statute of limitations for civil fertility fraud is 10 years from the eighteenth birthday of the child, or not later than five years after the earliest of the date on which: (1) the person first discovers evidence sufficient to bring an action against the defendant through DNA analysis; (2) the person first becomes aware of the existence of a recording that provides evidence sufficient to bring an action against the defendant; or (3) the defendant confesses to the offense.

Effective: July 1, 2019.

Pressel, Schaibley, DeLaney

January 10, 2019, read first time and referred to Committee on Public Health.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1264

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

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

- 1 SECTION 1. IC 34-11-2-15 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2019]: **Sec. 15. (a) Except as provided in subsection (b), an action**
4 **for civil fertility fraud (IC 34-24-5) must be commenced not later**
5 **than:**
6 (1) **ten (10) years after the eighteenth birthday of the child; or**
7 (2) **if subdivision (1) does not apply, twenty (20) years after**
8 **the procedure was performed.**
9 (b) **An action for civil fertility fraud that would otherwise be**
10 **barred under this section may be commenced not later than five (5)**
11 **years after the earliest of the date on which:**
12 (1) **the person first discovers evidence sufficient to bring a**
13 **action against the defendant through DNA (deoxyribonucleic**
14 **acid) analysis;**
15 (2) **the person first becomes aware of the existence of a**
16 **recording (as defined in IC 35-31.5-2-273) that provides**
17 **evidence sufficient to bring an action against the defendant;**



1 **or**

2 **(3) the defendant confesses to the offense.**

3 SECTION 2. IC 34-18-2-18 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 18. "Malpractice"
5 means a tort or breach of contract based on health care or professional
6 services that were provided, or that should have been provided, by a
7 health care provider, to a patient. **The term does not include civil**
8 **fertility fraud under IC 34-24-5.**

9 SECTION 3. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS
10 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2019]:

12 **Chapter 5. Civil Fertility Fraud**

13 **Sec. 1. The following definitions apply throughout this chapter:**

14 **(1) "Human reproductive material" has the meaning set forth**
15 **in IC 35-45-21-6.**

16 **(2) "Physician" means a physician licensed under IC 25-22.5.**

17 **Sec. 2. A:**

18 **(1) woman who gives birth to a child after being treated for**
19 **infertility by a physician; or**

20 **(2) surviving spouse of the woman;**

21 **may bring an action against a physician who knowingly or**
22 **intentionally treated the woman for infertility by using the**
23 **physician's own spermatozoon or ovum, without the patient's**
24 **informed written consent to treatment using these spermatozoa or**
25 **ova.**

26 **Sec. 3. A donor of human reproductive material may bring an**
27 **action against a physician who:**

28 **(1) treats a patient for infertility by using human reproductive**
29 **material donated by the donor; and**

30 **(2) knows or reasonably should have known that the human**
31 **reproductive material was used:**

32 **(A) without the donor's consent; or**

33 **(B) in a manner or to an extent other than that to which**
34 **the donor consented.**

35 **Sec. 4. A plaintiff who prevails in an action under this chapter**
36 **is entitled to the person's reasonable attorney's fees, the costs of the**
37 **infertility treatment (in an action brought under section 2 of this**
38 **chapter), and:**

39 **(1) actual damages; or**

40 **(2) liquidated damages of ten thousand dollars (\$10,000).**

41 **Sec. 5. (a) A person who brings an action under section 2 of this**
42 **chapter has a separate cause of action for each child born as the**



1 result of the fraudulent fertility treatment.

2 (b) A person who brings an action under section 3 of this
3 chapter has a separate cause of action for each individual who
4 received fertility treatment with the donor's human reproductive
5 material.

6 SECTION 4. IC 35-31.5-2-161.2 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2019]: Sec. 161.2. "Human reproductive
9 material", for purposes of IC 35-45-21-6, has the meaning set forth
10 in IC 35-45-21-6.

11 SECTION 5. IC 35-41-4-2, AS AMENDED BY P.L.158-2017,
12 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2019]: Sec. 2. (a) Except as otherwise provided in this section,
14 a prosecution for an offense is barred unless it is commenced:

- 15 (1) within five (5) years after the commission of the offense, in
16 the case of a Class B, Class C, or Class D felony (for a crime
17 committed before July 1, 2014) or a Level 3, Level 4, Level 5, or
18 Level 6 felony (for a crime committed after June 30, 2014); or
19 (2) within two (2) years after the commission of the offense, in the
20 case of a misdemeanor.

21 (b) A prosecution for a Class B or Class C felony (for a crime
22 committed before July 1, 2014) or a Level 3, Level 4, or Level 5 felony
23 (for a crime committed after June 30, 2014) that would otherwise be
24 barred under this section may be commenced within one (1) year after
25 the earlier of the date on which the state:

- 26 (1) first discovers evidence sufficient to charge the offender with
27 the offense through DNA (deoxyribonucleic acid) analysis; or
28 (2) could have discovered evidence sufficient to charge the
29 offender with the offense through DNA (deoxyribonucleic acid)
30 analysis by the exercise of due diligence.

31 (c) A prosecution for a Class A felony (for a crime committed
32 before July 1, 2014) or a Level 1 felony or Level 2 felony (for a crime
33 committed after June 30, 2014) may be commenced at any time.

34 (d) A prosecution for murder may be commenced:

- 35 (1) at any time; and
36 (2) regardless of the amount of time that passes between:
37 (A) the date a person allegedly commits the elements of
38 murder; and
39 (B) the date the alleged victim of the murder dies.

40 (e) A prosecution for the following offenses is barred unless
41 commenced before the date that the alleged victim of the offense
42 reaches thirty-one (31) years of age:



- (1) IC 35-42-4-3(a) (Child molesting).
- (2) IC 35-42-4-5 (Vicarious sexual gratification).
- (3) IC 35-42-4-6 (Child solicitation).
- (4) IC 35-42-4-7 (Child seduction).
- (5) IC 35-46-1-3 (Incest).

(f) A prosecution for forgery of an instrument for payment of money, or for the uttering of a forged instrument, under IC 35-43-5-2, is barred unless it is commenced within five (5) years after the maturity of the instrument.

(g) If a complaint, indictment, or information is dismissed because of an error, defect, insufficiency, or irregularity, a new prosecution may be commenced within ninety (90) days after the dismissal even if the period of limitation has expired at the time of dismissal, or will expire within ninety (90) days after the dismissal.

(h) The period within which a prosecution must be commenced does not include any period in which:

- (1) the accused person is not usually and publicly resident in Indiana or so conceals himself or herself that process cannot be served;
- (2) the accused person conceals evidence of the offense, and evidence sufficient to charge the person with that offense is unknown to the prosecuting authority and could not have been discovered by that authority by exercise of due diligence; or
- (3) the accused person is a person elected or appointed to office under statute or constitution, if the offense charged is theft or conversion of public funds or bribery while in public office.

(i) For purposes of tolling the period of limitation only, a prosecution is considered commenced on the earliest of these dates:

- (1) The date of filing of an indictment, information, or complaint before a court having jurisdiction.
- (2) The date of issuance of a valid arrest warrant.
- (3) The date of arrest of the accused person by a law enforcement officer without a warrant, if the officer has authority to make the arrest.

(j) A prosecution is considered timely commenced for any offense to which the defendant enters a plea of guilty, notwithstanding that the period of limitation has expired.

(k) The following apply to the specified offenses:

- (1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-9).



(2) A prosecution for an offense under IC 30-2-10-9(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-10).

(3) A prosecution for an offense under IC 30-2-13-38(f) (misuse of funeral trust or escrow account funds) is barred unless commenced within five (5) years after the date of death of the purchaser (as defined in IC 30-2-13-9).

(l) A prosecution for an offense under IC 23-2-5, IC 23-2-6, IC 23-14-48-9, or IC 23-19 is barred unless commenced within five (5) years after the earlier of the date on which the state:

(1) first discovers evidence sufficient to charge the offender with the offense; or

(2) could have discovered evidence sufficient to charge the offender with the offense by the exercise of due diligence.

(m) A prosecution for a sex offense listed in IC 11-8-8-4.5 that is committed against a child and that is not:

(1) a Class A felony (for a crime committed before July 1, 2014) or a Level 1 felony or Level 2 felony (for a crime committed after June 30, 2014); or

(2) listed in subsection (e);

is barred unless commenced within ten (10) years after the commission of the offense, or within four (4) years after the person ceases to be a dependent of the person alleged to have committed the offense, whichever occurs later.

(n) A prosecution for rape (IC 35-42-4-1) as a Class B felony (for a crime committed before July 1, 2014) or as a Level 3 felony (for a crime committed after June 30, 2014) that would otherwise be barred under this section may be commenced not later than five (5) years after the earlier 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.

(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.

(p) A prosecution for fertility fraud (IC 35-45-21-6) 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.

SECTION 6. IC 35-45-21-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) As used in this section, "human reproductive material" means:

(1) a human spermatozoon or ovum; or

(2) a human organism at any stage of development from fertilized ovum to embryo.

(b) A physician who knowingly or intentionally treats a patient of that physician for infertility by using the physician's own spermatozoon or ovum, without the patient's informed written consent to treatment using these spermatozoa or ova, commits fertility fraud, a Level 6 felony.

(c) A physician who:

(1) treats a patient for infertility by using human reproductive material donated by another person; and

(2) knows or reasonably should have known that the human reproductive material was used:

(A) without the donor's consent; or

(B) in a manner or to an extent other than that to which the donor consented;

commits fertility fraud, a Level 6 felony.

