

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1294

AN ACT to amend the Indiana Code concerning corrections.

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

SECTION 1. IC 11-8-1-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 11. "Pregnant inmate" has the meaning set forth in IC 11-10-3.5-1.**

SECTION 2. IC 11-8-1-12 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 12. "Restraints" has the meaning set forth in IC 11-10-3.5-1.**

SECTION 3. IC 11-8-1-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 13. Except as otherwise provided, "violent offense" has the meaning set forth in IC 11-12-3.7-6.**

SECTION 4. IC 11-10-3-3 IS REPEALED [EFFECTIVE JULY 1, 2022]. ~~Sec. 3. Necessary prenatal and postnatal care and treatment shall be provided consistent with acceptable medical practice and standards. When possible, arrangements shall be made for children to be born in a hospital outside the correctional facility. If a child is born in a correctional facility, this fact may not be mentioned on the birth certificate.~~

SECTION 5. IC 11-10-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

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Chapter 3.5. Pregnant Inmates

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

- (1) "Correctional facility" has the meaning set forth in IC 5-1.2-2-11.**
- (2) "Pregnant inmate" means a confined person who is pregnant.**
- (3) "Restraints" means any mechanical device used to control the movement of a pregnant inmate's body or limbs, including handcuffs, leg shackles, and belly chains.**

Sec. 2. Necessary prenatal and postnatal care and treatment shall be provided consistent with acceptable medical practice and standards. When possible, arrangements shall be made for children to be born in a hospital outside the correctional facility. If a child is born in a correctional facility, this fact may not be mentioned on the birth certificate.

Sec. 3. (a) A correctional facility may restrain an inmate known to be pregnant if an individualized determination is made by the correctional facility that restraints are reasonably necessary for the legitimate safety and security needs of the pregnant inmate, staff, other inmates, or the public.

(b) If restraints are determined to be necessary, the restraints must be the least restrictive available and the most reasonable under the circumstances. A correctional facility may do the following:

- (1) Use the least restrictive restraints necessary on a pregnant inmate when the pregnant inmate is in the second or third trimester of pregnancy.**
- (2) Use no restraints on a pregnant inmate:**
 - (A) who is in labor;**
 - (B) delivering a baby;**
 - (C) during the immediate postdelivery period; or**
 - (D) dealing with a medical emergency related to the pregnancy.**

(c) A correctional facility may use the least restrictive restraints necessary on a pregnant inmate described in subsection (b)(1) if the correctional facility has actual or constructive knowledge that the pregnant inmate is in the second or third trimester of pregnancy.

(d) A correctional facility may only use the least restrictive restraints necessary on a pregnant inmate described in subsection (b)(2) if:

- (1) the pregnant inmate presents an immediate danger to the pregnant inmate or to others; or**



(2) the pregnant inmate is a substantial flight risk and cannot be contained by any other reasonable means.

(e) A correctional facility may restrain a pregnant inmate while the inmate is being transported if the restraints are applied in such a way that the pregnant inmate may be able to protect the inmate and the inmate's fetus in the event of a forward fall.

Sec. 4. The warden of each correctional facility housing a pregnant inmate shall ensure that staff members of the facility who come into contact with pregnant inmates incarcerated at the facility are provided training concerning the requirements under this chapter.

SECTION 6. IC 11-12-3.7-6, AS AMENDED BY P.L.142-2020, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 6. As used in this chapter, "violent offense" means one (1) or more of the following offenses:

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Voluntary manslaughter (IC 35-42-1-3).
- (4) Involuntary manslaughter (IC 35-42-1-4).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Aggravated battery (IC 35-42-2-1.5).
- (7) Battery (IC 35-42-2-1) as a:
 - (A) Class A felony, Class B felony, or Class C felony (for a crime committed before July 1, 2014); or
 - (B) Level 2 felony, Level 3 felony, or Level 5 felony (for a crime committed after June 30, 2014).
- (8) Kidnapping (IC 35-42-3-2).
- (9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8 that is a:
 - (A) Class A felony, Class B felony, or Class C felony (for a crime committed before July 1, 2014); or
 - (B) Level 1 felony, Level 2 felony, Level 3 felony, Level 4 felony, or Level 5 felony (for a crime committed after June 30, 2014).
- (10) Sexual misconduct with a minor (IC 35-42-4-9) as a:
 - (A) Class A felony or Class B felony (for a crime committed before July 1, 2014); or
 - (B) Level 1 felony, Level 2 felony, or Level 4 felony (for a crime committed after June 30, 2014).
- (11) Incest (IC 35-46-1-3).
- (12) Robbery (IC 35-42-5-1) as a:
 - (A) Class A felony or a Class B felony (for a crime committed



- before July 1, 2014); or
 (B) Level 2 felony or Level 3 felony (for a crime committed after June 30, 2014).
- (13) Burglary (IC 35-43-2-1) as a:
 (A) Class A felony or a Class B felony (for a crime committed before July 1, 2014); or
 (B) Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony (for a crime committed after June 30, 2014).
- (14) Carjacking (IC 35-42-5-2) (repealed).
- (15) Assisting a criminal (IC 35-44.1-2-5) as a:
 (A) Class C felony (for a crime committed before July 1, 2014); or
 (B) Level 5 felony (for a crime committed after June 30, 2014).
- (16) Escape (IC 35-44.1-3-4) as a:
 (A) Class B felony or Class C felony (for a crime committed before July 1, 2014); or
 (B) Level 4 felony or Level 5 felony (for a crime committed after June 30, 2014).
- (17) Trafficking with an inmate (IC 35-44.1-3-5) as a:
 (A) Class C felony (for a crime committed before July 1, 2014); or
 (B) Level 5 felony (for a crime committed after June 30, 2014).
- (18) Causing death or catastrophic injury when operating a vehicle (IC 9-30-5-5).
- (19) Criminal confinement (IC 35-42-3-3) as a:
 (A) Class B felony (for a crime committed before July 1, 2014); or
 (B) Level 3 felony (for a crime committed after June 30, 2014).
- (20) Arson (IC 35-43-1-1) as a:
 (A) Class A or Class B felony (for a crime committed before July 1, 2014); or
 (B) Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014).
- (21) Possession, use, or manufacture of a weapon of mass destruction (IC 35-46.5-2-1) (or IC 35-47-12-1 before its repeal).
- (22) Terroristic mischief (IC 35-46.5-2-3) (or IC 35-47-12-3 before its repeal) as a:
 (A) Class B felony (for a crime committed before July 1, 2014); or



- (B) Level 4 felony (for a crime committed after June 30, 2014).
- (23) Hijacking or disrupting an aircraft (IC 35-47-6-1.6).
- (24) A violation of IC 35-47.5 (controlled explosives) as a:
 - (A) Class A or Class B felony (for a crime committed before July 1, 2014); or
 - (B) Level 2 or Level 4 felony (for a crime committed after June 30, 2014).
- (25) Domestic battery (IC 35-42-2-1.3) as a Level 2 felony, Level 3 felony, or Level 5 felony.
- (26) Sexual misconduct with a service provider (35-44.1-3-10) as a Level 4 felony.**
- ~~(26)~~ **(27) Any other crimes evidencing a propensity or history of violence.**

SECTION 7. IC 11-12-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. (a) The department shall adopt under IC 4-22-2 minimum standards for county jails governing:

- (1) general physical and environmental conditions;
- (2) services and programs to be provided to confined persons; ~~and~~
- (3) procedures for the care and control of confined persons that are necessary to ensure the health and safety of confined persons, the security of the jail, and public safety; ~~and~~
- (4) the restraint of pregnant inmates. Rules adopted under this subdivision must be consistent with IC 11-10-3.5.**

However, the department may not adopt any standard that prohibits the placement of more than one (1) prisoner in a prisoner cell that has thirty-five (35) square feet or more of floor space per prisoner.

(b) The standards must be sufficiently flexible to foster the development of new and improved practices and to accommodate local needs and circumstances. The standards must be consistent with the laws of Indiana and the rules of the state department of health and the fire prevention and building safety commission.

(c) The commissioner shall select a committee of not less than five (5) county sheriffs to consult with the department before and during the drafting of the proposed minimum standards. County sheriffs shall be selected from the various classes of counties to ensure that densely, moderately, and sparsely populated counties are represented. Each county sheriff is entitled to the minimum salary per diem as provided in IC 4-10-11-2.1 for each day engaged in the official business of the committee and to reimbursement for traveling and other expenses, as provided in the state travel policies and procedures established by the



Indiana department of administration and approved by the budget agency.

(d) At least sixty (60) days before setting the date for a public hearing under IC 4-22-2, the department shall forward copies of the proposed minimum standards to each county sheriff and each board of county commissioners and shall solicit their views and suggestions.

SECTION 8. IC 35-42-4-1, AS AMENDED BY P.L.168-2014, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. (a) Except as provided in subsection (b), a person who knowingly or intentionally has sexual intercourse with another person or knowingly or intentionally causes another person to perform or submit to other sexual conduct (as defined in IC 35-31.5-2-221.5) when:

- (1) the other person is compelled by force or imminent threat of force;
- (2) the other person is unaware that the sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) is occurring; or
- (3) the other person is so mentally disabled or deficient that consent to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) cannot be given;

commits rape, a Level 3 felony.

(b) An offense described in subsection (a) is a Level 1 felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon;
- (3) it results in serious bodily injury to a person other than a defendant; or
- (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) In addition to any other penalty imposed for a violation of this section, the court shall order the person to pay restitution under IC 35-50-5-3 for expenses related to pregnancy and childbirth if the pregnancy is a result of the offense.

SECTION 9. IC 35-42-4-3, AS AMENDED BY P.L.190-2021, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 3. (a) A person who, with a child under fourteen (14) years of age, knowingly or intentionally performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) commits child molesting, a Level 3 felony. However, the offense is a Level 1 felony if:



- (1) it is committed by a person at least twenty-one (21) years of age;
- (2) it is committed by using or threatening the use of deadly force or while armed with a deadly weapon;
- (3) it results in serious bodily injury;
- (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; or
- (5) it results in the transmission of a serious sexually transmitted disease and the person knew that the person was infected with the disease.

(b) A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Level 4 felony. However, the offense is a Level 2 felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon; or
- (3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) A person may be convicted of attempted child molesting of an individual at least fourteen (14) years of age if the person believed the individual to be a child under fourteen (14) years of age at the time the person attempted to commit the offense.

(d) It is a defense to a prosecution under this section that the accused person reasonably believed that the child was sixteen (16) years of age or older at the time of the conduct, unless:

- (1) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon;
- (2) the offense results in serious bodily injury; or
- (3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(e) In addition to any other penalty imposed for a violation of this section, the court shall order the person to pay restitution



under IC 35-50-5-3 for expenses related to pregnancy and childbirth if the pregnancy is a result of the offense.

SECTION 10. IC 35-44.1-3-10, AS AMENDED BY P.L.185-2014, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 10. (a) The following definitions apply throughout this section:

- (1) "Lawful supervision" means supervision by:
 - (A) the department of correction;
 - (B) a court;
 - (C) a probation department;
 - (D) a community corrections program, a community transition program, or another similar program; or
 - (E) parole.
- (2) "Service provider" means:
 - (A) with respect to a person subject to lawful detention:
 - (i) a public servant;
 - (ii) a person employed by a governmental entity; or
 - (iii) a person who provides goods or services to a person who is subject to lawful detention; and
 - (B) with respect to a person subject to lawful supervision:
 - (i) a public servant whose official duties include the supervision of the person subject to lawful supervision;
 - (ii) a person employed by a governmental entity to provide supervision for the person subject to lawful supervision; or
 - (iii) a person who is employed by or contracts with a governmental entity to provide treatment or other services to the person subject to lawful supervision as a condition of the person's lawful supervision.

(b) A service provider who knowingly or intentionally engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with a person who is subject to lawful detention or lawful supervision commits sexual misconduct, a Level 5 felony.

(c) A service provider at least eighteen (18) years of age who knowingly or intentionally engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with a person who is:

- (1) less than eighteen (18) years of age; and
 - (2) subject to lawful detention or lawful supervision;
- commits sexual misconduct, a Level 4 felony.

(d) In addition to any other penalty imposed for a violation of this section, the court shall order the person to pay restitution under IC 35-50-5-3 for expenses related to pregnancy and



childbirth if the pregnancy is a result of the offense.

~~(d)~~ (e) It is not a defense that an act described in subsection (b) or (c) was consensual.

~~(e)~~ This section does not apply to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) between spouses.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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