



January 24, 2020

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## SENATE BILL No. 109

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DIGEST OF SB 109 (Updated January 21, 2020 12:48 pm - DI 106)

**Citations Affected:** IC 35-41.

**Synopsis:** Statute of limitations. Provides that an otherwise barred offense may be commenced not later than five years from the earlier of the date on which: (1) the state first discovers DNA evidence sufficient to charge the offender; (2) the state first becomes aware of a recording that provides evidence sufficient to charge the offender; or (3) a person confesses to the offense.

**Effective:** July 1, 2020.

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**Crider, Houchin, Ford Jon,  
Freeman, Randolph Lonnie M,  
Sandlin, Young M, Buck, Bohacek,  
Merritt**

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January 6, 2020, read first time and referred to Committee on Corrections and Criminal Law.  
January 23, 2020, amended, reported favorably — Do Pass.

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SB 109—LS 6504/DI 106





January 24, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

## SENATE BILL No. 109

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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.211-2019,  
2 SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2020]: 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) Except as provided in subsection (e), a prosecution for a Class  
 5 A felony (for a crime committed before July 1, 2014) or a Level 1  
 6 felony or Level 2 felony (for a crime committed after June 30, 2014)  
 7 may be commenced at any time.
- 8 (d) A prosecution for murder may be commenced:  
 9 (1) at any time; and  
 10 (2) regardless of the amount of time that passes between:  
 11 (A) the date a person allegedly commits the elements of  
 12 murder; and  
 13 (B) the date the alleged victim of the murder dies.
- 14 (e) **Except as provided in subsection (p)**, a prosecution for the  
 15 following offenses is barred unless commenced before the date that the  
 16 alleged victim of the offense reaches thirty-one (31) years of age:  
 17 (1) IC 35-42-4-3 (Child molesting).  
 18 (2) IC 35-42-4-5 (Vicarious sexual gratification).  
 19 (3) IC 35-42-4-6 (Child solicitation).  
 20 (4) IC 35-42-4-7 (Child seduction).  
 21 (5) IC 35-42-4-9 (Sexual misconduct with a minor).  
 22 (6) IC 35-46-1-3 (Incest).
- 23 (f) A prosecution for forgery of an instrument for payment of  
 24 money, or for the uttering of a forged instrument, under IC 35-43-5-2,  
 25 is barred unless it is commenced within five (5) years after the maturity  
 26 of the instrument.
- 27 (g) If a complaint, indictment, or information is dismissed because  
 28 of an error, defect, insufficiency, or irregularity, a new prosecution may  
 29 be commenced within ninety (90) days after the dismissal even if the  
 30 period of limitation has expired at the time of dismissal, or will expire  
 31 within ninety (90) days after the dismissal.
- 32 (h) The period within which a prosecution must be commenced does  
 33 not include any period in which:  
 34 (1) the accused person is not usually and publicly resident in  
 35 Indiana or so conceals himself or herself that process cannot be  
 36 served;  
 37 (2) the accused person conceals evidence of the offense, and  
 38 evidence sufficient to charge the person with that offense is  
 39 unknown to the prosecuting authority and could not have been  
 40 discovered by that authority by exercise of due diligence; or  
 41 (3) the accused person is a person elected or appointed to office  
 42 under statute or constitution, if the offense charged is theft or



- 1 conversion of public funds or bribery while in public office.
- 2 (i) For purposes of tolling the period of limitation only, a  
3 prosecution is considered commenced on the earliest of these dates:
- 4 (1) The date of filing of an indictment, information, or complaint  
5 before a court having jurisdiction.
- 6 (2) The date of issuance of a valid arrest warrant.
- 7 (3) The date of arrest of the accused person by a law enforcement  
8 officer without a warrant, if the officer has authority to make the  
9 arrest.
- 10 (j) A prosecution is considered timely commenced for any offense  
11 to which the defendant enters a plea of guilty, notwithstanding that the  
12 period of limitation has expired.
- 13 (k) The following apply to the specified offenses:
- 14 (1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of  
15 funeral trust funds) is barred unless commenced within five (5)  
16 years after the date of death of the settlor (as described in  
17 IC 30-2-9).
- 18 (2) A prosecution for an offense under IC 30-2-10-9(b) (misuse  
19 of funeral trust funds) is barred unless commenced within five (5)  
20 years after the date of death of the settlor (as described in  
21 IC 30-2-10).
- 22 (3) A prosecution for an offense under IC 30-2-13-38(f) (misuse  
23 of funeral trust or escrow account funds) is barred unless  
24 commenced within five (5) years after the date of death of the  
25 purchaser (as defined in IC 30-2-13-9).
- 26 (l) A prosecution for an offense under IC 23-2-6, IC 23-2.5,  
27 IC 23-14-48-9, or IC 23-19 is barred unless commenced within five (5)  
28 years after the earlier of the date on which the state:
- 29 (1) first discovers evidence sufficient to charge the offender with  
30 the offense; or
- 31 (2) could have discovered evidence sufficient to charge the  
32 offender with the offense by the exercise of due diligence.
- 33 (m) A prosecution for a sex offense listed in IC 11-8-8-4.5 that is  
34 committed against a child and that is not:
- 35 (1) a Class A felony (for a crime committed before July 1, 2014)  
36 or a Level 1 felony or Level 2 felony (for a crime committed after  
37 June 30, 2014); or
- 38 (2) listed in subsection (e);
- 39 is barred unless commenced within ten (10) years after the commission  
40 of the offense, or within four (4) years after the person ceases to be a  
41 dependent of the person alleged to have committed the offense,  
42 whichever occurs later.



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

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

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

12 (3) a person confesses to the offense.

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

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

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

24 (3) a person confesses to the offense.

25 **(p) A prosecution for an offense described in subsection (e) that**  
26 **would otherwise be barred under this section may be commenced**  
27 **not later than five (5) years after the earliest of the date on which:**

28 **(1) the state first discovers evidence sufficient to charge the**  
29 **offender with the offense through DNA (deoxyribonucleic**  
30 **acid) analysis;**

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

34 **(3) a person confesses to the offense.**



## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 109, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 4, reset in roman "Except as provided in subsection (e),".

Page 2, line 4, delete "A" and insert "a".

Page 2, line 14, delete "A" and insert "**Except as provided in subsection (p), a**".

Page 2, line 14, reset in roman "is barred unless".

Page 2, line 14, delete "may be".

Page 2, line 15, reset in roman "before the date that the alleged victim of the offense".

Page 2, line 16, reset in roman "reaches thirty-one (31) years of age:".

Page 2, line 16, delete "at any time:".

Page 2, delete lines 17 through 18.

Page 2, line 19, reset in roman "(1)".

Page 2, line 19, delete "(3)".

Page 2, line 20, reset in roman "(2)".

Page 2, line 20, delete "(4)".

Page 2, line 21, reset in roman "(3)".

Page 2, line 21, delete "(5)".

Page 2, line 22, reset in roman "(4)".

Page 2, line 22, delete "(6)".

Page 2, line 23, reset in roman "(5)".

Page 2, line 23, delete "(7)".

Page 2, line 24, reset in roman "(6)".

Page 2, line 24, delete "(8)".

Page 4, after line 26, begin a new paragraph and insert:

**"(p) A prosecution for an offense described in subsection (e) 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 SB 109 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 8, Nays 0.

