

SENATE BILL No. 239

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 (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 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, 2018.

Bray

January 3, 2018, read first time and referred to Committee on Corrections and Criminal Law.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 239

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 34-11-2-15 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2018]: **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, 2018]: 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, 2018]:

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 spermatozoon
25 or ovum.

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, 2018]: **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, 2018]: 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 (1) IC 35-42-4-3(a) (Child molesting).
 2 (2) IC 35-42-4-5 (Vicarious sexual gratification).
 3 (3) IC 35-42-4-6 (Child solicitation).
 4 (4) IC 35-42-4-7 (Child seduction).
 5 (5) IC 35-46-1-3 (Incest).
 6 (f) A prosecution for forgery of an instrument for payment of
 7 money, or for the uttering of a forged instrument, under IC 35-43-5-2,
 8 is barred unless it is commenced within five (5) years after the maturity
 9 of the instrument.
 10 (g) If a complaint, indictment, or information is dismissed because
 11 of an error, defect, insufficiency, or irregularity, a new prosecution may
 12 be commenced within ninety (90) days after the dismissal even if the
 13 period of limitation has expired at the time of dismissal, or will expire
 14 within ninety (90) days after the dismissal.
 15 (h) The period within which a prosecution must be commenced does
 16 not include any period in which:
 17 (1) the accused person is not usually and publicly resident in
 18 Indiana or so conceals himself or herself that process cannot be
 19 served;
 20 (2) the accused person conceals evidence of the offense, and
 21 evidence sufficient to charge the person with that offense is
 22 unknown to the prosecuting authority and could not have been
 23 discovered by that authority by exercise of due diligence; or
 24 (3) the accused person is a person elected or appointed to office
 25 under statute or constitution, if the offense charged is theft or
 26 conversion of public funds or bribery while in public office.
 27 (i) For purposes of tolling the period of limitation only, a
 28 prosecution is considered commenced on the earliest of these dates:
 29 (1) The date of filing of an indictment, information, or complaint
 30 before a court having jurisdiction.
 31 (2) The date of issuance of a valid arrest warrant.
 32 (3) The date of arrest of the accused person by a law enforcement
 33 officer without a warrant, if the officer has authority to make the
 34 arrest.
 35 (j) A prosecution is considered timely commenced for any offense
 36 to which the defendant enters a plea of guilty, notwithstanding that the
 37 period of limitation has expired.
 38 (k) The following apply to the specified offenses:
 39 (1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of
 40 funeral trust funds) is barred unless commenced within five (5)
 41 years after the date of death of the settlor (as described in
 42 IC 30-2-9).



- 1 (2) A prosecution for an offense under IC 30-2-10-9(b) (misuse
2 of funeral trust funds) is barred unless commenced within five (5)
3 years after the date of death of the settlor (as described in
4 IC 30-2-10).
- 5 (3) A prosecution for an offense under IC 30-2-13-38(f) (misuse
6 of funeral trust or escrow account funds) is barred unless
7 commenced within five (5) years after the date of death of the
8 purchaser (as defined in IC 30-2-13-9).
- 9 (l) A prosecution for an offense under IC 23-2-5, IC 23-2-6,
10 IC 23-14-48-9, or IC 23-19 is barred unless commenced within five (5)
11 years after the earlier of the date on which the state:
12 (1) first discovers evidence sufficient to charge the offender with
13 the offense; or
14 (2) could have discovered evidence sufficient to charge the
15 offender with the offense by the exercise of due diligence.
- 16 (m) A prosecution for a sex offense listed in IC 11-8-8-4.5 that is
17 committed against a child and that is not:
18 (1) a Class A felony (for a crime committed before July 1, 2014)
19 or a Level 1 felony or Level 2 felony (for a crime committed after
20 June 30, 2014); or
21 (2) listed in subsection (e);
22 is barred unless commenced within ten (10) years after the commission
23 of the offense, or within four (4) years after the person ceases to be a
24 dependent of the person alleged to have committed the offense,
25 whichever occurs later.
- 26 (n) A prosecution for rape (IC 35-42-4-1) as a Class B felony (for a
27 crime committed before July 1, 2014) or as a Level 3 felony (for a
28 crime committed after June 30, 2014) that would otherwise be barred
29 under this section may be commenced not later than five (5) years after
30 the earlier of the date on which:
31 (1) the state first discovers evidence sufficient to charge the
32 offender with the offense through DNA (deoxyribonucleic acid)
33 analysis;
34 (2) the state first becomes aware of the existence of a recording
35 (as defined in IC 35-31.5-2-273) that provides evidence sufficient
36 to charge the offender with the offense; or
37 (3) a person confesses to the offense.
- 38 (o) A prosecution for criminal deviate conduct (IC 35-42-4-2)
39 (repealed) as a Class B felony for a crime committed before July 1,
40 2014, that would otherwise be barred under this section may be
41 commenced not later than five (5) years after the earliest of the date on
42 which:



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

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

7 (3) a person confesses to the offense.

8 **(p) A prosecution for fertility fraud (IC 35-45-21-6) that would**
 9 **otherwise be barred under this section may be commenced not**
 10 **later than five (5) years after the earliest of the date on which:**

11 (1) the state first discovers evidence sufficient to charge the
 12 offender with the offense through DNA (deoxyribonucleic
 13 acid) analysis;

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

17 (3) a person confesses to the offense.

18 SECTION 6. IC 35-45-21-6 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2018]: Sec. 6. (a) As used in this section, "human reproductive
 21 material" means:

22 (1) a human spermatozoon or ovum; or

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

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

30 (c) A physician who:

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

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

35 (A) without the donor's consent; or

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

38 commits fertility fraud, a Level 6 felony.

