

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 464

AN ACT to amend the Indiana Code concerning family law and juvenile law.

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

SECTION 1. IC 11-8-8-4.5, AS AMENDED BY P.L.142-2020, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.5. (a) Except as provided in section 22 of this chapter, as used in this chapter, "sex offender" means a person convicted of any of the following offenses:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).
- (5) Vicarious sexual gratification (including performing sexual conduct in the presence of a minor) (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual misconduct with a minor (IC 35-42-4-9) as a Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a crime committed after June 30, 2014), unless:
 - (A) the person is convicted of sexual misconduct with a minor as a Class C felony (for a crime committed before July 1, 2014) or a Level 5 felony (for a crime committed after June 30, 2014);

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- (B) the person is not more than:
- (i) four (4) years older than the victim if the offense was committed after June 30, 2007; or
 - (ii) five (5) years older than the victim if the offense was committed before July 1, 2007; and
- (C) the sentencing court finds that the person should not be required to register as a sex offender.
- (9) Incest (IC 35-46-1-3).
- (10) Sexual battery (IC 35-42-4-8).
- (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age, and the person who kidnapped the victim is not the victim's parent or guardian.
- (12) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age, and the person who confined or removed the victim is not the victim's parent or guardian.
- (13) Possession of child pornography (IC 35-42-4-4(d) or IC 35-42-4-4(e)).
- (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony (for a crime committed before July 1, 2014) or a Level 4 felony (for a crime committed after June 30, 2014).
- (15) Promotion of human sexual trafficking under IC 35-42-3.5-1.1.
- (16) Promotion of child sexual trafficking under IC 35-42-3.5-1.2(a).
- (17) Promotion of sexual trafficking of a younger child (IC 35-42-3.5-1.2(c)).
- (18) Child sexual trafficking (IC 35-42-3.5-1.3).
- (19) Human trafficking under IC 35-42-3.5-1.4 if the victim is less than eighteen (18) years of age.
- (20) Sexual misconduct by a service provider with a detained or supervised child (IC 35-44.1-3-10(c)).
- (b) The term includes:
- (1) a person who is required to register as a sex offender in any jurisdiction; and
 - (2) a child who has committed a delinquent act, **or a person prosecuted under IC 31-30-1-4(d) for an offense described in subsection (a) committed when the person was less than eighteen (18) years of age, but who was at least twenty-one (21) years of age when the charge was filed**, and who:
 - (A) is at least fourteen (14) years of age;
 - (B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure



private facility (as defined in IC 31-9-2-115), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and (C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

(c) In making a determination under subsection (b)(2)(C), the court shall consider expert testimony concerning whether a child is likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

(d) A person ordered to register under subsection (b)(2) may petition the court to reconsider the order at any time after completing court ordered sex offender treatment. The court shall consider expert testimony concerning whether a child or person is likely to repeat an offense described in subsection (a) or an act that would be an offense described in subsection (a) if committed by an adult.

SECTION 2. IC 11-8-8-5, AS AMENDED BY P.L.142-2020, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) Except as provided in section 22 of this chapter, as used in this chapter, "sex or violent offender" means a person convicted of any of the following offenses:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).
- (5) Vicarious sexual gratification (including performing sexual conduct in the presence of a minor) (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual misconduct with a minor (IC 35-42-4-9) as a Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a crime committed after June 30, 2014), unless:
 - (A) the person is convicted of sexual misconduct with a minor as a Class C felony (for a crime committed before July 1, 2014) or a Level 5 felony (for a crime committed after June 30, 2014);
 - (B) the person is not more than:
 - (i) four (4) years older than the victim if the offense was committed after June 30, 2007; or



- (ii) five (5) years older than the victim if the offense was committed before July 1, 2007; and
- (C) the sentencing court finds that the person should not be required to register as a sex offender.
- (9) Incest (IC 35-46-1-3).
- (10) Sexual battery (IC 35-42-4-8).
- (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age, and the person who kidnapped the victim is not the victim's parent or guardian.
- (12) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age, and the person who confined or removed the victim is not the victim's parent or guardian.
- (13) Possession of child pornography (IC 35-42-4-4(d) or IC 35-42-4-4(e)).
- (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony (for a crime committed before July 1, 2014) or a Level 4 felony (for a crime committed after June 30, 2014).
- (15) Promotion of human sexual trafficking under IC 35-42-3.5-1.1.
- (16) Promotion of child sexual trafficking under IC 35-42-3.5-1.2(a).
- (17) Promotion of sexual trafficking of a younger child (IC 35-42-3.5-1.2(c)).
- (18) Child sexual trafficking (IC 35-42-3.5-1.3).
- (19) Human trafficking under IC 35-42-3.5-1.4 if the victim is less than eighteen (18) years of age.
- (20) Murder (IC 35-42-1-1).
- (21) Voluntary manslaughter (IC 35-42-1-3).
- (22) Sexual misconduct by a service provider with a detained or supervised child (IC 35-44.1-3-10(c)).
- (b) The term includes:
 - (1) a person who is required to register as a sex or violent offender in any jurisdiction; and
 - (2) a child who has committed a delinquent act, **or a person prosecuted under IC 31-30-1-4(d) for an offense described in subsection (a) committed when the person was less than eighteen (18) years of age, but who was at least twenty-one (21) years of age when the charge was filed**, and who:
 - (A) is at least fourteen (14) years of age;
 - (B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in IC 31-9-2-115), or is discharged



from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and (C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

(c) In making a determination under subsection (b)(2)(C), the court shall consider expert testimony concerning whether a child is likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

(d) A person ordered to register under subsection (b)(2) may petition the court to reconsider the order at any time after completing court ordered sex offender treatment. The court shall consider expert testimony concerning whether a child or person is likely to repeat an offense described in subsection (a) or an act that would be an offense described in subsection (a) if committed by an adult.

SECTION 3. IC 29-3-2-1, AS AMENDED BY P.L.178-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) This article applies to the following:

- (1) The business affairs, physical person, and property of every incapacitated person and minor residing in Indiana.
- (2) Property located in Indiana of every incapacitated person and minor residing outside Indiana.
- (3) Property of every incapacitated person or minor, regardless of where the property is located, coming into the control of a fiduciary who is subject to the laws of Indiana.

(b) Except as provided in subsections (c) through (e), the court has exclusive original jurisdiction with respect to an individual who is not an adult (as defined in IC 29-3.5-1-2(1)) over all matters concerning the following:

- (1) Guardians.
- (2) Protective proceedings under IC 29-3-4.

In the case of an adult (as defined in IC 29-3.5-1-2(1)), a court must establish jurisdiction concerning a guardianship or a protective proceeding in accordance with IC 29-3.5-2.

(c) A juvenile court has exclusive original jurisdiction over matters relating to the following:

- (1) Minors described in IC 31-30-1-1.
- (2) Matters related to guardians of the person and guardianships of the person described in ~~IC 31-30-1-1(10)~~; **IC 31-30-1-1(a)(10)**.

(d) Except as provided in subsection (c), courts with child custody



jurisdiction under:

- (1) IC 31-14-10;
- (2) IC 31-17-2-1; or
- (3) IC 31-21-5 (or IC 31-17-3-3 before its repeal);

have original and continuing jurisdiction over custody matters relating to minors.

(e) A mental health division of a superior court under IC 33-33-49 has jurisdiction concurrent with the court in mental health proceedings under IC 12-26 relating to guardianship and protective orders.

(f) Jurisdiction under this section is not dependent on issuance or service of summons.

SECTION 4. IC 31-25-2-7, AS AMENDED BY P.L.104-2015, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7. (a) The department is responsible for the following:

- (1) Providing child protection services under this article.
 - (2) Providing and administering child abuse and neglect prevention services.
 - (3) Providing and administering child services.
 - (4) Providing and administering family services.
 - (5) Providing family preservation services under IC 31-26-5.
 - (6) Regulating and licensing the following under IC 31-27:
 - (A) Child caring institutions.
 - (B) Foster family homes.
 - (C) Group homes.
 - (D) Child placing agencies.
 - (7) Administering the state's plan for the administration of Title IV-D of the federal Social Security Act (42 U.S.C. 651 et seq.).
 - (8) Administering foster care services.
 - (9) Administering successful adulthood services (as described in 42 U.S.C. 677 et seq.).
 - (10) Administering adoption and guardianship services.
 - (11) Certifying and providing grants to the youth services bureaus under IC 31-26-1.
 - (12) Administering the project safe program.
 - (13) Paying for programs and services as provided under IC 31-40.
 - (14) Obtaining on an annual basis a consumer report, as defined in 42 U.S.C. 1681a(d), for each child at least fourteen (14) years of age who is in state foster care.
- (b) This chapter does not authorize or require the department to:
- (1) investigate or report on proceedings under IC 31-17-2 relating



to a child who is not the subject of an open child in need of services case under IC 31-34; or

(2) otherwise monitor child custody or visitation in dissolution of marriage proceedings.

(c) This chapter does not authorize or require the department to:

(1) conduct home studies; or

(2) otherwise participate in guardianship proceedings under IC 29-3;

other than those over which the juvenile court has jurisdiction under IC 29-3-2-1(c) or ~~IC 31-30-1-1(10)~~. **IC 31-30-1-1(a)(10)**.

SECTION 5. IC 31-30-1-0.1, AS ADDED BY P.L.220-2011, SECTION 508, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to ~~section 1~~ **section 1(a)** of this chapter by P.L.217-2001 apply to all proceedings pending under IC 31-34 on July 1, 2001, and to all proceedings commenced under IC 31-34 after June 30, 2001.

(2) The amendments made to section 2.5 of this chapter by P.L.131-2009 apply to proceedings pending on or initiated on or after May 12, 2009.

SECTION 6. IC 31-30-1-1, AS AMENDED BY P.L.172-2022, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. **(a)** A juvenile court has exclusive original jurisdiction, except as provided in sections 9, 10, 12, and 13 of this chapter, in the following:

(1) Proceedings in which a child, including a child of divorced parents, is alleged to be a delinquent child under IC 31-37.

(2) Proceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services under IC 31-34.

(3) Proceedings concerning the paternity of a child under IC 31-14.

(4) Proceedings under the interstate compact on juveniles under IC 31-37-23.

(5) Proceedings governing the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for a child under IC 31-34-20 or IC 31-37-15.

(6) Proceedings under IC 31-34-4, IC 31-34-5, IC 31-37-5, and IC 31-37-6 governing the detention of a child before a petition has been filed.

(7) Proceedings to issue a protective order under IC 31-32-13.

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- (8) Proceedings in which a child less than sixteen (16) years of age is alleged to have committed an act that would be a misdemeanor traffic offense if committed by an adult.
- (9) Proceedings in which a child is alleged to have committed an act that would be an offense under IC 9-30-5 if committed by an adult.
- (10) Guardianship of the person proceedings for a child:
- (A) who has been adjudicated as a child in need of services;
 - (B) for whom a juvenile court has approved a permanency plan under IC 31-34-21-7 that provides for the appointment of a guardian of the person; and
 - (C) who is the subject of a pending child in need of services proceeding under IC 31-34.
- (11) Proceedings concerning involuntary drug and alcohol treatment under IC 31-32-16.
- (12) Proceedings under the interstate compact for juveniles under IC 11-13-4.5-1.5.
- (13) Proceedings under IC 31-28-5.8.
- (14) Other proceedings specified by law.

(b) A juvenile court has jurisdiction over a person who is at least twenty-one (21) years of age for an alleged offense:

- (1) committed while the person was a child; and**
- (2) that could not have been waived under IC 31-30-3.**

SECTION 7. IC 31-30-1-4, AS AMENDED BY P.L.175-2022, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) The juvenile court does not have jurisdiction over an individual for an alleged violation of:

- (1) IC 35-41-5-1(a) (attempted murder);
- (2) IC 35-42-1-1 (murder);
- (3) IC 35-42-3-2 (kidnapping);
- (4) IC 35-42-4-1 (rape);
- (5) IC 35-42-4-2 (criminal deviate conduct) (before its repeal);
- (6) IC 35-42-5-1 (robbery) if:
 - (A) the robbery was committed while armed with a deadly weapon; or
 - (B) the robbery results in bodily injury or serious bodily injury;
- (7) IC 35-42-5-2 (carjacking) (before its repeal);
- (8) IC 35-47-2-1.5 (unlawful carrying of a handgun), if charged as a felony;
- (9) IC 35-47-10 (children and firearms), if charged as a felony; or
- (10) any offense that may be joined under IC 35-34-1-9(a)(2) with



any crime listed in this subsection;
if the individual was at least sixteen (16) years of age but less than eighteen (18) years of age at the time of the alleged violation.

(b) Once an individual described in subsection (a) has been charged with any offense listed in subsection (a), the court having adult criminal jurisdiction shall retain jurisdiction over the case if the individual pleads guilty to or is convicted of any offense listed in subsection (a)(1) through (a)(9).

(c) If:

(1) an individual described in subsection (a) is charged with one

(1) or more offenses listed in subsection (a);

(2) all the charges under subsection (a)(1) through (a)(9) resulted in an acquittal or were dismissed; and

(3) the individual pleads guilty to or is convicted of any offense other than an offense listed in subsection (a)(1) through (a)(9);

the court having adult criminal jurisdiction may withhold judgment and transfer jurisdiction to the juvenile court for adjudication and disposition. In determining whether to transfer jurisdiction to the juvenile court for adjudication and disposition, the court having adult criminal jurisdiction shall consider whether there are appropriate services available in the juvenile justice system, whether the child is amenable to rehabilitation under the juvenile justice system, and whether it is in the best interests of the safety and welfare of the community that the child be transferred to juvenile court. All orders concerning release conditions remain in effect until a juvenile court detention hearing, which must be held not later than forty-eight (48) hours, excluding Saturdays, Sundays, and legal holidays, after the order of transfer of jurisdiction.

(d) A court having adult criminal jurisdiction, and not a juvenile court, has jurisdiction over a person who is at least twenty-one (21) years of age for an alleged offense:

(1) committed while the person was a child; and

(2) that could have been waived under IC 31-30-3.

SECTION 8. IC 31-30-2-1, AS AMENDED BY P.L.86-2017, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Except as provided in subsections (b), (c), and (h), the juvenile court's jurisdiction over a delinquent child or a child in need of services and over the child's parent, guardian, or custodian continues until:

(1) the child becomes twenty-one (21) years of age, unless the court discharges the child and the child's parent, guardian, or custodian at an earlier time; or



(2) guardianship of the child is awarded to the department of correction.

(b) The juvenile court may, on its own motion, after guardianship of a child is awarded to the department of correction, reinstate the court's jurisdiction for the purpose of ordering the child's parent, guardian, or custodian to participate in programs operated by or through the department of correction.

(c) The juvenile court's jurisdiction over a parent or guardian of the estate of a child under this section continues until the parent or guardian of the estate has satisfied the financial obligation of the parent or guardian of the estate that is imposed under IC 31-40 (or IC 31-6-4-18 before its repeal).

(d) Except as provided in subsection (g), the jurisdiction of the juvenile court over a proceeding described in ~~IC 31-30-1-1(10)~~ **IC 31-30-1-1(a)(10)** for a guardianship of the person continues until the earlier of the date that:

(1) the juvenile court terminates the guardianship of the person;

or

(2) the child becomes:

(A) nineteen (19) years of age, if a child who is at least eighteen (18) years of age is a full-time student in a secondary school or the equivalent level of vocational or career and technical education; or

(B) eighteen (18) years of age, if clause (A) does not apply.

If the guardianship of the person continues after the child becomes the age specified in subdivision (2), the juvenile court shall transfer the guardianship of the person proceedings to a court having probate jurisdiction in the county in which the guardian of the person resides. If the juvenile court has both juvenile and probate jurisdiction, the juvenile court may transfer the guardianship of the person proceedings to the probate docket of the court.

(e) The jurisdiction of the juvenile court to enter, modify, or enforce a support order under IC 31-40-1-5 continues during the time that the court retains jurisdiction over a guardianship of the person proceeding described in ~~IC 31-30-1-1(10)~~; **IC 31-30-1-1(a)(10)**.

(f) At any time, a juvenile court may, with the consent of a probate court, transfer to the probate court guardianship of the person proceedings and any related support order initiated in the juvenile court.

(g) A juvenile court may retain jurisdiction over an older youth, as defined in IC 31-28-5.8-4, who is a recipient or beneficiary of:

(1) kinship guardianship assistance under Title IV-E of the federal



Social Security Act (42 U.S.C. 673), as amended; or

(2) other financial assistance provided to or for the benefit of a child who:

- (A) was previously adjudicated as a child in need of services or delinquent child;
- (B) is a protected person under a legal guardianship if IC 29-3-8-9(f) applies; and
- (C) is approved for assistance under a rule or published policy of the department.

(h) Upon receipt of a motion under IC 31-37-22-11, the juvenile court shall reinstate its jurisdiction to conduct a hearing and issue an appropriate order in accordance with IC 31-37-22-11.

SECTION 9. IC 31-37-1-2, AS AMENDED BY P.L.84-2021, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. A child commits a delinquent act if, before becoming eighteen (18) years of age, the child commits ~~an act: (1) that would be an a misdemeanor or felony offense, if committed by an adult;~~

~~(2) in violation of IC 35-45-4-6; or~~

~~(3) in violation of IC 35-47-10-5; except for an act committed by a person over which the juvenile court lacks jurisdiction under IC 31-30-1.~~

SECTION 10. IC 35-38-1-7.1, AS AMENDED BY P.L.5-2019, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court may consider the following aggravating circumstances:

(1) The harm, injury, loss, or damage suffered by the victim of an offense was:

- (A) significant; and
- (B) greater than the elements necessary to prove the commission of the offense.

(2) The person has a history of criminal or delinquent behavior.

(3) The victim of the offense was less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense.

(4) The person:

- (A) committed a crime of violence (IC 35-50-1-2); and
- (B) knowingly committed the offense in the presence or within hearing of an individual who:
 - (i) was less than eighteen (18) years of age at the time the person committed the offense; and



- (ii) is not the victim of the offense.
- (5) The person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person.
- (6) The person has recently violated the conditions of any probation, parole, pardon, community corrections placement, or pretrial release granted to the person.
- (7) The victim of the offense was:
- (A) a person with a disability (as defined in IC 27-7-6-12), and the defendant knew or should have known that the victim was a person with a disability; or
 - (B) mentally or physically infirm.
- (8) The person was in a position having care, custody, or control of the victim of the offense.
- (9) The injury to or death of the victim of the offense was the result of shaken baby syndrome (as defined in IC 16-41-40-2).
- (10) The person threatened to harm the victim of the offense or a witness if the victim or witness told anyone about the offense.
- (11) The person:
- (A) committed trafficking with an inmate under IC 35-44.1-3-5; and
 - (B) is an employee of the penal facility.
- (12) The person committed the offense with bias due to the victim's or the group's real or perceived characteristic, trait, belief, practice, association, or other attribute the court chooses to consider, including but not limited to an attribute described in IC 10-13-3-1.
- (b) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:
- (1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.
 - (2) The crime was the result of circumstances unlikely to recur.
 - (3) The victim of the crime induced or facilitated the offense.
 - (4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.
 - (5) The person acted under strong provocation.
 - (6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period



before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(12) The person was convicted of a crime relating to a controlled substance and the person's arrest or prosecution was facilitated in part because the person:

(A) requested emergency medical assistance; or

(B) acted in concert with another person who requested emergency medical assistance;

for an individual who reasonably appeared to be in need of medical assistance due to the use of alcohol or a controlled substance.

(13) The person has posttraumatic stress disorder, traumatic brain injury, or a postconcussive brain injury.

(14) The person is a person described in IC 31-30-1-4(d) who committed the offense while the person was a child but is now at least twenty-one (21) years of age.

(c) The criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence.

(d) A court may impose any sentence that is:

(1) authorized by statute; and

(2) permissible under the Constitution of the State of Indiana; regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

(e) If a court suspends a sentence and orders probation for a person described in subsection (b)(13), the court may require the person to receive treatment for the person's injuries.

SECTION 11. IC 35-38-1-17, AS AMENDED BY P.L.45-2018, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 17. (a) Notwithstanding IC 1-1-5.5-21, this section



applies to a person who:

- (1) commits an offense; or
- (2) is sentenced;

before July 1, 2014.

(b) This section does not apply to a credit restricted felon.

(c) Except as provided in subsections (k) and (m), this section does not apply to a violent criminal.

(d) As used in this section, "violent criminal" means a person convicted of any 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) Kidnapping (IC 35-42-3-2).
- (8) Rape (IC 35-42-4-1).
- (9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- (10) Child molesting (IC 35-42-4-3).
- (11) Sexual misconduct with a minor as a Class A felony under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2) (for a crime committed before July 1, 2014) or sexual misconduct with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a Level 2 felony under IC 35-42-4-9(b)(2) (for a crime committed after June 30, 2014).
- (12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1) (for a crime committed before July 1, 2014) or robbery as a Level 2 felony or a Level 3 felony (IC 35-42-5-1) (for a crime committed after June 30, 2014).
- (13) Burglary as Class A felony or a Class B felony (IC 35-43-2-1) (for a crime committed before July 1, 2014) or burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony (IC 35-43-2-1) (for a crime committed after June 30, 2014).
- (14) Unlawful possession of a firearm by a serious violent felon (IC 35-47-4-5).

(e) At any time after:

- (1) a convicted person begins serving the person's sentence; and
- (2) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned;

the court may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing.



However, if the convicted person was sentenced under the terms of a plea agreement, the court may not, without the consent of the prosecuting attorney, reduce or suspend the sentence and impose a sentence not authorized by the plea agreement. The court must incorporate its reasons in the record.

(f) If the court sets a hearing on a petition under this section, the court must give notice to the prosecuting attorney and the prosecuting attorney must give notice to the victim (as defined in IC 35-31.5-2-348) of the crime for which the convicted person is serving the sentence.

(g) The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.2.

(h) The court may deny a request to suspend or reduce a sentence under this section without making written findings and conclusions.

(i) The court is not required to conduct a hearing before reducing or suspending a sentence under this section if:

- (1) the prosecuting attorney has filed with the court an agreement of the reduction or suspension of the sentence; and
- (2) the convicted person has filed with the court a waiver of the right to be present when the order to reduce or suspend the sentence is considered.

(j) This subsection applies only to a convicted person who is not a violent criminal. A convicted person who is not a violent criminal may file a petition for sentence modification under this section:

- (1) not more than one (1) time in any three hundred sixty-five (365) day period; and
- (2) a maximum of two (2) times during any consecutive period of incarceration;

without the consent of the prosecuting attorney.

(k) This subsection applies to a convicted person who is a violent criminal. **Except as provided in subsection (n)**, a convicted person who is a violent criminal may, not later than three hundred sixty-five (365) days from the date of sentencing, file one (1) petition for sentence modification under this section without the consent of the prosecuting attorney. After the elapse of the three hundred sixty-five (365) day period, a violent criminal may not file a petition for sentence modification without the consent of the prosecuting attorney.

(l) A person may not waive the right to sentence modification under this section as part of a plea agreement. Any purported waiver of the right to sentence modification under this section in a plea agreement is invalid and unenforceable as against public policy. This subsection does not prohibit the finding of a waiver of the right to:

- (1) have a court modify a sentence and impose a sentence not



authorized by the plea agreement, as described under subsection (e); or

(2) sentence modification for any other reason, including failure to comply with the provisions of this section.

(m) Notwithstanding subsection (k), a person who commits an offense after June 30, 2014, and before May 15, 2015, may file one (1) petition for sentence modification without the consent of the prosecuting attorney, even if the person has previously filed a petition for sentence modification.

(n) A person sentenced in a criminal court having jurisdiction over an offense committed when the person was less than eighteen (18) years of age may file an additional petition for sentence modification under this section without the consent of the prosecuting attorney if the person has served at least:

(1) fifteen (15) years of the person's sentence, if the person is not serving a sentence for murder; or

(2) twenty (20) years of the person's sentence, if the person is serving a sentence for murder.

The time periods described in this subsection are computed on the basis of time actually served and do not include any reduction applied for good time credit or educational credit time.

SECTION 12. IC 35-50-2-2.2, AS AMENDED BY P.L.119-2021, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2.2. (a) Except as provided in subsection (b) or (c), the court may suspend any part of a sentence for a felony.

(b) If a person is convicted of a Level 2 felony or a Level 3 felony and has any prior unrelated felony conviction, other than a conviction for a felony involving marijuana, hashish, hash oil, or salvia divinorum, the court may suspend only that part of a sentence that is in excess of the minimum sentence for the:

(1) Level 2 felony; or

(2) Level 3 felony.

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

(d) The court may suspend any part of a sentence for an offense filed in adult court under IC 31-30-1-4(d), unless the offense is murder (IC 35-42-1-1).



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 464 — Concur

