

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.

## SENATE ENROLLED ACT No. 551

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AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

SECTION 1. IC 11-8-8-19, AS AMENDED BY P.L.5-2015, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 19. (a) Except as provided in subsections (b) through (f), a sex or violent offender is required to register under this chapter until the expiration of ten (10) years after the date the sex or violent offender:

- (1) is released from a penal facility (as defined in IC 35-31.5-2-232) or a secure juvenile detention facility of a state or another jurisdiction;
- (2) is placed in a community transition program;
- (3) is placed in a community corrections program;
- (4) is placed on parole; or
- (5) is placed on probation;

for the sex or violent offense requiring registration, whichever occurs last. The registration period is tolled during any period that the sex or violent offender is incarcerated. The registration period does not restart if the offender is convicted of a subsequent offense. However, if the subsequent offense is a sex or violent offense, **or an offense under IC 11-8-8-17**, a new registration period may be imposed in accordance with this chapter. The department shall ensure that an offender who is no longer required to register as a sex or violent offender is notified

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that the obligation to register has expired, and shall ensure that the offender's information is no longer published to the public portal of the sex and violent offender registry Internet web site established under IC 36-2-13-5.5.

(b) A sex or violent offender who is a sexually violent predator is required to register for life.

(c) A sex or violent offender who is convicted of at least one (1) offense under section 5(a) of this chapter that the sex or violent offender committed:

- (1) when the person was at least eighteen (18) years of age; and
- (2) against a victim who was less than twelve (12) years of age at the time of the crime;

is required to register for life.

(d) A sex or violent offender who is convicted of at least one (1) offense under section 5(a) of this chapter in which the sex offender:

- (1) proximately caused serious bodily injury or death to the victim;
- (2) used force or the threat of force against the victim or a member of the victim's family, unless the offense is sexual battery as a Class D felony (for an offense committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014); or
- (3) rendered the victim unconscious or otherwise incapable of giving voluntary consent;

is required to register for life.

(e) A sex or violent offender who is convicted of at least two (2) unrelated offenses under section 5(a) of this chapter is required to register for life.

(f) A person who is required to register as a sex or violent offender in any jurisdiction shall register for the period required by the other jurisdiction or the period described in this section, whichever is longer.

SECTION 2. IC 31-33-18-1.5, AS AMENDED BY P.L.23-2016, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. (a) This section applies to records held by:

- (1) a local office;
- (2) the department; or
- (3) the department of child services ombudsman established by IC 4-13-19-3;

regarding a child whose death or near fatality may have been the result of abuse, abandonment, or neglect.

(b) For purposes of subsection (a), a child's death or near fatality



may have been the result of abuse, abandonment, or neglect if:

- (1) an entity described in subsection (a) determines that the child's death or near fatality is the result of abuse, abandonment, or neglect; or
- (2) a prosecuting attorney files:
  - (A) an indictment or information; or
  - (B) a complaint alleging the commission of a delinquent act; that, if proven, would cause a reasonable person to believe that the child's death or near fatality may have been the result of abuse, abandonment, or neglect.

Upon the request of any person, or upon its own motion, the court exercising juvenile jurisdiction in the county in which the child's death or near fatality occurred shall determine whether the allegations contained in the indictment, information, or complaint described in subdivision (2), if proven, would cause a reasonable person to believe that the child's death or near fatality may have been the result of abuse, abandonment, or neglect.

(c) If the juvenile court finds that the child's death or near fatality was the result of abuse, abandonment, or neglect, the court shall make written findings and provide a copy of the findings and the indictment, information, or complaint described under subsection (b)(2) to the department.

(d) As used in this section:

- (1) "case" means:
  - (A) any intake report generated by the department;
  - (B) any investigation or assessment conducted by the department; or
  - (C) ongoing involvement between the department and a child or family that is the result of:
    - (i) a program of informal adjustment; or
    - (ii) a child in need of services action;

for which related records and documents have not been expunged as required by law or by a court at the time the department is notified of a fatality or near fatality;

- (2) "contact" means in person communication about a case in which:
  - (A) the child who is the victim of a fatality or near fatality is alleged to be a victim; or
  - (B) the perpetrator of the fatality or near fatality is alleged to be the perpetrator;
- (3) "identifying information" means information that identifies an individual, including an individual's:



- (A) name, address, date of birth, occupation, place of employment, and telephone number;
- (B) employer identification number, mother's maiden name, Social Security number, or any identification number issued by a governmental entity;
- (C) unique biometric data, including the individual's fingerprint, voice print, or retina or iris image;
- (D) unique electronic identification number, address, or routing code;
- (E) telecommunication identifying information; or
- (F) telecommunication access device, including a card, a plate, a code, an account number, a personal identification number, an electronic serial number, a mobile identification number, or another telecommunications service or device or means of account access;
- (4) "life threatening" means an injury or condition that is categorized as "serious" or "critical" in patient hospital records; and
- (5) "near fatality" means a severe childhood injury or condition that is certified by a physician as being life threatening.
- (e) Unless:
  - (1) ~~for purposes of a near fatality~~, a police investigation **or criminal prosecution** is ongoing; or
  - (2) information in a record is otherwise confidential under state or federal law;

a record described in subsection (a) that has been redacted in accordance with this section is not confidential and may be disclosed to any person who requests the record. The person requesting the record may be required to pay the reasonable expenses of copying the record.

(f) When a person requests a record described in subsection (a), the entity having control of the record shall immediately transmit a copy of the record to the court exercising juvenile jurisdiction in the county in which the death or near fatality of the child occurred. However, if the court requests that the entity having control of a record transmit the original record, the entity shall transmit the original record.

(g) Upon receipt of the record described in subsection (a), the court shall, within thirty (30) days, redact the record to exclude:

- (1) identifying information described in subsection (d)(3)(B) through (d)(3)(F) of a person; and
- (2) all identifying information of a child less than eighteen (18) years of age.



(h) The court shall disclose the record redacted in accordance with subsection (g) to any person who requests the record, if the person has paid:

- (1) to the entity having control of the record, the reasonable expenses of copying under IC 5-14-3-8; and
- (2) to the court, the reasonable expenses of copying the record.

(i) The data and information in a record disclosed under this section must include the following:

- (1) A summary of the report of abuse or neglect and a factual description of the contents of the report.
- (2) The age and gender of the child.
- (3) The cause of the fatality or near fatality, if the cause has been determined.
- (4) Whether the department had any contact with the child or the perpetrator before the fatality or near fatality, and, if the department had contact, the following:

(A) The frequency of the contact with the child or the perpetrator before the fatality or near fatality and the date on which the last contact occurred before the fatality or near fatality.

(B) A summary of the status of the child's case at the time of the fatality or near fatality, including:

- (i) whether the child's case was closed by the department before the fatality or near fatality; and
- (ii) if the child's case was closed as described under item (i), the date of closure and the reasons that the case was closed.

(j) The court's determination under subsection (g) that certain identifying information or other information is not relevant to establishing the facts and circumstances leading to the death or near fatality of a child is not admissible in a criminal proceeding or civil action.

SECTION 3. IC 34-26-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a:

- (1) family or household member who commits an act of domestic or family violence; or
- (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the petitioner.

(b) A parent, a guardian, or another representative may file a petition for an order for protection on behalf of a child against a:

- (1) family or household member who commits an act of domestic

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or family violence; ~~or~~

(2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the child; **or**

**(3) person who engaged in a course of conduct involving repeated or continuing contact with a child that is intended to prepare or condition a child for sexual activity (as defined in IC 35-42-4-13).**

(c) A court may issue only one (1) order for each respondent. If a petitioner files a petition against more than one (1) respondent, the court shall:

- (1) assign a new case number; and
- (2) maintain a separate court file;

for each respondent.

(d) If a petitioner seeks relief against an unemancipated minor, the case may originate in any court of record and, if it is an emergency matter, be processed the same as an ex parte petition. When a hearing is set, the matter may be transferred to a court with juvenile jurisdiction.

SECTION 4. IC 35-31.5-2-78, AS AMENDED BY P.L.181-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 78. "Crime of domestic violence", for purposes of IC 5-2-6.1, IC 35-38-9, and IC 35-47-4-7, means an offense or the attempt to commit an offense that:

- (1) has as an element the:
  - (A) use of physical force; or
  - (B) threatened use of a deadly weapon; and
- (2) is committed against a **family or household member, as defined in section 128 of this chapter.**

~~(A) current or former spouse, parent, or guardian of the defendant;~~

~~(B) person with whom the defendant shared a child in common;~~

~~(C) person who was cohabiting with or had cohabited with the defendant as a spouse, parent, or guardian; or~~

~~(D) person who was or had been similarly situated to a spouse, parent, or guardian of the defendant.~~

SECTION 5. IC 35-40-5-12 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2019]: **Sec. 12. (a) The following shall be identified by means of a designation omitting the victim's name, such as "Victim 1", in court documents open to the public:**

- (1) A victim of a sex crime under IC 35-42-4.**

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**(2) A child victim of a crime of violence (as defined in IC 35-50-1-2).**

**(b) The state shall provide to the court a confidential document identifying the victims named in the court documents.**

SECTION 6. IC 35-40-5-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 13. When a child less than sixteen (16) years of age is summoned as a witness to any hearing in any criminal matter, including a preliminary hearing, a comfort item or comfort animal shall be allowed to remain in the courtroom with the child during the child's testimony unless the court finds that the defendant's constitutional right to a fair trial will be unduly prejudiced.**

SECTION 7. IC 35-41-4-2, AS AMENDED BY P.L.158-2017, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 2. (a) Except as otherwise provided in this section, a prosecution for an offense is barred unless it is commenced:**

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

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

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

**(c) Except as provided in subsection (e), a prosecution for 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) may be commenced at any time.**

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

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



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

- (1) ~~IC 35-42-4-3(a)~~ **IC 35-42-4-3** (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 35-42-4-9 (Sexual misconduct with a minor).**
- ~~(5)~~ **(6) 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:

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(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.

SECTION 8. IC 35-42-2-1.3, AS AMENDED BY P.L.65-2016, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1.3. (a) Except as provided in subsections (b) through (f), a person who knowingly or intentionally:

- (1) touches a family or household member in a rude, insolent, or angry manner; or
- (2) in a rude, insolent, or angry manner places any bodily fluid or waste on a family or household member;

commits domestic battery, a Class A misdemeanor.

(b) The offense under subsection (a)(1) or (a)(2) is a Level 6 felony if one (1) or more of the following apply:

- (1) The person who committed the offense has a previous, unrelated conviction:
  - (A) for a battery offense included in this chapter; ~~or~~
  - (B) for a strangulation offense under IC 35-42-2-9; or**
  - ~~(B)~~ **(C) in any other jurisdiction, including a military court, in which the elements of the crime for which the conviction was entered are substantially similar to the elements of:**
    - (i) a battery offense included in this chapter; or**
    - (ii) a strangulation offense under IC 35-42-2-9.**

(2) The person who committed the offense is at least eighteen (18) years of age and committed the offense against a family or household member in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense.

(3) The offense results in moderate bodily injury to a family or household member.

(4) The offense is committed against a family or household member who is less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age.

(5) The offense is committed against a family or household



member of any age who has a mental or physical disability and is committed by a person having the care of the family or household member with the mental or physical disability, whether the care is assumed voluntarily or because of a legal obligation.

(6) The offense is committed against a family or household member who is an endangered adult (as defined in IC 12-10-3-2).

(c) The offense described in subsection (a)(1) or (a)(2) is a Level 5 felony if one (1) or more of the following apply:

(1) The offense results in serious bodily injury to a family or household member.

(2) The offense is committed with a deadly weapon against a family or household member.

(3) The offense results in bodily injury to a pregnant family or household member if the person knew of the pregnancy.

(4) The person has a previous conviction for a battery offense:

(A) included in this chapter against the same family or household member; or

(B) against the same family or household member in any other jurisdiction, including a military court, in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a battery offense included in this chapter.

(5) The offense results in bodily injury to one (1) or more of the following:

(A) A family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.

(B) A family or household member who has a mental or physical disability if the offense is committed by an individual having care of the family or household member with the disability, regardless of whether the care is assumed voluntarily or because of a legal obligation.

(C) A family or household member who is an endangered adult (as defined in IC 12-10-3-2).

(d) The offense described in subsection (a)(1) or (a)(2) is a Level 4 felony if it results in serious bodily injury to a family or household member who is an endangered adult (as defined in IC 12-10-3-2).

(e) The offense described in subsection (a)(1) or (a)(2) is a Level 3 felony if it results in serious bodily injury to a family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.

(f) The offense described in subsection (a)(1) or (a)(2) is a Level 2



felony if it results in the death of one (1) or more of the following:

- (1) A family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.
- (2) A family or household member who is an endangered adult (as defined in IC 12-10-3-2).

SECTION 9. IC 35-42-2-9, AS AMENDED BY P.L.252-2017, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) This section does not apply to a medical procedure.

(b) As used in this section, "torso" means any part of the upper body from the collarbone to the hips.

(c) A person who, in a rude, angry, or insolent manner, knowingly or intentionally:

- (1) applies pressure to the throat or neck of another person;
- (2) obstructs the nose or mouth of the another person; or
- (3) applies pressure to the torso of another person;

in a manner that impedes the normal breathing or the blood circulation of the other person commits strangulation, a Level 6 felony.

(d) However, the offense under subsection (c) is a Level 5 felony if:

- (1) the offense is committed **by a person:**
  - (A) against a pregnant woman; and
  - (2) ~~(B) the person who committed the offense~~ **(B) the person who committed the offense** knew the victim was pregnant at the time of the offense;
- (2) the person has a prior unrelated conviction under this section; or**
- (3) the person has a prior unrelated conviction in any jurisdiction, including a military court, in which the elements of the crime for which the conviction was entered are substantially similar to the elements set forth in this section.**

SECTION 10. IC 35-42-3-2, AS AMENDED BY P.L.158-2013, SECTION 433, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) A person who knowingly or intentionally removes another person, by fraud, enticement, force, or threat of force, from one place to another commits kidnapping. Except as provided in subsection (b), the offense of kidnapping is a Level 6 felony.

(b) The offense described in subsection (a) is:

- (1) a Level 5 felony if:
  - (A) the person removed is less than fourteen (14) years of age and is not the removing person's child;
  - (B) it is committed by using a vehicle; or



(C) it results in bodily injury to a person other than the removing person;

**(2) a Level 4 felony if it results in moderate bodily injury to a person other than the removing person;**

~~(2)~~ **(3)** a Level 3 felony if it:

(A) is committed while armed with a deadly weapon;

(B) results in serious bodily injury to a person other than the removing person; or

(C) is committed on an aircraft; and

~~(3)~~ **(4)** a Level 2 felony if it is committed:

(A) with intent to obtain ransom;

(B) while hijacking a vehicle;

(C) with intent to obtain the release, or intent to aid in the escape, of any person from lawful incarceration; or

(D) with intent to use the person removed as a shield or hostage.

SECTION 11. IC 35-42-3-3, AS AMENDED BY P.L.158-2013, SECTION 434, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) A person who knowingly or intentionally confines another person without the other person's consent commits criminal confinement. Except as provided in subsection (b), the offense of criminal confinement is a Level 6 felony.

(b) The offense of criminal confinement defined in subsection (a) is:

(1) a Level 5 felony if:

(A) the person confined is less than fourteen (14) years of age and is not the confining person's child;

(B) it is committed by using a vehicle; or

(C) it results in bodily injury to a person other than the confining person;

**(2) a Level 4 felony if it results in moderate bodily injury to a person other than the confining person;**

~~(2)~~ **(3)** a Level 3 felony if it:

(A) is committed while armed with a deadly weapon;

(B) results in serious bodily injury to a person other than the confining person; or

(C) is committed on an aircraft; and

~~(3)~~ **(4)** a Level 2 felony if it is committed:

(A) with intent to obtain ransom;

(B) while hijacking a vehicle;

(C) with intent to obtain the release, or intent to aid in the escape, of any person from lawful incarceration; or



(D) with intent to use the person confined as a shield or hostage.

SECTION 12. IC 35-42-4-7, AS AMENDED BY P.L.233-2015, SECTION 324, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) As used in this section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

(b) As used in this section, "adoptive grandparent" means the parent of an adoptive parent.

(c) As used in this section, "charter school" has the meaning set forth in IC 20-18-2-2.5.

(d) As used in this section, "child care worker" means a person who:

(1) provides care, supervision, or instruction to a child within the scope of the person's employment in a shelter care facility;

(2) is employed by a:

(A) school corporation;

(B) charter school;

(C) nonpublic school; or

(D) special education cooperative;

attended by a child who is the victim of a crime under this chapter; or

(3) is:

(A) affiliated with a:

(i) school corporation;

(ii) charter school;

(iii) nonpublic school; or

(iv) special education cooperative;

attended by a child who is the victim of a crime under this chapter, regardless of how or whether the person is compensated;

(B) in a position of trust in relation to a child who attends the school; or cooperative;

(C) engaged in the provision of care or supervision to a child who attends the school; or cooperative; and

(D) at least four (4) years older than the child who is the victim of a crime under this chapter.

The term does not include a student who attends the school or cooperative.

(e) As used in this section, "custodian" means any person who resides with a child and is responsible for the child's welfare.

(f) As used in this section, "mental health professional" means:

(1) a mental health counselor licensed under IC 25-23.6-8.5;

(2) a psychologist; or



(3) a psychiatrist.

(g) As used in this section, "military recruiter" means a member of:

- (1) the United States Air Force;
- (2) the United States Army;
- (3) the United States Coast Guard;
- (4) the United States Marine Corps;
- (5) the United States Navy;
- (6) any reserve components of the military forces listed in subdivisions (1) through (5); or
- (7) the Indiana National Guard;

whose primary job function, classification, or specialty is recruiting individuals to enlist with an entity listed in subdivisions (1) through (7).

(h) As used in this section, "nonpublic school" has the meaning set forth in IC 20-18-2-12.

(i) For purposes of this section, a person has a "professional relationship" with a child if:

- (1) the person:
  - (A) has a license issued by the state or a political subdivision on the basis of the person's training and experience that authorizes the person to carry out a particular occupation; or
  - (B) is employed in a position in which counseling, supervising, instructing, or recruiting children forms a significant part of the employment; and
- (2) the person has a relationship with a child that is based on the person's employment or licensed status as described in subdivision (1).

The term includes a relationship between a child and a mental health professional or military recruiter. The term does not include a coworker relationship between a child and a person described in subdivision (1)(B).

(j) As used in this section, "school corporation" has the meaning set forth in IC 20-18-2-16.

(k) As used in this section, "special education cooperative" has the meaning set forth in IC 20-35-5-1.

(l) As used in this section, "stepparent" means an individual who is married to a child's custodial or noncustodial parent and is not the child's adoptive parent.

- (m) If a person who:
- (1) is at least eighteen (18) years of age; and
  - (2) is the:
    - (A) guardian, adoptive parent, adoptive grandparent,



custodian, or stepparent of; or  
 (B) child care worker for;  
 a child ~~at least sixteen (16) years of age but~~ less than eighteen  
 (18) years of age;  
 engages with the child in sexual intercourse, other sexual conduct (as  
 defined in IC 35-31.5-2-221.5), or any fondling or touching with the  
 intent to arouse or satisfy the sexual desires of either the child or the  
 adult, the person commits child seduction.

(n) A person who:

- (1) has or had a professional relationship with a child ~~at least sixteen (16) years of age but~~ less than eighteen (18) years of age whom the person knows to be ~~at least sixteen (16) years of age but~~ less than eighteen (18) years of age;
- (2) may exert undue influence on the child because of the person's current or previous professional relationship with the child; and
- (3) uses or exerts the person's professional relationship to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching with the child with the intent to arouse or satisfy the sexual desires of the child or the person;

commits child seduction.

(o) A law enforcement officer who:

- (1) is at least five (5) years older than a child who is
  - (A) ~~at least sixteen (16) years of age; and~~
  - (B) less than eighteen (18) years of age;
- (2) has contact with the child while acting within the scope of the law enforcement officer's official duties with respect to the child; and
- (3) uses or exerts the law enforcement officer's professional relationship with the child to engage with the child in:
  - (A) sexual intercourse;
  - (B) other sexual conduct (as defined in IC 35-31.5-2-221.5);
 or
  - (C) any fondling or touching with the child with the intent to arouse or satisfy the sexual desires of the child or the law enforcement officer;

commits child seduction.

(p) In determining whether a person used or exerted the person's professional relationship with the child to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching with the intent to arouse or satisfy the sexual desires of the child or the person under this section, the trier of fact





may consider one (1) or more of the following:

- (1) The age difference between the person and the child.
- (2) Whether the person was in a position of trust with respect to the child.
- (3) Whether the person's conduct with the child violated any ethical obligations of the person's profession or occupation.
- (4) The authority that the person had over the child.
- (5) Whether the person exploited any particular vulnerability of the child.
- (6) Any other evidence relevant to the person's ability to exert undue influence over the child.

(q) Child seduction under this section is:

(1) a Level 6 felony if the **child is at least sixteen (16) years of age but less than eighteen (18) years of age and the person or law enforcement officer engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of:**

(A) the child; or

(B) the person or law enforcement officer; ~~and~~

(2) a Level 5 felony if the **child is at least sixteen (16) years of age but less than eighteen (18) years of age and the person or law enforcement officer engaged in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the child;**

(3) a Level 5 felony if the **child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person or law enforcement officer engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of:**

(A) the child; or

(B) the person or law enforcement officer;

(4) a Level 4 felony if the **child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person or law enforcement officer engaged in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the child;**

(5) a Level 3 felony if the **child is thirteen (13) years of age or under and the person or law enforcement officer engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of:**

(A) the child; or

(B) the person or law enforcement officer; and

(6) a Level 2 felony if the **child is thirteen (13) years of age or under and the person or law enforcement officer engaged in sexual intercourse or other sexual conduct (as defined in**



**IC 35-31.5-2-221.5) with the child.**

SECTION 13. IC 35-42-4-9, AS AMENDED BY P.L.144-2018, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) A person at least eighteen (18) years of age who **knowingly or intentionally with a child at least fourteen (14) years of age but less than sixteen (16) years of age**, performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) **with a child less than sixteen (16) years of age**, commits sexual misconduct with a minor, a Level 5 felony. However, the offense is:

- (1) a Level 4 felony if it is committed by a person at least twenty-one (21) years of age; and
- (2) a Level 1 felony if it is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if 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.

(b) A person at least eighteen (18) years of age who **knowingly or intentionally with a child at least fourteen (14) years of age but less than sixteen (16) years of age**, performs or submits to any fondling or touching **with a child less than sixteen (16) years of age 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 sexual misconduct with a minor, a Level 6 felony. However, the offense is:

- (1) a Level 5 felony if it is committed by a person at least twenty-one (21) years of age; and
- (2) a Level 2 felony if it is committed by using or threatening the use of deadly force, while armed with a deadly weapon, or if 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) It is a defense that the accused person reasonably believed that the child was at least sixteen (16) years of age at the time of the conduct. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(d) It is a defense that the child is or has ever been married. However, this subsection does not apply to an offense described in



subsection (a)(2) or (b)(2).

(e) It is a defense to a prosecution under this section if all the following apply:

(1) The person is not more than four (4) years older than the victim.

(2) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.

(3) The crime:

(A) was not committed by a person who is at least twenty-one (21) years of age;

(B) was not committed by using or threatening the use of deadly force;

(C) was not committed while armed with a deadly weapon;

(D) did not result in serious bodily injury;

(E) was not 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; and

(F) was not committed by a person having a position of authority or substantial influence over the victim.

(4) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

(5) The person is not promoting prostitution (as defined in IC 35-45-4-4) with respect to the victim even though the person has not been charged with or convicted of the offense.

SECTION 14. IC 35-50-2-7, AS AMENDED BY P.L.13-2016, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) A person who commits a Class D felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) A person who commits a Level 6 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 1/2) years, with the advisory sentence being one (1) year. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**SEA 551 — Concur**



(c) Notwithstanding subsections (a) and (b), if a person has committed a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014), the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) if:

- (1) the court finds that:
  - (A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and
  - (B) the prior felony was committed less than three (3) years before the second felony was committed;
- (2) the offense is domestic battery as a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) under IC 35-42-2-1.3; or
- (3) the offense is possession of child pornography (IC 35-42-4-4(d)).

The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.

(d) Notwithstanding subsections (a) and (b), the sentencing court may convert a Class D felony conviction (for a crime committed before July 1, 2014) or a Level 6 felony conviction (for a crime committed after June 30, 2014) to a Class A misdemeanor conviction if, after receiving a verified petition as described in subsection (e) and after conducting a hearing of which the prosecuting attorney has been notified, the court makes the following findings:

- (1) The person is not a sex or violent offender (as defined in IC 11-8-8-5).
- (2) The person was not convicted of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) that resulted in bodily injury to another person.
- (3) The person has not been convicted of perjury under IC 35-44.1-2-1 (or IC 35-44-2-1 before its repeal) or official misconduct under IC 35-44.1-1-1 (or IC 35-44-1-2 before its repeal).
- (4) The person has not been convicted of domestic battery as a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30,**



**2014) under IC 35-42-2-1.3 in the fifteen (15) year period immediately preceding the commission of the current offense.**

~~(4)~~ **(5)** At least three (3) years have passed since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D or Level 6 felony.

~~(5)~~ **(6)** The person has not been convicted of a felony since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D or Level 6 felony.

~~(6)~~ **(7)** No criminal charges are pending against the person.

(e) A petition filed under subsection (d) or (f) must be verified and set forth:

(1) the crime the person has been convicted of;

(2) the date of the conviction;

(3) the date the person completed the person's sentence;

(4) any obligations imposed on the person as part of the sentence;

(5) the date the obligations were satisfied; and

(6) a verified statement that there are no criminal charges pending against the person.

(f) If a person whose Class D or Level 6 felony conviction has been converted to a Class A misdemeanor conviction under subsection (d) is convicted of a felony not later than five (5) years after the conversion under subsection (d), a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction (for a crime committed before July 1, 2014) or a Level 6 felony conviction (for a crime committed after June 30, 2014).

**SECTION 15. [EFFECTIVE UPON PASSAGE] The legislative council is urged to assign to an appropriate interim study committee the task of studying the impact discovery depositions have on victims, including:**

**(1) the laws and practices of discovery depositions in other states and the federal government;**

**(2) the constitutional rights of a defendant during the discovery process; and**

**(3) the extent to which discovery depositions retraumatize child and adult victims of sex crimes.**

**SECTION 16. An emergency is declared for this act.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**SEA 551 — Concur**

