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## SENATE BILL No. 265

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-13-2-14.7; IC 5-2; IC 12-14-2-24; IC 12-24-3-2; IC 16-21-8-1; IC 20-6.1-3-7; IC 20-6.1-4-10; IC 20-6.1-4-10.5; IC 22-5-5-1; IC 31-19-9-8; IC 31-19-9-10; IC 31-35-3-4; IC 33-14-1-8; IC 33-19-6-12; IC 34-4-30.1-1; IC 35-37-4-15; IC 35-38-1-7.1; IC 35-41-4-2; IC 35-42-1-1; IC 35-42-4-3; IC 35-50-1-2; IC 35-50-2-2; IC 35-50-2-9.

**Synopsis:** Child rape. Provides that a crime involving sexual intercourse or deviate sexual conduct with a child is child rape. (Current law provides that such a crime is child molesting.) Removes a statute of limitations provision that makes references to provisions in the child molesting law that no longer exist.

**Effective:** July 1, 1998.

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January 7, 1998, read first time and referred to Committee on Judiciary.

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Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

# SENATE BILL No. 265

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 4-13-2-14.7, AS ADDED BY P.L.12-1994,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 1998]: Sec. 14.7. A person employed, appointed, or under  
4 contract with a state agency, who works with or around children, shall  
5 be dismissed (after the appropriate pre-deprivation procedure has  
6 occurred) if that person is, or has ever been, convicted of any of the  
7 following:

- 8 (1) Rape ( IC 35-42-4-1), if the victim is less than eighteen (18)
- 9 years of age.
- 10 (2) Criminal deviate conduct ( IC 35-42-4-2), if the victim is less
- 11 than eighteen (18) years of age.
- 12 **(3) Child rape (IC 35-42-4-3).**
- 13 ~~(4)~~ (4) Child molesting ( IC 35-42-4-3).
- 14 ~~(5)~~ (5) Child exploitation ( IC 35-42-4-4(b)).
- 15 ~~(6)~~ (6) Vicarious sexual gratification ( IC 35-42-4-5).
- 16 ~~(7)~~ (7) Child solicitation ( IC 35-42-4-6).
- 17 ~~(8)~~ (8) Child seduction ( IC 35-42-4-7).



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- 1           ~~(8)~~ **(9)** Incest ( IC 35-46-1-3), if the victim is less than eighteen  
 2           (18) years of age.
- 3           SECTION 2. IC 5-2-5-5, AS AMENDED BY P.L.59-1995,  
 4           SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5           JULY 1, 1998]: Sec. 5. (a) Except as provided in subsection (b), on  
 6           request, law enforcement agencies shall release or allow inspection of  
 7           a limited criminal history to noncriminal justice organizations or  
 8           individuals only if the subject of the request:
- 9           (1) has applied for employment with a noncriminal justice  
 10           organization or individual;
- 11           (2) has applied for a license and criminal history data as required  
 12           by law to be provided in connection with the license;
- 13           (3) is a candidate for public office or a public official;
- 14           (4) is in the process of being apprehended by a law enforcement  
 15           agency;
- 16           (5) is placed under arrest for the alleged commission of a crime;
- 17           (6) has charged that his rights have been abused repeatedly by  
 18           criminal justice agencies;
- 19           (7) is the subject of judicial decision or determination with  
 20           respect to the setting of bond, plea bargaining, sentencing, or  
 21           probation;
- 22           (8) has volunteered services that involve contact with, care of, or  
 23           supervision over a child who is being placed, matched, or  
 24           monitored by a social services agency or a nonprofit corporation;
- 25           (9) is being investigated for welfare fraud by an investigator of the  
 26           division of family and children or a county office of family and  
 27           children;
- 28           (10) is being sought by the parent locator service of the child  
 29           support bureau of the division of family and children; or
- 30           (11) has been convicted of any of the following:
- 31           (A) Rape (IC 35-42-4-1), if the victim is less than eighteen  
 32           (18) years of age.
- 33           (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is  
 34           less than eighteen (18) years of age.
- 35           **(C) Child rape (IC 35-42-4-3).**
- 36           ~~(D)~~ **(D)** Child molesting (IC 35-42-4-3).
- 37           ~~(E)~~ **(E)** Child exploitation (IC 35-42-4-4(b)).
- 38           ~~(F)~~ **(F)** Possession of child pornography (IC 35-42-4-4(c)).
- 39           ~~(G)~~ **(G)** Vicarious sexual gratification (IC 35-42-4-5).
- 40           ~~(H)~~ **(H)** Child solicitation (IC 35-42-4-6).
- 41           ~~(I)~~ **(I)** Child seduction (IC 35-42-4-7).
- 42           ~~(J)~~ **(J)** Incest (IC 35-46-1-3), if the victim is less than eighteen

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1 (18) years of age.  
 2 However, limited criminal history information obtained from the  
 3 National Crime Information Center may not be released under this  
 4 section except to the extent permitted by the Attorney General of the  
 5 United States.

6 (b) A law enforcement agency shall allow inspection of a limited  
 7 criminal history by and release a limited criminal history to the  
 8 following noncriminal justice organizations:

- 9 (1) Federally chartered or insured banking institutions.
- 10 (2) Officials of state and local government for the purpose of  
 11 employment and licensing.
- 12 (3) Segments of the securities industry identified under 15 U.S.C.  
 13 78q(f)(2).

14 (c) Any person who uses limited criminal history for any purpose  
 15 not specified under this section commits a Class A misdemeanor.

16 SECTION 3. IC 5-2-6-3, AS AMENDED BY P.L.36-1997,  
 17 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 JULY 1, 1998]: Sec. 3. (a) The institute is established to do the  
 19 following:

- 20 (1) Evaluate state and local programs associated with:
  - 21 (A) the prevention, detection, and solution of criminal  
 22 offenses;
  - 23 (B) law enforcement; and
  - 24 (C) the administration of criminal and juvenile justice.
- 25 (2) Improve and coordinate all aspects of law enforcement,  
 26 juvenile justice, and criminal justice in this state.
- 27 (3) Stimulate criminal and juvenile justice research.
- 28 (4) Develop new methods for the prevention and reduction of  
 29 crime.
- 30 (5) Prepare applications for funds under the Omnibus Act and the  
 31 Juvenile Justice Act.
- 32 (6) Administer victim and witness assistance funds.
- 33 (7) Administer the traffic safety functions assigned to the institute  
 34 under IC 9-27-2.
- 35 (8) Compile and analyze information and disseminate the  
 36 information to persons who make criminal justice decisions in this  
 37 state.
- 38 (9) Serve as the criminal justice statistical analysis center for this  
 39 state.
- 40 (10) Establish and maintain, in cooperation with the office of the  
 41 secretary of family and social services, a sex offender registry.
- 42 (11) Administer the application and approval process for



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1 designating an area of a consolidated or second class city as a  
2 public safety improvement area under IC 36-8-19.5.

3 (b) The registry established under subsection (a)(10) must include  
4 the names of all persons who:

5 (1) have been convicted in Indiana of:

6 (A) rape ( IC 35-42-4-1);

7 (B) criminal deviate conduct ( IC 35-42-4-2);

8 **(C) child rape (IC 35-42-4-3);**

9 ~~(D)~~ (D) child molesting ( IC 35-42-4-3);

10 ~~(E)~~ (E) child exploitation ( IC 35-42-4-4(b));

11 ~~(F)~~ (F) vicarious sexual gratification ( IC 35-42-4-5);

12 ~~(G)~~ (G) child solicitation ( IC 35-42-4-6);

13 ~~(H)~~ (H) child seduction ( IC 35-42-4-7);

14 ~~(I)~~ (I) sexual misconduct with a minor as a Class A or Class  
15 B felony ( IC 35-42-4-9);

16 ~~(J)~~ (J) incest ( IC 35-46-1-3); or

17 ~~(K)~~ (K) sexual battery ( IC 35-42-4-8); or

18 (2) are residing in Indiana and have been convicted in another  
19 state of a sex offense that is substantially equivalent to any of the  
20 offenses listed in subdivision (1).

21 SECTION 4. IC 5-2-12-4, AS AMENDED BY P.L.36-1997,  
22 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
23 JULY 1, 1998]: Sec. 4. As used in this chapter, "offender" refers to:

24 (1) a person convicted in Indiana after June 30, 1994, of:

25 (A) rape ( IC 35-42-4-1);

26 (B) criminal deviate conduct ( IC 35-42-4-2);

27 **(C) child rape (IC 35-42-4-3);**

28 ~~(D)~~ (D) child molesting ( IC 35-42-4-3);

29 ~~(E)~~ (E) child exploitation ( IC 35-42-4-4(b));

30 ~~(F)~~ (F) vicarious sexual gratification ( IC 35-42-4-5);

31 ~~(G)~~ (G) child solicitation ( IC 35-42-4-6);

32 ~~(H)~~ (H) child seduction ( IC 35-42-4-7);

33 ~~(I)~~ (I) sexual misconduct with a minor as a Class A or Class  
34 B felony ( IC 35-42-4-9);

35 ~~(J)~~ (J) incest ( IC 35-46-1-3); or

36 ~~(K)~~ (K) sexual battery ( IC 35-42-4-8);

37 (2) a child who:

38 (A) is at least fourteen (14) years of age;

39 (B) is on probation, is on parole, or is discharged from a  
40 facility by the department of correction as a result of an  
41 adjudication as a delinquent child for an act that would be an  
42 offense described in subdivision (1) if committed by an adult;

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- 1                   and  
 2                   (C) is found by a court by clear and convincing evidence to be  
 3                   likely to repeat an act that would be an offense described in  
 4                   subdivision (1) if committed by an adult; or  
 5                   (3) a person residing in Indiana who was convicted after June 30,  
 6                   1994, in another state of a sex offense that is substantially  
 7                   equivalent to any of the offenses listed in subdivision (1).

8                   SECTION 5. IC 12-14-2-24, AS AMENDED BY P.L.1-1997,  
 9                   SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10                   JULY 1, 1998]: Sec. 24. (a) A dependent child and a parent or an  
 11                   essential person are not eligible for AFDC assistance under this chapter  
 12                   unless the mother of the dependent child:

- 13                   (1) initiates a court proceeding to establish paternity, other than  
 14                   an adoption proceeding, except as provided in IC 31-14-20-2;  
 15                   (2) executes a paternity affidavit under IC 16-37-2-2.1; or  
 16                   (3) requests, at the time of application or renewal, that the Title  
 17                   IV-D agency or its agents file a paternity action under  
 18                   IC 31-14-4-3.

19                   (b) A person applying for assistance under this chapter is not  
 20                   required to comply with subsection (a) if:

- 21                   (1) the father of the dependent child has been charged with an act  
 22                   of rape, incest, **child rape**, or child molesting that occurred  
 23                   against the dependent child's mother within ten (10) months  
 24                   before the birth of the dependent child;  
 25                   (2) the mother of the dependent child is deceased;  
 26                   (3) the division determines under rules adopted by the division  
 27                   under IC 4-22-2 that the mother of the dependent child could not  
 28                   know the identity of the child's father; or  
 29                   (4) the mother of the dependent child provides proof, and the  
 30                   division agrees, that the physical health or safety of the mother or  
 31                   the dependent child would be jeopardized if the mother complies  
 32                   with subsection (a).

33                   (c) If a dependent child's mother is a party to a paternity action filed  
 34                   under IC 31-14 (or IC 31-6-6.1 before its repeal), a county office shall  
 35                   revoke assistance under this chapter if the mother fails to pursue the  
 36                   paternity action.

37                   (d) The office may not delay payments otherwise owing to a  
 38                   provider if the mother fails to comply with this section

39                   SECTION 6. IC 12-24-3-2 IS AMENDED TO READ AS  
 40                   FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. To provide greater  
 41                   security for patients, visitors, and employees, the division may not  
 42                   employ in a state institution an individual who has been convicted of



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1 any of the following offenses:

- 2 (1) Rape (IC 35-42-4-1).  
 3 (2) Criminal deviate conduct (IC 35-42-4-2).  
 4 **(3) Child rape (IC 35-42-4-3).**  
 5 ~~(4)~~ (4) Child molesting (IC 35-42-4-3).  
 6 ~~(5)~~ (5) Child exploitation (IC 35-42-4-4).

7 SECTION 7. IC 16-21-8-1, AS AMENDED BY P.L.36-1997,  
 8 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 1998]: Sec. 1. (a) A hospital licensed under IC 16-21-2 that  
 10 provides general medical and surgical hospital services shall provide  
 11 emergency hospital service, in accordance with rules adopted by the  
 12 victim services division of the Indiana criminal justice institute, to all  
 13 alleged sex crime victims who apply for hospital emergency services  
 14 in relation to injuries or trauma resulting from the alleged sex crime.

15 (b) For the purposes of this chapter, the following crimes are  
 16 considered sex crimes:

- 17 (1) Rape ( IC 35-42-4-1).  
 18 (2) Criminal deviate conduct ( IC 35-42-4-2).  
 19 **(3) Child rape (IC 35-42-4-3).**  
 20 ~~(4)~~ (4) Child molesting (IC 35-42-4-3).  
 21 ~~(5)~~ (5) Vicarious sexual gratification ( IC 35-42-4-5).  
 22 ~~(6)~~ (6) Sexual battery ( IC 35-42-4-8).  
 23 ~~(7)~~ (7) Sexual misconduct with a minor ( IC 35-42-4-9).

24 SECTION 8. IC 20-6.1-3-7, AS AMENDED BY P.L.195-1995,  
 25 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 26 JULY 1, 1998]: Sec. 7. (a) On the written recommendation of the  
 27 superintendent of public instruction, the board may revoke a license  
 28 for:

- 29 (1) immorality;  
 30 (2) misconduct in office;  
 31 (3) incompetency; or  
 32 (4) willful neglect of duty.

33 However, for each revocation the board shall comply with IC 4-21.5-3.

34 (b) The board, after holding a hearing on the matter, shall  
 35 permanently revoke the license of a person who is known by the board  
 36 to have been convicted of any of the following offenses:

- 37 (1) Rape ( IC 35-42-4-1), if the victim is less than eighteen (18)  
 38 years of age.  
 39 (2) Criminal deviate conduct ( IC 35-42-4-2), if the victim is less  
 40 than eighteen (18) years of age.  
 41 **(3) Child rape (IC 35-42-4-3).**  
 42 ~~(4)~~ (4) Child molesting ( IC 35-42-4-3).



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- 1           ~~(4)~~ **(5)** Child exploitation ( IC 35-42-4-4(b)).  
 2           ~~(5)~~ **(6)** Vicarious sexual gratification ( IC 35-42-4-5).  
 3           ~~(6)~~ **(7)** Child solicitation ( IC 35-42-4-6).  
 4           ~~(7)~~ **(8)** Child seduction ( IC 35-42-4-7).  
 5           ~~(8)~~ **(9)** Sexual misconduct with a minor ( IC 35-42-4-9).  
 6           ~~(9)~~ **(10)** Incest ( IC 35-46-1-3), if the victim is less than eighteen  
 7           (18) years of age.  
 8           (c) A license may be suspended by the superintendent of public  
 9           instruction as specified in IC 20-6.1-4-13.  
 10          SECTION 9. IC 20-6.1-4-10, AS AMENDED BY P.L.11-1994,  
 11          SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12          JULY 1, 1998]: Sec. 10. Cancellation of Indefinite Contract by School  
 13          Corporation) Grounds. (a) An indefinite contract with a permanent  
 14          teacher may be canceled in the manner specified in section 11 of this  
 15          chapter for only the following grounds:  
 16               (1) immorality;  
 17               (2) insubordination, which means a willful refusal to obey the  
 18               state school laws or reasonable rules prescribed for the  
 19               government of the school corporation;  
 20               (3) neglect of duty;  
 21               (4) incompetency;  
 22               (5) justifiable decrease in the number of teaching positions;  
 23               (6) a conviction for:  
 24                   (A) rape (IC 35-42-4-1), if the victim is less than eighteen (18)  
 25                   years of age;  
 26                   (B) criminal deviate conduct (IC 35-42-4-2), if the victim is  
 27                   less than eighteen (18) years of age;  
 28                   **(C) child rape (IC 35-42-4-3);**  
 29                   ~~(C)~~ **(D)** child molesting (IC 35-42-4-3);  
 30                   ~~(D)~~ **(E)** child exploitation (IC 35-42-4-4(b));  
 31                   ~~(E)~~ **(F)** vicarious sexual gratification (IC 35-42-4-5);  
 32                   ~~(F)~~ **(G)** child solicitation (IC 35-42-4-6);  
 33                   ~~(G)~~ **(H)** child seduction (IC 35-42-4-7); or  
 34                   ~~(H)~~ **(I)** incest (IC 35-46-1-3), if the victim is less than eighteen  
 35                   (18) years of age; or  
 36               (7) other good and just cause.  
 37          When the cause of cancellation is ground (1), (2), or (6) the  
 38          cancellation is effective immediately. When the cause of cancellation  
 39          is ground (3), (4), (5), or (7), the cancellation is effective at the end of  
 40          the school term following the cancellation.  
 41          (b) An indefinite contract may not be canceled for political or  
 42          personal reasons.



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1 SECTION 10. IC 20-6.1-4-10.5, AS AMENDED BY P.L.11-1994,  
 2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 1998]: Sec. 10.5. (a) An indefinite contract with a  
 4 semipermanent teacher may be canceled in the manner specified in  
 5 section 11 of this chapter only for the following grounds:

- 6 (1) Immorality.  
 7 (2) Insubordination, which means a willful refusal to obey the  
 8 state school laws or reasonable rules prescribed for the  
 9 government of the school corporation.  
 10 (3) Neglect of duty.  
 11 (4) Substantial inability to perform teaching duties.  
 12 (5) Justifiable decrease in the number of teaching positions.  
 13 (6) Good and just cause.  
 14 (7) The cancellation is in the best interest of the school  
 15 corporation.  
 16 (8) A conviction for:  
 17 (A) rape (IC 35-42-4-1), if the victim is less than eighteen (18)  
 18 years of age;  
 19 (B) criminal deviate conduct (IC 35-42-4-2), if the victim is  
 20 less than eighteen (18) years of age;  
 21 **(C) child rape (IC 35-42-4-3);**  
 22 ~~(D)~~ **(D)** child molesting (IC 35-42-4-3);  
 23 ~~(E)~~ **(E)** child exploitation (IC 35-42-4-4(b));  
 24 ~~(F)~~ **(F)** vicarious sexual gratification (IC 35-42-4-5);  
 25 ~~(G)~~ **(G)** child solicitation (IC 35-42-4-6);  
 26 ~~(H)~~ **(H)** child seduction (IC 35-42-4-7); or  
 27 ~~(I)~~ **(I)** incest (IC 35-46-1-3), if the victim is less than eighteen  
 28 (18) years of age.

29 (b) An indefinite contract with a semipermanent teacher may not be  
 30 canceled for political or personal reasons.

31 (c) Before the cancellation of a semipermanent teacher's indefinite  
 32 contract, the principal of the school at which the teacher teaches shall  
 33 provide the teacher with a written evaluation of the teacher's  
 34 performance before January 1 of each year. Upon the request of a  
 35 semipermanent teacher, delivered in writing to the principal within  
 36 thirty (30) days after the teacher receives the evaluation required by  
 37 this section, the principal shall provide the teacher with an additional  
 38 written evaluation.

39 SECTION 11. IC 22-5-5-1, AS ADDED BY P.L.11-1994,  
 40 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 41 JULY 1, 1998]: Sec. 1. The employment contract of a person who:

- 42 (1) works with children; and

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- 1 (2) is convicted of:
- 2 (A) rape (IC 35-42-4-1), if the victim is less than eighteen (18)
- 3 years of age;
- 4 (B) criminal deviate conduct (IC 35-42-4-2), if the victim is
- 5 less than eighteen (18) years of age;
- 6 **(C) child rape (IC 35-42-4-3);**
- 7 ~~(D)~~ (D) child molesting (IC 35-42-4-3);
- 8 ~~(E)~~ (E) child exploitation (IC 35-42-4-4(b));
- 9 ~~(F)~~ (F) vicarious sexual gratification (IC 35-42-4-5);
- 10 ~~(G)~~ (G) child solicitation (IC 35-42-4-6);
- 11 ~~(H)~~ (H) child seduction (IC 35-42-4-7); or
- 12 ~~(I)~~ (I) incest (IC 35-46-1-3), if the victim is less than eighteen
- 13 (18) years of age;
- 14 may be canceled by the person's employer.
- 15 SECTION 12. IC 31-19-9-8, AS ADDED BY P.L.197-1997,
- 16 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 17 JULY 1, 1998]: Sec. 8. (a) Consent to adoption is not required from
- 18 any of the following:
- 19 (1) A parent or parents if the child is adjudged to have been
- 20 abandoned or deserted for at least six (6) months immediately
- 21 preceding the date of the filing of the petition for adoption.
- 22 (2) A parent of a child in the custody of another person if for a
- 23 period of at least one (1) year the parent:
- 24 (A) fails without justifiable cause to communicate
- 25 significantly with the child when able to do so; or
- 26 (B) knowingly fails to provide for the care and support of the
- 27 child when able to do so as required by law or judicial decree.
- 28 (3) The biological father of a child born out of wedlock whose
- 29 paternity has not been established:
- 30 (A) by a court proceeding other than the adoption proceeding;
- 31 or
- 32 (B) by executing a paternity affidavit under IC 16-37-2-2.1.
- 33 (4) The biological father of a child born out of wedlock who was
- 34 conceived as a result of:
- 35 (A) a rape for which the father was convicted under
- 36 IC 35-42-4-1;
- 37 **(B) child rape (IC 35-42-4-3);**
- 38 ~~(C)~~ (C) child molesting (IC 35-42-4-3);
- 39 ~~(D)~~ (D) sexual misconduct with a minor (IC 35-42-4-9); or
- 40 ~~(E)~~ (E) incest (IC 35-46-1-3).
- 41 (5) The putative father of a child born out of wedlock if the
- 42 putative father's consent to adoption is irrevocably implied under

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- 1 section 15 of this chapter.
- 2 (6) The biological father of a child born out of wedlock if the:
- 3 (A) father's paternity is established after the filing of a petition
- 4 for adoption in a court proceeding or by executing a paternity
- 5 affidavit under IC 16-37-2-2.1; and
- 6 (B) father is required to but does not register with the putative
- 7 father registry established by IC 31-19-5 within the period
- 8 required by IC 31-19-5-12.
- 9 (7) A parent who has relinquished the parent's right to consent to
- 10 adoption as provided in this chapter.
- 11 (8) A parent after the parent-child relationship has been
- 12 terminated under IC 31-35 (or IC 31-6-5 before its repeal).
- 13 (9) A parent judicially declared incompetent or mentally defective
- 14 if the court dispenses with the parent's consent to adoption.
- 15 (10) A legal guardian or lawful custodian of the person to be
- 16 adopted who has failed to consent to the adoption for reasons
- 17 found by the court not to be in the best interests of the child.
- 18 (b) If a parent has made only token efforts to support or to
- 19 communicate with the child, the court may declare the child abandoned
- 20 by the parent.
- 21 SECTION 13. IC 31-19-9-10, AS ADDED BY P.L.1-1997,
- 22 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 23 JULY 1, 1998]: Sec. 10. A court shall determine that consent to
- 24 adoption is not required from a parent if:
- 25 (1) the parent is convicted of and incarcerated at the time of the
- 26 filing of a petition for adoption for:
- 27 (A) murder (IC 35-42-1-1);
- 28 (B) causing suicide (IC 35-42-1-2);
- 29 (C) voluntary manslaughter (IC 35-42-1-3);
- 30 (D) rape (IC 35-42-4-1);
- 31 (E) criminal deviate conduct (IC 35-42-4-2);
- 32 (F) child molesting as a Class A or Class B felony (IC
- 33 35-42-4-3) **before June 30, 1998;**
- 34 **(G) child rape (IC 35-42-4-3);**
- 35 ~~(H)~~ **(H)** incest as a Class B felony (IC 35-46-1-3);
- 36 ~~(I)~~ **(I)** neglect of a dependent as a Class B felony
- 37 (IC 35-46-1-4);
- 38 ~~(J)~~ **(J)** battery of a child as a Class C felony
- 39 (IC 35-42-2-1(a)(3)); or
- 40 ~~(K)~~ **(K)** an attempt under IC 35-41-5-1 to commit an offense
- 41 described in clauses (A) through ~~(I)~~; **(J)**;
- 42 (2) the child or the child's sibling, half-blood sibling, or

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1 step-sibling of the parent's current marriage is the victim of the  
2 offense; and

3 (3) after notice to the parent and a hearing, the court determines  
4 that dispensing with the parent's consent to adoption is in the  
5 child's best interests.

6 SECTION 14. IC 31-35-3-4, AS ADDED BY P.L.1-1997,  
7 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 1998]: Sec. 4. If:

9 (1) an individual is convicted of the offense of:

10 (A) murder (IC 35-42-1-1);

11 (B) causing suicide (IC 35-42-1-2);

12 (C) voluntary manslaughter (IC 35-42-1-3);

13 (D) involuntary manslaughter (IC 35-42-1-4);

14 (E) rape (IC 35-42-4-1);

15 (F) criminal deviate conduct (IC 35-42-4-2);

16 **(G) child rape (IC 35-42-4-3);**

17 ~~(H)~~ **(H)** child molesting (IC 35-42-4-3);

18 ~~(I)~~ **(I)** child exploitation (IC 35-42-4-4);

19 ~~(J)~~ **(J)** sexual misconduct with a minor (IC 35-42-4-9); or

20 ~~(K)~~ **(K)** incest (IC 35-46-1-3); and

21 (2) the victim of the offense:

22 (A) was less than sixteen (16) years of age at the time of the  
23 offense; and

24 (B) is:

25 (i) the individual's biological or adoptive child; or

26 (ii) the child of a spouse of the individual who has  
27 committed the offense;

28 the prosecuting attorney, the attorney for the county office of family  
29 and children, the child's guardian ad litem, or the court appointed  
30 special advocate may file a petition with the juvenile or probate court  
31 to terminate the parent-child relationship of the individual who has  
32 committed the offense with the victim of the offense, the victim's  
33 siblings, or any biological or adoptive child of that individual.

34 SECTION 15. IC 33-14-1-8, AS ADDED BY P.L.11-1994,  
35 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
36 JULY 1, 1998]: Sec. 8. A prosecuting attorney who charges a person  
37 with committing any of the following shall inform the person's  
38 employer of the charge, unless the prosecuting attorney determines that  
39 the person charged does not work with children:

40 (1) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)  
41 years of age.

42 (2) Criminal deviate conduct (IC 35-42-4-2), if the victim is less

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1 than eighteen (18) years of age.

2 **(3) Child rape (IC 35-42-4-3).**

3 ~~(4)~~ **(4)** Child molesting (IC 35-42-4-3).

4 ~~(5)~~ **(5)** Child exploitation (IC 35-42-4-4(b)).

5 ~~(6)~~ **(6)** Vicarious sexual gratification (IC 35-42-4-5).

6 ~~(7)~~ **(7)** Child solicitation (IC 35-42-4-6).

7 ~~(8)~~ **(8)** Child seduction (IC 35-42-4-7).

8 ~~(9)~~ **(9)** Incest (IC 35-46-1-3), if the victim is less than eighteen  
9 (18) years of age.

10 SECTION 16. IC 33-19-6-12, AS AMENDED BY P.L.117-1996,  
11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
12 JULY 1, 1998]: Sec. 12. In each criminal action in which:

13 (1) a person is found to have committed the offense of:

14 (A) murder ( IC 35-42-1-1);

15 (B) causing suicide ( IC 35-42-1-2);

16 (C) voluntary manslaughter ( IC 35-42-1-3);

17 (D) reckless homicide ( IC 35-42-1-5);

18 (E) battery ( IC 35-42-2-1);

19 (F) rape ( IC 35-42-4-1);

20 (G) criminal deviate conduct ( IC 35-42-4-2);

21 **(H) child rape (IC 35-42-4-3);**

22 ~~(I)~~ **(I)** child molesting ( IC 35-42-4-3);

23 ~~(J)~~ **(J)** child exploitation ( IC 35-42-4-4);

24 ~~(K)~~ **(K)** vicarious sexual gratification ( IC 35-42-4-5);

25 ~~(L)~~ **(L)** child solicitation ( IC 35-42-4-6);

26 ~~(M)~~ **(M)** incest ( IC 35-46-1-3);

27 ~~(N)~~ **(N)** neglect of a dependent ( IC 35-46-1-4);

28 ~~(O)~~ **(O)** child selling ( IC 35-46-1-4); or

29 ~~(P)~~ **(P)** child seduction ( IC 35-42-4-7); and

30 (2) the victim of the offense is less than eighteen (18) years of  
31 age;

32 the court shall order the person to pay a child abuse prevention fee of  
33 one hundred-dollars (\$100) to the clerk.

34 SECTION 17. IC 34-4-30.1-1, AS AMENDED BY P.L.2-1997,  
35 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
36 JULY 1, 1998]: Sec. 1. (a) The following may be seized:

37 (1) All vehicles (as defined by IC 35-41-1), if they are used or are  
38 intended for use by the person or persons in possession of them to  
39 transport or in any manner to facilitate the transportation of the  
40 following:

41 (A) A controlled substance for the purpose of committing,  
42 attempting to commit, or conspiring to commit any of the



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- 1 following:
- 2 (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
- 3 (ii) Dealing in a schedule I, II, or III controlled substance
- 4 (IC 35-48-4-2).
- 5 (iii) Dealing in a schedule IV controlled substance
- 6 (IC 35-48-4-3).
- 7 (iv) Dealing in a schedule V controlled substance
- 8 (IC 35-48-4-4).
- 9 (v) Dealing in a counterfeit substance (IC 35-48-4-5).
- 10 (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).
- 11 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
- 12 (viii) Dealing in marijuana, hash oil, or hashish
- 13 (IC 35-48-4-10).
- 14 (B) Any stolen (IC 35-43-4-2) or converted property
- 15 (IC 35-43-4-3) if the retail or repurchase value of that property
- 16 is one hundred dollars (\$100) or more.
- 17 (C) Any hazardous waste in violation of IC 13-30-6-6.
- 18 (2) All money, negotiable instruments, securities, weapons,
- 19 communications devices, or any property commonly used as
- 20 consideration for a violation of IC 35-48-4 (other than items
- 21 subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1
- 22 before its repeal):
- 23 (A) furnished or intended to be furnished by any person in
- 24 exchange for an act that is in violation of a criminal statute;
- 25 (B) used to facilitate any violation of a criminal statute; or
- 26 (C) traceable as proceeds of the violation of a criminal statute.
- 27 (3) Any portion of real or personal property purchased with
- 28 money that is traceable as a proceed of a violation of a criminal
- 29 statute.
- 30 (4) A vehicle that is used by a person to:
- 31 (A) commit, attempt to commit, or conspire to commit;
- 32 (B) facilitate the commission of; or
- 33 (C) escape from the commission of;
- 34 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
- 35 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), **child rape**
- 36 **(IC 35-42-4-3)**, child molesting (IC 35-42-4-3), or child
- 37 exploitation (IC 35-42-4-4).
- 38 (5) Real property owned by a person who uses it to commit any of
- 39 the following as a Class A felony, a Class B felony, or a Class C
- 40 felony:
- 41 (A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
- 42 (B) Dealing in a schedule I, II, or III controlled substance

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- 1 (IC 35-48-4-2).  
 2 (C) Dealing in a schedule IV controlled substance  
 3 (IC 35-48-4-3).  
 4 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).  
 5 (6) Equipment and recordings used by a person to commit fraud  
 6 under IC 35-43-5-4(11).  
 7 (7) Recordings sold, rented, transported, or possessed by a person  
 8 in violation of IC 24-4-10.  
 9 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as  
 10 defined by IC 35-45-6-1) that is the object of a corrupt business  
 11 influence violation (IC 35-45-6-2).  
 12 (9) Unlawful telecommunications devices (as defined in  
 13 IC 35-45-13-6) and plans, instructions, or publications used to  
 14 commit an offense under IC 35-45-13.  
 15 (b) A vehicle used by any person as a common or contract carrier in  
 16 the transaction of business as a common or contract carrier is not  
 17 subject to seizure under this section, unless it can be proven by a  
 18 preponderance of the evidence that the owner of the vehicle knowingly  
 19 permitted the vehicle to be used to engage in conduct that subjects it to  
 20 seizure under subsection (a).  
 21 (c) Money, negotiable instruments, securities, weapons,  
 22 communications devices, or any property commonly used as  
 23 consideration for a violation of IC 35-48-4 found near or on a person  
 24 who is committing, attempting to commit, or conspiring to commit any  
 25 of the following offenses shall be admitted into evidence in an action  
 26 under this chapter as prima facie evidence that the money, negotiable  
 27 instrument, security, or other thing of value is property that has been  
 28 used or was to have been used to facilitate the violation of a criminal  
 29 statute or is the proceeds of the violation of a criminal statute:  
 30 (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).  
 31 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled  
 32 substance).  
 33 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).  
 34 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)  
 35 as a Class B felony.  
 36 (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a  
 37 Class A felony, Class B felony, or Class C felony.  
 38 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as  
 39 a Class C felony.  
 40 SECTION 18. IC 35-37-4-15 IS AMENDED TO READ AS  
 41 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 15. (a) In a prosecution  
 42 for **child rape under IC 35-42-4-3(a)**, child molesting under

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1 ~~IC 35-42-4-3~~, **IC 35-42-4-3(b)**, a prosecution for incest under  
 2 IC 35-46-1-3, or a prosecution for an attempt or a conspiracy to commit  
 3 **child rape**, child molesting, or incest, evidence that the defendant has  
 4 committed another crime or act of **child rape**, child molesting, or  
 5 incest or attempted or conspired to commit another crime or act of  
 6 **child rape**, child molesting, or incest:

- 7 (1) against the same victim; or  
 8 (2) that involves a similar crime or act of child molesting or incest  
 9 against a different victim;  
 10 is admissible.

11 (b) If the state proposes to offer evidence described under  
 12 subsection (a), the state must disclose the evidence to the defendant,  
 13 including statements made by witnesses or a summary of the substance  
 14 of any testimony that is expected to be offered at the defendant's trial:

- 15 (1) at least fifteen (15) days before the date the defendant's trial  
 16 is scheduled to begin; or  
 17 (2) at a later date as determined by the court for good cause.

18 (c) The court shall hold a hearing out of the presence of the jury  
 19 regarding the admissibility of the evidence described under subsection  
 20 (a). Even if the court determines that the evidence is relevant, the  
 21 evidence may be excluded if the probative value of the evidence is  
 22 substantially outweighed by:

- 23 (1) the danger of:  
 24 (A) unfair prejudice;  
 25 (B) confusion of the issues; or  
 26 (C) misleading the jury; or  
 27 (2) considerations of:  
 28 (A) undue delay;  
 29 (B) waste of time; or  
 30 (C) needless presentation of cumulative evidence.

31 However, if the court finds that all or some of the evidence is  
 32 admissible, the court shall enter an order stating what evidence may be  
 33 introduced.

34 (d) This section may not be construed to limit the right to introduce  
 35 evidence at a trial that would otherwise be admissible to prove any of  
 36 the following:

- 37 (1) Motive.  
 38 (2) Opportunity.  
 39 (3) Intent.  
 40 (4) Plan.  
 41 (5) Knowledge.  
 42 (6) Identity.

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1 (7) Absence of mistake or accident.  
2 SECTION 19. IC 35-38-1-7.1, AS AMENDED BY P.L.210-1997,  
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 1998]: Sec. 7.1. (a) In determining what sentence to impose  
5 for a crime, the court shall consider:  
6 (1) the risk that the person will commit another crime;  
7 (2) the nature and circumstances of the crime committed;  
8 (3) the person's:  
9 (A) prior criminal record;  
10 (B) character; and  
11 (C) condition;  
12 (4) whether the victim of the crime was less than twelve (12)  
13 years of age or at least sixty-five (65) years of age;  
14 (5) whether the person violated a protective order issued against  
15 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its  
16 repeal) or IC 34-4-5.1; and  
17 (6) any oral or written statement made by a victim of the crime.  
18 (b) The court may consider the following factors as aggravating  
19 circumstances or as favoring imposing consecutive terms of  
20 imprisonment:  
21 (1) The person has recently violated the conditions of any  
22 probation, parole, or pardon granted to the person.  
23 (2) The person has a history of criminal or delinquent activity.  
24 (3) The person is in need of correctional or rehabilitative  
25 treatment that can best be provided by commitment of the person  
26 to a penal facility.  
27 (4) Imposition of a reduced sentence or suspension of the  
28 sentence and imposition of probation would depreciate the  
29 seriousness of the crime.  
30 (5) The victim of the crime was less than twelve (12) years of age  
31 or at least sixty-five (65) years of age.  
32 (6) The victim of the crime was mentally or physically infirm.  
33 (7) The person committed a forcible felony while wearing a  
34 garment designed to resist the penetration of a bullet.  
35 (8) The person committed a sex crime listed in subsection (e) and:  
36 (A) the crime created an epidemiologically demonstrated risk  
37 of transmission of the human immunodeficiency virus (HIV)  
38 and involved the sex organ of one (1) person and the mouth,  
39 anus, or sex organ of another person;  
40 (B) the person had knowledge that the person was a carrier of  
41 HIV; and  
42 (C) the person had received risk counseling as described in

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- subsection (g).
- (9) The person committed an offense related to controlled substances listed in subsection (f) if:
  - (A) the offense involved:
    - (i) the delivery by any person to another person; or
    - (ii) the use by any person on another person;
      - of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact;
  - (B) the person had knowledge that the person was a carrier of the human immunodeficiency virus (HIV); and
  - (C) the person had received risk counseling as described in subsection (g).
- (10) The person committed the offense in an area of a consolidated or second class city that is designated as a public safety improvement area by the Indiana criminal justice institute under IC 36-8-19.5.
- (c) 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

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1 the convicted person suffered from the effects of battery as a  
 2 result of the past course of conduct of the individual who is the  
 3 victim of the crime for which the person was convicted.

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

6 (e) For the purposes of this article, the following crimes are  
 7 considered sex crimes:

- 8 (1) Rape (IC 35-42-4-1).
- 9 (2) Criminal deviate conduct (IC 35-42-4-2).
- 10 **(3) Child rape (IC 35-42-4-3).**
- 11 ~~(3)~~ (4) Child molesting (IC 35-42-4-3).
- 12 ~~(4)~~ (5) Child seduction (IC 35-42-4-7).
- 13 ~~(5)~~ (6) Prostitution (IC 35-45-4-2).
- 14 ~~(6)~~ (7) Patronizing a prostitute (IC 35-45-4-3).
- 15 ~~(7)~~ (8) Incest (IC 35-46-1-3).

16 (f) For the purposes of this article, the following crimes are  
 17 considered offenses related to controlled substances:

- 18 (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 19 (2) Dealing in a schedule I, II, or III controlled substance  
 20 (IC 35-48-4-2).
- 21 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- 22 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 23 (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- 24 (6) Possession of a controlled substance (IC 35-48-4-7).
- 25 (7) Dealing in paraphernalia (IC 35-48-4-8.5).
- 26 (8) Possession of paraphernalia (IC 35-48-4-8.3).
- 27 (9) Offenses relating to registration (IC 35-48-4-14).

28 (g) For the purposes of this section, a person received risk  
 29 counseling if the person had been:

- 30 (1) notified in person or in writing that tests have confirmed the  
 31 presence of antibodies to the human immunodeficiency virus  
 32 (HIV) in the person's blood; and
- 33 (2) warned of the behavior that can transmit HIV.

34 SECTION 20. IC 35-41-4-2 IS AMENDED TO READ AS  
 35 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) Except as  
 36 otherwise provided in this section, a prosecution for an offense is  
 37 barred unless it is commenced:

- 38 (1) within five (5) years after the commission of a Class B, Class  
 39 C, or Class D felony; or
- 40 (2) within two (2) years after the commission of a misdemeanor.

41 (b) A prosecution for murder or a Class A felony may be  
 42 commenced at any time.

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

4 (1) ~~IC 35-42-4-3(a)~~ **IC 35-42-4-3** (Child molesting).

5 **(2) IC 35-42-4-3 (Child rape).**

6 ~~(2)~~ **(3)** IC 35-42-4-5 (Vicarious sexual gratification).

7 ~~(3)~~ **(4)** IC 35-42-4-6 (Child solicitation).

8 ~~(4)~~ **(5)** IC 35-42-4-7 (Child seduction).

9 ~~(5)~~ **(6)** IC 35-46-1-3 (Incest).

10 ~~(d)~~ **(d)** Notwithstanding subsection ~~(c)(1)~~, a prosecution for child  
 11 molesting under IC 35-42-4-3(c) or IC 35-42-4-3(d) where a person  
 12 who is at least sixteen ~~(16)~~ years of age allegedly commits the offense  
 13 against a child who is not more than two ~~(2)~~ years younger than the  
 14 older person, is barred unless commenced within five ~~(5)~~ years after the  
 15 commission of the offense:

16 ~~(e)~~ **(d)** A prosecution for forgery of an instrument for payment of  
 17 money, or for the uttering of a forged instrument, under IC 35-43-5-2,  
 18 is barred unless it is commenced within five (5) years after the maturity  
 19 of the instrument.

20 ~~(f)~~ **(e)** If a complaint, indictment, or information is dismissed  
 21 because of an error, defect, insufficiency, or irregularity, a new  
 22 prosecution may be commenced within ninety (90) days after the  
 23 dismissal even if the period of limitation has expired at the time of  
 24 dismissal, or will expire within ninety (90) days after the dismissal.

25 ~~(g)~~ **(f)** The period within which a prosecution must be commenced  
 26 does not include any period in which:

27 (1) the accused person is not usually and publicly resident in  
 28 Indiana or so conceals himself that process cannot be served on  
 29 him;

30 (2) the accused person conceals evidence of the offense, and  
 31 evidence sufficient to charge him with that offense is unknown to  
 32 the prosecuting authority and could not have been discovered by  
 33 that authority by exercise of due diligence; or

34 (3) the accused person is a person elected or appointed to office  
 35 under statute or constitution, if the offense charged is theft or  
 36 conversion of public funds or bribery while in public office.

37 ~~(h)~~ **(g)** For purposes of tolling the period of limitation only, a  
 38 prosecution is considered commenced on the earliest of these dates:

39 (1) The date of filing of an indictment, information, or complaint  
 40 before a court having jurisdiction.

41 (2) The date of issuance of a valid arrest warrant.

42 (3) The date of arrest of the accused person by a law enforcement

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1 officer without a warrant, if the officer has authority to make the  
2 arrest.

3 (†) (h) A prosecution is considered timely commenced for any  
4 offense to which the defendant enters a plea of guilty, notwithstanding  
5 that the period of limitation has expired.

6 SECTION 21. IC 35-42-1-1 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. A person who:

- 8 (1) knowingly or intentionally kills another human being;  
9 (2) kills another human being while committing or attempting to  
10 commit arson, burglary, **child rape**, child molesting, consumer  
11 product tampering, criminal deviate conduct, kidnapping, rape,  
12 robbery, or carjacking; or  
13 (3) kills another human being while committing or attempting to  
14 commit:

- 15 (A) dealing in cocaine or a narcotic drug (IC 35-48-4-1);  
16 (B) dealing in a schedule I, II, or III controlled substance  
17 (IC 35-48-4-2);  
18 (C) dealing in a schedule IV controlled substance  
19 (IC 35-48-4-3); or  
20 (D) dealing in a schedule V controlled substance  
21 (IC 35-48-4-4);

22 commits murder, a felony.

23 SECTION 22. IC 35-42-4-3, AS AMENDED BY P.L.216-1996,  
24 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
25 JULY 1, 1998]: Sec. 3. (a) A person who, with a child under fourteen  
26 (14) years of age, performs or submits to sexual intercourse or deviate  
27 sexual conduct commits child ~~molesting~~; **rape**, a Class B felony.  
28 However, the offense is a Class A felony if:

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

34 (b) A person who, with a child under fourteen (14) years of age,  
35 performs or submits to any fondling or touching, of either the child or  
36 the older person, with intent to arouse or to satisfy the sexual desires of  
37 either the child or the older person, commits child molesting, a Class  
38 C felony. However, the offense is a Class A felony if it is committed by  
39 using or threatening the use of deadly force, or while armed with a  
40 deadly weapon.

41 (c) It is a defense that the accused person reasonably believed that  
42 the child was sixteen (16) years of age or older at the time of the



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1 conduct.

2 SECTION 23. IC 35-50-1-2, AS AMENDED BY P.L.219-1997,  
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 1998]: Sec. 2. (a) As used in this section, "crime of violence"  
5 means:

- 6 (1) murder (IC 35-42-1-1);  
7 (2) voluntary manslaughter (IC 35-42-1-3);  
8 (3) involuntary manslaughter (IC 35-42-1-4);  
9 (4) reckless homicide (IC 35-42-1-5);  
10 (5) aggravated battery (IC 35-42-2-1.5);  
11 (6) kidnapping (IC 35-42-3-2);  
12 (7) rape (IC 35-42-4-1);  
13 (8) criminal deviate conduct (IC 35-42-4-2);  
14 **(9) child rape (IC 35-42-4-3);**  
15 ~~(9)~~ **(10)** child molesting ( IC 35-42-4-3);  
16 ~~(10)~~ **(11)** robbery as a Class A felony or a Class B felony  
17 (IC 35-42-5-1);  
18 ~~(11)~~ **(12)** burglary as a Class A felony or a Class B felony  
19 (IC 35-43-2-1); or  
20 ~~(12)~~ **(13)** causing death when operating a motor vehicle  
21 (IC 9-30-5-5).

22 (b) As used in this section, "episode of criminal conduct" means  
23 offenses or a connected series of offenses that are closely related in  
24 time, place, and circumstance.

25 (c) Except as provided in subsection (d) or (e), the court shall  
26 determine whether terms of imprisonment shall be served concurrently  
27 or consecutively. The court may consider the aggravating and  
28 mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c)  
29 in making a determination under this subsection. The court may order  
30 terms of imprisonment to be served consecutively even if the sentences  
31 are not imposed at the same time. However, except for crimes of  
32 violence, the total of the consecutive terms of imprisonment, exclusive  
33 of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to  
34 which the defendant is sentenced for felony convictions arising out of  
35 an episode of criminal conduct shall not exceed the presumptive  
36 sentence for a felony which is one (1) class of felony higher than the  
37 most serious of the felonies for which the person has been convicted.

38 (d) If, after being arrested for one (1) crime, a person commits  
39 another crime:

- 40 (1) before the date the person is discharged from probation,  
41 parole, or a term of imprisonment imposed for the first crime; or  
42 (2) while the person is released:

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1 (A) upon the person's own recognizance; or  
 2 (B) on bond;  
 3 the terms of imprisonment for the crimes shall be served consecutively,  
 4 regardless of the order in which the crimes are tried and sentences are  
 5 imposed.  
 6 (e) If a court determines under IC 35-50-2-11 that a person used a  
 7 firearm in the commission of the offense for which the person was  
 8 convicted, the term of imprisonment for the underlying offense and the  
 9 additional term of imprisonment imposed under IC 35-50-2-11 must be  
 10 served consecutively.  
 11 SECTION 24. IC 35-50-2-2, AS AMENDED BY P.L.220-1997,  
 12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 1998]: Sec. 2. (a) The court may suspend any part of a  
 14 sentence for a felony, except as provided in this section or in section  
 15 2.1 of this chapter.  
 16 (b) With respect to the crimes listed in this subsection, the court  
 17 may suspend only that part of the sentence that is in excess of the  
 18 minimum sentence:  
 19 (1) The crime committed was a Class A or Class B felony and the  
 20 person has a prior unrelated felony conviction.  
 21 (2) The crime committed was a Class C felony and less than seven  
 22 (7) years have elapsed between the date the person was  
 23 discharged from probation, imprisonment, or parole, whichever  
 24 is later, for a prior unrelated felony conviction and the date the  
 25 person committed the Class C felony for which the person is  
 26 being sentenced.  
 27 (3) The crime committed was a Class D felony and less than three  
 28 (3) years have elapsed between the date the person was  
 29 discharged from probation, imprisonment, or parole, whichever  
 30 is later, for a prior unrelated felony conviction and the date the  
 31 person committed the Class D felony for which the person is  
 32 being sentenced. However, the court may suspend the minimum  
 33 sentence for the crime only if the court orders home detention  
 34 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum  
 35 sentence specified for the crime under this chapter.  
 36 (4) The felony committed was:  
 37 (A) murder (IC 35-42-1-1);  
 38 (B) battery (IC 35-42-2-1) with a deadly weapon;  
 39 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;  
 40 (D) kidnapping (IC 35-42-3-2);  
 41 (E) confinement (IC 35-42-3-3) with a deadly weapon;  
 42 (F) rape (IC 35-42-4-1) as a Class A felony;

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- 1 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A  
 2 felony;  
 3 (H) child molesting (IC 35-42-4-3) as a Class A or Class B  
 4 felony;  
 5 **(I) child rape (IC 35-42-4-3);**  
 6 ~~(J)~~ (J) robbery (IC 35-42-5-1) resulting in serious bodily injury  
 7 or with a deadly weapon;  
 8 ~~(K)~~ (K) arson (IC 35-43-1-1) for hire or resulting in serious  
 9 bodily injury;  
 10 ~~(L)~~ (L) burglary (IC 35-43-2-1) resulting in serious bodily  
 11 injury or with a deadly weapon;  
 12 ~~(M)~~ (M) resisting law enforcement (IC 35-44-3-3) with a  
 13 deadly weapon;  
 14 ~~(N)~~ (N) escape (IC 35-44-3-5) with a deadly weapon;  
 15 ~~(O)~~ (O) rioting (IC 35-45-1-2) with a deadly weapon;  
 16 ~~(P)~~ (P) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as  
 17 a Class A felony;  
 18 ~~(Q)~~ (Q) dealing in a schedule I, II, or III controlled substance  
 19 (IC 35-48-4-2) if the amount of controlled substance involved  
 20 has an aggregate weight of three (3) grams or more;  
 21 ~~(R)~~ (R) an offense under IC 9-30-5 (operating a vehicle while  
 22 intoxicated) and the person who committed the offense has  
 23 accumulated at least two (2) prior unrelated convictions under  
 24 IC 9-30-5; or  
 25 ~~(S)~~ (S) aggravated battery (IC 35-42-2-1.5).
- 26 (c) Except as provided in subsection (e), whenever the court  
 27 suspends a sentence for a felony, it shall place the person on probation  
 28 under IC 35-38-2 for a fixed period to end not later than the date that  
 29 the maximum sentence that may be imposed for the felony will expire.
- 30 (d) The minimum sentence for a person convicted of voluntary  
 31 manslaughter may not be suspended unless the court finds at the  
 32 sentencing hearing that the crime was not committed by means of a  
 33 deadly weapon.
- 34 (e) Whenever the court suspends that part of an offender's (as  
 35 defined in IC 5-2-12-4) sentence that is suspendible under subsection  
 36 (b), the court shall place the offender on probation under IC 35-38-2 for  
 37 not more than ten (10) years.
- 38 (f) An additional term of imprisonment imposed under  
 39 IC 35-50-2-11 may not be suspended.
- 40 (g) A term of imprisonment imposed under IC 35-47-10-6 or  
 41 IC 35-47-10-7 may not be suspended if the commission of the offense  
 42 was knowing or intentional.



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1 SECTION 25. IC 35-50-2-9, AS AMENDED BY P.L.216-1996,  
 2 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 1998]: Sec. 9. (a) The state may seek either a death sentence  
 4 or a sentence of life imprisonment without parole for murder by  
 5 alleging, on a page separate from the rest of the charging instrument,  
 6 the existence of at least one (1) of the aggravating circumstances listed  
 7 in subsection (b). In the sentencing hearing after a person is convicted  
 8 of murder, the state must prove beyond a reasonable doubt the  
 9 existence of at least one (1) of the aggravating circumstances alleged.  
 10 However, the state may not proceed against a defendant under this  
 11 section if a court determines at a pretrial hearing under IC 35-36-9 that  
 12 the defendant is a mentally retarded individual.

13 (b) The aggravating circumstances are as follows:

14 (1) The defendant committed the murder by intentionally killing  
 15 the victim while committing or attempting to commit any of the  
 16 following:

17 (A) Arson (IC 35-43-1-1).

18 (B) Burglary (IC 35-43-2-1).

19 **(C) Child rape (IC 35-42-4-3).**

20 ~~(D)~~ (D) Child molesting (IC 35-42-4-3).

21 ~~(E)~~ (E) Criminal deviate conduct (IC 35-42-4-2).

22 ~~(F)~~ (F) Kidnapping (IC 35-42-3-2).

23 ~~(G)~~ (G) Rape (IC 35-42-4-1).

24 ~~(H)~~ (H) Robbery (IC 35-42-5-1).

25 ~~(I)~~ (I) Carjacking (IC 35-42-5-2).

26 ~~(J)~~ (J) Criminal gang activity (IC 35-45-9-3).

27 ~~(K)~~ (K) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

28 (2) The defendant committed the murder by the unlawful  
 29 detonation of an explosive with intent to injure person or damage  
 30 property.

31 (3) The defendant committed the murder by lying in wait.

32 (4) The defendant who committed the murder was hired to kill.

33 (5) The defendant committed the murder by hiring another person  
 34 to kill.

35 (6) The victim of the murder was a corrections employee,  
 36 probation officer, parole officer, community corrections worker,  
 37 home detention officer, fireman, judge, or law enforcement  
 38 officer, and either:

39 (A) the victim was acting in the course of duty; or

40 (B) the murder was motivated by an act the victim performed  
 41 while acting in the course of duty.

42 (7) The defendant has been convicted of another murder.

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- 1 (8) The defendant has committed another murder, at any time,  
 2 regardless of whether the defendant has been convicted of that  
 3 other murder.  
 4 (9) The defendant was:  
 5 (A) under the custody of the department of correction;  
 6 (B) under the custody of a county sheriff;  
 7 (C) on probation after receiving a sentence for the commission  
 8 of a felony; or  
 9 (D) on parole;  
 10 at the time the murder was committed.  
 11 (10) The defendant dismembered the victim.  
 12 (11) The defendant burned, mutilated, or tortured the victim while  
 13 the victim was alive.  
 14 (12) The victim of the murder was less than twelve (12) years of  
 15 age.  
 16 (13) The victim was a victim of any of the following offenses for  
 17 which the defendant was convicted:  
 18 (A) Battery as a Class D felony or as a Class C felony under  
 19 IC 35-42-2-1.  
 20 (B) Kidnapping (IC 35-42-3-2).  
 21 (C) Criminal confinement (IC 35-42-3-3).  
 22 (D) A sex crime under IC 35-42-4.  
 23 (14) The victim of the murder was listed by the state or known by  
 24 the defendant to be a witness against the defendant and the  
 25 defendant committed the murder with the intent to prevent the  
 26 person from testifying.  
 27 (15) The defendant committed the murder by intentionally  
 28 discharging a firearm (as defined in IC 35-47-1-5):  
 29 (A) into an inhabited dwelling; or  
 30 (B) from a vehicle.  
 31 (c) The mitigating circumstances that may be considered under this  
 32 section are as follows:  
 33 (1) The defendant has no significant history of prior criminal  
 34 conduct.  
 35 (2) The defendant was under the influence of extreme mental or  
 36 emotional disturbance when the murder was committed.  
 37 (3) The victim was a participant in or consented to the defendant's  
 38 conduct.  
 39 (4) The defendant was an accomplice in a murder committed by  
 40 another person, and the defendant's participation was relatively  
 41 minor.  
 42 (5) The defendant acted under the substantial domination of

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- 1 another person.
- 2 (6) The defendant's capacity to appreciate the criminality of the
- 3 defendant's conduct or to conform that conduct to the
- 4 requirements of law was substantially impaired as a result of
- 5 mental disease or defect or of intoxication.
- 6 (7) The defendant was less than eighteen (18) years of age at the
- 7 time the murder was committed.
- 8 (8) Any other circumstances appropriate for consideration.
- 9 (d) If the defendant was convicted of murder in a jury trial, the jury
- 10 shall reconvene for the sentencing hearing. If the trial was to the court,
- 11 or the judgment was entered on a guilty plea, the court alone shall
- 12 conduct the sentencing hearing. The jury or the court may consider all
- 13 the evidence introduced at the trial stage of the proceedings, together
- 14 with new evidence presented at the sentencing hearing. The court shall
- 15 instruct the jury concerning the statutory penalties for murder and any
- 16 other offenses for which the defendant was convicted, the potential for
- 17 consecutive or concurrent sentencing, and the availability of good time
- 18 credit and clemency. The defendant may present any additional
- 19 evidence relevant to:
- 20 (1) the aggravating circumstances alleged; or
- 21 (2) any of the mitigating circumstances listed in subsection (c).
- 22 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the
- 23 jury shall recommend to the court whether the death penalty or life
- 24 imprisonment without parole, or neither, should be imposed. The jury
- 25 may recommend:
- 26 (1) the death penalty; or
- 27 (2) life imprisonment without parole;
- 28 only if it makes the findings described in subsection (k). The court shall
- 29 make the final determination of the sentence, after considering the
- 30 jury's recommendation, and the sentence shall be based on the same
- 31 standards that the jury was required to consider. The court is not bound
- 32 by the jury's recommendation. In making the final determination of the
- 33 sentence after receiving the jury's recommendation, the court may
- 34 receive evidence of the crime's impact on members of the victim's
- 35 family.
- 36 (f) If a jury is unable to agree on a sentence recommendation after
- 37 reasonable deliberations, the court shall discharge the jury and proceed
- 38 as if the hearing had been to the court alone.
- 39 (g) If the hearing is to the court alone, except as provided by
- 40 IC 35-36-9, the court shall:
- 41 (1) sentence the defendant to death; or
- 42 (2) impose a term of life imprisonment without parole;



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1 only if it makes the findings described in subsection (k).

2 (h) If a court sentences a defendant to death, the court shall order  
3 the defendant's execution to be carried out not later than one (1) year  
4 and one (1) day after the date the defendant was convicted. The  
5 supreme court has exclusive jurisdiction to stay the execution of a  
6 death sentence. If the supreme court stays the execution of a death  
7 sentence, the supreme court shall order a new date for the defendant's  
8 execution.

9 (i) If a person sentenced to death by a court files a petition for  
10 post-conviction relief, the court, not later than ninety (90) days after the  
11 date the petition is filed, shall set a date to hold a hearing to consider  
12 the petition. If a court does not, within the ninety (90) day period, set  
13 the date to hold the hearing to consider the petition, the court's failure  
14 to set the hearing date is not a basis for additional post-conviction  
15 relief. The attorney general shall answer the petition for post-conviction  
16 relief on behalf of the state. At the request of the attorney general, a  
17 prosecuting attorney shall assist the attorney general. The court shall  
18 enter written findings of fact and conclusions of law concerning the  
19 petition not later than ninety (90) days after the date the hearing  
20 concludes. However, if the court determines that the petition is without  
21 merit, the court may dismiss the petition within ninety (90) days  
22 without conducting a hearing under this subsection.

23 (j) A death sentence is subject to automatic review by the supreme  
24 court. The review, which shall be heard under rules adopted by the  
25 supreme court, shall be given priority over all other cases. The supreme  
26 court's review must take into consideration all claims that the:

- 27 (1) conviction or sentence was in violation of the:  
28 (A) Constitution of the State of Indiana; or  
29 (B) Constitution of the United States;  
30 (2) sentencing court was without jurisdiction to impose a  
31 sentence; and  
32 (3) sentence:  
33 (A) exceeds the maximum sentence authorized by law; or  
34 (B) is otherwise erroneous.

35 If the supreme court cannot complete its review by the date set by the  
36 sentencing court for the defendant's execution under subsection (h), the  
37 supreme court shall stay the execution of the death sentence and set a  
38 new date to carry out the defendant's execution.

39 (k) Before a sentence may be imposed under this section, the jury,  
40 in a proceeding under subsection (e), or the court, in a proceeding  
41 under subsection (g), must find that:

- 42 (1) the state has proved beyond a reasonable doubt that at least

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1           one (1) of the aggravating circumstances listed in subsection (b)  
2           exists; and  
3           (2) any mitigating circumstances that exist are outweighed by the  
4           aggravating circumstance or circumstances.

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