



February 11, 2011

SENATE BILL No. 530

DIGEST OF SB 530 (Updated February 8, 2011 3:12 pm - DI 106)

Citations Affected: IC 4-13; IC 10-13; IC 11-8; IC 12-24; IC 16-21; IC 16-25; IC 16-27; IC 20-28; IC 22-5; IC 29-3; IC 31-19; IC 31-30; IC 31-34; IC 31-35; IC 31-37; IC 33-37; IC 33-39; IC 35-38; IC 35-41; IC 35-42; IC 35-47; IC 35-50.

Synopsis: Rape and criminal deviate conduct. Merges the offense of criminal deviate conduct into the crime of rape, and repeals the statute defining the crime of criminal deviate conduct. Makes conforming amendments.

Effective: July 1, 2011.

Landske, Steele

January 18, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 10, 2011, reported favorably — Do Pass.

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SB 530—LS 7023/DI 106+



February 11, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 530

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 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14.7. A person
3 employed, appointed, or under contract with a state agency, who works
4 with or around children, shall be dismissed (after the appropriate
5 pre-deprivation procedure has occurred) if that person is, or has ever
6 been, convicted of any of the following:
7 (1) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)
8 years of age.
9 (2) Criminal deviate conduct (IC 35-42-4-2) (**for an act**
10 **committed before its repeal**), if the victim is less than eighteen
11 (18) years of age.
12 (3) Child molesting (IC 35-42-4-3).
13 (4) Child exploitation (IC 35-42-4-4(b)).
14 (5) Vicarious sexual gratification (IC 35-42-4-5).
15 (6) Child solicitation (IC 35-42-4-6).
16 (7) Child seduction (IC 35-42-4-7).
17 (8) Sexual misconduct with a minor as a Class A or **Class B**

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1 felony (IC 35-42-4-9).
 2 (9) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)
 3 years of age.
 4 SECTION 2. IC 10-13-3-27, AS AMENDED BY P.L.44-2009,
 5 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2011]: Sec. 27. (a) Except as provided in subsection (b), on
 7 request, a law enforcement agency shall release a limited criminal
 8 history to or allow inspection of a limited criminal history by
 9 noncriminal justice organizations or individuals only if the subject of
 10 the request:
 11 (1) has applied for employment with a noncriminal justice
 12 organization or individual;
 13 (2) has applied for a license and has provided criminal history
 14 data as required by law to be provided in connection with the
 15 license;
 16 (3) is a candidate for public office or a public official;
 17 (4) is in the process of being apprehended by a law enforcement
 18 agency;
 19 (5) is placed under arrest for the alleged commission of a crime;
 20 (6) has charged that the subject's rights have been abused
 21 repeatedly by criminal justice agencies;
 22 (7) is the subject of a judicial decision or determination with
 23 respect to the setting of bond, plea bargaining, sentencing, or
 24 probation;
 25 (8) has volunteered services that involve contact with, care of, or
 26 supervision over a child who is being placed, matched, or
 27 monitored by a social services agency or a nonprofit corporation;
 28 (9) is currently residing in a location designated by the
 29 department of child services (established by IC 31-25-1-1) or by
 30 a juvenile court as the out-of-home placement for a child at the
 31 time the child will reside in the location;
 32 (10) has volunteered services at a public school (as defined in
 33 IC 20-18-2-15) or nonpublic school (as defined in IC 20-18-2-12)
 34 that involve contact with, care of, or supervision over a student
 35 enrolled in the school;
 36 (11) is being investigated for welfare fraud by an investigator of
 37 the division of family resources or a county office of the division
 38 of family resources;
 39 (12) is being sought by the parent locator service of the child
 40 support bureau of the department of child services;
 41 (13) is or was required to register as a sex or violent offender
 42 under IC 11-8-8; or

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- 1 (14) has been convicted of any of the following:
- 2 (A) Rape (IC 35-42-4-1), if the victim is less than eighteen
- 3 (18) years of age.
- 4 (B) Criminal deviate conduct (IC 35-42-4-2) **(for an act**
- 5 **committed before its repeal)**, if the victim is less than
- 6 eighteen (18) years of age.
- 7 (C) Child molesting (IC 35-42-4-3).
- 8 (D) Child exploitation (IC 35-42-4-4(b)).
- 9 (E) Possession of child pornography (IC 35-42-4-4(c)).
- 10 (F) Vicarious sexual gratification (IC 35-42-4-5).
- 11 (G) Child solicitation (IC 35-42-4-6).
- 12 (H) Child seduction (IC 35-42-4-7).
- 13 (I) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
- 14 (J) Incest (IC 35-46-1-3), if the victim is less than eighteen
- 15 (18) years of age.

16 However, limited criminal history information obtained from the
 17 National Crime Information Center may not be released under this
 18 section except to the extent permitted by the Attorney General of the
 19 United States.

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

- 23 (1) Federally chartered or insured banking institutions.
- 24 (2) Officials of state and local government for any of the
- 25 following purposes:
- 26 (A) Employment with a state or local governmental entity.
- 27 (B) Licensing.
- 28 (3) Segments of the securities industry identified under 15 U.S.C.
- 29 78q(f)(2).

30 (c) Any person who knowingly or intentionally uses limited criminal
 31 history for any purpose not specified under this section commits a
 32 Class A misdemeanor.

33 SECTION 3. IC 11-8-8-4.5, AS ADDED BY P.L.216-2007,
 34 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2011]: Sec. 4.5. (a) Except as provided in section 22 of this
 36 chapter, as used in this chapter, "sex offender" means a person
 37 convicted of any of the following offenses:

- 38 (1) Rape (IC 35-42-4-1).
- 39 (2) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.
- 40 (3) Child molesting (IC 35-42-4-3).
- 41 (4) Child exploitation (IC 35-42-4-4(b)).
- 42 (5) Vicarious sexual gratification (including performing sexual

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- 1 conduct in the presence of a minor) (IC 35-42-4-5).
- 2 (6) Child solicitation (IC 35-42-4-6).
- 3 (7) Child seduction (IC 35-42-4-7).
- 4 (8) Sexual misconduct with a minor as a Class A, Class B, or
- 5 Class C felony (IC 35-42-4-9), unless:
- 6 (A) the person is convicted of sexual misconduct with a minor
- 7 as a Class C felony;
- 8 (B) the person is not more than:
- 9 (i) four (4) years older than the victim if the offense was
- 10 committed after June 30, 2007; or
- 11 (ii) five (5) years older than the victim if the offense was
- 12 committed before July 1, 2007; and
- 13 (C) the sentencing court finds that the person should not be
- 14 required to register as a sex offender.
- 15 (9) Incest (IC 35-46-1-3).
- 16 (10) Sexual battery (IC 35-42-4-8).
- 17 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
- 18 (18) years of age, and the person who kidnapped the victim is not
- 19 the victim's parent or guardian.
- 20 (12) Criminal confinement (IC 35-42-3-3), if the victim is less
- 21 than eighteen (18) years of age, and the person who confined or
- 22 removed the victim is not the victim's parent or guardian.
- 23 (13) Possession of child pornography (IC 35-42-4-4(c)).
- 24 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony.
- 25 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the
- 26 victim is less than eighteen (18) years of age.
- 27 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(b)).
- 28 (17) Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less
- 29 than eighteen (18) years of age.
- 30 (18) An attempt or conspiracy to commit a crime listed in
- 31 subdivisions (1) through (17).
- 32 (19) A crime under the laws of another jurisdiction, including a
- 33 military court, that is substantially equivalent to any of the
- 34 offenses listed in subdivisions (1) through (18).
- 35 (b) The term includes:
- 36 (1) a person who is required to register as a sex offender in any
- 37 jurisdiction; and
- 38 (2) a child who has committed a delinquent act and who:
- 39 (A) is at least fourteen (14) years of age;
- 40 (B) is on probation, is on parole, is discharged from a facility
- 41 by the department of correction, is discharged from a secure
- 42 private facility (as defined in IC 31-9-2-115), or is discharged

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

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

11 SECTION 4. IC 11-8-8-5, AS AMENDED BY P.L.216-2007,
 12 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2011]: Sec. 5. (a) Except as provided in section 22 of this
 14 chapter, as used in this chapter, "sex or violent offender" means a
 15 person convicted of any of the following offenses:

- 16 (1) Rape (IC 35-42-4-1).
 17 (2) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.
 18 (3) Child molesting (IC 35-42-4-3).
 19 (4) Child exploitation (IC 35-42-4-4(b)).
 20 (5) Vicarious sexual gratification (including performing sexual
 21 conduct in the presence of a minor) (IC 35-42-4-5).
 22 (6) Child solicitation (IC 35-42-4-6).
 23 (7) Child seduction (IC 35-42-4-7).
 24 (8) Sexual misconduct with a minor as a Class A, Class B, or
 25 Class C felony (IC 35-42-4-9), unless:
 26 (A) the person is convicted of sexual misconduct with a minor
 27 as a Class C felony;
 28 (B) the person is not more than:
 29 (i) four (4) years older than the victim if the offense was
 30 committed after June 30, 2007; or
 31 (ii) five (5) years older than the victim if the offense was
 32 committed before July 1, 2007; and
 33 (C) the sentencing court finds that the person should not be
 34 required to register as a sex offender.
 35 (9) Incest (IC 35-46-1-3).
 36 (10) Sexual battery (IC 35-42-4-8).
 37 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
 38 (18) years of age, and the person who kidnapped the victim is not
 39 the victim's parent or guardian.
 40 (12) Criminal confinement (IC 35-42-3-3), if the victim is less
 41 than eighteen (18) years of age, and the person who confined or
 42 removed the victim is not the victim's parent or guardian.

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- 1 (13) Possession of child pornography (IC 35-42-4-4(c)).
- 2 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony.
- 3 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the
- 4 victim is less than eighteen (18) years of age.
- 5 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(b)).
- 6 (17) Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less
- 7 than eighteen (18) years of age.
- 8 (18) Murder (IC 35-42-1-1).
- 9 (19) Voluntary manslaughter (IC 35-42-1-3).
- 10 (20) An attempt or conspiracy to commit a crime listed in
- 11 subdivisions (1) through (19).
- 12 (21) A crime under the laws of another jurisdiction, including a
- 13 military court, that is substantially equivalent to any of the
- 14 offenses listed in subdivisions (1) through (20).
- 15 (b) The term includes:
- 16 (1) a person who is required to register as a sex or violent
- 17 offender in any jurisdiction; and
- 18 (2) a child who has committed a delinquent act and who:
- 19 (A) is at least fourteen (14) years of age;
- 20 (B) is on probation, is on parole, is discharged from a facility
- 21 by the department of correction, is discharged from a secure
- 22 private facility (as defined in IC 31-9-2-115), or is discharged
- 23 from a juvenile detention facility as a result of an adjudication
- 24 as a delinquent child for an act that would be an offense
- 25 described in subsection (a) if committed by an adult; and
- 26 (C) is found by a court by clear and convincing evidence to be
- 27 likely to repeat an act that would be an offense described in
- 28 subsection (a) if committed by an adult.
- 29 (c) In making a determination under subsection (b)(2)(C), the court
- 30 shall consider expert testimony concerning whether a child is likely to
- 31 repeat an act that would be an offense described in subsection (a) if
- 32 committed by an adult.
- 33 SECTION 5. IC 12-24-3-2 IS AMENDED TO READ AS
- 34 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. To provide greater
- 35 security for patients, visitors, and employees, the division may not
- 36 employ in a state institution an individual who has been convicted of
- 37 any of the following offenses:
- 38 (1) Rape (IC 35-42-4-1).
- 39 (2) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.
- 40 (3) Child molesting (IC 35-42-4-3).
- 41 (4) Child exploitation (IC 35-42-4-4).
- 42 (5) Sexual misconduct with a minor as a Class A or **Class B**

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1 felony (IC 35-42-4-9).
 2 SECTION 6. IC 16-21-8-1, AS AMENDED BY P.L.41-2007,
 3 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2011]: Sec. 1. (a) A hospital licensed under IC 16-21-2 that
 5 provides general medical and surgical hospital services shall provide
 6 forensic medical exams and additional forensic services to all alleged
 7 sex crime victims who apply for forensic medical exams and additional
 8 forensic services in relation to injuries or trauma resulting from the
 9 alleged sex crime. The provision of services may not be dependent on
 10 a victim's reporting to, or cooperating with, law enforcement.

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

- 13 (1) Rape (IC 35-42-4-1).
- 14 (2) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.
- 15 (3) Child molesting (IC 35-42-4-3).
- 16 (4) Vicarious sexual gratification (IC 35-42-4-5).
- 17 (5) Sexual battery (IC 35-42-4-8).
- 18 (6) Sexual misconduct with a minor (IC 35-42-4-9).
- 19 (7) Child solicitation (IC 35-42-4-6).
- 20 (8) Child seduction (IC 35-42-4-7).
- 21 (9) Incest (IC 35-46-1-3).

22 (c) Payment for services under this section shall be processed in
 23 accordance with rules adopted by the victim services division of the
 24 Indiana criminal justice institute.

25 SECTION 7. IC 16-25-6-1 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) A person may not
 27 own or operate a hospice program if the person has:

- 28 (1) been convicted of rape (IC 35-42-4-1);
- 29 (2) been convicted of criminal deviate conduct (IC 35-42-4-2)
- 30 **(repealed)**;
- 31 (3) been convicted of exploitation of a dependent or an
- 32 endangered adult (IC 35-46-1-12);
- 33 (4) had a judgment entered against the person for failure to report
- 34 battery, neglect, or exploitation of an endangered adult
- 35 (IC 35-46-1-13); or
- 36 (5) been convicted of theft (IC 35-43-4), if the person's conviction
- 37 for theft occurred less than ten (10) years before the date of
- 38 submission by the person of an application for licensure or
- 39 approval as a hospice program under IC 16-25-3.

40 (b) A person who knowingly or intentionally violates this section
 41 commits a Class A misdemeanor.

42 SECTION 8. IC 16-25-6-3 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) Except as
2 provided in subsection (b), a person who owns or operates a hospice
3 program may not employ an individual or allow a volunteer to provide
4 hospice services if that individual's or volunteer's limited criminal
5 history indicates that the individual or volunteer has:

- 6 (1) been convicted of rape (IC 35-42-4-1);
- 7 (2) been convicted of criminal deviate conduct (IC 35-42-4-2)
- 8 **(repealed);**
- 9 (3) been convicted of exploitation of an endangered adult
- 10 (IC 35-46-1-12);
- 11 (4) had a judgment entered against the individual for failure to
- 12 report battery, neglect, or exploitation of an endangered adult
- 13 (IC 35-46-1-13); or
- 14 (5) been convicted of theft (IC 35-43-4), if the conviction for theft
- 15 occurred less than ten (10) years before the individual's
- 16 employment application date.

17 (b) A hospice program may not employ an individual or allow a
18 volunteer to provide hospice services for more than twenty-one (21)
19 calendar days without receipt of that individual's or volunteer's limited
20 criminal history required by section 2 of this chapter, unless the Indiana
21 central repository for criminal history information under IC 10-13-3 is
22 solely responsible for failing to provide the individual's or volunteer's
23 limited criminal history to the hospice program within the time
24 required under this subsection.

25 SECTION 9. IC 16-27-2-3, AS AMENDED BY P.L.212-2005,
26 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2011]: Sec. 3. (a) A person may not operate a home health
28 agency or a personal services agency if the person has been convicted
29 of any of the following:

- 30 (1) Rape (IC 35-42-4-1).
- 31 (2) Criminal deviate conduct (IC 35-42-4-2) **(repealed).**
- 32 (3) Exploitation of an endangered adult (IC 35-46-1-12).
- 33 (4) Failure to report battery, neglect, or exploitation of an
- 34 endangered adult (IC 35-46-1-13).
- 35 (5) Theft (IC 35-43-4), if the person's conviction for theft
- 36 occurred less than ten (10) years before the date of submission by
- 37 the person of an application for licensure as a home health agency
- 38 under IC 16-27-1 or as a personal services agency under
- 39 IC 16-27-4.

40 (b) A person who knowingly or intentionally violates this section
41 commits a Class A misdemeanor.

42 SECTION 10. IC 16-27-2-5, AS AMENDED BY P.L.84-2010,

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SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) Except as provided in subsection (b), a person who operates a home health agency under IC 16-27-1 or a personal services agency under IC 16-27-4 may not employ a person to provide services in a patient's or client's temporary or permanent residence if that person's limited criminal history, national criminal history background check, or expanded criminal history check indicates that the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the conviction for theft occurred less than ten (10) years before the person's employment application date.
- (6) A felony that is substantially equivalent to a felony listed in:
 - (A) subdivisions (1) through (4); or
 - (B) subdivision (5), if the conviction for theft occurred less than ten (10) years before the person's employment application date;
 for which the conviction was entered in another state.

(b) A home health agency or personal services agency may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than twenty-one (21) calendar days without receipt of that person's limited criminal history, national criminal history background check, or expanded criminal history check, required by section 4 of this chapter, unless the state police department, the Federal Bureau of Investigation under IC 10-13-3-39, or the private agency providing the expanded criminal history check is responsible for failing to provide the person's limited criminal history, national criminal history background check, or expanded criminal history check to the home health agency or personal services agency within the time required under this subsection.

SECTION 11. IC 20-28-5-8, AS AMENDED BY P.L.121-2009, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) This section applies when a prosecuting attorney knows that a licensed employee of a public school or a nonpublic school has been convicted of an offense listed in subsection (c). The prosecuting attorney shall immediately give written notice of the conviction to the following:

- (1) The state superintendent.

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- 1 (2) Except as provided in subdivision (3), the superintendent of
- 2 the school corporation that employs the licensed employee or the
- 3 equivalent authority if a nonpublic school employs the licensed
- 4 employee.
- 5 (3) The presiding officer of the governing body of the school
- 6 corporation that employs the licensed employee, if the convicted
- 7 licensed employee is the superintendent of the school corporation.
- 8 (b) The superintendent of a school corporation, presiding officer of
- 9 the governing body, or equivalent authority for a nonpublic school shall
- 10 immediately notify the state superintendent when the individual knows
- 11 that a current or former licensed employee of the public school or
- 12 nonpublic school has been convicted of an offense listed in subsection
- 13 (c), or when the governing body or equivalent authority for a nonpublic
- 14 school takes any final action in relation to an employee who engaged
- 15 in any offense listed in subsection (c).
- 16 (c) The department, after holding a hearing on the matter, shall
- 17 permanently revoke the license of a person who is known by the
- 18 department to have been convicted of any of the following felonies:
- 19 (1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
- 20 (18) years of age.
- 21 (2) Criminal confinement (IC 35-42-3-3), if the victim is less than
- 22 eighteen (18) years of age.
- 23 (3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)
- 24 years of age.
- 25 (4) Criminal deviate conduct (IC 35-42-4-2) (**repealed**), if the
- 26 victim is less than eighteen (18) years of age.
- 27 (5) Child molesting (IC 35-42-4-3).
- 28 (6) Child exploitation (IC 35-42-4-4(b)).
- 29 (7) Vicarious sexual gratification (IC 35-42-4-5).
- 30 (8) Child solicitation (IC 35-42-4-6).
- 31 (9) Child seduction (IC 35-42-4-7).
- 32 (10) Sexual misconduct with a minor (IC 35-42-4-9).
- 33 (11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)
- 34 years of age.
- 35 (12) Dealing in or manufacturing cocaine or a narcotic drug
- 36 (IC 35-48-4-1).
- 37 (13) Dealing in methamphetamine (IC 35-48-4-1.1).
- 38 (14) Dealing in a schedule I, II, or III controlled substance
- 39 (IC 35-48-4-2).
- 40 (15) Dealing in a schedule IV controlled substance
- 41 (IC 35-48-4-3).
- 42 (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).

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- 1 (17) Dealing in a counterfeit substance (IC 35-48-4-5).
- 2 (18) Dealing in marijuana, hash oil, or hashish
- 3 (IC 35-48-4-10(b)).
- 4 (19) Possession of child pornography (IC 35-42-4-4(c)).
- 5 (d) A license may be suspended by the state superintendent as
- 6 specified in IC 20-28-7-7.
- 7 (e) The department shall develop a data base of information on
- 8 school corporation employees who have been reported to the
- 9 department under this section.

10 SECTION 12. IC 22-5-5-1 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. The employment
 12 contract of a person who:

- 13 (1) works with children; and
- 14 (2) is convicted of:
 - 15 (A) rape (IC 35-42-4-1), if the victim is less than eighteen (18)
 - 16 years of age;
 - 17 (B) criminal deviate conduct (IC 35-42-4-2) (**repealed**), if the
 - 18 victim is less than eighteen (18) years of age;
 - 19 (C) child molesting (IC 35-42-4-3);
 - 20 (D) child exploitation (IC 35-42-4-4(b));
 - 21 (E) vicarious sexual gratification (IC 35-42-4-5);
 - 22 (F) child solicitation (IC 35-42-4-6);
 - 23 (G) child seduction (IC 35-42-4-7); or
 - 24 (H) incest (IC 35-46-1-3), if the victim is less than eighteen
 - 25 (18) years of age;

26 may be canceled by the person's employer.

27 SECTION 13. IC 29-3-7-7, AS ADDED BY P.L.131-2009,
 28 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2011]: Sec. 7. A court may not appoint a person to serve as
 30 the guardian or permit a person to continue to serve as a guardian if the
 31 person:

- 32 (1) is a sexually violent predator (as described in IC 35-38-1-7.5);
- 33 (2) was at least eighteen (18) years of age at the time of the
- 34 offense and was convicted of child molesting (IC 35-42-4-3) or
- 35 sexual misconduct with a minor (IC 35-42-4-9) against a child
- 36 less than sixteen (16) years of age:
 - 37 (A) by using or threatening the use of deadly force;
 - 38 (B) while armed with a deadly weapon; or
 - 39 (C) that resulted in serious bodily injury; or
- 40 (3) was less than eighteen (18) years of age at the time of the
- 41 offense and was convicted as an adult of:
 - 42 (A) an offense described in:

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- 1 (i) IC 35-42-4-1;
- 2 (ii) IC 35-42-4-2 (**repealed**);
- 3 (iii) IC 35-42-4-3 as a Class A or Class B felony;
- 4 (iv) IC 35-42-4-5(a)(1);
- 5 (v) IC 35-42-4-5(a)(2);
- 6 (vi) IC 35-42-4-5(a)(3);
- 7 (vii) IC 35-42-4-5(b)(1) as a Class A or Class B felony;
- 8 (viii) IC 35-42-4-5(b)(2); or
- 9 (ix) IC 35-42-4-5(b)(3) as a Class A or Class B felony;
- 10 (B) an attempt or conspiracy to commit a crime listed in clause
- 11 (A); or
- 12 (C) a crime under the laws of another jurisdiction, including a
- 13 military court, that is substantially equivalent to any of the
- 14 offenses listed in clauses (A) and (B).

15 SECTION 14. IC 31-19-9-10 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. A court shall
 17 determine that consent to adoption is not required from a parent if:

- 18 (1) the parent is convicted of and incarcerated at the time of the
- 19 filing of a petition for adoption for:
 - 20 (A) murder (IC 35-42-1-1);
 - 21 (B) causing suicide (IC 35-42-1-2);
 - 22 (C) voluntary manslaughter (IC 35-42-1-3);
 - 23 (D) rape (IC 35-42-4-1);
 - 24 (E) criminal deviate conduct (IC 35-42-4-2) (**repealed**);
 - 25 (F) child molesting as a Class A or Class B felony
 - 26 (IC 35-42-4-3);
 - 27 (G) incest as a Class B felony (IC 35-46-1-3);
 - 28 (H) neglect of a dependent as a Class B felony (IC 35-46-1-4);
 - 29 (I) battery of a child as a Class C felony (IC 35-42-2-1(a)(3));
 - 30 (J) battery as a Class A felony (IC 35-42-2-1(a)(5)) or Class B
 - 31 felony (IC 35-42-2-1(a)(4)); or
 - 32 (K) an attempt under IC 35-41-5-1 to commit an offense
 - 33 described in clauses (A) through (J);
- 34 (2) the child or the child's sibling, half-blood sibling, or
- 35 step-sibling of the parent's current marriage is the victim of the
- 36 offense; and
- 37 (3) after notice to the parent and a hearing, the court determines
- 38 that dispensing with the parent's consent to adoption is in the
- 39 child's best interests.

40 SECTION 15. IC 31-30-1-2.5, AS AMENDED BY P.L.131-2009,
 41 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2011]: Sec. 2.5. A juvenile court may not appoint a person to

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1 serve as the guardian or custodian of a child or permit a person to
 2 continue to serve as a guardian or custodian of a child if the person:
 3 (1) is a sexually violent predator (as described in IC 35-38-1-7.5);
 4 (2) was at least eighteen (18) years of age at the time of the
 5 offense and committed child molesting (IC 35-42-4-3) or sexual
 6 misconduct with a minor (IC 35-42-4-9) against a child less than
 7 sixteen (16) years of age:
 8 (A) by using or threatening the use of deadly force;
 9 (B) while armed with a deadly weapon; or
 10 (C) that resulted in serious bodily injury; or
 11 (3) was less than eighteen (18) years of age at the time of the
 12 offense but was tried and convicted as an adult of:
 13 (A) an offense described in:
 14 (i) IC 35-42-4-1;
 15 (ii) IC 35-42-4-2 (**repealed**);
 16 (iii) IC 35-42-4-3 as a Class A or Class B felony;
 17 (iv) IC 35-42-4-5(a)(1);
 18 (v) IC 35-42-4-5(a)(2);
 19 (vi) IC 35-42-4-5(a)(3);
 20 (vii) IC 35-42-4-5(b)(1) as a Class A or Class B felony;
 21 (viii) IC 35-42-4-5(b)(2); or
 22 (ix) IC 35-42-4-5(b)(3) as a Class A or Class B felony;
 23 (B) an attempt or conspiracy to commit a crime listed in clause
 24 (A); or
 25 (C) a crime under the laws of another jurisdiction, including a
 26 military court, that is substantially equivalent to any of the
 27 offenses listed in clauses (A) and (B).
 28 SECTION 16. IC 31-30-1-4, AS AMENDED BY P.L.67-2008,
 29 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2011]: Sec. 4. (a) The juvenile court does not have jurisdiction
 31 over an individual for an alleged violation of:
 32 (1) IC 35-41-5-1(a) (attempted murder);
 33 (2) IC 35-42-1-1 (murder);
 34 (3) IC 35-42-3-2 (kidnapping);
 35 (4) IC 35-42-4-1 (rape);
 36 (5) IC 35-42-4-2 (criminal deviate conduct) (**repealed**);
 37 (6) IC 35-42-5-1 (robbery) if:
 38 (A) the robbery was committed while armed with a deadly
 39 weapon; or
 40 (B) the robbery results in bodily injury or serious bodily
 41 injury;
 42 (7) IC 35-42-5-2 (carjacking);

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1 (8) IC 35-45-9-3 (criminal gang activity);
 2 (9) IC 35-45-9-4 (criminal gang intimidation);
 3 (10) IC 35-47-2-1 (carrying a handgun without a license), if
 4 charged as a felony;
 5 (11) IC 35-47-10 (children and firearms), if charged as a felony;
 6 (12) IC 35-47-5-4.1 (dealing in a sawed-off shotgun); or
 7 (13) any offense that may be joined under IC 35-34-1-9(a)(2) with
 8 any crime listed in subdivisions (1) through (12);
 9 if the individual was at least sixteen (16) years of age at the time of the
 10 alleged violation.

11 (b) The juvenile court does not have jurisdiction for an alleged
 12 violation of manufacturing or dealing in cocaine or a narcotic drug
 13 (IC 35-48-4-1), dealing in methamphetamine (IC 35-48-4-1.1), dealing
 14 in a schedule I, II, or III controlled substance (IC 35-48-4-2), or dealing
 15 in a schedule IV controlled substance (IC 35-48-4-3), if:

- 16 (1) the individual has a prior unrelated conviction under
- 17 IC 35-48-4-1, IC 35-48-4-1.1, IC 35-48-4-2, or IC 35-48-4-3; or
- 18 (2) the individual has a prior unrelated juvenile adjudication that,
- 19 if committed by an adult, would be a crime under IC 35-48-4-1,
- 20 IC 35-48-4-1.1, IC 35-48-4-2, or IC 35-48-4-3;

21 and the individual was at least sixteen (16) years of age at the time of
 22 the alleged violation.

23 (c) Once an individual described in subsection (a) or (b) has been
 24 charged with any crime listed in subsection (a) or (b), the court having
 25 adult criminal jurisdiction shall retain jurisdiction over the case even
 26 if the individual pleads guilty to or is convicted of a lesser included
 27 offense. A plea of guilty to or a conviction of a lesser included offense
 28 does not vest jurisdiction in the juvenile court.

29 SECTION 17. IC 31-34-1-3 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) A child is a child
 31 in need of services if, before the child becomes eighteen (18) years of
 32 age:

- 33 (1) the child is the victim of a sex offense under:
- 34 (A) IC 35-42-4-1;
- 35 (B) IC 35-42-4-2 (**repealed**);
- 36 (C) IC 35-42-4-3;
- 37 (D) IC 35-42-4-4;
- 38 (E) IC 35-42-4-7;
- 39 (F) IC 35-42-4-9;
- 40 (G) IC 35-45-4-1;
- 41 (H) IC 35-45-4-2;
- 42 (I) IC 35-46-1-3; or

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- 1 (J) the law of another jurisdiction, including a military court,
- 2 that is substantially equivalent to any of the offenses listed in
- 3 clauses (A) through (I); and
- 4 (2) the child needs care, treatment, or rehabilitation that:
- 5 (A) the child is not receiving; and
- 6 (B) is unlikely to be provided or accepted without the coercive
- 7 intervention of the court.
- 8 (b) A child is a child in need of services if, before the child becomes
- 9 eighteen (18) years of age:
- 10 (1) the child lives in the same household as another child who is
- 11 the victim of a sex offense under:
- 12 (A) IC 35-42-4-1;
- 13 (B) IC 35-42-4-2 (**repealed**);
- 14 (C) IC 35-42-4-3;
- 15 (D) IC 35-42-4-4;
- 16 (E) IC 35-42-4-7;
- 17 (F) IC 35-42-4-9;
- 18 (G) IC 35-45-4-1;
- 19 (H) IC 35-45-4-2;
- 20 (I) IC 35-46-1-3; or
- 21 (J) the law of another jurisdiction, including a military court,
- 22 that is substantially equivalent to any of the offenses listed in
- 23 clauses (A) through (I);
- 24 (2) the child lives in the same household as the adult who
- 25 committed the sex offense under subdivision (1) and the sex
- 26 offense resulted in a conviction or a judgment under
- 27 IC 31-34-11-2;
- 28 (3) the child needs care, treatment, or rehabilitation that:
- 29 (A) the child is not receiving; and
- 30 (B) is unlikely to be provided or accepted without the coercive
- 31 intervention of the court; and
- 32 (4) a caseworker assigned to provide services to the child:
- 33 (A) places the child in a program of informal adjustment or
- 34 other family or rehabilitative services based upon the existence
- 35 of the circumstances described in subdivisions (1) and (2) and
- 36 the assigned caseworker subsequently determines further
- 37 intervention is necessary; or
- 38 (B) determines that a program of informal adjustment or other
- 39 family or rehabilitative services is inappropriate.

40 SECTION 18. IC 31-35-3-4, AS AMENDED BY P.L.146-2008,
 41 SECTION 618, IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2011]: Sec. 4. If:

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- 1 (1) an individual is convicted of the offense of:
- 2 (A) murder (IC 35-42-1-1);
- 3 (B) causing suicide (IC 35-42-1-2);
- 4 (C) voluntary manslaughter (IC 35-42-1-3);
- 5 (D) involuntary manslaughter (IC 35-42-1-4);
- 6 (E) rape (IC 35-42-4-1);
- 7 (F) criminal deviate conduct (IC 35-42-4-2) **(repealed)**;
- 8 (G) child molesting (IC 35-42-4-3);
- 9 (H) child exploitation (IC 35-42-4-4);
- 10 (I) sexual misconduct with a minor (IC 35-42-4-9); or
- 11 (J) incest (IC 35-46-1-3); and
- 12 (2) the victim of the offense:
- 13 (A) was less than sixteen (16) years of age at the time of the
- 14 offense; and
- 15 (B) is:
- 16 (i) the individual's biological or adoptive child; or
- 17 (ii) the child of a spouse of the individual who has
- 18 committed the offense;

19 the attorney for the department, the child's guardian ad litem, or the
 20 court appointed special advocate may file a petition with the juvenile
 21 or probate court to terminate the parent-child relationship of the
 22 individual who has committed the offense with the victim of the
 23 offense, the victim's siblings, or any biological or adoptive child of that
 24 individual.

25 SECTION 19. IC 31-37-19-9, AS AMENDED BY P.L.173-2006,
 26 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2011]: Sec. 9. (a) This section applies if a child is a delinquent
 28 child under IC 31-37-1.

29 (b) After a juvenile court makes a determination under IC 11-8-8-5,
 30 the juvenile court may, in addition to an order under section 6 of this
 31 chapter, and if the child:

- 32 (1) is at least thirteen (13) years of age and less than sixteen (16)
- 33 years of age; and
- 34 (2) committed an act that, if committed by an adult, would be:
- 35 (A) murder (IC 35-42-1-1);
- 36 (B) kidnapping (IC 35-42-3-2);
- 37 (C) rape (IC 35-42-4-1);
- 38 (D) criminal deviate conduct (IC 35-42-4-2) **(repealed)**; or
- 39 (E) robbery (IC 35-42-5-1) if the robbery was committed while
- 40 armed with a deadly weapon or if the robbery resulted in
- 41 bodily injury or serious bodily injury;
- 42 order wardship of the child to the department of correction for a fixed

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1 period that is not longer than the date the child becomes eighteen (18)
2 years of age, subject to IC 11-10-2-10.

3 (c) Notwithstanding IC 11-10-2-5, the department of correction may
4 not reduce the period ordered under this section (or
5 IC 31-6-4-15.9(b)(8) before its repeal).

6 SECTION 20. IC 33-37-5-12 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. The court shall
8 order a person to pay a child abuse prevention fee of one hundred
9 dollars (\$100) to the clerk in each criminal action in which:

- 10 (1) the person is found to have committed the offense of:
 - 11 (A) murder (IC 35-42-1-1);
 - 12 (B) causing suicide (IC 35-42-1-2);
 - 13 (C) voluntary manslaughter (IC 35-42-1-3);
 - 14 (D) reckless homicide (IC 35-42-1-5);
 - 15 (E) battery (IC 35-42-2-1);
 - 16 (F) rape (IC 35-42-4-1);
 - 17 (G) criminal deviate conduct (IC 35-42-4-2) **(repealed)**;
 - 18 (H) child molesting (IC 35-42-4-3);
 - 19 (I) child exploitation (IC 35-42-4-4);
 - 20 (J) vicarious sexual gratification (IC 35-42-4-5);
 - 21 (K) child solicitation (IC 35-42-4-6);
 - 22 (L) incest (IC 35-46-1-3);
 - 23 (M) neglect of a dependent (IC 35-46-1-4);
 - 24 (N) child selling (IC 35-46-1-4); or
 - 25 (O) child seduction (IC 35-42-4-7); and
- 26 (2) the victim of the offense is less than eighteen (18) years of
27 age.

28 SECTION 21. IC 33-37-5-23 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 23. (a) This section
30 applies to criminal actions.

31 (b) The court shall assess a sexual assault victims assistance fee of
32 at least two hundred fifty dollars (\$250) and not more than one
33 thousand dollars (\$1,000) against an individual convicted in Indiana of
34 any of the following offenses:

- 35 (1) Rape (IC 35-42-4-1).
- 36 (2) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.
- 37 (3) Child molesting (IC 35-42-4-3).
- 38 (4) Child exploitation (IC 35-42-4-4(b)).
- 39 (5) Vicarious sexual gratification (IC 35-42-4-5).
- 40 (6) Child solicitation (IC 35-42-4-6).
- 41 (7) Child seduction (IC 35-42-4-7).
- 42 (8) Sexual battery (IC 35-42-4-8).

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1 (9) Sexual misconduct with a minor as a Class A or Class B
2 felony (IC 35-42-4-9).

3 (10) Incest (IC 35-46-1-3).

4 SECTION 22. IC 33-39-1-9 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. A prosecuting
6 attorney who charges a person with committing any of the following
7 shall inform the person's employer of the charge, unless the prosecuting
8 attorney determines that the person charged does not work with
9 children:

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

12 (2) Criminal deviate conduct (IC 35-42-4-2) (**repealed**), if the
13 victim is less than eighteen (18) years of age.

14 (3) Child molesting (IC 35-42-4-3).

15 (4) Child exploitation (IC 35-42-4-4(b)).

16 (5) Vicarious sexual gratification (IC 35-42-4-5).

17 (6) Child solicitation (IC 35-42-4-6).

18 (7) Child seduction (IC 35-42-4-7).

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

21 SECTION 23. IC 35-38-1-7.5, AS AMENDED BY P.L.216-2007,
22 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2011]: Sec. 7.5. (a) As used in this section, "sexually violent
24 predator" means a person who suffers from a mental abnormality or
25 personality disorder that makes the individual likely to repeatedly
26 commit a sex offense (as defined in IC 11-8-8-5.2). The term includes
27 a person convicted in another jurisdiction who is identified as a
28 sexually violent predator under IC 11-8-8-20. The term does not
29 include a person no longer considered a sexually violent predator under
30 subsection (g).

31 (b) A person who:

32 (1) being at least eighteen (18) years of age, commits an offense
33 described in:

34 (A) IC 35-42-4-1;

35 (B) IC 35-42-4-2 (**repealed**);

36 (C) IC 35-42-4-3 as a Class A or Class B felony;

37 (D) IC 35-42-4-5(a)(1);

38 (E) IC 35-42-4-5(a)(2);

39 (F) IC 35-42-4-5(a)(3);

40 (G) IC 35-42-4-5(b)(1) as a Class A or Class B felony;

41 (H) IC 35-42-4-5(b)(2);

42 (I) IC 35-42-4-5(b)(3) as a Class A or Class B felony;

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1 (J) an attempt or conspiracy to commit a crime listed in
 2 clauses (A) through (I); or
 3 (K) a crime under the laws of another jurisdiction, including
 4 a military court, that is substantially equivalent to any of the
 5 offenses listed in clauses (A) through (J);
 6 (2) commits a sex offense (as defined in IC 11-8-8-5.2) while
 7 having a previous unrelated conviction for a sex offense for which
 8 the person is required to register as a sex or violent offender under
 9 IC 11-8-8;
 10 (3) commits a sex offense (as defined in IC 11-8-8-5.2) while
 11 having had a previous unrelated adjudication as a delinquent child
 12 for an act that would be a sex offense if committed by an adult, if,
 13 after considering expert testimony, a court finds by clear and
 14 convincing evidence that the person is likely to commit an
 15 additional sex offense; or
 16 (4) commits a sex offense (as defined in IC 11-8-8-5.2) while
 17 having had a previous unrelated adjudication as a delinquent child
 18 for an act that would be a sex offense if committed by an adult, if
 19 the person was required to register as a sex or violent offender
 20 under IC 11-8-8-5(b)(2);
 21 is a sexually violent predator. Except as provided in subsection (g) or
 22 (h), a person is a sexually violent predator by operation of law if an
 23 offense committed by the person satisfies the conditions set forth in
 24 subdivision (1) or (2) and the person was released from incarceration,
 25 secure detention, or probation for the offense after June 30, 1994.
 26 (c) This section applies whenever a court sentences a person or a
 27 juvenile court issues a dispositional decree for a sex offense (as defined
 28 in IC 11-8-8-5.2) for which the person is required to register with the
 29 local law enforcement authority under IC 11-8-8.
 30 (d) At the sentencing hearing, the court shall indicate on the record
 31 whether the person has been convicted of an offense that makes the
 32 person a sexually violent predator under subsection (b).
 33 (e) If a person is not a sexually violent predator under subsection
 34 (b), the prosecuting attorney may request the court to conduct a hearing
 35 to determine whether the person (including a child adjudicated to be a
 36 delinquent child) is a sexually violent predator under subsection (a). If
 37 the court grants the motion, the court shall appoint two (2)
 38 psychologists or psychiatrists who have expertise in criminal
 39 behavioral disorders to evaluate the person and testify at the hearing.
 40 After conducting the hearing and considering the testimony of the two
 41 (2) psychologists or psychiatrists, the court shall determine whether the
 42 person is a sexually violent predator under subsection (a). A hearing

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1 conducted under this subsection may be combined with the person's
2 sentencing hearing.

3 (f) If a person is a sexually violent predator:

4 (1) the person is required to register with the local law
5 enforcement authority as provided in IC 11-8-8; and

6 (2) the court shall send notice to the department of correction.

7 (g) This subsection does not apply to a person who has two (2) or
8 more unrelated convictions for an offense described in IC 11-8-8-4.5
9 for which the person is required to register under IC 11-8-8. A person
10 who is a sexually violent predator may petition the court to consider
11 whether the person should no longer be considered a sexually violent
12 predator. The person may file a petition under this subsection not
13 earlier than ten (10) years after:

14 (1) the sentencing court or juvenile court makes its determination
15 under subsection (e); or

16 (2) the person is released from incarceration or secure detention.

17 A person may file a petition under this subsection not more than one
18 (1) time per year. A court may dismiss a petition filed under this
19 subsection or conduct a hearing to determine if the person should no
20 longer be considered a sexually violent predator. If the court conducts
21 a hearing, the court shall appoint two (2) psychologists or psychiatrists
22 who have expertise in criminal behavioral disorders to evaluate the
23 person and testify at the hearing. After conducting the hearing and
24 considering the testimony of the two (2) psychologists or psychiatrists,
25 the court shall determine whether the person should no longer be
26 considered a sexually violent predator under subsection (a). If a court
27 finds that the person should no longer be considered a sexually violent
28 predator, the court shall send notice to the department of correction that
29 the person is no longer considered a sexually violent predator.
30 Notwithstanding any other law, a condition imposed on a person due
31 to the person's status as a sexually violent predator, including lifetime
32 parole or GPS monitoring, does not apply to a person no longer
33 considered a sexually violent predator.

34 (h) A person is not a sexually violent predator by operation of law
35 under subsection (b)(1) if all of the following conditions are met:

36 (1) The victim was not less than twelve (12) years of age at the
37 time the offense was committed.

38 (2) The person is not more than four (4) years older than the
39 victim.

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

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1 relationship.

2 (4) The offense committed by the person was not any of the
3 following:

4 (A) Rape (IC 35-42-4-1).

5 (B) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.

6 (C) An offense committed by using or threatening the use of
7 deadly force or while armed with a deadly weapon.

8 (D) An offense that results in serious bodily injury.

9 (E) An offense that is facilitated by furnishing the victim,
10 without the victim's knowledge, with a drug (as defined in
11 IC 16-42-19-2(1)) or a controlled substance (as defined in
12 IC 35-48-1-9) or knowing that the victim was furnished with
13 the drug or controlled substance without the victim's
14 knowledge.

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

18 (6) The person did not have a position of authority or substantial
19 influence over the victim.

20 (7) The court finds that the person should not be considered a
21 sexually violent predator.

22 SECTION 24. IC 35-38-2-2.5, AS AMENDED BY P.L.216-2007,
23 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2011]: Sec. 2.5. (a) As used in this section, "offender" means
25 an individual convicted of a sex offense.

26 (b) As used in this section, "sex offense" means any of the
27 following:

28 (1) Rape (IC 35-42-4-1).

29 (2) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.

30 (3) Child molesting (IC 35-42-4-3).

31 (4) Child exploitation (IC 35-42-4-4(b)).

32 (5) Vicarious sexual gratification (IC 35-42-4-5).

33 (6) Child solicitation (IC 35-42-4-6).

34 (7) Child seduction (IC 35-42-4-7).

35 (8) Sexual battery (IC 35-42-4-8).

36 (9) Sexual misconduct with a minor as a felony (IC 35-42-4-9).

37 (10) Incest (IC 35-46-1-3).

38 (c) A condition of remaining on probation or parole after conviction
39 for a sex offense is that the offender not reside within one (1) mile of
40 the residence of the victim of the offender's sex offense.

41 (d) An offender:

42 (1) who will be placed on probation shall provide the sentencing

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1 court and the probation department with the address where the
 2 offender intends to reside during the period of probation:
 3 (A) at the time of sentencing if the offender will be placed on
 4 probation without first being incarcerated; or
 5 (B) before the offender's release from incarceration if the
 6 offender will be placed on probation after completing a term
 7 of incarceration; or
 8 (2) who will be placed on parole shall provide the parole board
 9 with the address where the offender intends to reside during the
 10 period of parole.
 11 (e) An offender, while on probation or parole, may not establish a
 12 new residence within one (1) mile of the residence of the victim of the
 13 offender's sex offense unless the offender first obtains a waiver from
 14 the:
 15 (1) court, if the offender is placed on probation; or
 16 (2) parole board, if the offender is placed on parole;
 17 for the change of address under subsection (f).
 18 (f) The court or parole board may waive the requirement set forth in
 19 subsection (c) only if the court or parole board, at a hearing at which
 20 the offender is present and of which the prosecuting attorney has been
 21 notified, determines that:
 22 (1) the offender has successfully completed a sex offender
 23 treatment program during the period of probation or parole;
 24 (2) the offender is in compliance with all terms of the offender's
 25 probation or parole; and
 26 (3) good cause exists to allow the offender to reside within one (1)
 27 mile of the residence of the victim of the offender's sex offense.
 28 However, the court or parole board may not grant a waiver under this
 29 subsection if the offender is a sexually violent predator under
 30 IC 35-38-1-7.5 or if the offender is an offender against children under
 31 IC 35-42-4-11.
 32 (g) If the court or parole board grants a waiver under subsection (f),
 33 the court or parole board shall state in writing the reasons for granting
 34 the waiver. The court's written statement of its reasons shall be
 35 incorporated into the record.
 36 (h) The address of the victim of the offender's sex offense is
 37 confidential even if the court or parole board grants a waiver under
 38 subsection (f).
 39 SECTION 25. IC 35-41-1-19.3, AS ADDED BY P.L.125-2007,
 40 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2011]: Sec. 19.3. "Offense relating to a criminal sexual act"
 42 means the following:

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- 1 (1) Rape (IC 35-42-4-1).
 - 2 (2) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.
 - 3 (3) Child molesting (IC 35-42-4-3).
 - 4 (4) Child seduction (IC 35-42-4-7).
 - 5 (5) Prostitution (IC 35-45-4-2).
 - 6 (6) Patronizing a prostitute (IC 35-45-4-3).
 - 7 (7) Incest (IC 35-46-1-3).
 - 8 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).
- 9 SECTION 26. IC 35-42-4-1 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) Except as
 11 provided in subsection (b), a person who knowingly or intentionally has
 12 sexual intercourse with a member of the opposite sex **or knowingly or**
 13 **intentionally causes another person to perform or submit to**
 14 **deviate sexual conduct** when:
 15 (1) the other person is compelled by force or imminent threat of
 16 force;
 17 (2) the other person is unaware that the sexual intercourse **or**
 18 **deviate sexual conduct** is occurring; or
 19 (3) the other person is so mentally disabled or deficient that
 20 consent to sexual intercourse **or deviate sexual conduct** cannot
 21 be given;
 22 commits rape, a Class B felony.
 23 (b) An offense described in subsection (a) is a Class A felony if:
 24 (1) it is committed by using or threatening the use of deadly force;
 25 (2) it is committed while armed with a deadly weapon;
 26 (3) it results in serious bodily injury to a person other than a
 27 defendant; or
 28 (4) the commission of the offense is facilitated by furnishing the
 29 victim, without the victim's knowledge, with a drug (as defined in
 30 IC 16-42-19-2(1)) or a controlled substance (as defined in
 31 IC 35-48-1-9) or knowing that the victim was furnished with the
 32 drug or controlled substance without the victim's knowledge.
 33 SECTION 27. IC 35-47-4-5, AS AMENDED BY P.L.151-2006,
 34 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2011]: Sec. 5. (a) As used in this section, "serious violent
 36 felon" means a person who has been convicted of:
 37 (1) committing a serious violent felony in:
 38 (A) Indiana; or
 39 (B) any other jurisdiction in which the elements of the crime
 40 for which the conviction was entered are substantially similar
 41 to the elements of a serious violent felony; or
 42 (2) attempting to commit or conspiring to commit a serious

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- 1 violent felony in:
- 2 (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2;
- 3 or
- 4 (B) any other jurisdiction in which the elements of the crime
- 5 for which the conviction was entered are substantially similar
- 6 to the elements of attempting to commit or conspiring to
- 7 commit a serious violent felony.
- 8 (b) As used in this section, "serious violent felony" means:
- 9 (1) murder (IC 35-42-1-1);
- 10 (2) voluntary manslaughter (IC 35-42-1-3);
- 11 (3) reckless homicide not committed by means of a vehicle
- 12 (IC 35-42-1-5);
- 13 (4) battery as a:
- 14 (A) Class A felony (IC 35-42-2-1(a)(5));
- 15 (B) Class B felony (IC 35-42-2-1(a)(4)); or
- 16 (C) Class C felony (IC 35-42-2-1(a)(3));
- 17 (5) aggravated battery (IC 35-42-2-1.5);
- 18 (6) kidnapping (IC 35-42-3-2);
- 19 (7) criminal confinement (IC 35-42-3-3);
- 20 (8) rape (IC 35-42-4-1);
- 21 (9) criminal deviate conduct (IC 35-42-4-2) **(repealed)**;
- 22 (10) child molesting (IC 35-42-4-3);
- 23 (11) sexual battery as a Class C felony (IC 35-42-4-8);
- 24 (12) robbery (IC 35-42-5-1);
- 25 (13) carjacking (IC 35-42-5-2);
- 26 (14) arson as a Class A felony or Class B felony
- 27 (IC 35-43-1-1(a));
- 28 (15) burglary as a Class A felony or Class B felony
- 29 (IC 35-43-2-1);
- 30 (16) assisting a criminal as a Class C felony (IC 35-44-3-2);
- 31 (17) resisting law enforcement as a Class B felony or Class C
- 32 felony (IC 35-44-3-3);
- 33 (18) escape as a Class B felony or Class C felony (IC 35-44-3-5);
- 34 (19) trafficking with an inmate as a Class C felony
- 35 (IC 35-44-3-9);
- 36 (20) criminal gang intimidation (IC 35-45-9-4);
- 37 (21) stalking as a Class B felony or Class C felony
- 38 (IC 35-45-10-5);
- 39 (22) incest (IC 35-46-1-3);
- 40 (23) dealing in or manufacturing cocaine or a narcotic drug
- 41 (IC 35-48-4-1);
- 42 (24) dealing in methamphetamine (IC 35-48-4-1.1);

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- 1 (25) dealing in a schedule I, II, or III controlled substance
 2 (IC 35-48-4-2);
 3 (26) dealing in a schedule IV controlled substance (IC 35-48-4-3);
 4 or
 5 (27) dealing in a schedule V controlled substance (IC 35-48-4-4).
 6 (c) A serious violent felon who knowingly or intentionally possesses
 7 a firearm commits unlawful possession of a firearm by a serious violent
 8 felon, a Class B felony.
 9 SECTION 28. IC 35-50-1-2, AS AMENDED BY P.L.126-2008,
 10 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2011]: Sec. 2. (a) As used in this section, "crime of violence"
 12 means the following:
 13 (1) Murder (IC 35-42-1-1).
 14 (2) Attempted murder (IC 35-41-5-1).
 15 (3) Voluntary manslaughter (IC 35-42-1-3).
 16 (4) Involuntary manslaughter (IC 35-42-1-4).
 17 (5) Reckless homicide (IC 35-42-1-5).
 18 (6) Aggravated battery (IC 35-42-2-1.5).
 19 (7) Kidnapping (IC 35-42-3-2).
 20 (8) Rape (IC 35-42-4-1).
 21 (9) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.
 22 (10) Child molesting (IC 35-42-4-3).
 23 (11) Sexual misconduct with a minor as a Class A felony under
 24 IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2).
 25 (12) Robbery as a Class A felony or a Class B felony
 26 (IC 35-42-5-1).
 27 (13) Burglary as a Class A felony or a Class B felony
 28 (IC 35-43-2-1).
 29 (14) Operating a motor vehicle while intoxicated causing death
 30 (IC 9-30-5-5).
 31 (15) Operating a motor vehicle while intoxicated causing serious
 32 bodily injury to another person (IC 9-30-5-4).
 33 (16) Resisting law enforcement as a felony (IC 35-44-3-3).
 34 (b) As used in this section, "episode of criminal conduct" means
 35 offenses or a connected series of offenses that are closely related in
 36 time, place, and circumstance.
 37 (c) Except as provided in subsection (d) or (e), the court shall
 38 determine whether terms of imprisonment shall be served concurrently
 39 or consecutively. The court may consider the:
 40 (1) aggravating circumstances in IC 35-38-1-7.1(a); and
 41 (2) mitigating circumstances in IC 35-38-1-7.1(b);
 42 in making a determination under this subsection. The court may order

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1 terms of imprisonment to be served consecutively even if the sentences
 2 are not imposed at the same time. However, except for crimes of
 3 violence, the total of the consecutive terms of imprisonment, exclusive
 4 of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to
 5 which the defendant is sentenced for felony convictions arising out of
 6 an episode of criminal conduct shall not exceed the advisory sentence
 7 for a felony which is one (1) class of felony higher than the most
 8 serious of the felonies for which the person has been convicted.

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

11 (1) before the date the person is discharged from probation,
 12 parole, or a term of imprisonment imposed for the first crime; or

13 (2) while the person is released:

14 (A) upon the person's own recognizance; or

15 (B) on bond;

16 the terms of imprisonment for the crimes shall be served consecutively,
 17 regardless of the order in which the crimes are tried and sentences are
 18 imposed.

19 (e) If the factfinder determines under IC 35-50-2-11 that a person
 20 used a firearm in the commission of the offense for which the person
 21 was convicted, the term of imprisonment for the underlying offense and
 22 the additional term of imprisonment imposed under IC 35-50-2-11
 23 must be served consecutively.

24 SECTION 29. IC 35-50-2-2, AS AMENDED BY P.L.64-2008,
 25 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2011]: Sec. 2. (a) The court may suspend any part of a
 27 sentence for a felony, except as provided in this section or in section
 28 2.1 of this chapter.

29 (b) Except as provided in subsection (i), with respect to the
 30 following crimes listed in this subsection, the court may suspend only
 31 that part of the sentence that is in excess of the minimum sentence,
 32 unless the court has approved placement of the offender in a forensic
 33 diversion program under IC 11-12-3.7:

34 (1) The crime committed was a Class A felony or Class B felony
 35 and the person has a prior unrelated felony conviction.

36 (2) The crime committed was a Class C felony and less than seven
 37 (7) years have elapsed between the date the person was
 38 discharged from probation, imprisonment, or parole, whichever
 39 is later, for a prior unrelated felony conviction and the date the
 40 person committed the Class C felony for which the person is
 41 being sentenced.

42 (3) The crime committed was a Class D felony and less than three

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1 (3) years have elapsed between the date the person was
 2 discharged from probation, imprisonment, or parole, whichever
 3 is later, for a prior unrelated felony conviction and the date the
 4 person committed the Class D felony for which the person is
 5 being sentenced. However, the court may suspend the minimum
 6 sentence for the crime only if the court orders home detention
 7 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
 8 sentence specified for the crime under this chapter.

9 (4) The felony committed was:

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

11 (B) battery (IC 35-42-2-1) with a deadly weapon or battery
 12 causing death;

13 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

14 (D) kidnapping (IC 35-42-3-2);

15 (E) confinement (IC 35-42-3-3) with a deadly weapon;

16 (F) rape (IC 35-42-4-1) as a Class A felony;

17 (G) criminal deviate conduct (IC 35-42-4-2) (**repealed**) as a
 18 Class A felony;

19 (H) except as provided in subsection (i), child molesting
 20 (IC 35-42-4-3) as a Class A or Class B felony, unless:

21 (i) the felony committed was child molesting as a Class B
 22 felony;

23 (ii) the victim was not less than twelve (12) years old at the
 24 time the offense was committed;

25 (iii) the person is not more than four (4) years older than the
 26 victim, or more than five (5) years older than the victim if
 27 the relationship between the person and the victim was a
 28 dating relationship or an ongoing personal relationship (not
 29 including a family relationship);

30 (iv) the person did not have a position of authority or
 31 substantial influence over the victim; and

32 (v) the person has not committed another sex offense (as
 33 defined in IC 11-8-8-5.2) (including a delinquent act that
 34 would be a sex offense if committed by an adult) against any
 35 other person;

36 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
 37 with a deadly weapon;

38 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
 39 injury;

40 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
 41 or with a deadly weapon;

42 (L) resisting law enforcement (IC 35-44-3-3) with a deadly

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- 1 weapon;
- 2 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 3 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 4 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the
- 5 court finds the person possessed a firearm (as defined in
- 6 IC 35-47-1-5) at the time of the offense, or the person
- 7 delivered or intended to deliver to a person under eighteen
- 8 (18) years of age at least three (3) years junior to the person
- 9 and was on a school bus or within one thousand (1,000) feet
- 10 of:
- 11 (i) school property;
- 12 (ii) a public park;
- 13 (iii) a family housing complex; or
- 14 (iv) a youth program center;
- 15 (P) dealing in methamphetamine (IC 35-48-4-1.1) if the court
- 16 finds the person possessed a firearm (as defined in
- 17 IC 35-47-1-5) at the time of the offense, or the person
- 18 delivered or intended to deliver the methamphetamine pure or
- 19 adulterated to a person under eighteen (18) years of age at
- 20 least three (3) years junior to the person and was on a school
- 21 bus or within one thousand (1,000) feet of:
- 22 (i) school property;
- 23 (ii) a public park;
- 24 (iii) a family housing complex; or
- 25 (iv) a youth program center;
- 26 (Q) dealing in a schedule I, II, or III controlled substance
- 27 (IC 35-48-4-2) if the court finds the person possessed a firearm
- 28 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 29 person delivered or intended to deliver to a person under
- 30 eighteen (18) years of age at least three (3) years junior to the
- 31 person and was on a school bus or within one thousand (1,000)
- 32 feet of:
- 33 (i) school property;
- 34 (ii) a public park;
- 35 (iii) a family housing complex; or
- 36 (iv) a youth program center;
- 37 (R) an offense under IC 9-30-5 (operating a vehicle while
- 38 intoxicated) and the person who committed the offense has
- 39 accumulated at least two (2) prior unrelated convictions under
- 40 IC 9-30-5;
- 41 (S) an offense under IC 9-30-5-5(b) (operating a vehicle while
- 42 intoxicated causing death);

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1 (T) aggravated battery (IC 35-42-2-1.5); or

2 (U) disarming a law enforcement officer (IC 35-44-3-3.5).

3 (c) Except as provided in subsection (e), whenever the court
4 suspends a sentence for a felony, it shall place the person on probation
5 under IC 35-38-2 for a fixed period to end not later than the date that
6 the maximum sentence that may be imposed for the felony will expire.

7 (d) The minimum sentence for a person convicted of voluntary
8 manslaughter may not be suspended unless the court finds at the
9 sentencing hearing that the crime was not committed by means of a
10 deadly weapon.

11 (e) Whenever the court suspends that part of the sentence of a sex
12 or violent offender (as defined in IC 11-8-8-5) that is suspendible under
13 subsection (b), the court shall place the sex or violent offender on
14 probation under IC 35-38-2 for not more than ten (10) years.

15 (f) An additional term of imprisonment imposed under
16 IC 35-50-2-11 may not be suspended.

17 (g) A term of imprisonment imposed under IC 35-47-10-6 or
18 IC 35-47-10-7 may not be suspended if the commission of the offense
19 was knowing or intentional.

20 (h) A term of imprisonment imposed for an offense under
21 IC 35-48-4-6(b)(1)(B) or IC 35-48-4-6.1(b)(1)(B) may not be
22 suspended.

23 (i) If a person is:

24 (1) convicted of child molesting (IC 35-42-4-3) as a Class A
25 felony against a victim less than twelve (12) years of age; and

26 (2) at least twenty-one (21) years of age;

27 the court may suspend only that part of the sentence that is in excess of
28 thirty (30) years.

29 SECTION 30. IC 35-50-2-9, AS AMENDED BY P.L.99-2007,
30 SECTION 213, IS AMENDED TO READ AS FOLLOWS
31 [EFFECTIVE JULY 1, 2011]: Sec. 9. (a) The state may seek either a
32 death sentence or a sentence of life imprisonment without parole for
33 murder by alleging, on a page separate from the rest of the charging
34 instrument, the existence of at least one (1) of the aggravating
35 circumstances listed in subsection (b). In the sentencing hearing after
36 a person is convicted of murder, the state must prove beyond a
37 reasonable doubt the existence of at least one (1) of the aggravating
38 circumstances alleged. However, the state may not proceed against a
39 defendant under this section if a court determines at a pretrial hearing
40 under IC 35-36-9 that the defendant is an individual with mental
41 retardation.

42 (b) The aggravating circumstances are as follows:

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- 1 (1) The defendant committed the murder by intentionally killing
- 2 the victim while committing or attempting to commit any of the
- 3 following:
- 4 (A) Arson (IC 35-43-1-1).
- 5 (B) Burglary (IC 35-43-2-1).
- 6 (C) Child molesting (IC 35-42-4-3).
- 7 (D) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.
- 8 (E) Kidnapping (IC 35-42-3-2).
- 9 (F) Rape (IC 35-42-4-1).
- 10 (G) Robbery (IC 35-42-5-1).
- 11 (H) Carjacking (IC 35-42-5-2).
- 12 (I) Criminal gang activity (IC 35-45-9-3).
- 13 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 14 (2) The defendant committed the murder by the unlawful
- 15 detonation of an explosive with intent to injure person or damage
- 16 property.
- 17 (3) The defendant committed the murder by lying in wait.
- 18 (4) The defendant who committed the murder was hired to kill.
- 19 (5) The defendant committed the murder by hiring another person
- 20 to kill.
- 21 (6) The victim of the murder was a corrections employee,
- 22 probation officer, parole officer, community corrections worker,
- 23 home detention officer, fireman, judge, or law enforcement
- 24 officer, and either:
- 25 (A) the victim was acting in the course of duty; or
- 26 (B) the murder was motivated by an act the victim performed
- 27 while acting in the course of duty.
- 28 (7) The defendant has been convicted of another murder.
- 29 (8) The defendant has committed another murder, at any time,
- 30 regardless of whether the defendant has been convicted of that
- 31 other murder.
- 32 (9) The defendant was:
- 33 (A) under the custody of the department of correction;
- 34 (B) under the custody of a county sheriff;
- 35 (C) on probation after receiving a sentence for the commission
- 36 of a felony; or
- 37 (D) on parole;
- 38 at the time the murder was committed.
- 39 (10) The defendant dismembered the victim.
- 40 (11) The defendant burned, mutilated, or tortured the victim while
- 41 the victim was alive.
- 42 (12) The victim of the murder was less than twelve (12) years of

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1 age.

2 (13) The victim was a victim of any of the following offenses for

3 which the defendant was convicted:

4 (A) Battery as a Class D felony or as a Class C felony under

5 IC 35-42-2-1.

6 (B) Kidnapping (IC 35-42-3-2).

7 (C) Criminal confinement (IC 35-42-3-3).

8 (D) A sex crime under IC 35-42-4.

9 (14) The victim of the murder was listed by the state or known by

10 the defendant to be a witness against the defendant and the

11 defendant committed the murder with the intent to prevent the

12 person from testifying.

13 (15) The defendant committed the murder by intentionally

14 discharging a firearm (as defined in IC 35-47-1-5):

15 (A) into an inhabited dwelling; or

16 (B) from a vehicle.

17 (16) The victim of the murder was pregnant and the murder

18 resulted in the intentional killing of a fetus that has attained

19 viability (as defined in IC 16-18-2-365).

20 (c) The mitigating circumstances that may be considered under this

21 section are as follows:

22 (1) The defendant has no significant history of prior criminal

23 conduct.

24 (2) The defendant was under the influence of extreme mental or

25 emotional disturbance when the murder was committed.

26 (3) The victim was a participant in or consented to the defendant's

27 conduct.

28 (4) The defendant was an accomplice in a murder committed by

29 another person, and the defendant's participation was relatively

30 minor.

31 (5) The defendant acted under the substantial domination of

32 another person.

33 (6) The defendant's capacity to appreciate the criminality of the

34 defendant's conduct or to conform that conduct to the

35 requirements of law was substantially impaired as a result of

36 mental disease or defect or of intoxication.

37 (7) The defendant was less than eighteen (18) years of age at the

38 time the murder was committed.

39 (8) Any other circumstances appropriate for consideration.

40 (d) If the defendant was convicted of murder in a jury trial, the jury

41 shall reconvene for the sentencing hearing. If the trial was to the court,

42 or the judgment was entered on a guilty plea, the court alone shall

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1 conduct the sentencing hearing. The jury or the court may consider all
 2 the evidence introduced at the trial stage of the proceedings, together
 3 with new evidence presented at the sentencing hearing. The court shall
 4 instruct the jury concerning the statutory penalties for murder and any
 5 other offenses for which the defendant was convicted, the potential for
 6 consecutive or concurrent sentencing, and the availability of good time
 7 credit and clemency. The court shall instruct the jury that, in order for
 8 the jury to recommend to the court that the death penalty or life
 9 imprisonment without parole should be imposed, the jury must find at
 10 least one (1) aggravating circumstance beyond a reasonable doubt as
 11 described in subsection (1) and shall provide a special verdict form for
 12 each aggravating circumstance alleged. The defendant may present any
 13 additional evidence relevant to:

14 (1) the aggravating circumstances alleged; or

15 (2) any of the mitigating circumstances listed in subsection (c).

16 (e) For a defendant sentenced after June 30, 2002, except as
 17 provided by IC 35-36-9, if the hearing is by jury, the jury shall
 18 recommend to the court whether the death penalty or life imprisonment
 19 without parole, or neither, should be imposed. The jury may
 20 recommend:

21 (1) the death penalty; or

22 (2) life imprisonment without parole;

23 only if it makes the findings described in subsection (1). If the jury
 24 reaches a sentencing recommendation, the court shall sentence the
 25 defendant accordingly. After a court pronounces sentence, a
 26 representative of the victim's family and friends may present a
 27 statement regarding the impact of the crime on family and friends. The
 28 impact statement may be submitted in writing or given orally by the
 29 representative. The statement shall be given in the presence of the
 30 defendant.

31 (f) If a jury is unable to agree on a sentence recommendation after
 32 reasonable deliberations, the court shall discharge the jury and proceed
 33 as if the hearing had been to the court alone.

34 (g) If the hearing is to the court alone, except as provided by
 35 IC 35-36-9, the court shall:

36 (1) sentence the defendant to death; or

37 (2) impose a term of life imprisonment without parole;

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

39 (h) If a court sentences a defendant to death, the court shall order
 40 the defendant's execution to be carried out not later than one (1) year
 41 and one (1) day after the date the defendant was convicted. The
 42 supreme court has exclusive jurisdiction to stay the execution of a

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1 death sentence. If the supreme court stays the execution of a death
2 sentence, the supreme court shall order a new date for the defendant's
3 execution.

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

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

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

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

34 (k) A person who has been sentenced to death and who has
35 completed state post-conviction review proceedings may file a written
36 petition with the supreme court seeking to present new evidence
37 challenging the person's guilt or the appropriateness of the death
38 sentence if the person serves notice on the attorney general. The
39 supreme court shall determine, with or without a hearing, whether the
40 person has presented previously undiscovered evidence that
41 undermines confidence in the conviction or the death sentence. If
42 necessary, the supreme court may remand the case to the trial court for

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1 an evidentiary hearing to consider the new evidence and its effect on
 2 the person's conviction and death sentence. The supreme court may not
 3 make a determination in the person's favor nor make a decision to
 4 remand the case to the trial court for an evidentiary hearing without
 5 first providing the attorney general with an opportunity to be heard on
 6 the matter.

7 (l) Before a sentence may be imposed under this section, the jury,
 8 in a proceeding under subsection (e), or the court, in a proceeding
 9 under subsection (g), must find that:

10 (1) the state has proved beyond a reasonable doubt that at least
 11 one (1) of the aggravating circumstances listed in subsection (b)
 12 exists; and

13 (2) any mitigating circumstances that exist are outweighed by the
 14 aggravating circumstance or circumstances.

15 SECTION 31. IC 35-50-6-3.3, AS AMENDED BY P.L.42-2010,
 16 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2011]: Sec. 3.3. (a) In addition to any credit time a person
 18 earns under subsection (b) or section 3 of this chapter, a person earns
 19 credit time if the person:

20 (1) is in credit Class I;

21 (2) has demonstrated a pattern consistent with rehabilitation; and

22 (3) successfully completes requirements to obtain one (1) of the
 23 following:

24 (A) A general educational development (GED) diploma under
 25 IC 20-20-6, if the person has not previously obtained a high
 26 school diploma.

27 (B) A high school diploma, if the person has not previously
 28 obtained a general educational development (GED) diploma.

29 (C) An associate's degree from an approved postsecondary
 30 educational institution (as defined under IC 21-7-13-6(a)).

31 (D) A bachelor's degree from an approved postsecondary
 32 educational institution (as defined under IC 21-7-13-6(a)).

33 (b) In addition to any credit time that a person earns under
 34 subsection (a) or section 3 of this chapter, a person may earn credit
 35 time if, while confined by the department of correction, the person:

36 (1) is in credit Class I;

37 (2) demonstrates a pattern consistent with rehabilitation; and

38 (3) successfully completes requirements to obtain at least one (1)
 39 of the following:

40 (A) A certificate of completion of a career and technical
 41 education program approved by the department of correction.

42 (B) A certificate of completion of a substance abuse program

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approved by the department of correction.
(C) A certificate of completion of a literacy and basic life skills program approved by the department of correction.
(D) A certificate of completion of a reformatory program approved by the department of correction.

(c) The department of correction shall establish admissions criteria and other requirements for programs available for earning credit time under subsection (b). A person may not earn credit time under both subsections (a) and (b) for the same program of study.

(d) The amount of credit time a person may earn under this section is the following:

- (1) Six (6) months for completion of a state of Indiana general educational development (GED) diploma under IC 20-20-6.
- (2) One (1) year for graduation from high school.
- (3) One (1) year for completion of an associate's degree.
- (4) Two (2) years for completion of a bachelor's degree.
- (5) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more career and technical education programs approved by the department of correction.
- (6) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more substance abuse programs approved by the department of correction.
- (7) Not more than a total of six (6) months credit, as determined by the department of correction, for the completion of one (1) or more literacy and basic life skills programs approved by the department of correction.
- (8) Not more than a total of six (6) months credit time, as determined by the department of correction, for completion of one (1) or more reformatory programs approved by the department of correction. However, a person who is serving a sentence for an offense listed under IC 11-8-8-4.5 may not earn credit time under this subdivision.

However, a person who does not have a substance abuse problem that qualifies the person to earn credit in a substance abuse program may earn not more than a total of twelve (12) months of credit, as determined by the department of correction, for the completion of one (1) or more career and technical education programs approved by the department of correction. If a person earns more than six (6) months of credit for the completion of one (1) or more career and technical education programs, the person is ineligible to earn credit for the

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- 1 completion of one (1) or more substance abuse programs.
- 2 (e) Credit time earned by a person under this section is subtracted
- 3 from the release date that would otherwise apply to the person after
- 4 subtracting all other credit time earned by the person.
- 5 (f) A person does not earn credit time under subsection (a) unless
- 6 the person completes at least a portion of the degree requirements after
- 7 June 30, 1993.
- 8 (g) A person does not earn credit time under subsection (b) unless
- 9 the person completes at least a portion of the program requirements
- 10 after June 30, 1999.
- 11 (h) Credit time earned by a person under subsection (a) for a
- 12 diploma or degree completed before July 1, 1999, shall be subtracted
- 13 from:
- 14 (1) the release date that would otherwise apply to the person after
- 15 subtracting all other credit time earned by the person, if the
- 16 person has not been convicted of an offense described in
- 17 subdivision (2); or
- 18 (2) the period of imprisonment imposed on the person by the
- 19 sentencing court, if the person has been convicted of one (1) of
- 20 the following crimes:
- 21 (A) Rape (IC 35-42-4-1).
- 22 (B) Criminal deviate conduct (IC 35-42-4-2) **(repealed)**.
- 23 (C) Child molesting (IC 35-42-4-3).
- 24 (D) Child exploitation (IC 35-42-4-4(b)).
- 25 (E) Vicarious sexual gratification (IC 35-42-4-5).
- 26 (F) Child solicitation (IC 35-42-4-6).
- 27 (G) Child seduction (IC 35-42-4-7).
- 28 (H) Sexual misconduct with a minor as a Class A felony, Class
- 29 B felony, or Class C felony (IC 35-42-4-9).
- 30 (I) Incest (IC 35-46-1-3).
- 31 (J) Sexual battery (IC 35-42-4-8).
- 32 (K) Kidnapping (IC 35-42-3-2), if the victim is less than
- 33 eighteen (18) years of age.
- 34 (L) Criminal confinement (IC 35-42-3-3), if the victim is less
- 35 than eighteen (18) years of age.
- 36 (M) An attempt or a conspiracy to commit a crime listed in
- 37 clauses (A) through (L).
- 38 (i) The maximum amount of credit time a person may earn under
- 39 this section is the lesser of:
- 40 (1) four (4) years; or
- 41 (2) one-third (1/3) of the person's total applicable credit time.
- 42 (j) The amount of credit time earned under this section is reduced

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1 to the extent that application of the credit time would otherwise result
 2 in:
 3 (1) postconviction release (as defined in IC 35-40-4-6); or
 4 (2) assignment of the person to a community transition program;
 5 in less than forty-five (45) days after the person earns the credit time.
 6 (k) A person may earn credit time for multiple degrees at the same
 7 education level under subsection (d) only in accordance with guidelines
 8 approved by the department of correction. The department of
 9 correction may approve guidelines for proper sequence of education
 10 degrees under subsection (d).
 11 (l) A person may not earn credit time:
 12 (1) for a general educational development (GED) diploma if the
 13 person has previously earned a high school diploma; or
 14 (2) for a high school diploma if the person has previously earned
 15 a general educational development (GED) diploma.
 16 (m) A person may not earn credit time under this section if the
 17 person:
 18 (1) commits an offense listed in IC 11-8-8-4.5 while the person is
 19 required to register as a sex or violent offender under IC 11-8-8-7;
 20 and
 21 (2) is committed to the department of correction after being
 22 convicted of the offense listed in IC 11-8-8-4.5.
 23 SECTION 32. IC 35-42-4-2 IS REPEALED [EFFECTIVE JULY 1,
 24 2011].

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 530, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 530 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 6, Nays 0.

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