



February 18, 2011

# SENATE BILL No. 561

DIGEST OF SB 561 (Updated February 17, 2011 12:56 pm - DI 58)

**Citations Affected:** IC 4-13.1; IC 10-13; IC 11-8; IC 11-10; IC 11-12; IC 11-13; IC 11-14; IC 33-24; IC 33-37; IC 34-30; IC 35-32; IC 35-33; IC 35-34; IC 35-38; IC 35-41; IC 35-43; IC 35-48; IC 35-50; IC 36-2; noncode.

**Synopsis:** Corrections and sentencing. Requires the department of correction to: (1) determine the average daily marginal cost of incarcerating an offender; (2) determine the average length of stay for a Class D felony offender in the department; and (3) administer an incentive and disincentive program for counties to reduce the number of Class D felony offenders committed to the department. Provides that the local rehabilitation incentive is to be made from the marginal savings realized by the department as a result of the counties committing fewer Class D felony offenders to the department. Requires each county to establish a county offender fund. Requires the judicial conference to adopt rules concerning swift and certain sanctions that a probation officer may use in supervising persons on probation. Requires the department of correction to: (1) supervise parolees who were sentenced by a court in Indiana for murder, a Class A felony, a sex offense, or incest; (2) assist all parolees sentenced by a court in Indiana; and (3) supervise and assist out-of-state parolees accepted under an interstate compact as required by the interstate compact. Provides that when a court imposes a sentence on a specified type of offender, the court shall suspend part of the sentence and require the  
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**Effective:** June 30, 2011; July 1, 2011.

**Steele, Bray, Hume, Head, Taylor,  
Charbonneau**

January 20, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.  
February 15, 2011, amended, reported favorably — Do Pass; pursuant to Senate Rule 68(b), reassigned to Committee on Appropriations.  
February 17, 2011, amended, reported favorably — Do Pass.

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offender to serve the suspended period on probation, in a community corrections program, or in a problem solving court program. Requires the board of directors of the judicial conference of Indiana to adopt rules to establish standards of probation supervision provided by probation departments based on validated risk assessments of offenders. Requires local and state community corrections programs to use services, programs, and practices that reduce recidivism rates, as demonstrated by scientific research, among persons who participate in community corrections programs. Requires community corrections boards to coordinate or operate educational, mental health, drug or alcohol abuse counseling, housing, and supervision services for persons participating in community corrections programs. Provides that money received by a community corrections program or community transition program from the state may be used only to provide community corrections or community transition services for persons who have been charged with or convicted of a crime. Provides that any user fees collected: (1) by a community corrections program that is funded in whole or in part by money received from the state; and (2) from persons who have been convicted of a felony; may be used only to provide services for persons who have been charged with or convicted of a crime. Provides that if the department of correction establishes or contracts for the establishment of a community corrections program, the program may provide services only for persons who have been charged with or convicted of a crime. Provides that any home detention user fees collected: (1) by a community corrections program that provides supervision of home detention and is funded in whole or in part by money received from the state; and (2) from persons who have been convicted of a felony; may be used only to provide home detention services for persons who have been charged with or convicted of a crime. Removes certain Class D felonies from the list of felonies for which a court may suspend only the part of the sentence that exceeds the minimum sentence. Repeals the statute prohibiting the suspension of certain felony sentences if the person has a juvenile record. Removes certain habitual traffic violator statutes from the list of crimes that are not suspendible. Defines "defraud" for purposes of criminal law. Makes theft: (1) a Class A misdemeanor if the amount of property involved in the theft is less than \$750; (2) a Class D felony if the amount is between \$750 and \$50,000 or if the person has a prior conviction; and (3) a Class C felony if the amount of property is at least \$50,000. Removes provisions relating to receiving stolen property. Makes forgery a Class D felony. Consolidates certain duplicative provisions and makes enhancements to certain crimes more uniform. Requires the criminal code evaluation commission to study truth in sentencing, good time credit and earned credit time, and felony classifications during the 2011 interim. Makes certain changes to drug offenses. Makes an appropriation. Repeals auto theft (same offense as theft) and terroristic deception (consolidated in other provisions). Permits the amendment of a habitual offender charging information at any time if the defendant's rights are not harmed. Authorizes a law enforcement officer to arrest a person who has committed theft, even if the theft is not committed in the officer's presence. Requires a sentencing court to inform the department of correction if a person is a credit restricted felon, and makes a person who commits additional offenses a credit restricted felon. Requires a court to order the expungement of a person's arrest record if the person is acquitted. Permits a person who has committed a non-violent misdemeanor or Class D felony to have disclosure of the conviction restricted to criminal justice agencies if the person does not committed an additional felony for eight years. Provides that a person commits burglary if the person breaks and enters with the intent to commit theft. Provides that certain funds from pretrial diversion or deferral fees may only be used to fund GPS monitoring programs. Recommends that the

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criminal law and sentencing policy study committee study development of a criminal information package. (The introduced version of this bill was prepared by the criminal code evaluation commission.)

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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. 561

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure and to make an appropriation.

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

- 1 SECTION 1. IC 4-13.1-2-2, AS AMENDED BY P.L.2-2007,  
2 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]: Sec. 2. (a) The office shall do the following:  
4 (1) Develop and maintain overall strategy and architecture for the  
5 use of information technology in state government.  
6 (2) Review state agency budget requests and proposed contracts  
7 relating to information technology at the request of the budget  
8 agency.  
9 (3) Coordinate state information technology master planning.  
10 (4) Maintain an inventory of significant information technology  
11 resources and expenditures.  
12 (5) Manage a computer gateway to carry out or facilitate public,  
13 educational, and governmental functions.  
14 (6) Provide technical staff support services for state agencies.  
15 (7) Provide services that may be requested by the following:

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- 1 (A) The judicial department of state government.
- 2 (B) The legislative department of state government.
- 3 (C) A state educational institution.
- 4 (D) A political subdivision (as defined in IC 36-1-2-13).
- 5 (E) A body corporate and politic created by statute.
- 6 (F) An entity created by the state.
- 7 (8) Monitor trends and advances in information technology.
- 8 (9) Review projects, architecture, security, staffing, and
- 9 expenditures.
- 10 (10) Develop and maintain policies, procedures, and guidelines
- 11 for the effective and secure use of information technology in state
- 12 government.
- 13 (11) Advise the state personnel department on guidelines for
- 14 information technology staff for state agencies.
- 15 (12) Conduct periodic management reviews of information
- 16 technology activities within state agencies upon request.
- 17 (13) Seek funding for technology services from the following:
- 18 (A) Grants.
- 19 (B) Federal sources.
- 20 (C) Gifts, donations, and bequests.
- 21 (D) Partnerships with other governmental entities or the
- 22 private sector.
- 23 (E) Appropriations.
- 24 (F) Any other source of funds.
- 25 **(14) Certify, before July 1 of each year, that any technology**
- 26 **services program funded by the judicial technology and**
- 27 **automation project fund established by IC 33-24-6-12:**
- 28 **(A) shares and exchanges all information with any**
- 29 **independent provider of technology services; and**
- 30 **(B) complies with IC 33-24-6-3(a)(7) and IC 33-24-6-3(b).**
- 31 ~~(14)~~ **(15) Perform other information technology related functions**
- 32 **and duties as directed by the governor.**
- 33 (b) The office may adopt rules under IC 4-22-2 that are necessary
- 34 or appropriate in carrying out its powers and duties.
- 35 SECTION 2. IC 10-13-3-27, AS AMENDED BY P.L.44-2009,
- 36 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 37 JULY 1, 2011]: Sec. 27. (a) Except as provided in subsection (b) **or (c)**,
- 38 on request, a law enforcement agency shall release a limited criminal
- 39 history to or allow inspection of a limited criminal history by
- 40 noncriminal justice organizations or individuals only if the subject of
- 41 the request:
- 42 (1) has applied for employment with a noncriminal justice

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- 1 organization or individual;
- 2 (2) has applied for a license and has provided criminal history
- 3 data as required by law to be provided in connection with the
- 4 license;
- 5 (3) is a candidate for public office or a public official;
- 6 (4) is in the process of being apprehended by a law enforcement
- 7 agency;
- 8 (5) is placed under arrest for the alleged commission of a crime;
- 9 (6) has charged that the subject's rights have been abused
- 10 repeatedly by criminal justice agencies;
- 11 (7) is the subject of a judicial decision or determination with
- 12 respect to the setting of bond, plea bargaining, sentencing, or
- 13 probation;
- 14 (8) has volunteered services that involve contact with, care of, or
- 15 supervision over a child who is being placed, matched, or
- 16 monitored by a social services agency or a nonprofit corporation;
- 17 (9) is currently residing in a location designated by the
- 18 department of child services (established by IC 31-25-1-1) or by
- 19 a juvenile court as the out-of-home placement for a child at the
- 20 time the child will reside in the location;
- 21 (10) has volunteered services at a public school (as defined in
- 22 IC 20-18-2-15) or nonpublic school (as defined in IC 20-18-2-12)
- 23 that involve contact with, care of, or supervision over a student
- 24 enrolled in the school;
- 25 (11) is being investigated for welfare fraud by an investigator of
- 26 the division of family resources or a county office of the division
- 27 of family resources;
- 28 (12) is being sought by the parent locator service of the child
- 29 support bureau of the department of child services;
- 30 (13) is or was required to register as a sex or violent offender
- 31 under IC 11-8-8; or
- 32 (14) has been convicted of any of the following:
- 33 (A) Rape (IC 35-42-4-1), if the victim is less than eighteen
- 34 (18) years of age.
- 35 (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is
- 36 less than eighteen (18) years of age.
- 37 (C) Child molesting (IC 35-42-4-3).
- 38 (D) Child exploitation (IC 35-42-4-4(b)).
- 39 (E) Possession of child pornography (IC 35-42-4-4(c)).
- 40 (F) Vicarious sexual gratification (IC 35-42-4-5).
- 41 (G) Child solicitation (IC 35-42-4-6).
- 42 (H) Child seduction (IC 35-42-4-7).

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- 1 (I) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
- 2 (J) Incest (IC 35-46-1-3), if the victim is less than eighteen
- 3 (18) years of age.

4 However, limited criminal history information obtained from the  
 5 National Crime Information Center may not be released under this  
 6 section except to the extent permitted by the Attorney General of the  
 7 United States.

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

- 11 (1) Federally chartered or insured banking institutions.
- 12 (2) Officials of state and local government for any of the
- 13 following purposes:
  - 14 (A) Employment with a state or local governmental entity.
  - 15 (B) Licensing.
- 16 (3) Segments of the securities industry identified under 15 U.S.C.
- 17 78q(f)(2).

18 (c) **A law enforcement agency may not release a person's limited**  
 19 **criminal history information to a noncriminal justice organization**  
 20 **or an individual if a court has issued an order restricting disclosure**  
 21 **of the person's arrest records under IC 35-38-5-5.5.**

22 (d) Any person who knowingly or intentionally uses limited  
 23 criminal history for any purpose not specified under this section  
 24 commits a Class A misdemeanor.

25 SECTION 3. IC 11-8-1-3.1 IS ADDED TO THE INDIANA CODE  
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 27 1, 2011]: **Sec. 3.1. "Average daily marginal cost of incarcerating an**  
 28 **offender" means the average daily cost to the department to**  
 29 **commit one (1) additional offender to the department without**  
 30 **building additional beds as determined under IC 11-10-13-1(b).**

31 SECTION 4. IC 11-8-1-5.6 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 5.6. "Community**  
 33 **transition program commencement date" means the following:**

- 34 (1) Not earlier than sixty (60) days and not later than thirty (30)
- 35 days before an offender's expected release date, if the most
- 36 serious offense for which the person is committed is a Class D
- 37 felony.
- 38 (2) Not earlier than ninety (90) days and not later than thirty (30)
- 39 days before an offender's expected release date, if the most
- 40 serious offense for which the person is committed is a Class C
- 41 felony and subdivision (3) does not apply.
- 42 (3) Not earlier than one hundred twenty (120) days and not later

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1 than thirty (30) days before an offender's expected release date, if:  
 2 (A) the most serious offense for which the person is committed  
 3 is a Class C felony;  
 4 (B) all of the offenses for which the person was concurrently  
 5 or consecutively sentenced are offenses under IC 16-42-19 or  
 6 IC 35-48-4; and  
 7 (C) none of the offenses for which the person was concurrently  
 8 or consecutively sentenced are listed in ~~IC 35-50-2-2(b)(4)~~.  
 9 **IC 35-50-2-2(b)(3).**

10 (4) Not earlier than one hundred twenty (120) days and not later  
 11 than thirty (30) days before an offender's expected release date, if  
 12 the most serious offense for which the person is committed is a  
 13 Class A or Class B felony and subdivision (5) does not apply.

14 (5) Not earlier than one hundred eighty (180) days and not later  
 15 than thirty (30) days before an offender's expected release date, if:  
 16 (A) the most serious offense for which the person is committed  
 17 is a Class A or Class B felony;  
 18 (B) all of the offenses for which the person was concurrently  
 19 or consecutively sentenced are offenses under IC 16-42-19 or  
 20 IC 35-48-4; and  
 21 (C) none of the offenses for which the person was concurrently  
 22 or consecutively sentenced are listed in ~~IC 35-50-2-2(b)(4)~~.  
 23 **IC 35-50-2-2(b)(3).**

24 SECTION 5. IC 11-8-8-21, AS ADDED BY P.L.216-2007,  
 25 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 26 JULY 1, 2011]: Sec. 21. (a) The state sex and violent offender  
 27 administration fund is established to assist the department in carrying  
 28 out its duties under:  
 29 (1) IC 11-8-2-12.4 concerning the Indiana sex and violent  
 30 offender registry; **and**  
 31 (2) **IC 11-13-3-4 concerning GPS monitoring of sexually**  
 32 **violent predators and sex and violent offenders.**

33 The fund shall be administered by the department.

34 (b) The expenses of administering the fund shall be paid from  
 35 money in the fund.

36 (c) The fund consists of:  
 37 (1) grants;  
 38 (2) donations;  
 39 (3) appropriations;  
 40 (4) money from the annual sex or violent offender registration fee  
 41 (IC 36-2-13-5.6(a)(1)(A)); **and**  
 42 (5) money from the sex or violent offender address change fee

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1 (IC 36-2-13-5.6(a)(1)(B));  
 2 (6) money from pretrial diversion fees (IC 33-37-4-1(d)); and  
 3 (7) money from deferral fees (IC 33-37-4-2(c)).  
 4 (d) The treasurer of state shall invest the money in the fund not  
 5 currently needed to meet the obligations of the fund in the same  
 6 manner as other public money may be invested.  
 7 (e) Money in the fund is continually appropriated to carry out the  
 8 purposes of the fund. **However, money from pretrial diversion fees**  
 9 **and deferral fees may be used only for GPS monitoring of sexually**  
 10 **violent predators and sex and violent offenders.**  
 11 SECTION 6. IC 11-10-13-1 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) The department  
 13 shall develop a methodology for determining the average daily cost of  
 14 incarcerating an offender.  
 15 (b) **The department shall develop a methodology for**  
 16 **determining the average daily marginal cost of incarcerating an**  
 17 **offender. The costs must include the additional expenses of**  
 18 **providing food, clothing, and health care to a new offender. The**  
 19 **costs do not include the costs of new facilities or additional staff.**  
 20 (c) **The department shall annually determine the average length**  
 21 **of stay for a Class D felony offender in the department.**  
 22 SECTION 7. IC 11-10-16 IS ADDED TO THE INDIANA CODE  
 23 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2011]:  
 25 **Chapter 16. County Incentives for Class D Felony Offenders**  
 26 **Sec. 1. The department shall administer a local rehabilitation**  
 27 **incentive and disincentive program for counties to reduce the**  
 28 **number of Class D felony offenders committed to the department.**  
 29 **Sec. 2. (a) Before September 1, 2011, the department shall**  
 30 **establish a baseline average number of Class D felony offenders**  
 31 **that each county commits annually to the department based on the**  
 32 **2007, 2008, 2009, and 2010 calendar years.**  
 33 (b) **The department shall provide a local rehabilitation incentive**  
 34 **to each county that commits to the department fewer Class D**  
 35 **felony offenders than the baseline average established for that**  
 36 **county described in subsection (a) in one (1) calendar year.**  
 37 (c) **Before March 1 each year, the department shall calculate the**  
 38 **incentive described in subsection (b) using the following formula:**  
 39 **STEP ONE: Subtract the number of Class D felony offenders**  
 40 **a county commits to the department in a calendar year from**  
 41 **the baseline average for that county described in subsection**  
 42 **(a).**

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1           **STEP TWO: If the STEP ONE amount is not positive, the**  
2           **incentive amount is zero (0). Otherwise, multiply the number**  
3           **of offenders determined under STEP ONE by the average**  
4           **number of days of the length of stay for a Class D felony**  
5           **offender in the department as determined under**  
6           **IC 11-10-13-1(c).**

7           **STEP THREE: Multiply the amount determined under STEP**  
8           **TWO by the average daily marginal cost of incarcerating an**  
9           **offender determined under IC 11-10-13-1(b).**

10           **STEP FOUR: Multiply the amount determined under STEP**  
11           **THREE by fifty percent (50%).**

12           **(d) The department shall not consider a Class D felony offender**  
13           **whose:**

- 14           **(1) probation has been revoked;**
- 15           **(2) participation in a community corrections program has**  
16           **been terminated as a result of a violation of program**  
17           **requirements; or**
- 18           **(3) participation in a problem solving court has been**  
19           **terminated as a result of a violation of program requirements;**  
20           **in the calculations under this chapter.**

21           **Sec. 3. (a) Before June 1 each year, the local rehabilitation**  
22           **incentive described in section 2 of this chapter shall be made from**  
23           **the marginal savings realized by the department as a result of the**  
24           **counties committing fewer Class D felony offenders to the**  
25           **department and shall be distributed to a county's fiscal body,**  
26           **which shall redistribute the incentive to:**

- 27           **(1) programs that defray the expense of housing an offender**  
28           **in jail;**
- 29           **(2) probation programs;**
- 30           **(3) work release programs;**
- 31           **(4) community corrections programs; or**
- 32           **(5) problem solving courts.**

33           **The fiscal body shall give first priority to probation and**  
34           **community corrections programs, and second priority to problem**  
35           **solving courts and work release programs.**

36           **(b) If a county has a local community corrections advisory**  
37           **board, the local community corrections advisory board shall make**  
38           **a recommendation to the county's fiscal body regarding how local**  
39           **rehabilitation incentive funds should be distributed.**

40           **Sec. 4. (a) The department shall create a disincentive to each**  
41           **county that commits to the department more than ten (10) more**  
42           **Class D felony offenders than the baseline average established for**

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1 that county described in section 2(a) of this chapter in one (1)  
2 calendar year.

3 (b) Before March 1 each year, the department shall calculate the  
4 disincentive described in subsection (a) using the following  
5 formula:

6 STEP ONE: Subtract the baseline average for that county  
7 described in section 2(a) of this chapter from the number of  
8 Class D felony offenders a county commits to the department  
9 in a calendar year.

10 STEP TWO: If the STEP ONE amount is ten (10) or less, the  
11 disincentive amount is zero (0). Otherwise, multiply the  
12 number of offenders determined under STEP ONE by the  
13 average number of days of the length of stay for a Class D  
14 felony offender in the department as determined under  
15 IC 11-10-13-1(c).

16 STEP THREE: Multiply the amount determined under STEP  
17 TWO by the average daily marginal cost of incarcerating an  
18 offender as determined under IC 11-10-13-1(b).

19 STEP FOUR: Multiply the amount determined under STEP  
20 THREE by fifty percent (50%).

21 (c) The department shall not consider a Class D felony offender  
22 whose:

- 23 (1) probation has been revoked;
  - 24 (2) participation in a community corrections program has  
25 been terminated as a result of a violation of program  
26 requirements; or
  - 27 (3) participation in a problem solving court has been  
28 terminated as a result of a violation of program requirements;
- 29 in the calculations under this chapter.

30 Sec. 5. Before June 1 each year, the department shall withhold  
31 the amount of the disincentive described in section 4 of this chapter  
32 from the amount of money the department is required to deposit  
33 in a county's misdemeanor fund under IC 11-12-6.

34 Sec. 6. The department may adopt rules under IC 4-22-2 to  
35 implement this chapter.

36 SECTION 8. IC 11-12-1-2.5 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2.5. (a) The community  
38 corrections programs described in section 2 of this chapter ~~may include~~  
39 the following:

- 40 ~~(1) Residential or work release programs.~~
- 41 ~~(2) House arrest, home detention, and electronic monitoring~~  
42 ~~programs.~~

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- 1           (3) ~~Community restitution or service programs.~~
- 2           (4) ~~Victim-offender reconciliation programs.~~
- 3           (5) ~~Jail services programs.~~
- 4           (6) ~~Jail work crews.~~
- 5           (7) ~~Community work crews.~~
- 6           (8) ~~Juvenile detention alternative programs.~~
- 7           (9) ~~Day reporting programs.~~
- 8           (10) ~~Faith based programs.~~
- 9           (11) ~~Other community corrections programs approved by the~~
- 10          ~~department.~~

11          **shall use services, programs, and practices that reduce recidivism**  
 12          **rates, as demonstrated by scientific research, among persons who**  
 13          **participate in the community corrections programs.**

14          (b) The community corrections board ~~may~~ **shall** also coordinate ~~and~~  
 15          **or** operate educational, mental health, drug or alcohol abuse  
 16          counseling, housing, as a part of any ~~of these~~ programs, ~~or~~ **and**  
 17          supervision services for persons described in section 2 of this chapter.

18          SECTION 9. IC 11-12-2-1, AS AMENDED BY P.L.105-2010,  
 19          SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20          JULY 1, 2011]: Sec. 1. (a) For the purpose of encouraging counties to  
 21          develop a coordinated local corrections-criminal justice system and  
 22          providing effective alternatives to imprisonment at the state level, the  
 23          commissioner shall, out of funds appropriated for such purposes, make  
 24          grants to counties for the establishment and operation of community  
 25          corrections programs. Appropriations intended for this purpose:

- 26                (1) may not be used by the department for any other purpose; **and**
- 27                (2) **may be used by grant recipients only to provide**  
 28                **community corrections program services for persons who:**
  - 29                    (A) **have been convicted of crime; or**
  - 30                    (B) **are participating in a presentence community**  
 31                    **corrections program after having been charged with a**  
 32                    **crime.**

33          Money appropriated to the department of correction for the purpose of  
 34          making grants under this chapter and any financial aid payments  
 35          suspended under section 6 of this chapter do not revert to the state  
 36          general fund at the close of any fiscal year, but remain available to the  
 37          department of correction for its use in making grants under this chapter.

38          (b) The commissioner shall give priority in issuing community  
 39          corrections grants to programs that provide alternative sentencing  
 40          projects for persons with mental illness, addictive disorders, mental  
 41          retardation, and developmental disabilities.

42          SECTION 10. IC 11-12-2-5, AS AMENDED BY P.L.105-2010,

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1 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 2 JULY 1, 2011]: Sec. 5. (a) The department shall do the following:  
 3 (1) Provide consultation and technical assistance to counties to  
 4 aid in the development of community corrections plans.  
 5 (2) Provide training for community corrections personnel and  
 6 board members to the extent funds are available.  
 7 (3) Adopt under IC 4-22-2 rules governing application by  
 8 counties for financial aid under this chapter, including the content  
 9 of community corrections plans.  
 10 (4) Adopt under IC 4-22-2 rules governing the disbursement of  
 11 monies to a county and the county's certification of expenditures,  
 12 **including rules that:**  
 13 **(A) require that any money received from the state to fund**  
 14 **a community corrections program may be used only to**  
 15 **provide services for persons who:**  
 16 **(i) have been convicted of crime; or**  
 17 **(ii) are participating in a presentence community**  
 18 **corrections program after having been charged with a**  
 19 **crime; and**  
 20 **(B) require that any user fees collected:**  
 21 **(i) by a community corrections program that is funded**  
 22 **in whole or in part by money received from the state;**  
 23 **and**  
 24 **(ii) from persons who have been convicted of a felony;**  
 25 **may be used only to provide services for persons who have**  
 26 **been convicted of or charged with a crime.**  
 27 (5) Adopt under IC 4-22-2 minimum standards for the  
 28 establishment, operation, and evaluation of programs receiving  
 29 financial aid under this chapter. (These standards must be  
 30 sufficiently flexible to foster the development of new and  
 31 improved correctional practices.)  
 32 (6) Examine and either approve or disapprove applications for  
 33 financial aid. The department's approval or disapproval must be  
 34 based on this chapter and the rules adopted under this chapter.  
 35 (7) Keep the budget agency informed of the amount of  
 36 appropriation needed to adequately fund programs under this  
 37 chapter.  
 38 (8) Adopt under IC 4-22-2 a formula or other method of  
 39 determining a participating county's share of funds appropriated  
 40 for purposes of this chapter. This formula or method must be  
 41 approved by the budget agency before the formula is adopted and  
 42 must be designed to accurately reflect a county's correctional

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- 1 needs and ability to pay.
- 2 (9) Keep counties informed of money appropriated for the
- 3 purposes of this chapter.
- 4 (10) Provide an approved training curriculum for community
- 5 corrections field officers.
- 6 (11) Require community corrections programs to submit in
- 7 proposed budget requests an evaluation of the use of department
- 8 approved best practices for each community corrections program
- 9 component.
- 10 (b) The commissioner may do the following:
- 11 (1) Visit and inspect any program receiving financial aid under
- 12 this chapter.
- 13 (2) Require a participating county or program to submit
- 14 information or statistics pertinent to the review of applications
- 15 and programs.
- 16 (3) Expend up to three percent (3%) of the money appropriated to
- 17 the department for community correction grants to provide
- 18 technical assistance, consultation, and training to counties and to
- 19 monitor and evaluate program delivery.
- 20 (c) Notwithstanding any law prohibiting advance payments, the
- 21 department of correction may advance grant money to a county or
- 22 group of counties in order to assist a community corrections program.
- 23 However, not more than twenty-five percent (25%) of the amount
- 24 awarded to a county or group of counties may be paid in advance.
- 25 (d) The commissioner shall disburse no more funds to any county
- 26 under this chapter than are required to fund the community corrections
- 27 plan.
- 28 SECTION 11. IC 11-12-2-12 IS AMENDED TO READ AS
- 29 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) A community
- 30 corrections fund is established in each community having a community
- 31 corrections program. The fund shall be administered by the community
- 32 corrections advisory board in accordance with rules adopted by the
- 33 department under subsection (c). The expenses of administering the
- 34 fund shall be paid from money in the fund. Money in the fund at the
- 35 end of a fiscal year does not revert to any other fund. The fund consists
- 36 of fees deposited under subsection (b). Money in the fund may be used
- 37 only for the provision of community corrections program services,
- 38 including services allowed under IC 11-12-2-5(b)(3).
- 39 (b) In addition to user fees collected under IC 31-40, IC 35-38-2-1,
- 40 or any other user fee collected from a participant in a community
- 41 corrections program by an agency or program, a community corrections
- 42 program may collect from a participant a user fee assessed in

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1 accordance with rules adopted under subsection (c). Community  
2 corrections user fees collected under this section shall be deposited into  
3 the community corrections fund established by this section.

4 (c) The department shall adopt rules under IC 4-22-2 governing the  
5 following:

6 (1) The maximum amount that a community corrections program  
7 or a court may assess as a user fee under subsection (b) or  
8 IC 35-38-2.5-6.

9 (2) Administration by community corrections advisory boards of  
10 community corrections funds and the community corrections  
11 home detention fund, including criteria for expenditures from the  
12 funds.

13 **(3) A requirement that any user fees collected:**

14 **(A) by a community corrections program that is funded in**  
15 **whole or in part by money received from the state; and**

16 **(B) from persons who have been convicted of a felony;**  
17 **may be used only to provide services to a person who has been**  
18 **convicted of crime or is participating in a presentence**  
19 **community corrections program after having been charged**  
20 **with a crime.**

21 SECTION 12. IC 11-12-3-1 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. **(a)** The department  
23 may:

24 (1) establish and operate community corrections programs if these  
25 programs are not being provided at the local level; and

26 (2) contract with any public or private agency approved by the  
27 commissioner, or any combination of those agencies, for the  
28 provision of community based services to committed persons,  
29 including the furnishing of custody, supervision, care, training,  
30 and reintegration.

31 **(b) A community corrections program established or contracted**  
32 **for under subsection (a):**

33 **(1) shall use services, programs, and practices that reduce**  
34 **recidivism rates, as demonstrated by scientific research,**  
35 **among persons who participate in the community corrections**  
36 **program; and**

37 **(2) may provide services only for persons who have been**  
38 **convicted of a crime or are participating in a presentence**  
39 **community corrections program after having been charged**  
40 **with a crime.**

41 SECTION 13. IC 11-12-6-13 IS AMENDED TO READ AS  
42 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13. **Except as**

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1 **provided in IC 11-10-16-5**, before September 1 of each year after  
2 1998, the department shall deposit in the misdemeanor fund of each  
3 county the greatest of the following:

- 4 (1) The sum determined by multiplying the total amount
- 5 appropriated for the county misdemeanor fund by the county's
- 6 multiplier.
- 7 (2) The minimum allocation amount assigned to the county under
- 8 section 11.1(a) of this chapter.
- 9 (3) After state fiscal year 1999, the amount deposited by the
- 10 department in the misdemeanor fund for the county in state fiscal
- 11 year 1999.

12 SECTION 14. IC 11-12-7-2 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. The fund consists of:

- 14 (1) home detention user fees deposited into the fund under
- 15 IC 35-38-2.5-8;
- 16 (2) home detention supervision grants to the community
- 17 corrections program made by the department under IC 11-12-2-1
- 18 for the purpose of funding supervision of home detention by a
- 19 community corrections program **involving persons who have**
- 20 **been convicted of a crime or are participating in a**
- 21 **presentence community corrections program after having**
- 22 **been charged with a crime;** and
- 23 (3) amounts deposited into the fund under IC 11-12-1-3.

24 SECTION 15. IC 11-12-7-3 IS AMENDED TO READ AS  
25 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. A community  
26 corrections program that provides supervision of home detention under  
27 IC 35-38-2.5-5 shall annually submit a budget of its operating expenses  
28 for home detention supervision to the fiscal body of the county. Based  
29 on the budget submitted, the fiscal body of the county shall appropriate  
30 from the community corrections home detention fund amounts  
31 necessary to maintain supervision of home detention by the community  
32 corrections program. **However, any home detention user fees**  
33 **collected:**

- 34 (1) **by a community corrections program that:**
- 35 (A) **provides supervision of home detention under**
- 36 **IC 35-38-2.5-5; and**
- 37 (B) **is funded in whole or in part by money received from**
- 38 **the state; and**
- 39 (2) **from persons who have been convicted of a felony;**
- 40 **may be used only to provide home detention services for persons**
- 41 **who have been convicted of a crime or are participating in a**
- 42 **presentence community corrections program after having been**

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**charged with a crime.**

SECTION 16. IC 11-12-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. A community transition program for a county must provide services that improve an offender's chances of making a successful transition from commitment to employment and participation in the community without the commission of further crimes. ~~The program may include any of the services described in IC 11-12-1-2.5.~~

SECTION 17. IC 11-12-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The department shall reimburse communities on a per diem basis for services provided to persons assigned to a community transition program under IC 11-10-11.5.

(b) The department shall set the per diem rate under this section. In setting the per diem rate for a community, the department may consider the direct costs incurred by the community to provide a community transition program. The per diem may not be less than seven dollars (\$7).

(c) Funding provided under this section is in addition to any other funding received under IC 11-12-2 for community corrections programs or IC 11-13-2 for probation services.

(d) Money received by a community under this section:

- (1) shall be deposited in the community transition program fund for the community; **and**
- (2) **may be used only to provide services for persons who have been convicted of a felony.**

SECTION 18. IC 11-13-1-8, AS AMENDED BY P.L.1-2007, SECTION 102, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) As used in this section, "board" refers to the board of directors of the judicial conference of Indiana established by IC 33-38-9-3.

(b) The board shall adopt rules consistent with this chapter, prescribing minimum standards concerning:

- (1) educational and occupational qualifications for employment as a probation officer;
- (2) compensation of probation officers;
- (3) protection of probation records and disclosure of information contained in those records; ~~and~~
- (4) presentence investigation reports;
- (5) **risk classification for probationers;**
- (6) **supervision levels for probationers based on risk classification;**

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**(7) a schedule of progressive probation incentives and violation sanctions, including judicial review procedures; and (8) qualifications for probation officers to administer probation violation sanctions under IC 35-38-2-3(e).**

(c) The conference shall prepare a written examination to be used in establishing lists of persons eligible for appointment as probation officers. The conference shall prescribe the qualifications for entrance to the examination and establish a minimum passing score and rules for the administration of the examination after obtaining recommendations on these matters from the probation standards and practices advisory committee. The examination must be offered at least once every other month.

(d) The conference shall, by its rules, establish an effective date for the minimum standards and written examination for probation officers.

(e) The conference shall provide probation departments with training and technical assistance for:

- (1) the implementation and management of probation case classification; and
- (2) the development and use of workload information.

The staff of the Indiana judicial center may include a probation case management coordinator and probation case management assistant.

(f) The conference shall, in cooperation with the department of child services and the department of education, provide probation departments with training and technical assistance relating to special education services and programs that may be available for delinquent children or children in need of services. The subjects addressed by the training and technical assistance must include the following:

- (1) Eligibility standards.
- (2) Testing requirements and procedures.
- (3) Procedures and requirements for placement in programs provided by school corporations or special education cooperatives under IC 20-35-5.
- (4) Procedures and requirements for placement in residential special education institutions or facilities under IC 20-35-6-2 and 511 IAC 7-27-12.
- (5) Development and implementation of individual education programs for eligible children in:
  - (A) accordance with applicable requirements of state and federal laws and rules; and
  - (B) coordination with:
    - (i) individual case plans; and
    - (ii) informal adjustment programs or dispositional decrees

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1 entered by courts having juvenile jurisdiction under  
2 IC 31-34 and IC 31-37.

3 (6) Sources of federal, state, and local funding that is or may be  
4 available to support special education programs for children for  
5 whom proceedings have been initiated under IC 31-34 and  
6 IC 31-37.

7 Training for probation departments may be provided jointly with  
8 training provided to child welfare caseworkers relating to the same  
9 subject matter.

10 (g) The conference shall, in cooperation with the division of mental  
11 health and addiction (IC 12-21) and the division of disability and  
12 rehabilitative services (IC 12-9-1), provide probation departments with  
13 training and technical assistance concerning mental illness, addictive  
14 disorders, mental retardation, and developmental disabilities.

15 (h) The conference shall make recommendations to courts and  
16 probation departments concerning:

17 (1) selection, training, distribution, and removal of probation  
18 officers;

19 (2) methods and procedure for the administration of probation,  
20 including investigation, supervision, workloads, **case planning,**  
21 **use of evidence based practices,** record keeping, and reporting;  
22 and

23 (3) use of citizen volunteers and public and private agencies.

24 (i) The conference may delegate any of the functions described in  
25 this section to the advisory committee or the Indiana judicial center.

26 SECTION 19. IC 11-13-1-8.5 IS ADDED TO THE INDIANA  
27 CODE AS A NEW SECTION TO READ AS FOLLOWS  
28 [EFFECTIVE JULY 1, 2011]: **Sec. 8.5. (a) As used in this section,**  
29 **"board" refers to the board of directors of the judicial conference**  
30 **of Indiana established by IC 33-38-9-3.**

31 (b) **The board shall adopt rules to establish standards of**  
32 **probation supervision of offenders based on validated risk**  
33 **assessment systems, including:**

34 (1) **classification and reclassification of an offender as low**  
35 **risk, medium risk, or high risk;**

36 (2) **classification of active and administrative levels of**  
37 **supervision for an offender; and**

38 (3) **modification of an offender's supervision level.**

39 (c) **The rules adopted under this section must include the**  
40 **following requirements:**

41 (1) **An offender classified as a high risk offender shall be**  
42 **placed on active supervision during the offender's entire**

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period of probation.

(2) An offender classified as a low risk or medium risk offender who is on probation for committing a misdemeanor shall be placed on:

(A) active supervision for the first nine (9) months of the offender's probationary period; and

(B) administrative supervision after the first nine (9) months of the offender's probationary period if the offender has not been arrested during the probationary period or violated a condition of the offender's probation.

(3) An offender classified as a low risk or medium risk offender who is on probation for committing a felony shall be placed on:

(A) active supervision for the first twelve (12) months of the offender's probationary period; and

(B) administrative supervision after the offender has completed active supervision if the offender has not been arrested for a new crime or violated a condition of probation during the period of active supervision.

(d) If an order issued by the court that placed an offender on probation conflicts with the conditions of probation required by the level of supervision the offender is placed on under this section, the court order supersedes the conditions of probation.

SECTION 20. IC 11-13-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. There is established a program of state financial aid to be used for the support of court probation services to felons and high risk offenders. The financial aid program shall be administered by the judicial conference of Indiana. Funds appropriated to the conference for purposes of this chapter shall be distributed by the conference upon approval of the state budget committee.

SECTION 21. IC 11-13-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Except as provided in subsection (b), funds appropriated under this program may be made available to any court administering probation services to felons and high risk offenders in order to finance expenditures incurred for either of the following purposes:

- (1) Salaries for existing or new probation officer positions.
- (2) Maintenance or establishment of administrative support services to probation officers.

(3) Development and use of a progressive sanctions policy for violations of probation conditions.

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- 1           **(4) Development and use of evidence based supervision**
- 2           **practices and programs to reduce the risk of further offense.**
- 3           **(5) Establishment of a policy to improve the efficiency and**
- 4           **coordination of offender services provided by supervision**
- 5           **agencies within a county to ensure that an offender is**
- 6           **supervised by only one (1) offender supervision agency.**

7           **(b) Funds appropriated under this program may not be made**  
 8           **available after July 1 of each year unless the Indiana office of**  
 9           **technology has certified under IC 4-13.1-2-2 that the judicial**  
 10           **technology and automation project is sharing information with**  
 11           **independent providers.**

12           SECTION 22. IC 11-13-2-3 IS AMENDED TO READ AS  
 13           FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) State financial  
 14           aid for support of probation services **to felons and high risk offenders**  
 15           may be made only to courts meeting the minimum standards adopted  
 16           by the judicial conference of Indiana. ~~and may not exceed fifty percent~~  
 17           ~~(50%) of the cost of the positions or services being financed.~~ Any court  
 18           having probation jurisdiction may apply for financial assistance under  
 19           this chapter by submitting an application to the conference for review.  
 20           The application shall be accompanied by detailed plans regarding the  
 21           use of the financial aid.

22           (b) The conference may recommend changes or modifications  
 23           necessary to effect compliance with the minimum standards. The  
 24           conference and the ~~state budget committee~~ **department** must approve  
 25           all financial aid granted under this chapter. Any court receiving  
 26           financial assistance under this chapter may be declared ineligible to  
 27           receive that assistance if the court fails to maintain the minimum  
 28           standards.

29           (c) Two (2) or more courts may jointly apply for financial assistance  
 30           under this chapter.

31           SECTION 23. IC 11-13-2-4 IS AMENDED TO READ AS  
 32           FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. At the end of each  
 33           quarter of the fiscal year, courts receiving financial aid under this  
 34           chapter shall submit to the judicial conference of Indiana a verified  
 35           accounting of all amounts expended in providing probation services **to**  
 36           **felons and high risk offenders.** The accounting must designate those  
 37           items for which reimbursement is claimed and shall be presented  
 38           together with a claim for reimbursement. If the accounting and claim  
 39           are approved by the conference, ~~and the state budget agency,~~ the  
 40           conference shall submit it to the ~~state~~ **auditor of state** for payment.

41           SECTION 24. IC 11-13-3-6 IS AMENDED TO READ AS  
 42           FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. **(a) This section**

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1 **applies to all persons sentenced for a conviction before July 1,**  
2 **2011.**

3 ~~(a)~~ **(b)** The department shall supervise and assist persons on parole.  
4 Its duties in this regard include:

- 5 (1) establishing methods and procedures for parole
- 6 administration, including investigation, supervision, workloads,
- 7 record keeping, and reporting;
- 8 (2) providing information to and otherwise assisting the parole
- 9 board in making parole decisions;
- 10 (3) assisting persons in preparing parole release plans;
- 11 (4) providing employment counseling and assistance in job and
- 12 residential placement;
- 13 (5) providing family and individual counseling and treatment
- 14 placement;
- 15 (6) providing financial counseling;
- 16 (7) providing vocational and educational counseling placement;
- 17 (8) supervising and assisting out of state parolees accepted under
- 18 an interstate compact;
- 19 (9) assisting the parole board in transferring supervision of a
- 20 parolee to another jurisdiction;
- 21 (10) notifying the parole board of any modification in the
- 22 conditions of parole considered advisable;
- 23 (11) notifying the parole board when a violation of parole occurs;
- 24 and
- 25 (12) cooperating with public and private agencies and with
- 26 individual citizens concerned with the treatment or welfare of
- 27 parolees, and assisting the parolee in obtaining services from
- 28 those agencies and citizens.

29 ~~(b)~~ **(c)** Courts, probation officers, and other public officials shall  
30 cooperate with the department in obtaining information relating to  
31 persons committed to the department.

32 ~~(c)~~ **(d)** The department shall cause the name of any person released  
33 on parole to be entered into the Indiana data communications system  
34 (IDACS).

35 SECTION 25. IC 11-13-3-6.1 IS ADDED TO THE INDIANA  
36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
37 [EFFECTIVE JULY 1, 2011]: **Sec. 6.1. (a) This section applies to all**  
38 **persons sentenced for a conviction after June 30, 2011.**

39 **(b) The department:**

40 **(1) shall:**

41 **(A) supervise parolees who were sentenced by a court in**  
42 **Indiana for:**

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- (i) murder;
  - (ii) a Class A felony; or
  - (iii) a sex offense under IC 35-42-4 or incest under IC 35-46-1-3; and
- (B) assist all parolees sentenced by a court in Indiana; and
- (2) shall supervise and assist out-of-state parolees accepted under an interstate compact as required by the interstate compact.
- (c) The department's duties under subsection (b) include:
- (1) establishing methods and procedures for parole administration, including investigation, supervision, workloads, record keeping, and reporting;
  - (2) providing information to and otherwise assisting the parole board in making parole decisions;
  - (3) assisting persons in preparing parole release plans;
  - (4) providing employment counseling and assistance in job and residential placement;
  - (5) providing family and individual counseling and treatment placement;
  - (6) providing financial counseling;
  - (7) providing vocational and educational counseling placement;
  - (8) assisting the parole board in transferring supervision of a parolee to another jurisdiction;
  - (9) notifying the parole board of any modification in the conditions of parole considered advisable;
  - (10) notifying the parole board when a violation of parole occurs; and
  - (11) cooperating with public and private agencies and with individual citizens concerned with the treatment or welfare of parolees, and assisting the parolee in obtaining services from those agencies and citizens.
- (d) Courts, probation officers, and other public officials shall cooperate with the department in obtaining information relating to persons committed to the department.
- (e) The department shall cause the name of any person released on parole to be entered into the Indiana data communications system (IDACS).
- SECTION 26. IC 11-14-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. "Youthful offender" means an offender (as defined in IC 11-8-1-9) who:
- (1) is less than twenty-one (21) years of age;

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- 1 (2) has been committed to the department to serve a maximum  
 2 sentence of not more than eight (8) years;  
 3 (3) has received a suspendible sentence under IC 35-50-2-2; ~~or~~  
 4 ~~IC 35-50-2-2.1;~~  
 5 (4) has been sentenced by a court having criminal jurisdiction;  
 6 (5) has never been confined in a state or federal adult correctional  
 7 facility; and  
 8 (6) has not previously participated in a military or correctional  
 9 boot camp program.

10 SECTION 27. IC 33-24-6-3, AS AMENDED BY P.L.1-2010,  
 11 SECTION 132, IS AMENDED TO READ AS FOLLOWS  
 12 [EFFECTIVE JUNE 30, 2011]: Sec. 3. (a) The division of state court  
 13 administration shall do the following:

14 (1) Examine the administrative and business methods and systems  
 15 employed in the offices of the clerks of court and other offices  
 16 related to and serving the courts and make recommendations for  
 17 necessary improvement.

18 (2) Collect and compile statistical data and other information on  
 19 the judicial work of the courts in Indiana. All justices of the  
 20 supreme court, judges of the court of appeals, judges of all trial  
 21 courts, and any city or town courts, whether having general or  
 22 special jurisdiction, court clerks, court reporters, and other  
 23 officers and employees of the courts shall, upon notice by the  
 24 executive director and in compliance with procedures prescribed  
 25 by the executive director, furnish the executive director the  
 26 information as is requested concerning the nature and volume of  
 27 judicial business. The information must include the following:

28 (A) The volume, condition, and type of business conducted by  
 29 the courts.

30 (B) The methods of procedure in the courts.

31 (C) The work accomplished by the courts.

32 (D) The receipt and expenditure of public money by and for  
 33 the operation of the courts.

34 (E) The methods of disposition or termination of cases.

35 (3) Prepare and publish reports, not less than one (1) or more than  
 36 two (2) times per year, on the nature and volume of judicial work  
 37 performed by the courts as determined by the information  
 38 required in subdivision (2).

39 (4) Serve the judicial nominating commission and the judicial  
 40 qualifications commission in the performance by the commissions  
 41 of their statutory and constitutional functions.

42 (5) Administer the civil legal aid fund as required by IC 33-24-12.

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(6) Administer the judicial technology and automation project fund established by section 12 of this chapter.

(7) **Before July 1, 2011**, develop a standard protocol for the **exchange sharing and exchanging** of information: **by not later than December 31, 2009:**

(A) between the protective order registry, established by IC 5-2-9-5.5, and county court case management systems;

(B) at the option of the county prosecuting attorney, for:  
(i) a prosecuting attorney's case management system;  
(ii) a county court case management system; and  
(iii) a county court case management system developed and operated by the division of state court administration;

to interface with the electronic traffic tickets, as defined by IC 9-30-3-2.5; and

(C) between county court case management systems and the case management system developed and operated by the division of state court administration.

(8) Establish and administer an electronic system for receiving information that relates to certain individuals who may be prohibited from possessing a firearm and transmitting this information to the Federal Bureau of Investigation for inclusion in the NICS.

**(b) The division of state court administration shall not:**

**(1) deny a person access to any public records that the division maintains or keeps, including public records that are maintained or kept as part of the judicial technology and automation project; or**

**(2) adopt a rule that limits public access or imposes any restriction on public records that are maintained by the county clerk.**

~~(b)~~ (c) All forms to be used in gathering data must be approved by the supreme court and shall be distributed to all judges and clerks before the start of each period for which reports are required.

~~(c)~~ (d) The division may adopt rules to implement this section.

SECTION 28. IC 33-37-4-1, AS AMENDED BY P.L.182-2009(ss), SECTION 392, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) For each action that results in a felony conviction under IC 35-50-2 or a misdemeanor conviction under IC 35-50-3, the clerk shall collect from the defendant a criminal costs fee of one hundred twenty dollars (\$120).

(b) In addition to the criminal costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are

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- 1 required under IC 33-37-5:
- 2 (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or  
3 IC 33-37-5-4).
- 4 (2) A marijuana eradication program fee (IC 33-37-5-7).
- 5 (3) An alcohol and drug services program user fee  
6 (IC 33-37-5-8(b)).
- 7 (4) A law enforcement continuing education program fee  
8 (IC 33-37-5-8(c)).
- 9 (5) A drug abuse, prosecution, interdiction, and correction fee  
10 (IC 33-37-5-9).
- 11 (6) An alcohol and drug countermeasures fee (IC 33-37-5-10).
- 12 (7) A child abuse prevention fee (IC 33-37-5-12).
- 13 (8) A domestic violence prevention and treatment fee  
14 (IC 33-37-5-13).
- 15 (9) A highway work zone fee (IC 33-37-5-14).
- 16 (10) A deferred prosecution fee (~~IC 33-37-5-17~~):  
17 **(IC 33-37-5-17(b))**.
- 18 (11) A document storage fee (IC 33-37-5-20).
- 19 (12) An automated record keeping fee (IC 33-37-5-21).
- 20 (13) A late payment fee (IC 33-37-5-22).
- 21 (14) A sexual assault victims assistance fee (IC 33-37-5-23).
- 22 (15) A public defense administration fee (IC 33-37-5-21.2).
- 23 (16) A judicial insurance adjustment fee (IC 33-37-5-25).
- 24 (17) A judicial salaries fee (IC 33-37-5-26).
- 25 (18) A court administration fee (IC 33-37-5-27).
- 26 (19) A DNA sample processing fee (IC 33-37-5-26.2).
- 27 (c) Instead of the criminal costs fee prescribed by this section,  
28 except for the automated record keeping fee (IC 33-37-5-21), the clerk  
29 shall collect a pretrial diversion program fee if an agreement between  
30 the prosecuting attorney and the accused person entered into under  
31 IC 33-39-1-8 requires payment of those fees by the accused person.  
32 The pretrial diversion program fee is:
- 33 (1) an initial user's fee of fifty dollars (\$50); and  
34 (2) a monthly user's fee of ten dollars (\$10) for each month that  
35 the person remains in the pretrial diversion program.
- 36 **In addition to the pretrial diversion program fee, the clerk shall**  
37 **collect a county offender diversion fee of thirty dollars (\$30).**
- 38 (d) The clerk shall transfer to the county auditor or city or town  
39 fiscal officer the following fees, not later than thirty (30) days after the  
40 fees are collected:
- 41 (1) **the Forty-eight dollars (\$48) of each pretrial diversion initial**  
42 **user fee.**

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**(2) The pretrial diversion monthly user fee.**  
~~(2) (3)~~ The marijuana eradication program fee.  
~~(3) (4)~~ The alcohol and drug services program user fee.  
~~(4) (5)~~ The law enforcement continuing education program fee.  
The auditor or fiscal officer shall deposit fees transferred under this subsection in the appropriate user fee fund established under IC 33-37-8.

**(e) The clerk shall transfer to the auditor of state, not later than thirty (30) days after the fees are collected, two dollars (\$2) of each pretrial diversion initial user fee. The auditor of state shall deposit:**

**(1) one dollar (\$1) in the public defense fund established by IC 33-40-6-1; and**

**(2) one dollar (\$1) in the state sex and violent offender administration fund established by IC 11-8-8-21.**

~~(e) (f)~~ Unless otherwise directed by a court, if a clerk collects only part of a criminal costs fee from a defendant under this section, the clerk shall distribute the partial payment of the criminal costs fee as follows:

(1) The clerk shall apply the partial payment to general court costs.

(2) If there is money remaining after the partial payment is applied to general court costs under subdivision (1), the clerk shall distribute the remainder of the partial payment for deposit in the appropriate county user fee fund.

(3) If there is money remaining after distribution under subdivision (2), the clerk shall distribute the remainder of the partial payment for deposit in the state user fee fund.

(4) If there is money remaining after distribution under subdivision (3), the clerk shall distribute the remainder of the partial payment to any other applicable user fee fund.

(5) If there is money remaining after distribution under subdivision (4), the clerk shall apply the remainder of the partial payment to any outstanding fines owed by the defendant.

SECTION 29. IC 33-37-4-2, AS AMENDED BY P.L.182-2009(ss), SECTION 393, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Except as provided in subsections (d) and (e), for each action that results in a judgment:

(1) for a violation constituting an infraction; or

(2) for a violation of an ordinance of a municipal corporation (as defined in IC 36-1-2-10);

the clerk shall collect from the defendant an infraction or ordinance violation costs fee of seventy dollars (\$70).

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1 (b) In addition to the infraction or ordinance violation costs fee  
2 collected under this section, the clerk shall collect from the defendant  
3 the following fees, if they are required under IC 33-37-5:

4 (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or  
5 IC 33-37-5-4).

6 (2) An alcohol and drug services program user fee  
7 (IC 33-37-5-8(b)).

8 (3) A law enforcement continuing education program fee  
9 (IC 33-37-5-8(c)).

10 (4) An alcohol and drug countermeasures fee (IC 33-37-5-10).

11 (5) A highway work zone fee (IC 33-37-5-14).

12 (6) A deferred prosecution fee (~~IC 33-37-5-17~~);

13 **(IC 33-37-5-17(b)).**

14 (7) A jury fee (IC 33-37-5-19).

15 (8) A document storage fee (IC 33-37-5-20).

16 (9) An automated record keeping fee (IC 33-37-5-21).

17 (10) A late payment fee (IC 33-37-5-22).

18 (11) A public defense administration fee (IC 33-37-5-21.2).

19 (12) A judicial insurance adjustment fee (IC 33-37-5-25).

20 (13) A judicial salaries fee (IC 33-37-5-26).

21 (14) A court administration fee (IC 33-37-5-27).

22 (15) A DNA sample processing fee (IC 33-37-5-26.2).

23 **(16) A county offender deferral fee (IC 33-37-5-17(c)).**

24 (c) The clerk shall transfer to the county auditor or fiscal officer of  
25 the municipal corporation the following fees, not later than thirty (30)  
26 days after the fees are collected:

27 (1) The alcohol and drug services program user fee  
28 (IC 33-37-5-8(b)).

29 (2) The law enforcement continuing education program fee  
30 (IC 33-37-5-8(c)).

31 ~~The Fifty dollars (\$50) of the~~ deferral program **initial user's**  
32 ~~fee (subsection (e)(1));~~ **(subsection (e)(1)), or, if the initial**  
33 **user's fee is less than fifty-two dollars (\$52), all but two**  
34 **dollars (\$2) of the initial user's fee.**

35 **(4) The deferral program monthly user's fee under subsection**  
36 **(e)(2).**

37 **(5) The county offender deferral fee under subsection (b)(16),**  
38 **for deposit in the county offender fund (IC 36).**

39 The auditor or fiscal officer shall deposit the fees in the user fee fund  
40 established under IC 33-37-8.

41 (d) The defendant is not liable for any ordinance violation costs fee  
42 in an action if all the following apply:

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- 1 (1) The defendant was charged with an ordinance violation
- 2 subject to IC 33-36.
- 3 (2) The defendant denied the violation under IC 33-36-3.
- 4 (3) Proceedings in court against the defendant were initiated
- 5 under IC 34-28-5 (or IC 34-4-32 before its repeal).
- 6 (4) The defendant was tried and the court entered judgment for
- 7 the defendant for the violation.

8 (e) Instead of the infraction or ordinance violation costs fee  
 9 prescribed by subsection (a), except for the automated record keeping  
 10 fee (IC 33-37-5-21), the clerk shall collect a deferral program fee if an  
 11 agreement between a prosecuting attorney or an attorney for a  
 12 municipal corporation and the person charged with a violation entered  
 13 into under IC 34-28-5-1 (or IC 34-4-32-1 before its repeal) requires  
 14 payment of those fees by the person charged with the violation. The  
 15 deferral program fee is:

- 16 (1) an initial user's fee not to exceed fifty-two dollars (\$52); and
- 17 (2) a monthly user's fee not to exceed ten dollars (\$10) for each
- 18 month the person remains in the deferral program.

19 **(f) The clerk shall transfer to the auditor of state, not later than**  
 20 **thirty (30) days after the fees are collected, two dollars (\$2) of each**  
 21 **deferral program initial user's fee. The auditor of state shall**  
 22 **deposit:**

- 23 **(1) one dollar (\$1) in the public defense fund established by**
- 24 **IC 33-40-6-1; and**
- 25 **(2) one dollar (\$1) in the state sex and violent offender**
- 26 **administration fund established by IC 11-8-8-21.**

27 ~~(f)~~ **(g)** The fees prescribed by this section are costs for purposes of  
 28 IC 34-28-5-5 and may be collected from a defendant against whom  
 29 judgment is entered. Any penalty assessed is in addition to costs.

30 SECTION 30. IC 33-37-5-17, AS AMENDED BY P.L.176-2005,  
 31 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 2011]: Sec. 17. (a) This section applies to actions in which the  
 33 court defers prosecution under IC 33-39-1-8.

34 (b) In each action in which prosecution is deferred, the clerk shall  
 35 collect from the defendant a deferred prosecution fee of one hundred  
 36 twenty dollars (\$120) for court costs.

37 **(c) In each action in which prosecution is deferred, the clerk**  
 38 **shall collect from the defendant a county offender deferral fee of**  
 39 **fifteen dollars (\$15).**

40 SECTION 31. IC 33-37-5-31 IS ADDED TO THE INDIANA  
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 42 [EFFECTIVE JULY 1, 2011]: **Sec. 31. In each action in which a**

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1 **person is required to pay a pretrial diversion fee, the clerk shall**  
 2 **collect a county offender diversion fee of thirty dollars (\$30).**

3 SECTION 32. IC 33-37-7-2, AS AMENDED BY P.L.182-2009(ss),  
 4 SECTION 395, IS AMENDED TO READ AS FOLLOWS  
 5 [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The clerk of a circuit court  
 6 shall distribute semiannually to the auditor of state as the state share for  
 7 deposit in the homeowner protection unit account established by  
 8 IC 4-6-12-9 one hundred percent (100%) of the automated record  
 9 keeping fees collected under IC 33-37-5-21 with respect to actions  
 10 resulting in the accused person entering into a pretrial diversion  
 11 program agreement under IC 33-39-1-8 or a deferral program  
 12 agreement under IC 34-28-5-1 and, **except as provided in subsection**  
 13 **(n)**, for deposit in the state general fund seventy percent (70%) of the  
 14 amount of fees collected under the following:

- 15 (1) IC 33-37-4-1(a) (criminal costs fees).
- 16 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- 17 (3) IC 33-37-4-3(a) (juvenile costs fees).
- 18 (4) IC 33-37-4-4(a) (civil costs fees).
- 19 (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- 20 (6) IC 33-37-4-7(a) (probate costs fees).
- 21 (7) ~~IC 33-37-5-17~~ **IC 33-37-5-17(b)** (deferred prosecution fees).

22 (b) The clerk of a circuit court shall distribute semiannually to the  
 23 auditor of state for deposit in the state user fee fund established in  
 24 IC 33-37-9-2 the following:

- 25 (1) Twenty-five percent (25%) of the drug abuse, prosecution,  
 26 interdiction, and correction fees collected under  
 27 IC 33-37-4-1(b)(5).
- 28 (2) Twenty-five percent (25%) of the alcohol and drug  
 29 countermeasures fees collected under IC 33-37-4-1(b)(6),  
 30 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 31 (3) Fifty percent (50%) of the child abuse prevention fees  
 32 collected under IC 33-37-4-1(b)(7).
- 33 (4) One hundred percent (100%) of the domestic violence  
 34 prevention and treatment fees collected under IC 33-37-4-1(b)(8).
- 35 (5) One hundred percent (100%) of the highway work zone fees  
 36 collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- 37 (6) One hundred percent (100%) of the safe schools fee collected  
 38 under IC 33-37-5-18.
- 39 (7) One hundred percent (100%) of the automated record keeping  
 40 fee (IC 33-37-5-21) not distributed under subsection (a).

41 (c) The clerk of a circuit court shall distribute monthly to the county  
 42 auditor the following:

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1 (1) Seventy-five percent (75%) of the drug abuse, prosecution,  
 2 interdiction, and correction fees collected under  
 3 IC 33-37-4-1(b)(5).  
 4 (2) Seventy-five percent (75%) of the alcohol and drug  
 5 countermeasures fees collected under IC 33-37-4-1(b)(6),  
 6 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).  
 7 The county auditor shall deposit fees distributed by a clerk under this  
 8 subsection into the county drug free community fund established under  
 9 IC 5-2-11.  
 10 (d) The clerk of a circuit court shall distribute monthly to the county  
 11 auditor fifty percent (50%) of the child abuse prevention fees collected  
 12 under IC 33-37-4-1(b)(7). The county auditor shall deposit fees  
 13 distributed by a clerk under this subsection into the county child  
 14 advocacy fund established under IC 12-17-17.  
 15 (e) The clerk of a circuit court shall distribute monthly to the county  
 16 auditor one hundred percent (100%) of the late payment fees collected  
 17 under IC 33-37-5-22. The county auditor shall deposit fees distributed  
 18 by a clerk under this subsection as follows:  
 19 (1) If directed to do so by an ordinance adopted by the county  
 20 fiscal body, the county auditor shall deposit forty percent (40%)  
 21 of the fees in the clerk's record perpetuation fund established  
 22 under IC 33-37-5-2 and sixty percent (60%) of the fees in the  
 23 county general fund.  
 24 (2) If the county fiscal body has not adopted an ordinance  
 25 described in subdivision (1), the county auditor shall deposit all  
 26 the fees in the county general fund.  
 27 (f) The clerk of the circuit court shall distribute semiannually to the  
 28 auditor of state for deposit in the sexual assault victims assistance  
 29 account established by IC 5-2-6-23(h) one hundred percent (100%) of  
 30 the sexual assault victims assistance fees collected under  
 31 IC 33-37-5-23.  
 32 (g) The clerk of a circuit court shall distribute monthly to the county  
 33 auditor the following:  
 34 (1) One hundred percent (100%) of the support and maintenance  
 35 fees for cases designated as non-Title IV-D child support cases in  
 36 the Indiana support enforcement tracking system (ISETS)  
 37 collected under IC 33-37-5-6.  
 38 (2) The percentage share of the support and maintenance fees for  
 39 cases designated as IV-D child support cases in ISETS collected  
 40 under IC 33-37-5-6 that is reimbursable to the county at the  
 41 federal financial participation rate.  
 42 The county clerk shall distribute monthly to the office of the secretary

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1 of family and social services the percentage share of the support and  
2 maintenance fees for cases designated as Title IV-D child support cases  
3 in ISETS collected under IC 33-37-5-6 that is not reimbursable to the  
4 county at the applicable federal financial participation rate.

5 (h) The clerk of a circuit court shall distribute monthly to the county  
6 auditor the following:

7 (1) One hundred percent (100%) of the small claims service fee  
8 under IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2) for deposit in  
9 the county general fund.

10 (2) One hundred percent (100%) of the small claims garnishee  
11 service fee under IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3) for  
12 deposit in the county general fund.

13 (i) This subsection does not apply to court administration fees  
14 collected in small claims actions filed in a court described in IC 33-34.  
15 The clerk of a circuit court shall semiannually distribute to the auditor  
16 of state for deposit in the state general fund one hundred percent  
17 (100%) of the following:

18 (1) The public defense administration fee collected under  
19 IC 33-37-5-21.2.

20 (2) The judicial salaries fees collected under IC 33-37-5-26.

21 (3) The DNA sample processing fees collected under  
22 IC 33-37-5-26.2.

23 (4) The court administration fees collected under IC 33-37-5-27.

24 (j) The clerk of a circuit court shall semiannually distribute to the  
25 auditor of state for deposit in the judicial branch insurance adjustment  
26 account established by IC 33-38-5-8.2 one hundred percent (100%) of  
27 the judicial insurance adjustment fee collected under IC 33-37-5-25.

28 (k) The proceeds of the service fee collected under  
29 IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2) shall be distributed as  
30 follows:

31 (1) The clerk shall distribute one hundred percent (100%) of the  
32 service fees collected in a circuit, superior, county, or probate  
33 court to the county auditor for deposit in the county general fund.

34 (2) The clerk shall distribute one hundred percent (100%) of the  
35 service fees collected in a city or town court to the city or town  
36 fiscal officer for deposit in the city or town general fund.

37 (l) The proceeds of the garnishee service fee collected under  
38 IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as  
39 follows:

40 (1) The clerk shall distribute one hundred percent (100%) of the  
41 garnishee service fees collected in a circuit, superior, county, or  
42 probate court to the county auditor for deposit in the county

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general fund.

(2) The clerk shall distribute one hundred percent (100%) of the garnishee service fees collected in a city or town court to the city or town fiscal officer for deposit in the city or town general fund.

(m) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the home ownership education account established by IC 5-20-1-27 one hundred percent (100%) of the mortgage foreclosure counseling and education fees collected under IC 33-37-5-30 (before its expiration on January 1, 2013).

**(n) This subsection applies only to the seventy percent (70%) of the deferred prosecution fee (IC 33-37-5-17(b)) transferred to the auditor of state under subsection (a). The auditor of state shall deposit:**

**(1) one and two-tenths percent (1.2%) of the deferred prosecution fee received from the clerk of a circuit court in the public defense fund established by IC 33-40-6-1; and**

**(2) one and two-tenths percent (1.2%) of the deferred prosecution fee received from the clerk of a circuit court in the state sex and violent offender administration fund established by IC 11-8-8-21.**

**The auditor of state shall deposit the remaining funds in the state general fund.**

**(o) The clerk of a circuit court shall distribute monthly to the county auditor for deposit in the county offender fund established by IC 36-2-21-1 one hundred percent (100%) of the following:**

- (1) The county offender deferral fee (IC 33-37-5-17(c)).**
- (2) The county offender diversion fee (IC 33-37-5-31).**

SECTION 33. IC 33-37-7-8, AS AMENDED BY P.L.182-2009(ss), SECTION 396, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) The clerk of a city or town court shall distribute semiannually to the auditor of state as the state share for deposit in the homeowner protection unit account established by IC 4-6-12-9 one hundred percent (100%) of the automated record keeping fees collected under IC 33-37-5-21 with respect to actions resulting in the accused person entering into a pretrial diversion program agreement under IC 33-39-1-8 or a deferral program agreement under IC 34-28-5-1 and, **except as provided in subsection (j)**, for deposit in the state general fund fifty-five percent (55%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-4(a) (civil costs fees).

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- 1 (4) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- 2 (5) ~~IC 33-37-5-17~~ **IC 33-37-5-17(b)** (deferred prosecution fees).
- 3 (b) The city or town fiscal officer shall distribute monthly to the
- 4 county auditor as the county share twenty percent (20%) of the amount
- 5 of fees collected under the following:
- 6 (1) IC 33-37-4-1(a) (criminal costs fees).
- 7 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- 8 (3) IC 33-37-4-4(a) (civil costs fees).
- 9 (4) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- 10 (5) ~~IC 33-37-5-17~~ **IC 33-237-5-17(b)** (deferred prosecution fees).
- 11 (c) The city or town fiscal officer shall retain twenty-five percent
- 12 (25%) as the city or town share of the fees collected under the
- 13 following:
- 14 (1) IC 33-37-4-1(a) (criminal costs fees).
- 15 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- 16 (3) IC 33-37-4-4(a) (civil costs fees).
- 17 (4) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- 18 (5) ~~IC 33-37-5-17~~ **IC 33-237-5-17(b)** (deferred prosecution fees).
- 19 (d) The clerk of a city or town court shall distribute semiannually to
- 20 the auditor of state for deposit in the state user fee fund established in
- 21 IC 33-37-9 the following:
- 22 (1) Twenty-five percent (25%) of the drug abuse, prosecution,
- 23 interdiction, and correction fees collected under
- 24 IC 33-37-4-1(b)(5).
- 25 (2) Twenty-five percent (25%) of the alcohol and drug
- 26 countermeasures fees collected under IC 33-37-4-1(b)(6),
- 27 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 28 (3) One hundred percent (100%) of the highway work zone fees
- 29 collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- 30 (4) One hundred percent (100%) of the safe schools fee collected
- 31 under IC 33-37-5-18.
- 32 (5) One hundred percent (100%) of the automated record keeping
- 33 fee (IC 33-37-5-21) not distributed under subsection (a).
- 34 (e) The clerk of a city or town court shall distribute monthly to the
- 35 county auditor the following:
- 36 (1) Seventy-five percent (75%) of the drug abuse, prosecution,
- 37 interdiction, and corrections fees collected under
- 38 IC 33-37-4-1(b)(5).
- 39 (2) Seventy-five percent (75%) of the alcohol and drug
- 40 countermeasures fees collected under IC 33-37-4-1(b)(6),
- 41 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 42 The county auditor shall deposit fees distributed by a clerk under this

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1 subsection into the county drug free community fund established under  
2 IC 5-2-11.

3 (f) The clerk of a city or town court shall distribute monthly to the  
4 city or town fiscal officer (as defined in IC 36-1-2-7) one hundred  
5 percent (100%) of the following:

6 (1) The late payment fees collected under IC 33-37-5-22.

7 (2) The small claims service fee collected under  
8 IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2).

9 (3) The small claims garnishee service fee collected under  
10 IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3).

11 The city or town fiscal officer (as defined in IC 36-1-2-7) shall deposit  
12 fees distributed by a clerk under this subsection in the city or town  
13 general fund.

14 (g) The clerk of a city or town court shall semiannually distribute to  
15 the auditor of state for deposit in the state general fund one hundred  
16 percent (100%) of the following:

17 (1) The public defense administration fee collected under  
18 IC 33-37-5-21.2.

19 (2) The DNA sample processing fees collected under  
20 IC 33-37-5-26.2.

21 (3) The court administration fees collected under IC 33-37-5-27.

22 (h) The clerk of a city or town court shall semiannually distribute to  
23 the auditor of state for deposit in the judicial branch insurance  
24 adjustment account established by IC 33-38-5-8.2 one hundred percent  
25 (100%) of the judicial insurance adjustment fee collected under  
26 IC 33-37-5-25.

27 (i) The clerk of a city or town court shall semiannually distribute to  
28 the auditor of state for deposit in the state general fund seventy-five  
29 percent (75%) of the judicial salaries fee collected under  
30 IC 33-37-5-26. The city or town fiscal officer shall retain twenty-five  
31 percent (25%) of the judicial salaries fee collected under  
32 IC 33-37-5-26. The funds retained by the city or town shall be  
33 prioritized to fund city or town court operations.

34 **(j) This subsection applies only to the fifty-five percent (55%) of**  
35 **the deferred prosecution fee (IC 33-37-5-17) transferred to the**  
36 **auditor of state under subsection (a). The auditor of state shall**  
37 **deposit:**

38 **(1) one and five-tenths percent (1.5%) of the deferred**  
39 **prosecution fee received from the clerk of a city or town court**  
40 **in the public defense fund established by IC 33-40-6-1; and**

41 **(2) one and five-tenths percent (1.5%) of the deferred**  
42 **prosecution fee received from the clerk of a city or town court**

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1 in the state sex and violent offender administration fund  
2 established by IC 11-8-8-21.

3 The auditor of state shall deposit the remaining funds in the state  
4 general fund.

5 (k) The clerk of a city or town court shall monthly distribute to  
6 the county auditor for deposit in the county offender fund  
7 (IC 35-2-21-1) one hundred percent (100%) of the following:

8 (1) The county offender deferral fee.

9 (2) The county offender diversion fee.

10 SECTION 34. IC 34-30-3-2 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The definitions  
12 set forth in IC 22-11-20 apply to this section.

13 (b) Except as provided in subsection (c), the victim or an agent of  
14 the victim of a theft (~~IC 35-43-4-2(a)~~) (IC 35-43-4-2) or criminal  
15 conversion (IC 35-43-4-3) of:

16 (1) anhydrous ammonia (NH<sub>3</sub>);

17 (2) an ammonia solution; or

18 (3) a container used to store or transport anhydrous ammonia or  
19 an ammonia solution;

20 is immune from civil liability for injury or damage resulting from the  
21 possession or use of the anhydrous ammonia, ammonia solution, or  
22 container by another person to commit a violation of IC 35-48-4.

23 (c) A victim or an agent described in subsection (b) is not immune  
24 from civil liability under subsection (b) if:

25 (1) the victim or agent committed a crime involving the  
26 anhydrous ammonia, ammonia solution, or container that is the  
27 subject of the theft or criminal conversion; or

28 (2) the victim's or agent's willful or intentional commission of a  
29 violation of an applicable law, rule, or regulation governing the:

30 (A) design;

31 (B) construction;

32 (C) location;

33 (D) installation; or

34 (E) operation;

35 of equipment for storage, handling, use, or transportation of  
36 anhydrous ammonia or ammonia solution proximately caused the  
37 theft or criminal conversion.

38 SECTION 35. IC 34-30-20-1 IS AMENDED TO READ AS  
39 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. A person is immune  
40 from civil liability based on an act or omission related to the use of a  
41 firearm or ammunition for a firearm by another person if the other  
42 person directly or indirectly obtained the firearm or ammunition for a

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- 1 firearm through the commission of the following:
- 2 (1) Burglary (IC 35-43-2-1).
- 3 (2) Robbery (IC 35-42-5-1).
- 4 (3) Theft (IC 35-43-4-2).
- 5 (4) Receiving stolen property (**before the offense was abolished**
- 6 **on July 1, 2011**) (IC 35-43-4-2).
- 7 (5) Criminal conversion (IC 35-43-4-3).

8 SECTION 36. IC 35-32-2-2 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) A person may be  
 10 tried for theft or conversion in any county in which ~~he~~ **the person**  
 11 exerted unauthorized control over the property.

12 (b) A person may be tried for receiving stolen property (**for an act**  
 13 **committed before the offense was abolished on July 1, 2011**) in any  
 14 county in which ~~he~~ **the person** receives, retains, or disposes of the  
 15 property.

16 SECTION 37. IC 35-34-1-5, AS AMENDED BY P.L.178-2007,  
 17 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 JULY 1, 2011]: Sec. 5. (a) An indictment or information which charges  
 19 the commission of an offense may not be dismissed but may be  
 20 amended on motion by the prosecuting attorney at any time because of  
 21 any immaterial defect, including:

- 22 (1) any miswriting, misspelling, or grammatical error;
- 23 (2) any misjoinder of parties defendant or offenses charged;
- 24 (3) the presence of any unnecessary repugnant allegation;
- 25 (4) the failure to negate any exception, excuse, or provision
- 26 contained in the statute defining the offense;
- 27 (5) the use of alternative or disjunctive allegations as to the acts,
- 28 means, intents, or results charged;
- 29 (6) any mistake in the name of the court or county in the title of
- 30 the action, or the statutory provision alleged to have been
- 31 violated;
- 32 (7) the failure to state the time or place at which the offense was
- 33 committed where the time or place is not of the essence of the
- 34 offense;
- 35 (8) the failure to state an amount of value or price of any matter
- 36 where that value or price is not of the essence of the offense; or
- 37 (9) any other defect which does not prejudice the substantial
- 38 rights of the defendant.

39 (b) The indictment or information may be amended in matters of  
 40 substance and the names of material witnesses may be added, by the  
 41 prosecuting attorney, upon giving written notice to the defendant at any  
 42 time:

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1 (1) up to:  
 2 (A) thirty (30) days if the defendant is charged with a felony;  
 3 or  
 4 (B) fifteen (15) days if the defendant is charged only with one  
 5 (1) or more misdemeanors;  
 6 before the omnibus date; or  
 7 (2) before the commencement of trial;  
 8 if the amendment does not prejudice the substantial rights of the  
 9 defendant. When the information or indictment is amended, it shall be  
 10 signed by the prosecuting attorney or a deputy prosecuting attorney.  
 11 (c) Upon motion of the prosecuting attorney, the court may, at any  
 12 time before, during, or after the trial, permit an amendment to the  
 13 indictment or information in respect to any defect, imperfection, or  
 14 omission in form which does not prejudice the substantial rights of the  
 15 defendant.  
 16 (d) Before amendment of any indictment or information other than  
 17 amendment as provided in subsection (b), ~~of this section~~, the court  
 18 shall give all parties adequate notice of the intended amendment and  
 19 an opportunity to be heard. Upon permitting such amendment, the court  
 20 shall, upon motion by the defendant, order any continuance of the  
 21 proceedings which may be necessary to accord the defendant adequate  
 22 opportunity to prepare ~~his~~ **the defendant's** defense.  
 23 (e) An amendment of an indictment or information to include a  
 24 habitual offender charge under IC 35-50-2-8, IC 35-50-2-8.5, or  
 25 IC 35-50-2-10 ~~must be made not later than ten (10) days after the~~  
 26 ~~omnibus date. However, upon a showing of good cause, the court may~~  
 27 ~~permit the filing of a habitual offender charge at may be made~~ any  
 28 time before the commencement of the trial **if the amendment does not**  
 29 **prejudice the substantial rights of the defendant.**  
 30 SECTION 38. IC 35-33-1-1, AS AMENDED BY P.L.50-2005,  
 31 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 2011]: Sec. 1. (a) A law enforcement officer may arrest a  
 33 person when the officer has:  
 34 (1) a warrant commanding that the person be arrested;  
 35 (2) probable cause to believe the person has committed or  
 36 attempted to commit, or is committing or attempting to commit,  
 37 **theft or** a felony;  
 38 (3) probable cause to believe the person has violated the  
 39 provisions of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1),  
 40 IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;  
 41 (4) probable cause to believe the person is committing or  
 42 attempting to commit a misdemeanor in the officer's presence;

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1 (5) probable cause to believe the person has committed a:  
 2 (A) battery resulting in bodily injury under IC 35-42-2-1; or  
 3 (B) domestic battery under IC 35-42-2-1.3.  
 4 The officer may use an affidavit executed by an individual alleged  
 5 to have direct knowledge of the incident alleging the elements of  
 6 the offense of battery to establish probable cause;  
 7 (6) probable cause to believe that the person violated  
 8 IC 35-46-1-15.1 (invasion of privacy);  
 9 (7) probable cause to believe that the person violated  
 10 IC 35-47-2-1 (carrying a handgun without a license) or  
 11 IC 35-47-2-22 (counterfeit handgun license);  
 12 (8) probable cause to believe that the person is violating or has  
 13 violated an order issued under IC 35-50-7;  
 14 (9) probable cause to believe that the person is violating or has  
 15 violated IC 35-47-6-1.1 (undisclosed transport of a dangerous  
 16 device); or  
 17 (10) probable cause to believe that the person is:  
 18 (A) violating or has violated IC 35-45-2-5 (interference with  
 19 the reporting of a crime); and  
 20 (B) interfering with or preventing the reporting of a crime  
 21 involving domestic or family violence (as defined in  
 22 IC 34-6-2-34.5).  
 23 (b) A person who:  
 24 (1) is employed full time as a federal enforcement officer;  
 25 (2) is empowered to effect an arrest with or without warrant for a  
 26 violation of the United States Code; and  
 27 (3) is authorized to carry firearms in the performance of the  
 28 person's duties;  
 29 may act as an officer for the arrest of offenders against the laws of this  
 30 state where the person reasonably believes that a felony has been or is  
 31 about to be committed or attempted in the person's presence.  
 32 SECTION 39. IC 35-38-1-7.8 IS ADDED TO THE INDIANA  
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2011]: **Sec. 7.8. (a) At the time of sentencing,  
 35 a court shall determine whether a person is a credit restricted felon  
 36 (as defined in IC 35-41-1-5.5).**  
 37 **(b) A determination under subsection (a) must be based upon:**  
 38 **(1) evidence introduced at trial; or**  
 39 **(2) a factual basis provided as part of a guilty plea.**  
 40 **(c) Upon determining that a defendant is a credit restricted**  
 41 **felon, a court shall advise the defendant of the consequences of this**  
 42 **finding.**

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**(d) A judge shall record a determination that a defendant is a credit restricted felon on a form prepared by the division of state court administration.**

SECTION 40. IC 35-38-1-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 31. (a) This section does not apply to a person convicted of a crime under IC 35-42-4, except as otherwise authorized by IC 33-23-16.**

**(b) A sentencing court may order that an eligible person convicted of a Class A felony participate in a problem solving court program authorized under IC 33-23-16, a probation department, or a community corrections program.**

**(c) If a court imposes a sentence on a person convicted of a Class B, Class C, or Class D felony that involves a commitment to the department of correction, the court shall suspend six (6) months to three (3) years of the sentence and require the person to serve the suspended period:**

- (1) on probation;**
- (2) in a community corrections program under IC 35-38-2.6;**
- or**
- (3) in a problem solving court authorized under IC 33-23-16.**

**(d) If a person violates a condition of probation, a community corrections program, or a problem solving court authorized under IC 33-23-16, the court may order the person to serve the remainder of the sentence in the department of correction.**

**(e) If a person is required to participate in a community transition program under IC 11-10-11.5, the participation in a community transition program must take place before the person serves the suspended period on probation, a community corrections program, or a problem solving court program under this section.**

SECTION 41. IC 35-38-2-2.3, AS AMENDED BY P.L.111-2009, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 2.3. (a) As a condition of probation, the court may require a person to do a combination of the following, subject to the supervision guidelines for the person's risk classification:**

- (1) Work faithfully at suitable employment or faithfully pursue a course of study or career and technical education that will equip the person for suitable employment.**
- (2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.**
- (3) Attend or reside in a facility established for the instruction,**

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- 1 recreation, or residence of persons on probation.
- 2 (4) Support the person's dependents and meet other family
- 3 responsibilities.
- 4 (5) Make restitution or reparation to the victim of the crime for
- 5 damage or injury that was sustained by the victim. When
- 6 restitution or reparation is a condition of probation, the court shall
- 7 fix the amount, which may not exceed an amount the person can
- 8 or will be able to pay, and shall fix the manner of performance.
- 9 (6) Execute a repayment agreement with the appropriate
- 10 governmental entity to repay the full amount of public relief or
- 11 assistance wrongfully received, and make repayments according
- 12 to a repayment schedule set out in the agreement.
- 13 (7) Pay a fine authorized by IC 35-50.
- 14 (8) Refrain from possessing a firearm or other deadly weapon
- 15 unless granted written permission by the court or the person's
- 16 probation officer.
- 17 (9) Report to a probation officer at reasonable times as directed
- 18 by the court or the probation officer.
- 19 (10) Permit the person's probation officer to visit the person at
- 20 reasonable times at the person's home or elsewhere.
- 21 (11) Remain within the jurisdiction of the court, unless granted
- 22 permission to leave by the court or by the person's probation
- 23 officer.
- 24 (12) Answer all reasonable inquiries by the court or the person's
- 25 probation officer and promptly notify the court or probation
- 26 officer of any change in address or employment.
- 27 (13) Perform uncompensated work that benefits the community.
- 28 (14) Satisfy other conditions reasonably related to the person's
- 29 rehabilitation.
- 30 (15) Undergo home detention under IC 35-38-2.5.
- 31 (16) Undergo a laboratory test or series of tests approved by the
- 32 state department of health to detect and confirm the presence of
- 33 the human immunodeficiency virus (HIV) antigen or antibodies
- 34 to the human immunodeficiency virus (HIV), if:
- 35 (A) the person had been convicted of an offense relating to a
- 36 criminal sexual act and the offense created an
- 37 epidemiologically demonstrated risk of transmission of the
- 38 human immunodeficiency virus (HIV); or
- 39 (B) the person had been convicted of an offense relating to a
- 40 controlled substance and the offense involved:
- 41 (i) the delivery by any person to another person; or
- 42 (ii) the use by any person on another person;

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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.

(17) Refrain from any direct or indirect contact with an individual and, if convicted of an offense under IC 35-46-3, any animal belonging to the individual.

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

- (A) may not exceed an amount the person can or will be able to pay;
- (B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the person; and
- (C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is required to pay under this section.

(21) Refrain from owning, harboring, or training an animal.

(22) Participate in a reentry court program.

(b) When a person is placed on probation, the person shall be given a written statement specifying:

- (1) the conditions of probation; and
- (2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:
  - (A) One (1) year after the termination of probation.
  - (B) Forty-five (45) days after the state receives notice of the violation.

(c) As a condition of probation, the court may require that the

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1 person serve a term of imprisonment in an appropriate facility at the  
 2 time or intervals (consecutive or intermittent) within the period of  
 3 probation the court determines.

4 (d) Intermittent service may be required only for a term of not more  
 5 than sixty (60) days and must be served in the county or local penal  
 6 facility. The intermittent term is computed on the basis of the actual  
 7 days spent in confinement and shall be completed within one (1) year.  
 8 A person does not earn credit time while serving an intermittent term  
 9 of imprisonment under this subsection. When the court orders  
 10 intermittent service, the court shall state:

- 11 (1) the term of imprisonment;  
 12 (2) the days or parts of days during which a person is to be  
 13 confined; and  
 14 (3) the conditions.

15 **(e) If the court orders conditions of probation that do not follow**  
 16 **the supervision guidelines for the person's risk classification, the**  
 17 **court shall make written findings showing that it is in the best**  
 18 **interest of the rehabilitation of the person and the safety of the**  
 19 **community to make the order.**

20 ~~(e)~~ (f) Supervision of a person may be transferred from the court  
 21 that placed the person on probation to a court of another jurisdiction,  
 22 with the concurrence of both courts. Retransfers of supervision may  
 23 occur in the same manner. This subsection does not apply to transfers  
 24 made under IC 11-13-4 or IC 11-13-5.

25 ~~(f)~~ (g) When a court imposes a condition of probation described in  
 26 subsection (a)(17):

- 27 (1) the clerk of the court shall comply with IC 5-2-9; and  
 28 (2) the prosecuting attorney shall file a confidential form  
 29 prescribed or approved by the division of state court  
 30 administration with the clerk.

31 ~~(g)~~ (h) As a condition of probation, a court shall require a person:

- 32 (1) convicted of an offense described in IC 10-13-6-10;  
 33 (2) who has not previously provided a DNA sample in accordance  
 34 with IC 10-13-6; and  
 35 (3) whose sentence does not involve a commitment to the  
 36 department of correction;

37 to provide a DNA sample as a condition of probation.

38 SECTION 42. IC 35-38-2-3, AS AMENDED BY P.L.106-2010,  
 39 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2011]: Sec. 3. (a) The court may revoke a person's probation  
 41 if:

- 42 (1) the person has violated a condition of probation during the

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1           probationary period; and  
2           (2) the petition to revoke probation is filed during the  
3           probationary period or before the earlier of the following:  
4           (A) One (1) year after the termination of probation.  
5           (B) Forty-five (45) days after the state receives notice of the  
6           violation.  
7           (b) When a petition is filed charging a violation of a condition of  
8           probation, the court may:  
9           (1) order a summons to be issued to the person to appear; or  
10           (2) order a warrant for the person's arrest if there is a risk of the  
11           person's fleeing the jurisdiction or causing harm to others.  
12           (c) The issuance of a summons or warrant tolls the period of  
13           probation until the final determination of the charge.  
14           (d) **Except as provided in subsection (e), the court shall conduct**  
15           a hearing concerning the alleged violation. The court may admit the  
16           person to bail pending the hearing. **A person who is not admitted to**  
17           **bail pending the hearing may not be held in jail for more than**  
18           **fifteen (15) days without a hearing on the violation.**  
19           (e) **A person may admit to the violation and waive the right to**  
20           **a probation violation hearing after being offered the opportunity**  
21           **to consult with an attorney. If the person admits to the violation**  
22           **and requests to waive the probation violation hearing, the**  
23           **probation officer shall advise the person that by waiving the right**  
24           **to a probation violation hearing the person forfeits the rights**  
25           **provided in subsection (f). The sanction administered must follow**  
26           **the schedule of progressive probation violation sanctions adopted**  
27           **by the judicial conference of Indiana under IC 11-13-1-8.**  
28           ~~(e)~~ (f) **Except as provided in subsection (e), the state must prove**  
29           the violation by a preponderance of the evidence. The evidence shall  
30           be presented in open court. The person is entitled to confrontation,  
31           cross-examination, and representation by counsel.  
32           ~~(f)~~ (g) Probation may not be revoked for failure to comply with  
33           conditions of a sentence that imposes financial obligations on the  
34           person unless the person recklessly, knowingly, or intentionally fails to  
35           pay.  
36           ~~(g)~~ (h) If the court finds that the person has violated a condition at  
37           any time before termination of the period, and the petition to revoke is  
38           filed within the probationary period, the court may impose one (1) or  
39           more of the following sanctions:  
40           (1) Continue the person on probation, with or without modifying  
41           or enlarging the conditions.  
42           (2) Extend the person's probationary period for not more than one

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1 (1) year beyond the original probationary period.  
 2 (3) Order execution of all or part of the sentence that was  
 3 suspended at the time of initial sentencing.  
 4 ~~(h)~~ **(i)** If the court finds that the person has violated a condition of  
 5 home detention at any time before termination of the period, and the  
 6 petition to revoke probation is filed within the probationary period, the  
 7 court shall:  
 8 (1) order one (1) or more sanctions as set forth in subsection ~~(g)~~;  
 9 **(h)**; and  
 10 (2) provide credit for time served as set forth under  
 11 IC 35-38-2.5-5.  
 12 ~~(i)~~ **(j)** If the court finds that the person has violated a condition  
 13 during any time before the termination of the period, and the petition  
 14 is filed under subsection (a) after the probationary period has expired,  
 15 the court may:  
 16 (1) reinstate the person's probationary period, with or without  
 17 enlarging the conditions, if the sum of the length of the original  
 18 probationary period and the reinstated probationary period does  
 19 not exceed the length of the maximum sentence allowable for the  
 20 offense that is the basis of the probation; or  
 21 (2) order execution of all or part of the sentence that was  
 22 suspended at the time of the initial sentencing.  
 23 ~~(j)~~ **(k)** If the court finds that the person has violated a condition of  
 24 home detention during any time before termination of the period, and  
 25 the petition is filed under subsection (a) after the probation period has  
 26 expired, the court shall:  
 27 (1) order a sanction as set forth in subsection ~~(i)~~; **(j)**; and  
 28 (2) provide credit for time served as set forth under  
 29 IC 35-38-2.5-5.  
 30 ~~(k)~~ **(l)** A judgment revoking probation is a final appealable order.  
 31 ~~(l)~~ **(m)** Failure to pay fines or costs (including fees) required as a  
 32 condition of probation may not be the sole basis for commitment to the  
 33 department of correction.  
 34 ~~(m)~~ **(n)** Failure to pay fees or costs assessed against a person under  
 35 IC 33-40-3-6, IC 33-37-2-3(e), or IC 35-33-7-6 is not grounds for  
 36 revocation of probation.  
 37 SECTION 43. IC 35-38-2.6-1, AS AMENDED BY P.L.151-2006,  
 38 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2011]: Sec. 1. (a) Except as provided in subsection (b), this  
 40 chapter applies to the sentencing of a person convicted of:  
 41 (1) a felony whenever any part of the sentence may not be  
 42 suspended under IC 35-50-2-2; or ~~IC 35-50-2-2.1;~~

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- 1 (2) a misdemeanor whenever any part of the sentence may not be
- 2 suspended; or
- 3 (3) an offense described in ~~IC 35-50-2-2(b)(4)(R)~~
- 4 **IC 35-50-2-2(b)(3)(R)** (operating a vehicle while intoxicated with
- 5 at least two (2) prior unrelated convictions), if the person:
- 6 (A) is required to serve the nonsuspendible part of the
- 7 sentence in a community corrections:
- 8 (i) work release program; or
- 9 (ii) program that uses electronic monitoring as a part of the
- 10 person's supervision; and
- 11 (B) participates in a court approved substance abuse program.
- 12 (b) This chapter does not apply to persons convicted of any of the
- 13 following:
- 14 (1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.
- 15 (2) Except as provided in subsection (a)(3), any of the felonies
- 16 listed in ~~IC 35-50-2-2(b)(4)~~: **IC 35-50-2-2(b)(3)**.
- 17 (3) An offense under IC 9-30-5-4.
- 18 (4) An offense under IC 9-30-5-5.
- 19 SECTION 44. IC 35-38-3-5 IS AMENDED TO READ AS
- 20 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) The department,
- 21 after diagnosis and classification, shall:
- 22 (1) determine the degree of security (maximum, medium, or
- 23 minimum) to which a convicted person will be assigned;
- 24 ~~(2) for each offender convicted of a Class D felony whose~~
- 25 ~~sentence for the Class D felony is nonsuspendible under~~
- 26 ~~IC 35-50-2-2(b)(3) due to a prior unrelated Class E or Class D~~
- 27 ~~felony, determine whether the offender is an appropriate~~
- 28 ~~candidate for home detention under IC 35-38-2.5;~~
- 29 ~~(3) for each offender convicted of a Class D felony whose~~
- 30 ~~sentence for the Class D felony is nonsuspendible under:~~
- 31 ~~(A) IC 35-50-2-2.1(a)(1)(B);~~
- 32 ~~(B) IC 35-50-2-2.1(a)(1)(C); or~~
- 33 ~~(C) IC 35-50-2-2.1(a)(2);~~
- 34 ~~determine whether the offender is an appropriate candidate for~~
- 35 ~~home detention under IC 35-38-2.5;~~
- 36 ~~(4) (2) for each offender:~~
- 37 (A) committed to the department because the offender has
- 38 been convicted for the first time of a Class C or a Class D
- 39 felony; and
- 40 (B) whose sentence may be suspended;
- 41 determine whether the offender is an appropriate candidate for
- 42 home detention under IC 35-38-2.5;

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1           ~~(5)~~ (3) notify the trial court and prosecuting attorney if the degree  
2           of security assigned differs from the court's recommendations;  
3           and

4           ~~(6)~~ (4) petition the sentencing court under IC 35-38-1-21 for  
5           review of the sentence of an offender who is not a habitual  
6           offender sentenced under IC 35-50-2-8 or IC 35-50-2-10 and who  
7           the department has determined under subdivision (2) ~~or~~  
8           subdivision ~~(3)~~, to be an appropriate candidate for home  
9           detention.

10           (b) The department may change the degree of security to which the  
11           person is assigned. However, if the person is changed to a lesser degree  
12           of security during the first two (2) years of the commitment, the  
13           department shall notify the trial court and the prosecuting attorney not  
14           less than thirty (30) days before the effective date of the changed  
15           security assignment.

16           SECTION 45. IC 35-38-5-5.5 IS ADDED TO THE INDIANA  
17           CODE AS A NEW SECTION TO READ AS FOLLOWS  
18           [EFFECTIVE JULY 1, 2011]: **Sec. 5.5. (a) If a person charged with**  
19           **a crime:**

20                   (1) is not prosecuted or if charges against the person are  
21                   dismissed;

22                   (2) is acquitted of all criminal charges; or

23                   (3) is convicted of the crime and the conviction is subsequently  
24                   vacated;

25           the person may petition a court to restrict disclosure of the records  
26           related to the arrest to a noncriminal justice organization or an  
27           individual.

28           (b) A petition under subsection (a) must be verified and filed in:

29                   (1) the court in which the charges against the person were  
30                   filed, for a person described in subsection (a)(1); or

31                   (2) the court in which the trial was held, for a person  
32                   described in subsection (a)(2) or (a)(3).

33           (c) A petition under subsection (a) must be filed not earlier than:

34                   (1) if the person is acquitted, thirty (30) days after the person  
35                   is acquitted;

36                   (2) if the person's conviction is vacated, three hundred  
37                   sixty-five (365) days after:

38                           (A) the order vacating the person's conviction is final, if  
39                           there is no appeal or the appeal is terminated before entry  
40                           of an opinion or memorandum decision; or

41                           (B) the opinion or memorandum decision vacating the  
42                           person's conviction is certified; or

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- 1           (3) if the person is not prosecuted, thirty (30) days after  
2 charges are dismissed, if the charges are not refiled.
- 3       (d) A petition under subsection (a) must set forth:
- 4           (1) the date of the arrest;
- 5           (2) the charge;
- 6           (3) the date charges were dismissed, if applicable;
- 7           (4) the date of conviction or acquittal, if applicable;
- 8           (5) the date the conviction was vacated, if applicable;
- 9           (6) the basis on which the conviction was vacated, if  
10 applicable;
- 11          (7) the law enforcement agency employing the arresting  
12 officer;
- 13          (8) any other known identifying information, such as the name  
14 of the arresting officer, case number, or court cause number;
- 15          (9) the date of the petitioner's birth; and
- 16          (10) the petitioner's Social Security number.
- 17       (e) A copy of a petition under subsection (a) shall be served on  
18 the prosecuting attorney and the state central repository for  
19 records.
- 20       (f) If the prosecuting attorney wishes to oppose a petition under  
21 subsection (a), the prosecuting attorney shall, not later than thirty  
22 (30) days after the petition is filed, file a notice of opposition with  
23 the court setting forth reasons for opposing the petition. The  
24 prosecuting attorney shall attach to the notice of opposition a  
25 certified copy of any documentary evidence showing that the  
26 petitioner is not entitled to relief. A copy of the notice of opposition  
27 and copies of any documentary evidence shall be served on the  
28 petitioner in accordance with the Indiana Rules of Trial Procedure.  
29 The court may:
- 30           (1) summarily grant the petition;
- 31           (2) set the matter for hearing; or
- 32           (3) summarily deny the petition, if the court determines that:
- 33               (A) the petition is insufficient; or
- 34               (B) based on documentary evidence submitted by the  
35 prosecuting attorney, the petitioner is not entitled to have  
36 access to the petitioner's arrest records restricted.
- 37       (g) If a notice of opposition is filed under subsection (f) and the  
38 court does not summarily grant or summarily deny the petition,  
39 the court shall set the matter for a hearing.
- 40       (h) After a hearing is held under subsection (g), the court shall  
41 grant the petition filed under subsection (a), unless the petitioner  
42 is being reprocessed on charges related to the original conviction.

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1 (i) If the court grants a petition filed under subsection (a), the  
2 court shall order the state police department not to disclose or  
3 permit disclosure of the petitioner's limited criminal history  
4 information to a noncriminal justice organization or an individual  
5 under IC 10-13-3-27.

6 SECTION 46. IC 35-38-8 IS ADDED TO THE INDIANA CODE  
7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2011]:

9 **Chapter 8. Restricted Access to Conviction Records**

10 **Sec. 1. This chapter does not apply to a sex or violent offender.**

11 **Sec. 2. This chapter applies only to a person:**

- 12 (1) convicted of a misdemeanor or a Class D felony that did
- 13 not result in injury to a person; or
- 14 (2) adjudicated a delinquent child for committing an offense
- 15 that, if committed by an adult, would be a misdemeanor or
- 16 Class D felony that did not result in injury to a person.

17 **Sec. 3. Eight (8) years after the date a person completes the**  
18 **person's sentence and satisfies any other obligations imposed on**  
19 **the person as a part of the sentence, the person may petition a**  
20 **sentencing court to order the state police department to restrict**  
21 **access to the records concerning the person's arrest and**  
22 **involvement in criminal or juvenile court proceedings.**

23 **Sec. 4. The court shall grant a petition under this chapter if the**  
24 **court finds:**

- 25 (1) the person is not a sex or violent offender;
- 26 (2) the person was:
  - 27 (A) convicted of a misdemeanor or a Class D felony that
  - 28 did not result in injury to a person; or
  - 29 (B) adjudicated a delinquent child for committing an
  - 30 offense that, if committed by an adult, would be a
  - 31 misdemeanor or Class D felony not resulting in injury to a
  - 32 person;
- 33 (3) eight (8) years have passed since the person completed the
- 34 person's sentence and satisfied any other obligation imposed
- 35 on the person as part of the sentence; and
- 36 (4) the person has not been convicted of a felony since the
- 37 person completed the person's sentence and satisfied any
- 38 other obligation imposed on the person as part of the
- 39 sentence.

40 **Sec. 5. If the court grants the petition of a person under this**  
41 **chapter, the court shall do the following:**

- 42 (1) Order:

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(A) the department of correction; and  
(B) each:  
(i) law enforcement agency; and  
(ii) other person;  
who incarcerated, provided treatment for, or provided  
other services for the person under an order of the court;  
to prohibit the release of the person's records or information  
relating to the misdemeanor, nonviolent Class D felony, or  
juvenile adjudication described in section 2 of this chapter, in  
the person's records to a noncriminal justice agency without  
a court order.

(2) Order any:  
(A) state;  
(B) regional; or  
(C) local;  
central repository for criminal history information to prohibit  
the release of the person's records or information relating to  
the misdemeanor, nonviolent Class D felony, or juvenile  
adjudication described in section 2 of this chapter, in the  
person's records to a noncriminal justice agency without a  
court order.

Sec. 5. (a) If a person whose records are restricted under this  
chapter brings a civil action that might be defended with the  
contents of the records, the defendant is presumed to have a  
complete defense to the action.

(b) For the plaintiff to recover in an action described in  
subsection (a), the plaintiff must show that the contents of the  
expunged records would not exonerate the defendant.

(c) In an action described in subsection (a), the plaintiff may be  
required to state under oath whether:

- (1) the plaintiff had records in the criminal justice system;  
and
- (2) those records were expunged.

(d) In an action described in subsection (a), if the plaintiff denies  
the existence of the records, the defendant may prove the existence  
of the records in any manner compatible with the law of evidence.

Sec. 6. If a court orders a person's records to be restricted under  
this chapter, the person may legally state on an application for  
employment or any other document that the person has not been  
arrested for or convicted of the felony or misdemeanor recorded  
in the restricted records.

SECTION 47. IC 35-41-1-5.5, AS ADDED BY P.L.80-2008,

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1 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2011]: Sec. 5.5. (a) "Credit restricted felon" means a person  
3 who has been convicted of at least one (1) of the following offenses:

4 (1) Child molesting involving sexual intercourse or deviate sexual  
5 conduct (~~IC 35-42-4-3(a)~~); if:

6 (A) the offense is committed by a person at least twenty-one  
7 (21) years of age; and

8 (B) the victim is less than twelve (12) years of age.  
9 (IC 35-42-4-3) as a Class A felony.

10 (2) Child molesting (~~IC 35-42-4-3~~) resulting in serious bodily  
11 injury or death:

12 (3) (2) Murder (IC 35-42-1-1). if:

13 (A) the person killed the victim while committing or  
14 attempting to commit child molesting (~~IC 35-42-4-3~~);

15 (B) the victim was the victim of a sex crime under IC 35-42-4  
16 for which the person was convicted; or

17 (C) the victim of the murder was listed by the state or known  
18 by the person to be a witness against the person in a  
19 prosecution for a sex crime under IC 35-42-4 and the person  
20 committed the murder with the intent to prevent the person  
21 from testifying.

22 (3) Voluntary manslaughter (IC 35-42-1-3).

23 (4) Battery (IC 35-42-2-1) as a Class A felony.

24 (5) Criminal deviate conduct (IC 35-42-4-2) as a Class A  
25 felony.

26 (6) Kidnapping (IC 35-42-3-2) as a Class A felony.

27 (7) Neglect of a dependent (IC 35-46-1-4) as a Class A felony.

28 (8) Robbery (IC 35-42-5-1) as a Class A felony.

29 (9) Rape (IC 35-42-4-1) as a Class A felony.

30 (b) This section applies only to persons who after June 30, 2011,  
31 commit an offense described in subsection (a), including an offense  
32 that makes the person a habitual offender or habitual substance  
33 offender.

34 SECTION 48. IC 35-41-1-8.3 IS ADDED TO THE INDIANA  
35 CODE AS A NEW SECTION TO READ AS FOLLOWS  
36 [EFFECTIVE JULY 1, 2011]: Sec. 8.3. "Defraud" means to deprive  
37 a person of any money, property, interest, benefit, or right by  
38 means of false or deceptive pretenses, representations, or promises.

39 SECTION 49. IC 35-43-2-1 IS AMENDED TO READ AS  
40 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. A person who breaks  
41 and enters the building or structure of another person, with intent to  
42 commit **theft** or a felony in it, commits burglary, a Class C felony.

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1 However, the offense is:

2 (1) a Class B felony if:

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

4 (B) the building or structure is a:

5 (i) dwelling; or

6 (ii) structure used for religious worship; and

7 (2) a Class A felony if it results in:

8 (A) bodily injury; or

9 (B) serious bodily injury;

10 to any person other than a defendant.

11 SECTION 50. IC 35-43-4-2, AS AMENDED BY P.L.158-2009,  
 12 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2011]: Sec. 2. ~~(a)~~ A person who knowingly or intentionally  
 14 exerts unauthorized control over property of another person, with intent  
 15 to deprive the other person of any part of its value or use, commits  
 16 theft, a ~~Class D felony~~. **Class A misdemeanor**. However, the offense  
 17 is a **Class D felony if the fair market value of the property is at**  
 18 **least seven hundred fifty dollars (\$750) or if the person has a prior**  
 19 **unrelated conviction for conversion or theft, and a Class C felony**  
 20 **if:**

21 (1) the fair market value of the property is at least ~~one hundred~~  
 22 **fifty thousand dollars (\$100,000); (\$50,000);** or

23 (2) the property that is the subject of the theft is a valuable metal  
 24 (as defined in IC 25-37.5-1-1) and:

25 (A) relates to transportation safety;

26 (B) relates to public safety; or

27 (C) is taken from a:

28 (i) hospital or other health care facility;

29 (ii) telecommunications provider;

30 (iii) public utility (as defined in IC 32-24-1-5.9(a)); or

31 (iv) key facility;

32 and the absence of the property creates a substantial risk of bodily  
 33 injury to a person.

34 ~~(b)~~ A person who knowingly or intentionally receives, retains, or  
 35 disposes of the property of another person that has been the subject of  
 36 theft commits receiving stolen property, a ~~Class D felony~~. However, the  
 37 offense is a ~~Class E felony~~ if:

38 ~~(1)~~ the fair market value of the property is at least one hundred  
 39 thousand dollars ~~(\$100,000);~~ or

40 ~~(2)~~ the property that is the subject of the theft is a valuable metal  
 41 (as defined in IC 25-37.5-1-1) and:

42 ~~(A)~~ relates to transportation safety;

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- ~~(B)~~ relates to public safety; or
- ~~(C)~~ is taken from a:
  - (i) hospital or other health care facility;
  - (ii) telecommunications provider;
  - (iii) public utility (as defined in IC 32-24-1-5.9(a)); or
  - (iv) key facility;

and the absence of the property creates a substantial risk of bodily injury to a person.

SECTION 51. IC 35-43-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) A conviction for an offense under section 2 of this chapter or section 3 of this chapter that involves exerting unauthorized control over gasoline or motor vehicle fuel:

- (1) by operation of a motor vehicle to leave the premises of an establishment at which gasoline or motor vehicle fuel is offered for sale after the gasoline or motor vehicle fuel has been dispensed into the fuel tank of the motor vehicle; and
- (2) without payment or authorization of payment by a credit card, debit card, charge card, or similar method of payment;

shall result in the suspension of the driving privileges of the person.

(b) The court imposing a sentence for a violation under subsection (a) shall issue an order to the bureau of motor vehicles:

- (1) stating that the person has been convicted of an offense under section 2 of this chapter or section 3 of this chapter involving the unauthorized taking of gasoline or motor vehicle fuel; and
- (2) ordering the suspension of the person's driving privileges under IC 9-25-6-21.

The suspension of a person's driving privileges under this section is in addition to other penalties prescribed by ~~IC 35-50-3-2 for a Class A misdemeanor or by IC 35-50-2-7 for a Class D felony.~~ **IC 35-50.**

SECTION 52. IC 35-43-5-2, AS AMENDED BY P.L.106-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) A person who knowingly or intentionally:

- (1) makes or utters a written instrument in such a manner that it purports to have been made:
  - (A) by another person;
  - (B) at another time;
  - (C) with different provisions; or
  - (D) by authority of one who did not give authority; or
- (2) possesses more than one (1) written instrument knowing that the written instruments were made in a manner that they purport to have been made:

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1 (A) by another person;  
 2 (B) at another time;  
 3 (C) with different provisions; or  
 4 (D) by authority of one who did not give authority;  
 5 commits counterfeiting, a Class D felony.  
 6 (b) A person who, with intent to defraud, makes, utters, or possesses  
 7 a written instrument in such a manner that it purports to have been  
 8 made:  
 9 (1) by another person;  
 10 (2) at another time;  
 11 (3) with different provisions; or  
 12 (4) by authority of one who did not give authority;  
 13 commits forgery, a ~~Class E~~ **Class D** felony.  
 14 (c) This subsection applies to a person who applies for a driver's  
 15 license (as defined in IC 9-13-2-48) **or a state identification card (as**  
 16 **issued under IC 9-24-16).** A person who:  
 17 (1) knowingly or intentionally uses a false or fictitious name or  
 18 gives a false or fictitious address in an application for a driver's  
 19 license **or a state identification card** or for a renewal or a  
 20 duplicate of a driver's license **or a state identification card;** or  
 21 (2) knowingly or intentionally makes a false statement or conceals  
 22 a material fact or otherwise commits fraud in an application for a  
 23 driver's license **or a state identification card;**  
 24 commits application fraud, a Class D felony.  
 25 (d) This subsection applies to a person who applies for a state  
 26 identification card (as issued under ~~IC 9-24-16~~): A person who:  
 27 (1) knowingly or intentionally uses false information in an  
 28 application for an identification card or for a renewal or duplicate  
 29 of an identification card; or  
 30 (2) knowingly or intentionally makes a false statement or  
 31 otherwise commits fraud in an application for an identification  
 32 card;  
 33 commits application fraud; a ~~Class D~~ **Class D** felony.  
 34 SECTION 53. IC 35-43-5-3 IS AMENDED TO READ AS  
 35 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) A person who:  
 36 (1) being an officer, manager, or other person participating in the  
 37 direction of a credit institution, knowingly or intentionally  
 38 receives or permits the receipt of a deposit or other investment,  
 39 knowing that the institution is insolvent;  
 40 (2) knowingly or intentionally:  
 41 (A) makes a false or misleading written statement; **or**  
 42 (B) **misrepresents:**

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(i) the identity of the person or another person;  
(ii) a person as being a physician licensed under IC 25-22.5; or  
(iii) the identity or quality of property;

with intent to obtain property, employment, or an educational opportunity;

(3) misapplies entrusted property, property of a governmental entity, or property of a credit institution in a manner that the person knows is unlawful or that the person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted;

(4) knowingly or intentionally, in the regular course of business, either:

(A) uses or possesses for use a false weight or measure or other device for falsely determining or recording the quality or quantity of any commodity; or

(B) sells, offers, or displays for sale or delivers less than the represented quality or quantity of any commodity;

(5) with intent to defraud another person furnishing electricity, gas, water, telecommunication, or any other utility service **or cable television service**, avoids a lawful charge for that service by scheme or device or by tampering with facilities or equipment of the person furnishing the service;

~~(6)~~ with intent to defraud; misrepresents the identity of the person or another person or the identity or quality of property;

~~(7)~~ ~~(6)~~ with intent to defraud an owner of a coin machine, deposits a slug in that machine;

~~(8)~~ ~~(7)~~ with intent to enable the person or another person to deposit a slug in a coin machine, makes, possesses, or disposes of a slug; **or**

~~(9)~~ ~~(8)~~ disseminates to the public an advertisement that the person knows is false, misleading, or deceptive, with intent to promote the purchase or sale of property or the acceptance of employment;

~~(10)~~ with intent to defraud; misrepresents a person as being a physician licensed under IC 25-22.5; or

~~(11)~~ knowingly and intentionally defrauds another person furnishing cable TV service by avoiding paying compensation for that service by any scheme or device or by tampering with facilities or equipment of the person furnishing the service;

commits deception, a Class A misdemeanor.

(b) In determining whether an advertisement is false, misleading, or

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1 deceptive under subsection ~~(a)(9)~~; **(a)(8)**, there shall be considered,  
 2 among other things, not only representations contained or suggested in  
 3 the advertisement, by whatever means, including device or sound, but  
 4 also the extent to which the advertisement fails to reveal material facts  
 5 in the light of the representations.

6 SECTION 54. IC 35-43-5-3.5, AS AMENDED BY P.L.137-2009,  
 7 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2011]: Sec. 3.5. (a) Except as provided in subsection (c), a  
 9 person who knowingly or intentionally obtains, possesses, transfers, or  
 10 uses the identifying information of another person, including the  
 11 identifying information of a person who is deceased:

12 (1) without the other person's consent; and

13 (2) with intent to:

14 (A) harm or defraud another person;

15 (B) assume another person's identity; or

16 (C) profess to be another person;

17 commits identity deception, a Class D felony.

18 (b) However, the offense defined in subsection (a) is a Class C  
 19 felony if:

20 (1) a person obtains, possesses, transfers, or uses the identifying  
 21 information of more than one hundred (100) persons;

22 (2) the fair market value of the fraud or harm caused by the  
 23 offense is at least fifty thousand dollars (\$50,000); ~~or~~

24 (3) a person obtains, possesses, transfers, or uses the identifying  
 25 information of a person who is less than eighteen (18) years of  
 26 age and is:

27 (A) the person's son or daughter;

28 (B) a dependent of the person;

29 (C) a ward of the person; or

30 (D) an individual for whom the person is a guardian; **or**

31 **(4) a person obtains, possesses, transfers, or uses the**  
 32 **identifying information of another person with intent to:**

33 **(A) commit terrorism; or**

34 **(B) obtain or transport a weapon of mass destruction.**

35 (c) The conduct prohibited in subsections (a) and (b) does not apply  
 36 to:

37 (1) a person less than twenty-one (21) years of age who uses the  
 38 identifying information of another person to acquire an alcoholic  
 39 beverage (as defined in IC 7.1-1-3-5);

40 (2) a minor (as defined in IC 35-49-1-4) who uses the identifying  
 41 information of another person to acquire:

42 (A) a cigarette or tobacco product (as defined in IC 6-7-2-5);

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- 1 (B) a periodical, a videotape, or other communication medium
- 2 that contains or depicts nudity (as defined in IC 35-49-1-5);
- 3 (C) admittance to a performance (live or film) that prohibits
- 4 the attendance of the minor based on age; or
- 5 (D) an item that is prohibited by law for use or consumption by
- 6 a minor; or

7 (3) any person who uses the identifying information for a lawful  
8 purpose.

9 (d) It is not a defense in a prosecution under subsection (a) or (b)  
10 that no person was harmed or defrauded.

11 SECTION 55. IC 35-43-5-3.8, AS ADDED BY P.L.137-2009,  
12 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2011]: Sec. 3.8. (a) A person who knowingly or intentionally  
14 obtains, possesses, transfers, or uses the synthetic identifying  
15 information:

- 16 (1) with intent to harm or defraud another person;
- 17 (2) with intent to assume another person's identity; or
- 18 (3) with intent to profess to be another person;

19 commits synthetic identity deception, a Class D felony.

20 (b) The offense under subsection (a) is a Class C felony if:

- 21 (1) a person obtains, possesses, transfers, or uses the synthetic
- 22 identifying information of more than one hundred (100) persons;
- 23 or
- 24 (2) the fair market value of the fraud or harm caused by the
- 25 offense is at least fifty thousand dollars (\$50,000); or

26 **(3) a person obtains, possesses, transfers, or uses the synthetic**  
27 **identifying information of another person with intent to:**

- 28 **(A) commit terrorism; or**
- 29 **(B) obtain or transport a weapon of mass destruction.**

30 (c) The conduct prohibited in subsections (a) and (b) does not apply  
31 to:

32 (1) a person less than twenty-one (21) years of age who uses the  
33 synthetic identifying information of another person to acquire an  
34 alcoholic beverage (as defined in IC 7.1-1-3-5); or

35 (2) a minor (as defined in IC 35-49-1-4) who uses the synthetic  
36 identifying information of another person to acquire:

- 37 (A) a cigarette or tobacco product (as defined in IC 6-7-2-5);
- 38 (B) a periodical, a videotape, or other communication medium
- 39 that contains or depicts nudity (as defined in IC 35-49-1-5);
- 40 (C) admittance to a performance (live or on film) that prohibits
- 41 the attendance of the minor based on age; or
- 42 (D) an item that is prohibited by law for use or consumption by

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1 a minor.

2 (d) It is not a defense in a prosecution under subsection (a) or (b)  
3 that no person was harmed or defrauded.

4 SECTION 56. IC 35-43-5-4.3, AS AMENDED BY P.L.137-2009,  
5 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2011]: Sec. 4.3. (a) As used in this section, "card skimming  
7 device" means a device that is designed to read information encoded on  
8 a credit card. The term includes a device designed to read, record, or  
9 transmit information encoded on a credit card:

- 10 (1) directly from a credit card; or
- 11 (2) from another device that reads information directly from a  
12 credit card.

13 (b) A person who possesses a card skimming device with intent to  
14 commit:

- 15 (1) identity deception (IC 35-43-5-3.5);
- 16 (2) synthetic identity deception (IC 35-43-5-3.8); or
- 17 (3) fraud (IC 35-43-5-4); or
- 18 ~~(4) terroristic deception (IC 35-43-5-3.6);~~

19 commits unlawful possession of a card skimming device, ~~Unlawful~~  
20 ~~possession of a card skimming device under subdivision (1); (2); or (3)~~  
21 ~~is~~ a Class D felony. **However**, unlawful possession of a card skimming  
22 device ~~under subdivision (4)~~ **with intent to commit terrorism or**  
23 **obtain or transport a weapon of mass destruction** is a Class C  
24 felony.

25 SECTION 57. IC 35-43-5-4.5, AS ADDED BY P.L.181-2005,  
26 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2011]: Sec. 4.5. (a) A person who, knowingly and with intent  
28 to defraud:

- 29 (1) makes, utters, presents, or causes to be presented to an insurer  
30 or an insurance claimant, a claim statement that contains false,  
31 incomplete, or misleading information concerning the claim;
- 32 (2) presents, causes to be presented, or prepares with knowledge  
33 or belief that it will be presented to or by an insurer, an oral, a  
34 written, or an electronic statement that the person knows to  
35 contain materially false information as part of, in support of, or  
36 concerning a fact that is material to:
  - 37 (A) the rating of an insurance policy;
  - 38 (B) a claim for payment or benefit under an insurance policy;
  - 39 (C) premiums paid on an insurance policy;
  - 40 (D) payments made in accordance with the terms of an  
41 insurance policy;
  - 42 (E) an application for a certificate of authority;

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1 (F) the financial condition of an insurer; or  
 2 (G) the acquisition of an insurer;  
 3 or conceals any information concerning a subject set forth in  
 4 clauses (A) through (G);  
 5 (3) solicits or accepts new or renewal insurance risks by or for an  
 6 insolvent insurer or other entity regulated under IC 27;  
 7 (4) removes:  
 8 (A) the assets;  
 9 (B) the record of assets, transactions, and affairs; or  
 10 (C) a material part of the assets or the record of assets,  
 11 transactions, and affairs;  
 12 of an insurer or another entity regulated under IC 27, from the  
 13 home office, other place of business, or place of safekeeping of  
 14 the insurer or other regulated entity, or conceals or attempts to  
 15 conceal from the department of insurance assets or records  
 16 referred to in clauses (A) through (B); or  
 17 (5) diverts funds of an insurer or another person in connection  
 18 with:  
 19 (A) the transaction of insurance or reinsurance;  
 20 (B) the conduct of business activities by an insurer or another  
 21 entity regulated under IC 27; or  
 22 (C) the formation, acquisition, or dissolution of an insurer or  
 23 another entity regulated under IC 27;  
 24 commits insurance fraud. Except as provided in subsection (b),  
 25 insurance fraud is a Class D felony.  
 26 (b) An offense described in subsection (a) is a Class C felony if:  
 27 (1) the person who commits the offense has a prior unrelated  
 28 conviction under this section; or  
 29 (2) the:  
 30 (A) value of property, services, or other benefits obtained or  
 31 attempted to be obtained by the person as a result of the  
 32 offense; or  
 33 (B) economic loss suffered by another person as a result of the  
 34 offense;  
 35 is at least ~~two thousand five hundred dollars (\$2,500):~~ **fifty**  
 36 **thousand dollars (\$50,000).**  
 37 (c) A person who knowingly and with intent to defraud makes a  
 38 material misstatement in support of an application for the issuance of  
 39 an insurance policy commits insurance application fraud, a Class A  
 40 misdemeanor.

41 SECTION 58. IC 35-43-5-5 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) A person who

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1 knowingly or intentionally issues or delivers a check, a draft, or an  
 2 order on a credit institution for the payment of or to acquire money or  
 3 other property, knowing that it will not be paid or honored by the credit  
 4 institution upon presentment in the usual course of business, commits  
 5 check deception, a Class A misdemeanor. However, the offense is a  
 6 Class D felony if the amount of the check, draft, or order is at least ~~two~~  
 7 ~~thousand five hundred~~ **seven hundred fifty** dollars ~~(\$2,500)~~ **and the**  
 8 **property acquired by the person was a motor vehicle: (\$750).**

9 (b) An unpaid and dishonored check, a draft, or an order that has the  
 10 drawee's refusal to pay and reason printed, stamped, or written on or  
 11 attached to it constitutes prima facie evidence:

12 (1) that due presentment of it was made to the drawee for payment  
 13 and dishonor thereof; and

14 (2) that it properly was dishonored for the reason stated.

15 (c) The fact that a person issued or delivered a check, a draft, or an  
 16 order, payment of which was refused by the drawee, constitutes prima  
 17 facie evidence that the person knew that it would not be paid or  
 18 honored. In addition, evidence that a person had insufficient funds in  
 19 or no account with a drawee credit institution constitutes prima facie  
 20 evidence that the person knew that the check, draft, or order would not  
 21 be paid or honored.

22 (d) The following two (2) items constitute prima facie evidence of  
 23 the identity of the maker of a check, draft, or order if at the time of its  
 24 acceptance they are obtained and recorded, either on the check, draft,  
 25 or order itself or on file, by the payee:

26 (1) Name and residence, business, or mailing address of the  
 27 maker.

28 (2) Motor vehicle operator's license number, Social Security  
 29 number, home telephone number, or place of employment of the  
 30 maker.

31 (e) It is a defense under subsection (a) if a person who:

32 (1) has an account with a credit institution but does not have  
 33 sufficient funds in that account; and

34 (2) issues or delivers a check, a draft, or an order for payment on  
 35 that credit institution;

36 pays the payee or holder the amount due, together with protest fees and  
 37 any service fee or charge, which may not exceed the greater of  
 38 twenty-seven dollars and fifty cents (\$27.50) or five percent (5%) (but  
 39 not more than two hundred fifty dollars (\$250)) of the amount due, that  
 40 may be charged by the payee or holder, within ten (10) days after the  
 41 date of mailing by the payee or holder of notice to the person that the  
 42 check, draft, or order has not been paid by the credit institution. Notice

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1 sent in the manner set forth in IC 26-2-7-3 constitutes notice to the  
 2 person that the check, draft, or order has not been paid by the credit  
 3 institution. The payee or holder of a check, draft, or order that has been  
 4 dishonored incurs no civil or criminal liability for sending notice under  
 5 this subsection.

6 (f) A person does not commit a crime under subsection (a) when:

7 (1) the payee or holder knows that the person has insufficient  
 8 funds to ensure payment or that the check, draft, or order is  
 9 postdated; or

10 (2) insufficiency of funds or credit results from an adjustment to  
 11 the person's account by the credit institution without notice to the  
 12 person.

13 SECTION 59. IC 35-43-5-7 IS AMENDED TO READ AS  
 14 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) A person who  
 15 knowingly or intentionally:

16 (1) obtains public relief or assistance by means of impersonation,  
 17 fictitious transfer, false or misleading oral or written statement,  
 18 ~~fraudulent~~ **fraudulent** conveyance, or other fraudulent means;

19 (2) acquires, possesses, uses, transfers, sells, trades, issues, or  
 20 disposes of:

21 (A) an authorization document to obtain public relief or  
 22 assistance; or

23 (B) public relief or assistance;

24 except as authorized by law;

25 (3) uses, transfers, acquires, issues, or possesses a blank or  
 26 incomplete authorization document to participate in public relief  
 27 or assistance programs, except as authorized by law;

28 (4) counterfeits or alters an authorization document to receive  
 29 public relief or assistance, or knowingly uses, transfers, acquires,  
 30 or possesses a counterfeit or altered authorization document to  
 31 receive public relief or assistance; or

32 (5) conceals information for the purpose of receiving public relief  
 33 or assistance to which ~~he~~ **the person** is not entitled;

34 commits welfare fraud, a Class A misdemeanor, except as provided in  
 35 subsection (b).

36 (b) The offense is:

37 (1) a Class D felony if

38 ~~(A)~~ the amount of public relief or assistance involved is more  
 39 than ~~two hundred fifty dollars (\$250)~~ **seven hundred fifty**  
 40 **dollars (\$750)** but less than ~~two thousand five hundred dollars~~  
 41 ~~(\$2,500)~~; or

42 ~~(B)~~ the amount involved is not more than two hundred fifty

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1           dollars (~~\$250~~) and the person has a prior conviction of welfare  
 2           fraud under this section; **fifty thousand dollars (\$50,000);**  
 3           and  
 4           (2) a Class C felony if the amount of public relief or assistance  
 5           involved is ~~two thousand five hundred dollars (\$2,500)~~ **fifty**  
 6           **thousand dollars (\$50,000)** or more. ~~regardless of whether the~~  
 7           ~~person has a prior conviction of welfare fraud under this section:~~  
 8           (c) Whenever a person is convicted of welfare fraud under this  
 9           section, the clerk of the sentencing court shall certify to the appropriate  
 10          state agency and the appropriate agency of the county of the defendant's  
 11          residence:

- 12           (1) ~~his the person's~~ conviction; and
- 13           (2) whether the defendant is placed on probation and restitution
- 14           is ordered under IC 35-38-2.

15          SECTION 60. IC 35-43-5-7.1, AS AMENDED BY P.L.1-2006,  
 16          SECTION 531, IS AMENDED TO READ AS FOLLOWS  
 17          [EFFECTIVE JULY 1, 2011]: Sec. 7.1. (a) Except as provided in  
 18          subsection (b), a person who knowingly or intentionally:

- 19           (1) files a Medicaid claim, including an electronic claim, in  
 20           violation of IC 12-15;
- 21           (2) obtains payment from the Medicaid program under IC 12-15  
 22           by means of a false or misleading oral or written statement or  
 23           other fraudulent means;
- 24           (3) acquires a provider number under the Medicaid program  
 25           except as authorized by law;
- 26           (4) alters with the intent to defraud or falsifies documents or  
 27           records of a provider (as defined in 42 CFR 1000.30) that are  
 28           required to be kept under the Medicaid program; or
- 29           (5) conceals information for the purpose of applying for or  
 30           receiving unauthorized payments from the Medicaid program;
- 31          commits Medicaid fraud, a Class D felony.

32          (b) The offense described in subsection (a) is a Class C felony if the  
 33          fair market value of the offense is at least ~~one hundred thousand dollars~~  
 34          ~~(\$100,000).~~ **fifty thousand dollars (\$50,000).**

35          SECTION 61. IC 35-43-5-7.2 IS AMENDED TO READ AS  
 36          FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7.2. (a) Except as  
 37          provided in subsection (b), a person who knowingly or intentionally:

- 38           (1) files a children's health insurance program claim, including an  
 39           electronic claim, in violation of IC 12-17.6;
- 40           (2) obtains payment from the children's health insurance program  
 41           under IC 12-17.6 by means of a false or misleading oral or written  
 42           statement or other fraudulent means;

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- 1 (3) acquires a provider number under the children's health
- 2 insurance program except as authorized by law;
- 3 (4) alters with intent to defraud or falsifies documents or records
- 4 of a provider (as defined in 42 CFR 1002.301) that are required
- 5 to be kept under the children's health insurance program; or
- 6 (5) conceals information for the purpose of applying for or
- 7 receiving unauthorized payments from the children's health
- 8 insurance program;

9 commits insurance fraud, a Class D felony.

10 (b) The offense described in subsection (a) is a Class C felony if the  
11 fair market value of the offense is at least ~~one hundred thousand dollars~~  
12 ~~(\$100,000)~~ **fifty thousand dollars (\$50,000)**.

13 SECTION 62. IC 35-43-5-8, AS AMENDED BY P.L.57-2006,  
14 SECTION 80, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2011]: Sec. 8. (a) A person who knowingly executes, or  
16 attempts to execute, a scheme or artifice:

- 17 (1) to defraud a state or federally chartered or federally insured
- 18 financial institution; or
- 19 (2) to obtain any of the money, funds, credits, assets, securities,
- 20 or other property owned by or under the custody or control of a
- 21 state or federally chartered or federally insured financial
- 22 institution by means of false or fraudulent pretenses,
- 23 representations, or promises;

24 commits **bank fraud**, a ~~Class C~~ **Class D** felony. **However, the offense**  
25 **is a Class C felony if the total amount of property obtained is at**  
26 **least fifty thousand dollars (\$50,000).**

27 (b) As used in this section, the term "state or federally chartered or  
28 federally insured financial institution" means:

- 29 (1) an institution with accounts insured by the Federal Deposit
- 30 Insurance Corporation;
- 31 (2) a credit union with accounts insured by the National Credit
- 32 Union Administration Board;
- 33 (3) a federal home loan bank or a member, as defined in Section
- 34 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), as in
- 35 effect on December 31, 1990, of the Federal Home Loan Bank
- 36 System; or
- 37 (4) a bank, banking association, land bank, intermediate credit
- 38 bank, bank for cooperatives, production credit association, land
- 39 bank association, mortgage association, trust company, savings
- 40 bank, or other banking or financial institution organized or
- 41 operating under the laws of the United States or of the state.

42 The term does not include a lender licensed under IC 24-4.5.

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1 SECTION 63. IC 35-43-5-12 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) As used in this  
3 section, "financial institution" refers to a state or federally chartered  
4 bank, savings bank, savings association, or credit union.

5 (b) A person who knowingly or intentionally obtains property,  
6 through a scheme or artifice, with intent to defraud:

7 (1) by issuing or delivering a check, a draft, an electronic debit,  
8 or an order on a financial institution:

9 (A) knowing that the check, draft, order, or electronic debit  
10 will not be paid or honored by the financial institution upon  
11 presentment in the usual course of business;

12 (B) using false or altered evidence of identity or residence;

13 (C) using a false or an altered account number; or

14 (D) using a false or an altered check, draft, order, or electronic  
15 instrument;

16 (2) by:

17 (A) depositing the minimum initial deposit required to open an  
18 account; and

19 (B) either making no additional deposits or making insufficient  
20 additional deposits to insure debits to the account; or

21 (3) by opening accounts with more than one (1) financial  
22 institution in either a consecutive or concurrent time period;

23 commits check fraud, a Class D felony. However, the offense is a Class  
24 C felony if the person has a prior unrelated conviction under this  
25 section or the aggregate amount of property obtained is at least  
26 ~~twenty-five thousand dollars (\$25,000):~~ **fifty thousand dollars**  
27 **(\$50,000).**

28 SECTION 64. IC 35-48-4-1, AS AMENDED BY P.L.151-2006,  
29 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
30 JULY 1, 2011]: Sec. 1. (a) A person who:

31 (1) ~~knowingly or intentionally:~~

32 (A) ~~manufactures;~~

33 (B) ~~finances the manufacture of;~~

34 (C) ~~delivers; or~~

35 (D) ~~finances the delivery of;~~

36 cocaine or a narcotic drug, pure or adulterated, classified in  
37 schedule I or II; or

38 (2) ~~possesses, with intent to:~~

39 (A) ~~manufacture;~~

40 (B) ~~finance the manufacture of;~~

41 (C) ~~deliver; or~~

42 (D) ~~finance the delivery of;~~

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1 cocaine or a narcotic drug, pure or adulterated, classified in  
 2 schedule I or H;  
 3 commits dealing in cocaine or a narcotic drug, a Class B felony, except  
 4 as provided in subsection (b):  
 5 (b) The offense is a Class A felony if:  
 6 (1) the amount of the drug involved weighs three (3) grams or  
 7 more;  
 8 (2) the person:  
 9 (A) delivered; or  
 10 (B) financed the delivery of;  
 11 the drug to a person under eighteen (18) years of age at least three  
 12 (3) years junior to the person; or  
 13 (3) the person manufactured, delivered, or financed the delivery  
 14 of the drug:  
 15 (A) on a school bus; or  
 16 (B) in, on, or within one thousand (1,000) feet of:  
 17 (i) school property;  
 18 (ii) a public park;  
 19 (iii) a family housing complex; or  
 20 (iv) a youth program center.  
 21 (1) knowingly or intentionally:  
 22 (A) delivers; or  
 23 (B) finances the delivery of;  
 24 cocaine or a narcotic drug, pure or adulterated, classified in  
 25 schedule I or II; or  
 26 (2) possesses, with intent to:  
 27 (A) manufacture;  
 28 (B) finance the manufacture of;  
 29 (C) deliver; or  
 30 (D) finance the delivery of;  
 31 cocaine or a narcotic drug, pure or adulterated, classified in  
 32 schedule I or II;  
 33 commits dealing in cocaine or a narcotic drug, a Class C felony,  
 34 except as provided in subsection (b) or (c).  
 35 (b) The offense is a Class B felony if:  
 36 (1) the amount of the drug involved is three (3) grams or  
 37 more, but less than ten (10) grams;  
 38 (2) the person manufactured or financed the manufacture of  
 39 the drug;  
 40 (3) the person;  
 41 (A) delivered; or  
 42 (B) financed the delivery of;

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- 1           **the drug to a person under eighteen (18) years of age; or**
- 2           **(4) the person delivered or financed the delivery of the drug;**
- 3               **(A) on a school bus;**
- 4               **(B) in, on, or within one thousand (1,000) feet of:**
  - 5                   **(i) school property;**
  - 6                   **(ii) a public park;**
  - 7                   **(iii) a family housing complex; or**
  - 8                   **(iv) a youth program center; or**
- 9               **(C) the person delivered the drug while possessing a**
- 10              **firearm (as defined in IC 35-47-1-5).**
- 11           **(c) The offense is a Class A felony if:**
  - 12               **(1) the amount of the drug involved is ten (10) grams or more;**
  - 13               **or**
  - 14               **(2) the:**
    - 15                   **(A) amount of the drug involved is three (3) grams or**
    - 16                   **more; and**
    - 17                   **(B) person:**
      - 18                       **(i) manufactured or financed the manufacture of the**
      - 19                       **drug; or**
      - 20                       **(ii) delivered or financed the delivery of the drug on a**
      - 21                       **school bus, or in, on, or within one thousand (1,000) feet**
      - 22                       **of school property, a public park, a family housing**
      - 23                       **complex, or a youth program center, or the person**
      - 24                       **delivered the drug while possessing a firearm (as defined**
      - 25                       **in IC 35-47-1-5).**

26           SECTION 65. IC 35-48-4-1.1, AS ADDED BY P.L.151-2006,  
 27           SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28           JULY 1, 2011]: Sec. 1.1. (a) A person who:  
 29               **(1) knowingly or intentionally:**  
 30                   **(A) manufactures;**  
 31                   **(B) finances the manufacture of;**  
 32                   **(C) delivers; or**  
 33                   **(D) finances the delivery of;**  
 34               **methamphetamine, pure or adulterated; or**  
 35               **(2) possesses, with intent to:**  
 36                   **(A) manufacture;**  
 37                   **(B) finance the manufacture of;**  
 38                   **(C) deliver; or**  
 39                   **(D) finance the delivery of;**  
 40               **methamphetamine, pure or adulterated;**  
 41           **commits dealing in methamphetamine, a Class B felony, except as**  
 42           **provided in subsection (b):**

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- 1 (b) The offense is a Class A felony if:
- 2 (1) the amount of the drug involved weighs three (3) grams or
- 3 more;
- 4 (2) the person:
- 5 (A) delivered; or
- 6 (B) financed the delivery of;
- 7 the drug to a person under eighteen (18) years of age at least three
- 8 (3) years junior to the person; or
- 9 (3) the person manufactured, delivered, or financed the delivery
- 10 of the drug:
- 11 (A) on a school bus; or
- 12 (B) in, on, or within one thousand (1,000) feet of:
- 13 (i) school property;
- 14 (ii) a public park;
- 15 (iii) a family housing complex; or
- 16 (iv) a youth program center.
- 17 (1) knowingly or intentionally:
- 18 (A) delivers; or
- 19 (B) finances the delivery of;
- 20 methamphetamine, pure or adulterated; or
- 21 (2) possesses, with intent to:
- 22 (A) manufacture;
- 23 (B) finance the manufacture of;
- 24 (C) deliver; or
- 25 (D) finance the delivery of;
- 26 methamphetamine, pure or adulterated;
- 27 commits dealing in methamphetamine, a Class C felony, except as
- 28 provided in subsection (b) or (c).
- 29 (b) The offense is a Class B felony if:
- 30 (1) the amount of the drug involved is three (3) grams or
- 31 more, but less than ten (10) grams;
- 32 (2) the person manufactured or financed the manufacture of
- 33 the drug;
- 34 (3) the person;
- 35 (A) delivered; or
- 36 (B) financed the delivery of;
- 37 the drug to a person under eighteen (18) years of age; or
- 38 (4) the person delivered or financed the delivery of the drug:
- 39 (A) on a school bus;
- 40 (B) in, on, or within one thousand (1,000) feet of:
- 41 (i) school property;
- 42 (ii) a public park;

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- 1                   (iii) a family housing complex; or
- 2                   (iv) a youth program center; or
- 3                   (C) the person delivered the drug while possessing a
- 4                   firearm (as defined in IC 35-47-1-5).
- 5       (c) The offense is a Class A felony if:
- 6           (1) the amount of the drug involved is ten (10) grams or more;
- 7           (2) the:
- 8               (A) amount of the drug involved is three (3) grams or
- 9               more; and
- 10              (B) person delivered or financed the delivery of the drug
- 11              on a school bus, or in, on, or within one thousand (1,000)
- 12              feet of school property, a public park, a family housing
- 13              complex, or a youth program center, or the person
- 14              delivered the drug while possessing a firearm (as defined
- 15              in IC 35-47-1-5); or
- 16              (3) the person manufactured or financed the manufacture of
- 17              the drug on a school bus, or in, on, or within one thousand
- 18              (1,000) feet of school property, a public park, a family housing
- 19              complex, or a youth program center, or a dwelling; or
- 20              (4) the person manufactured the drug in the physical presence
- 21              of a child.
- 22       SECTION 66. IC 35-48-4-2 IS AMENDED TO READ AS
- 23       FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) A person who:
- 24           (1) knowingly or intentionally:
- 25               (A) manufactures;
- 26               (B) finances the manufacture of;
- 27               (C) delivers; or
- 28               (D) finances the delivery of;
- 29       a controlled substance, pure or adulterated, classified in schedule
- 30       I, H, or HH, except marijuana, hash oil, or hashish; or
- 31           (2) possesses, with intent to:
- 32               (A) manufacture;
- 33               (B) finance the manufacture of;
- 34               (C) deliver; or
- 35               (D) finance the delivery of;
- 36       a controlled substance, pure or adulterated, classified in schedule
- 37       I, H, or HH, except marijuana, hash oil, or hashish;
- 38       commits dealing in a schedule I, H, or HH controlled substance, a Class
- 39       B felony, except as provided in subsection (b).
- 40           (b) The offense is a Class A felony if:
- 41               (1) the person:
- 42                   (A) delivered; or

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- 1                    (B) financed the delivery of;
- 2                    the substance to a person under eighteen (18) years of age at least
- 3                    three (3) years junior to the person; or
- 4                    (2) the person delivered or financed the delivery of the substance:
- 5                    (A) on a school bus; or
- 6                    (B) in, on, or within one thousand (1,000) feet of:
- 7                    (i) school property;
- 8                    (ii) a public park;
- 9                    (iii) a family housing complex; or
- 10                   (iii) a youth program center.
- 11                   (1) knowingly or intentionally:
- 12                   (A) manufactures;
- 13                   (B) finances the manufacture of;
- 14                   (C) delivers; or
- 15                   (D) finances the delivery of;
- 16                   a controlled substance, pure or adulterated, classified in
- 17                   schedule I, II, or III, except marijuana, hash oil, or hashish;
- 18                   or
- 19                   (2) possesses with intent to:
- 20                   (A) manufacture;
- 21                   (B) finance the manufacture of;
- 22                   (C) deliver; or
- 23                   (D) finance the delivery of;
- 24                   a controlled substance, pure or adulterated, classified in
- 25                   schedule I, II, or III, except marijuana, hash oil, or hashish;
- 26                   commits dealing in a schedule I, II, or III controlled substance, a
- 27                   Class C felony, except as provided in subsection (b), or (c).
- 28                   (b) The offense is a Class B felony if:
- 29                   (1) the amount of the drug is three (3) grams or more but less
- 30                   than then (10) grams;
- 31                   (2) the person manufactured the substance;
- 32                   (3) the person delivered or financed the delivery of the
- 33                   substance to a person under eighteen (18) years of age;
- 34                   (4) the person delivered or financed the delivery of the
- 35                   substance:
- 36                   (A) on a school bus; or
- 37                   (B) in, on, or within one thousand (1,000) feet of:
- 38                   (i) school property;
- 39                   (ii) a public park;
- 40                   (iii) a family housing complex; or
- 41                   (iv) a youth program center; or
- 42                   (5) the person delivered the substance while possessing a

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**firearm (as defined in IC 35-47-1-5).**  
**(c) The offense is a Class A felony if:**  
**(1) the amount of the substance is ten (10) grams or more; or**  
**(2) the person:**  
**(A) manufactured or financed the manufacture of the substance; or**  
**(B) delivered or financed the delivery of the drug on a school bus, or in, on, or within one thousand (1,000) feet of school property, a public park, a family housing complex, or a youth program center, or the person delivered the drug while possessing a firearm (as defined in IC 35-47-1-5).**

SECTION 67. IC 35-48-4-6, AS AMENDED BY P.L.151-2006, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses cocaine (pure or adulterated) or a narcotic drug (pure or adulterated) classified in schedule I or II, commits possession of cocaine or a narcotic drug, a Class D felony, except as provided in subsection (b) or (c).

**(b) The offense is:**  
**(1) a Class E felony if:**  
**(A) the amount of the drug involved (pure or adulterated) weighs three (3) grams or more; or**  
**(B) the person was also in possession of a firearm (as defined in IC 35-47-1-5);**  
**(2) a Class B felony if the person in possession of the cocaine or narcotic drug possesses less than three (3) grams of pure or adulterated cocaine or a narcotic drug:**  
**(A) on a school bus; or**  
**(B) in, on, or within one thousand (1,000) feet of:**  
**(i) school property;**  
**(ii) a public park;**  
**(iii) a family housing complex; or**  
**(iv) a youth program center; and**  
**(3) a Class A felony if the person possesses the cocaine or narcotic drug in an amount (pure or adulterated) weighing at least three (3) grams:**  
**(A) on a school bus; or**  
**(B) in, on, or within one thousand (1,000) feet of:**  
**(i) school property;**  
**(ii) a public park;**

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- 1 (iii) a family housing complex; or
- 2 (iv) a youth program center.
- 3 **(b) The offense is a Class C felony if:**
- 4 **(1) the amount of the drug involved, pure or adulterated,**
- 5 **weighs three (3) grams or more but less than ten (10) grams;**
- 6 **or**
- 7 **(2) the person possesses the drug;**
- 8 **(A) on a school bus;**
- 9 **(B) in, on, or within one thousand (1,000) feet of:**
- 10 **(i) school property;**
- 11 **(ii) a public park;**
- 12 **(iii) a family housing complex; or**
- 13 **(iv) a youth program center; or**
- 14 **(C) while the person was also in possession of a firearm (as**
- 15 **defined in IC 35-47-1-5).**
- 16 **(c) The offense is a Class B felony if the amount of the drug**
- 17 **involved, pure or adulterated, weighs ten (10) grams or more.**
- 18 SECTION 68. IC 35-48-4-6.1, AS ADDED BY P.L.151-2006,
- 19 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 20 JULY 1, 2011]: Sec. 6.1. (a) A person who, without a valid prescription
- 21 or order of a practitioner acting in the course of the practitioner's
- 22 professional practice, knowingly or intentionally possesses
- 23 methamphetamine (pure or adulterated) commits possession of
- 24 methamphetamine, a Class D felony, except as provided in subsection
- 25 (b) or (c).
- 26 (b) The offense is:
- 27 (1) a Class E felony if:
- 28 (A) the amount of the drug involved (pure or adulterated)
- 29 weighs three (3) grams or more; or
- 30 (B) the person was also in possession of a firearm (as defined
- 31 in IC 35-47-1-5);
- 32 (2) a Class B felony if the person in possession of the
- 33 methamphetamine possesses less than three (3) grams of pure or
- 34 adulterated methamphetamine:
- 35 (A) on a school bus; or
- 36 (B) in, on, or within one thousand (1,000) feet of:
- 37 (i) school property;
- 38 (ii) a public park;
- 39 (iii) a family housing complex; or
- 40 (iv) a youth program center; and
- 41 (3) a Class A felony if the person possesses the methamphetamine
- 42 in an amount (pure or adulterated) weighing at least three (3)

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grams:

- (A) on a school bus; or
- (B) in, on, or within one thousand (1,000) feet of:
  - (i) school property;
  - (ii) a public park;
  - (iii) a family housing complex; or
  - (iv) a youth program center.

**(b) The offense is a Class C felony if:**

- (1) the amount of the drug involved, pure or adulterated, weighs three (3) grams or more but less than ten (10) grams; or**
- (2) the person possesses the drug;**
  - (A) on a school bus;**
  - (B) in, on, or within one thousand (1,000) feet of:**
    - (i) school property;**
    - (ii) a public park;**
    - (iii) a family housing complex; or**
    - (iv) a youth program center; or**
  - (C) while the person was also in possession of a firearm (as defined in IC 35-47-1-5).**

**(c) The offense is a Class B felony if the amount of the drug involved, pure or adulterated, weighs ten (10) grams or more.**

SECTION 69. IC 35-48-4-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. A person who:

- (1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, or hashish;
- (2) knowingly or intentionally grows or cultivates marijuana; or
- (3) knowing that marijuana is growing on his premises, fails to destroy the marijuana plants;

commits possession of marijuana, hash oil, or hashish, a Class A misdemeanor. However, the offense is a Class D felony ~~(i)~~ if the amount involved is more than thirty (30) grams of marijuana or two (2) grams of hash oil or hashish. ~~or (ii) if the person has a prior conviction of an offense involving marijuana, hash oil, or hashish.~~

SECTION 70. IC 35-50-2-2, AS AMENDED BY P.L.64-2008, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section. ~~or in section 2.1 of this chapter.~~

(b) Except as provided in subsection (i), with respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence,

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1 unless the court has approved placement of the offender in a forensic  
 2 diversion program under IC 11-12-3.7:

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

5 (2) The crime committed was a Class C felony, **except for a**  
 6 **Class C felony under IC 9-30-10-17**, and less than seven (7)  
 7 years have elapsed between the date the person was discharged  
 8 from probation, imprisonment, or parole, whichever is later, for  
 9 a prior unrelated felony conviction and the date the person  
 10 committed the Class C felony for which the person is being  
 11 sentenced.

12 ~~(3) The crime committed was a Class D felony and less than three~~  
 13 ~~(3) years have elapsed between the date the person was~~  
 14 ~~discharged from probation, imprisonment, or parole, whichever~~  
 15 ~~is later, for a prior unrelated felony conviction and the date the~~  
 16 ~~person committed the Class D felony for which the person is~~  
 17 ~~being sentenced. However, the court may suspend the minimum~~  
 18 ~~sentence for the crime only if the court orders home detention~~  
 19 ~~under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum~~  
 20 ~~sentence specified for the crime under this chapter.~~

21 ~~(4)~~ **(3)** The felony committed was:

22 (A) murder (IC 35-42-1-1);  
 23 (B) battery (IC 35-42-2-1) with a deadly weapon or battery  
 24 causing death;  
 25 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;  
 26 (D) kidnapping (IC 35-42-3-2);  
 27 (E) confinement (IC 35-42-3-3) with a deadly weapon;  
 28 (F) rape (IC 35-42-4-1) as a Class A felony;  
 29 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A  
 30 felony;  
 31 (H) except as provided in subsection (i), child molesting  
 32 (IC 35-42-4-3) as a Class A or Class B felony, unless:  
 33 (i) the felony committed was child molesting as a Class B  
 34 felony;  
 35 (ii) the victim was not less than twelve (12) years old at the  
 36 time the offense was committed;  
 37 (iii) the person is not more than four (4) years older than the  
 38 victim, or more than five (5) years older than the victim if  
 39 the relationship between the person and the victim was a  
 40 dating relationship or an ongoing personal relationship (not  
 41 including a family relationship);  
 42 (iv) the person did not have a position of authority or

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- 1           substantial influence over the victim; and
- 2           (v) the person has not committed another sex offense (as
- 3           defined in IC 11-8-8-5.2) (including a delinquent act that
- 4           would be a sex offense if committed by an adult) against any
- 5           other person;
- 6           (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 7           with a deadly weapon;
- 8           (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 9           injury;
- 10          (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 11          or with a deadly weapon;
- 12          (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 13          weapon;
- 14          (M) escape (IC 35-44-3-5) with a deadly weapon;
- 15          (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 16          (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the
- 17          court finds the person possessed a firearm (as defined in
- 18          IC 35-47-1-5) at the time of the offense, or the person
- 19          delivered or intended to deliver to a person under eighteen
- 20          (18) years of age at least three (3) years junior to the person
- 21          and was on a school bus or within one thousand (1,000) feet
- 22          of:
- 23           (i) school property;
- 24           (ii) a public park;
- 25           (iii) a family housing complex; or
- 26           (iv) a youth program center;
- 27          (P) dealing in methamphetamine (IC 35-48-4-1.1) if the court
- 28          finds the person possessed a firearm (as defined in
- 29          IC 35-47-1-5) at the time of the offense, or the person
- 30          delivered or intended to deliver the methamphetamine pure or
- 31          adulterated to a person under eighteen (18) years of age at
- 32          least three (3) years junior to the person and was on a school
- 33          bus or within one thousand (1,000) feet of:
- 34           (i) school property;
- 35           (ii) a public park;
- 36           (iii) a family housing complex; or
- 37           (iv) a youth program center;
- 38          (Q) dealing in a schedule I, II, or III controlled substance
- 39          (IC 35-48-4-2) if the court finds the person possessed a firearm
- 40          (as defined in IC 35-47-1-5) at the time of the offense, or the
- 41          person delivered or intended to deliver to a person under
- 42          eighteen (18) years of age at least three (3) years junior to the

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1 person and was on a school bus or within one thousand (1,000)  
 2 feet of:  
 3 (i) school property;  
 4 (ii) a public park;  
 5 (iii) a family housing complex; or  
 6 (iv) a youth program center;  
 7 (R) an offense under IC 9-30-5 (operating a vehicle while  
 8 intoxicated) and the person who committed the offense has  
 9 accumulated at least two (2) prior unrelated convictions under  
 10 IC 9-30-5;  
 11 (S) an offense under IC 9-30-5-5(b) (operating a vehicle while  
 12 intoxicated causing death);  
 13 (T) aggravated battery (IC 35-42-2-1.5); or  
 14 (U) disarming a law enforcement officer (IC 35-44-3-3.5).  
 15 (c) Except as provided in subsection (e), whenever the court  
 16 suspends a sentence for a felony, it shall place the person on probation  
 17 under IC 35-38-2 for a fixed period to end not later than the date that  
 18 the maximum sentence that may be imposed for the felony will expire.  
 19 (d) The minimum sentence for a person convicted of voluntary  
 20 manslaughter may not be suspended unless the court finds at the  
 21 sentencing hearing that the crime was not committed by means of a  
 22 deadly weapon.  
 23 (e) Whenever the court suspends that part of the sentence of a sex  
 24 or violent offender (as defined in IC 11-8-8-5) that is suspendible under  
 25 subsection (b), the court shall place the sex or violent offender on  
 26 probation under IC 35-38-2 for not more than ten (10) years.  
 27 (f) An additional term of imprisonment imposed under  
 28 IC 35-50-2-11 may not be suspended.  
 29 (g) A term of imprisonment imposed under IC 35-47-10-6 or  
 30 IC 35-47-10-7 may not be suspended if the commission of the offense  
 31 was knowing or intentional.  
 32 (h) A term of imprisonment imposed for an offense under  
 33 IC 35-48-4-6(b)(1)(B) or IC 35-48-4-6.1(b)(1)(B) may not be  
 34 suspended.  
 35 (i) If a person is:  
 36 (1) convicted of child molesting (IC 35-42-4-3) as a Class A  
 37 felony against a victim less than twelve (12) years of age; and  
 38 (2) at least twenty-one (21) years of age;  
 39 the court may suspend only that part of the sentence that is in excess of  
 40 thirty (30) years.  
 41 SECTION 71. IC 35-50-2-8, AS AMENDED BY P.L.71-2005,  
 42 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2011]: Sec. 8. (a) Except as otherwise provided in this section,  
 2 the state may seek to have a person sentenced as a habitual offender for  
 3 any felony by alleging, on a page separate from the rest of the charging  
 4 instrument, that the person has accumulated two (2) prior unrelated  
 5 felony convictions.

6 (b) The state may not seek to have a person sentenced as a habitual  
 7 offender for a felony offense under this section if:

8 (1) the offense is a misdemeanor that is enhanced to a felony in  
 9 the same proceeding as the habitual offender proceeding solely  
 10 because the person had a prior unrelated conviction; **or**

11 (2) the offense is an offense under IC 9-30-10-16 or  
 12 IC 9-30-10-17. **or**

13 ~~(3) all of the following apply:~~

14 ~~(A) The offense is an offense under IC 16-42-19 or~~  
 15 ~~IC 35-48-4.~~

16 ~~(B) The offense is not listed in section 2(b)(4) of this chapter.~~

17 ~~(C) The total number of unrelated convictions that the person~~  
 18 ~~has for:~~

19 ~~(i) dealing in or selling a legend drug under IC 16-42-19-27;~~

20 ~~(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);~~

21 ~~(iii) dealing in a schedule I, H, HH controlled substance~~  
 22 ~~(IC 35-48-4-2);~~

23 ~~(iv) dealing in a schedule IV controlled substance~~  
 24 ~~(IC 35-48-4-3); and~~

25 ~~(v) dealing in a schedule V controlled substance~~  
 26 ~~(IC 35-48-4-4);~~

27 ~~does not exceed one (1).~~

28 (c) A person has accumulated two (2) prior unrelated felony  
 29 convictions for purposes of this section only if:

30 (1) the second prior unrelated felony conviction was committed  
 31 after sentencing for the first prior unrelated felony conviction; and

32 (2) the offense for which the state seeks to have the person  
 33 sentenced as a habitual offender was committed after sentencing  
 34 for the second prior unrelated felony conviction.

35 (d) A conviction does not count for purposes of this section as a  
 36 prior unrelated felony conviction if:

37 (1) the conviction has been set aside; **or**

38 (2) the conviction is one for which the person has been pardoned.

39 **or**

40 ~~(3) all of the following apply:~~

41 ~~(A) The offense is an offense under IC 16-42-19 or~~  
 42 ~~IC 35-48-4.~~

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1           ~~(B) The offense is not listed in section 2(b)(4) of this chapter.~~  
 2           ~~(C) The total number of unrelated convictions that the person~~  
 3           ~~has for:~~  
 4           ~~(i) dealing in or selling a legend drug under IC 16-42-19-27;~~  
 5           ~~(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);~~  
 6           ~~(iii) dealing in a schedule I, II, III controlled substance~~  
 7           ~~(IC 35-48-4-2);~~  
 8           ~~(iv) dealing in a schedule IV controlled substance~~  
 9           ~~(IC 35-48-4-3); and~~  
 10           ~~(v) dealing in a schedule V controlled substance~~  
 11           ~~(IC 35-48-4-4);~~  
 12           ~~does not exceed one (1).~~

13           (e) The requirements in subsection (b) do not apply to a prior  
 14           unrelated felony conviction that is used to support a sentence as a  
 15           habitual offender. A prior unrelated felony conviction may be used  
 16           under this section to support a sentence as a habitual offender even if  
 17           the sentence for the prior unrelated offense was enhanced for any  
 18           reason, including an enhancement because the person had been  
 19           convicted of another offense. However, a prior unrelated felony  
 20           conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed),  
 21           or IC 9-12-3-2 (repealed) may not be used to support a sentence as a  
 22           habitual offender.

23           (f) If the person was convicted of the felony in a jury trial, the jury  
 24           shall reconvene for the sentencing hearing. If the trial was to the court  
 25           or the judgment was entered on a guilty plea, the court alone shall  
 26           conduct the sentencing hearing under IC 35-38-1-3.

27           (g) A person is a habitual offender if the jury (if the hearing is by  
 28           jury) or the court (if the hearing is to the court alone) finds that the  
 29           state has proved beyond a reasonable doubt that the person had  
 30           accumulated two (2) prior unrelated felony convictions.

31           (h) The court shall sentence a person found to be a habitual offender  
 32           to an additional fixed term that is not less than the advisory sentence  
 33           for the underlying offense nor more than three (3) times the advisory  
 34           sentence for the underlying offense. However, the additional sentence  
 35           may not exceed thirty (30) years.

36           SECTION 72. IC 35-50-2-10, AS AMENDED BY P.L.1-2006,  
 37           SECTION 551, IS AMENDED TO READ AS FOLLOWS  
 38           [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) As used in this section:

39           (1) "Drug" means a drug or a controlled substance (as defined in  
 40           IC 35-48-1).

41           (2) "Substance offense" means a Class A misdemeanor or a felony  
 42           in which the possession, use, abuse, delivery, transportation, or

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1 manufacture of alcohol or drugs is a material element of the  
 2 crime. The term includes an offense under IC 9-30-5 and an  
 3 offense under IC 9-11-2 (before its repeal).

4 (b) The state may seek to have a person sentenced as a habitual  
 5 substance offender for any substance offense by alleging, on a page  
 6 separate from the rest of the charging instrument, that the person has  
 7 accumulated two (2) prior unrelated substance offense convictions.

8 (c) After a person has been convicted and sentenced for a substance  
 9 offense committed after sentencing for a prior unrelated substance  
 10 offense conviction, the person has accumulated two (2) prior unrelated  
 11 substance offense convictions. However, a conviction does not count  
 12 for purposes of this subsection if:

- 13 (1) it has been set aside; or  
 14 (2) it is a conviction for which the person has been pardoned.

15 (d) If the person was convicted of the substance offense in a jury  
 16 trial, the jury shall reconvene for the sentencing hearing. If the trial was  
 17 to the court, or the judgment was entered on a guilty plea, the court  
 18 alone shall conduct the sentencing hearing, under IC 35-38-1-3.

19 (e) A person is a habitual substance offender if the jury (if the  
 20 hearing is by jury) or the court (if the hearing is to the court alone)  
 21 finds that the state has proved beyond a reasonable doubt that the  
 22 person had accumulated two (2) prior unrelated substance offense  
 23 convictions.

24 (f) The court shall sentence a person found to be a habitual  
 25 substance offender to an additional fixed term of at least three (3) years  
 26 but not more than eight (8) years imprisonment, to be added to the term  
 27 of imprisonment imposed under IC 35-50-2 or IC 35-50-3. If the court  
 28 finds that

29 ~~(1)~~ three (3) years or more have elapsed since the date the person  
 30 was discharged from probation, imprisonment, or parole  
 31 (whichever is later) for the last prior unrelated substance offense  
 32 conviction and the date the person committed the substance  
 33 offense for which the person is being sentenced as a habitual  
 34 substance offender, or

35 ~~(2)~~ all of the substance offenses for which the person has been  
 36 convicted are substance offenses under ~~IC 16-42-19~~ or  
 37 ~~IC 35-48-4~~, the person has not been convicted of a substance  
 38 offense listed in section 2(b)(4) of this chapter, and the total  
 39 number of convictions that the person has for:

- 40 (A) dealing in or selling a legend drug under ~~IC 16-42-19-27~~;  
 41 (B) dealing in cocaine or a narcotic drug (~~IC 35-48-4-1~~);  
 42 (C) dealing in a schedule I, II, or III controlled substance

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1           ~~(IC 35-48-4-2);~~  
 2           ~~(D) dealing in a schedule IV controlled substance~~  
 3           ~~(IC 35-48-4-3); and~~  
 4           ~~(E) dealing in a schedule V controlled substance~~  
 5           ~~(IC 35-48-4-4);~~  
 6           does not exceed one (1);

7 then the court may reduce the additional fixed term. However, the court  
 8 may not reduce the additional fixed term to less than one (1) year.

9           (g) If a reduction of the additional year fixed term is authorized  
 10 under subsection (f), the court may also consider the aggravating ~~or~~  
 11 circumstances in IC 35-38-1-7.1(a) and the mitigating circumstances  
 12 in IC 35-38-1-7.1(b) to:

- 13           (1) decide the issue of granting a reduction; or
- 14           (2) determine the number of years, if any, to be subtracted under
- 15           subsection (f).

16           SECTION 73. IC 35-50-2-14, AS AMENDED BY P.L.125-2009,  
 17 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 JULY 1, 2011]: Sec. 14. (a) As used in this section, "sex offense"  
 19 means a felony conviction:

- 20           (1) under IC 35-42-4-1 through IC 35-42-4-9 or under
- 21           IC 35-46-1-3;
- 22           (2) for an attempt or conspiracy to commit an offense described
- 23           in subdivision (1); or
- 24           (3) for an offense under the laws of another jurisdiction, including
- 25           a military court, that is substantially similar to an offense
- 26           described in subdivision (1) **or (2).**

27           (b) The state may seek to have a person sentenced as a repeat sexual  
 28 offender for a sex offense described in subsection (a)(1) or (a)(2) by  
 29 alleging, on a page separate from the rest of the charging instrument,  
 30 that the person has accumulated one (1) prior unrelated felony  
 31 conviction for a sex offense described in subsection (a).

32           (c) After a person has been convicted and sentenced for a felony  
 33 described in subsection (a)(1) or (a)(2) after having been sentenced for  
 34 a prior unrelated sex offense described in subsection (a), the person has  
 35 accumulated one (1) prior unrelated felony sex offense conviction.  
 36 However, a conviction does not count for purposes of this subsection,  
 37 if:

- 38           (1) it has been set aside; or
- 39           (2) it is a conviction for which the person has been pardoned.

40           (d) If the person was convicted of the sex offense in a jury trial, the  
 41 jury shall reconvene to hear evidence in the enhancement hearing. If  
 42 the trial was to the court, or the judgment was entered on a guilty plea,

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1 the court alone shall hear evidence in the enhancement hearing.

2 (e) A person is a repeat sexual offender if the jury (if the hearing is  
3 by jury) or the court (if the hearing is to the court alone) finds that the  
4 state has proved beyond a reasonable doubt that the person had  
5 accumulated one (1) prior unrelated felony sex offense conviction.

6 (f) The court may sentence a person found to be a repeat sexual  
7 offender to an additional fixed term that is the advisory sentence for the  
8 underlying offense. However, the additional sentence may not exceed  
9 ten (10) years.

10 SECTION 74. IC 36-2-21 IS ADDED TO THE INDIANA CODE  
11 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
12 JULY 1, 2011]:

13 **Chapter 21. County Offender Fund**

14 **Sec. 1. (a) A county shall establish, by resolution, a county  
15 offender fund to receive money that may be used to defray the  
16 expenses of incarcerating, supervising, or treating offenders  
17 housed in the county, in particular those offenders housed locally  
18 who may have previously been transferred to the department of  
19 correction.**

20 **(b) Except as provided in subsection (c), money in the fund may  
21 be spent only under an appropriation from the county fiscal body.  
22 In appropriating money from the fund, the fiscal body shall give  
23 first priority to programs that defray the expense of housing an  
24 offender in jail, second priority to probation and community  
25 corrections programs, and third priority to problem solving courts  
26 and work release programs.**

27 **(c) No money may be disbursed from this fund after July 1 of  
28 each year unless the Indiana office of technology has certified  
29 under IC 4-13.1-2-2 that the judicial technology and automation  
30 project is sharing information with independent providers.**

31 SECTION 75. P.L.182-2009(ss), SECTION 493 IS AMENDED TO  
32 READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: SECTION 493.

33 (a) As used in this SECTION, "commission" refers to the criminal code  
34 evaluation commission established by subsection (b).

35 (b) The criminal code evaluation commission is established to  
36 evaluate the criminal laws of Indiana. If, based on the commission's  
37 evaluation, the commission determines that changes are necessary or  
38 appropriate, the commission shall make recommendations to the  
39 general assembly for the modification of the criminal laws.

40 **(c) For the 2011 legislative interim, the commission shall study  
41 truth in sentencing, the department of correction's use of good time  
42 credit and earned credit time, and felony classifications.**

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1           (c) (d) The commission may study other topics assigned by the  
2 legislative council or as directed by the commission chair.

3           (d) (e) The commission may meet during the months of:

4               (1) ~~July, August, and September of 2009;~~

5               (2) (1) April, May, June, July, August, and September of 2010;  
6               and

7               (3) (2) June, July, August, ~~and~~ September, **and October** of 2011.

8           (e) (f) The commission consists of seventeen (17) members  
9 appointed as follows:

10           (1) Four (4) members of the senate, not more than two (2) of  
11 whom may be affiliated with the same political party, to be  
12 appointed by the president pro tempore of the senate.

13           (2) Four (4) members of the house of representatives, not more  
14 than two (2) of whom may be affiliated with the same political  
15 party, to be appointed by the speaker of the house of  
16 representatives.

17           (3) The attorney general or the attorney general's designee.

18           (4) The commissioner of the department of correction or the  
19 commissioner's designee.

20           (5) The executive director of the prosecuting attorneys council of  
21 Indiana or the executive director's designee.

22           (6) The executive director of the public defender council of  
23 Indiana or the executive director's designee.

24           (7) The chief justice of the supreme court or the chief justice's  
25 designee.

26           (8) Two (2) judges who exercise criminal jurisdiction, who may  
27 not be affiliated with the same political party, to be appointed by  
28 the governor.

29           (9) Two (2) professors employed by a law school in Indiana  
30 whose expertise includes criminal law, to be appointed by the  
31 governor.

32           (f) (g) The chairman of the legislative council shall appoint a  
33 legislative member of the commission to serve as chair of the  
34 commission. Whenever there is a new chairman of the legislative  
35 council, the new chairman may remove the chair of the commission  
36 and appoint another chair.

37           (g) (h) If a legislative member of the commission ceases to be a  
38 member of the chamber from which the member was appointed, the  
39 member also ceases to be a member of the commission.

40           (h) (i) A legislative member of the commission may be removed at  
41 any time by the appointing authority who appointed the legislative  
42 member.

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1           (†) (j) If a vacancy exists on the commission, the appointing  
2 authority who appointed the former member whose position is vacant  
3 shall appoint an individual to fill the vacancy.  
4           (†) (k) The commission shall submit a final report of the results of  
5 its study to the legislative council before November 1, 2011. The report  
6 must be in an electronic format under IC 5-14-6.  
7           (†) (l) The Indiana criminal justice institute shall provide staff  
8 support to the commission to prepare:  
9               (1) minutes of each meeting; and  
10              (2) the final report.  
11           (†) (m) The legislative services agency shall provide staff support to  
12 the commission to:  
13               (1) advise the commission on legal matters, criminal procedures,  
14               and legal research; and  
15               (2) draft potential legislation.  
16           (†) (n) Each member of the commission is entitled to receive the  
17 same per diem, mileage, and travel allowances paid to individuals who  
18 serve as legislative and lay members, respectively, of interim study  
19 committees established by the legislative council.  
20           (†) (o) The affirmative votes of a majority of all the members who  
21 serve on the commission are required for the commission to take action  
22 on any measure, including the final report.  
23           (†) (p) Except as otherwise specifically provided by this SECTION,  
24 the commission shall operate under the rules of the legislative council.  
25 All funds necessary to carry out this SECTION shall be paid from  
26 appropriations to the legislative council and the legislative services  
27 agency.  
28           (†) (q) This SECTION expires December 31, 2011.  
29           SECTION 76. [EFFECTIVE JULY 1, 2011] (a) **The legislative**  
30 **council is urged to assign to the criminal law and sentencing policy**  
31 **study committee the topic of developing a criminal information**  
32 **packet that would contain all relevant information that pertains to**  
33 **an offender's dangerousness or lack of dangerousness, including:**  
34               **(1) the original charges;**  
35               **(2) the terms of any plea agreement;**  
36               **(3) whether the jury found the offender guilty of lesser**  
37 **included offenses; and**  
38               **(4) any other information that would allow a more accurate**  
39 **assessment of an offender's character.**  
40           **(b) This SECTION expires January 1, 2012.**  
41           SECTION 77. THE FOLLOWING ARE REPEALED [EFFECTIVE  
42 JULY 1, 2011]: IC 35-43-4-2.5; IC 35-43-5-3.6; IC 35-50-2-2.1.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 561, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 561 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 2.

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Report of the President  
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that, subsequent to the adoption of the Corrections, Criminal, and Civil Matters Committee Report on February 15, 2011, Senate Bill 561 was reassigned to the Committee on Appropriations.

LONG

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COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 561, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 29, after "services;" insert "**and**".

Page 2, delete lines 30 through 31.

Page 2, line 32, delete "(C)" and insert "**(B)**".

Page 6, line 31, delete "The" and insert "**Before September 1, 2011, the**".

Page 6, line 39, delete "The" and insert "**Before March 1 each year, the**".

Page 7, line 3, delete "Multiply" and insert "**If the STEP ONE**".



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**amount is not positive, the incentive amount is zero (0). Otherwise, multiply".**

Page 7, line 21, delete "The" and insert "**Before June 1 each year, the**".

Page 7, line 22, before "distributed" insert "**made from the marginal savings realized by the department as a result of the counties committing fewer Class D felony offenders to the department and shall be**".

Page 7, line 30, delete "programs that defray the" and insert "**probation**".

Page 7, delete line 31.

Page 7, line 32, delete "third" and insert "**second**".

Page 8, line 1, delete "The" and insert "**Before March 1 each year, the**".

Page 8, line 7, delete "Multiply" and insert "**If the STEP ONE amount is ten (10) or less, the disincentive amount is zero (0). Otherwise, multiply**".

Page 8, line 25, delete "The" and insert "**Before June 1 each year, the**".

Page 18, delete lines 36 through 42.

Delete pages 19 through 21.

Page 51, line 11, delete "or Class B".

Page 51, line 26, delete "or".

Page 51, line 27, delete "Class B".

Page 51, line 31, delete "or Class B".

Page 80, line 16, delete "may" and insert "**shall**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 561 as printed February 16, 2011.)

KENLEY, Chairperson

Committee Vote: Yeas 13, Nays 0.

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