



Reprinted
February 22, 2011

SENATE BILL No. 561

DIGEST OF SB 561 (Updated February 21, 2011 8:52 pm - DI 106)

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 offender to serve the suspended period on probation, in a community
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Effective: 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.
February 21, 2011, read second time, amended, ordered engrossed.

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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, including specifying that the sentencing enhancement for certain drug offenses committed within 1,000 feet of a school, park, public housing project, or youth program center only apply if children are present. 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 commit 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

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certain funds from pretrial diversion or deferral fees may only be used to fund GPS monitoring programs. Prohibits persons charged with offenses that would qualify them as a credit restricted felon from paying a 10% cash bond. Requires the division of state court administration to implement a standard program for disseminating bulk court case information for a reasonable fee, and requires the Indiana office of technology to annually certify that case management systems operated or funded by the division of state court administration comply with this program. Recommends that the 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) Annually certify, beginning July 1, 2012, that any case**
- 26 **management system operated or funded by the division of**
- 27 **state court administration complies with IC 33-24-6-3(9).**
- 28 ~~(14)~~ **(15)** Perform other information technology related functions
- 29 and duties as directed by the governor.
- 30 (b) The office may adopt rules under IC 4-22-2 that are necessary
- 31 or appropriate in carrying out its powers and duties.
- 32 SECTION 2. IC 10-13-3-27, AS AMENDED BY P.L.44-2009,
- 33 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 34 JULY 1, 2011]: Sec. 27. (a) Except as provided in subsection (b) **or (c)**,
- 35 on request, a law enforcement agency shall release a limited criminal
- 36 history to or allow inspection of a limited criminal history by
- 37 noncriminal justice organizations or individuals only if the subject of
- 38 the request:
- 39 (1) has applied for employment with a noncriminal justice
- 40 organization or individual;
- 41 (2) has applied for a license and has provided criminal history
- 42 data as required by law to be provided in connection with the

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- 1 license;
- 2 (3) is a candidate for public office or a public official;
- 3 (4) is in the process of being apprehended by a law enforcement
- 4 agency;
- 5 (5) is placed under arrest for the alleged commission of a crime;
- 6 (6) has charged that the subject's rights have been abused
- 7 repeatedly by criminal justice agencies;
- 8 (7) is the subject of a judicial decision or determination with
- 9 respect to the setting of bond, plea bargaining, sentencing, or
- 10 probation;
- 11 (8) has volunteered services that involve contact with, care of, or
- 12 supervision over a child who is being placed, matched, or
- 13 monitored by a social services agency or a nonprofit corporation;
- 14 (9) is currently residing in a location designated by the
- 15 department of child services (established by IC 31-25-1-1) or by
- 16 a juvenile court as the out-of-home placement for a child at the
- 17 time the child will reside in the location;
- 18 (10) has volunteered services at a public school (as defined in
- 19 IC 20-18-2-15) or nonpublic school (as defined in IC 20-18-2-12)
- 20 that involve contact with, care of, or supervision over a student
- 21 enrolled in the school;
- 22 (11) is being investigated for welfare fraud by an investigator of
- 23 the division of family resources or a county office of the division
- 24 of family resources;
- 25 (12) is being sought by the parent locator service of the child
- 26 support bureau of the department of child services;
- 27 (13) is or was required to register as a sex or violent offender
- 28 under IC 11-8-8; or
- 29 (14) has been convicted of any of the following:
- 30 (A) Rape (IC 35-42-4-1), if the victim is less than eighteen
- 31 (18) years of age.
- 32 (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is
- 33 less than eighteen (18) years of age.
- 34 (C) Child molesting (IC 35-42-4-3).
- 35 (D) Child exploitation (IC 35-42-4-4(b)).
- 36 (E) Possession of child pornography (IC 35-42-4-4(c)).
- 37 (F) Vicarious sexual gratification (IC 35-42-4-5).
- 38 (G) Child solicitation (IC 35-42-4-6).
- 39 (H) Child seduction (IC 35-42-4-7).
- 40 (I) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
- 41 (J) Incest (IC 35-46-1-3), if the victim is less than eighteen
- 42 (18) years of age.

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

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

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

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

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

22 SECTION 3. IC 11-8-1-3.1 IS ADDED TO THE INDIANA CODE
23 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
24 1, 2011]: **Sec. 3.1. "Average daily marginal cost of incarcerating an
25 offender" means the average daily cost to the department to
26 commit one (1) additional offender to the department without
27 building additional beds as determined under IC 11-10-13-1(b).**

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

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

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- 1 (B) all of the offenses for which the person was concurrently
- 2 or consecutively sentenced are offenses under IC 16-42-19 or
- 3 IC 35-48-4; and
- 4 (C) none of the offenses for which the person was concurrently
- 5 or consecutively sentenced are listed in ~~IC 35-50-2-2(b)(4)~~.
- 6 **IC 35-50-2-2(b)(3).**
- 7 (4) Not earlier than one hundred twenty (120) days and not later
- 8 than thirty (30) days before an offender's expected release date, if
- 9 the most serious offense for which the person is committed is a
- 10 Class A or Class B felony and subdivision (5) does not apply.
- 11 (5) Not earlier than one hundred eighty (180) days and not later
- 12 than thirty (30) days before an offender's expected release date, if:
- 13 (A) the most serious offense for which the person is committed
- 14 is a Class A or Class B felony;
- 15 (B) all of the offenses for which the person was concurrently
- 16 or consecutively sentenced are offenses under IC 16-42-19 or
- 17 IC 35-48-4; and
- 18 (C) none of the offenses for which the person was concurrently
- 19 or consecutively sentenced are listed in ~~IC 35-50-2-2(b)(4)~~.
- 20 **IC 35-50-2-2(b)(3).**
- 21 SECTION 5. IC 11-8-8-21, AS ADDED BY P.L.216-2007,
- 22 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 23 JULY 1, 2011]: Sec. 21. (a) The state sex and violent offender
- 24 administration fund is established to assist the department in carrying
- 25 out its duties under:
- 26 (1) IC 11-8-2-12.4 concerning the Indiana sex and violent
- 27 offender registry; **and**
- 28 (2) **IC 11-13-3-4 concerning GPS monitoring of sexually**
- 29 **violent predators and sex and violent offenders.**
- 30 The fund shall be administered by the department.
- 31 (b) The expenses of administering the fund shall be paid from
- 32 money in the fund.
- 33 (c) The fund consists of:
- 34 (1) grants;
- 35 (2) donations;
- 36 (3) appropriations;
- 37 (4) money from the annual sex or violent offender registration fee
- 38 (IC 36-2-13-5.6(a)(1)(A)); ~~and~~
- 39 (5) money from the sex or violent offender address change fee
- 40 (IC 36-2-13-5.6(a)(1)(B));
- 41 (6) **money from pretrial diversion fees (IC 33-37-4-1(d)); and**
- 42 (7) **money from deferral fees (IC 33-37-4-2(c)).**

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1 (d) The treasurer of state shall invest the money in the fund not
2 currently needed to meet the obligations of the fund in the same
3 manner as other public money may be invested.

4 (e) Money in the fund is continually appropriated to carry out the
5 purposes of the fund. **However, money from pretrial diversion fees
6 and deferral fees may be used only for GPS monitoring of sexually
7 violent predators and sex and violent offenders.**

8 SECTION 6. IC 11-10-13-1 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) The department
10 shall develop a methodology for determining the average daily cost of
11 incarcerating an offender.

12 (b) **The department shall develop a methodology for
13 determining the average daily marginal cost of incarcerating an
14 offender. The costs must include the additional expenses of
15 providing food, clothing, and health care to a new offender. The
16 costs do not include the costs of new facilities or additional staff.**

17 (c) **The department shall annually determine the average length
18 of stay for a Class D felony offender in the department.**

19 SECTION 7. IC 11-10-16 IS ADDED TO THE INDIANA CODE
20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2011]:

22 **Chapter 16. County Incentives for Class D Felony Offenders**

23 **Sec. 1. The department shall administer a local rehabilitation
24 incentive and disincentive program for counties to reduce the
25 number of Class D felony offenders committed to the department.**

26 **Sec. 2. (a) Before September 1, 2011, the department shall
27 establish a baseline average number of Class D felony offenders
28 that each county commits annually to the department based on the
29 2007, 2008, 2009, and 2010 calendar years.**

30 (b) **The department shall provide a local rehabilitation incentive
31 to each county that commits to the department fewer Class D
32 felony offenders than the baseline average established for that
33 county described in subsection (a) in one (1) calendar year.**

34 (c) **Before March 1 each year, the department shall calculate the
35 incentive described in subsection (b) using the following formula:**

36 **STEP ONE: Subtract the number of Class D felony offenders
37 a county commits to the department in a calendar year from
38 the baseline average for that county described in subsection
39 (a).**

40 **STEP TWO: If the STEP ONE amount is not positive, the
41 incentive amount is zero (0). Otherwise, multiply the number
42 of offenders determined under STEP ONE by the average**

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1 number of days of the length of stay for a Class D felony
2 offender in the department as determined under
3 IC 11-10-13-1(c).

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

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

9 (d) The department shall not consider a Class D felony offender
10 whose:

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

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

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

30 The fiscal body shall give first priority to probation and
31 community corrections programs, and second priority to problem
32 solving courts and work release programs.

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

37 **Sec. 4. (a) The department shall create a disincentive to each**
38 **county that commits to the department more than ten (10) more**
39 **Class D felony offenders than the baseline average established for**
40 **that county described in section 2(a) of this chapter in one (1)**
41 **calendar year.**

42 (b) Before March 1 each year, the department shall calculate the

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1 disincentive described in subsection (a) using the following
2 formula:

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

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

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

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

18 (c) The department shall not consider a Class D felony offender
19 whose:

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

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

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

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

- 37 (1) Residential or work release programs;
- 38 (2) House arrest, home detention, and electronic monitoring
39 programs;
- 40 (3) Community restitution or service programs;
- 41 (4) Victim-offender reconciliation programs;
- 42 (5) Jail services programs;

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

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

11 (b) The community corrections board ~~may~~ **shall** also coordinate ~~and~~
 12 **or** operate educational, mental health, drug or alcohol abuse
 13 counseling, housing, as a part of any ~~of these~~ programs, ~~or~~ **and**
 14 supervision services for persons described in section 2 of this chapter.
 15 **Mental health and drug or alcohol abuse counseling must be**
 16 **conducted with a certified mental health or addiction provider as**
 17 **determined by the division of mental health and addiction.**

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

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

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

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

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

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

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

- 28 (1) Eligibility standards.
- 29 (2) Testing requirements and procedures.
- 30 (3) Procedures and requirements for placement in programs
 31 provided by school corporations or special education cooperatives
 32 under IC 20-35-5.
- 33 (4) Procedures and requirements for placement in residential
 34 special education institutions or facilities under IC 20-35-6-2 and
 35 511 IAC 7-27-12.
- 36 (5) Development and implementation of individual education
 37 programs for eligible children in:
 - 38 (A) accordance with applicable requirements of state and
 39 federal laws and rules; and
 - 40 (B) coordination with:
 - 41 (i) individual case plans; and
 - 42 (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 any case**
 10 **management system operated or funded by the division of state**
 11 **court administration complies with IC 33-24-6-3(9).**

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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- 1 (i) murder;
- 2 (ii) a Class A felony; or
- 3 (iii) a sex offense under IC 35-42-4 or incest under
- 4 IC 35-46-1-3; and
- 5 (B) assist all parolees sentenced by a court in Indiana; and
- 6 (2) shall supervise and assist out-of-state parolees accepted
- 7 under an interstate compact as required by the interstate
- 8 compact.
- 9 (c) The department's duties under subsection (b) include:
 - 10 (1) establishing methods and procedures for parole
 - 11 administration, including investigation, supervision,
 - 12 workloads, record keeping, and reporting;
 - 13 (2) providing information to and otherwise assisting the
 - 14 parole board in making parole decisions;
 - 15 (3) assisting persons in preparing parole release plans;
 - 16 (4) providing employment counseling and assistance in job
 - 17 and residential placement;
 - 18 (5) providing family and individual counseling and treatment
 - 19 placement;
 - 20 (6) providing financial counseling;
 - 21 (7) providing vocational and educational counseling
 - 22 placement;
 - 23 (8) assisting the parole board in transferring supervision of a
 - 24 parolee to another jurisdiction;
 - 25 (9) notifying the parole board of any modification in the
 - 26 conditions of parole considered advisable;
 - 27 (10) notifying the parole board when a violation of parole
 - 28 occurs; and
 - 29 (11) cooperating with public and private agencies and with
 - 30 individual citizens concerned with the treatment or welfare of
 - 31 parolees, and assisting the parolee in obtaining services from
 - 32 those agencies and citizens.
- 33 (d) Courts, probation officers, and other public officials shall
- 34 cooperate with the department in obtaining information relating
- 35 to persons committed to the department.
- 36 (e) The department shall cause the name of any person released
- 37 on parole to be entered into the Indiana data communications
- 38 system (IDACS).
- 39 SECTION 26. IC 11-14-1-5 IS AMENDED TO READ AS
- 40 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. "Youthful offender"
- 41 means an offender (as defined in IC 11-8-1-9) who:
 - 42 (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 JULY 1, 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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- 1 (6) Administer the judicial technology and automation project
- 2 fund established by section 12 of this chapter.
- 3 (7) Develop a standard protocol for the exchange of information,
- 4 by not later than December 31, 2009:
- 5 (A) between the protective order registry, established by
- 6 IC 5-2-9-5.5, and county court case management systems;
- 7 (B) at the option of the county prosecuting attorney, for:
- 8 (i) a prosecuting attorney's case management system;
- 9 (ii) a county court case management system; and
- 10 (iii) a county court case management system developed and
- 11 operated by the division of state court administration;
- 12 to interface with the electronic traffic tickets, as defined by
- 13 IC 9-30-3-2.5; and
- 14 (C) between county court case management systems and the
- 15 case management system developed and operated by the
- 16 division of state court administration.
- 17 (8) Establish and administer an electronic system for receiving
- 18 information that relates to certain individuals who may be
- 19 prohibited from possessing a firearm and transmitting this
- 20 information to the Federal Bureau of Investigation for inclusion
- 21 in the NICS.
- 22 **(9) Not later than January 1, 2012, implement a standard bulk**
- 23 **export program for the dissemination of all nonconfidential**
- 24 **court case information to agencies and other recipients from**
- 25 **the case management system operating by the division of state**
- 26 **court administration. The export program must include the**
- 27 **following:**
- 28 (A) A function to export in bulk all existing nonconfidential
- 29 court case information.
- 30 (B) A function to export in bulk all nonconfidential court
- 31 case information that has changed after a specified point
- 32 in time. Information exported through the function
- 33 included in the export program under this clause must not
- 34 include court case information that has not changed.
- 35 (C) The ability to run the function described in clause (B)
- 36 at least one (1) time per hour.
- 37 **The division may charge a reasonable fee to each recipient for**
- 38 **providing the bulk export under this subdivision. The fee may**
- 39 **not exceed the direct cost of operating the export program**
- 40 **and delivering data to the recipient plus a prorated fee to**
- 41 **recoup the direct costs of developing the export program. In**
- 42 **any one (1) year, the aggregate prorated fees charged under**

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1 **this subdivision may not exceed five percent (5%) of the direct**
2 **costs of developing the export program.**
3 (b) All forms to be used in gathering data must be approved by the
4 supreme court and shall be distributed to all judges and clerks before
5 the start of each period for which reports are required.
6 (c) The division may adopt rules to implement this section.
7 SECTION 28. IC 33-37-4-1, AS AMENDED BY P.L.182-2009(ss),
8 SECTION 392, IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) For each action that results in
10 a felony conviction under IC 35-50-2 or a misdemeanor conviction
11 under IC 35-50-3, the clerk shall collect from the defendant a criminal
12 costs fee of one hundred twenty dollars (\$120).
13 (b) In addition to the criminal costs fee collected under this section,
14 the clerk shall collect from the defendant the following fees if they are
15 required under IC 33-37-5:
16 (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or
17 IC 33-37-5-4).
18 (2) A marijuana eradication program fee (IC 33-37-5-7).
19 (3) An alcohol and drug services program user fee
20 (IC 33-37-5-8(b)).
21 (4) A law enforcement continuing education program fee
22 (IC 33-37-5-8(c)).
23 (5) A drug abuse, prosecution, interdiction, and correction fee
24 (IC 33-37-5-9).
25 (6) An alcohol and drug countermeasures fee (IC 33-37-5-10).
26 (7) A child abuse prevention fee (IC 33-37-5-12).
27 (8) A domestic violence prevention and treatment fee
28 (IC 33-37-5-13).
29 (9) A highway work zone fee (IC 33-37-5-14).
30 (10) A deferred prosecution fee (~~IC 33-37-5-17~~):
31 **(IC 33-37-5-17(b)).**
32 (11) A document storage fee (IC 33-37-5-20).
33 (12) An automated record keeping fee (IC 33-37-5-21).
34 (13) A late payment fee (IC 33-37-5-22).
35 (14) A sexual assault victims assistance fee (IC 33-37-5-23).
36 (15) A public defense administration fee (IC 33-37-5-21.2).
37 (16) A judicial insurance adjustment fee (IC 33-37-5-25).
38 (17) A judicial salaries fee (IC 33-37-5-26).
39 (18) A court administration fee (IC 33-37-5-27).
40 (19) A DNA sample processing fee (IC 33-37-5-26.2).
41 (c) Instead of the criminal costs fee prescribed by this section,
42 except for the automated record keeping fee (IC 33-37-5-21), the clerk

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1 shall collect a pretrial diversion program fee if an agreement between
 2 the prosecuting attorney and the accused person entered into under
 3 IC 33-39-1-8 requires payment of those fees by the accused person.
 4 The pretrial diversion program fee is:

- 5 (1) an initial user's fee of fifty dollars (\$50); and
- 6 (2) a monthly user's fee of ten dollars (\$10) for each month that
- 7 the person remains in the pretrial diversion program.

8 **In addition to the pretrial diversion program fee, the clerk shall**
 9 **collect a county offender diversion fee of thirty dollars (\$30).**

10 (d) The clerk shall transfer to the county auditor or city or town
 11 fiscal officer the following fees, not later than thirty (30) days after the
 12 fees are collected:

- 13 (1) ~~the~~ **Forty-eight dollars (\$48) of each** pretrial diversion **initial**
 14 **user** fee.
- 15 **(2) The pretrial diversion monthly user fee.**
- 16 ~~(2)~~ **(3)** The marijuana eradication program fee.
- 17 ~~(3)~~ **(4)** The alcohol and drug services program user fee.
- 18 ~~(4)~~ **(5)** The law enforcement continuing education program fee.

19 The auditor or fiscal officer shall deposit fees transferred under this
 20 subsection in the appropriate user fee fund established under
 21 IC 33-37-8.

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

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

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

- 33 (1) The clerk shall apply the partial payment to general court
 34 costs.
- 35 (2) If there is money remaining after the partial payment is
 36 applied to general court costs under subdivision (1), the clerk
 37 shall distribute the remainder of the partial payment for deposit in
 38 the appropriate county user fee fund.
- 39 (3) If there is money remaining after distribution under
 40 subdivision (2), the clerk shall distribute the remainder of the
 41 partial payment for deposit in the state user fee fund.
- 42 (4) If there is money remaining after distribution under

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1 subdivision (3), the clerk shall distribute the remainder of the
 2 partial payment to any other applicable user fee fund.
 3 (5) If there is money remaining after distribution under
 4 subdivision (4), the clerk shall apply the remainder of the partial
 5 payment to any outstanding fines owed by the defendant.
 6 SECTION 29. IC 33-37-4-2, AS AMENDED BY P.L.182-2009(ss),
 7 SECTION 393, IS AMENDED TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Except as provided in
 9 subsections (d) and (e), for each action that results in a judgment:
 10 (1) for a violation constituting an infraction; or
 11 (2) for a violation of an ordinance of a municipal corporation (as
 12 defined in IC 36-1-2-10);
 13 the clerk shall collect from the defendant an infraction or ordinance
 14 violation costs fee of seventy dollars (\$70).
 15 (b) In addition to the infraction or ordinance violation costs fee
 16 collected under this section, the clerk shall collect from the defendant
 17 the following fees, if they are required under IC 33-37-5:
 18 (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or
 19 IC 33-37-5-4).
 20 (2) An alcohol and drug services program user fee
 21 (IC 33-37-5-8(b)).
 22 (3) A law enforcement continuing education program fee
 23 (IC 33-37-5-8(c)).
 24 (4) An alcohol and drug countermeasures fee (IC 33-37-5-10).
 25 (5) A highway work zone fee (IC 33-37-5-14).
 26 (6) A deferred prosecution fee (~~IC 33-37-5-17~~):
 27 **(IC 33-37-5-17(b))**.
 28 (7) A jury fee (IC 33-37-5-19).
 29 (8) A document storage fee (IC 33-37-5-20).
 30 (9) An automated record keeping fee (IC 33-37-5-21).
 31 (10) A late payment fee (IC 33-37-5-22).
 32 (11) A public defense administration fee (IC 33-37-5-21.2).
 33 (12) A judicial insurance adjustment fee (IC 33-37-5-25).
 34 (13) A judicial salaries fee (IC 33-37-5-26).
 35 (14) A court administration fee (IC 33-37-5-27).
 36 (15) A DNA sample processing fee (IC 33-37-5-26.2).
 37 **(16) A county offender deferral fee (IC 33-37-5-17(c))**.
 38 (c) The clerk shall transfer to the county auditor or fiscal officer of
 39 the municipal corporation the following fees, not later than thirty (30)
 40 days after the fees are collected:
 41 (1) The alcohol and drug services program user fee
 42 (IC 33-37-5-8(b)).

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- 1 (2) The law enforcement continuing education program fee
- 2 (IC 33-37-5-8(c)).
- 3 (3) ~~The Fifty dollars (\$50) of the~~ deferral program **initial user's**
- 4 ~~fee (subsection (c)(1)); (subsection (e)(1)), or, if the initial~~
- 5 **user's fee is less than fifty-two dollars (\$52), all but two**
- 6 **dollars (\$2) of the initial user's fee.**
- 7 (4) **The deferral program monthly user's fee under subsection**
- 8 **(e)(2).**
- 9 (5) **The county offender deferral fee under subsection (b)(16),**
- 10 **for deposit in the county offender fund (IC 36).**

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

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

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

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

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

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

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

41 (g) The fees prescribed by this section are costs for purposes of
42 IC 34-28-5-5 and may be collected from a defendant against whom

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1 judgment is entered. Any penalty assessed is in addition to costs.

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

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

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

12 SECTION 31. IC 33-37-5-31 IS ADDED TO THE INDIANA
13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2011]: **Sec. 31. In each action in which a
15 person is required to pay a pretrial diversion fee, the clerk shall
16 collect a county offender diversion fee of thirty dollars (\$30).**

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

- 29 (1) IC 33-37-4-1(a) (criminal costs fees).
30 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
31 (3) IC 33-37-4-3(a) (juvenile costs fees).
32 (4) IC 33-37-4-4(a) (civil costs fees).
33 (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
34 (6) IC 33-37-4-7(a) (probate costs fees).
35 (7) ~~IC 33-37-5-17~~ **IC 33-37-5-17(b)** (deferred prosecution fees).

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

- 39 (1) Twenty-five percent (25%) of the drug abuse, prosecution,
40 interdiction, and correction fees collected under
41 IC 33-37-4-1(b)(5).
42 (2) Twenty-five percent (25%) of the alcohol and drug

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- 1 countermeasures fees collected under IC 33-37-4-1(b)(6),
 2 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 3 (3) Fifty percent (50%) of the child abuse prevention fees
 4 collected under IC 33-37-4-1(b)(7).
- 5 (4) One hundred percent (100%) of the domestic violence
 6 prevention and treatment fees collected under IC 33-37-4-1(b)(8).
- 7 (5) One hundred percent (100%) of the highway work zone fees
 8 collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- 9 (6) One hundred percent (100%) of the safe schools fee collected
 10 under IC 33-37-5-18.
- 11 (7) One hundred percent (100%) of the automated record keeping
 12 fee (IC 33-37-5-21) not distributed under subsection (a).
- 13 (c) The clerk of a circuit court shall distribute monthly to the county
 14 auditor the following:
- 15 (1) Seventy-five percent (75%) of the drug abuse, prosecution,
 16 interdiction, and correction fees collected under
 17 IC 33-37-4-1(b)(5).
- 18 (2) Seventy-five percent (75%) of the alcohol and drug
 19 countermeasures fees collected under IC 33-37-4-1(b)(6),
 20 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 21 The county auditor shall deposit fees distributed by a clerk under this
 22 subsection into the county drug free community fund established under
 23 IC 5-2-11.
- 24 (d) The clerk of a circuit court shall distribute monthly to the county
 25 auditor fifty percent (50%) of the child abuse prevention fees collected
 26 under IC 33-37-4-1(b)(7). The county auditor shall deposit fees
 27 distributed by a clerk under this subsection into the county child
 28 advocacy fund established under IC 12-17-17.
- 29 (e) The clerk of a circuit court shall distribute monthly to the county
 30 auditor one hundred percent (100%) of the late payment fees collected
 31 under IC 33-37-5-22. The county auditor shall deposit fees distributed
 32 by a clerk under this subsection as follows:
- 33 (1) If directed to do so by an ordinance adopted by the county
 34 fiscal body, the county auditor shall deposit forty percent (40%)
 35 of the fees in the clerk's record perpetuation fund established
 36 under IC 33-37-5-2 and sixty percent (60%) of the fees in the
 37 county general fund.
- 38 (2) If the county fiscal body has not adopted an ordinance
 39 described in subdivision (1), the county auditor shall deposit all
 40 the fees in the county general fund.
- 41 (f) The clerk of the circuit court shall distribute semiannually to the
 42 auditor of state for deposit in the sexual assault victims assistance

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1 account established by IC 5-2-6-23(h) one hundred percent (100%) of
2 the sexual assault victims assistance fees collected under
3 IC 33-37-5-23.

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

6 (1) One hundred percent (100%) of the support and maintenance
7 fees for cases designated as non-Title IV-D child support cases in
8 the Indiana support enforcement tracking system (ISETS)
9 collected under IC 33-37-5-6.

10 (2) The percentage share of the support and maintenance fees for
11 cases designated as IV-D child support cases in ISETS collected
12 under IC 33-37-5-6 that is reimbursable to the county at the
13 federal financial participation rate.

14 The county clerk shall distribute monthly to the office of the secretary
15 of family and social services the percentage share of the support and
16 maintenance fees for cases designated as Title IV-D child support cases
17 in ISETS collected under IC 33-37-5-6 that is not reimbursable to the
18 county at the applicable federal financial participation rate.

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

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

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

27 (i) This subsection does not apply to court administration fees
28 collected in small claims actions filed in a court described in IC 33-34.
29 The clerk of a circuit court shall semiannually distribute to the auditor
30 of state for deposit in the state general fund one hundred percent
31 (100%) of the following:

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

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

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

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

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

42 (k) The proceeds of the service fee collected under

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1 IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2) shall be distributed as
2 follows:

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

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

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

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

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

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

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

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

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

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

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

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

41 (2) **The county offender diversion fee (IC 33-37-5-31).**

42 SECTION 33. IC 33-37-7-8, AS AMENDED BY P.L.182-2009(ss),

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1 SECTION 396, IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) The clerk of a city or town
 3 court shall distribute semiannually to the auditor of state as the state
 4 share for deposit in the homeowner protection unit account established
 5 by IC 4-6-12-9 one hundred percent (100%) of the automated record
 6 keeping fees collected under IC 33-37-5-21 with respect to actions
 7 resulting in the accused person entering into a pretrial diversion
 8 program agreement under IC 33-39-1-8 or a deferral program
 9 agreement under IC 34-28-5-1 and, **except as provided in subsection**
 10 **(j)**, for deposit in the state general fund fifty-five percent (55%) of the
 11 amount of fees collected under the following:
 12 (1) IC 33-37-4-1(a) (criminal costs fees).
 13 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
 14 (3) IC 33-37-4-4(a) (civil costs fees).
 15 (4) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
 16 (5) ~~IC 33-37-5-17~~ **IC 33-37-5-17(b)** (deferred prosecution fees).
 17 (b) The city or town fiscal officer shall distribute monthly to the
 18 county auditor as the county share twenty percent (20%) of the amount
 19 of fees collected under the following:
 20 (1) IC 33-37-4-1(a) (criminal costs fees).
 21 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
 22 (3) IC 33-37-4-4(a) (civil costs fees).
 23 (4) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
 24 (5) ~~IC 33-37-5-17~~ **IC 33-37-5-17(b)** (deferred prosecution fees).
 25 (c) The city or town fiscal officer shall retain twenty-five percent
 26 (25%) as the city or town share of the fees collected under the
 27 following:
 28 (1) IC 33-37-4-1(a) (criminal costs fees).
 29 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
 30 (3) IC 33-37-4-4(a) (civil costs fees).
 31 (4) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
 32 (5) ~~IC 33-37-5-17~~ **IC 33-37-5-17(b)** (deferred prosecution fees).
 33 (d) The clerk of a city or town court shall distribute semiannually to
 34 the auditor of state for deposit in the state user fee fund established in
 35 IC 33-37-9 the following:
 36 (1) Twenty-five percent (25%) of the drug abuse, prosecution,
 37 interdiction, and correction fees collected under
 38 IC 33-37-4-1(b)(5).
 39 (2) Twenty-five percent (25%) 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 (3) One hundred percent (100%) of the highway work zone fees

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1 collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
 2 (4) One hundred percent (100%) of the safe schools fee collected
 3 under IC 33-37-5-18.
 4 (5) One hundred percent (100%) of the automated record keeping
 5 fee (IC 33-37-5-21) not distributed under subsection (a).
 6 (e) The clerk of a city or town court shall distribute monthly to the
 7 county auditor the following:
 8 (1) Seventy-five percent (75%) of the drug abuse, prosecution,
 9 interdiction, and corrections fees collected under
 10 IC 33-37-4-1(b)(5).
 11 (2) Seventy-five percent (75%) of the alcohol and drug
 12 countermeasures fees collected under IC 33-37-4-1(b)(6),
 13 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
 14 The county auditor shall deposit fees distributed by a clerk under this
 15 subsection into the county drug free community fund established under
 16 IC 5-2-11.
 17 (f) The clerk of a city or town court shall distribute monthly to the
 18 city or town fiscal officer (as defined in IC 36-1-2-7) one hundred
 19 percent (100%) of the following:
 20 (1) The late payment fees collected under IC 33-37-5-22.
 21 (2) The small claims service fee collected under
 22 IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2).
 23 (3) The small claims garnishee service fee collected under
 24 IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3).
 25 The city or town fiscal officer (as defined in IC 36-1-2-7) shall deposit
 26 fees distributed by a clerk under this subsection in the city or town
 27 general fund.
 28 (g) The clerk of a city or town court shall semiannually distribute to
 29 the auditor of state for deposit in the state general fund one hundred
 30 percent (100%) of the following:
 31 (1) The public defense administration fee collected under
 32 IC 33-37-5-21.2.
 33 (2) The DNA sample processing fees collected under
 34 IC 33-37-5-26.2.
 35 (3) The court administration fees collected under IC 33-37-5-27.
 36 (h) The clerk of a city or town court shall semiannually distribute to
 37 the auditor of state for deposit in the judicial branch insurance
 38 adjustment account established by IC 33-38-5-8.2 one hundred percent
 39 (100%) of the judicial insurance adjustment fee collected under
 40 IC 33-37-5-25.
 41 (i) The clerk of a city or town court shall semiannually distribute to
 42 the auditor of state for deposit in the state general fund seventy-five

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1 percent (75%) of the judicial salaries fee collected under
2 IC 33-37-5-26. The city or town fiscal officer shall retain twenty-five
3 percent (25%) of the judicial salaries fee collected under
4 IC 33-37-5-26. The funds retained by the city or town shall be
5 prioritized to fund city or town court operations.

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

- 10 (1) one and five-tenths percent (1.5%) of the deferred
- 11 prosecution fee received from the clerk of a city or town court
- 12 in the public defense fund established by IC 33-40-6-1; and
- 13 (2) one and five-tenths percent (1.5%) of the deferred
- 14 prosecution fee received from the clerk of a city or town court
- 15 in the state sex and violent offender administration fund
- 16 established by IC 11-8-8-21.

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

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

- 22 (1) **The county offender deferral fee.**
- 23 (2) **The county offender diversion fee.**

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

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

- 30 (1) anhydrous ammonia (NH₃);
- 31 (2) an ammonia solution; or
- 32 (3) a container used to store or transport anhydrous ammonia or
- 33 an ammonia solution;

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

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

- 39 (1) the victim or agent committed a crime involving the
- 40 anhydrous ammonia, ammonia solution, or container that is the
- 41 subject of the theft or criminal conversion; or
- 42 (2) the victim's or agent's willful or intentional commission of a

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1 violation of an applicable law, rule, or regulation governing the:

- 2 (A) design;
 3 (B) construction;
 4 (C) location;
 5 (D) installation; or
 6 (E) operation;

7 of equipment for storage, handling, use, or transportation of
 8 anhydrous ammonia or ammonia solution proximately caused the
 9 theft or criminal conversion.

10 SECTION 35. IC 34-30-20-1 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. A person is immune
 12 from civil liability based on an act or omission related to the use of a
 13 firearm or ammunition for a firearm by another person if the other
 14 person directly or indirectly obtained the firearm or ammunition for a
 15 firearm through the commission of the following:

- 16 (1) Burglary (IC 35-43-2-1).
 17 (2) Robbery (IC 35-42-5-1).
 18 (3) Theft (IC 35-43-4-2).
 19 (4) Receiving stolen property (**before the offense was abolished**
 20 **on July 1, 2011**) (IC 35-43-4-2).
 21 (5) Criminal conversion (IC 35-43-4-3).

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

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

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

- 36 (1) any miswriting, misspelling, or grammatical error;
 37 (2) any misjoinder of parties defendant or offenses charged;
 38 (3) the presence of any unnecessary repugnant allegation;
 39 (4) the failure to negate any exception, excuse, or provision
 40 contained in the statute defining the offense;
 41 (5) the use of alternative or disjunctive allegations as to the acts,
 42 means, intents, or results charged;

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1 (6) any mistake in the name of the court or county in the title of
 2 the action, or the statutory provision alleged to have been
 3 violated;

4 (7) the failure to state the time or place at which the offense was
 5 committed where the time or place is not of the essence of the
 6 offense;

7 (8) the failure to state an amount of value or price of any matter
 8 where that value or price is not of the essence of the offense; or

9 (9) any other defect which does not prejudice the substantial
 10 rights of the defendant.

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

15 (1) up to:

16 (A) thirty (30) days if the defendant is charged with a felony;

17 or

18 (B) fifteen (15) days if the defendant is charged only with one

19 (1) or more misdemeanors;

20 before the omnibus date; or

21 (2) before the commencement of trial;

22 if the amendment does not prejudice the substantial rights of the
 23 defendant. When the information or indictment is amended, it shall be
 24 signed by the prosecuting attorney or a deputy prosecuting attorney.

25 (c) Upon motion of the prosecuting attorney, the court may, at any
 26 time before, during, or after the trial, permit an amendment to the
 27 indictment or information in respect to any defect, imperfection, or
 28 omission in form which does not prejudice the substantial rights of the
 29 defendant.

30 (d) Before amendment of any indictment or information other than
 31 amendment as provided in subsection (b), ~~of this section~~, the court
 32 shall give all parties adequate notice of the intended amendment and
 33 an opportunity to be heard. Upon permitting such amendment, the court
 34 shall, upon motion by the defendant, order any continuance of the
 35 proceedings which may be necessary to accord the defendant adequate
 36 opportunity to prepare ~~his~~ **the defendant's** defense.

37 (e) An amendment of an indictment or information to include a
 38 habitual offender charge under IC 35-50-2-8, IC 35-50-2-8.5, or
 39 IC 35-50-2-10 ~~must be made not later than ten (10) days after the~~
 40 ~~omnibus date. However, upon a showing of good cause, the court may~~
 41 ~~permit the filing of a habitual offender charge at may be made~~ any
 42 time before the commencement of the trial **if the amendment does not**

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prejudice the substantial rights of the defendant.

SECTION 38. IC 35-33-1-1, AS AMENDED BY P.L.50-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) A law enforcement officer may arrest a person when the officer has:

- (1) a warrant commanding that the person be arrested;
- (2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, **theft or** a felony;
- (3) probable cause to believe the person has violated the provisions of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;
- (4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence;
- (5) probable cause to believe the person has committed a:
 - (A) battery resulting in bodily injury under IC 35-42-2-1; or
 - (B) domestic battery under IC 35-42-2-1.3.

The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause;

- (6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy);
- (7) probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license) or IC 35-47-2-22 (counterfeit handgun license);
- (8) probable cause to believe that the person is violating or has violated an order issued under IC 35-50-7;
- (9) probable cause to believe that the person is violating or has violated IC 35-47-6-1.1 (undisclosed transport of a dangerous device); or
- (10) probable cause to believe that the person is:
 - (A) violating or has violated IC 35-45-2-5 (interference with the reporting of a crime); and
 - (B) interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5).

- (b) A person who:
 - (1) is employed full time as a federal enforcement officer;
 - (2) is empowered to effect an arrest with or without warrant for a violation of the United States Code; and
 - (3) is authorized to carry firearms in the performance of the person's duties;

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1 may act as an officer for the arrest of offenders against the laws of this
 2 state where the person reasonably believes that a felony has been or is
 3 about to be committed or attempted in the person's presence.

4 SECTION 39. IC 35-33-8-3.2, AS AMENDED BY P.L.94-2010,
 5 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2011]: Sec. 3.2. (a) **Except as provided in subsection (b)**, a
 7 court may admit a defendant to bail and impose any of the following
 8 conditions to assure the defendant's appearance at any stage of the legal
 9 proceedings, or, upon a showing of clear and convincing evidence that
 10 the defendant poses a risk of physical danger to another person or the
 11 community, to assure the public's physical safety:

12 (1) Require the defendant to:

- 13 (A) execute a bail bond with sufficient solvent sureties;
- 14 (B) deposit cash or securities in an amount equal to the bail;
- 15 (C) execute a bond secured by real estate in the county, where
- 16 thirty-three hundredths (0.33) of the true tax value less
- 17 encumbrances is at least equal to the amount of the bail;
- 18 (D) post a real estate bond; or
- 19 (E) perform any combination of the requirements described in
- 20 clauses (A) through (D).

21 If the court requires the defendant to deposit cash or cash and
 22 another form of security as bail, the court may require the
 23 defendant and each person who makes the deposit on behalf of the
 24 defendant to execute an agreement that allows the court to retain
 25 all or a part of the cash to pay publicly paid costs of
 26 representation and fines, costs, fees, and restitution that the court
 27 may order the defendant to pay if the defendant is convicted. The
 28 defendant must also pay the fee required by subsection ~~(d)~~ (e).

29 (2) Require the defendant to execute:

- 30 (A) a bail bond by depositing cash or securities with the clerk
- 31 of the court in an amount not less than ten percent (10%) of
- 32 the bail; and
- 33 (B) an agreement that allows the court to retain all or a part of
- 34 the cash or securities to pay fines, costs, fees, and restitution
- 35 that the court may order the defendant to pay if the defendant
- 36 is convicted.

37 A portion of the deposit, not to exceed ten percent (10%) of the
 38 monetary value of the deposit or fifty dollars (\$50), whichever is
 39 the lesser amount, may be retained as an administrative fee. The
 40 clerk shall also retain from the deposit under this subdivision
 41 fines, costs, fees, and restitution as ordered by the court, publicly
 42 paid costs of representation that shall be disposed of in

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1 accordance with subsection ~~(b)~~, **(c)**, and the fee required by
 2 subsection ~~(d)~~: **(e)**. In the event of the posting of a real estate
 3 bond, the bond shall be used only to insure the presence of the
 4 defendant at any stage of the legal proceedings, but shall not be
 5 foreclosed for the payment of fines, costs, fees, or restitution. The
 6 individual posting bail for the defendant or the defendant
 7 admitted to bail under this subdivision must be notified by the
 8 sheriff, court, or clerk that the defendant's deposit may be
 9 forfeited under section 7 of this chapter or retained under
 10 subsection ~~(b)~~ **(c)**.

11 (3) Impose reasonable restrictions on the activities, movements,
 12 associations, and residence of the defendant during the period of
 13 release.

14 (4) Except as provided in section 3.6 of this chapter, require the
 15 defendant to refrain from any direct or indirect contact with an
 16 individual and, if the defendant has been charged with an offense
 17 under IC 35-46-3, any animal belonging to the individual,
 18 including if the defendant has not been released from lawful
 19 detention.

20 (5) Place the defendant under the reasonable supervision of a
 21 probation officer, pretrial services agency, or other appropriate
 22 public official. If the court places the defendant under the
 23 supervision of a probation officer or pretrial services agency, the
 24 court shall determine whether the defendant must pay the pretrial
 25 services fee under section 3.3 of this chapter.

26 (6) Release the defendant into the care of a qualified person or
 27 organization responsible for supervising the defendant and
 28 assisting the defendant in appearing in court. The supervisor shall
 29 maintain reasonable contact with the defendant in order to assist
 30 the defendant in making arrangements to appear in court and,
 31 where appropriate, shall accompany the defendant to court. The
 32 supervisor need not be financially responsible for the defendant.

33 (7) Release the defendant on personal recognizance unless:
 34 (A) the state presents evidence relevant to a risk by the
 35 defendant:
 36 (i) of nonappearance; or
 37 (ii) to the physical safety of the public; and
 38 (B) the court finds by a preponderance of the evidence that the
 39 risk exists.

40 (8) Require a defendant charged with an offense under IC 35-46-3
 41 to refrain from owning, harboring, or training an animal.

42 (9) Impose any other reasonable restrictions designed to assure

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1 the defendant's presence in court or the physical safety of another
2 person or the community.

3 **(b) If a defendant is charged with a felony described in**
4 **IC 35-41-1-5.5 and the court admits the defendant to bail, the**
5 **court:**

- 6 **(1) shall admit the defendant to bail under subsection (a)(1);**
- 7 **(2) may not admit the defendant to bail under subsection**
- 8 **(a)(2); and**
- 9 **(3) may impose on the defendant any other appropriate**
- 10 **condition set forth in subsection (a)(3) through (a)(9).**

11 ~~(b)~~ **(c)** Within thirty (30) days after disposition of the charges
12 against the defendant, the court that admitted the defendant to bail shall
13 order the clerk to remit the amount of the deposit remaining under
14 subsection (a)(2) to the defendant. The portion of the deposit that is not
15 remitted to the defendant shall be deposited by the clerk in the
16 supplemental public defender services fund established under
17 IC 33-40-3.

18 ~~(c)~~ **(d)** For purposes of subsection ~~(b)~~; **(c)**, "disposition" occurs
19 when the indictment or information is dismissed or the defendant is
20 acquitted or convicted of the charges.

21 ~~(d)~~ **(e)** Except as provided in subsection ~~(c)~~ **(f)**, the clerk of the court
22 shall:

- 23 (1) collect a fee of five dollars (\$5) from each bond or deposit
- 24 required under subsection (a)(1); and
- 25 (2) retain a fee of five dollars (\$5) from each deposit under
- 26 subsection (a)(2).

27 The clerk of the court shall semiannually remit the fees collected under
28 this subsection to the board of trustees of the public employees'
29 retirement fund for deposit in the special death benefit fund. The fee
30 required by subdivision (2) is in addition to the administrative fee
31 retained under subsection (a)(2).

32 ~~(e)~~ **(f)** With the approval of the clerk of the court, the county sheriff
33 may collect the bail posted under this section. The county sheriff shall
34 remit the bail to the clerk of the court by the following business day
35 and remit monthly the five dollar (\$5) special death benefit fee to the
36 county auditor.

37 ~~(f)~~ **(g)** When a court imposes a condition of bail described in
38 subsection (a)(4):

- 39 (1) the clerk of the court shall comply with IC 5-2-9; and
- 40 (2) the prosecuting attorney shall file a confidential form
- 41 prescribed or approved by the division of state court
- 42 administration with the clerk.

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1 SECTION 40. IC 35-38-1-7.8 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2011]: **Sec. 7.8. (a) At the time of sentencing,**
4 **a court shall determine whether a person is a credit restricted felon**
5 **(as defined in IC 35-41-1-5.5).**

6 (b) A determination under subsection (a) must be based upon:
7 (1) evidence introduced at trial; or
8 (2) a factual basis provided as part of a guilty plea.

9 (c) Upon determining that a defendant is a credit restricted
10 felon, a court shall advise the defendant of the consequences of this
11 finding.

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

15 SECTION 41. IC 35-38-1-31 IS ADDED TO THE INDIANA
16 CODE AS A NEW SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2011]: **Sec. 31. (a) This section does not apply**
18 **to a person convicted of a crime under IC 35-42-4, except as**
19 **otherwise authorized by IC 33-23-16.**

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

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

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

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

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

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1 SECTION 42. IC 35-38-2-2.3, AS AMENDED BY P.L.111-2009,
 2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2011]: Sec. 2.3. (a) As a condition of probation, the court may
 4 require a person to do a combination of the following, **subject to the**
 5 **supervision guidelines for the person's risk classification:**

6 (1) Work faithfully at suitable employment or faithfully pursue a
 7 course of study or career and technical education that will equip
 8 the person for suitable employment.

9 (2) Undergo available medical or psychiatric treatment and
 10 remain in a specified institution if required for that purpose.

11 (3) Attend or reside in a facility established for the instruction,
 12 recreation, or residence of persons on probation.

13 (4) Support the person's dependents and meet other family
 14 responsibilities.

15 (5) Make restitution or reparation to the victim of the crime for
 16 damage or injury that was sustained by the victim. When
 17 restitution or reparation is a condition of probation, the court shall
 18 fix the amount, which may not exceed an amount the person can
 19 or will be able to pay, and shall fix the manner of performance.

20 (6) Execute a repayment agreement with the appropriate
 21 governmental entity to repay the full amount of public relief or
 22 assistance wrongfully received, and make repayments according
 23 to a repayment schedule set out in the agreement.

24 (7) Pay a fine authorized by IC 35-50.

25 (8) Refrain from possessing a firearm or other deadly weapon
 26 unless granted written permission by the court or the person's
 27 probation officer.

28 (9) Report to a probation officer at reasonable times as directed
 29 by the court or the probation officer.

30 (10) Permit the person's probation officer to visit the person at
 31 reasonable times at the person's home or elsewhere.

32 (11) Remain within the jurisdiction of the court, unless granted
 33 permission to leave by the court or by the person's probation
 34 officer.

35 (12) Answer all reasonable inquiries by the court or the person's
 36 probation officer and promptly notify the court or probation
 37 officer of any change in address or employment.

38 (13) Perform uncompensated work that benefits the community.

39 (14) Satisfy other conditions reasonably related to the person's
 40 rehabilitation.

41 (15) Undergo home detention under IC 35-38-2.5.

42 (16) Undergo a laboratory test or series of tests approved by the

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1 state department of health to detect and confirm the presence of
 2 the human immunodeficiency virus (HIV) antigen or antibodies
 3 to the human immunodeficiency virus (HIV), if:

4 (A) the person had been convicted of an offense relating to a
 5 criminal sexual act and the offense created an
 6 epidemiologically demonstrated risk of transmission of the
 7 human immunodeficiency virus (HIV); or

8 (B) the person had been convicted of an offense relating to a
 9 controlled substance and the offense involved:

10 (i) the delivery by any person to another person; or

11 (ii) the use by any person on another person;

12 of a contaminated sharp (as defined in IC 16-41-16-2) or other
 13 paraphernalia that creates an epidemiologically demonstrated
 14 risk of transmission of HIV by involving percutaneous contact.

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

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

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

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

34 (A) may not exceed an amount the person can or will be able
 35 to pay;

36 (B) does not harm the person's ability to reasonably be self
 37 supporting or to reasonably support any dependent of the
 38 person; and

39 (C) takes into consideration and gives priority to any other
 40 restitution, reparation, repayment, or fine the person is
 41 required to pay under this section.

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

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- 1 (22) Participate in a reentry court program.
- 2 (b) When a person is placed on probation, the person shall be given
3 a written statement specifying:
- 4 (1) the conditions of probation; and
- 5 (2) that if the person violates a condition of probation during the
6 probationary period, a petition to revoke probation may be filed
7 before the earlier of the following:
- 8 (A) One (1) year after the termination of probation.
- 9 (B) Forty-five (45) days after the state receives notice of the
10 violation.
- 11 (c) As a condition of probation, the court may require that the
12 person serve a term of imprisonment in an appropriate facility at the
13 time or intervals (consecutive or intermittent) within the period of
14 probation the court determines.
- 15 (d) Intermittent service may be required only for a term of not more
16 than sixty (60) days and must be served in the county or local penal
17 facility. The intermittent term is computed on the basis of the actual
18 days spent in confinement and shall be completed within one (1) year.
19 A person does not earn credit time while serving an intermittent term
20 of imprisonment under this subsection. When the court orders
21 intermittent service, the court shall state:
- 22 (1) the term of imprisonment;
- 23 (2) the days or parts of days during which a person is to be
24 confined; and
- 25 (3) the conditions.
- 26 **(e) If the court orders conditions of probation that do not follow**
27 **the supervision guidelines for the person's risk classification, the**
28 **court shall make written findings showing that it is in the best**
29 **interest of the rehabilitation of the person and the safety of the**
30 **community to make the order.**
- 31 ~~(f)~~ (f) Supervision of a person may be transferred from the court
32 that placed the person on probation to a court of another jurisdiction,
33 with the concurrence of both courts. Retransfers of supervision may
34 occur in the same manner. This subsection does not apply to transfers
35 made under IC 11-13-4 or IC 11-13-5.
- 36 ~~(g)~~ (g) When a court imposes a condition of probation described in
37 subsection (a)(17):
- 38 (1) the clerk of the court shall comply with IC 5-2-9; and
- 39 (2) the prosecuting attorney shall file a confidential form
40 prescribed or approved by the division of state court
41 administration with the clerk.
- 42 ~~(h)~~ (h) As a condition of probation, a court shall require a person:

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- 1 (1) convicted of an offense described in IC 10-13-6-10;
 2 (2) who has not previously provided a DNA sample in accordance
 3 with IC 10-13-6; and
 4 (3) whose sentence does not involve a commitment to the
 5 department of correction;
 6 to provide a DNA sample as a condition of probation.

7 SECTION 43. IC 35-38-2-3, AS AMENDED BY P.L.106-2010,
 8 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2011]: Sec. 3. (a) The court may revoke a person's probation
 10 if:

- 11 (1) the person has violated a condition of probation during the
 12 probationary period; and
 13 (2) the petition to revoke probation is filed during the
 14 probationary period or before the earlier of the following:
 15 (A) One (1) year after the termination of probation.
 16 (B) Forty-five (45) days after the state receives notice of the
 17 violation.

18 (b) When a petition is filed charging a violation of a condition of
 19 probation, the court may:

- 20 (1) order a summons to be issued to the person to appear; or
 21 (2) order a warrant for the person's arrest if there is a risk of the
 22 person's fleeing the jurisdiction or causing harm to others.

23 (c) The issuance of a summons or warrant tolls the period of
 24 probation until the final determination of the charge.

25 (d) **Except as provided in subsection (e), the court shall conduct**
 26 **a hearing concerning the alleged violation. The court may admit the**
 27 **person to bail pending the hearing. A person who is not admitted to**
 28 **bail pending the hearing may not be held in jail for more than**
 29 **fifteen (15) days without a hearing on the violation.**

30 (e) **A person may admit to the violation and waive the right to**
 31 **a probation violation hearing after being offered the opportunity**
 32 **to consult with an attorney. If the person admits to the violation**
 33 **and requests to waive the probation violation hearing, the**
 34 **probation officer shall advise the person that by waiving the right**
 35 **to a probation violation hearing the person forfeits the rights**
 36 **provided in subsection (f). The sanction administered must follow**
 37 **the schedule of progressive probation violation sanctions adopted**
 38 **by the judicial conference of Indiana under IC 11-13-1-8.**

39 (f) **Except as provided in subsection (e), the state must prove**
 40 **the violation by a preponderance of the evidence. The evidence shall**
 41 **be presented in open court. The person is entitled to confrontation,**
 42 **cross-examination, and representation by counsel.**

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1 ~~(f)~~ **(g)** Probation may not be revoked for failure to comply with
 2 conditions of a sentence that imposes financial obligations on the
 3 person unless the person recklessly, knowingly, or intentionally fails to
 4 pay.

5 ~~(g)~~ **(h)** If the court finds that the person has violated a condition at
 6 any time before termination of the period, and the petition to revoke is
 7 filed within the probationary period, the court may impose one (1) or
 8 more of the following sanctions:

9 (1) Continue the person on probation, with or without modifying
 10 or enlarging the conditions.

11 (2) Extend the person's probationary period for not more than one
 12 (1) year beyond the original probationary period.

13 (3) Order execution of all or part of the sentence that was
 14 suspended at the time of initial sentencing.

15 ~~(h)~~ **(i)** If the court finds that the person has violated a condition of
 16 home detention at any time before termination of the period, and the
 17 petition to revoke probation is filed within the probationary period, the
 18 court shall:

19 (1) order one (1) or more sanctions as set forth in subsection ~~(g)~~;
 20 **(h)**; and

21 (2) provide credit for time served as set forth under
 22 IC 35-38-2.5-5.

23 ~~(i)~~ **(j)** If the court finds that the person has violated a condition
 24 during any time before the termination of the period, and the petition
 25 is filed under subsection (a) after the probationary period has expired,
 26 the court may:

27 (1) reinstate the person's probationary period, with or without
 28 enlarging the conditions, if the sum of the length of the original
 29 probationary period and the reinstated probationary period does
 30 not exceed the length of the maximum sentence allowable for the
 31 offense that is the basis of the probation; or

32 (2) order execution of all or part of the sentence that was
 33 suspended at the time of the initial sentencing.

34 ~~(j)~~ **(k)** If the court finds that the person has violated a condition of
 35 home detention during any time before termination of the period, and
 36 the petition is filed under subsection (a) after the probation period has
 37 expired, the court shall:

38 (1) order a sanction as set forth in subsection ~~(i)~~; **(j)**; and

39 (2) provide credit for time served as set forth under
 40 IC 35-38-2.5-5.

41 ~~(k)~~ **(l)** A judgment revoking probation is a final appealable order.

42 ~~(l)~~ **(m)** Failure to pay fines or costs (including fees) required as a

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1 condition of probation may not be the sole basis for commitment to the
2 department of correction.

3 ~~(m)~~ (n) Failure to pay fees or costs assessed against a person under
4 IC 33-40-3-6, IC 33-37-2-3(e), or IC 35-33-7-6 is not grounds for
5 revocation of probation.

6 SECTION 44. IC 35-38-2.6-1, AS AMENDED BY P.L.151-2006,
7 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2011]: Sec. 1. (a) Except as provided in subsection (b), this
9 chapter applies to the sentencing of a person convicted of:

10 (1) a felony whenever any part of the sentence may not be
11 suspended under IC 35-50-2-2; ~~or IC 35-50-2-2.1;~~

12 (2) a misdemeanor whenever any part of the sentence may not be
13 suspended; or

14 (3) an offense described in ~~IC 35-50-2-2(b)(4)(R)~~
15 **IC 35-50-2-2(b)(3)(R)** (operating a vehicle while intoxicated with
16 at least two (2) prior unrelated convictions), if the person:

17 (A) is required to serve the nonsuspendible part of the
18 sentence in a community corrections:

19 (i) work release program; or

20 (ii) program that uses electronic monitoring as a part of the
21 person's supervision; and

22 (B) participates in a court approved substance abuse program.

23 (b) This chapter does not apply to persons convicted of any of the
24 following:

25 (1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.

26 (2) Except as provided in subsection (a)(3), any of the felonies
27 listed in ~~IC 35-50-2-2(b)(4)~~: **IC 35-50-2-2(b)(3)**.

28 (3) An offense under IC 9-30-5-4.

29 (4) An offense under IC 9-30-5-5.

30 SECTION 45. IC 35-38-3-5 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) The department,
32 after diagnosis and classification, shall:

33 (1) determine the degree of security (maximum, medium, or
34 minimum) to which a convicted person will be assigned;

35 ~~(2) for each offender convicted of a Class D felony whose~~
36 ~~sentence for the Class D felony is nonsuspendible under~~
37 ~~IC 35-50-2-2(b)(3) due to a prior unrelated Class E or Class D~~
38 ~~felony; determine whether the offender is an appropriate~~
39 ~~candidate for home detention under IC 35-38-2-5;~~

40 ~~(3) for each offender convicted of a Class D felony whose~~
41 ~~sentence for the Class D felony is nonsuspendible under:~~

42 ~~(A) IC 35-50-2-2.1(a)(1)(B);~~

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- 1 ~~(B) IC 35-50-2-2.1(a)(1)(C); or~~
 2 ~~(C) IC 35-50-2-2.1(a)(2);~~
 3 determine whether the offender is an appropriate candidate for
 4 home detention under IC 35-38-2.5;
 5 ~~(4) (2)~~ for each offender:
 6 (A) committed to the department because the offender has
 7 been convicted for the first time of a Class C or a Class D
 8 felony; and
 9 (B) whose sentence may be suspended;
 10 determine whether the offender is an appropriate candidate for
 11 home detention under IC 35-38-2.5;
 12 ~~(5) (3)~~ notify the trial court and prosecuting attorney if the degree
 13 of security assigned differs from the court's recommendations;
 14 and
 15 ~~(6) (4)~~ petition the sentencing court under IC 35-38-1-21 for
 16 review of the sentence of an offender who is not a habitual
 17 offender sentenced under IC 35-50-2-8 or IC 35-50-2-10 and who
 18 the department has determined under subdivision (2) ~~or~~
 19 ~~subdivision (3)~~; to be an appropriate candidate for home
 20 detention.
 21 (b) The department may change the degree of security to which the
 22 person is assigned. However, if the person is changed to a lesser degree
 23 of security during the first two (2) years of the commitment, the
 24 department shall notify the trial court and the prosecuting attorney not
 25 less than thirty (30) days before the effective date of the changed
 26 security assignment.
 27 SECTION 46. IC 35-38-5-5.5 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2011]: **Sec. 5.5. (a) If a person charged with**
 30 **a crime:**
 31 **(1) is not prosecuted or if charges against the person are**
 32 **dismissed;**
 33 **(2) is acquitted of all criminal charges; or**
 34 **(3) is convicted of the crime and the conviction is subsequently**
 35 **vacated;**
 36 **the person may petition a court to restrict disclosure of the records**
 37 **related to the arrest to a noncriminal justice organization or an**
 38 **individual.**
 39 **(b) A petition under subsection (a) must be verified and filed in:**
 40 **(1) the court in which the charges against the person were**
 41 **filed, for a person described in subsection (a)(1); or**
 42 **(2) the court in which the trial was held, for a person**

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- 1 described in subsection (a)(2) or (a)(3).
 2 (c) A petition under subsection (a) must be filed not earlier than:
 3 (1) if the person is acquitted, thirty (30) days after the person
 4 is acquitted;
 5 (2) if the person's conviction is vacated, three hundred
 6 sixty-five (365) days after:
 7 (A) the order vacating the person's conviction is final, if
 8 there is no appeal or the appeal is terminated before entry
 9 of an opinion or memorandum decision; or
 10 (B) the opinion or memorandum decision vacating the
 11 person's conviction is certified; or
 12 (3) if the person is not prosecuted, thirty (30) days after
 13 charges are dismissed, if the charges are not refiled.
 14 (d) A petition under subsection (a) must set forth:
 15 (1) the date of the arrest;
 16 (2) the charge;
 17 (3) the date charges were dismissed, if applicable;
 18 (4) the date of conviction or acquittal, if applicable;
 19 (5) the date the conviction was vacated, if applicable;
 20 (6) the basis on which the conviction was vacated, if
 21 applicable;
 22 (7) the law enforcement agency employing the arresting
 23 officer;
 24 (8) any other known identifying information, such as the name
 25 of the arresting officer, case number, or court cause number;
 26 (9) the date of the petitioner's birth; and
 27 (10) the petitioner's Social Security number.
 28 (e) A copy of a petition under subsection (a) shall be served on
 29 the prosecuting attorney and the state central repository for
 30 records.
 31 (f) If the prosecuting attorney wishes to oppose a petition under
 32 subsection (a), the prosecuting attorney shall, not later than thirty
 33 (30) days after the petition is filed, file a notice of opposition with
 34 the court setting forth reasons for opposing the petition. The
 35 prosecuting attorney shall attach to the notice of opposition a
 36 certified copy of any documentary evidence showing that the
 37 petitioner is not entitled to relief. A copy of the notice of opposition
 38 and copies of any documentary evidence shall be served on the
 39 petitioner in accordance with the Indiana Rules of Trial Procedure.
 40 The court may:
 41 (1) summarily grant the petition;
 42 (2) set the matter for hearing; or

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1 (3) summarily deny the petition, if the court determines that:

2 (A) the petition is insufficient; or

3 (B) based on documentary evidence submitted by the
4 prosecuting attorney, the petitioner is not entitled to have
5 access to the petitioner's arrest records restricted.

6 (g) If a notice of opposition is filed under subsection (f) and the
7 court does not summarily grant or summarily deny the petition,
8 the court shall set the matter for a hearing.

9 (h) After a hearing is held under subsection (g), the court shall
10 grant the petition filed under subsection (a), unless the petitioner
11 is being reprobsecuted on charges related to the original conviction.

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

17 SECTION 47. IC 35-38-8 IS ADDED TO THE INDIANA CODE
18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2011]:

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

21 **Sec. 1. This chapter does not apply to a sex or violent offender**
22 **unless the offender's status as a sex or violent offender is solely due**
23 **to the offender's conviction for sexual misconduct with a minor**
24 **(IC 35-42-4-9) and the offender proves that the defense described**
25 **in IC 35-42-4-9(e) applies to the offender.**

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

27 (1) convicted of a misdemeanor or a Class D felony that did
28 not result in injury to a person; or

29 (2) adjudicated a delinquent child for committing an offense
30 that, if committed by an adult, would be a misdemeanor or
31 Class D felony that did not result in injury to a person.

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

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

40 (1) the person is:

41 (A) not a sex or violent offender; or

42 (B) the person is a sex or violent offender, but the

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- 1 offender's status as a sex or violent offender is solely due to
- 2 the offender's conviction for sexual misconduct with a
- 3 minor (IC 35-42-4-9) and the offender proved that the
- 4 defense described in IC 35-42-4-9(e) applies to the
- 5 offender;
- 6 (2) the person was:
 - 7 (A) convicted of a misdemeanor or a Class D felony that
 - 8 did not result in injury to a person; or
 - 9 (B) adjudicated a delinquent child for committing an
 - 10 offense that, if committed by an adult, would be a
 - 11 misdemeanor or Class D felony not resulting in injury to a
 - 12 person;
 - 13 (3) eight (8) years have passed since the person completed the
 - 14 person's sentence and satisfied any other obligation imposed
 - 15 on the person as part of the sentence; and
 - 16 (4) the person has not been convicted of a felony since the
 - 17 person completed the person's sentence and satisfied any
 - 18 other obligation imposed on the person as part of the
 - 19 sentence.

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

- 22 (1) Order:
 - 23 (A) the department of correction; and
 - 24 (B) each:
 - 25 (i) law enforcement agency; and
 - 26 (ii) other person;
 - 27 who incarcerated, provided treatment for, or provided
 - 28 other services for the person under an order of the court;
 - 29 to prohibit the release of the person's records or information
 - 30 relating to the misdemeanor, nonviolent Class D felony, or
 - 31 juvenile adjudication described in section 2 of this chapter, in
 - 32 the person's records to a noncriminal justice agency without
 - 33 a court order.
- 34 (2) Order any:
 - 35 (A) state;
 - 36 (B) regional; or
 - 37 (C) local;
- 38 central repository for criminal history information to prohibit
- 39 the release of the person's records or information relating to
- 40 the misdemeanor, nonviolent Class D felony, or juvenile
- 41 adjudication described in section 2 of this chapter, in the
- 42 person's records to a noncriminal justice agency without a

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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 48. IC 35-41-1-5.5, AS ADDED BY P.L.80-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5.5. (a) "Credit restricted felon" means a person who has been convicted of at least one (1) of the following offenses:

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

 - (A) the offense is committed by a person at least twenty-one (21) years of age; and**
 - (B) the victim is less than twelve (12) years of age. (~~IC 35-42-4-3~~) as a Class A felony.****
- (2) Child molesting (~~IC 35-42-4-3~~) resulting in serious bodily injury or death.**
- (3) (2) Murder (IC 35-42-1-1). if:

 - (A) the person killed the victim while committing or attempting to commit child molesting (~~IC 35-42-4-3~~);**
 - (B) the victim was the victim of a sex crime under IC 35-42-4 for which the person was convicted; or**
 - (C) the victim of the murder was listed by the state or known by the person to be a witness against the person in a prosecution for a sex crime under IC 35-42-4 and the person committed the murder with the intent to prevent the person****

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- 1 ~~from testifying-~~
- 2 (3) Voluntary manslaughter (IC 35-42-1-3).
- 3 (4) Battery (IC 35-42-2-1) as a Class A felony.
- 4 (5) Criminal deviate conduct (IC 35-42-4-2) as a Class A
- 5 felony.
- 6 (6) Kidnapping (IC 35-42-3-2) as a Class A felony.
- 7 (7) Neglect of a dependent (IC 35-46-1-4) as a Class A felony.
- 8 (8) Robbery (IC 35-42-5-1) as a Class A felony.
- 9 (9) Rape (IC 35-42-4-1) as a Class A felony.

10 (b) This section applies only to persons who after June 30, 2011,

11 commit an offense described in subsection (a), including an offense

12 that makes the person a habitual offender or habitual substance

13 offender.

14 SECTION 49. IC 35-41-1-8.3 IS ADDED TO THE INDIANA

15 CODE AS A NEW SECTION TO READ AS FOLLOWS

16 [EFFECTIVE JULY 1, 2011]: Sec. 8.3. "Defraud" means to deprive

17 a person of any money, property, interest, benefit, or right by

18 means of false or deceptive pretenses, representations, or promises.

19 SECTION 50. IC 35-41-6 IS ADDED TO THE INDIANA CODE

20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE

21 JULY 1, 2011]:

22 **Chapter 6. Application of Certain Offenses**

23 **Sec. 1. The following, as added or amended by SEA 561-2011,**

24 **apply only to crimes committed after July 1, 2011:**

- 25 (1) IC 35-43-2-1 (burglary).
- 26 (2) IC 35-43-4-2 (theft).
- 27 (3) IC 35-43-5-2 (counterfeiting, fraud, forgery).
- 28 (4) IC 35-43-5-3 (deception).
- 29 (5) IC 35-43-5-3.5 (identity deception).
- 30 (6) IC 35-43-5-3.8 (synthetic identity deception).
- 31 (7) IC 35-43-5-4.3 (unlawful possession of a card skimming
- 32 device).
- 33 (8) IC 35-43-5-4.5 (insurance fraud, insurance application
- 34 fraud).
- 35 (9) IC 35-43-5-5 (check deception).
- 36 (10) IC 35-43-5-7 (welfare fraud).
- 37 (11) IC 35-43-5-7.1 (Medicaid fraud).
- 38 (12) IC 35-43-5-7.2 (insurance fraud).
- 39 (13) IC 35-43-5-8 (bank fraud).
- 40 (14) IC 35-43-5-12 (check fraud).
- 41 (15) IC 35-48-4-1 (dealing in cocaine).
- 42 (16) IC 35-48-4-1.1 (dealing in methamphetamine).

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- 1 **(17) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled**
- 2 **substance).**
- 3 **(18) IC 35-48-4-6 (possession of cocaine).**
- 4 **(19) IC 35-48-4-6.1 (possession of methamphetamine).**
- 5 **(20) IC 35-48-4-11 (possession of marijuana).**

6 SECTION 51. IC 35-43-2-1 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. A person who breaks
 8 and enters the building or structure of another person, with intent to
 9 commit **theft or** a felony in it, commits burglary, a Class C felony.
 10 However, the offense is:

- 11 (1) a Class B felony if:
 - 12 (A) it is committed while armed with a deadly weapon; or
 - 13 (B) the building or structure is a:
 - 14 (i) dwelling; or
 - 15 (ii) structure used for religious worship; and
 - 16 (2) a Class A felony if it results in:
 - 17 (A) bodily injury; or
 - 18 (B) serious bodily injury;
- 19 to any person other than a defendant.

20 SECTION 52. IC 35-43-4-2, AS AMENDED BY P.L.158-2009,
 21 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2011]: Sec. 2. ~~(a)~~ A person who knowingly or intentionally
 23 exerts unauthorized control over property of another person, with intent
 24 to deprive the other person of any part of its value or use, commits
 25 theft, a ~~Class D felony~~. **Class A misdemeanor**. However, the offense
 26 is a **Class D felony if the fair market value of the property is at**
 27 **least seven hundred fifty dollars (\$750) or if the person has a prior**
 28 **unrelated conviction for conversion or theft, and a Class C felony**
 29 **if:**

- 30 (1) the fair market value of the property is at least ~~one hundred~~
 31 **fifty thousand dollars (\$100,000); (\$50,000);** or
- 32 (2) the property that is the subject of the theft is a valuable metal
 33 (as defined in IC 25-37.5-1-1) and:
 - 34 (A) relates to transportation safety;
 - 35 (B) relates to public safety; or
 - 36 (C) is taken from a:
 - 37 (i) hospital or other health care facility;
 - 38 (ii) telecommunications provider;
 - 39 (iii) public utility (as defined in IC 32-24-1-5.9(a)); or
 - 40 (iv) key facility;

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

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1 (b) A person who knowingly or intentionally receives, retains, or
2 disposes of the property of another person that has been the subject of
3 theft commits receiving stolen property, a Class D felony. However, the
4 offense is a Class C felony if:

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

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

9 (A) relates to transportation safety;

10 (B) relates to public safety; or

11 (C) is taken from a:

12 (i) hospital or other health care facility;

13 (ii) telecommunications provider;

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

15 (iv) key facility;

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

18 SECTION 53. IC 35-43-4-8 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) A conviction for
20 an offense under section 2 of this chapter or section 3 of this chapter
21 that involves exerting unauthorized control over gasoline or motor
22 vehicle fuel:

23 (1) by operation of a motor vehicle to leave the premises of an
24 establishment at which gasoline or motor vehicle fuel is offered
25 for sale after the gasoline or motor vehicle fuel has been
26 dispensed into the fuel tank of the motor vehicle; and

27 (2) without payment or authorization of payment by a credit card,
28 debit card, charge card, or similar method of payment;

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

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

32 (1) stating that the person has been convicted of an offense under
33 section 2 of this chapter or section 3 of this chapter involving the
34 unauthorized taking of gasoline or motor vehicle fuel; and

35 (2) ordering the suspension of the person's driving privileges
36 under IC 9-25-6-21.

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

40 SECTION 54. IC 35-43-5-2, AS AMENDED BY P.L.106-2006,
41 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2011]: Sec. 2. (a) A person who knowingly or intentionally:

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1 (1) makes or utters a written instrument in such a manner that it
 2 purports to have been made:
 3 (A) by another person;
 4 (B) at another time;
 5 (C) with different provisions; or
 6 (D) by authority of one who did not give authority; or
 7 (2) possesses more than one (1) written instrument knowing that
 8 the written instruments were made in a manner that they purport
 9 to have been made:
 10 (A) by another person;
 11 (B) at another time;
 12 (C) with different provisions; or
 13 (D) by authority of one who did not give authority;
 14 commits counterfeiting, a Class D felony.
 15 (b) A person who, with intent to defraud, makes, utters, or possesses
 16 a written instrument in such a manner that it purports to have been
 17 made:
 18 (1) by another person;
 19 (2) at another time;
 20 (3) with different provisions; or
 21 (4) by authority of one who did not give authority;
 22 commits forgery, a ~~Class C~~ **Class D** felony.
 23 (c) This subsection applies to a person who applies for a driver's
 24 license (as defined in IC 9-13-2-48) **or a state identification card (as**
 25 **issued under IC 9-24-16)**. A person who:
 26 (1) knowingly or intentionally uses a false or fictitious name or
 27 gives a false or fictitious address in an application for a driver's
 28 license **or a state identification card** or for a renewal or a
 29 duplicate of a driver's license **or a state identification card**; or
 30 (2) knowingly or intentionally makes a false statement or conceals
 31 a material fact or otherwise commits fraud in an application for a
 32 driver's license **or a state identification card**;
 33 commits application fraud, a Class D felony.
 34 (d) This subsection applies to a person who applies for a state
 35 identification card (as issued under ~~IC 9-24-16~~): A person who:
 36 (1) knowingly or intentionally uses false information in an
 37 application for an identification card or for a renewal or duplicate
 38 of an identification card; or
 39 (2) knowingly or intentionally makes a false statement or
 40 otherwise commits fraud in an application for an identification
 41 card;
 42 commits application fraud; a ~~Class D~~ **Class D** felony.

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1 SECTION 55. IC 35-43-5-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) A person who:

3 (1) being an officer, manager, or other person participating in the
4 direction of a credit institution, knowingly or intentionally
5 receives or permits the receipt of a deposit or other investment,
6 knowing that the institution is insolvent;

7 (2) knowingly or intentionally:

8 (A) makes a false or misleading written statement; or

9 (B) misrepresents:

10 (i) the identity of the person or another person;

11 (ii) a person as being a physician licensed under
12 IC 25-22.5; or

13 (iii) the identity or quality of property;

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

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

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

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

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

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

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

36 (7) (6) with intent to defraud an owner of a coin machine, deposits
37 a slug in that machine;

38 (8) (7) with intent to enable the person or another person to
39 deposit a slug in a coin machine, makes, possesses, or disposes of
40 a slug; or

41 (9) (8) disseminates to the public an advertisement that the person
42 knows is false, misleading, or deceptive, with intent to promote

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1 the purchase or sale of property or the acceptance of employment;
 2 ~~(10) with intent to defraud; misrepresents a person as being a~~
 3 ~~physician licensed under IC 25-22.5; or~~
 4 ~~(11) knowingly and intentionally defrauds another person~~
 5 ~~furnishing cable TV service by avoiding paying compensation for~~
 6 ~~that service by any scheme or device or by tampering with~~
 7 ~~facilities or equipment of the person furnishing the service;~~
 8 commits deception, a Class A misdemeanor.

9 (b) In determining whether an advertisement is false, misleading, or
 10 deceptive under subsection ~~(a)(9)~~; **(a)(8)**, there shall be considered,
 11 among other things, not only representations contained or suggested in
 12 the advertisement, by whatever means, including device or sound, but
 13 also the extent to which the advertisement fails to reveal material facts
 14 in the light of the representations.

15 SECTION 56. IC 35-43-5-3.5, AS AMENDED BY P.L.137-2009,
 16 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2011]: Sec. 3.5. (a) Except as provided in subsection (c), a
 18 person who knowingly or intentionally obtains, possesses, transfers, or
 19 uses the identifying information of another person, including the
 20 identifying information of a person who is deceased:

- 21 (1) without the other person's consent; and
 22 (2) with intent to:
 23 (A) harm or defraud another person;
 24 (B) assume another person's identity; or
 25 (C) profess to be another person;

26 commits identity deception, a Class D felony.

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

- 29 (1) a person obtains, possesses, transfers, or uses the identifying
 30 information of more than one hundred (100) persons;
 31 (2) the fair market value of the fraud or harm caused by the
 32 offense is at least fifty thousand dollars (\$50,000); ~~or~~
 33 (3) a person obtains, possesses, transfers, or uses the identifying
 34 information of a person who is less than eighteen (18) years of
 35 age and is:
 36 (A) the person's son or daughter;
 37 (B) a dependent of the person;
 38 (C) a ward of the person; or
 39 (D) an individual for whom the person is a guardian; **or**
 40 **(4) a person obtains, possesses, transfers, or uses the**
 41 **identifying information of another person with intent to:**
 42 **(A) commit terrorism; or**

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

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

- (1) a person less than twenty-one (21) years of age who uses the identifying information of another person to acquire an alcoholic beverage (as defined in IC 7.1-1-3-5);
- (2) a minor (as defined in IC 35-49-1-4) who uses the identifying information of another person to acquire:
 - (A) a cigarette or tobacco product (as defined in IC 6-7-2-5);
 - (B) a periodical, a videotape, or other communication medium that contains or depicts nudity (as defined in IC 35-49-1-5);
 - (C) admittance to a performance (live or film) that prohibits the attendance of the minor based on age; or
 - (D) an item that is prohibited by law for use or consumption by a minor; or
- (3) any person who uses the identifying information for a lawful purpose.

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

SECTION 57. IC 35-43-5-3.8, AS ADDED BY P.L.137-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3.8. (a) A person who knowingly or intentionally obtains, possesses, transfers, or uses the synthetic identifying information:

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

commits synthetic identity deception, a Class D felony.

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

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

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

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

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

- (1) a person less than twenty-one (21) years of age who uses the synthetic identifying information of another person to acquire an

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- 1 alcoholic beverage (as defined in IC 7.1-1-3-5); or
- 2 (2) a minor (as defined in IC 35-49-1-4) who uses the synthetic
- 3 identifying information of another person to acquire:
- 4 (A) a cigarette or tobacco product (as defined in IC 6-7-2-5);
- 5 (B) a periodical, a videotape, or other communication medium
- 6 that contains or depicts nudity (as defined in IC 35-49-1-5);
- 7 (C) admittance to a performance (live or on film) that prohibits
- 8 the attendance of the minor based on age; or
- 9 (D) an item that is prohibited by law for use or consumption by
- 10 a minor.

11 (d) It is not a defense in a prosecution under subsection (a) or (b)

12 that no person was harmed or defrauded.

13 SECTION 58. IC 35-43-5-4.3, AS AMENDED BY P.L.137-2009,

14 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

15 JULY 1, 2011]: Sec. 4.3. (a) As used in this section, "card skimming

16 device" means a device that is designed to read information encoded on

17 a credit card. The term includes a device designed to read, record, or

18 transmit information encoded on a credit card:

- 19 (1) directly from a credit card; or
- 20 (2) from another device that reads information directly from a
- 21 credit card.

22 (b) A person who possesses a card skimming device with intent to

23 commit:

- 24 (1) identity deception (IC 35-43-5-3.5);
- 25 (2) synthetic identity deception (IC 35-43-5-3.8); or
- 26 (3) fraud (IC 35-43-5-4); or
- 27 ~~(4) terroristic deception (IC 35-43-5-3.6);~~

28 commits unlawful possession of a card skimming device, ~~Unlawful~~

29 ~~possession of a card skimming device under subdivision (1); (2); or (3)~~

30 ~~is~~ a Class D felony. **However**, unlawful possession of a card skimming

31 device ~~under subdivision (4)~~ **with intent to commit terrorism or**

32 **obtain or transport a weapon of mass destruction** is a Class C

33 felony.

34 SECTION 59. IC 35-43-5-4.5, AS ADDED BY P.L.181-2005,

35 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

36 JULY 1, 2011]: Sec. 4.5. (a) A person who, knowingly and with intent

37 to defraud:

- 38 (1) makes, utters, presents, or causes to be presented to an insurer
- 39 or an insurance claimant, a claim statement that contains false,
- 40 incomplete, or misleading information concerning the claim;
- 41 (2) presents, causes to be presented, or prepares with knowledge
- 42 or belief that it will be presented to or by an insurer, an oral, a

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1 written, or an electronic statement that the person knows to
 2 contain materially false information as part of, in support of, or
 3 concerning a fact that is material to:

- 4 (A) the rating of an insurance policy;
- 5 (B) a claim for payment or benefit under an insurance policy;
- 6 (C) premiums paid on an insurance policy;
- 7 (D) payments made in accordance with the terms of an
 8 insurance policy;
- 9 (E) an application for a certificate of authority;
- 10 (F) the financial condition of an insurer; or
- 11 (G) the acquisition of an insurer;

12 or conceals any information concerning a subject set forth in
 13 clauses (A) through (G);

14 (3) solicits or accepts new or renewal insurance risks by or for an
 15 insolvent insurer or other entity regulated under IC 27;

16 (4) removes:

- 17 (A) the assets;
- 18 (B) the record of assets, transactions, and affairs; or
- 19 (C) a material part of the assets or the record of assets,
 20 transactions, and affairs;

21 of an insurer or another entity regulated under IC 27, from the
 22 home office, other place of business, or place of safekeeping of
 23 the insurer or other regulated entity, or conceals or attempts to
 24 conceal from the department of insurance assets or records
 25 referred to in clauses (A) through (B); or

26 (5) diverts funds of an insurer or another person in connection
 27 with:

- 28 (A) the transaction of insurance or reinsurance;
- 29 (B) the conduct of business activities by an insurer or another
 30 entity regulated under IC 27; or
- 31 (C) the formation, acquisition, or dissolution of an insurer or
 32 another entity regulated under IC 27;

33 commits insurance fraud. Except as provided in subsection (b),
 34 insurance fraud is a Class D felony.

35 (b) An offense described in subsection (a) is a Class C felony if:

36 (1) the person who commits the offense has a prior unrelated
 37 conviction under this section; or

38 (2) the:

39 (A) value of property, services, or other benefits obtained or
 40 attempted to be obtained by the person as a result of the
 41 offense; or

42 (B) economic loss suffered by another person as a result of the

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1 offense;
 2 is at least ~~two thousand five hundred dollars (\$2,500)~~ **fifty**
 3 **thousand dollars (\$50,000)**.
 4 (c) A person who knowingly and with intent to defraud makes a
 5 material misstatement in support of an application for the issuance of
 6 an insurance policy commits insurance application fraud, a Class A
 7 misdemeanor.
 8 SECTION 60. IC 35-43-5-5 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) A person who
 10 knowingly or intentionally issues or delivers a check, a draft, or an
 11 order on a credit institution for the payment of or to acquire money or
 12 other property, knowing that it will not be paid or honored by the credit
 13 institution upon presentment in the usual course of business, commits
 14 check deception, a Class A misdemeanor. However, the offense is a
 15 Class D felony if the amount of the check, draft, or order is at least ~~two~~
 16 ~~thousand five hundred~~ **seven hundred fifty** dollars ~~(\$2,500)~~ **and the**
 17 **property acquired by the person was a motor vehicle: (\$750)**.
 18 (b) An unpaid and dishonored check, a draft, or an order that has the
 19 drawee's refusal to pay and reason printed, stamped, or written on or
 20 attached to it constitutes prima facie evidence:
 21 (1) that due presentment of it was made to the drawee for payment
 22 and dishonor thereof; and
 23 (2) that it properly was dishonored for the reason stated.
 24 (c) The fact that a person issued or delivered a check, a draft, or an
 25 order, payment of which was refused by the drawee, constitutes prima
 26 facie evidence that the person knew that it would not be paid or
 27 honored. In addition, evidence that a person had insufficient funds in
 28 or no account with a drawee credit institution constitutes prima facie
 29 evidence that the person knew that the check, draft, or order would not
 30 be paid or honored.
 31 (d) The following two (2) items constitute prima facie evidence of
 32 the identity of the maker of a check, draft, or order if at the time of its
 33 acceptance they are obtained and recorded, either on the check, draft,
 34 or order itself or on file, by the payee:
 35 (1) Name and residence, business, or mailing address of the
 36 maker.
 37 (2) Motor vehicle operator's license number, Social Security
 38 number, home telephone number, or place of employment of the
 39 maker.
 40 (e) It is a defense under subsection (a) if a person who:
 41 (1) has an account with a credit institution but does not have
 42 sufficient funds in that account; and

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1 (2) issues or delivers a check, a draft, or an order for payment on
 2 that credit institution;
 3 pays the payee or holder the amount due, together with protest fees and
 4 any service fee or charge, which may not exceed the greater of
 5 twenty-seven dollars and fifty cents (\$27.50) or five percent (5%) (but
 6 not more than two hundred fifty dollars (\$250)) of the amount due, that
 7 may be charged by the payee or holder, within ten (10) days after the
 8 date of mailing by the payee or holder of notice to the person that the
 9 check, draft, or order has not been paid by the credit institution. Notice
 10 sent in the manner set forth in IC 26-2-7-3 constitutes notice to the
 11 person that the check, draft, or order has not been paid by the credit
 12 institution. The payee or holder of a check, draft, or order that has been
 13 dishonored incurs no civil or criminal liability for sending notice under
 14 this subsection.

15 (f) A person does not commit a crime under subsection (a) when:
 16 (1) the payee or holder knows that the person has insufficient
 17 funds to ensure payment or that the check, draft, or order is
 18 postdated; or
 19 (2) insufficiency of funds or credit results from an adjustment to
 20 the person's account by the credit institution without notice to the
 21 person.

22 SECTION 61. IC 35-43-5-7 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) A person who
 24 knowingly or intentionally:

25 (1) obtains public relief or assistance by means of impersonation,
 26 fictitious transfer, false or misleading oral or written statement,
 27 ~~fraudulent~~ **fraudulent** conveyance, or other fraudulent means;
 28 (2) acquires, possesses, uses, transfers, sells, trades, issues, or
 29 disposes of:

30 (A) an authorization document to obtain public relief or
 31 assistance; or

32 (B) public relief or assistance;
 33 except as authorized by law;

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

37 (4) counterfeits or alters an authorization document to receive
 38 public relief or assistance, or knowingly uses, transfers, acquires,
 39 or possesses a counterfeit or altered authorization document to
 40 receive public relief or assistance; or

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

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

3 (b) The offense is:

4 (1) a Class D felony if

5 ~~(A) the amount of public relief or assistance involved is more~~
6 ~~than two hundred fifty dollars (\$250) seven hundred fifty~~
7 ~~dollars (\$750) but less than two thousand five hundred dollars~~
8 ~~(\$2,500); or~~

9 ~~(B) the amount involved is not more than two hundred fifty~~
10 ~~dollars (\$250) and the person has a prior conviction of welfare~~
11 ~~fraud under this section; fifty thousand dollars (\$50,000);~~
12 and

13 (2) a Class C felony if the amount of public relief or assistance
14 involved is ~~two thousand five hundred dollars (\$2,500) fifty~~
15 ~~thousand dollars (\$50,000) or more. regardless of whether the~~
16 ~~person has a prior conviction of welfare fraud under this section.~~

17 (c) Whenever a person is convicted of welfare fraud under this
18 section, the clerk of the sentencing court shall certify to the appropriate
19 state agency and the appropriate agency of the county of the defendant's
20 residence:

21 (1) ~~his the person's~~ conviction; and

22 (2) whether the defendant is placed on probation and restitution
23 is ordered under IC 35-38-2.

24 SECTION 62. IC 35-43-5-7.1, AS AMENDED BY P.L.1-2006,
25 SECTION 531, IS AMENDED TO READ AS FOLLOWS
26 [EFFECTIVE JULY 1, 2011]: Sec. 7.1. (a) Except as provided in
27 subsection (b), a person who knowingly or intentionally:

28 (1) files a Medicaid claim, including an electronic claim, in
29 violation of IC 12-15;

30 (2) obtains payment from the Medicaid program under IC 12-15
31 by means of a false or misleading oral or written statement or
32 other fraudulent means;

33 (3) acquires a provider number under the Medicaid program
34 except as authorized by law;

35 (4) alters with the intent to defraud or falsifies documents or
36 records of a provider (as defined in 42 CFR 1000.30) that are
37 required to be kept under the Medicaid program; or

38 (5) conceals information for the purpose of applying for or
39 receiving unauthorized payments from the Medicaid program;

40 commits Medicaid fraud, a Class D felony.

41 (b) The offense described in subsection (a) is a Class C felony if the
42 fair market value of the offense is at least ~~one hundred thousand dollars~~

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1 ~~(\$100,000).~~ **fifty thousand dollars (\$50,000).**
2 SECTION 63. IC 35-43-5-7.2 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7.2. (a) Except as
4 provided in subsection (b), a person who knowingly or intentionally:
5 (1) files a children's health insurance program claim, including an
6 electronic claim, in violation of IC 12-17.6;
7 (2) obtains payment from the children's health insurance program
8 under IC 12-17.6 by means of a false or misleading oral or written
9 statement or other fraudulent means;
10 (3) acquires a provider number under the children's health
11 insurance program except as authorized by law;
12 (4) alters with intent to defraud or falsifies documents or records
13 of a provider (as defined in 42 CFR 1002.301) that are required
14 to be kept under the children's health insurance program; or
15 (5) conceals information for the purpose of applying for or
16 receiving unauthorized payments from the children's health
17 insurance program;
18 commits insurance fraud, a Class D felony.
19 (b) The offense described in subsection (a) is a Class C felony if the
20 fair market value of the offense is at least ~~one hundred thousand dollars~~
21 ~~(\$100,000).~~ **fifty thousand dollars (\$50,000).**
22 SECTION 64. IC 35-43-5-8, AS AMENDED BY P.L.57-2006,
23 SECTION 80, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2011]: Sec. 8. (a) A person who knowingly executes, or
25 attempts to execute, a scheme or artifice:
26 (1) to defraud a state or federally chartered or federally insured
27 financial institution;
28 **when children are present; or**
29 (2) to obtain any of the money, funds, credits, assets, securities,
30 or other property owned by or under the custody or control of a
31 state or federally chartered or federally insured financial
32 institution by means of false or fraudulent pretenses,
33 representations, or promises;
34 commits **bank fraud**, a ~~Class C~~ **Class D** felony. **However, the offense**
35 **is a Class C felony if the total amount of property obtained is at**
36 **least fifty thousand dollars (\$50,000).**
37 (b) As used in this section, the term "state or federally chartered or
38 federally insured financial institution" means:
39 (1) an institution with accounts insured by the Federal Deposit
40 Insurance Corporation;
41 (2) a credit union with accounts insured by the National Credit
42 Union Administration Board;

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- 1 (3) a federal home loan bank or a member, as defined in Section
- 2 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), as in
- 3 effect on December 31, 1990, of the Federal Home Loan Bank
- 4 System; or
- 5 (4) a bank, banking association, land bank, intermediate credit
- 6 bank, bank for cooperatives, production credit association, land
- 7 bank association, mortgage association, trust company, savings
- 8 bank, or other banking or financial institution organized or
- 9 operating under the laws of the United States or of the state.

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

11 SECTION 65. IC 35-43-5-12 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) As used in this
13 section, "financial institution" refers to a state or federally chartered
14 bank, savings bank, savings association, or credit union.

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

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

- 19 (A) knowing that the check, draft, order, or electronic debit
- 20 will not be paid or honored by the financial institution upon
- 21 presentment in the usual course of business;
- 22 (B) using false or altered evidence of identity or residence;
- 23 (C) using a false or an altered account number; or
- 24 (D) using a false or an altered check, draft, order, or electronic
- 25 instrument;

26 (2) by:

- 27 (A) depositing the minimum initial deposit required to open an
- 28 account; and
- 29 (B) either making no additional deposits or making insufficient
- 30 additional deposits to insure debits to the account; or

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

33 commits check fraud, a Class D felony. However, the offense is a Class
34 C felony if the person has a prior unrelated conviction under this
35 section or the aggregate amount of property obtained is at least
36 ~~twenty-five thousand dollars (\$25,000)~~. **fifty thousand dollars**
37 **(\$50,000)**.

38 SECTION 66. IC 35-48-4-1, AS AMENDED BY P.L.151-2006,
39 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2011]: Sec. 1. (a) A person who:

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

- 42 (A) ~~manufactures~~;

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

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1 **schedule I or II;**
2 **commits dealing in cocaine or a narcotic drug, a Class C felony,**
3 **except as provided in subsection (b) or (c).**
4 **(b) The offense is a Class B felony if:**
5 **(1) the amount of the drug involved is three (3) grams or**
6 **more, but less than ten (10) grams;**
7 **(2) the person manufactured or financed the manufacture of**
8 **the drug;**
9 **(3) the person;**
10 **(A) delivered; or**
11 **(B) financed the delivery of;**
12 **the drug to a person under eighteen (18) years of age; or**
13 **(4) the person delivered or financed the delivery of the drug;**
14 **(A) on a school bus;**
15 **(B) in, on, or within one thousand (1,000) feet of:**
16 **(i) school property;**
17 **(ii) a public park;**
18 **(iii) a family housing complex; or**
19 **(iv) a youth program center;**
20 **when children are present; or**
21 **(C) the person delivered the drug while possessing a**
22 **firearm (as defined in IC 35-47-1-5).**
23 **(c) The offense is a Class A felony if:**
24 **(1) the amount of the drug involved is ten (10) grams or more;**
25 **or**
26 **(2) the:**
27 **(A) amount of the drug involved is three (3) grams or**
28 **more; and**
29 **(B) person:**
30 **(i) manufactured or financed the manufacture of the**
31 **drug; or**
32 **(ii) delivered or financed the delivery of the drug on a**
33 **school bus, or in, on, or within one thousand (1,000) feet**
34 **of school property when children are present, a public**
35 **park when children are present, a family housing**
36 **complex when children are present, or a youth program**
37 **center when children are present, or the person delivered**
38 **the drug while possessing a firearm (as defined in**
39 **IC 35-47-1-5).**
40 **SECTION 67. IC 35-48-4-1.1, AS ADDED BY P.L.151-2006,**
41 **SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
42 **JULY 1, 2011]: Sec. 1.1. (a) A person who:**

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

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- 1 **(b) The offense is a Class B felony if:**
- 2 **(1) the amount of the drug involved is three (3) grams or**
- 3 **more, but less than ten (10) grams;**
- 4 **(2) the person manufactured or financed the manufacture of**
- 5 **the drug;**
- 6 **(3) the person;**
 - 7 **(A) delivered; or**
 - 8 **(B) financed the delivery of;**
 - 9 **the drug to a person under eighteen (18) years of age; or**
 - 10 **(4) the person delivered or financed the delivery of the drug:**
 - 11 **(A) on a school bus;**
 - 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 **when children are present; or**
 - 18 **(C) the person delivered the drug while possessing a**
 - 19 **firearm (as defined in IC 35-47-1-5).**
 - 20 **(c) The offense is a Class A felony if:**
 - 21 **(1) the amount of the drug involved is ten (10) grams or more;**
 - 22 **(2) the:**
 - 23 **(A) amount of the drug involved is three (3) grams or**
 - 24 **more; and**
 - 25 **(B) person delivered or financed the delivery of the drug**
 - 26 **on a school bus, or in, on, or within one thousand (1,000)**
 - 27 **feet of school property when children are present, a public**
 - 28 **park when children are present, a family housing complex**
 - 29 **when children are present, or a youth program center**
 - 30 **when children are present, or the person delivered the**
 - 31 **drug while possessing a firearm (as defined in**
 - 32 **IC 35-47-1-5); or**
 - 33 **(3) the person manufactured or financed the manufacture of**
 - 34 **the drug on a school bus, or in, on, or within one thousand**
 - 35 **(1,000) feet of school property when children are present, a**
 - 36 **public park when children are present, a family housing**
 - 37 **complex when children are present, or a youth program**
 - 38 **center when children are present, or a dwelling; or**
 - 39 **(4) the person manufactured the drug in the physical presence**
 - 40 **of a child.**
 - 41 SECTION 68. IC 35-48-4-2 IS AMENDED TO READ AS
 - 42 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) A person who:

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

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1 **(D) finance the delivery of;**
2 **a controlled substance, pure or adulterated, classified in**
3 **schedule I, II, or III, except marijuana, hash oil, or hashish;**
4 **commits dealing in a schedule I, II, or III controlled substance, a**
5 **Class C felony, except as provided in subsection (b), or (c).**
6 **(b) The offense is a Class B felony if:**
7 **(1) the amount of the drug is three (3) grams or more but less**
8 **than then (10) grams;**
9 **(2) the person manufactured the substance;**
10 **(3) the person delivered or financed the delivery of the**
11 **substance to a person under eighteen (18) years of age;**
12 **(4) the person delivered or financed the delivery of the**
13 **substance:**
14 **(A) on a school bus; or**
15 **(B) in, on, or within one thousand (1,000) feet of:**
16 **(i) school property;**
17 **(ii) a public park;**
18 **(iii) a family housing complex; or**
19 **(iv) a youth program center;**
20 **when children are present; or**
21 **(5) the person delivered the substance while possessing a**
22 **firearm (as defined in IC 35-47-1-5).**
23 **(c) The offense is a Class A felony if:**
24 **(1) the amount of the substance is ten (10) grams or more; or**
25 **(2) the amount of the substance involved is three (3) grams or**
26 **more, and the person:**
27 **(A) manufactured or financed the manufacture of the**
28 **substance; or**
29 **(B) delivered or financed the delivery of the drug on a**
30 **school bus, or in, on, or within one thousand (1,000) feet of**
31 **school property when children are present, a public park**
32 **when children are present, a family housing complex when**
33 **children are present, or a youth program center when**
34 **children are present, or the person delivered the drug**
35 **while possessing a firearm (as defined in IC 35-47-1-5).**
36 **SECTION 69. IC 35-48-4-6, AS AMENDED BY P.L.151-2006,**
37 **SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
38 **JULY 1, 2011]: Sec. 6. (a) A person who, without a valid prescription**
39 **or order of a practitioner acting in the course of the practitioner's**
40 **professional practice, knowingly or intentionally possesses cocaine**
41 **(pure or adulterated) or a narcotic drug (pure or adulterated) classified**
42 **in schedule I or II, commits possession of cocaine or a narcotic drug,**

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1 a Class D felony, except as provided in subsection (b) or (c).
 2 (b) The offense is:
 3 (1) a Class E felony if:
 4 (A) the amount of the drug involved (pure or adulterated)
 5 weighs three (3) grams or more; or
 6 (B) the person was also in possession of a firearm (as defined
 7 in IC 35-47-1-5);
 8 (2) a Class B felony if the person in possession of the cocaine or
 9 narcotic drug possesses less than three (3) grams of pure or
 10 adulterated cocaine or a narcotic 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; and
 17 (3) a Class A felony if the person possesses the cocaine or
 18 narcotic drug in an amount (pure or adulterated) weighing at least
 19 three (3) grams:
 20 (A) on a school bus; or
 21 (B) in, on, or within one thousand (1,000) feet of:
 22 (i) school property;
 23 (ii) a public park;
 24 (iii) a family housing complex; or
 25 (iv) a youth program center.
 26 (b) The offense is a Class C felony if:
 27 (1) the amount of the drug involved, pure or adulterated,
 28 weighs three (3) grams or more but less than ten (10) grams;
 29 or
 30 (2) the person possesses the drug;
 31 (A) on a school bus;
 32 (B) in, on, or within one thousand (1,000) feet of:
 33 (i) school property;
 34 (ii) a public park;
 35 (iii) a family housing complex; or
 36 (iv) a youth program center;
 37 when children are present; or
 38 (C) while the person was also in possession of a firearm (as
 39 defined in IC 35-47-1-5).
 40 (c) The offense is a Class B felony if the amount of the drug
 41 involved, pure or adulterated, weighs ten (10) grams or more.
 42 SECTION 70. IC 35-48-4-6.1, AS ADDED BY P.L.151-2006,

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1 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2011]: Sec. 6.1. (a) A person who, without a valid prescription
3 or order of a practitioner acting in the course of the practitioner's
4 professional practice, knowingly or intentionally possesses
5 methamphetamine (pure or adulterated) commits possession of
6 methamphetamine, a Class D felony, except as provided in subsection
7 (b) or (c).

8 (b) The offense is:

9 (1) a Class E felony if:

10 (A) the amount of the drug involved (pure or adulterated)
11 weighs three (3) grams or more; or

12 (B) the person was also in possession of a firearm (as defined
13 in IC 35-47-1-5);

14 (2) a Class B felony if the person in possession of the
15 methamphetamine possesses less than three (3) grams of pure or
16 adulterated methamphetamine:

17 (A) on a school bus; or

18 (B) in, on, or within one thousand (1,000) feet of:

19 (i) school property;

20 (ii) a public park;

21 (iii) a family housing complex; or

22 (iv) a youth program center; and

23 (3) a Class A felony if the person possesses the methamphetamine
24 in an amount (pure or adulterated) weighing at least three (3)
25 grams:

26 (A) on a school bus; or

27 (B) in, on, or within one thousand (1,000) feet of:

28 (i) school property;

29 (ii) a public park;

30 (iii) a family housing complex; or

31 (iv) a youth program center.

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

33 (1) the amount of the drug involved, pure or adulterated,
34 weighs three (3) grams or more but less than ten (10) grams;
35 or

36 (2) the person possesses the drug;

37 (A) on a school bus;

38 (B) in, on, or within one thousand (1,000) feet of:

39 (i) school property;

40 (ii) a public park;

41 (iii) a family housing complex; or

42 (iv) a youth program center;

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1 **when children are present; or**
2 **(C) while the person was also in possession of a firearm (as**
3 **defined in IC 35-47-1-5).**

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

6 SECTION 71. IC 35-48-4-11 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. A person who:

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

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

18 SECTION 72. IC 35-50-2-2, AS AMENDED BY P.L.64-2008,
19 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2011]: Sec. 2. (a) The court may suspend any part of a
21 sentence for a felony, except as provided in this section. ~~or in section~~
22 ~~2.1 of this chapter.~~

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

- 28 (1) The crime committed was a Class A felony or Class B felony
- 29 and the person has a prior unrelated felony conviction.
- 30 (2) The crime committed was a Class C felony, **except for a**
- 31 **Class C felony under IC 9-30-10-17**, and less than seven (7)
- 32 years have elapsed between the date the person was discharged
- 33 from probation, imprisonment, or parole, whichever is later, for
- 34 a prior unrelated felony conviction and the date the person
- 35 committed the Class C felony for which the person is being
- 36 sentenced.
- 37 ~~(3) The crime committed was a Class D felony and less than three~~
- 38 ~~(3) years have elapsed between the date the person was~~
- 39 ~~discharged from probation, imprisonment, or parole, whichever~~
- 40 ~~is later, for a prior unrelated felony conviction and the date the~~
- 41 ~~person committed the Class D felony for which the person is~~
- 42 ~~being sentenced. However, the court may suspend the minimum~~

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1 sentence for the crime only if the court orders home detention
 2 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
 3 sentence specified for the crime under this chapter.

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

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

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

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

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

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

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

12 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
 13 felony;

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

16 (i) the felony committed was child molesting as a Class B
 17 felony;

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

20 (iii) the person is not more than four (4) years older than the
 21 victim, or more than five (5) years older than the victim if
 22 the relationship between the person and the victim was a
 23 dating relationship or an ongoing personal relationship (not
 24 including a family relationship);

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

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

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

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

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

37 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
 38 weapon;

39 (M) escape (IC 35-44-3-5) with a deadly weapon;

40 (N) rioting (IC 35-45-1-2) with a deadly weapon;

41 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the
 42 court finds the person possessed a firearm (as defined in

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1 IC 35-47-1-5) at the time of the offense, or the person
 2 delivered or intended to deliver to a person under eighteen
 3 (18) years of age at least three (3) years junior to the person
 4 and was on a school bus or within one thousand (1,000) feet
 5 of:

- 6 (i) school property;
- 7 (ii) a public park;
- 8 (iii) a family housing complex; or
- 9 (iv) a youth program center;

10 **when children are present;**

11 (P) dealing in methamphetamine (IC 35-48-4-1.1) if the court
 12 finds the person possessed a firearm (as defined in
 13 IC 35-47-1-5) at the time of the offense, or the person
 14 delivered or intended to deliver the methamphetamine pure or
 15 adulterated to a person under eighteen (18) years of age at
 16 least three (3) years junior to the person and was on a school
 17 bus or within one thousand (1,000) feet of:

- 18 (i) school property;
- 19 (ii) a public park;
- 20 (iii) a family housing complex; or
- 21 (iv) a youth program center;

22 **when children are present;**

23 (Q) dealing in a schedule I, II, or III controlled substance
 24 (IC 35-48-4-2) if the court finds the person possessed a firearm
 25 (as defined in IC 35-47-1-5) at the time of the offense, or the
 26 person delivered or intended to deliver to a person under
 27 eighteen (18) years of age at least three (3) years junior to the
 28 person and was on a school bus or within one thousand (1,000)
 29 feet of:

- 30 (i) school property;
- 31 (ii) a public park;
- 32 (iii) a family housing complex; or
- 33 (iv) a youth program center;

34 (R) an offense under IC 9-30-5 (operating a vehicle while
 35 intoxicated) and the person who committed the offense has
 36 accumulated at least two (2) prior unrelated convictions under
 37 IC 9-30-5;

38 (S) an offense under IC 9-30-5-5(b) (operating a vehicle while
 39 intoxicated causing death);

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

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

42 (c) Except as provided in subsection (e), whenever the court

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1 suspends a sentence for a felony, it shall place the person on probation
2 under IC 35-38-2 for a fixed period to end not later than the date that
3 the maximum sentence that may be imposed for the felony will expire.

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

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

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

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

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

20 (i) If a person is:

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

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

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

26 SECTION 73. IC 35-50-2-8, AS AMENDED BY P.L.71-2005,
27 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2011]: Sec. 8. (a) Except as otherwise provided in this section,
29 the state may seek to have a person sentenced as a habitual offender for
30 any felony by alleging, on a page separate from the rest of the charging
31 instrument, that the person has accumulated two (2) prior unrelated
32 felony convictions.

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

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

38 (2) the offense is an offense under IC 9-30-10-16 or
39 IC 9-30-10-17. **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 (c) A person has accumulated two (2) prior unrelated felony
 14 convictions for purposes of this section only if:
- 15 (1) the second prior unrelated felony conviction was committed
 16 after sentencing for the first prior unrelated felony conviction; and
 17 (2) the offense for which the state seeks to have the person
 18 sentenced as a habitual offender was committed after sentencing
 19 for the second prior unrelated felony conviction.
- 20 (d) A conviction does not count for purposes of this section as a
 21 prior unrelated felony conviction if:
- 22 (1) the conviction has been set aside; **or**
 23 (2) the conviction is one for which the person has been pardoned.
 24 **or**
- 25 (3) all of the following apply:
- 26 ~~(A) The offense is an offense under IC 16-42-19 or~~
 27 ~~IC 35-48-4.~~
- 28 ~~(B) The offense is not listed in section 2(b)(4) of this chapter.~~
 29 ~~(C) The total number of unrelated convictions that the person~~
 30 ~~has for:~~
- 31 ~~(i) dealing in or selling a legend drug under IC 16-42-19-27;~~
 32 ~~(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);~~
 33 ~~(iii) dealing in a schedule I, II, III controlled substance~~
 34 ~~(IC 35-48-4-2);~~
 35 ~~(iv) dealing in a schedule IV controlled substance~~
 36 ~~(IC 35-48-4-3); and~~
 37 ~~(v) dealing in a schedule V controlled substance~~
 38 ~~(IC 35-48-4-4);~~
- 39 ~~does not exceed one (1).~~
- 40 (e) The requirements in subsection (b) do not apply to a prior
 41 unrelated felony conviction that is used to support a sentence as a
 42 habitual offender. A prior unrelated felony conviction may be used

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1 under this section to support a sentence as a habitual offender even if
 2 the sentence for the prior unrelated offense was enhanced for any
 3 reason, including an enhancement because the person had been
 4 convicted of another offense. However, a prior unrelated felony
 5 conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed),
 6 or IC 9-12-3-2 (repealed) may not be used to support a sentence as a
 7 habitual offender.

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

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

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

21 SECTION 74. IC 35-50-2-10, AS AMENDED BY P.L.1-2006,
 22 SECTION 551, IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) As used in this section:

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

26 (2) "Substance offense" means a Class A misdemeanor or a felony
 27 in which the possession, use, abuse, delivery, transportation, or
 28 manufacture of alcohol or drugs is a material element of the
 29 crime. The term includes an offense under IC 9-30-5 and an
 30 offense under IC 9-11-2 (before its repeal).

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

35 (c) After a person has been convicted and sentenced for a substance
 36 offense committed after sentencing for a prior unrelated substance
 37 offense conviction, the person has accumulated two (2) prior unrelated
 38 substance offense convictions. However, a conviction does not count
 39 for purposes of this subsection if:

40 (1) it has been set aside; or

41 (2) it is a conviction for which the person has been pardoned.

42 (d) If the person was convicted of the substance offense in a jury

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1 trial, the jury shall reconvene for the sentencing hearing. If the trial was
 2 to the court, or the judgment was entered on a guilty plea, the court
 3 alone shall conduct the sentencing hearing, under IC 35-38-1-3.

4 (e) A person is a habitual substance offender if the jury (if the
 5 hearing is by jury) or the court (if the hearing is to the court alone)
 6 finds that the state has proved beyond a reasonable doubt that the
 7 person had accumulated two (2) prior unrelated substance offense
 8 convictions.

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

14 ~~(1)~~ three (3) years or more have elapsed since the date the person
 15 was discharged from probation, imprisonment, or parole
 16 (whichever is later) for the last prior unrelated substance offense
 17 conviction and the date the person committed the substance
 18 offense for which the person is being sentenced as a habitual
 19 substance offender, or

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

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

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

27 (C) dealing in a schedule I, H, or III controlled substance
 28 (~~IC 35-48-4-2~~);

29 (D) dealing in a schedule IV controlled substance
 30 (~~IC 35-48-4-3~~); and

31 (E) dealing in a schedule V controlled substance
 32 (~~IC 35-48-4-4~~);

33 does not exceed one (1);

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

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

40 (1) decide the issue of granting a reduction; or

41 (2) determine the number of years, if any, to be subtracted under
 42 subsection (f).

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1 SECTION 75. IC 35-50-2-14, AS AMENDED BY P.L.125-2009,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 14. (a) As used in this section, "sex offense"
4 means a felony conviction:

5 (1) under IC 35-42-4-1 through IC 35-42-4-9 or under
6 IC 35-46-1-3;

7 (2) for an attempt or conspiracy to commit an offense described
8 in subdivision (1); or

9 (3) for an offense under the laws of another jurisdiction, including
10 a military court, that is substantially similar to an offense
11 described in subdivision (1) **or (2)**.

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

17 (c) After a person has been convicted and sentenced for a felony
18 described in subsection (a)(1) or (a)(2) after having been sentenced for
19 a prior unrelated sex offense described in subsection (a), the person has
20 accumulated one (1) prior unrelated felony sex offense conviction.
21 However, a conviction does not count for purposes of this subsection,
22 if:

23 (1) it has been set aside; or

24 (2) it is a conviction for which the person has been pardoned.

25 (d) If the person was convicted of the sex offense in a jury trial, the
26 jury shall reconvene to hear evidence in the enhancement hearing. If
27 the trial was to the court, or the judgment was entered on a guilty plea,
28 the court alone shall hear evidence in the enhancement hearing.

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

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

37 SECTION 76. IC 36-2-21 IS ADDED TO THE INDIANA CODE
38 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2011]:

40 **Chapter 21. County Offender Fund**

41 **Sec. 1. (a) A county shall establish, by resolution, a county**
42 **offender fund to receive money that may be used to defray the**

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1 expenses of incarcerating, supervising, or treating offenders
2 housed in the county, in particular those offenders housed locally
3 who may have previously been transferred to the department of
4 correction.

5 (b) Except as provided in subsection (c), money in the fund may
6 be spent only under an appropriation from the county fiscal body.
7 In appropriating money from the fund, the fiscal body shall give
8 first priority to programs that defray the expense of housing an
9 offender in jail, second priority to probation and community
10 corrections programs, and third priority to problem solving courts
11 and work release programs.

12 (c) No money may be disbursed from this fund after July 1 of
13 each year unless the Indiana office of technology has certified
14 under IC 4-13.1-2-2 that any case management system operated or
15 funded by the division of state court administration complies with
16 IC 33-24-6-3(9).

17 SECTION 77. P.L.182-2009(ss), SECTION 493 IS AMENDED TO
18 READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: SECTION 493.

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

21 (b) The criminal code evaluation commission is established to
22 evaluate the criminal laws of Indiana. If, based on the commission's
23 evaluation, the commission determines that changes are necessary or
24 appropriate, the commission shall make recommendations to the
25 general assembly for the modification of the criminal laws.

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

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

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

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

33 ~~(2)~~ (1) April, May, June, July, August, and September of 2010;
34 and

35 ~~(3)~~ (2) June, July, August, and September, and October of 2011.

36 ~~(e)~~ (f) The commission consists of seventeen (17) members
37 appointed as follows:

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

41 (2) Four (4) members of the house of representatives, not more
42 than two (2) of whom may be affiliated with the same political

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- 1 party, to be appointed by the speaker of the house of
2 representatives.
- 3 (3) The attorney general or the attorney general's designee.
- 4 (4) The commissioner of the department of correction or the
5 commissioner's designee.
- 6 (5) The executive director of the prosecuting attorneys council of
7 Indiana or the executive director's designee.
- 8 (6) The executive director of the public defender council of
9 Indiana or the executive director's designee.
- 10 (7) The chief justice of the supreme court or the chief justice's
11 designee.
- 12 (8) Two (2) judges who exercise criminal jurisdiction, who may
13 not be affiliated with the same political party, to be appointed by
14 the governor.
- 15 (9) Two (2) professors employed by a law school in Indiana
16 whose expertise includes criminal law, to be appointed by the
17 governor.
- 18 ~~(f)~~ **(g)** The chairman of the legislative council shall appoint a
19 legislative member of the commission to serve as chair of the
20 commission. Whenever there is a new chairman of the legislative
21 council, the new chairman may remove the chair of the commission
22 and appoint another chair.
- 23 ~~(g)~~ **(h)** If a legislative member of the commission ceases to be a
24 member of the chamber from which the member was appointed, the
25 member also ceases to be a member of the commission.
- 26 ~~(h)~~ **(i)** A legislative member of the commission may be removed at
27 any time by the appointing authority who appointed the legislative
28 member.
- 29 ~~(i)~~ **(j)** If a vacancy exists on the commission, the appointing
30 authority who appointed the former member whose position is vacant
31 shall appoint an individual to fill the vacancy.
- 32 ~~(j)~~ **(k)** The commission shall submit a final report of the results of
33 its study to the legislative council before November 1, 2011. The report
34 must be in an electronic format under IC 5-14-6.
- 35 ~~(k)~~ **(l)** The Indiana criminal justice institute shall provide staff
36 support to the commission to prepare:
- 37 (1) minutes of each meeting; and
38 (2) the final report.
- 39 ~~(l)~~ **(m)** The legislative services agency shall provide staff support to
40 the commission to:
- 41 (1) advise the commission on legal matters, criminal procedures,
42 and legal research; and

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1 (2) draft potential legislation.

2 ~~(m)~~ (n) Each member of the commission is entitled to receive the

3 same per diem, mileage, and travel allowances paid to individuals who

4 serve as legislative and lay members, respectively, of interim study

5 committees established by the legislative council.

6 ~~(n)~~ (o) The affirmative votes of a majority of all the members who

7 serve on the commission are required for the commission to take action

8 on any measure, including the final report.

9 ~~(o)~~ (p) Except as otherwise specifically provided by this SECTION,

10 the commission shall operate under the rules of the legislative council.

11 All funds necessary to carry out this SECTION shall be paid from

12 appropriations to the legislative council and the legislative services

13 agency.

14 ~~(p)~~ (q) This SECTION expires December 31, 2011.

15 SECTION 78. [EFFECTIVE JULY 1, 2011] (a) **The legislative**

16 **council is urged to assign to the criminal law and sentencing policy**

17 **study committee the topic of developing a criminal information**

18 **packet that would contain all relevant information that pertains to**

19 **an offender's dangerousness or lack of dangerousness, including:**

20 (1) **the original charges;**

21 (2) **the terms of any plea agreement;**

22 (3) **whether the jury found the offender guilty of lesser**

23 **included offenses; and**

24 (4) **any other information that would allow a more accurate**

25 **assessment of an offender's character.**

26 (b) **This SECTION expires January 1, 2012.**

27 SECTION 79. THE FOLLOWING ARE REPEALED [EFFECTIVE

28 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.

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

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.

SENATE MOTION

Madam President: I move that Senate Bill 561 be amended to read as follows:

Page 36, between lines 31 and 32, begin a new paragraph and insert:
"SECTION 39. IC 35-33-8-3.2, AS AMENDED BY P.L.94-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

SB 561—LS 6707/DI 107+

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JULY 1, 2011]: Sec. 3.2. (a) **Except as provided in subsection (b)**, a court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

- (1) Require the defendant to:
 - (A) execute a bail bond with sufficient solvent sureties;
 - (B) deposit cash or securities in an amount equal to the bail;
 - (C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;
 - (D) post a real estate bond; or
 - (E) perform any combination of the requirements described in clauses (A) through (D).

If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection ~~(d)~~ (e).

- (2) Require the defendant to execute:
 - (A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and
 - (B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection ~~(b)~~; (c), and the fee required by subsection ~~(d)~~; (e). In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The

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individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection ~~(b)~~ (c).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Except as provided in section 3.6 of this chapter, require the defendant to refrain from any direct or indirect contact with an individual and, if the defendant has been charged with an offense under IC 35-46-3, any animal belonging to the individual, including if the defendant has not been released from lawful detention.

(5) Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

- (i) of nonappearance; or
- (ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

(8) Require a defendant charged with an offense under IC 35-46-3 to refrain from owning, harboring, or training an animal.

(9) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) If a defendant is charged with a felony described in IC 35-41-1-5.5 and the court admits the defendant to bail, the court:

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- (1) shall admit the defendant to bail under subsection (a)(1);**
(2) may not admit the defendant to bail under subsection
(a)(2); and
(3) may impose on the defendant any other appropriate
condition set forth in subsection (a)(3) through (a)(9).

~~(b)~~ **(c)** Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

~~(c)~~ **(d)** For purposes of subsection ~~(b)~~; **(c)**, "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

~~(d)~~ **(e)** Except as provided in subsection ~~(c)~~ **(f)**, the clerk of the court shall:

- (1) collect a fee of five dollars (\$5) from each bond or deposit required under subsection (a)(1); and
- (2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the public employees' retirement fund for deposit in the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2).

~~(e)~~ **(f)** With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

~~(f)~~ **(g)** When a court imposes a condition of bail described in subsection (a)(4):

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

Renumber all SECTIONS consecutively.

(Reference is to SB 561 as printed February 18, 2011.)

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SENATE MOTION

Madam President: I move that Senate Bill 561 be amended to read as follows:

Page 31, line 10, delete "IC 33-237-5-17(b)" and insert "**IC 33-37-5-17(b)**".

Page 31, line 18, delete "IC 33-237-5-17(b)" and insert "**IC 33-37-5-17(b)**".

Page 48, between lines 38 and 39, begin a new paragraph and insert:
"SECTION 49. IC 35-41-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 6. Application of Certain Offenses

Sec. 1. The following offenses, as added or amended by SEA 561-2011, apply only to crimes committed after July 1, 2011:

- (1) IC 35-43-2-1 (burglary).
- (2) IC 35-43-4-2 (theft).
- (3) IC 35-43-5-2 (counterfeiting, fraud, forgery).
- (4) IC 35-43-5-3 (deception).
- (5) IC 35-43-5-3.5 (identity deception).
- (6) IC 35-43-5-3.8 (synthetic identity deception).
- (7) IC 35-43-5-4.3 (unlawful possession of a card skimming device).
- (8) IC 35-43-5-4.5 (insurance fraud, insurance application fraud).
- (9) IC 35-43-5-5 (check deception).
- (10) IC 35-43-5-7 (welfare fraud).
- (11) IC 35-43-5-7.1 (Medicaid fraud).
- (12) IC 35-43-5-7.2 (insurance fraud).
- (13) IC 35-43-5-8 (bank fraud).
- (14) IC 35-43-5-12 (check fraud).
- (15) IC 35-48-4-1 (dealing in cocaine).
- (16) IC 35-48-4-1.1 (dealing in methamphetamine).
- (17) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (18) IC 35-48-4-6 (possession of cocaine).
- (19) IC 35-48-4-6.1 (possession of methamphetamine).
- (20) IC 35-48-4-11 (possession of marijuana)."

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Page 67, line 4, after "(2)" insert "**the amount of the drug involved is three (3) grams or more, and**".

Renumber all SECTIONS consecutively.

(Reference is to SB 561 as printed February 18, 2011.)

STEELE

SENATE MOTION

Madam President: I move that Senate Bill 561 be amended to read as follows:

Page 46, line 10, after "offender" insert "**unless the offender's status as a sex or violent offender is solely due to the offender's conviction for sexual misconduct with a minor (IC 35-42-4-9) and the offender proves that the defense described in IC 35-42-4-9(e) applies to the offender**".

Page 46, line 25, after "is" insert ":

(A)".

Page 46, line 25, after "offender;" insert "or

(B) the person is a sex or violent offender, but the offender's status as a sex or violent offender is solely due to the offender's conviction for sexual misconduct with a minor (IC 35-42-4-9) and the offender proved that the defense described in IC 35-42-4-9(e) applies to the offender;".

(Reference is to SB 561 as printed February 18, 2011.)

STEELE

SENATE MOTION

Madam President: I move that Senate Bill 561 be amended to read as follows:

Page 2, delete lines 25 through 30, begin a new line block indented, and insert:

"(14) Annually certify, beginning July 1, 2012, that any case management system operated or funded by the division of state court administration complies with IC 33-24-6-3(9)."

Page 18, line 9, delete "the judicial" and insert "**any case management system operated or funded by the division of state**



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court administration complies with IC 33-24-6-3(9)."

Page 18, delete lines 10 through 11.

Page 21, delete lines 10 through 42, begin a new paragraph, and insert:

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

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

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

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

(B) The methods of procedure in the courts.

(C) The work accomplished by the courts.

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

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

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

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

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

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

(7) Develop a standard protocol for the exchange of information, by not later than December 31, 2009:

(A) between the protective order registry, established by

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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.

(9) Not later than January 1, 2012, implement a standard bulk export program for the dissemination of all nonconfidential court case information to agencies and other recipients from the case management system operating by the division of state court administration. The export program must include the following:

(A) A function to export in bulk all existing nonconfidential court case information.

(B) A function to export in bulk all nonconfidential court case information that has changed after a specified point in time. Information exported through the function included in the export program under this clause must not include court case information that has not changed.

(C) The ability to run the function described in clause (B) at least one (1) time per hour.

The division may charge a reasonable fee to each recipient for providing the bulk export under this subdivision. The fee may not exceed the direct cost of operating the export program and delivering data to the recipient plus a prorated fee to recoup the direct costs of developing the export program. In any one (1) year, the aggregate prorated fees charged under this subdivision may not exceed five percent (5%) of the direct costs of developing the export program.

(b) 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.

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

Page 22, delete lines 1 through 34.

Page 31, line 10, delete "IC 33-237-5-17(b)" and insert "**IC 33-37-5-17(b)**".

Page 31, line 18, delete "IC 33-237-5-17(b)" and insert "**IC 33-37-5-17(b)**".

Page 48, between lines 38 and 39, begin a new paragraph and insert:
"SECTION 49. IC 35-41-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 6. Application of Certain Offenses

Sec. 1. The following, as added or amended by SEA 561-2011, apply only to crimes committed after July 1, 2011:

- (1) **IC 35-43-2-1 (burglary).**
- (2) **IC 35-43-4-2 (theft).**
- (3) **IC 35-43-5-2 (counterfeiting, fraud, forgery).**
- (4) **IC 35-43-5-3 (deception).**
- (5) **IC 35-43-5-3.5 (identity deception).**
- (6) **IC 35-43-5-3.8 (synthetic identity deception).**
- (7) **IC 35-43-5-4.3 (unlawful possession of a card skimming device).**
- (8) **IC 35-43-5-4.5 (insurance fraud, insurance application fraud).**
- (9) **IC 35-43-5-5 (check deception).**
- (10) **IC 35-43-5-7 (welfare fraud).**
- (11) **IC 35-43-5-7.1 (Medicaid fraud).**
- (12) **IC 35-43-5-7.2 (insurance fraud).**
- (13) **IC 35-43-5-8 (bank fraud).**
- (14) **IC 35-43-5-12 (check fraud).**
- (15) **IC 35-48-4-1 (dealing in cocaine).**
- (16) **IC 35-48-4-1.1 (dealing in methamphetamine).**
- (17) **IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).**
- (18) **IC 35-48-4-6 (possession of cocaine).**
- (19) **IC 35-48-4-6.1 (possession of methamphetamine).**
- (20) **IC 35-48-4-11 (possession of marijuana)."**

Page 67, line 4, after "(2)" insert "**the amount of the substance involved is three (3) grams or more, and**".

Page 77, line 29, delete "the judicial technology and automation" and insert "**any case management system operated or funded by the division of state court administration complies with IC 33-24-6-3(9).**".

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Page 77, delete line 30.
Renumber all SECTIONS consecutively.
(Reference is to SB 561 as printed February 18, 2011.)

STEELE

SENATE MOTION

Madam President: I move that Senate Bill 561 be amended to read as follows:

Page 9, line 17, after "chapter." insert "**Mental health and drug or alcohol abuse counseling must be conducted with a certified mental health or addiction provider as determined by the division of mental health and addiction.**".

(Reference is to SB 561 as printed February 18, 2011.)

LAWSON C

SENATE MOTION

Madam President: I move that Senate Bill 561 be amended to read as follows:

Page 63, line 8, delete "or", begin a new line double block indented and insert:

"when children are present; or".

Page 63, line 22, after "property" insert "**when children are present**".

Page 63, line 22, after "park" insert "**when children are present**".

Page 63, line 23, after "complex" insert "**when children are present**".

Page 63, line 23, after "center" insert "**when children are present**".

Page 65, line 2, delete "or", begin a new line double block indented and insert:

"when children are present; or".

Page 65, line 12, after "property" insert "**when children are present**".

Page 65, line 12, after "park" insert "**when children are present**".

Page 65, line 13, after "complex" insert "**when children are present**".



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Page 65, line 13, after "center" insert **"when children are present"**.

Page 65, line 18, after "property" insert **"when children are present"**.

Page 65, line 18, after "park" insert **"when children are present"**.

Page 65, line 19, after "complex" insert **"when children are present"**.

Page 65, line 19, after "center" insert **"when children are present"**.

Page 66, line 41, delete "or", begin a new line double block indented and insert:

"when children are present; or".

Page 67, line 9, after "property" insert **"when children are present"**.

Page 67, line 9, after "park" insert **"when children are present"**.

Page 67, line 9, after "complex" insert **"when children are present"**.

Page 67, line 10, after "center" insert **"when children are present"**.

Page 68, line 13, delete "or", begin a new line double block indented and insert:

"when children are present; or".

Page 69, line 18, delete "or", begin a new line double block indented and insert:

"when children are present; or".

Page 71, between lines 26 and 27, begin a new line double block indented and insert:

"when children are present;".

Page 71, between lines 37 and 38, begin a new line double block indented and insert:

"when children are present;".

(Reference is to SB 561 as printed February 18, 2011.)

TAYLOR

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