IC 35

TITLE 35. CRIMINAL LAW AND PROCEDURE

IC 35-1

ARTICLE 1. REPEALED

(*Repealed by P.L.2-1995, SEC.140.)*

ARTICLE 1.1. REPEALED

(*Repealed by Acts 1981, P.L.298, SEC.9.*)

ARTICLE 2. REPEALED

(*Repealed by Acts 1981, P.L.298, SEC.9(a)*.)

ARTICLE 2.1. REPEALED

(*Repealed by Acts 1981, P.L.298, SEC.9.*)

ARTICLE 3. REPEALED

(*Repealed by P.L.1-1993, SEC.238.)*

ARTICLE 3. REPEALED

(*Repealed by P.L.1-1993, SEC.238.)*

ARTICLE 3.1. REPEALED

(*Repealed by Acts 1981, P.L.298, SEC.9(a)*.)

ARTICLE 4. REPEALED

(*Repealed by P.L.1-1993, SEC.238.)*

ARTICLE 4.1. REPEALED

(*Repealed by P.L.311-1983, SEC.49.)*

ARTICLE 5. REPEALED

(*Repealed by Acts 1981, P.L.298, SEC.9.*)

ARTICLE 6. REPEALED

(*Repealed by P.L.311-1983, SEC.49.)*

ARTICLE 7. REPEALED

(*Repealed by P.L.311-1983, SEC.49.)*

ARTICLE 8. REPEALED

(*Repealed by Acts 1979, P.L.120, SEC.22.*)

ARTICLE 9. REPEALED

(*Repealed by P.L.108-1985, SEC.1.)*

ARTICLE 10. REPEALED

(*Repealed by P.L.311-1983, SEC.49.)*

ARTICLE 11. REPEALED

(*Repealed by P.L.1-1993, SEC.238.)*

ARTICLE 12. REPEALED

(*Repealed by Acts 1976, P.L.148, SEC.24.)*

ARTICLE 13. REPEALED

(*Repealed by Acts 1976, P.L.148, SEC.24.)*

ARTICLE 14. REPEALED

(*Repealed by Acts 1976, P.L.148, SEC.24.)*

ARTICLE 15. REPEALED

(*Repealed by Acts 1977, P.L.26, SEC.25.*)

ARTICLE 16. REPEALED

(*Repealed by Acts 1976, P.L.148, SEC.24.*)

ARTICLE 17. REPEALED

(*Repealed by Acts 1976, P.L.148, SEC.24.)*

ARTICLE 18. REPEALED

(*Repealed by Acts 1977, P.L.26, SEC.25.*)

ARTICLE 19. REPEALED

(*Repealed by Acts 1976, P.L.148, SEC.24.)*

ARTICLE 20. REPEALED

(*Repealed by Acts 1976, P.L.148, SEC.24.)*

ARTICLE 21. REPEALED

(*Repealed by Acts 1977, P.L.26, SEC.25.*)

ARTICLE 22. REPEALED

(*Repealed by Acts 1976, P.L.148, SEC.24.)*

ARTICLE 23. REPEALED

(*Repealed by P.L.311-1983, SEC.49.)*

ARTICLE 24. REPEALED

(*Repealed by Acts 1976, P.L.148, SEC.24.*)

ARTICLE 24.1. REPEALED

(*Repealed by Acts 1976, P.L.148, SEC.24.*)

ARTICLE 25. REPEALED

(*Repealed by Acts 1977, P.L.26, SEC.25.*)

ARTICLE 26. REPEALED

(*Repealed by Acts 1977, P.L.26, SEC.25.*)

ARTICLE 27. REPEALED

(*Repealed by Acts 1977, P.L.26, SEC.25.*)

ARTICLE 28. REPEALED

(*Repealed by Acts 1977, P.L.26, SEC.25.*)

ARTICLE 29. REPEALED

(*Repealed by Acts 1977, P.L.26, SEC.25.*)

ARTICLE 30. REPEALED

(*Repealed by P.L.311-1983, SEC.49.)*

ARTICLE 31. REPEALED

(*Repealed by Acts 1977, P.L.26, SEC.25.*)

IC 35-32

ARTICLE 32. GENERAL PROCEDURAL PROVISIONS

IC 35-32-1

Chapter 1. General Purpose

IC 35-32-1-1

Construction of title

Sec. 1. This title shall be construed in accordance with its general purposes, to:

(1) secure simplicity in procedure;

(2) insure fairness of administration including the elimination of unjustifiable delay;

(3) insure the effective apprehension and trial of persons accused of offenses;

(4) provide for the just determination of every criminal proceeding by a fair and impartial trial and adequate review; and

(5) preserve the public welfare and secure the fundamental rights of individuals.

As added by Acts 1981, P.L.298, SEC.1.

IC 35-32-1-2

Legal effect of change of references from "community service" to "community restitution or service"

Sec. 2. The change of references in the Indiana Code from community service to community restitution or service by P.L.32-2000 shall not be construed to:

(1) release a person from a court order issued before July 1, 2000, requiring the person to perform community service; or

(2) limit the power of an entity to operate any program as a community restitution program after June 30, 2000, that was operated before July 1, 2000, as a community service program.

As added by P.L.20-2010, SEC.8.

IC 35-32-2

Chapter 2. Venue

IC 35-32-2-1

Place of trial

Sec. 1. (a) Criminal actions shall be tried in the county where the offense was committed, except as otherwise provided by law.

(b) If a person committing an offense upon the person of another is located in one (1) county and the person's victim is located in another county at the time of the commission of the offense, the trial may be in either of the counties.

(c) If the offense involves killing or causing the death of another human being, the trial may be in the county in which the:

(1) cause of death is inflicted;

(2) death occurs; or

(3) victim's body is found.

(d) If an offense is committed in Indiana and it cannot readily be determined in which county the offense was committed, trial may be in any county in which an act was committed in furtherance of the offense.

(e) If an offense is commenced outside Indiana and completed within Indiana, the offender may be tried in any county where any act in furtherance of the offense occurred.

(f) If an offense commenced inside Indiana is completed outside Indiana, the offender shall be tried in any county where an act in furtherance of the offense occurred.

(g) If an offense is committed on the portions of the Ohio or Wabash Rivers where they form a part of the boundaries of this state, trial may be in the county that is adjacent to the river and whose boundaries, if projected across the river, would include the place where the offense was committed.

(h) If an offense is committed at a place which is on or near a common boundary which is shared by two (2) or more counties and it cannot be readily determined where the offense was committed, then the trial may be in any county sharing the common boundary.

(i) If an offense is committed on a public highway (as defined in IC 9-25-2-4) that runs on and along a common boundary shared by two (2) or more counties, the trial may be held in any county sharing the common boundary.

(j) If an offense is committed by use of the Internet or another computer network (as defined in IC 35-43-2-3), the trial may be held in any county:

(1) from which or to which access to the Internet or other computer network was made; or

(2) in which any computer, computer data, computer software, or computer network that was used to access the Internet or other computer network is located.

(k) If an offense:

(1) is committed by use of:

(A) the Internet or another computer network (as defined in

IC 35-43-2-3); or

(B) another form of electronic communication; and

(2) occurs outside Indiana and the victim of the offense resides in Indiana at the time of the offense;

the trial may be held in the county where the victim resides at the time of the offense.

As added by Acts 1981, P.L.298, SEC.1. Amended by Acts 1982, P.L.204, SEC.5; P.L.320-1983, SEC.1; P.L.98-2000, SEC.16; P.L.115-2005, SEC.2.

IC 35-32-2-2

Theft or conversion; receiving stolen property

Sec. 2. (a) A person may be tried for theft or conversion in any county in which he exerted unauthorized control over the property.

(b) A person may be tried for receiving stolen property in any county in which he receives, retains, or disposes of the property.

As added by Acts 1981, P.L.298, SEC.1.

IC 35-32-2-3

Kidnapping, criminal confinement, human trafficking, promotion of human trafficking, sexual trafficking of a minor, and interference with custody

Sec. 3. (a) A person who commits the offense of:

(1) kidnapping;

(2) criminal confinement;

(3) human trafficking;

(4) promotion of human trafficking; or

(5) sexual trafficking of a minor;

may be tried in a county in which the victim has traveled or has been confined during the course of the offense.

(b) A person who commits the offense of criminal confinement or interference with custody may be tried in a county in which the child who was removed, taken, concealed, or detained in violation of a child custody order:

(1) was a legal resident at the time of the taking, concealment, or detention;

(2) was taken, detained, or concealed; or

(3) was found.

As added by Acts 1981, P.L.298, SEC.1. Amended by P.L.49-1989, SEC.19; P.L.173-2006, SEC.47.

IC 35-32-2-4

Aiding and abetting; conspiracy; attempts

Sec. 4. (a) If a person in a county engages in conduct sufficient to constitute aiding, inducing, or causing an offense committed in another county, he may be tried for the offense in either county.

(b) In a prosecution for conspiracy to commit a felony, any or all offenders may be tried in the county in which:

(1) the agreement was made; or

(2) any overt act in furtherance of the agreement is performed.

(c) In a prosecution for an attempt to commit a crime, the offender may be tried in any county in which:

(1) a substantial step towards the commission of the underlying crime occurred; or

(2) the underlying crime was to have been completed.

As added by Acts 1981, P.L.298, SEC.1.

IC 35-32-2-5

Transfer to proper county or court with proper jurisdiction; mistake in charge of proper offense or guilt of offense not charged; discharge without prejudice

Sec. 5. (a) When it appears, at any time before verdict or finding, that the prosecution was brought in an improper county, the court shall order that all papers and proceedings be certified and transferred to a court with jurisdiction over the offense in the proper county and, when necessary, order the sheriff to deliver custody of the defendant to the sheriff of the proper county.

(b) When it appears at any time before verdict or finding, that a mistake has been made in charging the proper offense, or that the defendant is guilty of an offense not charged, such defendant shall not be discharged, if the court finds probable cause that the defendant committed an offense.

(c) When it appears at any time before verdict or finding that the prosecution was brought in a court without jurisdiction over the subject matter of the offense charged, the court shall order that all the papers and proceedings be certified and transferred to a court with jurisdiction over the subject matter in the proper county.

(d) When a jury has been impaneled or the cause submitted in any case contemplated in subsection (a), (b), or (c), such jury may be discharged or submission set aside without prejudice to the prosecution.

As added by Acts 1981, P.L.298, SEC.1.

IC 35-32-2-6

Identity deception; synthetic identity deception; multiple offenses

Sec. 6. (a) Subject to subsection (b), a person who commits the offense of identity deception or synthetic identity deception may be tried in a county in which:

(1) the victim resides; or

(2) the person:

(A) obtains;

(B) possesses;

(C) transfers; or

(D) uses;

the information used to commit the offense.

(b) If:

(1) a person is charged with more than one (1) offense of identity deception or synthetic identity deception, or if a person is charged with both identity deception and synthetic identity deception; and

(2) either:

(A) the victims of the crimes reside in more than one (1) county; or

(B) the person performs an act described in subsection (a)(2) in more than one (1) county;

the person may be tried in any county described in subdivision (2).

As added by P.L.125-2006, SEC.7. Amended by P.L.137-2009, SEC.9.

IC 35-32-3
Repealed

(*Repealed by P.L.23-1994, SEC.18.)*

IC 35-33

ARTICLE 33. PRELIMINARY PROCEEDINGS

IC 35-33-1

Chapter 1. Arrest

IC 35-33-1-1

Law enforcement officer; federal enforcement officer

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, 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;

may act as an officer for the arrest of offenders against the laws of this state where the person reasonably believes that a felony has been

or is about to be committed or attempted in the person's presence.
As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.6; P.L.320-1983, SEC.2; P.L.311-1985, SEC.1; P.L.319-1987, SEC.1; P.L.53-1989, SEC.6; P.L.160-1990, SEC.1; P.L.2-1991, SEC.102; P.L.1-1991, SEC.189; P.L.1-1992, SEC.178; P.L.242-1993, SEC.1; P.L.140-1994, SEC.3; P.L.216-1996, SEC.10; P.L.47-2000, SEC.2; P.L.222-2001, SEC.3; P.L.133-2002, SEC.59; P.L.221-2003, SEC.15; P.L.50-2005, SEC.1.

IC 35-33-1-1.5

Crime involving domestic or family violence; duties of law enforcement officers; confiscation of firearm, ammunition, or deadly weapon

Sec. 1.5. (a) A law enforcement officer responding to the scene of an alleged crime involving domestic or family violence shall use all reasonable means to prevent further violence, including the following:

(1) Transporting or obtaining transportation for the alleged victim and each child to a designated safe place to meet with a domestic violence counselor, local family member, or friend.

(2) Assisting the alleged victim in removing toiletries, medication, and necessary clothing.

(3) Giving the alleged victim immediate and written notice of the rights under IC 35-40.

(b) A law enforcement officer may confiscate and remove a firearm, ammunition, or a deadly weapon from the scene if the law enforcement officer has:

(1) probable cause to believe that a crime involving domestic or family violence has occurred;

(2) a reasonable belief that the firearm, ammunition, or deadly weapon:

(A) exposes the victim to an immediate risk of serious bodily injury; or

(B) was an instrumentality of the crime involving domestic or family violence; and

(3) observed the firearm, ammunition, or deadly weapon at the scene during the response.

(c) If a firearm, ammunition, or a deadly weapon is removed from the scene under subsection (b), the law enforcement officer shall provide for the safe storage of the firearm, ammunition, or deadly weapon during the pendency of a proceeding related to the alleged act of domestic or family violence.
As added by P.L.133-2002, SEC.60.

IC 35-33-1-1.7

Mandatory hold on person arrested for domestic violence

Sec. 1.7. (a) A facility having custody of a person arrested for a crime of domestic violence (as described in IC 35-41-1-6.3) shall keep the person in custody for at least eight (8) hours from the time of the arrest.

(b) A person described in subsection (a) may not be released on bail until at least eight (8) hours from the time of the person's arrest.
As added by P.L.44-2008, SEC.1.

IC 35-33-1-2
Judge

Sec. 2. A judge may arrest, or order the arrest of a person in his presence, when he has probable cause to believe the person has committed a crime.
As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-1-3
Coroner

Sec. 3. A coroner has the authority to arrest any person when performing the duties of the sheriff under IC 36-2-14-4 and authority to arrest the sheriff under IC 36-2-14-5.
As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-1-4
Any person

Sec. 4. (a) Any person may arrest any other person if:

(1) the other person committed a felony in his presence;

(2) a felony has been committed and he has probable cause to believe that the other person has committed that felony; or

(3) a misdemeanor involving a breach of peace is being committed in his presence and the arrest is necessary to prevent the continuance of the breach of peace.

(b) A person making an arrest under this section shall, as soon as practical, notify a law enforcement officer and deliver custody of the person arrested to a law enforcement officer.

(c) The law enforcement officer may process the arrested person as if the officer had arrested him. The officer who receives or processes a person arrested by another under this section is not liable for false arrest or false imprisonment.
As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.7.

IC 35-33-1-5
Definition

Sec. 5. Arrest is the taking of a person into custody, that he may be held to answer for a crime.
As added by P.L.320-1983, SEC.3.

IC 35-33-1-6
Chart to determine detention time before release pending trial

Sec. 6. A law enforcement agency may use the following chart to determine the minimum number of hours that a person arrested for an alcohol-related offense should be detained before his release pending trial:

BLOOD OR BREATH ALCOHOL LEVEL IN GRAMS	HOURS AFTER INITIAL READING IS TAKEN													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00	.000	.00	.000	.00
.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00	.000	.00	.000	.00
.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00	.000	.00	.000	.00
.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00	.000	.00
.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00	.000	.00
.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00	.000	.00
.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00
.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00
.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00
.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00
.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00
.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00
.21	.195	.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00
.22	.205	.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01
.23	.215	.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02
.24	.225	.21	.195	.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03
.25	.235	.22	.205	.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04
.26	.245	.23	.215	.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05

Note: In order to find when a person will reach the legal blood or breath alcohol level, find the blood or breath alcohol level reading in the left hand column, go across and find where the blood or breath alcohol level reading is an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to below eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath, then read up that column to find the minimum number of hours before the person can be released.

As added by P.L.77-1984, SEC.15. Amended by P.L.33-1997, SEC.21; P.L.1-2000, SEC.18; P.L.175-2001, SEC.17.

IC 35-33-2

Chapter 2. Arrest Warrants

IC 35-33-2-1

Grounds; indictment or information filed; probable cause

Sec. 1. (a) Except as provided in chapter 4 of this article, whenever an indictment is filed and the defendant has not been arrested or otherwise brought within the custody of the court, the court, without making a determination of probable cause, shall issue a warrant for the arrest of the defendant.

(b) Whenever an information is filed and the defendant has not been arrested or otherwise brought within the custody of the court, the court shall issue a warrant for the arrest of the defendant after first determining that probable cause exists for the arrest.

(c) No warrant for arrest of a person may be issued until:

(1) an indictment has been found charging him with the commission of an offense; or

(2) a judge has determined that probable cause exists that the person committed a crime and an information has been filed charging him with a crime.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-2-2

Contents; form

Sec. 2. (a) A warrant of arrest shall:

(1) be in writing;

(2) specify the name of the person to be arrested, or if his name is unknown, shall designate such person by any name or description by which he can be identified with reasonable certainty;

(3) set forth the nature of the offense for which the warrant is issued;

(4) state the date and county of issuance;

(5) be signed by the clerk or the judge of the court with the title of his office;

(6) command that the person against whom the indictment or information was filed be arrested and brought before the court issuing the warrant, without unnecessary delay;

(7) specify the amount of bail, if any; and

(8) be directed to the sheriff of the county.

(b) An arrest warrant may be in substantially the following form:

TO: _____

You are hereby commanded to arrest _____ forthwith, and hold that person to bail in the sum of _____ dollars, to answer in the _____ Court of _____ County, in the State of Indiana, an information or indictment for _____.

And for want of bail commit him to the jail of the County, and thereafter without unnecessary delay to bring him before the said court.

IN WITNESS WHEREOF, I, _____ (Clerk/Judge) of said

Court, hereto affix the seal thereof, and subscribe my name at _____ this _____ day of _____ A.D. 20__.

_____
Clerk or Judge of the Court

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.2-2005, SEC.115.

IC 35-33-2-3

Issuance; service or arrests; forcible entry; wrongful entry, recovery of damages

Sec. 3. (a) The warrant is issued to the sheriff of the county where the indictment or information is filed. This warrant may be served or arrests on it made:

(1) by any law enforcement officer;
(2) on any day of the week; and
(3) at any time of the day or night.

(b) A law enforcement officer may break open any outer or inner door or window in order to execute an arrest warrant, if he is not admitted following an announcement of his authority and purpose.

(c) The accused person shall be delivered to the sheriff of the county in which the indictment or information was filed, and the sheriff shall commit the accused person to jail or hold him to bail as provided in this article.

(d) A person or persons whose property is wrongfully damaged or whose person is wrongfully injured by any law enforcement officer or officers who wrongfully enter may recover such damage from the responsible authority and the law enforcement officer or officers as the court may determine. The action may be filed in the circuit court, superior court or county court in the county where the wrongful entry took place.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.8; P.L.320-1983, SEC.4.

IC 35-33-2-4

Expiration; reissuance

Sec. 4. A warrant of arrest for a misdemeanor expires one hundred eighty (180) days after it is issued. A warrant of arrest for a felony and a rearrest warrant for any offense do not expire. A sheriff who has an expired warrant shall make a return on the warrant stating that it has expired and shall return it to the clerk of the court that issued it. The clerk shall enter the fact that the warrant has expired in his records and shall notify the prosecuting attorney of the county that the warrant has expired. Upon request of the prosecuting attorney, the court shall issue another warrant.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-2-5

Dismissal of information or indictment; return

Sec. 5. When an information or indictment has been dismissed, the court shall order the sheriff to make a return on any outstanding

arrest warrant or summons issued regarding a charge stating that the charge has been dismissed. The sheriff shall notify any law enforcement officer to whom the arrest warrant or summons has been delivered that it has been revoked.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-3

Chapter 3. Uniform Act on Fresh Pursuit

IC 35-33-3-1

Officer of another state in fresh pursuit; authority to arrest in this state

Sec. 1. Any member of a duly organized state, county or municipal peace unit of another state who enters this state in fresh pursuit, and continues within this state in such fresh pursuit of a person in order to arrest him on ground that he is believed to have committed a felony in the other state, shall have the same authority to arrest and hold such person in custody as has any law enforcement officer of this state to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-3-2

Hearing before judge; commitment for extradition or discharge

Sec. 2. If an arrest is made in this state by an officer of another state in accordance with the provisions of section 1 of this chapter, he shall, without unnecessary delay, take the person arrested before a judge of the county in which the arrest was made. The judge shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful, he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state. If the judge determines that the arrest was unlawful, he shall discharge the person arrested.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-3-3

Lawfulness of arrest

Sec. 3. Section 1 of this chapter shall not be construed so as to make unlawful any arrest in this state which otherwise would be lawful.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-3-4

"State" defined

Sec. 4. For the purpose of this chapter, the word "state" shall include the District of Columbia.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-3-5

"Fresh pursuit" defined

Sec. 5. The term "fresh pursuit" as used in this chapter shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who reasonably is suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed

felony, though no felony actually has been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.
As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-3-6
Certified copies of chapter to other states
Sec. 6. It shall be the duty of the secretary of state to certify a copy of this chapter to the executive department of each of the states of the United States.
As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-3-7
Short title
Sec. 7. This chapter may be cited as the uniform act on fresh pursuit.
As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-4

Chapter 4. Summons and Promise to Appear in Lieu of Arrest Warrant

IC 35-33-4-1

Summons in lieu of arrest warrant; contents; service; return; failure to appear; forms

Sec. 1. (a) When an indictment or information is filed against a person charging him with a misdemeanor, the court may, in lieu of issuing an arrest warrant under IC 35-33-2, issue a summons. The summons must set forth substantially the nature of the offense, and command the accused person to appear before the court at a stated time and place. However, the date set by the court must be at least seven (7) days after the issuance of the summons. The summons may be served in the same manner as the summons in a civil action.

(b) If the person summoned fails, without good cause, to appear as commanded by the summons and the court has determined that there is probable cause to believe that a crime (other than failure to appear) has been committed, the court shall issue a warrant of arrest.

(c) If after issuing a summons the court:

(1) is satisfied that the person will not appear as commanded by the summons; and

(2) has determined that there is probable cause that a crime (other than failure to appear) has been committed;

it may at once issue a warrant of arrest.

(d) The summons may be in substantially the following form:

STATE OF INDIANA	)	IN THE _____ COURT
	)	
vs.	)	OF _____ COUNTY
	)	
_____	)	
Defendant	)	CAUSE NO. _____

SUMMONS

THE STATE OF INDIANA TO

THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED, to appear before the above designated Court at _____, _____, _____ at _____ ___.m. on (day) _____, _____, 20___, with respect to an (information or indictment) for _____.

If you do not so appear, an application may be made for the Issuance of a Warrant for your arrest.

ISSUED: _____ ___,
20___
in
(City or County) _____, _____
BY THE CLERK OF SAID COURT:

_____
CLERK

(e) When any law enforcement officer in the state serves a summons on a person, he shall file a return of service with the court

issuing the summons. The return shall be in substantially the following form:

RETURN OF SERVICE

I hereby certify that I served this summons upon the above named defendant by delivering a copy of it and of the Information to the defendant personally or by certified mail return receipt requested, on _____ _____, 20___, at ____, _____.

DATED: _____ ___, 20___.

(Signature) _____

_____

LAW ENFORCEMENT AGENCY

(f) In lieu of arresting a person who has allegedly committed a misdemeanor (other than a traffic misdemeanor) in his presence, a law enforcement officer may issue a summons and promise to appear. The summons must set forth substantially the nature of the offense and direct the person to appear before a court at a stated place and time.

(g) The summons and promise to appear may be in substantially the following form:

STATE OF INDIANA	)	IN THE _____ COURT
	)	
vs.	)	OF _____ COUNTY
	)	
_____	)	
Defendant	)	

SUMMONS AND PROMISE TO APPEAR

YOU ARE HEREBY SUMMONED, to appear before the above designated Court at _____

(Address)

at _____ ___ .m. on _____ _____,

Month Day

20___, in respect to the charge of _____

_____.

If you do not so appear, an application may be made for the issuance of a warrant for your arrest.

ISSUED:_____, 20 ____,

in

_____, Indiana

(City or County)

BY THE UNDERSIGNED LAW ENFORCEMENT OFFICER:

_____

Officer's Signature

I.D. No. _____

Div. Dist. _____

Police Agency _____

COURT APPEARANCE

I promise to appear in court at the time and place designated above, or be subject to arrest.

Signature _____

YOUR SIGNATURE IS NOT AN ADMISSION OF GUILT.

(h) When any law enforcement officer issues a summons and promise to appear, he shall:

(1) promptly file the summons and promise to appear and the certificate of service with the court designated in the summons and promise to appear; and

(2) provide the prosecuting attorney with a copy thereof.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.9; P.L.320-1983, SEC.5; P.L.2-2005, SEC.116.

IC 35-33-5

Chapter 5. Search and Seizure

IC 35-33-5-1

Issuance by court; probable cause; oath and affirmation; "place" defined; objects of search

Sec. 1. (a) A court may issue warrants only upon probable cause, supported by oath or affirmation, to search any place for any of the following:

(1) Property which is obtained unlawfully.

(2) Property, the possession of which is unlawful.

(3) Property used or possessed with intent to be used as the means of committing an offense or concealed to prevent an offense from being discovered.

(4) Property constituting evidence of an offense or tending to show that a particular person committed an offense.

(5) Any person.

(6) Evidence necessary to enforce statutes enacted to prevent cruelty to or neglect of children.

(7) A firearm possessed by a person who is dangerous (as defined in IC 35-47-14-1).

(b) As used in this section, "place" includes any location where property might be secreted or hidden, including buildings, persons, or vehicles.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.10; P.L.187-2005, SEC.1; P.L.1-2006, SEC.526.

IC 35-33-5-2

Affidavit; descriptions; information to establish credibility of hearsay; form

Sec. 2. (a) Except as provided in section 8 of this chapter, no warrant for search or arrest shall be issued until there is filed with the judge an affidavit:

(1) particularly describing:

(A) the house or place to be searched and the things to be searched for; or

(B) particularly describing the person to be arrested;

(2) alleging substantially the offense in relation thereto and that the affiant believes and has good cause to believe that:

(A) the things as are to be searched for are there concealed; or

(B) the person to be arrested committed the offense; and

(3) setting forth the facts then in knowledge of the affiant or information based on hearsay, constituting the probable cause.

(b) When based on hearsay, the affidavit must either:

(1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or

(2) contain information that establishes that the totality of the

circumstances corroborates the hearsay.

(c) An affidavit for search substantially in the following form shall be treated as sufficient:

STATE OF INDIANA)
) SS:
COUNTY OF _____)

A B swears (or affirms, as the case may be) that he believes and has good cause to believe (here set forth the facts and information constituting the probable cause) that (here describe the things to be searched for and the offense in relation thereto) are concealed in or about the (here describe the house or place) of C D, situated in the county of _____, in said state.

Subscribed and sworn to before me this _____ day of _____ 20__.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.177-1984, SEC.1; P.L.161-1990, SEC.1; P.L.1-1991, SEC.190; P.L.2-2005, SEC.117.

IC 35-33-5-3

Form

Sec. 3. A search warrant in substantially the following form shall be sufficient:

STATE OF INDIANA)
) SS:
COUNTY OF _____) IN THE _____ COURT OF
_____

To _____ (herein insert the name, department or classification of the law enforcement officer to whom it is addressed)

You are authorized and ordered, in the name of the State of Indiana, with the necessary and proper assistance to enter into or upon _____ (here describe the place to be searched), and there diligently search for _____ (here describe property which is the subject of the search). You are ordered to seize such property, or any part thereof, found on such search.

Dated this ____ day of _____, 20___, at the hour of ___ __M.

_____
(Signature of Judge)

Executed this ___ day of _____, 20___, at the hour of ____ ___M.

_____
(Signature of Law Enforcement Officer)

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.2-2005, SEC.118.

IC 35-33-5-4

Return; initial disposition of property seized

Sec. 4. When the warrant is executed by the seizure of property or

things described in it or of any other items:

(1) The officer who executed the warrant shall make a return on it directed to the court or judge, who issued the warrant, and this return must indicate the date and time served and list the items seized.

(2) The items so seized shall be securely held by the law enforcement agency whose officer executed the search warrant under the order of the court trying the cause, except as provided in section 6 of this chapter.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-5-5

Disposition of property held as evidence; records

Sec. 5. (a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

(b) Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with IC 35-43-4-4(h).

(c) Following the final disposition of the cause at trial level or any other final disposition the following shall be done:

(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

(A) the rightful owner has been notified to take possession of the property; or

(B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at a convenient time, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Except as provided in subsection (e), property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

(3) A firearm that has been seized from a person who is dangerous (as defined in IC 35-47-14-1) shall be retained, returned, or disposed of in accordance with IC 35-47-14.

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

(e) A law enforcement agency may destroy or cause to be destroyed chemicals, controlled substances, or chemically contaminated equipment (including drug paraphernalia as described in IC 35-48-4-8.5) associated with the illegal manufacture of drugs or controlled substances without a court order if all the following

conditions are met:

(1) The law enforcement agency collects and preserves a sufficient quantity of the chemicals, controlled substances, or chemically contaminated equipment to demonstrate that the chemicals, controlled substances, or chemically contaminated equipment was associated with the illegal manufacture of drugs or controlled substances.

(2) The law enforcement agency takes photographs of the illegal drug manufacturing site that accurately depict the presence and quantity of chemicals, controlled substances, and chemically contaminated equipment.

(3) The law enforcement agency completes a chemical inventory report that describes the type and quantities of chemicals, controlled substances, and chemically contaminated equipment present at the illegal manufacturing site.

The photographs and description of the property shall be admissible into evidence in place of the actual physical evidence.

(f) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before the disposition of the property. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in place of the actual physical evidence. All other rules of law governing the admissibility of evidence shall apply to the photographs.

(g) The law enforcement agency disposing of property in any manner provided in subsection (b), (c), or (e) shall maintain certified records of any disposition under subsection (b), (c), or (e). Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

(h) This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

(i) A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise permanently identify the property as property sold by the law enforcement agency.

(j) Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.320-1983, SEC.6; P.L.294-1989, SEC.1; P.L.174-1999, SEC.2; P.L.17-2001, SEC.11; P.L.187-2005, SEC.2; P.L.1-2006, SEC.527; P.L.151-2006, SEC.14; P.L.1-2007, SEC.225.

IC 35-33-5-5.1

Repealed

(*Repealed by P.L.227-2007, SEC.70.)*

IC 35-33-5-6

Dead body; search of building or place; affidavit

Sec. 6. When an affidavit is filed before a judge alleging that the affiant has good reasons to believe, and does believe, that a dead human body is illegally secreted in a certain building, or other particularly specified place in the county, the judge may issue a search warrant authorizing a law enforcement officer to enter and search the building or other place for the dead body. While making the search, the law enforcement officer shall have the power of an officer executing a regular search warrant.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-5-7

Execution of search warrant; forcible entry; wrongful entry; recovery of damages

Sec. 7. (a) A search warrant issued by a court of record may be executed according to its terms anywhere in the state. A search warrant issued by a court that is not a court of record may be executed according to its terms anywhere in the county of the issuing court.

(b) A search warrant must be:

(1) executed not more than ten (10) days after the date of issuance; and

(2) returned to the court without unnecessary delay after the execution.

(c) A search warrant may be executed:

(1) on any day of the week; and

(2) at any time of the day or night.

(d) A law enforcement officer may break open any outer or inner door or window in order to execute a search warrant, if he is not admitted following an announcement of his authority and purpose.

(e) A person or persons whose property is wrongfully damaged or whose person is wrongfully injured by any law enforcement officer or officers who wrongfully enter may recover such damage from the responsible authority and the law enforcement officer or officers as the court may determine. The action may be filed in the circuit court, superior court or county court in the county where the wrongful entry took place.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.320-1983, SEC.7.

IC 35-33-5-8

Issue of warrant without affidavit; types of sworn testimony; procedures; perjury

Sec. 8. (a) A judge may issue a search or arrest warrant without the affidavit required under section 2 of this chapter, if the judge receives sworn testimony of the same facts required for an affidavit:

(1) in a nonadversarial, recorded hearing before the judge;

(2) orally by telephone or radio; or

(3) in writing by facsimile transmission (FAX).

(b) After reciting the facts required for an affidavit and verifying the facts recited under penalty of perjury, an applicant for a warrant under subsection (a)(2) shall read to the judge from a warrant form on which the applicant enters the information read by the applicant to the judge. The judge may direct the applicant to modify the warrant. If the judge agrees to issue the warrant, the judge shall direct the applicant to sign the judge's name to the warrant, adding the time of the issuance of the warrant.

(c) After transmitting an affidavit, an applicant for a warrant under subsection (a)(3) shall transmit to the judge a copy of a warrant form completed by the applicant. The judge may modify the transmitted warrant. If the judge agrees to issue the warrant, the judge shall transmit to the applicant a duplicate of the warrant. The judge shall then sign the warrant retained by the judge, adding the time of the issuance of the warrant.

(d) If a warrant is issued under subsection (a)(2), the judge shall record the conversation on audio tape and order the court reporter to type or transcribe the recording for entry in the record. The judge shall certify the audio tape, the transcription, and the warrant retained by the judge for entry in the record.

(e) If a warrant is issued under subsection (a)(3), the judge shall order the court reporter to the retype or copy the facsimile transmission for entry in the record. The judge shall certify the transcription or copy and warrant retained by the judge for entry in the record.

(f) The court reporter shall notify the applicant who received a warrant under subsection (a)(2) or (a)(3) when the transcription or copy required under this section is entered in the record. The applicant shall sign the typed, transcribed, or copied entry upon receiving notice from the court reporter.

As added by P.L.161-1990, SEC.2.

IC 35-33-6

Chapter 6. Detention of Shoplifters by Owner or Agent

IC 35-33-6-1

Definitions

Sec. 1. As used in this chapter:

"Adult employee" means an employee who is eighteen (18) years old or older.

"Agent" means an operator, a manager, an adult employee, or a security agent employed by a store.

"Motion picture exhibition facility" has the meaning set forth in IC 35-46-8-3.

"Security agent" means a person who has been employed by a store to prevent the loss of property due to theft.

"Store" means a place of business where property or service with respect to property is displayed, rented, sold, or offered for sale.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.94-2005, SEC.1.

IC 35-33-6-2

Probable cause; detention; procedure; statements by juveniles

Sec. 2. (a) An owner or agent of a store who has probable cause to believe that a theft has occurred or is occurring on or about the store and who has probable cause to believe that a specific person has committed or is committing the theft:

(1) may:

(A) detain the person and request the person to identify himself or herself;

(B) verify the identification;

(C) determine whether the person has in the person's possession unpurchased merchandise taken from the store;

(D) inform the appropriate law enforcement officers; and

(E) inform the person's parents or others interested in the person's welfare that the person has been detained; but

(2) shall not ask the person to make a statement that acknowledges that the person committed the theft or conversion or waives any of the person's legal rights if:

(A) the person is less than eighteen (18) years of age; and

(B) the person has not been afforded an opportunity to have a meaningful consultation with his or her parent, guardian, custodian, or guardian ad litem.

(b) A statement acknowledging that a child committed theft or conversion in violation of subdivision (a)(2) cannot be admitted as evidence against the child on the issue of whether the child committed a delinquent act or a crime.

(c) The detention must:

(1) be reasonable and last only for a reasonable time; and

(2) not extend beyond the arrival of a law enforcement officer or two (2) hours, whichever first occurs.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982,

P.L.204, SEC.11; P.L.77-2009, SEC.6.

IC 35-33-6-2.5

Detention of person making unlawful recording

Sec. 2.5. (a) An owner or agent of a motion picture exhibition facility who has probable cause to believe that an unlawful recording under IC 35-46-8 has occurred or is occurring in the motion picture exhibition facility and who has probable cause to believe that a specific person has committed or is committing the unlawful recording may:

(1) detain the person and request the person to provide identification;

(2) verify the identification;

(3) determine whether the person possesses at the time of detention an audiovisual recording device (as defined in IC 35-46-8-2);

(4) confiscate any unauthorized copies of a motion picture or another audiovisual work; and

(5) inform the appropriate law enforcement officer or agency that the person is being detained.

(b) Detention under subsection (a):

(1) must:

(A) be reasonable; and

(B) last only for a reasonable time; and

(2) may not extend beyond the arrival of a law enforcement officer or two (2) hours, whichever occurs first.

As added by P.L.94-2005, SEC.2.

IC 35-33-6-3

Placement of information before law enforcement officer; presumption

Sec. 3. An owner or agent of a store or motion picture exhibition facility who informs a law enforcement officer of the circumstantial basis for detention and any additional relevant facts shall be presumed to be placing information before the law enforcement officer. The placing of this information does not constitute a charge of crime.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.94-2005, SEC.3.

IC 35-33-6-4

Civil or criminal actions; exclusion of lawful detention; burden of proof

Sec. 4. A civil or criminal action against:

(1) an owner or agent of a store or motion picture exhibition facility; or

(2) a law enforcement officer;

may not be based on a detention that was lawful under section 2 or 2.5 of this chapter. However, the defendant has the burden of proof that the defendant acted with probable cause under section 2 or 2.5

of this chapter.
As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.94-2005, SEC.4.

IC 35-33-6-5
Reliance on information from employee; probable cause

Sec. 5. An owner or agent of a store may act in the manner permitted by section 2 of this chapter on information received from any employee of the store, if that employee has probable cause to believe that a:

(1) theft has occurred or is occurring in or about the store; and

(2) specific person has committed or is committing the theft.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-6-6
Reliance on information from employee of motion picture exhibition facility

Sec. 6. An owner or agent of a motion picture exhibition facility may act in the manner allowed by section 2.5 of this chapter on information received from an employee of the motion picture exhibition facility if the employee has probable cause to believe that:

(1) an unlawful recording under IC 35-46-8 has occurred or is occurring in the motion picture exhibition facility; and

(2) a specific person has committed or is committing the unlawful recording.

As added by P.L.94-2005, SEC.5.

IC 35-33-7

Chapter 7. Probable Cause; Initial Hearing

IC 35-33-7-1

Arrest without warrant; initial hearing; venue

Sec. 1. (a) A person arrested without a warrant for a crime shall be taken promptly before a judicial officer:

(1) in the county in which the arrest is made; or

(2) of any county believed to have venue over the offense committed; for an initial hearing in court.

(b) Except as provided in subsection (c), if the person arrested makes bail before the person's initial hearing before a judicial officer, the initial hearing shall occur at any time within twenty (20) calendar days after the person's arrest.

(c) If a person arrested under IC 9-30-5 makes bail before the person's initial hearing before a judicial officer, the initial hearing must occur within ten (10) calendar days after the person's arrest.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.126-1989, SEC.27; P.L.2-1991, SEC.103.

IC 35-33-7-2

Probable cause; affidavit or oral presentation under oath; record; determination; detention or release

Sec. 2. (a) At or before the initial hearing of a person arrested without a warrant for a crime, the facts upon which the arrest was made shall be submitted to the judicial officer, ex parte, in a probable cause affidavit. In lieu of the affidavit or in addition to it, the facts may be submitted orally under oath to the judicial officer. If facts upon which the arrest was made are submitted orally, the proceeding shall be recorded by a court reporter, and, upon request of any party in the case or upon order of the court, the record of the proceeding shall be transcribed.

(b) If the judicial officer determines that there is probable cause to believe that any crime was committed and that the arrested person committed it, the judicial officer shall order that the arrested person be held to answer in the proper court. If the facts submitted do not establish probable cause or if the prosecuting attorney informs the judicial officer on the record that no charge will be filed against the arrested person, the judicial officer shall order that the arrested person be released immediately.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.12.

IC 35-33-7-3

Filing of indictment or information; recess or continuation of initial hearing; informing accused of rights

Sec. 3. (a) When a person is arrested for a crime before a formal charge has been filed, an information or indictment shall be filed or be prepared to be filed at or before the initial hearing, unless the prosecuting attorney has informed the court that there will be no

charges filed in the case.

(b) If the prosecuting attorney states that more time is required to evaluate the case and determine whether a charge should be filed, or if it is necessary to transfer the person to another court, then the court shall recess or continue the initial hearing for up to seventy-two (72) hours, excluding intervening Saturdays, Sundays, and legal holidays.

(c) Before recessing the initial hearing and after the ex parte probable cause determination has been made, the court shall inform a defendant charged with a felony of the rights specified in subdivisions (1), (2), (3), (4), and (5) of section 5 of this chapter.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.13; P.L.320-1983, SEC.8.

IC 35-33-7-3.5

Conformity of initial hearing to summons; probable cause

Sec. 3.5. The initial hearing of a person issued a:

(1) summons; or

(2) summons and promise to appear;

must take place according to the terms of the summons. At such an initial hearing, a determination of probable cause is not required unless the prosecuting attorney requests on the record that the person be held in custody before his trial.

As added by P.L.320-1983, SEC.9.

IC 35-33-7-4

Arrest under warrant; jurisdiction; time of initial hearing

Sec. 4. A person arrested in accordance with the provisions of a warrant shall be taken promptly for an initial hearing before the court issuing the warrant or before a judicial officer having jurisdiction over the defendant. If the arrested person has been released in accordance with the provisions for release stated on the warrant, the initial hearing shall occur at any time within twenty (20) days after his arrest.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-7-5

Informing of accused

Sec. 5. At the initial hearing of a person, the judicial officer shall inform him orally or in writing:

(1) that he has a right to retain counsel and if he intends to retain counsel he must do so within:

(A) twenty (20) days if the person is charged with a felony; or

(B) ten (10) days if the person is charged only with one (1) or more misdemeanors;

after this initial hearing because there are deadlines for filing motions and raising defenses, and if those deadlines are missed, the legal issues and defenses that could have been raised will be waived;

(2) that he has a right to assigned counsel at no expense to him

if he is indigent;
(3) that he has a right to a speedy trial;
(4) of the amount and conditions of bail;
(5) of his privilege against self-incrimination;
(6) of the nature of the charge against him; and
(7) that a preliminary plea of not guilty is being entered for him and the preliminary plea of not guilty will become a formal plea of not guilty:
(A) twenty (20) days after the completion of the initial hearing; or
(B) ten (10) days after the completion of the initial hearing if the person is charged only with one (1) or more misdemeanors;
unless the defendant enters a different plea.

In addition, the judge shall direct the prosecuting attorney to give the defendant or his attorney a copy of any formal felony charges filed or ready to be filed. The judge shall, upon request of the defendant, direct the prosecuting attorney to give the defendant or his attorney a copy of any formal misdemeanor charges filed or ready to be filed.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.14; P.L.320-1983, SEC.10.

IC 35-33-7-6

Indigent defendant; assignment of counsel; payment to supplemental public defender services fund

Sec. 6. (a) Prior to the completion of the initial hearing, the judicial officer shall determine whether a person who requests assigned counsel is indigent. If the person is found to be indigent, the judicial officer shall assign counsel to the person.

(b) If jurisdiction over an indigent defendant is transferred to another court, the receiving court shall assign counsel immediately upon acquiring jurisdiction over the defendant.

(c) If the court finds that the person is able to pay part of the cost of representation by the assigned counsel, the court shall order the person to pay the following:
(1) For a felony action, a fee of one hundred dollars ($100).
(2) For a misdemeanor action, a fee of fifty dollars ($50).

The clerk of the court shall deposit fees collected under this subsection in the county's supplemental public defender services fund established under IC 33-40-3-1.

(d) The court may review the finding of indigency at any time during the proceedings.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.216-1996, SEC.11; P.L.98-2004, SEC.139.

IC 35-33-7-7

Order of release not to bar further proceedings

Sec. 7. An order releasing a person under this chapter does not bar further proceedings in the case.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.15.

IC 35-33-8

Chapter 8. Bail and Bail Procedure

IC 35-33-8-1

"Bail bond" defined

Sec. 1. As used in this chapter, "bail bond" means a bond executed by a person who has been arrested for the commission of an offense, for the purpose of ensuring:

(1) the person's appearance at the appropriate legal proceeding;

(2) another person's physical safety; or

(3) the safety of the community.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.221-1996, SEC.1.

IC 35-33-8-1.5

"Publicly paid costs of representation" defined

Sec. 1.5. As used in this chapter, "publicly paid costs of representation" means the portion of all attorney's fees, expenses, or wages incurred by the county that are:

(1) directly attributable to the defendant's defense; and

(2) not overhead expenditures made in connection with the maintenance or operation of a governmental agency.

As added by P.L.167-1987, SEC.8.

IC 35-33-8-2

Murder; other offenses

Sec. 2. (a) Murder is not bailable when the proof is evident or the presumption strong. In all other cases, offenses are bailable.

(b) A person charged with murder has the burden of proof that he should be admitted to bail.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-8-3

Repealed

(*Repealed by P.L.1-1990, SEC.341.)*

IC 35-33-8-3.1

Repealed

(*Repealed by P.L.107-1998, SEC.6.)*

IC 35-33-8-3.2

Conditions to assure appearance; remittance of deposit; collection of fees

Sec. 3.2. (a) 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).

(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), and the fee required by subsection (d). 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 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).

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

(d) Except as provided in subsection (e), 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) 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) 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.

As added by P.L.107-1998, SEC.2. Amended by P.L.1-2001, SEC.36; P.L.1-2003, SEC.91; P.L.98-2004, SEC.140; P.L.10-2005, SEC.4; P.L.1-2006, SEC.528; P.L.97-2006, SEC.1; P.L.173-2006, SEC.42; P.L.1-2007, SEC.226; P.L.104-2008, SEC.6; P.L.111-2009, SEC.7; P.L.94-2010, SEC.9.

IC 35-33-8-3.3

Pretrial services fee

Sec. 3.3. (a) This section does not apply to a defendant charged in a city or town court.

(b) If a defendant who has a prior unrelated conviction for any offense is charged with a new offense and placed under the supervision of a probation officer or pretrial services agency, the court may order the defendant to pay the pretrial services fee prescribed under subsection (e) if:

(1) the defendant has the financial ability to pay the fee; and

(2) the court finds by clear and convincing evidence that supervision by a probation officer or pretrial services agency is necessary to ensure the:

(A) defendant's appearance in court; or

(B) physical safety of the community or of another person.

(c) If a clerk of a court collects a pretrial services fee, the clerk may retain not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee. The clerk shall deposit amounts retained under this subsection in the clerk's record perpetuation fund established under IC 33-37-5-2.

(d) If a clerk of a court collects a pretrial services fee from a defendant, upon request of the county auditor, the clerk shall transfer not more than three percent (3%) of the fee to the county auditor for deposit in the county general fund.

(e) The court may order a defendant who is supervised by a probation officer or pretrial services agency and charged with an offense to pay:

(1) an initial pretrial services fee of at least twenty-five dollars ($25) and not more than one hundred dollars ($100);

(2) a monthly pretrial services fee of at least fifteen dollars ($15) and not more than thirty dollars ($30) for each month the defendant remains on bail and under the supervision of a probation officer or pretrial services agency; and

(3) an administrative fee of one hundred dollars ($100);

to the probation department, pretrial services agency, or clerk of the

court if the defendant meets the conditions set forth in subsection (b).

(f) The probation department, pretrial services agency, or clerk of the court shall collect the administrative fee under subsection (e)(3) before collecting any other fee under subsection (e). Except for the money described in subsections (c) and (d), all money collected by the probation department, pretrial services agency, or clerk of the court under this section shall be transferred to the county treasurer, who shall deposit fifty percent (50%) of the money into the county supplemental adult probation services fund and fifty percent (50%) of the money into the county supplemental public defender services fund (IC 33-40-3-1). The fiscal body of the county shall appropriate money from the county supplemental adult probation services fund:

(1) to the county, superior, or circuit court of the county that provides probation services or pretrial services to adults to supplement adult probation services or pretrial services; and

(2) to supplement the salary of:

(A) an employee of a pretrial services agency; or

(B) a probation officer in accordance with the schedule adopted by the county fiscal body under IC 36-2-16.5.

(g) The county supplemental adult probation services fund may be used only to supplement adult probation services or pretrial services and to supplement salaries for probation officers or employees of a pretrial services agency. A supplemental probation services fund may not be used to replace other probation services or pretrial services funding. Any money remaining in the fund at the end of a fiscal year does not revert to any other fund but continues in the county supplemental adult probation services fund.

(h) A defendant who is charged with more than one (1) offense and who is supervised by the probation department or pretrial services agency as a condition of bail may not be required to pay more than:

(1) one (1) initial pretrial services fee; and

(2) one (1) monthly pretrial services fee per month.

(i) A probation department or pretrial services agency may petition a court to:

(1) impose a pretrial services fee on a defendant; or

(2) increase a defendant's pretrial services fee;

if the financial ability of the defendant to pay a pretrial services fee changes while the defendant is on bail and supervised by a probation officer or pretrial services agency.

(j) An order to pay a pretrial services fee under this section:

(1) is a judgment lien that, upon the defendant's conviction:

(A) attaches to the property of the defendant;

(B) may be perfected;

(C) may be enforced to satisfy any payment that is delinquent under this section; and

(D) expires;

in the same manner as a judgment lien created in a civil proceeding;

(2) is not discharged by the disposition of charges against the

defendant or by the completion of a sentence, if any, imposed on the defendant;

(3) is not discharged by the liquidation of a defendant's estate by a receiver under IC 32-30-5; and

(4) is immediately terminated if a defendant is acquitted or if charges against the defendant are dropped.

(k) If a court orders a defendant to pay a pretrial services fee, the court may, upon the defendant's conviction, enforce the order by garnishing the wages, salary, and other income earned by the defendant.

(l) If a defendant is delinquent in paying the defendant's pretrial services fee and has never been issued a driver's license or permit, upon the defendant's conviction, the court may order the bureau of motor vehicles to not issue a driver's license or permit to the defendant until the defendant has paid the defendant's delinquent pretrial services fee. If a defendant is delinquent in paying the defendant's pretrial services fee and the defendant's driver's license or permit has been suspended or revoked, the court may order the bureau of motor vehicles to not reinstate the defendant's driver's license or permit until the defendant has paid the defendant's delinquent pretrial services fee.

(m) In addition to other methods of payment allowed by law, a probation department or pretrial services agency may accept payment of a pretrial services fee by credit card (as defined in IC 14-11-1-7(a)). The liability for payment is not discharged until the probation department or pretrial services agency receives payment or credit from the institution responsible for making the payment or credit.

(n) The probation department or pretrial services agency may contract with a bank or credit card vendor for acceptance of a bank or credit card. However, if there is a vendor transaction charge or discount fee, whether billed to the probation department or pretrial services agency, or charged directly to the account of the probation department or pretrial services agency, the probation department or pretrial services agency may collect a credit card service fee from the person using the bank or credit card. The fee collected under this subsection is a permitted additional charge to the fee or fees the defendant may be required to pay under subsection (e).

(o) The probation department or pretrial services agency shall forward a credit card service fee collected under subsection (n) to the county treasurer in accordance with subsection (f). These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or credit card vendor.

As added by P.L.173-2006, SEC.43.

IC 35-33-8-3.5

Bail procedures for a sexually violent predator defendant

Sec. 3.5. (a) This section applies only to a sexually violent predator defendant.

(b) As used in this section, "sexually violent predator defendant"

means a person who:

(1) is a sexually violent predator under IC 35-38-1-7.5; and

(2) is arrested for or charged with the commission of an offense that would classify the person as a sex or violent offender (as defined in IC 11-8-8-5).

(c) A court may not admit a:

(1) sexually violent predator defendant;

(2) person charged with child molesting (IC 35-42-4-3); or

(3) person charged with child solicitation (IC 35-42-4-6);

to bail until the court has conducted a bail hearing in open court. Except as provided in section 6 of this chapter, the court shall conduct a bail hearing not later than forty-eight (48) hours after the person has been arrested, unless exigent circumstances prevent holding the hearing within forty-eight (48) hours.

(d) At the conclusion of the hearing described in subsection (c), the court shall consider whether the factors described in IC 35-33-8-4 warrant the imposition of a bail amount that exceeds court or county guidelines, if applicable.

As added by P.L.74-2008, SEC.1.

IC 35-33-8-3.6

Automatic no contact order for certain defendants placed on bail; time limits; modification

Sec. 3.6. (a) This section applies only to a defendant who is charged with committing a violent crime (as defined in IC 5-2-6.1-8) that results in bodily injury to a person.

(b) If a court releases a defendant described in subsection (a) to bail without holding a bail hearing in open court, the court shall include as a condition of bail the requirement that the defendant refrain from any direct or indirect contact with the victim:

(1) for ten (10) days after release; or

(2) until the initial hearing;

whichever occurs first.

(c) At the initial hearing, the court may reinstate or modify the condition that the defendant refrain from direct or indirect contact with the victim.

As added by P.L.94-2010, SEC.10.

IC 35-33-8-4

Amount of bail; order; indorsement; facts taken into account

Sec. 4. (a) The court shall order the amount in which a person charged by an indictment or information is to be held to bail, and the clerk shall enter the order on the order book and indorse the amount on each warrant when issued. If no order fixing the amount of bail has been made, the sheriff shall present the warrant to the judge of an appropriate court of criminal jurisdiction, and the judge shall indorse on the warrant the amount of bail.

(b) Bail may not be set higher than that amount reasonably required to assure the defendant's appearance in court or to assure the physical safety of another person or the community if the court finds

by clear and convincing evidence that the defendant poses a risk to the physical safety of another person or the community. In setting and accepting an amount of bail, the judicial officer shall take into account all facts relevant to the risk of nonappearance, including:

(1) the length and character of the defendant's residence in the community;

(2) the defendant's employment status and history and his ability to give bail;

(3) the defendant's family ties and relationships;

(4) the defendant's character, reputation, habits, and mental condition;

(5) the defendant's criminal or juvenile record, insofar as it demonstrates instability and a disdain for the court's authority to bring him to trial;

(6) the defendant's previous record in not responding to court appearances when required or with respect to flight to avoid criminal prosecution;

(7) the nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of nonappearance;

(8) the source of funds or property to be used to post bail or to pay a premium, insofar as it affects the risk of nonappearance; and

(9) any other factors, including any evidence of instability and a disdain for authority, which might indicate that the defendant might not recognize and adhere to the authority of the court to bring him to trial.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.221-1996, SEC.3.

IC 35-33-8-5

Alteration or revocation of bail

Sec. 5. (a) Upon a showing of good cause, the state or the defendant may be granted an alteration or revocation of bail by application to the court before which the proceeding is pending. In reviewing a motion for alteration or revocation of bail, credible hearsay evidence is admissible to establish good cause.

(b) When the state presents additional:

(1) evidence relevant to a high risk of nonappearance, based on the factors set forth in section 4(b) of this chapter; or

(2) clear and convincing evidence:

(A) of the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B); or

(B) that the defendant otherwise poses a risk to the physical safety of another person or the community;

the court may increase bail.

(c) When the defendant presents additional evidence of substantial mitigating factors, based on the factors set forth in section 4(b) of this chapter, which reasonably suggests that the defendant recognizes the court's authority to bring the defendant to trial, the court may

reduce bail. However, the court may not reduce bail if the court finds by clear and convincing evidence that the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B) exist or that the defendant otherwise poses a risk to the physical safety of another person or the community.

(d) The court may revoke bail or an order for release on personal recognizance upon clear and convincing proof by the state that:

(1) while admitted to bail the defendant:

(A) or the defendant's agent threatened or intimidated a victim, prospective witnesses, or jurors concerning the pending criminal proceeding or any other matter;

(B) or the defendant's agent attempted to conceal or destroy evidence relating to the pending criminal proceeding;

(C) violated any condition of the defendant's current release order;

(D) failed to appear before the court as ordered at any critical stage of the proceedings; or

(E) committed a felony or a Class A misdemeanor that demonstrates instability and a disdain for the court's authority to bring the defendant to trial;

(2) the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B) exist or that the defendant otherwise poses a risk to the physical safety of another person or the community; or

(3) a combination of the factors described in subdivisions (1) and (2) exists.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.36-1990, SEC.6; P.L.107-1998, SEC.3; P.L.98-2004, SEC.141.

IC 35-33-8-6

Probationers and parolees; detention; notice to appropriate authority; revocation proceedings

Sec. 6. The court may detain, for a maximum period of fifteen (15) calendar days, a person charged with any offense who comes before it for a bail determination, if the person is on probation or parole. During the fifteen (15) day period, the prosecuting attorney shall notify the appropriate parole or probation authority. If that authority fails to initiate probation or parole revocation proceedings during the fifteen (15) day period, the person shall be treated in accordance with the other sections of this chapter.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-8-6.5

Eight hour holding period before person arrested for domestic violence may be released on bail

Sec. 6.5. The court may not release a person arrested for a crime of domestic violence (as described in IC 35-41-1-6.3) on bail until at least eight (8) hours from the time of the person's arrest.

As added by P.L.44-2008, SEC.2.

IC 35-33-8-7

Failure to appear; pending civil action or unsatisfied judgment; same transaction or occurrence; forfeiture; order for payment; judgment; transfer of funds

Sec. 7. (a) If a defendant:

(1) was admitted to bail under section 3.2(a)(2) of this chapter; and

(2) has failed to appear before the court as ordered;

the court shall, except as provided in subsection (b) or section 8(b) of this chapter, declare the bond forfeited not earlier than one hundred twenty (120) days after the defendant's failure to appear and issue a warrant for the defendant's arrest.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 3.2(a)(2) of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

(c) Any proceedings concerning the bond, or its forfeiture, judgment, or execution of judgment, shall be held in the court that admitted the defendant to bail.

(d) After a bond has been forfeited under subsection (a) or (b), the clerk shall mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear, the court shall immediately enter judgment, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail bond, and the clerk shall record the judgment.

(e) If a bond is forfeited and the court has entered a judgment under subsection (d), the clerk shall transfer to the state common school fund:

(1) any amount remaining on deposit with the court (less the fees retained by the clerk); and

(2) any amount collected in satisfaction of the judgment.

(f) The clerk shall return a deposit, less the administrative fee, made under section 3.2(a)(2) of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.

As added by Acts 1982, P.L.204, SEC.17. Amended by P.L.167-1987, SEC.10; P.L.44-1988, SEC.3; P.L.1-1990, SEC.343; P.L.36-1990, SEC.7; P.L.107-1998, SEC.4; P.L.105-2010, SEC.9.

IC 35-33-8-8

Failure to appear; pending civil action or unsatisfied judgment; same transaction or occurrence; forfeiture; order for payment

Sec. 8. (a) If a defendant was admitted to bail under section 3.2(a) of this chapter and the defendant has knowingly and intentionally failed to appear before the court as ordered, the court:

(1) shall issue a warrant for the defendant's arrest;

(2) may not release the defendant on personal recognizance; and

(3) may not set bail for the rearrest of the defendant on the warrant at an amount that is less than the greater of:

(A) the amount of the original bail; or

(B) two thousand five hundred dollars ($2,500);

in the form of a bond issued by an entity defined in IC 27-10-1-7 or the full amount of the bond in cash.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 3.2(a)(2) of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit is subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, forfeited.

As added by P.L.36-1990, SEC.8. Amended by P.L.224-1993, SEC.31; P.L.107-1998, SEC.5.

IC 35-33-8-9

Repealed

(*Repealed by P.L.65-2004, SEC.23.)*

IC 35-33-8-10

Credit card service fee

Sec. 10. In addition to any other condition of bail imposed under this chapter, a defendant who posts bail by means of a credit card shall pay the credit card service fee under IC 33-37-6.

As added by P.L.65-2004, SEC.11.

IC 35-33-8-11

Authority to require that persons charged with a crime of domestic violence to wear a GPS device; liability for costs

Sec. 11. (a) A court may require a person who has been charged with a crime of domestic violence (as described in IC 35-41-1-6.3) to wear a GPS tracking device as a condition of bail.

(b) A court may order a person who is required to wear a GPS tracking device under subsection (a) to pay any costs associated with the GPS tracking device.

As added by P.L.94-2010, SEC.11.

IC 35-33-8.5

Chapter 8.5. Bail and Recognizance

IC 35-33-8.5-1

Sheriff; approval of bail

Sec. 1. When any person is committed for want of bail, and the amount of bail is specified in the warrant of commitment, the sheriff may take the recognizance and approve the bail.

As added by P.L.5-1988, SEC.180.

IC 35-33-8.5-2

Recognizances; recording

Sec. 2. Every recognizance taken by any peace officer must be delivered forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance, and, from the time of filing, it shall have the same effect as if taken in open court.

As added by P.L.5-1988, SEC.180.

IC 35-33-8.5-3

Recognizances; sureties; affidavit of qualifications

Sec. 3. A court or officer required to take or accept any bail or recognizance or to approve the sureties offered on any bond or recognizance in any case of a criminal nature, may require any person offered as surety thereon to make affidavit of the person's qualifications or to be examined orally under oath touching the same, and such court or officer may take such affidavit or administer such oath.

As added by P.L.5-1988, SEC.180.

IC 35-33-8.5-4

Sureties; qualifications; judgments and decrees; appeals

Sec. 4. (a) One (1) surety on every such recognizance must be a resident freeholder of the county in which the prosecution is pending, and the surety or sureties must be worth at least double the sum to be secured and must have property in this state liable to execution equal to the sum to be secured, and when two (2) or more sureties are offered to the same recognizance, they must have in the aggregate the qualifications prescribed in this section. Whenever by the laws of this state a surety company is authorized to become surety on recognizance bonds, such surety company may be accepted as sufficient surety on any such bond.

(b) The recognizance shall be in form substantially as provided in IC 27-10-2-10, conditioned for judgment on ten (10) days notice to the surety. No pleadings shall be necessary and no change of judge or change of venue shall be granted. The obligor may except to the ruling of the court and appeal to the court of appeals as in civil cases without moving for a new trial.

As added by P.L.5-1988, SEC.180.

IC 35-33-8.5-5

Pending proceedings; renewals

Sec. 5. The recognizance as provided for in IC 27-10-2-10 shall be continuing, and the defendant shall not be required to renew it during pendency of the proceedings, unless ordered to do so by the court for cause shown. But, at each term of the court, after such recognizance is taken, the court shall inquire into the sufficiency of the sureties.

As added by P.L.5-1988, SEC.180.

IC 35-33-8.5-6

Murder; admittance to bail

Sec. 6. When any person is indicted for murder, the court in which the indictment is pending, upon motion, upon application by writ of habeas corpus, may admit the defendant to bail when it appears upon examination that the defendant is entitled to be let to bail.

As added by P.L.5-1988, SEC.180.

IC 35-33-8.5-7

Surrender of principal

Sec. 7. When a surety on any recognizance desires to surrender the surety's principal, the surety may procure a copy of the recognizance from the clerk, by virtue of which such surety, or any person authorized by the surety, may take the principal in any county within the state.

As added by P.L.5-1988, SEC.180.

IC 35-33-8.5-8

Amount of bond; payment into court

Sec. 8. At any time after forfeiture and at any time before judgment upon the recognizance, the surety may pay the amount named in the bond to the clerk of the court, who shall give the surety a receipt therefor.

As added by P.L.5-1988, SEC.180.

IC 35-33-8.5-9

Liens; real estate; release

Sec. 9. All recognizances, taken to secure the appearance of a defendant in the circuit court to answer a criminal charge, shall be immediately recorded by the clerk of said court in the order book and entered in the judgment docket of said court, and from the date of such recording and entry such recognizance shall be a lien upon all the real estate in such county owned by the several obligors. If the real estate owned by any one or more of said obligors be situated in any county or counties of the state of Indiana, other than that in which such prosecution is pending, it shall then be the duty of the clerk of the court where said action is pending, upon order of such court and as such court may direct, to immediately transmit to the clerk of the circuit court of the county, or counties, where said real estate is situated, a certified copy of said recognizance, and the clerk

or clerks, to whom such copies are so certified, shall immediately, upon receipt thereof, record the same and enter them upon the judgment docket of the circuit court of such county, in the same manner as required of the clerk of the court wherein said cause is pending, and the same shall become a lien upon all the real estate in such county, or counties, owned by any one or more of said obligors, in the same manner and to the same extent as if said lands were situated in the county where said cause is pending. The clerk to whom such document is transmitted shall be entitled to charge and collect the sum of one dollar ($1) for the services herein required of the clerk, which sum shall be paid by the defendant or the defendant's obligors, and which shall accompany said certified copy. Upon the final determination of said cause and the full and complete compliance with all of the requirements and conditions of said recognizance upon the part of the defendant, the court wherein said cause was determined shall order the release of all liens created by said recognizance as herein provided, and the clerk of said court shall transmit to the clerk of the circuit court of each county wherein said lien may have been recorded, as herein provided, and such order when recorded in any of said counties shall operate as a full and complete release thereof as to all lands of such obligors situated in any such county. The fee of any clerk for recording any such release shall be fifty cents ($0.50), which fee shall be paid by the obligor whose lands are thereby affected, and shall accompany the copy of such order when transmitted by the clerk of said court. Judgments, if any, rendered as in this article provided, in the event of the forfeiture of any recognizance bond affected by this article, shall bind and be a lien upon all the real estate of the principal and sureties, within the county in which such judgment is rendered, from the date of such entry and recording of such recognizance in the clerk's office, the date of which lien shall be stated in such judgment of the court. A transcript of such judgment shall also be filed in the office of the clerk of the circuit court of each other county, if any, where such recognizance may have been recorded as herein provided, and when so recorded shall be a lien upon all the lands of any obligor therein situated, from the date of the recording of such recognizance bond, in like manner as in the county of original jurisdiction, as herein provided, and shall be without relief from valuation or appraisement laws. Should such surety be relieved from liability from such bond as by law provided, such clerk shall proceed to release from the lien provided herein all the surety's such real estate as though such case had been completed and the case finally determined.

As added by P.L.5-1988, SEC.180.

IC 35-33-8.5-10

Subrogation

Sec. 10. Whenever any person has been compelled to pay to any prosecuting attorney, clerk of the court, or sheriff, under mere color of judicial proceedings in attachment or garnishment at the suit of the

state, the amount of any forfeited recognizance, such person so paying shall, from the date of such payment, be subrogated as against the recognizors in such recognizance, to all the rights of the state under such recognizance, and shall have a cause of action against such recognizors for the amount so paid, as if such recognizance and all the rights of the state under the same had been assigned by the state to the person or persons so paying, at the date of such payment.
As added by P.L.5-1988, SEC.180.

IC 35-33-8.5-11
Subrogation; enforcement; costs

Sec. 11. Whenever any claim or claims to which any person is subrogated under section 10 of this chapter shall be sought to be enforced by any action or legal proceedings, the proper prosecuting attorney shall be made a party to the action or proceedings, to answer as to the fact of such payment and to protect the interests of the state in such action or proceedings: provided, that nothing in this section or section 10 of this chapter shall, in any event, create any liability or authorize judgment against the state, or render the state, or the attorney, liable for any costs (including fees) in the action or proceedings.
As added by P.L.5-1988, SEC.180. Amended by P.L.106-2010, SEC.10.

IC 35-33-8.5-12
Sheriff; process; powers and duties

Sec. 12. The sheriff must return every process issued to the sheriff with the sheriff's doings fully endorsed thereon, and every process, judgment and commitment of the circuit and criminal courts must be executed by the sheriff.
As added by P.L.5-1988, SEC.180.

IC 35-33-9

Chapter 9. Bail Upon Appeal

IC 35-33-9-1

Discretion of court; excepted felonies

Sec. 1. A person convicted of an offense who has appealed or desires to appeal the conviction may file a petition to be admitted to bail pending appeal. The person may be admitted to bail pending appeal at the discretion of the court in which the case was tried, but he may not be admitted to it if he has been convicted of a Class A felony or a felony for which the court may not suspend the sentence under IC 35-50-2-2.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-9-2

Petition; filing

Sec. 2. When a person has been sentenced to a term of imprisonment and has filed an appeal, that person may file a petition for bail pending appeal unless he is barred from admission to bail pending appeal by section 1 of this chapter. The petition must be filed in the court in which the case was tried, and a copy shall be sent to the prosecuting attorney of the circuit where the judgment was rendered.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-9-3

Bond; conditions of undertaking

Sec. 3. (a) The sureties on all appeal bonds must possess the qualifications that are required of bail in criminal cases, except the undertaking must also include the defendant's promise to:

(1) faithfully prosecute his appeal;

(2) abide by the order and judgment of the court to which the cause is appealed;

(3) surrender himself in execution of the judgment if the appeal be affirmed or dismissed; and

(4) surrender himself to the trial court if required by the judgment upon reversal.

(b) If undertaking is given before an appeal has been perfected, the undertaking must include a promise that an appeal will be perfected by the defendant.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-9-4

Amount; order; surrender by surety and recommitment; failure to comply

Sec. 4. (a) The court in which a petition to be admitted to bail is filed shall:

(1) fix bail in a reasonable amount, considering the nature of the offense and the penalty adjudged, as will insure the compliance by the defendant with the terms of the bond; and

(2) make an order containing the terms of bail.

If the defendant furnishes bail to the satisfaction of the court, he shall be discharged from custody until he is required to surrender himself according to the terms of the order.

(b) The sureties on the bail bond may, at any time, surrender the principal of the bond to the court and be released from liability. If the court so orders, the defendant shall immediately be committed to the institution to which he was sentenced unless the court approves a new bond.

(c) If the defendant fails to comply with the terms of the bail bond:

(1) the bond shall be forfeited in the court from which the appeal was taken;

(2) a warrant shall be immediately issued for his arrest; and

(3) upon arrest, he shall be committed to the institution to which he was originally sentenced.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-9-5

Stay of judgment; commencement of sentence upon surrender; prior time credit

Sec. 5. (a) Whenever any defendant is admitted to bail under the provisions of this chapter, the judgment of conviction shall be stayed until the appeal is disposed of. If the appeal is dismissed or the judgment affirmed, the term of imprisonment prescribed in the judgment shall commence to run from the time the defendant surrenders himself according to the terms of the bond.

(b) If the defendant is surrendered by his sureties under section 4, the judgment shall commence to run from the time of the surrender, and the defendant shall be immediately confined in the institution to which he was committed by the original sentence.

(c) If a defendant is admitted to bail under this chapter after he has commenced to serve his sentence, and his appeal is dismissed or the judgment from which the appeal was taken is affirmed, the defendant shall have credit on his term of sentence for the time he served before being admitted to bail. During the time any defendant is released from custody under this chapter, the judgment of conviction shall be stayed.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-9-6

Penalty of fine only; stay

Sec. 6. Where a penalty in a criminal case is a fine only, the defendant may have a stay of execution on appeal as provided by law.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-9-7

Repealed

(*Repealed by P.L.65-2004, SEC.23.)*

IC 35-33-9-8

Credit card service fee

Sec. 8. In addition to any other condition of bail imposed under this chapter, a defendant who posts bail by means of a credit card shall pay the credit card service fee under IC 33-37-6.

As added by P.L.65-2004, SEC.12.

IC 35-33-10

Chapter 10. Securing Attendance of Defendants and Uniform Extradition Act

IC 35-33-10-1

Defendant in custody; order to appear; defendant at liberty; notice to appear; arrest upon failure to appear

Sec. 1. (a) When a criminal action is pending against a defendant and the defendant is in the custody of any law enforcement officer, the court may order the law enforcement officer to produce the defendant before the court for prosecution. If the defendant is at liberty within the state as a result of an order releasing him on his own recognizance or on bail, the court may cause the defendant or his attorney to be notified to appear at a designated time. Upon failure to appear after such notification, the court may issue a warrant for the defendant's immediate arrest.

(b) The method selected to secure the attendance of the defendant shall not be a ground for objection at any stage of the criminal proceeding if the method is allowed by this article.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-10-2

Defendant confined under judgment or court order or awaiting trial for another offense; order or warrant of detainer

Sec. 2. (a) When an indictment or information is pending against a defendant confined in this state under a judgment or court order, the court with jurisdiction over the pending criminal action shall, after application by the prosecuting attorney, order that the defendant be produced before the court for prosecution. The defendant shall not be entitled to release pending trial on the indictment or information. The court may order that the defendant be surrendered to the sheriff of the county in which the court issuing the order is located. The court may order the sheriff to convey the defendant from the institution and commit the defendant to the jail or to another place of custody specified in the order. If the proceeding is delayed, the court may order the defendant returned temporarily to the institution until the presence of the defendant before the court is required.

(b) When an indictment or information is pending against a defendant:

(1) confined in an institution within this state pending trial for another offense; or

(2) who has been released by order of another court pending trial before that court for another offense;

the court shall, upon motion of the prosecuting attorney, issue a warrant of detainer to the court before which the other prosecution is pending. The court to which the order of detainer is issued, shall, upon termination of the proceedings before the court, deliver custody of the defendant to the sheriff of the county in which the court issuing the warrant is situated. Upon delivery, the court shall return the warrant to the court of issuance showing such fact. A duplicate

copy of the return shall be served upon the prosecuting attorney who requested the issuance of the warrant.
As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-10-3
Uniform Criminal Extradition Act

Sec. 3. (1) Where appearing in this section, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor and any person performing the functions of governor in a state other than this state. The term "state", referring to a state other than this state, refers to any other state or territory, organized or unorganized, of the United States of America.

(2) Subject to the qualifications of this section and the provisions of the Constitution of the United States controlling, and acts of congress in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, a felony, or other crime who has fled from justice and is found in this state.

(3) No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

(4) When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

(5) A warrant of extradition shall not be issued unless the documents presented by the executive authority making the demand show that:

(a) except in cases arising under subsection 7 of this section, the accused was present in the demanding state at the time of the commission of the alleged crime, and thereafter fled from the state;

(b) the accused is now in this state; and

(c) he is lawfully charged by indictment found or by information filed by a prosecuting officer and supported by affidavit to the facts, or by affidavit made before a magistrate in that state, with having committed a crime under the laws of

that state, or that he has been convicted of a crime in that state and has escaped from confinement or has broken the terms of his bail, probation, or parole, or that the sentence or some portion of it otherwise remains unexecuted and that the person claimed has not been discharged or otherwise released from the sentence.

(6) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated. The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in subsection 24 of this section with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

(7) The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in subsection 5 of this section with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand; and the provisions of this section not otherwise inconsistent shall apply to such cases, notwithstanding that the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

(8) If the governor shall decide that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to a sheriff, marshal, coroner, or other person whom he may think fit to entrust with the execution thereof; and the warrant must substantially recite the facts necessary to the validity of its issue.

(9) Such warrant shall authorize the officer or other person to whom directed to arrest the accused at any place where he may be found within the state, to command the aid of all sheriffs and law enforcement officers in the execution of the warrant, and to deliver the accused subject to the provision of this section, to the duly authorized agent of the demanding state.

(10) Every such officer or other person empowered to make the arrest shall have the same authority in arresting the accused to command assistance therein, as sheriffs and other officers have by law in the execution of any criminal process directed to them, with the like penalties against those who refuse their assistance.

(11) No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he has been informed of the demand made for his surrender, of the crime with which he is charged and

that he has the right to demand legal counsel; and if the prisoner, his friends, or counsel shall state that he or they desire to test the legality of the arrest, the prisoner shall be taken forthwith before a judge of a court of record in this state who shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the public prosecuting officer of the county in which the arrest is made and in which the accused is in custody and to the said agent of the demanding state.

(12) An officer who recklessly delivers to the agent for extradition of the demanding state a person in his custody under the governor's warrant in disobedience to subsection 11 of this section commits a Class B misdemeanor.

(13) The officer or person executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the person having charge of him is ready to proceed on his route, such person being chargeable with the expense of keeping.

(14) Whenever any person within this state shall be charged on the oath of any credible person before any judge of this state with the commission of a crime in any other state, and, except in cases arising under subsection 7 of this section, with having fled from justice, or whenever complaint shall have been made before any judge in this state setting forth on the affidavit of any credible person in another state that a treason or felony has been committed in such other state and that the accused has been charged in such state with the commission of the treason or felony, and, except in cases arising under subsection 7 of this section, has fled therefrom and is believed to have been found in this state, the judge shall issue a warrant directed to the sheriff of the county in which the oath or complaint is filed directing him to apprehend the person charged, wherever he may be found in this state, and bring him before the same or any other judge, who may be convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(15) The arrest of a person may be lawfully made also by an officer or a private citizen without a warrant upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one (1) year; but when so arrested the accused must be taken before a judge with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in the last preceding subsection; and thereafter his answer shall be heard as if he has been arrested on warrant.

(16) If from the examination before the judge, it appears that the person held is the person charged with having committed the crime alleged and that he probably committed the crime, and, except in

cases arising under subsection 7 of this section, that he has fled from justice, the judge shall commit him to jail by a warrant reciting the accusation for such time specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in subsection 17 of this section, or until he shall be legally discharged.

(17) Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, the judge must admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the governor of this state. The prisoner shall not be admitted to bail after issuance of a warrant by the governor of this state.

(18) If the accused is not yet arrested under warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, the judge may discharge him or may recommit him to a further day, or may again take bail for his appearance and surrender, as provided in subsection 17 of this section; and at the expiration of the second period of commitment, or if he has been bailed and appeared according to the terms of his bond or undertaking, the judge may either discharge him, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day.

(19) If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the court, by proper order, shall declare the bond forfeited; and recovery may be had thereon in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

(20) If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor at his discretion either may surrender him on the demand of the executive authority of another state or may hold him until he has been tried and discharged, or convicted and punished in this state.

(21) The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceedings after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

(22) The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

(23) Whenever the governor of this state shall demand a person charged with a crime in this state from the chief executive of any other state or from the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive

such demand under the laws of the United States, he shall issue a warrant under the seal of this state to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

(24) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney of the county in which the offense is committed shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place, and circumstances of its committal, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial, and that the proceeding is not instituted to enforce a private claim. The application shall be verified by affidavit, shall be executed in triplicate, and shall be accompanied by three (3) certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the magistrate, stating the offense with which the accused is charged. The prosecuting attorney may also attach such further affidavits and other documents in triplicate as he shall deem proper to be submitted with such application. One (1) copy of the application with the action of the governor indicated by the endorsement thereon and one (1) of the certified copies of the indictment or complaint or information and affidavit shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

(25) The expenses shall be paid out of the general fund of the county treasury of the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, as now provided by law, for all necessary travel in returning such prisoner.

(26) A person brought into this state on extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer for which he is returned until he has been convicted in the criminal proceeding, or if acquitted, until he has had ample opportunity to return to the state from which he was extradited.

(27) After a person has been brought back to this state upon extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition.

(28) This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(29) Nothing in this section contained shall be deemed to constitute a waiver by the state of its right, power, or privilege to regain custody of such person by extradition proceedings or

otherwise for the purpose of trial, sentence, or punishment for any crime committed within this state, nor shall any proceedings had under this section which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges, or jurisdiction in any way whatsoever.

(30) This section may be cited as the Uniform Criminal Extradition Act.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.178-1984, SEC.1.

IC 35-33-10-4

Agreement on detainers; defendants confined in other jurisdiction of United States

Sec. 4. Securing attendance of defendants confined as prisoners in institutions of other jurisdictions of the United States–Agreement on detainers.

Text of the Agreement of Detainers

The contracting states solemnly agree that:

Article 1

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article 2

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time he initiates a request for final disposition pursuant to Article 3 of this section or at the time that a request for custody or availability is initiated pursuant to Article 4 hereof.

(c) " Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article 3 or Article 4 hereof.

Article 3

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or

complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty (180) days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of correction or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of correction or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, information or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of correction or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of

imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article 4

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article 5 (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty (30) days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody of availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty (120) days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or

ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article 5 (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article 5

(a) In response to a request made under Article 3 or Article 4 hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article 3 of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article 3 or Article 4 hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by

this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivision, as to the payment of costs, or responsibilities therefor.

Article 6

(a) In determining the duration and expiration dates of the time periods provided in Articles 3 and 4 of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article 7

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article 8

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article 9

1. This agreement shall be liberally construed so as to effectuate

its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

2. The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction.

3. All courts, departments, agencies, officers and employees of this state and its political subdivision are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes.

4. Escape from custody while in another state pursuant to the agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainers and shall be punishable in the same manner as an escape from said institution.

5. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate hereof whenever so required by the operation of the agreement on detainers.

6. The governor is hereby authorized and empowered to designate an administrator who shall perform the duties and functions and exercise the powers conferred upon such person by Article 7 of the agreement on detainers.

7. In order to implement Article 4(a) of the agreement on detainers, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor within thirty (30) days, and to contest the legality of his delivery.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-10-5

Defendants confined in federal institutions

Sec. 5. Securing Attendance of Defendant Confined in Federal Institutions. (1) A defendant against whom a criminal action is

pending in a court of record of this state, and who is confined in a federal prison or other institution either within or outside this state, may, with the consent of the attorney general of the United States, be produced in such court for the purpose of criminal prosecution, pursuant to the provisions of:

(a) Section four thousand eighty-five of title eighteen of the United States Code as in effect on July 26, 1973; or

(b) subsection 2 of this section.

(2) When such a defendant is in federal custody as specified in subsection 1, a court in which the criminal action against such defendant is pending, may, upon application of the prosecuting attorney of such county, issue a certificate, known as a writ of habeas corpus ad prosequendum, addressed to the attorney general of the United States, certifying that such defendant has been charged by indictment or information filed against him in the specified court with the offense or offenses alleged therein, and that attendance of the defendant in such court for the purpose of criminal prosecution thereon is necessary in the interest of justice and requesting the attorney general of the United States to cause such defendant to be produced in such court, under custody of a federal public servant, upon a designated date and for a period of time necessary to complete the prosecution. Upon issuing such a certificate, the court may deliver it, or cause or authorize it to be delivered, together with a certified copy of the indictment or information upon which it is based, to the attorney general of the United States or to his representative authorized to entertain the request.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-10-6

Defendants outside United States

Sec. 6. Securing Attendance of Defendants Who Are Outside The United States. (1) When a criminal action for a crime committed in this state is pending in a court of this state with jurisdiction over the crime against a defendant who is in a foreign country with which the United States has an extradition treaty, and when the indictment or information charges a crime which is specified in such treaty as an extraditable one, the prosecuting attorney of the county in which such crime was allegedly committed may make an application to the governor, requesting him to make an application to the president of the United States to institute extradition proceedings for the return of the defendant to this country and state for the purpose of prosecution of such action. The prosecuting attorney's application must comply with any rules, regulations and guidelines established by the governor for such applications and must be accompanied by all the documents required by such rules, regulations and guidelines.

(2) Upon receipt of the prosecuting attorney's application, the governor if satisfied that the defendant is in the foreign country in question, that the crime charged is an extraditable one pursuant to the treaty in question, and that there are no factors or impediments which in law preclude such an extradition, may in his discretion make an

application, addressed to the secretary of state of the United States, requesting that the president of the United States institute extradition proceedings for the return of the defendant from such foreign country. The governor's application must comply with any rules, regulations and guidelines established by the secretary of state for such applications and must be accompanied by all the documents required by such rules, regulations and guidelines.

(3) If the governor's application is granted and the extradition is achieved or attempted, all expenses incurred therein must be borne by the county from which the application emanated.

(4) The provisions of this section apply equally to extradition or attempted extradition of a person who is a fugitive following the entry of a judgment of conviction against him in a criminal court of this state.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-10-7

Corporate defendants

Sec. 7. Securing Attendance of Corporate Defendants. (1) The court attendance of a corporation for purposes of commencing or prosecuting a criminal action against it may be accomplished by the issuance and service of a summons.

(a) A corporation shall be deemed in attendance for purposes of commencing or prosecuting a criminal action against it whenever an officer, director or counsel for such corporation is present. If such officer, director or counsel fails or refuses to appear, the court shall proceed with trial and judgment.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-11

Chapter 11. Emergency Transfer of Certain Jail Inmates

IC 35-33-11-1

Inmate in county jail in imminent danger of serious bodily injury or death or represents substantial threat to safety of others

Sec. 1. Upon motion by the:

(1) sheriff;
(2) prosecuting attorney;
(3) defendant or his counsel;
(4) attorney general; or
(5) court;

alleging that an inmate in a county jail awaiting trial is in danger of serious bodily injury or death or represents a substantial threat to the safety of others, the court shall determine whether the inmate is in imminent danger of serious bodily injury or death, or represents a substantial threat to the safety of others. If the court finds that the inmate is in danger of serious bodily injury or death or represents a substantial threat to the safety of others, it shall order the sheriff to transfer the inmate to another county jail or to a facility of the department of correction designated by the commissioner of the department as suitable for the confinement of that prisoner and provided that space is available. For the purpose of this chapter, an inmate is not considered in danger of serious bodily injury or death due to an illness or other medical condition.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-11-2

Posttransfer hearing

Sec. 2. The inmate or receiving authority is entitled to a posttransfer hearing upon request. The inmate may refuse a transfer if the only issue is his personal safety.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-11-3

Overcrowding or inadequacy of local penal facility

Sec. 3. Upon petition by the sheriff alleging that:

(1) the local penal facility is overcrowded or otherwise physically inadequate to house inmates; and
(2) another sheriff or the commissioner of the department of correction has agreed to accept custody of inmates from the sheriff;

the court may order inmates transferred to the custody of the person who has agreed to accept custody. Whenever a transfer order is necessary under this section, only inmates serving a sentence after conviction for a crime may be transferred, unless the overcrowding or inadequacy of the facility also requires transfer of inmates awaiting trial or sentencing.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-11-4

Return to county jail

Sec. 4. Whenever the court finds that the circumstances which necessitated a transfer under this chapter no longer exist, it shall order the sheriff to return the inmate to the county jail from which he was transferred.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-11-5

Transportation to and from facilities; payment of costs by county

Sec. 5. When an inmate is transferred under this chapter, the sheriff of the county from which the inmate is transferred shall be responsible for transporting the inmates to and from the other facility. If the sheriff is unable to adequately protect the inmate during the transfer, the sheriff or the court may request assistance from any other law enforcement agency. The county which transfers an inmate shall pay:

(1) a per diem of the average daily cost of housing a prisoner at the facility to which the inmate has been assigned; and

(2) any additional costs reasonably necessary to maintain the health and welfare of a transferred inmate.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-11-6

Delivery of data with prisoner

Sec. 6. When an inmate is transferred under this chapter, the sheriff of the county from which the inmate is received shall deliver with the prisoner a certified copy of the order, a current medical report, if available, and other data relating the proper medical care and classification of the inmate that is established as necessary by written policy of the department of correction or the receiving institution, pertaining to the health, safety, and proper confinement of safekeepers.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-11-7

Notice of subsequent transfer

Sec. 7. The department of correction will notify the sheriff of the county and judge of the court from which the inmate was transferred of any subsequent transfer of a prisoner within the department of correction necessary to assure the purposes of the original transfer.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-11-8

Assignment of prisoners serving sentence to program or work

Sec. 8. Prisoners serving a sentence after a conviction and transfer to the department or other receiving institution may be assigned to any program or work consistent with procedures and requirements for other prisoners committed to the department or other receiving institution.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-11-9

Assignment of prisoners awaiting trial to program or work

Sec. 9. Prisoners awaiting trial may be allowed to work or be assigned to programs consistent with the rights regarding prisoners awaiting trial.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-11-10

Discipline of prisoners awaiting trial

Sec. 10. The department of correction or other receiving sheriff may discipline prisoners awaiting trial as authorized under IC 35-50.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-12
Repealed

(*Repealed by P.L.139-1999, SEC.2.)*

IC 35-33-13
Repealed

(*Repealed by P.L.305-1987, SEC.38.)*

IC 35-33-14

Chapter 14. County Extradition Fund

IC 35-33-14-1

Establishment

Sec. 1. There is established in each county a county extradition fund.

As added by P.L.355-1989(ss), SEC.15.

IC 35-33-14-2

Purpose

Sec. 2. The county extradition fund is established for the purpose of providing funding to offset the costs of extraditing criminal defendants. Money in the fund may not be used for any other purpose.

As added by P.L.355-1989(ss), SEC.15.

IC 35-33-14-3

Administration

Sec. 3. The county auditor shall administer the fund.

As added by P.L.355-1989(ss), SEC.15.

IC 35-33-14-4

Reversion of fund money

Sec. 4. Money in the fund at the end of a particular calendar year does not revert to any other fund, but remains in the county extradition fund.

As added by P.L.355-1989(ss), SEC.15.

IC 35-33-14-5

Composition of fund

Sec. 5. The fund consists of the portion of late surrender fees deposited in the fund under IC 27-10-2-12(i).

As added by P.L.355-1989(ss), SEC.15.

IC 35-33.5

ARTICLE 33.5. INTERCEPTION OF TELEPHONIC OR TELEGRAPHIC COMMUNICATIONS

IC 35-33.5-1

Chapter 1. Applicability and Definitions

IC 35-33.5-1-1

Inapplicable to ordinary course of business

Sec. 1. This article does not apply to the ordinary course of business pertaining to the operation of a business entity that provides or facilitates electronic communications in accordance with the business entity's tariffs.

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.1.

IC 35-33.5-1-2

Applicability of definitions

Sec. 2. The definitions in this chapter apply throughout this article.

As added by P.L.161-1990, SEC.3.

IC 35-33.5-1-3

"Designated offense" defined

Sec. 3. "Designated offense" means the following:

(1) A Class A, Class B, or Class C felony that is a controlled substance offense (IC 35-48-4).

(2) Murder (IC 35-42-1-1).

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

(4) Criminal confinement (IC 35-42-3-3).

(5) Robbery (IC 35-42-5-1).

(6) Arson (IC 35-43-1-1).

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

(8) Human and sexual trafficking crimes under IC 35-42-3.5.

(9) Escape as a Class B felony or Class C felony (IC 35-44-3-5).

(10) An offense that relates to a weapon of mass destruction (as defined in IC 35-41-1-29.4).

(11) An attempt or conspiracy to commit an offense described in subdivisions (1) through (10).

(12) An offense under the law of the United States or in another state or country that is substantially similar to an offense described in subdivisions (1) through (11).

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.2; P.L.3-2008, SEC.247.

IC 35-33.5-1-3.5

"Electronic communication" defined

Sec. 3.5. "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, oral communication, digital information, or intelligence of any nature transmitted in whole or in

part by a wire, a radio, or an electromagnetic, a photoelectronic, or a photo-optical system.
As added by P.L.105-2007, SEC.3.

IC 35-33.5-1-4
"Extension" defined

Sec. 4. "Extension" means an extension of the duration for which a warrant remains effective under this article.
As added by P.L.161-1990, SEC.3.

IC 35-33.5-1-5
"Interception" defined

Sec. 5. "Interception" means the intentional recording or acquisition of the contents of an electronic communication by a person other than a sender or receiver of that communication, without the consent of the sender or receiver, by means of any instrument, device, or equipment under this article. This term includes the intentional recording or acquisition of communication through the use of a computer or a FAX (facsimile transmission) machine. The term does not include recording or acquiring the contents of a radio transmission that is not:

(1) scrambled or encrypted;
(2) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;
(3) carried on a subcarrier or other signal subsidiary to a radio transmission;
(4) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or
(5) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.4.

IC 35-33.5-1-6
"Warrant" defined

Sec. 6. "Warrant" means a warrant authorizing the interception of electronic communication under this article.
As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.5.

IC 35-33.5-2

Chapter 2. Applications, Procedures, and Reports

IC 35-33.5-2-1

Application for warrant by prosecuting or designated deputy prosecuting attorney; coapplicant; interception equipment under control of state police; reimbursement to state police

Sec. 1. (a) A prosecuting attorney or, if the prosecuting attorney is unavailable, a chief deputy prosecuting attorney specifically authorized by the prosecuting attorney, may submit an application for a warrant or an extension to a circuit or superior court where:

(1) the county that the prosecuting attorney represents is located; and

(2) the communication subject to the warrant is anticipated to be sent or received.

The prosecuting attorney or authorized chief deputy prosecuting attorney may not delegate the responsibility of applying for a warrant or an extension to another deputy prosecuting attorney.

(b) One (1) of the following persons must serve as a coapplicant for a warrant or an extension under subsection (a):

(1) The superintendent of the state police department.

(2) The police chief of a consolidated city where the communication subject to the warrant is anticipated to be sent or received.

(3) The sheriff of the county containing a consolidated city where the communication subject to the warrant is anticipated to be sent or received.

(c) Only the state police department may install equipment used to intercept an electronic communication under this chapter.

(d) The state police department may:

(1) operate or monitor equipment used to intercept an electronic communication; or

(2) if the interception of an electronic communication is performed on behalf of another law enforcement agency, permit the law enforcement agency to operate or monitor the equipment under the supervision of the department.

(e) The superintendent of the state police department may terminate an interception under this chapter if the superintendent of the state police department determines that there is probable cause to believe that the allegations concerning the offense that are the basis of the interception are without merit. If an interception of an electronic communication is terminated under this subsection, the law enforcement agency that is the co-applicant for the interception shall reimburse the state police department for the department's expenses incurred in connection with the application for interception, including the costs of removing equipment related to the interception.

(f) If the interception of an electronic communication is performed on behalf of another law enforcement agency, the law enforcement agency shall reimburse the department for the

department's expenses in connection with the installation, operation, and maintenance of equipment used to intercept an electronic communication.

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.6.

IC 35-33.5-2-2

Application or extension in writing and upon oath of affirmation; information required

Sec. 2. (a) Except as provided in section 3.5 of this chapter, an application for a warrant or extension must be made in writing and upon oath or affirmation. Each application must also include the following:

(1) The identity of the persons submitting the application.

(2) An affidavit setting forth the facts relied upon by an applicant to show why a warrant should be issued or an extension granted, including the following:

(A) Facts establishing probable cause for the belief that a designated offense allegedly has been, is being, or may be committed.

(B) A description of the nature and location of the facility, place, or device from which the communication is to be intercepted.

(C) The identity, if known, of the person allegedly committing the designated offense whose communication is to be intercepted.

(D) A description of the type of communication to be intercepted.

(3) A statement specifying that other investigative procedures:

(A) have been tried and failed; or

(B) may not succeed or are too dangerous to attempt.

(4) A statement of the duration necessary for the interception. However, if the applicant requests that the authorization for interception not automatically terminate once the described type of communication is initially obtained, the application must also include a description of facts supporting the belief that additional communications of the same type will occur.

(5) A statement of facts and any action taken by the court concerning any previous application for a warrant or an extension that:

(A) has been made to a court under this article;

(B) sought to obtain communications from any of the same persons, places, or facilities as the current application; and

(C) is known to exist by the persons making the current application.

(6) If it is reasonably necessary to make a secret entry upon private property to install an interception device, a statement describing the following:

(A) The private property.

(B) Who owns and who occupies the private property.

(C) The reasons necessitating secret entry.

(b) In addition to the information required in subsection (a), if an application is for an extension, the application must contain a statement setting forth the results obtained from the original warrant or a reasonable explanation of the failure to obtain results under the original warrant.

(c) The court may require an applicant to furnish additional testimony or evidence in support of an application.

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.7.

IC 35-33.5-2-3

Allegations of fact; basis; information required; supporting affidavits

Sec. 3. (a) Allegations of fact in an application for a warrant submitted under this chapter may be based either upon the personal knowledge of the applicant or upon information and belief.

(b) If the applicant personally knows the facts alleged, the applicant shall state that the affidavit is based upon personal knowledge.

(c) If the allegations of fact are derived in whole or in part from the statements of persons other than the applicant:

(1) the sources of the applicant's information and belief must be either disclosed or described;

(2) the application must contain facts establishing the existence and reliability of:

(A) any informant; and

(B) information supplied by any informant; and

(3) the basis of an informant's knowledge or belief must be disclosed, as far as possible.

(d) If the applicant's information and belief is derived from:

(1) tangible evidence; or

(2) recorded oral evidence;

the applicant shall attach to the application a copy or detailed description of the tangible evidence or recorded oral evidence.

(e) Affidavits of persons other than the applicant may be attached to the application if the affidavits of other persons tend to support any fact or conclusion alleged in the application. An affidavit attached to the application under this subsection may be based either on personal knowledge of the affiant or on information and belief. However, if the attached affidavit is based on information and belief the affiant shall state the source of, and the reason for, the information and belief.

As added by P.L.161-1990, SEC.3.

IC 35-33.5-2-3.5

Alternative procedure for issuance of warrant; requirement for recording and transcription

Sec. 3.5. (a) A court may issue a warrant without the affidavit required under section 2 of this chapter, if the court receives sworn

testimony of the same facts required for an affidavit:

(1) in a nonadversarial, recorded hearing before the judge;

(2) orally by telephone or radio; or

(3) in writing by facsimile (fax) transmission.

In addition, the prosecuting attorney or, if the prosecuting attorney is unavailable, a chief deputy prosecuting attorney specifically authorized by the prosecuting attorney, shall inform the court that a person described in section 1(b) of this chapter has agreed to serve as a coapplicant of the warrant. The prosecuting attorney or authorized chief deputy prosecuting attorney may not delegate the responsibility of applying for a warrant to another deputy prosecuting attorney.

(b) After the affiant recites the facts required for an affidavit and verifies the facts recited under penalty of perjury, a prosecuting attorney or chief deputy prosecuting attorney who applies for a warrant under subsection (a)(2) shall read to the court from a warrant form on which the prosecuting attorney or chief deputy prosecuting attorney enters the information read by the affiant to the court. The court may direct the prosecuting attorney or chief deputy prosecuting attorney to modify the warrant. If the court agrees to issue the warrant, the court shall direct the prosecuting attorney or chief deputy prosecuting attorney to sign the judge's name to the warrant, adding the time of the issuance of the warrant.

(c) After transmitting an affidavit, a prosecuting attorney or chief deputy prosecuting attorney who applies for a warrant under subsection (a)(3) shall transmit to the court a copy of a warrant form completed by the prosecuting attorney or chief deputy prosecuting attorney. The court may modify the transmitted warrant. If the court agrees to issue the warrant, the court shall transmit to the applicant a duplicate of the warrant. The judge shall then sign the warrant retained by the court, adding the time of the issuance of the warrant.

(d) If a warrant is issued under subsection (a)(2), the court shall record the conversation and order the court reporter to type or transcribe the recording for entry in the record. The court shall certify the recording, the transcription, and the warrant retained by the court for entry in the record.

(e) If a warrant is issued under subsection (a)(3), the court shall order the court reporter to retype or copy the facsimile transmission for entry in the record. The court shall certify the transcription or copy and warrant retained by the court for entry in the record.

(f) The court reporter shall notify the prosecuting attorney or chief deputy prosecuting attorney who received a warrant under subsection (a)(2) or (a)(3) when the transcription or copy required under this section is entered in the record. The prosecuting attorney or chief deputy prosecuting attorney shall sign the typed, transcribed, or copied entry upon receiving notice from the court reporter.

As added by P.L.105-2007, SEC.8.

IC 35-33.5-2-4

Reports to legislative council on warrants or extensions granted;

reports on arrests or convictions

Sec. 4. (a) Not later than December 31 of each year, a prosecuting attorney who during that year:

(1) has received a warrant or an extension; or

(2) represents a county in which an arrest or a conviction has occurred as the result of the warrant or extension;

shall report in an electronic format under IC 5-14-6 the information described in subsection (b) to the legislative council.

(b) A prosecuting attorney shall report the following information under subsection (a):

(1) The information required in section 5 of this chapter.

(2) The number of arrests resulting from an interception made under a warrant or extension and the designated offense for which each arrest was made.

(3) The number of charges filed as a result of an interception.

(4) The number of motions to suppress made with respect to an interception and the number of motions granted or denied.

(5) The number of convictions resulting from an interception, the designated offense for which each conviction was obtained, and a general assessment of the importance of interception in obtaining the convictions.

(6) A general description of the interceptions made under a warrant or an extension, including the following:

(A) The approximate nature and frequency of incriminating communications intercepted.

(B) The approximate nature and frequency of other communications intercepted.

(C) The approximate number of persons whose communications were intercepted.

(D) The approximate nature, amount, and cost of manpower and other resources used in relation to the interceptions.

As added by P.L.161-1990, SEC.3. Amended by P.L.28-2004, SEC.176.

IC 35-33.5-2-5

Reports to executive director of division of state court administration on terminations and denials

Sec. 5. Within twenty-eight (28) days after the termination of a warrant or an extension, or the denial of an application for a warrant or an extension, the court to which application for the warrant or an extension was made shall submit a report to the executive director of the division of state court administration (IC 33-24-6-1) containing the following information:

(1) The fact that a warrant or an extension was applied for.

(2) The type of warrant or extension applied for.

(3) The fact that the application for a warrant or an extension was granted, modified, or denied.

(4) The duration authorized for interception by the warrant and the number and duration of any extensions.

(5) The designated offense for which the warrant or extension

was issued or applied for.

(6) The identity of the persons who applied for the warrant or extension.

(7) The nature and location of the place, facility, or device from which communications were to be intercepted.

(8) The reasons for withholding notice under IC 35-33.5-4-3, if the notice was withheld.

As added by P.L.161-1990, SEC.3. Amended by P.L.98-2004, SEC.142; P.L.105-2007, SEC.9.

IC 35-33.5-3

Chapter 3. Duties of the Court

IC 35-33.5-3-1

Authorization of warrant or extension; determinations by court; examinations under oath; in camera inquiries

Sec. 1. (a) A court may enter an order authorizing a warrant or an extension if, based on the facts submitted by an applicant, the court determines the following:

(1) Probable cause exists to believe that the person whose communications are to be intercepted is committing, has committed, or may commit a designated offense.

(2) Communications concerning the designated offense identified in the warrant application are likely to be obtained through the requested interception.

(3) Exigent circumstances are present that require the preservation of secrecy where there is a reasonable likelihood that a continuing investigation would be prevented if a person subject to investigation was alerted to the fact that the investigation was occurring.

(4) A place, facility, or device from which communications are to be intercepted is:

(A) being used or about to be used by;

(B) listed in the name of;

(C) leased to; or

(D) commonly used by;

a person who is committing, has committed, or may commit a designated offense.

(5) Investigative procedures:

(A) have been tried but have failed;

(B) are unlikely to succeed; or

(C) are too dangerous to attempt.

(b) In making a determination of probable cause required under subsection (a)(1) before a warrant may be issued by the court, the court may examine under oath any person. The court shall order the court reporter to:

(1) prepare a verbatim transcript of an examination made under this subsection; and

(2) attach the transcript to the application for the warrant.

(c) In making a determination of probable cause required under subsection (a)(1) before a warrant may be issued by the court, if there is no corroborative evidence offered in support of the allegation of probable cause, the court shall inquire in camera concerning:

(1) the identity of any informants; or

(2) any additional information the court considers relevant to a determination of probable cause to believe that the person whose communications are to be intercepted is committing, has committed, or may commit a designated offense.

(d) The court may modify the application and authorize a warrant or an extension that is more limited in authority for interception than

the warrant or extension that was requested by the applicant.
As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.10.

IC 35-33.5-3-2
Information required in warrant

Sec. 2. A court that issues a warrant or an extension shall specify the following information in the warrant:

(1) The identity of the law enforcement agency that the warrant directs to make the interception.

(2) The identity of the person, if known, whose communication is to be intercepted.

(3) The nature and location of the facility, place, or device from which the communication is to be intercepted.

(4) The type of communication to be intercepted and a statement of the designated offense to which the communication relates.

(5) That the interception must be conducted in a manner that minimizes the interception of communication that:

(A) is not relevant to the designated offense; and

(B) is not authorized by the warrant or extension.

(6) That methods required by the court to minimize the interception of irrelevant communications include the immediate termination by a law enforcement officer of the recording of a communication that is clearly irrelevant to the investigation of a designated offense.

(7) The duration during which the interception is authorized, including a statement as to whether the interception automatically terminates once the described communication is initially obtained.

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.11.

IC 35-33.5-3-3
Repealed

(*Repealed by P.L.105-2007, SEC.15.)*

IC 35-33.5-4

Chapter 4. Procedures Regarding Intercepted Communications

IC 35-33.5-4-1

Limitations; mandatory assistance to accomplish interception; compensation

Sec. 1. (a) A court may not authorize interception under a warrant or an extension for a period longer than is necessary to achieve the objective of the warrant or extension. Except as provided in subsection (d), a warrant and each extension may authorize interception for not more than thirty (30) days. A court that issues a warrant or an extension shall order that the authorized interception must:

(1) occur within ten (10) days after the court issues the warrant or extension;

(2) be conducted in a manner that minimizes the interception of a communication that is clearly irrelevant to the investigation of a designated offense; and

(3) terminate upon completion of the authorized objective or within thirty (30) days after the interception begins, whichever occurs first.

(b) A court may grant not more than three (3) extensions.

(c) A warrant or an extension may direct that a person immediately furnish an applicant all information, facilities, and technical assistance within that person's control necessary to accomplish the interception with a minimum of interference with the services that the person is furnishing to the person whose communication is to be intercepted. The applicant shall compensate a person furnishing facilities or technical assistance to the applicant at the prevailing rates.

(d) A warrant issued under IC 35-33.5-2-3.5 expires after twenty-four (24) hours, unless:

(1) the court that issued the warrant established a shorter period of expiration; or

(2) the warrant is extended in accordance with section 2 of this chapter.

A warrant extended in accordance with section 2 of this chapter expires as described in subsection (a).

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.12; P.L.3-2008, SEC.248.

IC 35-33.5-4-2

Progress reports to court

Sec. 2. Whenever a warrant or an extension is issued under this article, the court shall order that reports be submitted to the court indicating the progress that has been made toward the authorized objective and whether continued interception is necessary. The court may establish the times when a report is required.

As added by P.L.161-1990, SEC.3.

IC 35-33.5-4-3

Inventory to party of terminated warrant or extension; information available to person whose communications have been intercepted; postponement of inventory services

Sec. 3. (a) Within sixty (60) days after the termination of a warrant or an extension, the court shall cause to be served upon each person from whom communication was to be intercepted and upon any other party to an interception whom the court determines it is in the interest of justice to serve, an inventory that includes notice of the following:

(1) The date that the application for the warrant or extension was submitted.

(2) The date on which the warrant or extension was granted.

(3) The time during which the interception was authorized.

(4) Whether the type of communication specified in the warrant was intercepted during the authorized time.

(b) The court may make available for inspection, to any person whose communications have been intercepted under a warrant issued under this chapter and who makes a request, any part of the applications, warrants, extensions and recordings that the court determines to be in the interest of justice. On an ex parte showing of good cause to the issuing court, the serving of the inventory required by this section may be postponed.

(c) If a party moves the court for postponement of service of the inventory required under subsection (a) on the grounds that secrecy is essential, the moving party shall:

(1) submit the motion to the court in writing or by transcription; and

(2) attach to the motion a statement of reasons for the party's belief that secrecy of the documents is essential.

As added by P.L.161-1990, SEC.3.

IC 35-33.5-4-4

Suppression of evidence; basis

Sec. 4. (a) Upon a motion to suppress evidence arising from a warrant, a court may suppress the contents of or evidence derived from an interception based on:

(1) the grounds that the communication was intercepted in violation of this article;

(2) the grounds that the warrant or extension under which the communication was intercepted is insufficient on the face the warrant or extension;

(3) the grounds that the interception was not made in conformity with the warrant or extension;

(4) the grounds that a material defect, such as the failure to comply with the requirements that limit the use of authorized interceptions, exists in the application, the warrant, or the process of executing the warrant; or

(5) any other grounds that are a basis for suppressing the evidence.

(b) A court may not suppress the contents of or evidence derived from an interception if the motion to suppress is based on an immaterial defect in the application, the warrant, or the process of executing the warrant.
As added by P.L.161-1990, SEC.3.

IC 35-33.5-4-5
Motion to suppress; information or evidence available to aggrieved person; appeal of granted motion

Sec. 5. (a) If a court grants a motion to suppress under this article, the contents of the interception or evidence derived from the interception are considered to have been obtained in violation of this article. The court, upon the filing of the motion by an aggrieved person, may make available for inspection to the aggrieved person, or the person's attorney, any part of the interception or evidence derived from the interception that the court determines to be in the interest of justice.

(b) In addition to any other right to appeal, the state may appeal from an order granting a motion to suppress made under this section if the prosecuting attorney certifies to the court granting the motion that the appeal is not taken for purpose of delay. The state must file the appeal in accordance with the rules adopted by the Indiana supreme court.
As added by P.L.161-1990, SEC.3.

IC 35-33.5-5

Chapter 5. Confidentiality of Disclosure, Remedies, and Offenses

IC 35-33.5-5-1

Disclosure in court; information to parties in advance

Sec. 1. The contents of an interception under this article or evidence derived from the interception may not be received into evidence or otherwise disclosed during a court proceeding unless each party, not less than fourteen (14) days before the proceeding, has been furnished with a copy of the application, warrant, and any orders for an extension under which the interception was authorized. The fourteen (14) day period may be waived by the court if the court finds that:

(1) it is not possible to furnish each party with the information at least fourteen (14) days before the proceeding; and

(2) a party will not be prejudiced by the delay in receiving the information.

As added by P.L.161-1990, SEC.3.

IC 35-33.5-5-2

Recording contents of authorized interception; sealing documents; disclosure; destruction of documents

Sec. 2. (a) The contents of an authorized interception under this article shall be recorded. Immediately upon the expiration of the warrant or extension, the court shall order that recordings be sealed. The court shall determine who is entitled to custody of the recordings. The court shall order that the recordings be kept for at least ten (10) years. The recordings may be destroyed after ten (10) years only upon an order of the court that issued the warrant.

(b) A warrant or an extension granted under this article, as well as the application for a warrant or extension, shall be sealed by the court to which the application is made. The court shall determine who is entitled to custody of the application and warrant or extension. An application and a warrant or an extension shall be disclosed only upon a showing of good cause before the issuing court. The court shall order that the application and warrant or extension may not be destroyed for at least ten (10) years after the date granted, and then only upon the order of the court that issued the warrant.

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.13.

IC 35-33.5-5-3

Disclosure by law enforcement officer; persons other than officer; privileged character of communication; offenses not specified in order

Sec. 3. (a) A law enforcement officer who has obtained knowledge under this article of the contents of an interception or of evidence derived from that interception may:

(1) disclose the contents to another law enforcement officer; or

(2) use the contents of the interception;

only to the extent that use or disclosure of the contents of the interception is appropriate to the proper performance of the official duties of the law enforcement officer.

(b) If a recorded interception is transcribed by order of a court or by a law enforcement agency, only that part of the interception that is relevant to the prosecution of a designated offense may be transcribed.

(c) A person, other than a law enforcement officer, who has received, by a means authorized by this article, information concerning an interception or evidence derived from an interception under this article may disclose the contents of the interception or evidence derived from the interception only while giving testimony under oath or affirmation in a criminal court proceeding or grand jury proceeding. This subsection does not apply to a disclosure by a person of the contents of reports submitted under IC 35-33.5-2-4 and IC 35-33.5-2-5 or to the contents of an interception or evidence derived from an interception that is either:

(1) maintained in the record of a court proceeding and made accessible to the public; or

(2) previously disclosed in a court proceeding that is open to the public.

(d) An otherwise privileged communication that is intercepted in accordance with or in violation of this article does not lose the communication's privileged character.

(e) When a law enforcement officer, while engaged in intercepting communications in a manner authorized by this article, intercepts communications relating to offenses other than those specified in the order of authorization, the contents of those interceptions, and evidence derived from those interceptions, may be disclosed or used as provided in subsections (a) and (c). The contents and evidence may be used under subsection (d) when authorized by the court upon a finding, on subsequent application, that the contents were otherwise intercepted in accordance with this article. A subsequent application shall be made as soon as practicable.

As added by P.L.161-1990, SEC.3.

IC 35-33.5-5-4

Violations; cause of action; damages and costs; defenses; statute of limitations

Sec. 4. (a) A person whose communications are intercepted, disclosed, or used in violation of this article:

(1) has a civil cause of action against a person who intercepts, discloses, uses, or procures another person to intercept, disclose, or use a communication in violation of this article; and

(2) is entitled to recover from that person the following:

(A) The greater of:

(i) actual damages;

(ii) liquidated damages computed at a rate of one hundred dollars ($100) each day for each day of violation; or

(iii) one thousand dollars ($1,000).

(B) Court costs (including fees).

(C) Punitive damages, when determined to be appropriate by the court.

(D) Reasonable attorney's fees.

(b) A good faith reliance on a warrant or an extension issued under this article constitutes a complete defense to a civil action brought under this section.

(c) A person described in IC 34-46-4-1 has an affirmative defense under this section if the person was unaware that the communication was intercepted in violation of this article and:

(1) has not intercepted the communication;

(2) has not procured another person to intercept or disclose the communication; and

(3) has used a communication for the purpose of assisting the person to independently confirm information contained in a communication.

(d) An action under this section must be brought within two (2) years after the date that the interception, disclosure, or use of a communication in violation of this article initially occurs whichever is later.

As added by P.L.161-1990, SEC.3. Amended by P.L.1-1998, SEC.194; P.L.106-2010, SEC.9.

IC 35-33.5-5-5

Nonapplicability to interceptions authorized under federal law; classification of offenses

Sec. 5. (a) This section does not apply to a person who makes an interception authorized under federal law.

(b) A person who knowingly or intentionally intercepts, a communication in violation of this article commits unlawful interception, a Class C felony.

(c) A person who, by virtue of the person's employment or official capacity in the criminal justice system, knowingly or intentionally uses or discloses the contents of an interception in violation of this article commits unlawful use or disclosure of an interception, a Class C felony.

As added by P.L.161-1990, SEC.3.

IC 35-33.5-5-6

Immunity

Sec. 6. The following persons are immune from civil and criminal liability for an act or omission that relates to the provision of information, facilities, or technical assistance in accordance with this article:

(1) A person who provides services that relate to the provision of electronic communication.

(2) An employee, an officer, an agent, or a contractor of a person described in subdivision (1).

(3) A landlord, a custodian, a property owner, or other person

who provides assistance in the interception of an electronic communication.

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.14.

IC 35-34

ARTICLE 34. BRINGING CRIMINAL CHARGES

IC 35-34-1

Chapter 1. Indictment and Information

IC 35-34-1-1

Commencement of prosecution; filing; sealing; violation

Sec. 1. (a) All prosecutions of crimes shall be brought in the name of the state of Indiana. Any crime may be charged by indictment or information.

(b) Except as provided in IC 12-15-23-6(d), all prosecutions of crimes shall be instituted by the filing of an information or indictment by the prosecuting attorney, in a court with jurisdiction over the crime charged.

(c) Whenever an indictment or information is filed, the clerk of the court shall:

(1) mark the date of filing on the instrument;

(2) record it in a record book; and

(3) upon request, make a copy of it available to the defendant or his attorney.

(d) The court, upon motion of the prosecuting attorney, may order that the indictment or information be sealed. If a court has sealed an indictment or information, no person may disclose the fact that an indictment or information is in existence or pending until the defendant has been arrested or otherwise brought within the custody of the court. However, any person may make any disclosure necessarily incident to the arrest of the defendant. A violation of this subsection is punishable as a contempt.

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.18; P.L.10-1994, SEC.7.

IC 35-34-1-2

Contents; requisites; form

Sec. 2. (a) The indictment or information shall be in writing and allege the commission of an offense by:

(1) stating the title of the action and the name of the court in which the indictment or information is filed;

(2) stating the name of the offense in the words of the statute or any other words conveying the same meaning;

(3) citing the statutory provision alleged to have been violated, except that any failure to include such a citation or any error in such a citation does not constitute grounds for reversal of a conviction where the defendant was not otherwise misled as to the nature of the charges against the defendant;

(4) setting forth the nature and elements of the offense charged in plain and concise language without unnecessary repetition;

(5) stating the date of the offense with sufficient particularity to show that the offense was committed within the period of limitations applicable to that offense;

(6) stating the time of the offense as definitely as can be done if time is of the essence of the offense;

(7) stating the place of the offense with sufficient particularity to show that the offense was committed within the jurisdiction of the court where the charge is to be filed;

(8) stating the place of the offense as definitely as can be done if the place is of the essence of the offense; and

(9) stating the name of every defendant, if known, and if not known, by designating the defendant by any name or description by which he can be identified with reasonable certainty.

(b) An indictment shall be signed by:

(1) the foreman or five (5) members of the grand jury; and

(2) the prosecuting attorney or his deputy.

An information shall be signed by the prosecuting attorney or his deputy and sworn to or affirmed by him or any other person.

(c) An indictment or information shall have stated upon it the names of all the material witnesses. Other witnesses may afterwards be subpoenaed by the state, but unless the name of a witness is stated on the indictment or information, no continuance shall be granted to the state due to the absence of the witness.

(d) The indictment or information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It need not contain a formal commencement, a formal conclusion, or any other matter not necessary to the statement. Presumptions of law and matters of which judicial notice is taken need not be stated.

(e) The indictment may be substantially in the following form:

IN THE _____ COURT OF INDIANA, 20____

STATE OF INDIANA

vs. CAUSE NUMBER _____

A _____ B _____

The grand jury of the county of _____ upon their oath or affirmation do present that AB, on the _____ day of _____ 20____ at the county of _____ in the state of Indiana (HERE SET FORTH THE OFFENSE CHARGED).

(f) The information may be substantially in the same form as the indictment, substituting for the words, "the grand jury of the county of _____, upon their oath or affirmation so present" the following: "CD, being duly sworn on his oath or having affirmed, says." It is not necessary in an information to state the reason why the proceeding is by information rather than indictment.

(g) This section applies to a traffic offense (as defined in IC 9-30-3-5) if the traffic offense is:

(1) a felony; or

(2) a misdemeanor.

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.19; P.L.320-1983, SEC.11; P.L.158-1994, SEC.1; P.L.2-2005, SEC.119.

IC 35-34-1-2.4

Verified or sworn documents; form of oath; administration; false affirmation or verification

Sec. 2.4. (a) If an indictment, information, pleading, motion, petition, probable cause affidavit, or other document is required to be verified or sworn under oath before it is submitted to the court in a criminal action, the document meets the requirements of the law as a sworn document if the following form or a substantially similar form is used:

> I swear (affirm), under penalty of perjury as specified by IC 35-44-2-1, that the foregoing (the following) representations are true.
>
> Signed _____

(b) If a document complies with subsection (a), the swearing or affirming need not be done before a notary or other officer empowered to administer oaths.

(c) A person who makes a false affirmation or verification under this section may be prosecuted under IC 35-44-2-1.

As added by P.L.181-1988, SEC.1.

IC 35-34-1-2.5

Prior convictions

Sec. 2.5. If the penalty for an offense is, by the terms of the statute, increased because the person was previously convicted of the offense, the state may seek to have the person sentenced to receive the increased penalty by alleging, on a page separate from the rest of the charging instrument, that the person was previously convicted of the offense.

As added by P.L.50-1984, SEC.7.

IC 35-34-1-3

Illegible or lost indictment or information

Sec. 3. When an indictment or information which has been returned or presented to a court as authorized by law has become illegible or cannot be produced, the defendant may be tried using a copy certified by the clerk of the court.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-4

Motion to dismiss by defendant; grounds; requisites; disposition; effect of order

Sec. 4. (a) The court may, upon motion of the defendant, dismiss the indictment or information upon any of the following grounds:

> (1) The indictment or information, or any count thereof, is defective under section 6 of this chapter.
>
> (2) Misjoinder of offenses or parties defendant, or duplicity of allegation in counts.
>
> (3) The grand jury proceeding was defective.
>
> (4) The indictment or information does not state the offense with sufficient certainty.

(5) The facts stated do not constitute an offense.

(6) The defendant has immunity with respect to the offense charged.

(7) The prosecution is barred by reason of a previous prosecution.

(8) The prosecution is untimely brought.

(9) The defendant has been denied the right to a speedy trial.

(10) There exists some jurisdictional impediment to conviction of the defendant for the offense charged.

(11) Any other ground that is a basis for dismissal as a matter of law.

(b) Except as otherwise provided, a motion under this section shall be made no later than:

(1) twenty (20) days if the defendant is charged with a felony; or

(2) ten (10) days if the defendant is charged only with one (1) or more misdemeanors;

prior to the omnibus date. A motion made thereafter may be summarily denied if based upon a ground specified in subdivision (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) of this section. A motion to dismiss based upon a ground specified in subdivision (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), or (a)(11) of this section may be made or renewed at any time before or during trial. A motion to dismiss based upon lack of jurisdiction over the subject matter may be made at any time.

(c) Upon the motion to dismiss, a defendant who is in a position adequately to raise more than one (1) ground in support thereof shall raise every ground upon which he intends to challenge the indictment or information. A subsequent motion based upon a ground not properly raised may be summarily denied. However, the court, in the interest of justice and for good cause shown, may entertain and dispose of such a motion on the merits.

(d) Upon the motion to dismiss, the court shall:

(1) overrule the motion to dismiss;

(2) grant the motion to dismiss and discharge the defendant; or

(3) grant the motion to dismiss and deny discharge of the defendant if the court determines that the indictment or information may be cured by amendment under section 5 of this chapter and the prosecuting attorney has moved for leave to amend.

If the court grants the motion under subdivision (3) and grants the prosecuting attorney leave to amend, any prior order imposing conditions of release pending trial shall stand unless otherwise modified or removed by order of the court.

(e) If the court grants a motion under subsection (a)(3) and the prosecuting attorney informs the court on the record that the charges will be refiled within seventy-two (72) hours by information:

(1) the court may not discharge the defendant; and

(2) any prior order concerning release pending trial remains in force unless it is modified or removed by the court.

(f) An order of dismissal does not, of itself, constitute a bar to a subsequent prosecution of the same crime or crimes except as otherwise provided by law.

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.20; P.L.320-1983, SEC.12.

IC 35-34-1-5

Amendment of charge; procedures; limitations

Sec. 5. (a) An indictment or information which charges the commission of an offense may not be dismissed but may be amended on motion by the prosecuting attorney at any time because of any immaterial defect, including:

(1) any miswriting, misspelling, or grammatical error;

(2) any misjoinder of parties defendant or offenses charged;

(3) the presence of any unnecessary repugnant allegation;

(4) the failure to negate any exception, excuse, or provision contained in the statute defining the offense;

(5) the use of alternative or disjunctive allegations as to the acts, means, intents, or results charged;

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

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

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

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

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

(1) up to:

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

(B) fifteen (15) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date; or

(2) before the commencement of trial;

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

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

(d) Before amendment of any indictment or information other than

amendment as provided in subsection (b) of this section, the court shall give all parties adequate notice of the intended amendment and an opportunity to be heard. Upon permitting such amendment, the court shall, upon motion by the defendant, order any continuance of the proceedings which may be necessary to accord the defendant adequate opportunity to prepare his defense.

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

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.21; P.L.320-1983, SEC.13; P.L.164-1993, SEC.7; P.L.178-2007, SEC.1.

IC 35-34-1-6

Defective indictment or information; dismissal; exceptions

Sec. 6. (a) An indictment or information is defective when:

(1) it does not substantially conform to the requirements of section 2(a) of this chapter;

(2) the allegations demonstrate that the court does not have jurisdiction of the offense charged; or

(3) the statute defining the offense charged is unconstitutional or otherwise invalid.

(b) An information is defective if:

(1) the defendant was a grand jury target identified under IC 35-34-2-12(a)(1);

(2) the offense alleged was identified on the record under IC 35-34-2-12(a)(2) as an offense that the defendant allegedly committed; and

(3) the grand jury proceeded to deliberate on whether to issue an indictment, and voted not to indict the defendant for the offense identified on the record under IC 35-34-2-12(a)(2).

However, if the prosecuting attorney shows that there is newly discovered material evidence that was not presented to the grand jury before the grand jury's failure to indict, then the information is not defective.

(c) Except as provided in section 5 of this chapter, an indictment or information or a count thereof shall be dismissed upon motion when it is defective.

As added by Acts 1981, P.L.298, SEC.3. Amended by P.L.312-1985, SEC.1; P.L.3-1990, SEC.121.

IC 35-34-1-7

Grand jury proceedings; violation of IC 35-34-2; dismissal

Sec. 7. An indictment shall be dismissed upon motion when the grand jury proceeding which resulted in the indictment was conducted in violation of IC 35-34-2.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-8

Motion to dismiss by defendant; requisites; affidavits; documentary evidence; hearing; disposition; procedures

Sec. 8. (a) A motion to dismiss an indictment or information under section 4 of this chapter shall be in writing. The prosecutor must be given reasonable notice of a motion to dismiss. If the motion is expressly or impliedly based upon the existence or occurrence of facts, the motion shall be accompanied by affidavits containing sworn allegations of these facts. The sworn allegations may be based upon personal knowledge of the affiant or upon information and belief, provided that in the latter event the affiant discloses the sources of the information and the grounds for the belief. If the motion is expressly or impliedly based upon the existence of any question of law, the motion shall be accompanied by a memorandum stating specifically the legal question in issue. The defendant may also submit documentary evidence tending to support the allegations of the motion.

(b) The prosecutor may:

(1) file with the court an answer denying or admitting any or all of the allegations of the motion; and

(2) submit documentary evidence tending to refute the allegations.

(c) After all papers of both parties have been filed, and after all documentary evidence has been submitted, the court shall determine whether, under subsections (d) and (e) of this section, a hearing is necessary to resolve questions of fact.

(d) The court shall grant the motion without conducting a hearing only if:

(1) the motion alleges a ground constituting a legal basis for the motion under section 4 of this chapter;

(2) the ground, if expressly or impliedly based upon the existence or occurrence of facts, is supported by sworn allegations of all facts essential to support the motion; and

(3) the sworn allegations of fact essential to support the motion are admitted as true by the prosecutor or are conclusively established by documentary evidence.

(e) The court may deny the motion without conducting a hearing only if:

(1) the motion does not allege a ground constituting a legal basis for the motion under section 4 of this chapter;

(2) the motion is expressly or impliedly based upon the existence or occurrence of facts, and the motion does not contain sworn allegations supporting all the essential facts; or

(3) an allegation of fact essential to support the motion is conclusively refuted by documentary evidence.

(f) If a hearing is necessary to resolve questions of fact, the court shall conduct a hearing and make findings of fact essential to the determination of the motion. The defendant has a right to be present and represented by counsel at the hearing but may waive this right. The defendant has the burden of proving by a preponderance of the

evidence every fact essential to support the motion.
As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-9
Joinder of offenses or defendants

Sec. 9. (a) Two (2) or more offenses may be joined in the same indictment or information, with each offense stated in a separate count, when the offenses:

(1) are of the same or similar character, even if not part of a single scheme or plan; or

(2) are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

(b) Two (2) or more defendants can be joined in the same indictment or information when:

(1) each defendant is charged with each offense included;

(2) each of the defendants is charged as a conspirator or party to the commission of the offense and some of the defendants are also charged with one (1) or more offenses alleged to be in furtherance of the conspiracy or common scheme or plan; however, a party to the commission of an offense or conspirator need not be designated as such in the indictment or information; or

(3) conspiracy is not charged and not all of the defendants are charged in each count, if it is alleged in the indictment or information that the offenses charged:

(A) were part of a common scheme or plan; or

(B) were so closely connected in respect to time, place, and occasion that it would be difficult to separate proof of one (1) charge from proof of the others.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-10
Motions; joinder of offenses; dismissal of offense joinable for trial or of related offenses; requisites; orders

Sec. 10. (a) When a defendant has been charged with two (2) or more offenses in two (2) or more indictments or informations and the offenses could be joined in the same indictment or information under section 9(a)(1) of this chapter, the court, upon motion of the defendant, may order that the indictments or informations be joined for trial. Such motion shall be made before commencement of trial on either of the offenses charged.

(b) When a defendant has been charged with two (2) or more offenses in two (2) or more indictments or informations and the offenses could have been joined in the same indictment or information under section (9)(a)(2) of this chapter, the court, upon motion of the defendant or the prosecuting attorney, or on its own motion, shall join for trial all of such indictments or informations unless the court, in the interests of justice, orders that one (1) or more of such offenses shall be tried separately. Such motion shall be

made before commencement of trial on either of the offenses charged.

(c) A defendant who has been tried for one (1) offense may thereafter move to dismiss an indictment or information for an offense which could have been joined for trial with the prior offenses under section 9 of this chapter. The motion to dismiss shall be made prior to the second trial, and shall be granted if the prosecution is barred by reason of the former prosecution.

(d) A defendant who has been sentenced on a plea of guilty to one (1) offense may move to dismiss an indictment or information for a related offense. The motion shall be granted if the plea of guilty was entered on the basis of a plea agreement in which the prosecutor agreed to seek or not to oppose dismissal of other related offenses or not to prosecute other potential related offenses.

(e) Subject to the provisions of section 11(a) of this chapter, two (2) or more offenses which are within the jurisdiction of the same court and which could have been joined in one (1) prosecution constitute related offenses.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-11

Severance of offenses or separate trial of defendants joined

Sec. 11. (a) Whenever two (2) or more offenses have been joined for trial in the same indictment or information solely on the ground that they are of the same or similar character, the defendant shall have a right to a severance of the offenses. In all other cases the court, upon motion of the defendant or the prosecutor, shall grant a severance of offenses whenever the court determines that severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense considering:

(1) the number of offenses charged;

(2) the complexity of the evidence to be offered; and

(3) whether the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.

(b) Whenever two (2) or more defendants have been joined for trial in the same indictment or information and one (1) or more defendants move for a separate trial because another defendant has made an out-of-court statement which makes reference to the moving defendant but is not admissible as evidence against him, the court shall require the prosecutor to elect:

(1) a joint trial at which the statement is not admitted into evidence;

(2) a joint trial at which the statement is admitted into evidence only after all references to the moving defendant have been effectively deleted; or

(3) a separate trial for the moving defendant.

In all other cases, upon motion of the defendant or the prosecutor, the court shall order a separate trial of defendants whenever the court determines that a separate trial is necessary to protect a defendant's right to a speedy trial or is appropriate to promote a fair

determination of the guilt or innocence of a defendant.

(c) The court may order the prosecutor to disclose in camera any information concerning statements made by the defendants which the prosecutor intends to introduce in evidence at the trial if this information would assist the court in ruling on a motion for a separate trial.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-12

Motion for severance or separate trial; time; waiver or bar

Sec. 12. (a) A defendant's motion for severance of crimes or motion for a separate trial must be made before commencement of trial, except that the motion may be made before or at the close of all the evidence during trial if based upon a ground not previously known. The right to severance of offenses or separate trial is waived by failure to make the motion at the appropriate time.

(b) If a defendant's pretrial motion for severance of offenses or motion for a separate trial is overruled, the motion may be renewed on the same grounds before or at the close of all the evidence during trial. The right to severance of offenses or separate trial is waived by failure to renew the motion.

(c) If a defendant's motion for severance of offenses or separate trial is granted during the trial, the granting of the motion shall not bar a subsequent trial of that defendant on the offenses charged.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-13

Motion to dismiss by prosecuting attorney

Sec. 13. (a) Upon motion of the prosecuting attorney, the court shall order the dismissal of the indictment or information. The motion may be made at any time before sentencing and may be made on the record or in writing. The motion shall state the reason for dismissal.

(b) In any case where an order sustaining a motion to dismiss would otherwise constitute a bar to further prosecution of the crime charged, unless the defendant objects to dismissal, the granting of the motion does not bar a subsequent trial of the defendant on the offense charged.

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.22.

IC 35-34-1-14

Pleading special matters; sufficiency

Sec. 14. In any indictment or information, an averment substantially in compliance with the provisions of this section shall be sufficient.

(a) The age of the defendant or the victim need not be alleged, except where the age of the defendant or the victim is an essential element of the offense charged.

(b) Averments as to any money or bills or notes or postal orders

issued by any lawful authority and intended to pass and circulate as money are sufficient to be alleged simply as money without further identification.

(c) It is sufficient to describe a written instrument by any name or designation by which it is usually known or to aver generally the contents of such instrument.

(d) Averments of dates and numbers may be by words or figures or both.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-15

Incorrect name of defendant immaterial

Sec. 15. (a) If the stated name of the defendant in the indictment or information is incorrect:

(1) this defect shall not be a ground for dismissal of the indictment or information; and

(2) any variance between the allegations and the proof of the defendant's name shall not be considered material.

(b) If at any time during the proceedings the true name of the defendant becomes known, the court shall order the indictment or information amended to show both the name by which the defendant was first charged and the name later alleged to be true.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-16

Perjury; requisites

Sec. 16. (a) In an indictment or information for perjury, it is necessary to set forth only:

(1) the substance of the controversy or the matter in respect to which the alleged offense was committed; and

(2) in what court or before whom the false statement was made.

It is not necessary to set forth any part of any record or proceeding, or the commission or authority of the court or person before whom the perjury was allegedly committed.

(b) In an indictment or information for perjury, in swearing to any written instrument, it is necessary to set forth only that part of the instrument alleged to have been falsely sworn to, and to negative the same, with the name of the officer or court before whom the instrument was sworn.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-17

Forgery; misdescription of instrument destroyed or withheld by defendant immaterial

Sec. 17. When an instrument which is the subject of an indictment or information for forgery has been destroyed, or is withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment or information, and established at trial, the misdescription of the instrument is immaterial.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-18

Names of owners of property

Sec. 18. The indictment or information for an offense which was committed upon or in relation to any property belonging to partners, or to several joint owners, or property which, when the offense was committed, was in possession of a bailee or tenant, is sufficient if it alleges the ownership of the property to be in the name of:

(1) the partnership or any partner;
(2) an owner;
(3) a bailor;
(4) a bailee; or
(5) a tenant.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-19

Rules of construction

Sec. 19. The words used in an indictment or information shall be construed using their ordinary and common meaning, except words and phrases defined by law, which are to be construed according to their legal meaning.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-2

Chapter 2. Grand Jury and Special Grand Jury

IC 35-34-2-1

"Target" defined

Sec. 1. As used in this chapter:

"Target" means a person who has been charged by information for an offense the grand jury is investigating, or who is a subject of the grand jury investigation.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-2-2

Number; impaneling; scope of function and authority; convening

Sec. 2. (a) A grand jury shall consist of six (6) grand jurors and one (1) alternate and may be impaneled by the circuit court or a superior court with criminal jurisdiction. A grand jury shall hear and examine evidence concerning crimes and shall take action with respect to this evidence as provided by law.

(b) The court shall call the grand jury into session at the request of the prosecuting attorney. The court may also convene the grand jury without a request from the prosecuting attorney. The grand jury shall be convened by the judge issuing an order requiring the jury to meet at a time specified.

(c) A grand jury may not remain in session for more than six (6) months.

(d) An alternate impaneled under this section shall appear and hear all evidence presented to the grand jury but may not comment, deliberate, or vote unless there is not a quorum of grand jurors for a particular session.

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.23; P.L.4-1998, SEC.12.

IC 35-34-2-3

Drawing, selecting, and impaneling; discharge of panel or juror; grounds; foreman and clerk; minutes; record transcript; oath; instructions; report of offense

Sec. 3. (a) The jurors on a grand jury and one (1) alternate shall be drawn, selected, and impaneled by the procedure set out in IC 33-28-5.

(b) Whenever the court finds that the original panel was not selected in substantial conformity with the requirements of law for the selection of the panel, the court shall discharge the panel and summon another panel.

(c) Whenever the court finds that a grand juror:

(1) is disqualified from service under law;

(2) is incapable of performing the juror's duties because of bias or prejudice;

(3) is guilty of misconduct in the performance of the juror's duties that might impair the proper functioning of the grand jury;

(4) is under the age of eighteen (18) years;
(5) is not a resident of the county;
(6) is an alien;
(7) is a mentally incompetent person;
(8) is a witness for the prosecution;
(9) has such a state of mind in reference to a target that the juror cannot act impartially and without prejudice to the substantial rights of that person;
(10) holds a juror's place on the grand jury by reason of the corruption of the officer who selected and impaneled the grand jury; or
(11) has requested or otherwise caused any officer or an officer's deputy to place the juror upon the grand jury;

the court shall refuse to swear that grand juror or, if the juror has been sworn, shall discharge that grand juror and swear another grand juror.

(d) After a grand jury has been impaneled, the court that called the grand jury shall appoint one (1) of the grand jurors as foreman and one (1) as clerk. During any absence of the foreman or clerk, the grand jury shall select one (1) of their number to act as foreman or clerk. The clerk shall keep minutes of the grand jury proceedings. The court shall supply a means for recording the evidence presented before the grand jury and all of the other proceedings that occur before the grand jury, except for the deliberations and voting of the grand jury and other discussions when the members of the grand jury are the only persons present in the grand jury room. The evidence and proceedings shall be recorded in the same manner as evidence and proceedings are recorded in the court that impaneled the grand jury. When ordered by the court, a transcript or a copy of the recording shall be prepared and supplied to the requesting party. If the transcript is supplied, it shall be at the cost of the party requesting it. If a copy of the recording is supplied, the party requesting it is responsible for the actual cost of reproduction. If a transcript has already been prepared, the requesting party is responsible for the actual cost of obtaining the copy. If the court finds the requesting party is an indigent defendant, the cost of the transcript or copy of the recording supplied to the defendant shall be paid by the county.

(e) The following oath must be administered to the grand jury:

"You, and each of you, do solemnly swear or affirm that you will diligently inquire and make true presentment of all offenses committed or triable within this county, of which you have or can obtain legal evidence; that you will present no person through malice, hatred, ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your indictments you will present the truth, the whole truth, and nothing but the truth; that you will not disclose any evidence given or proceeding had before the grand jury; that you will keep secret whatever you or any other grand juror may have said or in what manner you or any other grand juror may have voted on a matter before the

grand jury.".

(f) The court shall provide a printed copy of the provisions of this chapter to the grand jury upon the request of any member of the grand jury. In addition, the court shall give the grand jurors any instructions relating to the proper performance of their duties that the court considers necessary.

(g) If a member of the grand jury has reason to believe that an offense has been committed which is triable in the county, the member may report this information to fellow jurors, who may then investigate the alleged offense.

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.24; P.L.320-1983, SEC.14; P.L.312-1985, SEC.3; P.L.169-1988, SEC.6; P.L.33-1989, SEC.124; P.L.4-1998, SEC.13; P.L.98-2004, SEC.144; P.L.118-2007, SEC.29.

IC 35-34-2-4

Conduct of proceedings

Sec. 4. (a) The proceedings of a grand jury are not valid unless at least five (5) of its members are present.

(b) The foreman shall administer an oath to any witness appearing before the grand jury.

(c) The prosecuting attorney, his staff and any witness the prosecuting attorney or the grand jury requests to be present may be present at any time during grand jury proceedings, except as provided in subsection (h).

(d) The grand jury may request assistance from a clerk, or other public servant, authorized by the court to assist the grand jury in the administrative conduct of its proceedings. Such a clerk or other public servant may be present during any grand jury proceedings, except as specified in subsection (h).

(e) The person recording the proceedings may be present during the proceedings except as specified in subsection (h).

(f) The grand jury may request the court to provide an interpreter to assist the grand jury in understanding the testimony of any witness, and the court shall provide an interpreter when requested. Before assuming his duties with the grand jury, an interpreter shall take an oath before the grand jury that he will faithfully interpret all testimony of the witness and that he will keep secret all matters before the grand jury that are within his knowledge. He may be present as requested by the grand jury, except as set out in subsection (h).

(g) When a person held in official custody is a witness before the grand jury, a public servant assigned to guard him may accompany him in the grand jury room. However, before entering the grand jury room for that purpose, the public servant shall take an oath before the grand jury that he will keep secret all matters before the grand jury that are within his knowledge.

(h) During the deliberations and voting of the grand jury, only the grand jurors may be present in the grand jury room.

(i) Grand jury proceedings shall be secret, and no person present

during a grand jury proceeding may, except in the lawful discharge of his duties or upon written order of the court impaneling the grand jury or the court trying the case on indictment presented by the grand jury, disclose:

(1) the nature or substance of any grand jury testimony; or

(2) any decision, result, or other matter attending the grand jury proceeding.

However, any court may require any person present during a proceeding to disclose the testimony of a witness as direct evidence in a prosecution for perjury.

(j) The grand jury shall be the exclusive judge of the facts with respect to any matter before it.

(k) The court and the prosecuting attorney shall be the legal advisors of the grand jury, and the grand jury may not seek or receive legal advice from any other source.

(l) The grand jury may not, without court permission, exercise any of its functions in any place other than that designated by the court.
As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-2-5

Subpoenas; contents; failure to obey; contempt

Sec. 5. (a) A subpoena duces tecum or subpoena ad testificandum summoning a witness to appear before the grand jury shall be issued by the clerk upon the request of the grand jury or prosecuting attorney. The subpoena must contain a statement of the general nature of the grand jury inquiry.

(b) If the subpoena is issued to a target, the subpoena shall also contain a statement informing the target that:

(1) he is a subject of the grand jury investigation;

(2) he has the right to consult with an attorney and to be assisted by an attorney under section 13 of this chapter; and

(3) if he cannot afford an attorney, the court inpaneling the grand jury will appoint one for him, upon request.

(c) If a witness fails to appear at the time and place stated in the subpoena, the court may hold him in contempt of court, unless he had filed a motion to quash the subpoena and the motion has been granted or was pending at the time he was to have appeared.
As added by Acts 1981, P.L.298, SEC.3. Amended by P.L.320-1983, SEC.15; P.L.170-1984, SEC.2.

IC 35-34-2-5.5

Target witnesses; right to counsel; removal of attorney

Sec. 5.5. (a) A target subpoenaed under section 5 of this chapter is entitled to the assistance of his attorney when the person is questioned in the grand jury room, subject to this section.

(b) The target's attorney:

(1) must take an oath of secrecy administered by the foreman;

(2) while in the grand jury room may not, without first obtaining the consent of the prosecutor and the foreman:

(A) address the grand jury or the prosecuting attorney;

(B) make objections or arguments;
(C) question any person; or
(D) otherwise participate in the proceeding; and
(3) may advise the client so long as the conversation is not overheard by any member of the grand jury.

(c) The court that impaneled the grand jury may remove any attorney from the grand jury room and may find him to be in contempt of court if the attorney has violated the requirements of subsection (b) or has otherwise disrupted or unnecessarily delayed the grand jury proceeding.

As added by P.L.170-1984, SEC.3.

IC 35-34-2-6

Motion to quash subpoena duces tecum; use immunity

Sec. 6. (a) Any witness may file a motion to quash a subpoena duces tecum directed to that witness. The motion must include a statement of the facts and grounds in support of the objection to the subpoena. The court shall:

(1) promptly conduct a hearing on the motion; and
(2) at the conclusion of the hearing, enter findings in support of its ruling.

(b) A target who is subpoenaed may move to quash a subpoena based upon his privilege against self-incrimination. The court shall grant the motion, unless the prosecuting attorney makes a written request that the target be granted use immunity in accordance with section 8 of this chapter. Upon request by the prosecuting attorney, the court shall grant use immunity to the target and order him to comply with the subpoena.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-2-7

Witnesses; refusal to answer; compelling testimony

Sec. 7. (a) If a witness before the grand jury refuses to answer any question or produce any item, the prosecutor may inform the court, in writing, of the question asked or item sought and the reason given for the refusal. The court shall, after a hearing, decide whether the witness is required to answer the question or produce the item and the witness shall be informed immediately of the court's decision.

(b) If the court determines that the witness must answer the question or produce the item and the witness continues to refuse, he shall be brought before the court and the court shall proceed as if the witness had refused in open court.

(c) If the court determines that the witness may properly refuse to answer a question or produce an item based upon his privilege against self-incrimination, the prosecutor may request the court to grant use immunity to the witness under section 8 of this chapter.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-2-8

Witnesses; use immunity

Sec. 8. (a) Upon request by the prosecuting attorney, the court shall grant use immunity to a witness before the grand jury. The court shall instruct the witness by written order or in open court that any evidence the witness gives before the grand jury, or evidence derived from that evidence, may not be used in any criminal prosecution against that witness, unless the evidence is volunteered by the witness or is not responsive to a question by the grand jury or the prosecutor. The court shall then instruct the witness that he must answer the questions asked and produce the items requested.

(b) A grant of use immunity does not prohibit the use of evidence the witness gives in a prosecution for perjury under IC 35-44-2-1.

(c) If a witness refuses to give evidence after he has been granted use immunity, he shall be brought before the court and the court shall proceed as if the witness had refused in open court.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-2-9

Right to testify before grand jury; target of investigation; notification; waiver of immunity; calling of witnesses

Sec. 9. (a) Except as provided by subsection (b) of this section, no person has a right to appear as a witness before the grand jury or to present any evidence or information to the grand jury.

(b) A target of a grand jury investigation shall be given the right to testify before the grand jury, provided he signs a waiver of immunity. The prosecuting attorney shall notify a target of his opportunity to testify unless:

(1) notification may result in flight or endanger other persons or obstruct justice; or

(2) the prosecutor is unable, with reasonable diligence, to notify him.

(c) The prosecuting attorney or grand jury may call as a witness in a grand jury proceeding any person believed to possess relevant information or knowledge.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-2-10

Unauthorized disclosure of grand jury information; offense; production of transcript

Sec. 10. (a) Except when required to do so by law, a person who has been present at a grand jury proceeding and who knowingly or intentionally discloses:

(1) any evidence or testimony given or produced;

(2) what a grand juror said; or

(3) the vote of any grand juror;

to any other person, except to a person who was also present or entitled to be present at that proceeding or to the prosecuting attorney or his representative, commits unauthorized disclosure of grand jury information, a Class B misdemeanor.

(b) The transcript of testimony of a witness before a grand jury may be produced only:

(1) for the official use of the prosecuting attorney; or
(2) upon order of:
(A) the court which impaneled the grand jury;
(B) the court trying a case upon an indictment of the grand jury; or
(C) a court trying a prosecution for perjury;
but only after a showing of particularized need for the transcript.

As added by Acts 1981, P.L.298, SEC.3. Amended by P.L.312-1985, SEC.4.

IC 35-34-2-11

Access to local government facilities for care or custody of persons

Sec. 11. The grand jury shall have free access, at all reasonable times, to any county, city, or town facility where persons are held in care or custody of such county, city, or town, for the purpose of examining their condition and management.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-2-12

Identification of target and offense; validity of indictment; concurrence of five grand jurors; signatures; endorsement

Sec. 12. (a) Before the grand jury proceeds to deliberate on whether to issue an indictment, the prosecuting attorney shall, on the record:
(1) identify each target of the grand jury proceeding; and
(2) identify each offense that each target is alleged to have committed.

(b) Before an indictment is valid, at least five (5) grand jurors must concur in the finding of the indictment, and it must be:
(1) signed by the prosecuting attorney or his deputy;
(2) endorsed with the phrase "a true bill"; and
(3) signed by the foreman of the grand jury or five (5) members of the grand jury.

(c) An indictment is not valid unless the offense that the indictment charges the defendant committed is an offense that is contained on the record under subsection (a).

(d) An indictment is not valid if it indicts the target of a previous grand jury who:
(1) was identified under subsection (a)(1);
(2) was the target of a previous grand jury that proceeded to deliberate on whether to issue an indictment, and voted not to indict the defendant for the offense identified to the previous grand jury under subsection (a)(2); and
(3) was alleged to have committed an offense identified to a previous grand jury under subsection (a)(2).

However, if the prosecuting attorney shows that there is newly discovered material evidence that was not presented to the previous grand jury before the grand jury's failure to indict, then the indictment is not defective.

As added by Acts 1981, P.L.298, SEC.3. Amended by P.L.312-1985, SEC.2.

IC 35-34-2-13

Extension of term; limitation

Sec. 13. The judge of any court having criminal jurisdiction may, upon due cause shown by petition of the prosecuting attorney of the judicial circuit, extend the terms of the members of a grand jury then convened for an additional term of three (3) months or more, as requested by the prosecuting attorney. The terms of the members of any grand jury may be so extended for successive periods of increments of three (3) months or more, to a total length of no more than two (2) years.

As added by P.L.171-1984, SEC.75.

IC 35-34-2-14

Special grand jury; powers and duties; term

Sec. 14. (a) The judge of any court having criminal jurisdiction may, upon due cause shown by petition of the prosecuting attorney of the judicial circuit, order the clerk of the courts, or jury administrator (as defined in IC 33-28-5-3) to draw the names of competent persons to be summoned to serve on a special grand jury, which shall serve in addition to the grand jury regularly summoned and convened pursuant to law.

(b) A special grand jury has the powers and duties of a grand jury prescribed by law.

(c) The members of the special grand jury serve terms of three (3) months or more, as requested by the prosecuting attorney. The terms of members of a special grand jury shall be extended for the same period of time and in the same manner in which the terms of grand jury members may be extended under section 13 of this chapter.

As added by P.L.171-1984, SEC.76. Amended by P.L.98-2004, SEC.145; P.L.118-2007, SEC.30.

IC 35-34-2-15

Special grand jury; number and names to be drawn; investigation of panel; issuance of venires or summonses

Sec. 15. When names of grand jurors are ordered drawn to be summoned under section 14 of this chapter, the judge shall specify the number of names to be drawn, and shall enter an order in sufficient time before the grand jury session to permit counsel to know and investigate the panel of special grand jurors. The order of names listed in the panel and called for service and entered in the order book of the court shall be the same as that provided in IC 33-28-5. The clerk shall issue summonses for such jurors as the courts may direct. The sheriff or bailiff shall then call the special grand jurors to the jury box in the same order as that in which their names were drawn from the jury pool and certified thereto.

As added by P.L.171-1984, SEC.77. Amended by P.L.98-2004, SEC.146; P.L.118-2007, SEC.31.

IC 35-35

ARTICLE 35. PLEADING AND PROCEDURE

IC 35-35-1

Chapter 1. Pleas

IC 35-35-1-1

Guilty or guilty but mentally ill at time of crime; aid of counsel

Sec. 1. A plea of guilty, or guilty but mentally ill at the time of the crime, shall not be accepted from a defendant unrepresented by counsel who has not freely and knowingly waived his right to counsel.

As added by Acts 1981, P.L.298, SEC.4.

IC 35-35-1-2

Guilty plea; advertisement of rights

Sec. 2. (a) The court shall not accept a plea of guilty or guilty but mentally ill at the time of the crime without first determining that the defendant:

(1) understands the nature of the charge against him;

(2) has been informed that by his plea he waives his rights to:

(A) a public and speedy trial by jury;

(B) confront and cross-examine the witnesses against him;

(C) have compulsory process for obtaining witnesses in his favor; and

(D) require the state to prove his guilt beyond a reasonable doubt at a trial at which the defendant may not be compelled to testify against himself;

(3) has been informed of the maximum possible sentence and minimum sentence for the crime charged and any possible increased sentence by reason of the fact of a prior conviction or convictions, and any possibility of the imposition of consecutive sentences;

(4) has been informed that the person will lose the right to possess a firearm if the person is convicted of a crime of domestic violence (IC 35-41-1-6.3); and

(5) has been informed that if:

(A) there is a plea agreement as defined by IC 35-35-3-1; and

(B) the court accepts the plea;

the court is bound by the terms of the plea agreement.

(b) A defendant in a misdemeanor case may waive the rights under subsection (a) by signing a written waiver.

(c) Any variance from the requirements of this section that does not violate a constitutional right of the defendant is not a basis for setting aside a plea of guilty.

As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.179-1984, SEC.1; P.L.313-1985, SEC.1; P.L.195-2003, SEC.3.

IC 35-35-1-3

Voluntary plea; factual basis

Sec. 3. (a) The court shall not accept a plea of guilty or guilty but mentally ill at the time of the crime without first determining that the plea is voluntary. The court shall determine whether any promises, force, or threats were used to obtain the plea.

(b) The court shall not enter judgment upon a plea of guilty or guilty but mentally ill at the time of the crime unless it is satisfied from its examination of the defendant or the evidence presented that there is a factual basis for the plea.

(c) A plea of guilty or guilty but mentally ill at the time of the crime shall not be deemed to be involuntary under subsection (a) solely because it is the product of an agreement between the prosecution and the defense.

As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.320-1983, SEC.16; P.L.179-1984, SEC.2.

IC 35-35-1-4

Withdrawal of plea; motion; requisites; procedures

Sec. 4. (a) A motion to withdraw a plea of not guilty for the purpose of entering a plea of guilty, or guilty but mentally ill at the time of the crime, may be made orally in open court and need not state any reason for the withdrawal of the plea.

(b) After entry of a plea of guilty, or guilty but mentally ill at the time of the crime, but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty, or guilty but mentally ill at the time of the crime, for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea. The motion to withdraw the plea of guilty or guilty but mentally ill at the time of the crime made under this subsection shall be in writing and verified. The motion shall state facts in support of the relief demanded, and the state may file counter-affidavits in opposition to the motion. The ruling of the court on the motion shall be reviewable on appeal only for an abuse of discretion. However, the court shall allow the defendant to withdraw his plea of guilty, or guilty but mentally ill at the time of the crime, whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

(c) After being sentenced following a plea of guilty, or guilty but mentally ill at the time of the crime, the convicted person may not as a matter of right withdraw the plea. However, upon motion of the convicted person, the court shall vacate the judgment and allow the withdrawal whenever the convicted person proves that withdrawal is necessary to correct a manifest injustice. A motion to vacate judgment and withdraw the plea made under this subsection shall be treated by the court as a petition for postconviction relief under the Indiana Rules of Procedure for Postconviction Remedies. For purposes of this section, withdrawal of the plea is necessary to correct a manifest injustice whenever:

(1) the convicted person was denied the effective assistance of counsel;

(2) the plea was not entered or ratified by the convicted person;

(3) the plea was not knowingly and voluntarily made;

(4) the prosecuting attorney failed to abide by the terms of a plea agreement; or

(5) the plea and judgment of conviction are void or voidable for any other reason.

The motion to vacate the judgment and withdraw the plea need not allege, and it need not be proved, that the convicted person is innocent of the crime charged or that he has a valid defense.

(d) A plea of guilty, or guilty but mentally ill at the time of the crime, which is not accepted by the court or is withdrawn shall not be admissible as evidence in any criminal, civil, or administrative proceeding.

(e) Upon any motion made under this section, the moving party has the burden of establishing his grounds for relief by a preponderance of the evidence. The order of the court upon a motion made under subsection (b) or (c) of this section shall constitute a final judgment from which the moving party or the state may appeal as otherwise provided by law. The order of the court upon a motion made under subsection (a) of this section is not a final judgment and is not appealable but is reviewable upon appeal from a final judgment subsequently entered.

As added by Acts 1981, P.L.298, SEC.4. Amended by Acts 1982, P.L.204, SEC.25; P.L.320-1983, SEC.17.

IC 35-35-2

Chapter 2. Pleadings

IC 35-35-2-1

Pleadings; motions, requisites, and answers

Sec. 1. (a) Pleadings in criminal proceedings are:

(1) an indictment;

(2) an information; and

(3) pleas of:

(A) not guilty;

(B) guilty; and

(C) guilty but mentally ill at the time of the crime.

Defenses and objections raised before trial which, before July 26, 1973, could have been raised by a plea in abatement, a plea in bar, a demurrer, a motion to quash, or any other plea not specifically allowed under this subsection may be raised only by motion to dismiss or to grant appropriate relief as provided in this title.

(b) Except as provided in this title, an application to the court for an order must be by motion. A motion other than one made during a trial or hearing must be in writing unless the court permits it to be made orally. It must state the grounds upon which it is made and set forth the relief or order sought. It may be supported by affidavit.

(c) Except as provided in this title, whenever the defendant files a motion, the state may file an answer to that motion. If no answer is filed by the state, all issues of fact and law raised by the motion stand at issue and the court shall proceed.

As added by Acts 1981, P.L.298, SEC.4. Amended by Acts 1982, P.L.204, SEC.26.

IC 35-35-2-2

Rules of procedure applicable

Sec. 2. In all criminal cases where no provision has been made in this title, the Indiana Rules of Trial Procedure govern. Where no procedure is provided by this title, the trial court may proceed in any manner consistent with applicable statutes or court rules.

As added by Acts 1981, P.L.298, SEC.4.

IC 35-35-3

Chapter 3. Plea Agreements

IC 35-35-3-1

Definitions

Sec. 1. As used in this chapter:

"Advisory sentence" means the nonbinding guideline sentence defined in IC 35-50-2-1.3.

"Plea agreement" means an agreement between a prosecuting attorney and a defendant concerning the disposition of a felony or misdemeanor charge.

"Prosecuting attorney" includes a deputy prosecuting attorney.

"Recommendation" means a proposal that is part of a plea agreement made to a court that:

(1) a felony charge be dismissed; or

(2) a defendant, if the defendant pleads guilty to a felony charge, receive less than the advisory sentence.

"Victim" means a person who has suffered harm as a result of a crime.

As added by Acts 1981, P.L.298, SEC.4. Amended by Acts 1982, P.L.204, SEC.27; P.L.320-1983, SEC.18; P.L.71-2005, SEC.1.

IC 35-35-3-2

Felony charge; duties of prosecuting attorney

Sec. 2. (a) In making a recommendation on a felony charge, a prosecuting attorney must:

(1) inform the victim that he has entered into discussions with defense counsel or the court concerning a recommendation;

(2) inform the victim of the contents of the recommendation before it is filed; and

(3) notify the victim that the victim is entitled to be present and may address the court (in person or in writing) when the court considers the recommendation.

(b) A court may consider a recommendation on a felony charge only if the prosecuting attorney has complied with this section.

As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.126-1985, SEC.2.

IC 35-35-3-3

Conditions; presentence report; acceptance or rejection

Sec. 3. (a) No plea agreement may be made by the prosecuting attorney to a court on a felony charge except:

(1) in writing; and

(2) before the defendant enters a plea of guilty.

The plea agreement shall be shown as filed, and if its contents indicate that the prosecuting attorney anticipates that the defendant intends to enter a plea of guilty to a felony charge, the court shall order the presentence report required by IC 35-38-1-8 and may hear evidence on the plea agreement.

(b) Neither the content of the plea agreement, the presentence

report, nor the hearing shall be a part of the official record of the case unless the court approves the plea agreement. If the plea agreement is not accepted, the court shall reject it before the case may be disposed of by trial or by guilty plea. If the court rejects the plea agreement, subsequent plea agreements may be filed with the court, subject to the same requirements that this chapter imposes upon the initial plea agreement.

(c) A plea agreement in a misdemeanor case may be submitted orally to the court.

(d) In a misdemeanor case, if:

(1) the court rejects a plea agreement; and

(2) the prosecuting attorney or the defendant files a written motion for change of judge within ten (10) days after the plea agreement is rejected;

the court shall grant the motion for change of judge and transfer the proceeding to a special judge under the Indiana Rules of Criminal Procedure. However, there may not be more than one (1) transfer of the proceeding to a special judge under this subsection.

(e) If the court accepts a plea agreement, it shall be bound by its terms.

As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.320-1983, SEC.19; P.L.136-1987, SEC.4.

IC 35-35-3-4

Inadmissibility at trial

Sec. 4. A plea agreement, or a verbal or written communication concerning the plea agreement, may not be admitted into evidence at the trial of the case, should the plea agreement not culminate in approval by the court.

As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.320-1983, SEC.20.

IC 35-35-3-5

Presentation to and opinion by victim; certification

Sec. 5. (a) As a part of the recommendation submitted to the court, the prosecuting attorney must certify that he has offered to show the proposed recommendation to the victims of the felony, if any, and that they have been offered an opportunity to present their opinion of the recommendation to the prosecuting attorney and the court.

(b) A victim present at sentencing in a felony or misdemeanor case shall be advised by the court of a victim's right to make a statement concerning the crime and the sentence. The court shall also offer the victim, if present, an opportunity to make a statement concerning the crime and the sentence. If unable to attend the hearing, the victim may mail a written statement to the court, which must be included in the presentence report made with respect to the defendant.

(c) However, this section gives no additional rights to the defendant. Failure to comply gives no grounds for postconviction

relief.
As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.126-1985, SEC.3.

IC 35-35-3-6
Procedure required by IC 35-35-3-5; representatives of deceased or legal entity victims; multiple victims

Sec. 6. (a) If the victim is deceased or is under the age of eighteen (18) years, the prosecuting attorney shall certify that he has completed the procedure required by section 5 of this chapter with at least one (1) of the next of kin or the parent, guardian, or custodian of the victim. If the victim is a corporation, limited liability company, association, or governmental entity, the prosecuting attorney shall certify that he has completed the procedure with a responsible officer or agent of the entity. If the victim is a partnership, the prosecuting attorney shall certify that he has completed the procedure with at least one (1) partner.

(b) If there are more than three (3) victims, the prosecuting attorney shall complete the procedure required by section 5 of this chapter with the three (3) who he believes have suffered the most.
As added by Acts 1981, P.L.298, SEC.4. Amended by Acts 1982, P.L.204, SEC.28; P.L.8-1993, SEC.508.

IC 35-35-3-7
Inability to locate victim or next of kin; certification

Sec. 7. If the prosecuting attorney is unable to make a certification required under section 5 or 6 of this chapter because he was unable, after a reasonable effort, to locate the victim or his next of kin, then he shall certify this fact to the court. He may then submit the recommendation, and the court may act upon it.
As added by Acts 1981, P.L.298, SEC.4.

IC 35-36

ARTICLE 36. PRETRIAL NOTICES, MOTIONS, AND PROCEDURES

IC 35-36-1

Chapter 1. Definitions

IC 35-36-1-1

Definitions

Sec. 1. As used in this article:

"Insanity" refers to the defense set out in IC 35-41-3-6.

"Mentally ill" means having a psychiatric disorder which substantially disturbs a person's thinking, feeling, or behavior and impairs the person's ability to function; "mentally ill" also includes having any mental retardation.

"Omnibus date" refers to the omnibus date established under IC 35-36-8-1.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-2

Chapter 2. Affirmative Defense of Insanity or Mental Illness; Pleadings, Orders, and Findings

IC 35-36-2-1

Time of filing

Sec. 1. When the defendant in a criminal case intends to interpose the defense of insanity, he must file a notice of that intent with the trial court no later than:

(1) twenty (20) days if the defendant is charged with a felony; or

(2) ten (10) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date. However, in the interest of justice and upon a showing of good cause, the court may permit the filing to be made at any time before commencement of the trial.

As added by Acts 1981, P.L.298, SEC.5. Amended by Acts 1982, P.L.204, SEC.29.

IC 35-36-2-2

Admissibility of evidence; psychiatrists, psychologists, or physicians; defendant's failure to communicate, participate, and cooperate with court appointed medical witnesses

Sec. 2. (a) At the trial of a criminal case in which the defendant intends to interpose the defense of insanity, evidence may be introduced to prove the defendant's sanity or insanity at the time at which the defendant is alleged to have committed the offense charged in the indictment or information.

(b) When notice of an insanity defense is filed, the court shall appoint two (2) or three (3) competent disinterested psychiatrists, psychologists endorsed by the state psychology board as health service providers in psychology, or physicians, at least one (1) of whom must be a psychiatrist, to examine the defendant and to testify at the trial. This testimony shall follow the presentation of the evidence for the prosecution and for the defense, including testimony of any medical experts employed by the state or by the defense.

(c) If a defendant does not adequately communicate, participate, and cooperate with the medical witnesses appointed by the court, after being ordered to do so by the court, the defendant may not present as evidence the testimony of any other medical witness:

(1) with whom the defendant adequately communicated, participated, and cooperated; and

(2) whose opinion is based upon examinations of the defendant;

unless the defendant shows by a preponderance of the evidence that the defendant's failure to communicate, participate, or cooperate with the medical witnesses appointed by the court was caused by the defendant's mental illness.

(d) The medical witnesses appointed by the court may be cross-examined by both the prosecution and the defense, and each side may introduce evidence in rebuttal to the testimony of such a

medical witness.
As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.321-1983, SEC.2; P.L.19-1986, SEC.59; P.L.149-1987, SEC.119; P.L.77-2004, SEC.3.

IC 35-36-2-3
Finding of jury

Sec. 3. In all cases in which the defense of insanity is interposed, the jury (or the court if tried by it) shall find whether the defendant is:

(1) guilty;
(2) not guilty;
(3) not responsible by reason of insanity at the time of the crime; or
(4) guilty but mentally ill at the time of the crime.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-2-4
Finding of nonresponsibility by reason of insanity; commitment procedures; requirements of the superintendent and attending physician; transmittal of information to NICS

Sec. 4. (a) Whenever a defendant is found not responsible by reason of insanity at the time of the crime, the prosecuting attorney shall file a written petition with the court under IC 12-26-6-2(a)(3) or under IC 12-26-7. If a petition is filed under IC 12-26-6-2(a)(3), the court shall hold a commitment hearing under IC 12-26-6. If a petition is filed under IC 12-26-7, the court shall hold a commitment hearing under IC 12-26-7.

(b) The hearing shall be conducted at the earliest opportunity after the finding of not responsible by reason of insanity at the time of the crime, and the defendant shall be detained in custody until the completion of the hearing. The court may take judicial notice of evidence introduced during the trial of the defendant and may call the physicians appointed by the court to testify concerning whether the defendant is currently mentally ill and dangerous or currently mentally ill and gravely disabled, as those terms are defined by IC 12-7-2-96 and IC 12-7-2-130(1). The court may subpoena any other persons with knowledge concerning the issues presented at the hearing.

(c) The defendant has all the rights provided by the provisions of IC 12-26 under which the petition against the defendant was filed. The prosecuting attorney may cross-examine the witnesses and present relevant evidence concerning the issues presented at the hearing.

(d) If a court orders an individual to be committed under IC 12-26-6 or IC 12-26-7 following a verdict of not responsible by reason of insanity at the time of the crime, the superintendent of the facility to which the individual is committed and the attending physician are subject to the requirements of IC 12-26-15-1.

(e) If a defendant is found not responsible by reason of insanity,

the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.200-1983, SEC.4; P.L.2-1992, SEC.869; P.L.77-2004, SEC.4; P.L.110-2009, SEC.13.

IC 35-36-2-5

Finding or plea of guilty but mentally ill; evaluation; sentence; treatment; transmittal of information to NICS

Sec. 5. (a) Except as provided by subsection (e), whenever a defendant is found guilty but mentally ill at the time of the crime or enters a plea to that effect that is accepted by the court, the court shall sentence the defendant in the same manner as a defendant found guilty of the offense.

(b) Before sentencing the defendant under subsection (a), the court shall require the defendant to be evaluated by a physician licensed under IC 25-22.5 who practices psychiatric medicine, a licensed psychologist, or a community mental health center (as defined in IC 12-7-2-38). However, the court may waive this requirement if the defendant was evaluated by a physician licensed under IC 25-22.5 who practices psychiatric medicine, a licensed psychologist, or a community mental health center and the evaluation is contained in the record of the defendant's trial or plea agreement hearing.

(c) If a defendant who is found guilty but mentally ill at the time of the crime is committed to the department of correction, the defendant shall be further evaluated and then treated in such a manner as is psychiatrically indicated for the defendant's mental illness. Treatment may be provided by:

(1) the department of correction; or

(2) the division of mental health and addiction after transfer under IC 11-10-4.

(d) If a defendant who is found guilty but mentally ill at the time of the crime is placed on probation, the court may, in accordance with IC 35-38-2-2.3, require that the defendant undergo treatment.

(e) As used in this subsection, "individual with mental retardation" has the meaning set forth in IC 35-36-9-2. If a court determines under IC 35-36-9 that a defendant who is charged with a murder for which the state seeks a death sentence is an individual with mental retardation, the court shall sentence the defendant under IC 35-50-2-3(a).

(f) If a defendant is found guilty but mentally ill, the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.320-1983, SEC.21; P.L.1-1991, SEC.191; P.L.2-1992, SEC.870; P.L.1-1993,

SEC.239; P.L.158-1994, SEC.2; P.L.121-1996, SEC.3; P.L.215-2001, SEC.108; P.L.99-2007, SEC.200; P.L.110-2009, SEC.14.

IC 35-36-3

Chapter 3. Comprehension to Stand Trial

IC 35-36-3-1

Hearing; psychiatric examination; delay or continuance of trial; confinement in psychiatric institution; competency restoration services; transmittal of information to NICS

Sec. 1. (a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of a defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

(1) psychiatrists; or

(2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology.

At least one (1) of the individuals appointed under this subsection must be a psychiatrist. However, none may be an employee or a contractor of a state institution (as defined in IC 12-7-2-184). The individuals who are appointed shall examine the defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. The division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party in the:

(1) location where the defendant currently resides; or

(2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

(c) If the court makes a finding under subsection (b), the court shall transmit any information required by the division of state court administration to the division of state court administration for

transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.
As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.321-1983, SEC.3; P.L.19-1986, SEC.60; P.L.2-1992, SEC.871; P.L.215-2001, SEC.109; P.L.77-2004, SEC.5; P.L.110-2009, SEC.15.

IC 35-36-3-2
Attainment of ability to stand trial; certification; return to court; order; trial

Sec. 2. Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense:

(1) the superintendent of the state institution (as defined in IC 12-7-2-184); or

(2) if the division of mental health and addiction entered into a contract for the provision of competency restoration services, the director or medical director of the third party contractor;

shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant. The court shall enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of the defendant's defense. Upon the return to court of any defendant committed under section 1 of this chapter, the court shall hold the trial as if no delay or postponement had occurred.
As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.2-1992, SEC.872; P.L.215-2001, SEC.110; P.L.77-2004, SEC.6.

IC 35-36-3-3
Substantial probability of attainment of comprehension to stand trial; certification; commitment proceedings; duration of retention

Sec. 3. (a) Within ninety (90) days after:

(1) a defendant's admission to a state institution (as defined in IC 12-7-2-184); or

(2) the initiation of competency restoration services to a defendant by a third party contractor;

the superintendent of the state institution (as defined in IC 12-7-2-184) or the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, the state institution (as defined in IC 12-7-2-184) or the third party contractor shall initiate regular commitment proceedings under IC 12-26. If a substantial probability does exist, the state institution (as defined in IC 12-7-2-184) or third party contractor shall retain the defendant:

(1) until the defendant attains the ability to understand the

proceedings and assist in the preparation of the defendant's defense and is returned to the proper court for trial; or

(2) for six (6) months from the date of the:

(A) defendant's admission to a state institution (as defined in IC 12-7-2-184); or

(B) initiation of competency restoration services by a third party contractor;

whichever first occurs.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.2-1992, SEC.873; P.L.215-2001, SEC.111; P.L.77-2004, SEC.7.

IC 35-36-3-4

Inability to attain comprehension to stand trial; commitment proceedings

Sec. 4. If a defendant who was found under section 3 of this chapter to have had a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense has not attained that ability within six (6) months after the date of the:

(1) defendant's admission to a state institution (as defined in IC 12-7-2-184); or

(2) initiation of competency restoration services by a third party contractor;

the state institution (as defined in IC 12-7-2-184) or the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall institute regular commitment proceedings under IC 12-26.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.2-1992, SEC.874; P.L.215-2001, SEC.112; P.L.77-2004, SEC.8.

IC 35-36-4

Chapter 4. Notice of Alibi Defense

IC 35-36-4-1

Time of filing; requisite information

Sec. 1. Whenever a defendant in a criminal case intends to offer in his defense evidence of alibi, the defendant shall, no later than:

(1) twenty (20) days prior to the omnibus date if the defendant is charged with a felony; or

(2) ten (10) days prior to the omnibus date if the defendant is charged only with one (1) or more misdemeanors;

file with the court and serve upon the prosecuting attorney a written statement of his intention to offer such a defense. The notice must include specific information concerning the exact place where the defendant claims to have been on the date stated in the indictment or information.

As added by Acts 1981, P.L.298, SEC.5. Amended by Acts 1982, P.L.204, SEC.30.

IC 35-36-4-2

Reply by prosecutor; second statement by defendant; filing and service

Sec. 2. (a) When a defendant files a notice of alibi, the prosecuting attorney shall file with the court and serve upon the defendant, or upon his counsel, a specific statement containing:

(1) the date the defendant was alleged to have committed the crime; and

(2) the exact place where the defendant was alleged to have committed the crime;

that he intends to present at trial. However, the prosecuting attorney need not comply with this requirement if he intends to present at trial the date and place listed in the indictment or information as the date and place of the crime.

(b) If a reply by the prosecuting attorney is required by subsection (a) of this section, the prosecuting attorney shall serve such a statement upon the defendant, or his counsel, within seven (7) days after the filing of the defendant's first notice of alibi.

(c) If the prosecuting attorney's statement to the defendant contains a date or place other than the date or place stated in the defendant's original statement, the defendant shall file a second statement of alibi if the defendant intends to produce at trial evidence of an alibi for the date or place contained in the prosecutor's statement. The defendant shall:

(1) file the second statement with the court; and

(2) serve the second statement upon the prosecuting attorney;

within four (4) days after the filing of the prosecuting attorney's statement. The defendant's second statement must contain the same details required in the defendant's original statement.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-4-3

Failure to file or serve statements; extension of time; exclusion of evidence

Sec. 3. (a) If either the defendant or the prosecuting attorney fails to file or serve statements in accordance with section 2 of this chapter, the judge may extend the time for filing.

(b) If at the trial it appears that the defendant has failed to file and serve an original statement of alibi in accordance with section 1 of this chapter, and if the defendant does not show good cause for his failure, then the court shall exclude evidence offered by the defendant to establish an alibi.

(c) If at the trial it appears that the prosecuting attorney has failed to file and serve his statement in accordance with section 2(a) of this chapter, and if the prosecuting attorney does not show good cause for his failure, then the court shall exclude evidence offered by the prosecuting attorney to show:

(1) that the defendant was at a place other than the place stated in the information or indictment; and

(2) that the date was other than the date stated in the information or indictment.

(d) If at the trial it appears that the defendant has failed to file and serve a second statement in accordance with section 2(c) of this chapter, and if the defendant does not show good cause for his failure, then the court shall exclude evidence offered by the defendant to establish that:

(1) he was at a place other than the place specified in the prosecuting attorney's statement; or

(2) the date was other than the date stated in the prosecuting attorney's statement.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-5

Chapter 5. Change of Judge

IC 35-36-5-1

Preemptory change of venue from judge; procedure

Sec. 1. In any criminal action, either the defendant or the state is entitled as a substantive right to a preemptory change of venue from the judge without specifically stating the reason. The defendant or the state may obtain a change of judge under this section by motion filed in a manner and within the time limitations as specified in the Indiana Rules of Criminal Procedure. Each party is entitled to only one (1) change of judge under this section.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.170-1984, SEC.4.

IC 35-36-5-2

Other grounds; motion; affidavit; time limitation

Sec. 2. The defendant and the state may obtain a change of judge if the judge:

(1) is biased or prejudiced against the moving party and that the moving party cannot obtain a fair trial before the judge;

(2) is related by blood or marriage to any party to the cause;

(3) is unable to properly perform the functions of his office because of mental or physical disabilities;

(4) is disqualified by reason of any conflict of interest; or

(5) should be disqualified for any other cause.

A motion made under this section must be verified or accompained by an affidavit specifically stating facts showing that at least one (1) of these causes exists.

The motion must be filed within the time limitations specified in Indiana Rules of Criminal Procedure.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6

Chapter 6. Change of Venue

IC 35-36-6-1

Verified motion by defendant; bias or prejudice; hearing; duties of clerk and sheriff

Sec. 1. (a) In any criminal action, the defendant may request a change of venue from the county by filing a verified motion for change of venue alleging that bias or prejudice against the defendant exists in that county.

(b) When a motion for a change of venue is filed, the court shall hold a hearing on the motion and may grant a change of venue to the most convenient county. When a change of venue is granted, the clerk shall immediately:

(1) make a transcript of the proceedings and orders of the court;

(2) seal the transcript with the original papers; and

(3) deliver them to the sheriff.

The sheriff shall immediately deliver them to the clerk's office of the proper county, and make his return accordingly. However, only one (1) change of venue from the county may be granted.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.311-1983, SEC.48; P.L.170-1984, SEC.5.

IC 35-36-6-2

Trial in court to which venued

Sec. 2. After a change of venue, the cause shall be docketed and stand for trial. The court to which the case has been venued shall proceed in all respects as if the indictment had been found and returned by a grand jury impaneled in that court, or as if the information had been originally filed in that court.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-3

Transfer of custody of defendant

Sec. 3. When ordered to do so by the court allowing a change of venue, the sheriff of the county from which change of venue is granted, when the defendant is in his custody, shall:

(1) transfer and deliver custody of the defendant; and

(2) deliver a certified copy of the order for change of venue at the same time the defendant is delivered;

to the sheriff of the county to which change of venue has been granted. The sheriff of the county to which change of venue has been granted shall receive the defendant and detain him in custody until the defendant is discharged from his custody. The sheriff who receives the defendant shall give a certificate that he has received the defendant to the sheriff of the county from which change of venue has been granted.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-4

New prosecution; election of court by defendant; alternative disposition

Sec. 4. If it is necessary to institute a new prosecution for the same offense after a change of venue has been taken, the defendant in the case shall elect, when required to do so by the court, the court in which he prefers the new prosecution to be instituted. He may choose either the court from which venue was granted or the court to which venue was granted, and, after his choice, further prosecution shall be instituted in that court. The defendant may then be:

(1) recognized to appear in the court which he elects;

(2) committed for want of bail;

(3) detained in custody; or

(4) remanded to the county from which the change was taken;

as the case may require and in accordance with the defendant's choice of courts.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-5

New prosecution; recognizance

Sec. 5. If in a new prosecution for the same offense, the defendant gives recognizance to appear before the court of the county from which the change of venue was taken, the recognizance shall be taken of record, and shall be recorded by the clerk of that court.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-6

New prosecution; new indictment or information

Sec. 6. If on a new prosecution a defendant is prosecuted for the offense in the court to which the change of venue was taken, a new indictment may be found, or a new information may be filed, and the case may be prosecuted to final execution as if the offense had been committed in the county of that court. However, the indictment or information in such a case must state how the proceeding came into the court where the party elects to be tried, and that he has elected to be tried in that county.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-7

Failure of defendant to elect county of trial; remand

Sec. 7. If in a new prosecution for the same offense the defendant refuses to elect in which county the new prosecution is to be instituted, he shall be recognized to appear before or be remanded to the proper court of the county from which the change of venue was taken, as if he had elected to be proceeded against in the county from which the change of venue was taken.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-8

Costs and expenses; liability; audit, certification, and collection

Sec. 8. (a) In all changes of venue from the county, the county

from which the change is taken is liable for:

(1) the expenses and charges of removing, delivering, and keeping the defendant;

(2) the per diem allowance and expenses of:

(A) the jury trying the cause; and

(B) any of the regular panel in attendance and not engaged in the trial; and

(3) all other expenses necessarily incurred by the county to which the change is taken that result from the change of venue.

(b) All costs and charges included under subsection (a) shall be audited and allowed by the court trying the cause, certified to the auditor of the county from which the change of venue was first taken, and collected by the auditor of the county to which the change was taken. However, where specific fees are allowed by law for any duty or service, no additional costs may be allowed for that duty or service than could be legally taxed in the court from which the change was taken.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-9

Prosecuting attorney; pauper counsel; appointment; reimbursement for fees and expenses

Sec. 9. (a) In a criminal prosecution, if a change of venue has been taken from the county in which the prosecution originated, the prosecuting attorney from the original county shall prosecute the case in the trial court to which the case was venued. The trial court to which the case was venued may appoint a prosecuting attorney to assist on the case.

(b) In a case described in subsection (a), if the defendant is entitled to pauper counsel, the original trial court shall furnish pauper counsel. The trial court to which the case was venued may remove from the case the pauper counsel furnished by the original trial court, and:

(1) request the original trial court to furnish another pauper counsel;

(2) appoint pauper counsel of its choice; or

(3) request the public defender of the state of Indiana to provide counsel under IC 33-40-2.

(c) The original trial court shall determine the amount of the fee and the expenses incurred by the pauper counsel and shall order the appropriate reimbursement to be paid to him by the county in which the prosecution originated. The fees and expenses of a public defender appointed under IC 33-40-2 shall be paid in accordance with that chapter.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.98-2004, SEC.147.

IC 35-36-6-10

Sheriff; expenses of transportation

Sec. 10. The sheriff of the county from which venue was taken

shall receive actual and necessary expenses for transporting himself and his prisoner, in accordance with this chapter, from the county from which venue was taken to the county receiving the case. The court from which venue was taken shall allow these expenses.
As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-11
Murder or Class A felony proceedings; selection of jury; verdict and judgment

Sec. 11. (a) In any criminal proceeding wherein the defendant is charged with murder or a Class A felony to be tried before a jury in which a motion for a change of venue from the county is filed, the court may recognize but decline to grant the motion, and order that the jury be drawn from the residents of a county other than the county in which the court is located.

(b) Pursuant to an order under this section, the court may convene in any county in the state for purposes of jury selection. The venire may be drawn by the jury administrator of a court in the jurors' home county, or may be drawn by the court itself by random selection.

(c) After a jury is selected, the trial shall be held in the county of the court's location. The verdict of the jury and the judgment based upon it have the same validity and effect as if the jury had been drawn from the county of the court's location.
As added by P.L.1-1998, SEC.61. Amended by P.L.118-2007, SEC.32.

IC 35-36-7

Chapter 7. Continuances

IC 35-36-7-1

Motion by defendant; affidavit; grounds; requisite; contents

Sec. 1. (a) A motion by a defendant to postpone a trial because of the absence of evidence may be made only on affidavit showing:

(1) that the evidence is material;

(2) that due diligence has been used to obtain the evidence; and

(3) the location of the evidence.

(b) If a defendant's motion to postpone is because of the absence of a witness, the affidavit required under subsection (a) must:

(1) show the name and address of the witness, if known;

(2) indicate the probability of procuring the witness's testimony within a reasonable time;

(3) show that the absence of the witness has not been procured by the act of the defendant;

(4) state the facts to which the defendant believes the witness will testify, and include a statement that the defendant believes these facts to be true; and

(5) state that the defendant is unable to prove the facts specified in accordance with subdivision (4) through the use of any other witness whose testimony can be as readily procured.

(c) The trial may not be postponed if:

(1) after a motion by the defendant to postpone because of the absence of a witness, the prosecuting attorney admits that the absent witness would testify to the facts as alleged by the defendant in his affidavit in accordance with subsection (b)(4); or

(2) after a motion by the defendant to postpone because of the absence of written or documentary evidence, the prosecuting attorney admits that the written or documentary evidence exists.

(d) A defendant must file an affidavit for a continuance not later than five (5) days before the date set for trial. If a defendant fails to file an affidavit by this time, then he must establish, to the satisfaction of the court, that he is not at fault for failing to file the affidavit at an earlier date.

(e) If a motion for a continuance is based on the illness of the defendant or of a witness, it must be accompanied by:

(1) oral testimony, given in open court; or

(2) a written statement;

of a physician or hospital official having the care or custody of the defendant or witness, presenting the nature of the illness and the probable duration of the person's incapacity to attend trial. Such a written statement must be sworn to by the person making the statement before an officer authorized to administer an oath. The court may appoint a physician to examine the defendant or witness and report to the court on the nature of the person's illness and of his incapacity to attend trial. The court shall by order provide for compensation for such a physician.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-7-2

Motion by prosecuting attorney; absence of witness or written or documentary evidence; official statement; requisites

Sec. 2. (a) A prosecuting attorney may move to postpone the trial of a criminal cause because of the absence of a witness whose name is endorsed on the indictment or information, if he makes an official statement:

(1) containing the requirements of subsections (b)(1) and (b)(2) of section 1 of this chapter;

(2) showing that the absence of the witness has not been procured by the act of the prosecuting attorney;

(3) stating the facts to which he believes the witness will testify, and include a statement that he believes these facts to be true; and

(4) stating that the prosecuting attorney is unable to prove the facts specified in accordance with subdivision (3) through the use of any other witness whose testimony can be as readily procured.

Upon request of the defendant the court shall order that the prosecuting attorney's motion and official statement be made in writing.

(b) The trial may not be postponed if:

(1) after a motion by the prosecuting attorney because of the absence of a witness, the defendant admits that the absent witness would testify to the facts as alleged by the prosecuting attorney in his official statement in accordance with subsection (a)(3); or

(2) after a motion by the prosecuting attorney to postpone because of the absence of written or documentary evidence, the defendant admits that the written or documentary evidence exists.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-7-3

Postponements; adverse impact upon certain children and endangered adults

Sec. 3. (a) This section applies to criminal actions for:

(1) an offense listed in IC 11-8-8-4.5(a);

(2) neglect of a dependent (IC 35-46-1-4);

(3) battery (IC 35-42-2-1) if the victim is:

(A) less than eighteen (18) years of age; or

(B) an endangered adult (as defined in IC 12-10-3-2); and

(4) attempts of the crimes listed in subdivisions (1) through (3).

(b) If a motion is made to postpone a trial or other court proceeding that involves an offense listed in subsection (a), the court shall consider whether a postponement will have an adverse impact upon an endangered adult (as defined in IC 12-10-3-2) or a child who is less than sixteen (16) years of age and who:

(1) is the alleged victim of an offense listed in subsection (a); or

(2) will be a witness in the trial.

As added by P.L.203-1986, SEC.1. Amended by P.L.11-1987, SEC.33; P.L.169-2009, SEC.1.

IC 35-36-8

Chapter 8. Omnibus Date, Pretrial Hearing, and Pretrial Conference

IC 35-36-8-1

Omnibus date; setting; purpose; notice; time limits

Sec. 1. (a) This subsection applies to persons charged with a felony. A date, known as the omnibus date:

(1) must be set by the judicial officer at the initial hearing; and

(2) must be no earlier than forty-five (45) days and no later than seventy-five (75) days after the completion of the initial hearing, unless the prosecuting attorney and the defendant agree to a different date.

(b) The purpose of the omnibus date is to establish a point in time from which various deadlines under this article are established. The court shall direct the clerk to notify the defendant and all counsel of record of the omnibus date.

(c) The omnibus date for persons charged only with one (1) or more misdemeanors:

(1) must be set by the judicial officer at the completion of the initial hearing;

(2) must be no earlier than thirty (30) days (unless the defendant and the prosecuting attorney agree to an earlier date), and no later than sixty-five (65) days, after the initial hearing; and

(3) is the trial date.

(d) Once the omnibus date is set, it remains the omnibus date for the case until final disposition, unless:

(1) the defendant requests a trial within time limits established by the Indiana rules of criminal procedure for early trial motions;

(2) subsequent counsel enters an appearance after the omnibus date and previous counsel withdrew or was removed due to:

(A) a conflict of interest; or

(B) a manifest necessity required that counsel withdraw from the case;

(3) the state has not complied with an order to compel discovery; or

(4) the prosecuting attorney and the defendant agree to continue the omnibus date.

As added by Acts 1981, P.L.298, SEC.5. Amended by Acts 1982, P.L.204, SEC.31; P.L.320-1983, SEC.22; P.L.314-1985, SEC.1.

IC 35-36-8-2

Withdrawal by counsel; grounds; time limit; restriction

Sec. 2. (a) Counsel for a defendant charged with a felony or misdemeanor may withdraw from the case for any reason, including failure of the defendant to fulfill an obligation with respect to counsel's fee, at any time up to thirty (30) days before the omnibus date.

(b) However, the court shall allow counsel for the defendant to

withdraw from the case at any time within thirty (30) days of, and at any time after, the omnibus date if there is a showing that:

(1) counsel for the defendant has a conflict of interest in continued representation of the defendant;

(2) other counsel has been retained or assigned to defend the case, substitution of new counsel would not cause any delay in the proceedings, and the defendant consents to or requests substitution of the new counsel;

(3) the attorney-client relationship has deteriorated to a point such that counsel cannot render effective assistance to the defendant;

(4) the defendant insists upon self representation and the defendant understands that the withdrawal of counsel will not be permitted to delay the proceedings; or

(5) there is a manifest necessity requiring that counsel withdraw from the case.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.40-1990, SEC.56.

IC 35-36-8-3

Pretrial hearing and conference; time; purposes; memorandum of matters agreed upon; use of admission

Sec. 3. (a) A pretrial hearing and pretrial conference, if one is necessary, may be held on the omnibus date or any other date that the court designates prior to the commencement of trial. The purpose of the pretrial hearing is to:

(1) consolidate hearings on pretrial motions and other requests to the maximum extent practicable;

(2) rule on the motions and requests and ascertain whether the case will be disposed of by guilty plea, jury trial, or bench trial; and

(3) make any other orders appropriate under the circumstances to expedite the proceedings.

(b) At the time of the pretrial hearing as provided under this section, or at any other time after the filing of the indictment or information and before the commencement of trial, the court, upon motion of any party or upon its own motion, may order conferences to consider any matters that will promote a fair and expeditious trial. The purpose of such a conference shall be to consider any matters related to the disposition of the proceedings, including the simplification of the issues to be tried and the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.

(c) At the conclusion of the conference the court shall prepare and file a memorandum of the matters agreed upon. Any admission made by the defendant or his attorney at the conference may not be used against the defendant unless the admission is reduced to writing and signed by the defendant and his attorney.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-8-4
Repealed

(*Repealed by P.L.320-1983, SEC.25.)*

IC 35-36-9

Chapter 9. Pretrial Determination of Mental Retardation in Death Sentence Cases

IC 35-36-9-1

Applicability

Sec. 1. This chapter applies when a defendant is charged with a murder for which the state seeks a death sentence under IC 35-50-2-9.

As added by P.L.158-1994, SEC.3. Amended by P.L.2-1996, SEC.283.

IC 35-36-9-2

Individual with mental retardation

Sec. 2. As used in this chapter, "individual with mental retardation" means an individual who, before becoming twenty-two (22) years of age, manifests:

(1) significantly subaverage intellectual functioning; and

(2) substantial impairment of adaptive behavior;

that is documented in a court ordered evaluative report.

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007, SEC.201.

IC 35-36-9-3

Petition alleging mental retardation; filing

Sec. 3. (a) The defendant may file a petition alleging that the defendant is an individual with mental retardation.

(b) The petition must be filed not later than twenty (20) days before the omnibus date.

(c) Whenever the defendant files a petition under this section, the court shall order an evaluation of the defendant for the purpose of providing evidence of the following:

(1) Whether the defendant has a significantly subaverage level of intellectual functioning.

(2) Whether the defendant's adaptive behavior is substantially impaired.

(3) Whether the conditions described in subdivisions (1) and (2) existed before the defendant became twenty-two (22) years of age.

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007, SEC.202.

IC 35-36-9-4

Hearing on petition

Sec. 4. (a) The court shall conduct a hearing on the petition under this chapter.

(b) At the hearing, the defendant must prove by clear and convincing evidence that the defendant is an individual with mental retardation.

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007,

SEC.203.

IC 35-36-9-5

Determination within ten days of trial

Sec. 5. Not later than ten (10) days before the initial trial date, the court shall determine whether the defendant is an individual with mental retardation based on the evidence set forth at the hearing under section 4 of this chapter. The court shall articulate findings supporting the court's determination under this section.

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007, SEC.204.

IC 35-36-9-6

Dismissal of death sentence charging instrument

Sec. 6. If the court determines that the defendant is an individual with mental retardation under section 5 of this chapter, the part of the state's charging instrument filed under IC 35-50-2-9(a) that seeks a death sentence against the defendant shall be dismissed.

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007, SEC.205.

IC 35-36-9-7

Sentencing

Sec. 7. If a defendant who is determined to be an individual with mental retardation under this chapter is convicted of murder, the court shall sentence the defendant under IC 35-50-2-3(a).

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007, SEC.206.

IC 35-37

ARTICLE 37. TRIAL PROCEDURE

IC 35-37-1

Chapter 1. Jury Selection

IC 35-37-1-1

Venire called; number of jurors

Sec. 1. (a) The jury venire called by a court may be used in civil or criminal cases.

(b) If a defendant is charged with:

(1) murder, a Class A felony, a Class B felony or a Class C felony, the jury shall consist of twelve (12) qualified jurors unless the defendant and prosecuting attorney agree to a lesser number; or

(2) any other crime, the jury shall consist of six (6) qualified jurors.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-1-2

Trial by court or jury

Sec. 2. The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court. All other trials must be by jury.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-1-3

Peremptory challenges by defendant

Sec. 3. (a) In prosecutions for murder where the death penalty is sought, the defendant may challenge, peremptorily, twenty (20) jurors.

(b) In prosecutions for murder, where the death penalty is not sought, and Class A, Class B, or Class C felonies, the defendant may challenge, peremptorily, ten (10) jurors.

(c) In prosecutions for all other crimes, the defendant may challenge, peremptorily, five (5) jurors.

(d) When several defendants are tried together, they must join in their challenges.

As added by Acts 1981, P.L.298, SEC.6. Amended by Acts 1982, P.L.204, SEC.32.

IC 35-37-1-4

Peremptory challenges of prosecuting attorney

Sec. 4. The prosecuting attorney shall have the same number of peremptory challenges as the defendant has in like cases.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-1-5

Good causes for challenge; opinion on guilt or innocence

Sec. 5. (a) The following are good causes for challenge to any

person called as a juror in any criminal trial:

(1) That the person was a member of the grand jury that found the indictment.

(2) That the person has formed or expressed an opinion as to the guilt or innocence of the defendant. However, such an opinion is subject to subsection (b).

(3) If the state is seeking a death sentence, that the person entertains such conscientious opinions as would preclude the person from recommending that the death penalty be imposed.

(4) That the person is related within the fifth degree to the person alleged to be the victim of the offense charged, to the person on whose complaint the prosecution was instituted, or to the defendant.

(5) That the person has served on a trial jury which was sworn in the same case against the same defendant, and which jury was discharged after hearing the evidence, or rendered a verdict which was set aside.

(6) That the person served as a juror in a civil case brought against the defendant for the same act.

(7) That the person has been subpoenaed in good faith as a witness in the case.

(8) That the person is a mentally incompetent person.

(9) That the person is an alien.

(10) That the person has been called to sit on the jury at the person's own solicitation or that of another.

(11) That the person is biased or prejudiced for or against the defendant.

(12) That the person does not have the qualifications for a juror prescribed by law.

(13) That, from defective sight or hearing, ignorance of the English language, or other cause, the person is unable to comprehend the evidence and the instructions of the court.

(14) That the person has a personal interest in the result of the trial.

(15) If the person is not a member of the regular panel, that the person has served on a jury within twelve (12) months immediately preceding the trial.

(b) If a person called as a juror states that the person has formed or expressed an opinion as to the guilt or innocence of the defendant, the court or the parties shall proceed to examine the juror on oath as to the grounds of the juror's opinion. If the juror's opinion appears to have been founded upon reading newspaper statements, communications, comments, reports, rumors, or hearsay, and if:

(1) the juror's opinion appears not to have been founded upon:

(A) conversation with a witness of the transaction;

(B) reading reports of a witness' testimony; or

(C) hearing a witness testify;

(2) the juror states on oath that the juror feels able, notwithstanding the juror's opinion, to render an impartial verdict upon the law and evidence; and

(3) the court is satisfied that the juror will render an impartial verdict;

the court may admit the juror as competent to serve in the case.

As added by Acts 1981, P.L.298, SEC.6. Amended by P.L.169-1988, SEC.7; P.L.33-1989, SEC.125.

IC 35-37-1-6

Challenges for cause; time; summary trial

Sec. 6. All challenges for cause shall be made before the jury is sworn to try the cause, and shall be summarily tried by the court on the oath of the party challenged or other evidence.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-1-7

Repealed

(*Repealed by P.L.118-2007, SEC.38.)*

IC 35-37-2

Chapter 2. Trial Proceedings

IC 35-37-2-1

Preliminary instructions

Sec. 1. The court shall give the jury preliminary instructions.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-2-2

Order of trial; statement of case; presentation of evidence; arguments of counsel; instructions

Sec. 2. After the jury is impaneled and sworn, the trial shall proceed in the following order:

(1) The prosecuting attorney shall state the case of the prosecution and briefly state the evidence by which he expects to support it, and the defendant may then state his defense and briefly state the evidence he expects to offer in support of his defense.

(2) The prosecuting attorney shall then offer the evidence in support of the prosecution, and the defendant shall then offer the evidence in support of his defense.

(3) The parties may then respectively offer rebutting evidence only, unless the court, for good reason and in furtherance of justice, permits them to offer evidence upon their original case.

(4) When the evidence is concluded the prosecuting attorney and the defendant or his counsel may, by agreement in open court, submit the case to the court or jury trying the case, without argument. If the case is not submitted without argument, the prosecuting attorney shall have the opening and closing of the argument. However, the prosecuting attorney shall disclose in the opening all the points relied on in the case, and if in the closing he refers to any new point or fact not disclosed in the opening, the defendant or his counsel may reply to that point or fact, and that reply shall close the argument of the case. If the prosecuting attorney refuses to open the argument, the defendant or his counsel may then argue the case. If the defendant or his counsel refuses to argue the case after the prosecuting attorney has made his opening argument, that shall be the only argument allowed in the case.

(5) The court shall then charge the jury. The judge shall:

(A) make the charge to the jury in writing;

(B) number each instruction; and

(C) sign the charge;

if, at any time before the commencement of the argument, he has been requested to do so by the prosecuting attorney, the defendant, or the defendant's counsel. In charging the jury, the court must state to them all matters of law which are necessary for their information in giving their verdict. The judge shall inform the jury that they are the exclusive judges of all questions of fact, and that they have a right, also, to determine

the law. The court may send the instructions to the jury room.

(6) If the prosecuting attorney, the defendant, or the defendant's counsel desires special instructions to be given to the jury, these instructions must be:

(A) reduced to writing;

(B) numbered;

(C) accompanied by an affixed cover sheet that refers to the instructions by number and that is signed by the party, or his attorney, who is requesting the special instructions; and

(D) delivered to the court;

before the commencement of the argument. A charge of the court or any special instructions, when written and given by the court under this subdivision, may not be orally qualified, modified, or in any manner orally explained to the jury by the court. If final instructions are submitted to the jury in written form after having been read by the court, no indication of the party or parties tendering any of the instructions may appear on any instruction.

As added by Acts 1981, P.L.298, SEC.6. Amended by P.L.315-1985, SEC.1.

IC 35-37-2-3

Preliminary instructions; personal knowledge of material fact by juror; disclosure; examination; excuse of juror or panel

Sec. 3. (a) As a part of the preliminary instructions, the court shall instruct the jurors that if a juror realizes, during the course of the trial, that he has personal knowledge of any fact material to the cause, he shall inform the bailiff that he believes he has this knowledge at the next recess or upon adjournment, whichever is sooner. The bailiff shall inform the court of the juror's belief, and the court shall examine the juror under oath in the presence of the parties and outside the presence of the other jurors concerning his personal knowledge of any material fact.

(b) If the court finds that the juror has personal knowledge of a material fact, the juror shall be excused and the court shall replace that juror with an alternate. If there is no alternate juror, then the court shall discharge the jury without prejudice, unless the parties agree to submit the cause to the remaining jurors.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-2-4

Preliminary instructions; admonition by court; separation

Sec. 4. (a) The court shall admonish the jurors in the preliminary instruction, before separating for meals, and at the end of the day, that it is their duty not to converse among themselves or permit others to converse with them on any subject connected with the trial, or to form or express any opinion about the case until the cause is finally submitted to them.

(b) The jurors may separate when court is adjourned for the day, unless the court finds that the jurors should be sequestered in order

to assure a fair trial.
As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-2-5
View by jury

Sec. 5. Whenever:

(1) the court believes that it is proper; or

(2) a party to the case makes a motion;

for the jury to have a view of the place in which any material fact occurred, the court may order the jury to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury is absent for this reason, no person, other than the officer and the person appointed to show them the place, may speak to the jurors on any subject connected with the trial.
As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-2-6
Retirement and deliberation of jury; officer in charge; restrictions

Sec. 6. (a) After hearing the charge, the jury shall retire to the jury room for deliberation. They shall retire under the charge of an officer, who shall be sworn by the court to:

(1) keep the jury together in the jury room or other place ordered by the court;

(2) furnish them food as directed by the court; and

(3) not permit any person to speak or communicate with them.

(b) An officer may not communicate with a juror except:

(1) as provided in sections 2 and 4 of this chapter;

(2) to ask them if they have agreed on a verdict; or

(3) when ordered to do so by the court.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-2-7
Verdict; rendering in open court; polling of jury

Sec. 7. When the jury has agreed upon its verdict, the officer having the jurors in his charge shall conduct them into court. If all jurors appear, their verdict must be rendered in open court. If all do not appear, the court shall discharge the jury without prejudice. The prosecuting attorney and the parties are entitled, in all criminal cases, to have the jury polled.
As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-2.5
Repealed

(*Repealed by P.L.213-2005, SEC.9.)*

IC 35-37-3

Chapter 3. Witness Immunity

IC 35-37-3-1

Refusal of witness to answer or produce item; hearing; decision on right to refuse

Sec. 1. (a) If a witness, in any hearing or trial occurring after an indictment or information has been filed, refuses to answer any question or produce any item, the court shall remove the jury, if one is present, and immediately conduct a hearing on the witness's refusal. After such a hearing, the court shall decide whether the witness is required to answer the question or produce the item.

(b) If the prosecuting attorney has reason to believe that a witness will refuse to answer a question or produce an item during any criminal trial, the prosecuting attorney may submit the question or request to the trial court. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-3-2

Self-incrimination; request for use immunity

Sec. 2. If the court determines that the witness, based upon his privilege against self-incrimination, may properly refuse to answer a question or produce an item, the prosecuting attorney may make a written request that the court grant use immunity to the witness, in accordance with section 3 of this chapter.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-3-3

Grant of use immunity; instruction of witness; contempt; perjury

Sec. 3. (a) Upon request of the prosecuting attorney, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceeding against that witness, unless the evidence is volunteered by the witness or is not responsive to a question by the prosecuting attorney. The court shall instruct the witness that he must answer the questions asked and produce the items requested.

(b) A grant of use immunity does not prohibit the use of evidence the witness has given in a prosecution for perjury under IC 35-44-2-1.

(c) If a witness refuses to give the evidence after he has been granted use immunity, the court may find him in contempt.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-4

Chapter 4. Evidence and Protection of Certain Witnesses

IC 35-37-4-1

Competency of witness

Sec. 1. A person who is competent to testify in civil actions is also competent to testify in criminal proceedings.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-4-2

Credibility; general moral character

Sec. 2. In all questions affecting the credibility of a witness, his general moral character may be given in evidence.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-4-3

Depositions

Sec. 3. The state and the defendant may take and use depositions of witnesses in accordance with the Indiana Rules of Trial Procedure.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-4-4

Sex crimes; admissibility of evidence of past sexual conduct; procedure

Sec. 4. (a) In a prosecution for a sex crime as defined in IC 35-42-4:

(1) evidence of the victim's past sexual conduct;

(2) evidence of the past sexual conduct of a witness other than the accused;

(3) opinion evidence of the victim's past sexual conduct;

(4) opinion evidence of the past sexual conduct of a witness other than the accused;

(5) reputation evidence of the victim's past sexual conduct; and

(6) reputation evidence of the past sexual conduct of a witness other than the accused;

may not be admitted, nor may reference be made to this evidence in the presence of the jury, except as provided in this chapter.

(b) Notwithstanding subsection (a), evidence:

(1) of the victim's or a witness's past sexual conduct with the defendant;

(2) which in a specific instance of sexual activity shows that some person other than the defendant committed the act upon which the prosecution is founded; or

(3) that the victim's pregnancy at the time of trial was not caused by the defendant;

may be introduced if the judge finds, under the procedure provided in subsection (c) of this section, that it is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(c) If the defendant or the state proposes to offer evidence

described in subsection (b) of this section, the following procedure must be followed:

(1) The defendant or the state shall file a written motion not less than ten (10) days before trial stating that it has an offer of proof concerning evidence described in subsection (b) and its relevancy to the case. This motion shall be accompanied by an affidavit in which the offer of proof is stated.

(2) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, and at the hearing allow the questioning of the victim or witness regarding the offer of proof made by the defendant or the state.

At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant or the state regarding the sexual conduct of the victim or witness is admissible under subsection (b) of this section, the court shall make an order stating what evidence may be introduced by the defendant or the state and the nature of the questions to be permitted. The defendant or the state may then offer evidence under the order of the court.

(d) If new information is discovered within ten (10) days before trial or during the course of the trial that might make evidence described in subsection (b) of this chapter admissible, the judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under this chapter.

(e) This section does not limit the right of either the state or the accused to impeach credibility by a showing of prior felony convictions.

(f) If:

(1) a defendant files a motion under subsection (c)(1) concerning evidence described in subsection (b)(3); and

(2) the state acknowledges that the victim's pregnancy is not due to the conduct of the defendant;

the court shall instruct the jury that the victim's pregnancy is not due to the conduct of the defendant. However, other evidence concerning the pregnancy may not be admitted, and further reference to the pregnancy may not be made in the presence of the jury.

As added by Acts 1981, P.L.298, SEC.6. Amended by P.L.322-1983, SEC.1.

IC 35-37-4-5

Evidence unlawfully obtained by officer in good faith; exclusion

Sec. 5. (a) In a prosecution for a crime or a proceeding to enforce an ordinance or a statute defining an infraction, the court may not grant a motion to exclude evidence on the grounds that the search or seizure by which the evidence was obtained was unlawful if the evidence was obtained by a law enforcement officer in good faith.

(b) For purposes of this section, evidence is obtained by a law enforcement officer in good faith if:

(1) it is obtained pursuant to:

(A) a search warrant that was properly issued upon a determination of probable cause by a neutral and detached

magistrate, that is free from obvious defects other than nondeliberate errors made in its preparation, and that was reasonably believed by the law enforcement officer to be valid; or

(B) a state statute, judicial precedent, or court rule that is later declared unconstitutional or otherwise invalidated; and

(2) the law enforcement officer, at the time he obtains the evidence, has satisfied applicable minimum basic training requirements established by rules adopted by the law enforcement training board under IC 5-2-1-9.

(c) This section does not affect the right of a person to bring a civil action against a law enforcement officer or a governmental entity to recover damages for the violation of his rights by an unlawful search and seizure.

As added by P.L.323-1983, SEC.1.

IC 35-37-4-6

Application of section; "protected person" defined; admissibility of statement or videotape; notice to defendant; jury instructions

Sec. 6. (a) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(1) or (c)(2):

(1) Sex crimes (IC 35-42-4).

(2) Battery upon a child (IC 35-42-2-1(a)(2)(B)).

(3) Kidnapping and confinement (IC 35-42-3).

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

(5) Neglect of a dependent (IC 35-46-1-4).

(6) Human and sexual trafficking crimes (IC 35-42-3.5).

(7) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through (6).

(b) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(3):

(1) Exploitation of a dependent or endangered adult (IC 35-46-1-12).

(2) A sex crime (IC 35-42-4).

(3) Battery (IC 35-42-2-1).

(4) Kidnapping, confinement, or interference with custody (IC 35-42-3).

(5) Home improvement fraud (IC 35-43-6).

(6) Fraud (IC 35-43-5).

(7) Identity deception (IC 35-43-5-3.5).

(8) Synthetic identity deception (IC 35-43-5-3.8).

(9) Theft (IC 35-43-4-2).

(10) Conversion (IC 35-43-4-3).

(11) Neglect of a dependent (IC 35-46-1-4).

(12) Human and sexual trafficking crimes (IC 35-42-3.5).

(c) As used in this section, "protected person" means:

(1) a child who is less than fourteen (14) years of age;

(2) an individual with a mental disability who has a disability

attributable to an impairment of general intellectual functioning or adaptive behavior that:

(A) is manifested before the individual is eighteen (18) years of age;

(B) is likely to continue indefinitely;

(C) constitutes a substantial impairment of the individual's ability to function normally in society; and

(D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; or

(3) an individual who is:

(A) at least eighteen (18) years of age; and

(B) incapable by reason of mental illness, mental retardation, dementia, or other physical or mental incapacity of:

(i) managing or directing the management of the individual's property; or

(ii) providing or directing the provision of self-care.

(d) A statement or videotape that:

(1) is made by a person who at the time of trial is a protected person;

(2) concerns an act that is a material element of an offense listed in subsection (a) or (b) that was allegedly committed against the person; and

(3) is not otherwise admissible in evidence;

is admissible in evidence in a criminal action for an offense listed in subsection (a) or (b) if the requirements of subsection (e) are met.

(e) A statement or videotape described in subsection (d) is admissible in evidence in a criminal action listed in subsection (a) or (b) if, after notice to the defendant of a hearing and of the defendant's right to be present, all of the following conditions are met:

(1) The court finds, in a hearing:

(A) conducted outside the presence of the jury; and

(B) attended by the protected person;

that the time, content, and circumstances of the statement or videotape provide sufficient indications of reliability.

(2) The protected person:

(A) testifies at the trial; or

(B) is found by the court to be unavailable as a witness for one (1) of the following reasons:

(i) From the testimony of a psychiatrist, physician, or psychologist, and other evidence, if any, the court finds that the protected person's testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate.

(ii) The protected person cannot participate in the trial for medical reasons.

(iii) The court has determined that the protected person is incapable of understanding the nature and obligation of an

oath.

(f) If a protected person is unavailable to testify at the trial for a reason listed in subsection (e)(2)(B), a statement or videotape may be admitted in evidence under this section only if the protected person was available for cross-examination:

(1) at the hearing described in subsection (e)(1); or

(2) when the statement or videotape was made.

(g) A statement or videotape may not be admitted in evidence under this section unless the prosecuting attorney informs the defendant and the defendant's attorney at least ten (10) days before the trial of:

(1) the prosecuting attorney's intention to introduce the statement or videotape in evidence; and

(2) the content of the statement or videotape.

(h) If a statement or videotape is admitted in evidence under this section, the court shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement or videotape and that, in making that determination, the jury shall consider the following:

(1) The mental and physical age of the person making the statement or videotape.

(2) The nature of the statement or videotape.

(3) The circumstances under which the statement or videotape was made.

(4) Other relevant factors.

(i) If a statement or videotape described in subsection (d) is admitted into evidence under this section, a defendant may introduce a:

(1) transcript; or

(2) videotape;

of the hearing held under subsection (e)(1) into evidence at trial.

As added by P.L.180-1984, SEC.1. Amended by P.L.316-1985, SEC.1; P.L.37-1990, SEC.22; P.L.23-1993, SEC.161; P.L.142-1994, SEC.7; P.L.43-2004, SEC.1; P.L.2-2005, SEC.120; P.L.173-2006, SEC.48; P.L.99-2007, SEC.207; P.L.137-2009, SEC.10.

IC 35-37-4-7

Pecuniary loss or gain; proof

Sec. 7. Whenever an element of an offense involves a pecuniary loss or a pecuniary gain, then the element shall be established by proof of the fair market value of the property at the time of the offense.

As added by P.L.320-1985, SEC.2.

IC 35-37-4-8

Application of section; testimony of protected person; closed circuit television; videotape; notice to defendant

Sec. 8. (a) This section applies to a criminal action under the following:

(1) Sex crimes (IC 35-42-4).

(2) Battery upon a child (IC 35-42-2-1(a)(2)(B)).
(3) Kidnapping and confinement (IC 35-42-3).
(4) Incest (IC 35-46-1-3).
(5) Neglect of a dependent (IC 35-46-1-4).
(6) Human and sexual trafficking crimes (IC 35-42-3.5).
(7) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through (6).

(b) As used in this section, "protected person" has the meaning set forth in section 6 of this chapter.

(c) On the motion of the prosecuting attorney, the court may order that the testimony of a protected person be taken in a room other than the courtroom, and that the questioning of the protected person by the prosecution and the defense be transmitted using a two-way closed circuit television arrangement that:

(1) allows the protected person to see the accused and the trier of fact; and
(2) allows the accused and the trier of fact to see and hear the protected person.

(d) On the motion of the prosecuting attorney or the defendant, the court may order that the testimony of a protected person be videotaped for use at trial. The videotaping of the testimony of a protected person under this subsection must meet the requirements of subsection (c).

(e) The court may not make an order under subsection (c) or (d) unless:

(1) the testimony to be taken is the testimony of a protected person who:
(A) is the alleged victim of an offense listed in subsection (a) for which the defendant is being tried or is a witness in a trial for an offense listed in subsection (a); and
(B) is found by the court to be a protected person who should be permitted to testify outside the courtroom because:
(i) the court finds from the testimony of a psychiatrist, physician, or psychologist and any other evidence that the protected person's testifying in the physical presence of the defendant would cause the protected person to suffer serious emotional harm and the court finds that the protected person could not reasonably communicate in the physical presence of the defendant to the trier of fact;
(ii) a physician has certified that the protected person cannot be present in the courtroom for medical reasons; or
(iii) evidence has been introduced concerning the effect of the protected person's testifying in the physical presence of the defendant, and the court finds that it is more likely than not that the protected person's testifying in the physical presence of the defendant creates a substantial likelihood of emotional or mental harm to the protected person;
(2) the prosecuting attorney has informed the defendant and the defendant's attorney of the intention to have the protected

person testify outside the courtroom; and

(3) the prosecuting attorney informed the defendant and the defendant's attorney under subdivision (2) at least ten (10) days before the trial of the prosecuting attorney's intention to have the protected person testify outside the courtroom.

(f) If the court makes an order under subsection (c), only the following persons may be in the same room as the protected person during the protected person's testimony:

(1) A defense attorney if:

(A) the defendant is represented by the defense attorney; and

(B) the prosecuting attorney is also in the same room.

(2) The prosecuting attorney if:

(A) the defendant is represented by a defense attorney; and

(B) the defense attorney is also in the same room.

(3) Persons necessary to operate the closed circuit television equipment.

(4) Persons whose presence the court finds will contribute to the protected person's well-being.

(5) A court bailiff or court representative.

(g) If the court makes an order under subsection (d), only the following persons may be in the same room as the protected person during the protected person's videotaped testimony:

(1) The judge.

(2) The prosecuting attorney.

(3) The defendant's attorney (or the defendant, if the defendant is not represented by an attorney).

(4) Persons necessary to operate the electronic equipment.

(5) The court reporter.

(6) Persons whose presence the court finds will contribute to the protected person's well-being.

(7) The defendant, who can observe and hear the testimony of the protected person with the protected person being able to observe or hear the defendant. However, if the defendant is not represented by an attorney, the defendant may question the protected person.

(h) If the court makes an order under subsection (c) or (d), only the following persons may question the protected person:

(1) The prosecuting attorney.

(2) The defendant's attorney (or the defendant, if the defendant is not represented by an attorney).

(3) The judge.

As added by P.L.203-1986, SEC.2. Amended by P.L.37-1990, SEC.23; P.L.142-1994, SEC.8; P.L.2-2005, SEC.121; P.L.173-2006, SEC.49.

IC 35-37-4-9

Certificates of title; certified copies as prima facie evidence of title

Sec. 9. (a) As used in this section, "certified copy of a certificate of title" means a document that is:

(1) a copy of a certificate of title for a motor vehicle, by

whatever name designated, that is issued by the bureau of motor vehicles or a governmental entity in another state;

(2) prepared from a record of the governmental entity issuing the certificate of title; and

(3) certified by the officer having legal custody of the record described in subdivision (2) or the officer's deputy.

(b) In a criminal proceeding, a certified copy of a certificate of title is prima facie evidence of the ownership of a motor vehicle.

As added by P.L.136-1987, SEC.3.

IC 35-37-4-10

Repealed

(*Repealed by P.L.1-1991, SEC.192.)*

IC 35-37-4-11

Safeguarding victim from contact with accused and relatives of accused; waiting areas

Sec. 11. (a) During court proceedings a court shall provide safeguards necessary to minimize the contact of the victim of an offense or delinquent act with:

(1) a defendant accused of the offense or a juvenile accused of committing the delinquent act; and

(2) the relatives and friends of:

(A) a defendant accused of the offense; or

(B) a juvenile accused of committing the delinquent act.

(b) The safeguards required under subsection (a) may include courthouse waiting areas for victims that are separated from those waiting areas specified for defendants, juveniles alleged to be delinquent children, and the relatives and friends of accused persons.

(c) A county is not required under this section, or by mandate of a court, to expend any funds to change the physical configuration of a courthouse in the county to meet the requirements of this section.

As added by P.L.36-1990, SEC.10.

IC 35-37-4-12

Physical safety of victim or victim's family in danger; exclusion of evidence; disclosure to court

Sec. 12. (a) If the physical safety of a victim or the victim's immediate family is in danger, a victim may not be required to give personal information during the course of sworn testimony regarding the following:

(1) Telephone numbers.

(2) Place of employment.

(3) Residential address.

(b) In any hearing to determine the introduction into evidence of the personal information specified in subsection (a), the court, if the court finds an actual danger to the victim or the victim's immediate family exists, may require the party possessing the personal information to disclose the personal information to the court for in camera review.

As added by P.L.1-1991, SEC.193.

IC 35-37-4-13

"Forensic DNA analysis" defined; admissibility

Sec. 13. (a) As used in this section, "forensic DNA analysis" means an identification process in which the unique genetic code of an individual that is carried by the individual's deoxyribonucleic acid (DNA) is compared to genetic codes carried in DNA found in bodily substance samples obtained by a law enforcement agency in the exercise of the law enforcement agency's investigative function.

(b) In a criminal trial or hearing, the results of forensic DNA analysis are admissible in evidence without antecedent expert testimony that forensic DNA analysis provides a trustworthy and reliable method of identifying characteristics in an individual's genetic material.

As added by P.L.1-1991, SEC.194.

IC 35-37-4-14

Evidence of a previous battery

Sec. 14. (a) This section applies even if no criminal charges were filed concerning the act that is the basis of the evidence of a previous battery.

(b) As used in this section, "evidence of a previous battery" means evidence that a person charged with a crime described in subsection (c)(1) through (c)(3) committed a prior unrelated act of battery or attempted battery on the victim of a crime described in subsection (c)(1) through (c)(3) within five (5) years before the person allegedly committed the crime described in subsection (c)(1) through (c)(3).

(c) In a prosecution for:

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

(2) aggravated battery (IC 35-42-2-1.5);

(3) murder (IC 35-42-1-1); or

(4) voluntary manslaughter (IC 35-42-1-3);

evidence of a previous battery is admissible into evidence in the state's case-in-chief for purposes of proving motive, intent, identity, or common scheme and design.

(d) If the state proposes to offer evidence described in subsection (b), the following procedure must be followed:

(1) The state shall file a written motion not less than ten (10) days before trial stating that the state has an offer of proof concerning evidence described in subsection (b) and the relevancy of the evidence to the case. The motion must be accompanied by an affidavit in which the offer of proof is stated.

(2) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury. At the hearing, the court shall allow the questioning of the victim or witness regarding the offer of proof made by the state.

At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the state is admissible, the court shall make

an order stating what evidence may be introduced by the state and the nature of the questions to be permitted. The state may then offer evidence under the order of the court.

(e) This section shall not be construed to limit the admissibility of evidence of a previous battery in any civil or criminal proceeding.
As added by P.L.213-1991, SEC.1.

IC 35-37-4-15

Child molestation; evidence of prior acts

Sec. 15. (a) In a prosecution for child molesting under IC 35-42-4-3, a prosecution for incest under IC 35-46-1-3, or a prosecution for an attempt or a conspiracy to commit child molesting or incest, evidence that the defendant has committed another crime or act of child molesting or incest or attempted or conspired to commit another crime or act of child molesting or incest:

(1) against the same victim; or

(2) that involves a similar crime or act of child molesting or incest against a different victim;

is admissible.

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

(1) at least fifteen (15) days before the date the defendant's trial is scheduled to begin; or

(2) at a later date as determined by the court for good cause.

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

(1) the danger of:

(A) unfair prejudice;

(B) confusion of the issues; or

(C) misleading the jury; or

(2) considerations of:

(A) undue delay;

(B) waste of time; or

(C) needless presentation of cumulative evidence.

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

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

(1) Motive.

(2) Opportunity.

(3) Intent.

(4) Plan.

(5) Knowledge.
(6) Identity.
(7) Absence of mistake or accident.

As added by P.L.232-1993, SEC.2.

IC 35-37-4.5

Chapter 4.5. Sex Crimes Victims and Polygraph Examinations

IC 35-37-4.5-1

"Polygraph"

Sec. 1. As used in this chapter, "polygraph" means a device that permanently and simultaneously records, at a minimum, an individual's:

(1) cardiovascular and respiratory patterns; and

(2) galvanic skin responses;

in order to determine truthfulness.

As added by P.L.41-2007, SEC.20.

IC 35-37-4.5-2

Prohibition against requiring a sex crime victim to submit to a polygraph examination

Sec. 2. A law enforcement officer may not require an alleged victim of an offense described in IC 35-42-4 to submit to a polygraph or other truth telling device examination.

As added by P.L.41-2007, SEC.20.

IC 35-37-4.5-3

Polygraph refusal; duties of law enforcement officers

Sec. 3. A law enforcement officer may not refuse to investigate, charge, or prosecute an offense under IC 35-42-4 solely because the alleged victim of the offense has not submitted to a polygraph or other truth telling device examination.

As added by P.L.41-2007, SEC.20.

IC 35-37-4.5-4

Voluntary submission to polygraph examination

Sec. 4. This chapter does not prohibit an alleged victim of an offense under IC 35-42-4 from voluntarily submitting to a polygraph or other truth telling device examination.

As added by P.L.41-2007, SEC.20.

IC 35-37-5

Chapter 5. Uniform Act to Secure the Attendance of Witnesses From Outside the State in Criminal Proceedings

IC 35-37-5-1

Definitions

Sec. 1. As used in this chapter:

"State" includes any territory of the United States and the District of Columbia.

"Subpoena" includes a summons in any state where a summons is used in lieu of a subpoena.

"Witness" shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-2

Subpoena; issuance; service; proof of service; fees; contempt of court

Sec. 2. (a) At the request of the state or a defendant, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court of the county in which the hearing or trial is to be held. A subpoena may be served at any place within the state. When permitted by the laws of the United States, this or another state, or foreign country, the court upon proper application and cause shown may authorize the service of a subpoena outside the state in accordance with such law.

(b) Every subpoena shall:

(1) be issued by the clerk under the seal of the court;

(2) state the name of the court and the title of the action;

(3) command each person to whom it is directed to attend and give testimony at a specified time and place; and

(4) be signed by the clerk.

The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it or his attorney, who shall fill it in before service.

(c) A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein. The court, upon motion made at or before the time specified in the subpoena for compliance, may:

(1) quash or modify the subpoena if it is unreasonable and oppressive; or

(2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, documents, or tangible things.

(d) A subpoena may be served by any person. Service of a subpoena upon a person shall be made in the same manner as provided in the Indiana Rules of Trial Procedure.

(e) When a subpoena is served by the sheriff or his deputy, his

return shall be proof of service. When served by any other person, the service must be shown by affidavit. No fees or costs for the service of a subpoena shall be collected or charged as costs except when service is made by the sheriff or his deputy.

(f) Fees need not be first paid or tendered in order to compel the attendance of witnesses in a criminal proceeding.

(g) Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of:

(1) the court from which the subpoena is issued; or

(2) the court of the county where the witness was required to appear or act.

When duly subpoenaed, the attendance of all witnesses may be enforced by attachment.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-3

Subpoena; persons imprisoned or institutionalized within this state

Sec. 3. (a) When the testimony of a person who is imprisoned or institutionalized within this state is necessary in any criminal proceeding, the subpoena shall be delivered or mailed to the official in charge of the institution.

(b) The official in charge of the institution shall bring the witness named in the subpoena before the court at the time and place specified and hold him until he is discharged by the court. When so discharged, the witness shall be returned to the custody of such official and returned to the institution. The official in charge of the institution may request from the court issuing the subpoena such assistance as he deems proper for the safe transportation of the witness.

(c) When such witness is in attendance upon any court, he may be placed, for safe-keeping, in the jail of the county or any other suitable place pursuant to an order of the court. The county in which the proceeding is pending shall pay the actual and necessary expense of producing, keeping, and returning such witness.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-4

Summoning witness in this state to testify in another state

Sec. 4. (a) If a judge of a court of record in any state which has made provision for the commanding of persons within that state to attend and testify in this state certifies under the seal of the court that:

(1) there is a criminal prosecution pending in the court, or that a grand jury investigation has commenced or is about to commence;

(2) a person being within this state is a material witness in the prosecution or grand jury investigation; and

(3) the person's presence will be required for a specified number of days;

upon presentation of the certificate to a judge of a court of record

with jurisdiction to try felony cases in the county in which the person is located, the judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at the hearing the judge determines that:

(1) the witness is material and necessary;

(2) it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state; and

(3) the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to the person protection from arrest, and the service of civil and criminal process;

the judge shall issue a subpoena, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the subpoena. In any hearing the certificate is prima facie evidence of all the facts stated in it.

(c) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure the attendance of the witness in the requesting state, the judge may, in lieu of notification of the hearing, direct that the witness be immediately brought before the judge for the hearing. If the judge is satisfied of the desirability of the custody and delivery, the judge may, in lieu of issuing a subpoena, order that the witness be immediately taken into custody and delivered to an officer of the requesting state. For this determination, the certificate is prima facie proof of such desirability.

(d) If a witness subpoenaed as provided in this section is paid or tendered a sum for expenses and fails without good cause to attend and testify as directed in the subpoena, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a subpoena issued from a court of record in this state.

(e) The amount of the payment for expenses under subsection (d) of this section and section 4(b) of this chapter is set out in IC 33-37-10-2.

As added by P.L.311-1983, SEC.2. Amended by P.L.171-1984, SEC.78; P.L.192-1986, SEC.38; P.L.305-1987, SEC.33; P.L.98-2004, SEC.148.

IC 35-37-5-5

Witness from another state summoned to testify in this state

Sec. 5. (a) If a person in any state that has made provision for commanding persons within its borders to attend and testify in criminal prosecutions in this state or grand jury investigations commenced or about to commence in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which has commenced or is about to commence in this state, a judge of the court may issue a certificate

under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate shall be presented to a judge of a court of record in the county of the state in which the witness is found.

(b) If the witness is summoned to attend and testify in this state, the witness shall be tendered a sum for expenses equal to the amount provided under IC 33-37-10-2. The fees shall be a proper charge upon the county in which the criminal prosecution or grand jury investigation is pending.

(c) A witness who has appeared in accordance with the provisions of the subpoena shall not be required to remain within this state for a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court.

(d) If the witness fails without good cause to attend and testify as directed in the subpoena, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a subpoena issued from a court of record in this state.

As added by P.L.311-1983, SEC.2. Amended by P.L.171-1984, SEC.79; P.L.192-1986, SEC.39; P.L.305-1987, SEC.34; P.L.98-2004, SEC.149.

IC 35-37-5-6

Summoning prisoners in this state to testify in another state; prisoner from another state summoned to testify in this state

Sec. 6. (a) If a judge of a court of record in any other state, which by its laws has made provision for commanding a prisoner within that state to attend and testify in this state, certifies under the seal of the court that:

(1) there is a criminal prosecution pending in such court or that a grand jury investigation has commenced;

(2) a person confined by the department of correction (other than a person awaiting execution of a sentence of death) is a material witness in such prosecution or investigation; and

(3) his presence is required for a specified number of days;

a judge of a court with jurisdiction to try felony cases in the county where the person is confined, after notice to the attorney general, shall fix a time and place for a hearing and shall order the person having custody of the prisoner to produce him at the hearing.

(b) If at such hearing the judge determines that the prisoner is a material and necessary witness in the requesting state, the judge shall issue an order directing that the prisoner attend the court where the prosecution or investigation is pending, upon such terms and conditions as the judge prescribes, including:

(1) provision for the return of the prisoner at the conclusion of his testimony;

(2) proper safeguards on his custody; and

(3) proper financial reimbursement or other payment by the demanding jurisdiction for all expenses incurred in the production and return of the prisoner.

(c) The attorney general is authorized to enter into agreements

with authorities of the demanding jurisdiction to insure proper compliance with the order of the court.

(d) If:

(1) a criminal action is pending in a court of record of this state by reason of the filing of an indictment or affidavit or by reason of the commencement of a grand jury proceeding or investigation;

(2) there is reasonable cause to believe that a person confined in a correctional institution or prison of another state (other than a person awaiting execution of a sentence of death or one confined as mentally ill) possesses information material to such criminal action;

(3) the attendance of such person as a witness in such action is desired by a party; and

(4) the state in which such person is confined possesses a statute equivalent to this section;

a judge of the court in which such action is pending may issue a certificate certifying all such facts and that the attendance of such person as a witness in such court is required for a specified number of days. Such a certificate may be issued upon application of either the state or defendant demonstrating all the facts specified in this section.

(e) Upon issuing such a certificate, the court may deliver it to a court of such other state which, pursuant to the laws thereof, is authorized to undertake legal action for the delivery of such prisoners to this state as witnesses.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-7

Federal prisoner summoned to testify in this state

Sec. 7. When:

(1) a criminal action is pending in a court of record of this state by reason of an indictment or affidavit, or by reason of the commencement of a grand jury proceeding or investigation;

(2) there is reasonable cause to believe that a person confined in a federal prison or other federal custody, either within or outside this state, possesses information material to such criminal action; and

(3) the attendance of such person as a witness in such action is desired by a party;

the court may issue a certificate, known as a writ of habeas corpus ad testificandum, addressed to the attorney general of the United States, certifying all such facts and requesting the attorney general of the United States to cause the attendance of such person as a witness in such court for a specified number of days. Such a certificate may be issued upon application of either the state or a defendant demonstrating all facts specified in subdivision (1). Upon issuing such a certificate, the court may deliver it, or cause or authorize it to be delivered, to the attorney general of the United States or to his representative authorized to entertain the request.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-8

Exemption from arrest or service of process

Sec. 8. If a person comes into this state in obedience to a subpoena directing him to attend and testify in a criminal prosecution in this or any other state, he shall not while in this state pursuant to such subpoena be subject to arrest or the service of process, civil, or criminal, in connection with matters which arose before his entrance into this state under subpoena.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-9

Uniformity of construction

Sec. 9. This chapter shall be construed so as to effectuate its general purpose which is to make uniform the law of the states that enact it.

As added by P.L.311-1983, SEC.2.

IC 35-37-6

Chapter 6. Privileged Communications and Victim Counseling

IC 35-37-6-1

"Confidential communication" defined

Sec. 1. (a) As used in this chapter, "confidential communication" means any information:

(1) exchanged between a victim and a victim advocate in the course of the relationship between the victim and the victim advocate;

(2) exchanged or disclosed in a support group in which a victim is or was a participant; or

(3) exchanged in the presence of a third person who facilitates or facilitated communication between a victim and a victim advocate.

(b) The term includes communication that is verbal or written and includes:

(1) advice;

(2) notes;

(3) reports;

(4) statistical data;

(5) memoranda;

(6) working papers;

(7) records; and

(8) personally identifying information;

produced in the course of advocating for a victim.

As added by P.L.136-1987, SEC.5. Amended by P.L.104-2008, SEC.7.

IC 35-37-6-1.5

"Confidential information" defined

Sec. 1.5. (a) As used in this chapter, "confidential information" includes:

(1) personally identifying information;

(2) descriptions of physical appearance;

(3) the case file; and

(4) the case history;

of a person who seeks, receives, or has received services from a victim advocate.

(b) The term does not include:

(1) information disclosed to a victim service provider or a victim advocate if the victim:

(A) files criminal charges;

(B) institutes a civil lawsuit; or

(C) reports allegations of criminal conduct to a law enforcement agency;

against the victim service provider or victim advocate; and

(2) alleged child abuse or neglect that is required to be reported under IC 31-33.

As added by P.L.104-2008, SEC.8.

IC 35-37-6-2
Repealed
(*Repealed by P.L.104-2008, SEC.24.)*

IC 35-37-6-2.5
"Personally identifying information" defined
Sec. 2.5. (a) As used in this chapter, "personally identifying information" means information that identifies a victim or the location where domestic violence, dating violence, sexual assault, or stalking occurred, including the victim's:
(1) name;
(2) mailing and physical address;
(3) electronic mail address;
(4) Internet protocol address;
(5) telephone numbers, including facsimile numbers;
(6) Social Security number;
(7) date of birth;
(8) racial or ethnic background; and
(9) religious affiliation.
(b) The term includes any other information that, in combination with other nonpersonally identifying information, would identify an individual.
As added by P.L.104-2008, SEC.9.

IC 35-37-6-3
"Victim" defined
Sec. 3. As used in this chapter, "victim" means:
(1) an individual against whom an act of:
(A) domestic or family violence;
(B) dating violence;
(C) sexual assault (as defined in IC 5-26.5-1-8);
(D) human and sexual trafficking (IC 35-42-3.5); or
(E) stalking (IC 35-45-10-5);
is committed; or
(2) an individual:
(A) who is not accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5); and
(B) who:
(i) is a member of the family of an individual described in subdivision (1); but
(ii) is not a family member who is accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5).
As added by P.L.136-1987, SEC.5. Amended by P.L.104-2008, SEC.10.

IC 35-37-6-3.5
"Victim advocate" defined

Sec. 3.5. (a) As used in this chapter, "victim advocate" means an individual employed or appointed by or who volunteers for a victim services provider.

(b) The term does not include:

(1) a law enforcement officer;
(2) an employee or agent of a law enforcement officer;
(3) a prosecuting attorney; or
(4) an employee or agent of a prosecuting attorney's office.

(c) The term includes an employee, an appointee, or a volunteer of a:

(1) victim services provider;
(2) domestic violence program;
(3) sexual assault program;
(4) rape crisis center;
(5) battered women's shelter;
(6) transitional housing program for victims of domestic violence; or
(7) program that has as one (1) of its primary purposes to provide services to an individual:
(A) against whom an act of:
(i) domestic or family violence;
(ii) dating violence;
(iii) sexual assault (as defined in IC 5-26.5-1-8);
(iv) human and sexual trafficking (IC 35-42-3.5); or
(v) stalking (IC 35-45-10-5);
is committed; or
(B) who:
(i) is not accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5); and
(ii) is a member of the family of an individual described in clause (A) other than a family member who is accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5).

As added by P.L.104-2008, SEC.11.

IC 35-37-6-4
Repealed

(*Repealed by P.L.104-2008, SEC.24.)*

IC 35-37-6-5
"Victim service provider" defined

Sec. 5. As used in this chapter, "victim service provider" means a person:

(1) that is:

(A) a public agency;
(B) a unit of a public agency; or
(C) an organization that is exempt from federal income taxation under Section 501 of the Internal Revenue Code;
(2) that is not affiliated with a law enforcement agency;
(3) that has, as one (1) of its primary purposes, to provide services for emotional and psychological conditions that occur to an individual:
(A) against whom an act of:
(i) domestic or family violence;
(ii) dating violence;
(iii) sexual assault (as defined in IC 5-26.5-1-8);
(iv) human and sexual trafficking (IC 35-42-3.5); or
(v) stalking (IC 35-45-10-5);
is committed; or
(B) who:
(i) is not accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5); and
(ii) is a member of the family of an individual described in clause (A) other than a family member who is accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5).
As added by P.L.136-1987, SEC.5. Amended by P.L.104-2008, SEC.12.

IC 35-37-6-6
Repealed
(*Repealed by P.L.104-2008, SEC.24.)*

IC 35-37-6-7
Application of chapter
Sec. 7. This chapter does not limit any other testimonial privilege available to a person.
As added by P.L.136-1987, SEC.5.

IC 35-37-6-8
Duty of victim advocate to report
Sec. 8. This chapter does not relieve a victim advocate of any duty to report suspected abuse, neglect, battery, or exploitation under IC 12-10-3, IC 31-33, or IC 35-46-1-13.
As added by P.L.136-1987, SEC.5. Amended by P.L.3-1989, SEC.222; P.L.2-1992, SEC.875; P.L.1-1997, SEC.144; P.L.104-2008, SEC.13.

IC 35-37-6-9
Confidential communications; compelling testimony; records;

temporary emergency shelters

Sec. 9. (a) The following persons or entities may not be compelled to give testimony, to produce records, or to disclose any information concerning confidential communications and confidential information to anyone or in any judicial, legislative, or administrative proceeding:

(1) A victim.

(2) A victim advocate or victim service provider unless the victim specifically consents to the disclosure in a written authorization that contains the date the consent expires.

(b) A victim advocate, victim service provider, or victim may not be compelled to provide testimony in any judicial, legislative, or administrative proceeding that would identify the name, address, location, or telephone number of any facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

(c) A victim service provider or victim advocate may not require a victim to consent to the disclosure of information concerning confidential communications and confidential information as a condition of the victim receiving services.

(d) This section does not prohibit a victim from providing testimony concerning an offense.

(e) The consent to disclose information on behalf of:

(1) a child who is less than eighteen (18) years of age and is unemancipated; or

(2) an incapacitated victim;

may be made by a custodial parent, custodian, guardian, or guardian ad litem in a written authorization that contains the date the consent expires.

(f) A consent under subsection (e) may not be given by a custodial parent, custodian, guardian, or guardian ad litem of the victim if the custodial parent, custodian, guardian, or guardian ad litem:

(1) committed; or

(2) is alleged to have committed;

an offense against the victim.

As added by P.L.136-1987, SEC.5. Amended by P.L.104-2008, SEC.14.

IC 35-37-6-10

Waiver by victim of protections of chapter

Sec. 10. (a) A victim does not waive the protections afforded by this chapter by testifying in court about an offense. However, if the victim partially discloses the contents of a confidential communication in the course of testifying, either party may request the court to rule that justice requires the protections of this chapter to be waived, to the extent they apply to that portion of the communication.

(b) A waiver under this section applies only to the extent necessary to require any witness to respond to questions concerning

the confidential communication that are relevant to the facts and circumstances of the case.
As added by P.L.136-1987, SEC.5.

IC 35-37-6-11
Waiver by victim advocate of protection of chapter; disclosure of confidential information

Sec. 11. A victim advocate may not waive the protections afforded to a victim under this chapter. However, if:

(1) a victim brings suit against a victim advocate or victim service provider in which the victim advocate was employed or served as a volunteer at the time of the counseling relationship; and

(2) the suit alleges malpractice during the relationship;

the victim advocate may testify or produce records regarding confidential communications with the victim and is not liable for doing so.
As added by P.L.136-1987, SEC.5. Amended by P.L.104-2008, SEC.15.

IC 35-37-6-13
Authorization of release of confidential information

Sec. 13. (a) Except as provided in subsection (d):

(1) a victim; or

(2) in the case of a deceased victim, the victim's personal representative;

may authorize a victim advocate or victim service provider to release confidential information or other information by signing a written authorization that specifies what information will be released and to whom the information will be released.

(b) The authorization described in subsection (a) must include a date the authorization expires.

(c) A victim advocate shall make reasonable attempts to notify a victim when a victim service provider or victim advocate is required to disclose confidential information or confidential communications.

(d) A consent for release may not be given by a personal representative of the victim if the personal representative:

(1) abused or killed the victim;

(2) is alleged to have abused or killed the victim; or

(3) assisted another person in abusing or killing the victim.

As added by P.L.104-2008, SEC.16.

IC 35-37-6-14
Prosecuting attorney duty to disclose; victim preserves confidentiality

Sec. 14. (a) This section does not:

(1) relieve a prosecuting attorney of the constitutional and ethical obligation to disclose exculpatory evidence; and

(2) prohibit impeachment of a victim as permitted by the Indiana Rules of Evidence.

(b) A victim does not waive any privileges or confidentiality protections under this chapter if the victim:

(1) testifies about underlying acts of domestic violence, dating violence, sexual assault, or stalking; or

(2) reveals that he or she used or attempted to use the services of a victim service provider or victim advocate.

As added by P.L.104-2008, SEC.17.

IC 35-37-6-15

Partial disclosure

Sec. 15. The partial disclosure of a confidential communication under this chapter does not waive any privilege concerning the remainder of the confidential communication.

As added by P.L.104-2008, SEC.18.

IC 35-37-6-16

Refusal to testify

Sec. 16. The fact that a victim or victim advocate refuses to testify or disclose information because of a privilege under this chapter does not raise any negative inferences or presumptions.

As added by P.L.104-2008, SEC.19.

IC 35-37-6-17

Disclosure of information in aggregate form

Sec. 17. A victim service provider may disclose information in the aggregate that does not identify a victim regarding services and demographic information to comply with federal or state data collection requirements.

As added by P.L.104-2008, SEC.20.

IC 35-38

ARTICLE 38. PROCEEDINGS FOLLOWING DISMISSAL, VERDICT, OR FINDING

IC 35-38-1

Chapter 1. Entry of Judgment and Sentencing

IC 35-38-1-1

Judgment of conviction; pronouncement of sentence

Sec. 1. (a) Except as provided in section 1.5 of this chapter, after a verdict, finding, or plea of guilty, if a new trial is not granted, the court shall enter a judgment of conviction.

(b) When the court pronounces the sentence, the court shall advise the person that the person is sentenced for not less than the earliest release date and for not more than the maximum possible release date.

As added by P.L.311-1983, SEC.3. Amended by P.L.148-1995, SEC.3; P.L.98-2003, SEC.1.

IC 35-38-1-1.3

Statement of reasons for imposing particular sentence

Sec. 1.3. After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes.

As added by P.L.178-2007, SEC.2.

IC 35-38-1-1.5

Converting Class D felony to Class A misdemeanor

Sec. 1.5. (a) A court may enter judgment of conviction as a Class D felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor within three (3) years if the person fulfills certain conditions. A court may enter a judgment of conviction as a Class D felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor only if the person pleads guilty to a Class D felony that qualifies for consideration as a Class A misdemeanor under IC 35-50-2-7, and the following conditions are met:

(1) The prosecuting attorney consents.

(2) The person agrees to the conditions set by the court.

(b) For a judgment of conviction to be entered under subsection (a), the court, the prosecuting attorney, and the person must all agree to the conditions set by the court under subsection (a).

(c) The court is not required to convert a judgment of conviction entered as a Class D felony to a Class A misdemeanor if, after a hearing, the court finds:

(1) the person has violated a condition set by the court under subsection (a); or

(2) the period that the conditions set by the court under subsection (a) are in effect expires before the person

successfully completes each condition.

However, the court may not convert a judgment of conviction entered as a Class D felony to a Class A misdemeanor if the person commits a new offense before the conditions set by the court under subsection (a) expire.

(d) The court shall enter judgment of conviction as a Class A misdemeanor if the person fulfills the conditions set by the court under subsection (a).

(e) The entry of a judgment of conviction under this section does not affect the application of any statute requiring the suspension of a person's driving privileges.

(f) This section may not be construed to diminish or alter the rights of a victim (as defined in IC 35-40-4-8) in a sentencing proceeding under this chapter.

As added by P.L.98-2003, SEC.2.

IC 35-38-1-2

"Victim representative" defined; sentencing; date; hearing for increased penalty; imprisonment pending sentencing

Sec. 2. (a) As used in this chapter, "victim representative" means a person designated by a sentencing court who is:

(1) a spouse, parent, child, sibling, or other relative of; or

(2) a person who has had a close personal relationship with;

the victim of a felony who is deceased, incapacitated, or less than eighteen (18) years of age.

(b) Upon entering a conviction, the court shall set a date for sentencing within thirty (30) days, unless for good cause shown an extension is granted. If a presentence report is not required, the court may sentence the defendant at the time the judgment of conviction is entered. However, the court may not pronounce sentence at that time without:

(1) inquiring as to whether an adjournment is desired by the defendant; and

(2) informing the victim, if present, of a victim's right to make a statement concerning the crime and the sentence.

When an adjournment is requested, the defendant shall state its purpose and the court may allow a reasonable time for adjournment.

(c) If:

(1) the state in the manner prescribed by IC 35-34-1-2.5 sought an increased penalty by alleging that the person was previously convicted of the offense; and

(2) the person was convicted of the subsequent offense in a jury trial;

the jury shall reconvene for the sentencing hearing. The person shall be sentenced to receive the increased penalty if the jury (or the court, if the trial is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had a previous conviction for the offense.

(d) If the felony is nonsuspendible under IC 35-50-2-2, the judge shall order the defendant, if the defendant has previously been

released on bail or recognizance, to be imprisoned in the county or local penal facility pending sentencing.

(e) Upon entering a conviction for a felony, the court shall designate a victim representative if the victim is deceased, incapacitated, or less than eighteen (18) years of age.

As added by P.L.311-1983, SEC.3. Amended by P.L.50-1984, SEC.8; P.L.131-1985, SEC.14; P.L.36-1990, SEC.11.

IC 35-38-1-2.5

Crime of deception

Sec. 2.5. (a) As used in this section, "crime of deception" means any offense in which a person assumes the identity of another person, professes to be another person, uses the identifying information of another person, or falsely suggests that the person is acting with the authority of another person. The term includes an offense under IC 35-43-5.

(b) This section applies to an offender who has been convicted of a crime of deception.

(c) During or after the sentencing of a person convicted of a crime of deception, the court may, upon motion by the state or upon application by a victim or a victim's representative, issue an order:

(1) describing the person whose credit history may be affected by the offender's crime of deception, with sufficient identifying information to assist another person in correcting the credit history; and

(2) stating that the person described in subdivision (1) was the victim of a crime of deception that may have affected the person's credit history.

(d) The order described in subsection (c) may be used to correct the credit history of any person described in the order.

As added by P.L.22-2003, SEC.3.

IC 35-38-1-3

Presentence hearing

Sec. 3. Before sentencing a person for a felony, the court must conduct a hearing to consider the facts and circumstances relevant to sentencing. The person is entitled to subpoena and call witnesses and to present information in his own behalf. The court shall make a record of the hearing, including:

(1) a transcript of the hearing;

(2) a copy of the presentence report; and

(3) if the court finds aggravating circumstances or mitigating circumstances, a statement of the court's reasons for selecting the sentence that it imposes.

As added by P.L.311-1983, SEC.3.

IC 35-38-1-4

Presence of defendant when sentence pronounced; pronouncement of sentence against defendant corporation

Sec. 4. (a) The defendant must be personally present at the time

sentence is pronounced. If the defendant is not personally present when sentence is to be pronounced, the court may issue a warrant for his arrest.

(b) Sentence may be pronounced against a defendant corporation in the absence of counsel, if counsel fails to appear on the date of sentencing after reasonable notice.

As added by P.L.311-1983, SEC.3.

IC 35-38-1-5

Informing defendant of verdict and court's finding; defendant's statement; inclusion of cost of incarceration in sentencing order

Sec. 5. (a) When the defendant appears for sentencing, the court shall inform the defendant of the verdict of the jury or the finding of the court. The court shall afford counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant may also make a statement personally in the defendant's own behalf and, before pronouncing sentence, the court shall ask the defendant whether the defendant wishes to make such a statement. Sentence shall then be pronounced, unless a sufficient cause is alleged or appears to the court for delay in sentencing.

(b) This subsection expires June 30, 2012. A court that sentences a person to a term of imprisonment shall include the total costs of incarceration in the sentencing order. The court may not consider Class I credit under IC 35-50-6-3 in the calculation of the total costs of incarceration.

As added by P.L.311-1983, SEC.3. Amended by P.L.85-2004, SEC.6; P.L.105-2010, SEC.10.

IC 35-38-1-6

Judgment and sentence when defendant charged and found guilty of offense and included offense

Sec. 6. Whenever:

(1) a defendant is charged with an offense and an included offense in separate counts; and

(2) the defendant is found guilty of both counts;

judgment and sentence may not be entered against the defendant for the included offense.

As added by P.L.311-1983, SEC.3.

IC 35-38-1-7

Repealed

(*Repealed by P.L.1-1990, SEC.344.)*

IC 35-38-1-7.1

Considerations in imposing sentence

Sec. 7.1. (a) In determining what sentence to impose for a crime, the court may consider the following aggravating circumstances:

(1) The harm, injury, loss, or damage suffered by the victim of an offense was:

(A) significant; and

(B) greater than the elements necessary to prove the commission of the offense.

(2) The person has a history of criminal or delinquent behavior.

(3) The victim of the offense was less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense.

(4) The person:

(A) committed a crime of violence (IC 35-50-1-2); and

(B) knowingly committed the offense in the presence or within hearing of an individual who:

(i) was less than eighteen (18) years of age at the time the person committed the offense; and

(ii) is not the victim of the offense.

(5) The person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person.

(6) The person has recently violated the conditions of any probation, parole, pardon, community corrections placement, or pretrial release granted to the person.

(7) The victim of the offense was:

(A) a person with a disability (as defined in IC 27-7-6-12), and the defendant knew or should have known that the victim was a person with a disability; or

(B) mentally or physically infirm.

(8) The person was in a position having care, custody, or control of the victim of the offense.

(9) The injury to or death of the victim of the offense was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(10) The person threatened to harm the victim of the offense or a witness if the victim or witness told anyone about the offense.

(11) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9; and

(B) is an employee of the penal facility.

(b) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.
(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.
(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.
(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.
(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

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

(d) A court may impose any sentence that is:
(1) authorized by statute; and
(2) permissible under the Constitution of the State of Indiana;
regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

As added by P.L.1-1990, SEC.345. Amended by P.L.1-1991, SEC.195; P.L.2-1993, SEC.181; P.L.21-1994, SEC.2; P.L.1-1997, SEC.145; P.L.210-1997, SEC.1; P.L.1-1998, SEC.195; P.L.51-1998, SEC.4; P.L.71-1998, SEC.1; P.L.31-1998, SEC.1; P.L.183-1999, SEC.1; P.L.17-2001, SEC.12; P.L.280-2001, SEC.51; P.L.133-2002, SEC.61; P.L.221-2003, SEC.16; P.L.71-2005, SEC.3; P.L.213-2005, SEC.3; P.L.119-2008, SEC.14.

IC 35-38-1-7.5

Sexually violent predators

Sec. 7.5. (a) As used in this section, "sexually violent predator" means a person who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense (as defined in IC 11-8-8-5.2). The term includes a person convicted in another jurisdiction who is identified as a sexually violent predator under IC 11-8-8-20. The term does not include a person no longer considered a sexually violent predator under subsection (g).

(b) A person who:
(1) being at least eighteen (18) years of age, commits an offense described in:
(A) IC 35-42-4-1;
(B) IC 35-42-4-2;
(C) IC 35-42-4-3 as a Class A or Class B felony;
(D) IC 35-42-4-5(a)(1);
(E) IC 35-42-4-5(a)(2);
(F) IC 35-42-4-5(a)(3);
(G) IC 35-42-4-5(b)(1) as a Class A or Class B felony;
(H) IC 35-42-4-5(b)(2);

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

(J) an attempt or conspiracy to commit a crime listed in clauses (A) through (I); or

(K) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (J);

(2) commits a sex offense (as defined in IC 11-8-8-5.2) while having a previous unrelated conviction for a sex offense for which the person is required to register as a sex or violent offender under IC 11-8-8;

(3) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a previous unrelated adjudication as a delinquent child for an act that would be a sex offense if committed by an adult, if, after considering expert testimony, a court finds by clear and convincing evidence that the person is likely to commit an additional sex offense; or

(4) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a previous unrelated adjudication as a delinquent child for an act that would be a sex offense if committed by an adult, if the person was required to register as a sex or violent offender under IC 11-8-8-5(b)(2);

is a sexually violent predator. Except as provided in subsection (g) or (h), a person is a sexually violent predator by operation of law if an offense committed by the person satisfies the conditions set forth in subdivision (1) or (2) and the person was released from incarceration, secure detention, or probation for the offense after June 30, 1994.

(c) This section applies whenever a court sentences a person or a juvenile court issues a dispositional decree for a sex offense (as defined in IC 11-8-8-5.2) for which the person is required to register with the local law enforcement authority under IC 11-8-8.

(d) At the sentencing hearing, the court shall indicate on the record whether the person has been convicted of an offense that makes the person a sexually violent predator under subsection (b).

(e) If a person is not a sexually violent predator under subsection (b), the prosecuting attorney may request the court to conduct a hearing to determine whether the person (including a child adjudicated to be a delinquent child) is a sexually violent predator under subsection (a). If the court grants the motion, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person is a sexually violent predator under subsection (a). A hearing conducted under this subsection may be combined with the person's sentencing hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

knowledge.

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

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

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

As added by P.L.56-1998, SEC.17. Amended by P.L.1-1999, SEC.77; P.L.238-2001, SEC.18; P.L.116-2002, SEC.20; P.L.6-2006, SEC.5; P.L.140-2006, SEC.21 and P.L.173-2006, SEC.21; P.L.216-2007, SEC.37.

IC 35-38-1-7.7

Crime of domestic violence; sentence procedures

Sec. 7.7. (a) At the time of sentencing, a court shall determine whether a person has committed a crime of domestic violence (as defined in IC 35-41-1-6.3).

(b) A determination under subsection (a) must be based upon:

(1) evidence introduced at trial; or

(2) a factual basis provided as part of a guilty plea.

(c) Upon determining that a defendant has committed a crime of domestic violence, a court shall advise the defendant of the consequences of this finding.

(d) A judge shall record a determination that a defendant has committed a crime of domestic violence on a form prepared by the division of state court administration.

As added by P.L.195-2003, SEC.4.

IC 35-38-1-8

Presentence report to be considered by court before sentencing; advisement of victim of right to make statement

Sec. 8. (a) Except as provided in subsection (c), a defendant convicted of a felony may not be sentenced before a written presentence report is prepared by a probation officer and considered by the sentencing court. Delay of sentence until a presentence report is prepared does not constitute an indefinite postponement or suspension of sentence.

(b) A victim present at sentencing in a felony or misdemeanor case shall be advised by the court of a victim's right to make a statement concerning the crime and the sentence.

(c) A court may sentence a person convicted of a Class D felony without considering a written presentence report prepared by a probation officer. However, if a defendant is committed to the department of correction or a community corrections program under IC 35-38-2.6, the probation officer shall prepare a report that meets the requirements of section 9 of this chapter to be sent with the offender to the department in lieu of the presentence investigation report required by section 14 of this chapter.

As added by P.L.311-1983, SEC.3. Amended by P.L.131-1985, SEC.16; P.L.240-1991(ss2), SEC.90; P.L.104-1997, SEC.6.

IC 35-38-1-8.5

Presentence investigation; notice to victim; victim impact statement; contents

Sec. 8.5. (a) A probation officer who is conducting a presentence investigation shall send written notification of the following to each victim or each victim representative designated by the court under section 2(e) of this chapter:

(1) The date, time, and place of the sentencing hearing set by the court.

(2) The right of the victim or victim representative to make an oral or written statement to the court at the sentencing hearing.

(3) The right of the victim or victim representative to submit or refuse to submit to the probation officer a written or oral statement of the impact of the crime upon the victim for inclusion by the probation officer in a victim impact statement.

(b) The notification required by subsection (a) must be sent at least seven (7) days before the date of the sentencing hearing to the last known address of the victim or the victim representative.

(c) The probation officer shall prepare a victim impact statement for inclusion in the convicted person's presentence report. The victim impact statement consists of information about each victim and the consequences suffered by a victim or a victim's family as a result of the crime.

(d) Unless the probation officer certifies to the court under section 9 of this chapter that a victim or victim representative could not be contacted or elected not to submit a statement to the probation officer concerning the crime, the victim impact statement required under this section must include the following information about each victim:

(1) A summary of the financial, emotional, and physical effects of the crime on the victim and the victim's family.

(2) Personal information concerning the victim, excluding telephone numbers, place of employment, and residential address.

(3) Any written statements submitted by a victim or victim representative to the probation officer.

(4) If the victim desires restitution, the basis and amount of a request for victim restitution.

(e) A victim or victim representative is not required to submit a statement or to cooperate in the preparation of the victim impact statement required under this section.

As added by P.L.36-1990, SEC.12. Amended by P.L.216-1996, SEC.12.

IC 35-38-1-9

"Recommendation" and "victim" defined; presentence investigation matters; certification by probation officer when no written statements submitted

Sec. 9. (a) As used in this chapter, "recommendation" and "victim" have the meanings set out in IC 35-35-3-1.

(b) The presentence investigation consists of the gathering of information with respect to:

(1) the circumstances attending the commission of the offense;

(2) the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education, and personal habits; and

(3) the impact of the crime upon the victim.

(c) The presentence investigation may include any matter that the probation officer conducting the investigation believes is relevant to the question of sentence, and must include:

(1) any matters the court directs to be included;

(2) any written statements submitted to the prosecuting attorney by a victim under IC 35-35-3;

(3) any written statements submitted to the probation officer by a victim; and

(4) preparation of the victim impact statement required under section 8.5 of this chapter.

(d) If there are no written statements submitted to the probation officer, he shall certify to the court:

(1) that he has attempted to contact the victim; and

(2) that if he has contacted the victim he has offered to accept the written statements of the victim or to reduce his oral statements to writing, concerning the sentence, including the acceptance of any recommendation.

(e) A presentence investigation report prepared by a probation officer must include the information and comply with any other requirements established in the rules adopted under IC 11-13-1-8.

As added by P.L.311-1983, SEC.3. Amended by P.L.36-1990, SEC.13; P.L.240-1991(ss2), SEC.91; P.L.216-1996, SEC.13.

IC 35-38-1-9.5

Confidential information; convicted person carrier of human immunodeficiency virus (HIV); sex crimes and controlled substances

Sec. 9.5. A probation officer shall obtain confidential information from the state department of health under IC 16-41-8-1 to determine whether a convicted person was a carrier of the human immunodeficiency virus (HIV) when the crime was committed if the person is:

(1) convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or

(2) convicted of an offense relating to controlled substances and the offense involved:

(A) the delivery by any person to another person; or

(B) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated

risk of transmission of HIV by involving percutaneous contact.
As added by P.L.123-1988, SEC.25. Amended by P.L.184-1989, SEC.24; P.L.1-1990, SEC.346; P.L.2-1992, SEC.876; P.L.2-1993, SEC.182; P.L.125-2007, SEC.4.

IC 35-38-1-10
Presentence investigation; physical or mental examination
Sec. 10. The court may order that the convicted person:
(1) undergo a thorough physical or mental examination in a designated facility as part of the presentence investigation; and
(2) remain in the facility for examination for not more than ninety (90) days.
As added by P.L.311-1983, SEC.3.

IC 35-38-1-10.5
Screening test for dangerous diseases; sex crimes and controlled substances; confirmatory test; presentence investigation; marital privilege; mental health service provider's civil and criminal immunity
Sec. 10.5. (a) The court:
(1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:
(A) convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or
(B) convicted of an offense relating to controlled substances and the offense involved:
(i) the delivery by any person to another person; or
(ii) the use by any person on another person;
of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact; and
(2) may order that a person undergo a screening test for a dangerous disease (as defined in IC 16-41-8-5) in accordance with IC 16-41-8-5.
(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.
(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:
(1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and
(2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.
(d) A person who, in good faith:

(1) makes a report required to be made under this section; or
(2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

As added by P.L.123-1988, SEC.26. Amended by P.L.184-1989, SEC.25; P.L.1-1990, SEC.347; P.L.2-1992, SEC.877; P.L.2-1993, SEC.183; P.L.1-1998, SEC.196; P.L.71-1998, SEC.2; P.L.125-2007, SEC.5; P.L.125-2009, SEC.5.

IC 35-38-1-10.6

Crime victims; notice that criminal had antibodies for human immunodeficiency virus (HIV); counseling

Sec. 10.6. (a) The state department of health shall notify victims of an offense relating to a criminal sexual act or an offense relating to controlled substances if tests conducted under section 10.5 of this chapter or IC 16-41-8-5 confirm that the person tested had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

As added by P.L.123-1988, SEC.27. Amended by P.L.1-1990, SEC.348; P.L.2-1992, SEC.878; P.L.71-1998, SEC.3; P.L.125-2007, SEC.6; P.L.125-2009, SEC.6.

IC 35-38-1-10.7

Repealed

(*Repealed by P.L.125-2009, SEC.9.)*

IC 35-38-1-11

Presentence memorandum by convicted person

Sec. 11. At any time before sentencing, the convicted person may file with the court a written memorandum setting forth any information he considers pertinent to the question of sentence. The convicted person may attach written statements by others in support of facts alleged in the memorandum.

As added by P.L.311-1983, SEC.3.

IC 35-38-1-12

Presentence investigation; advising defendant of contents and conclusions; copy of presentence report; opportunity for victim to make statement; sources of confidential information

Sec. 12. (a) Before imposing sentence, the court shall:

(1) advise the defendant or his counsel and the prosecuting

attorney of the factual contents and conclusions of the presentence investigation; or

(2) provide the defendant or his counsel and the prosecuting attorney with a copy of the presentence report.

The court also shall offer the victim, if present, an opportunity to make a statement concerning the crime and the sentence.

(b) The sources of confidential information need not be disclosed. The court shall furnish the factual contents of the presentence investigation or a copy of the presentence report sufficiently in advance of sentencing so that the defendant will be afforded a fair opportunity to controvert the material included.

As added by P.L.311-1983, SEC.3. Amended by P.L.131-1985, SEC.17.

IC 35-38-1-13

Confidentiality of presentence report or memoranda

Sec. 13. (a) Any:

(1) presentence report or memoranda; and

(2) report of a physical or mental examination;

submitted to the court in connection with sentencing shall be kept confidential.

(b) The materials specified in subsection (a) may not be made available to any person or public or private agency other than:

(1) the convicted person and his counsel;

(2) the prosecuting attorney;

(3) a probation department;

(4) the community corrections program in which an offender is placed under IC 35-38-2.6; and

(5) the Indiana criminal justice institute established under IC 5-2-6;

except where specifically required or permitted by statute or upon specific authorization by the court and the convicted person.

As added by P.L.311-1983, SEC.3. Amended by P.L.135-1993, SEC.5; P.L.292-1995, SEC.1.

IC 35-38-1-14

Imprisonment; transmission of certain information to department of correction

Sec. 14. (a) If a convicted person is sentenced to a term of imprisonment, the court shall send a copy of:

(1) the presentence report;

(2) any presentence memorandum filed by the convicted person;

(3) the report of any physical or mental examination made incident to the question of sentence;

(4) any record made under IC 35-35-2 or IC 35-35-3;

(5) the abstract of judgment;

(6) the judgment of conviction; and

(7) the sentencing order;

to the department of correction.

(b) Copies of the information sent to the department of correction

under subsection (a) may be sent through any electronic means approved by the department of correction.
As added by P.L.311-1983, SEC.3. Amended by P.L.119-2008, SEC.15.

IC 35-38-1-15
Erroneous sentence; nature; correction
Sec. 15. If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.
As added by P.L.311-1983, SEC.3.

IC 35-38-1-16
Certified copies of corrected or modified sentence
Sec. 16. Whenever:
(1) a court corrects an erroneous sentence or modifies a previously imposed sentence; and
(2) the convicted person is incarcerated or is to be incarcerated by the department of correction;
the court shall immediately send certified copies of the corrected or modified sentence to the department of correction.
As added by P.L.311-1983, SEC.3.

IC 35-38-1-17
Reduction or suspension of sentence
Sec. 17. (a) Within three hundred sixty-five (365) days after:
(1) a convicted person begins serving the person's sentence;
(2) a hearing is held:
(A) at which the convicted person is present; and
(B) of which the prosecuting attorney has been notified; and
(3) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned;
the court may reduce or suspend the sentence. The court must incorporate its reasons in the record.
(b) If more than three hundred sixty-five (365) days have elapsed since the convicted person began serving the sentence and after a hearing at which the convicted person is present, the court may reduce or suspend the sentence, subject to the approval of the prosecuting attorney. However, if in a sentencing hearing for a convicted person conducted after June 30, 2001, the court could have placed the convicted person in a community corrections program as an alternative to commitment to the department of correction, the court may modify the convicted person's sentence under this section without the approval of the prosecuting attorney to place the convicted person in a community corrections program under IC 35-38-2.6.

(c) The court must give notice of the order to reduce or suspend the sentence under this section to the victim (as defined in IC 35-35-3-1) of the crime for which the convicted person is serving the sentence.

(d) The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.

(e) The court may deny a request to suspend or reduce a sentence under this section without making written findings and conclusions.

(f) Notwithstanding subsections (a) and (b), the court is not required to conduct a hearing before reducing or suspending a sentence if:

(1) the prosecuting attorney has filed with the court an agreement of the reduction or suspension of the sentence; and

(2) the convicted person has filed with the court a waiver of the right to be present when the order to reduce or suspend the sentence is considered.

As added by P.L.311-1983, SEC.3. Amended by P.L.317-1985, SEC.1; P.L.204-1986, SEC.1; P.L.240-1991(ss2), SEC.92; P.L.291-2001, SEC.224; P.L.2-2005, SEC.123; P.L.1-2010, SEC.141.

IC 35-38-1-18

Fines and costs; suspension of fines; commitment instead of fine; default

Sec. 18. (a) Except as provided in subsection (b), whenever the court imposes a fine, it shall conduct a hearing to determine whether the convicted person is indigent. If the person is not indigent, the court shall order:

(1) that the person pay the entire amount at the time sentence is pronounced;

(2) that the person pay the entire amount at some later date;

(3) that the person pay specified parts at designated intervals; or

(4) at the request of the person, commitment of the person to the county jail for a period of time set by the court in lieu of a fine. If the court orders a person committed to jail under this subdivision, the person's total confinement for the crime that resulted in the conviction must not exceed the maximum term of imprisonment prescribed for the crime under IC 35-50-2 or IC 35-50-3.

(b) A court may impose a fine and suspend payment of all or part of the fine until the convicted person has completed all or part of the sentence. If the court suspends payment of the fine, the court shall conduct a hearing at the time the fine is due to determine whether the convicted person is indigent. If the convicted person is not indigent, the court shall order the convicted person to pay the fine:

(1) at the time the fine is due; or

(2) in a manner set forth in subsection (a)(2) through (a)(4).

(c) If a court suspends payment of a fine under subsection (b), the court retains jurisdiction over the convicted person until the

convicted person has paid the entire amount of the fine.

(d) Upon any default in the payment of the fine:

(1) an attorney representing the county may bring an action on a debt for the unpaid amount;

(2) the court may direct that the person, if the person is not indigent, be committed to the county jail and credited toward payment at the rate of twenty dollars ($20) for each twenty-four (24) hour period the person is confined, until the amount paid plus the amount credited equals the entire amount due; or

(3) the court may institute contempt proceedings or order the convicted person's wages, salary, and other income garnished in accordance with IC 24-4.5-5-105 to enforce the court's order for payment of the fine.

As added by P.L.311-1983, SEC.3. Amended by P.L.204-1986, SEC.2; P.L.305-1987, SEC.35; P.L.137-1989, SEC.11; P.L.156-2007, SEC.4.

IC 35-38-1-19

Repealed

(*Repealed by P.L.50-1984, SEC.5.)*

IC 35-38-1-20

Repealed

(*Repealed by P.L.305-1987, SEC.38.)*

IC 35-38-1-21

Home detention; petition and hearing

Sec. 21. (a) A court that receives a petition from the department of correction under IC 35-38-3-5 may, after notice to the prosecuting attorney of the judicial circuit in which the defendant's case originated, hold a hearing for the purpose of determining whether the offender named in the petition may be placed in home detention under IC 35-38-2.5 instead of commitment to the department of correction for the remainder of the offender's minimum sentence.

(b) Notwithstanding IC 35-35-3-3(e), and after a hearing held under this section, a sentencing court may order the offender named in the petition filed under IC 35-38-3-5 to be placed in home detention under IC 35-38-2.5 instead of commitment to the department of correction for the remainder of the offender's minimum sentence.

As added by P.L.98-1988, SEC.4.

IC 35-38-1-22

Juveniles; service of misdemeanor sentences in juvenile detention facilities

Sec. 22. A court that imposes a sentence for conviction of a misdemeanor upon a person who is less than eighteen (18) years of age may enter an order requiring that the convicted person serve the sentence in a juvenile detention facility established under IC 31-31-8 (or IC 31-6-9-5 before its repeal). However, before an order may be

entered under this section, the court must secure the written approval of the judge of the juvenile court allowing the detention of the person in the juvenile detention facility.
As added by P.L.173-1988, SEC.2. Amended by P.L.271-1989, SEC.2; P.L.73-1992, SEC.11; P.L.1-1997, SEC.146.

IC 35-38-1-23
Repealed
(*Repealed by P.L.183-1999, SEC.4.)*

IC 35-38-1-24
Community transition program; Class C or Class D felony
Sec. 24. (a) This section applies to a person if the most serious offense for which the person is committed is a Class C or Class D felony.
(b) Not later than forty-five (45) days after receiving a notice under IC 11-10-11.5-2, the sentencing court may order the department of correction to retain control over a person until the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term, if the court makes specific findings that support a determination:
(1) that placement of the person in a community transition program:
(A) places the person in danger of serious bodily injury or death; or
(B) represents a substantial threat to the safety of others; or
(2) of other good cause.
If the court issues an order under this section, the department of correction may not assign a person to a community transition program.
(c) The court may make a determination under this section without a hearing. The court shall consider any written statement presented to the court by a victim of the offender's crime or by an offender under IC 11-10-11.5-4.5. The court in its discretion may consider statements submitted by a victim after the time allowed for the submission of statements under IC 11-10-11.5-4.5.
(d) The court shall make written findings for a determination under this section, whether or not a hearing was held.
(e) Not later than five (5) days after making a determination under this section, the court shall send a copy of the order to the:
(1) prosecuting attorney where the person's case originated; and
(2) department of correction.
As added by P.L.273-1999, SEC.210. Amended by P.L.90-2000, SEC.17.

IC 35-38-1-25
Community transition program; murder or Class A or B felony
Sec. 25. (a) This section applies to a person if the most serious offense for which the person is committed is murder, a Class A felony, or a Class B felony.

(b) A sentencing court may sentence a person or modify the sentence of a person to assign the person to a community transition program for any period that begins after the person's community transition program commencement date (as defined in IC 11-8-1-5.6) and ends when the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term, if the court makes specific findings of fact that support a determination that it is in the best interests of justice to make the assignment. The order may include any other condition that the court could impose if the court had placed the person on probation under IC 35-38-2 or in a community corrections program under IC 35-38-2.6.

(c) The court may make a determination under this section without a hearing. The court shall consider any written statement presented to the court by a victim of the offender's crime or by an offender under IC 11-10-11.5-4.5. The court in its discretion may consider statements submitted by a victim after the time allowed for the submission of statements under IC 11-10-11.5-4.5.

(d) The court shall make written findings for a determination under this section, whether or not a hearing was held.

(e) Not later than five (5) days after making a determination under this section, the court shall send a copy of the order to the:

(1) prosecuting attorney where the person's case originated; and

(2) department of correction.

As added by P.L.273-1999, SEC.211. Amended by P.L.90-2000, SEC.18; P.L.85-2004, SEC.39.

IC 35-38-1-26

Repealed

(*Repealed by P.L.90-2000, SEC.25.)*

IC 35-38-1-27

Persons required to provide a DNA sample as a condition of a sentence

Sec. 27. (a) If a court imposes a sentence that does not involve a commitment to the department of correction, the court shall require a person:

(1) convicted of an offense described in IC 10-13-6-10; and

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6;

to provide a DNA sample as a condition of the sentence.

(b) If a person described in subsection (a) is confined at the time of sentencing, the court shall order the person to provide a DNA sample immediately after sentencing.

(c) If a person described in subsection (a) is not confined at the time of sentencing, the agency supervising the person after sentencing shall establish the date, time, and location for the person to provide a DNA sample. However, the supervising agency must require that the DNA sample be provided not more than seven (7) days after sentencing. A supervising agency's failure to obtain a

DNA sample not more than seven (7) days after sentencing does not permit a person required to provide a DNA sample to challenge the requirement that the person provide a DNA sample at a later date.

(d) A person's failure to provide a DNA sample is grounds for revocation of the person's probation, community corrections placement, or other conditional release.

As added by P.L.140-2006, SEC.22 and P.L.173-2006, SEC.22.

IC 35-38-1-28

Fingerprinting required after sentencing; exception; transmission of fingerprints to prosecuting attorney and department of correction; immunity

Sec. 28. (a) Except as provided in subsection (c), immediately after sentencing a defendant for an offense, the court shall order the defendant to be fingerprinted by an individual qualified to take fingerprints. The fingerprints may be recorded in any reliable manner, including by the use of a digital fingerprinting device.

(b) The court shall order a law enforcement officer to provide the fingerprints to the prosecuting attorney and the state police department, in hard copy or in an electronic format approved by the security and privacy council established by IC 10-13-3-34.

(c) The court is not required to order the defendant to be fingerprinted if the defendant was previously arrested and processed at the county jail.

(d) A clerk, court, law enforcement officer, or prosecuting attorney is immune from civil liability for an error or omission in the transmission of fingerprints, case history data, or sentencing data, unless the error or omission constitutes willful or wanton misconduct or gross negligence.

As added by P.L.216-2007, SEC.38.

IC 35-38-1-29

Lifetime parole for sexually violent predators not committed to the department of correction

Sec. 29. (a) This section applies only to a sexually violent predator, including a person who is a sexually violent predator by operation of law for committing an offense under IC 35-38-1-7.5(b).

(b) If a court imposes a sentence on a person described in subsection (a) that does not involve a commitment to the department of correction, the court shall order the parole board to place the person on lifetime parole and supervise the person in the same manner that the parole board supervises a sexually violent predator who has been released from imprisonment and placed on lifetime parole under IC 35-50-6-1(e).

(c) If a person described in subsection (b) is also required to be supervised by a court, a probation department, a community corrections program, a community transition program, or another similar program upon the person's release from imprisonment, the parole board may:

(1) supervise the person while the person is being supervised by

the other supervising agency; or

(2) permit the other supervising agency to exercise all or part of the parole board's supervisory responsibility during the period in which the other supervising agency is required to supervise the person;

in accordance with IC 35-50-6-1(g).

As added by P.L.216-2007, SEC.39.

IC 35-38-1-30

Sentence; refrain from contact

Sec. 30. A sentencing court may require that, as a condition of a person's executed sentence, the person shall refrain from any direct or indirect contact with an individual.

As added by P.L.104-2008, SEC.21.

IC 35-38-2

Chapter 2. Probation

IC 35-38-2-1

Conditions of probation; advice on violation specification in record; administrative costs; transfer of three percent of probation user's fee; administrative fee; user's fee; collection of administrative fee; disposition of money collected; supplemental adult probation services fund; payment by credit card; credit card service fee

Sec. 1. (a) Whenever it places a person on probation, the court shall:

(1) specify in the record the conditions of the probation; and

(2) advise the person that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(b) In addition, if the person was convicted of a felony and is placed on probation, the court shall order the person to pay to the probation department the user's fee prescribed under subsection (d). If the person was convicted of a misdemeanor, the court may order the person to pay the user's fee prescribed under subsection (e). The court may:

(1) modify the conditions (except a fee payment may only be modified as provided in section 1.7(b) of this chapter); or

(2) terminate the probation;

at any time. If the person commits an additional crime, the court may revoke the probation.

(c) If a clerk of a court collects a probation user's fee, the clerk:

(1) may keep not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee and shall deposit any fee kept under this subsection in the clerk's record perpetuation fund established under IC 33-37-5-2; and

(2) if requested to do so by the county auditor, city fiscal officer, or town fiscal officer under clause (A), (B), or (C), transfer not more than three percent (3%) of the fee to the:

(A) county auditor, who shall deposit the money transferred under this subdivision into the county general fund;

(B) city general fund when requested by the city fiscal officer; or

(C) town general fund when requested by the town fiscal officer.

(d) In addition to any other conditions of probation, the court shall order each person convicted of a felony to pay:

(1) not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) as an initial probation user's fee;

(2) a monthly probation user's fee of not less than fifteen dollars ($15) nor more than thirty dollars ($30) for each month that the

person remains on probation;

(3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter;

(4) an alcohol abuse deterrent fee and a medical fee set by the court under IC 9-30-9-8, if the court has referred the defendant to an alcohol abuse deterrent program; and

(5) an administrative fee of one hundred dollars ($100);

to either the probation department or the clerk.

(e) In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay:

(1) not more than a fifty dollar ($50) initial probation user's fee;

(2) a monthly probation user's fee of not less than ten dollars ($10) nor more than twenty dollars ($20) for each month that the person remains on probation;

(3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter; and

(4) an administrative fee of fifty dollars ($50);

to either the probation department or the clerk.

(f) The probation department or clerk shall collect the administrative fees under subsections (d)(5) and (e)(4) before collecting any other fee under subsection (d) or (e). All money collected by the probation department or the clerk under this section shall be transferred to the county treasurer, who shall deposit the money into the county supplemental adult probation services fund. The fiscal body of the county shall appropriate money from the county supplemental adult probation services fund:

(1) to the county, superior, circuit, or municipal court of the county that provides probation services to adults to supplement adult probation services; and

(2) to supplement the salaries of probation officers in accordance with the schedule adopted by the county fiscal body under IC 36-2-16.5.

(g) The probation department or clerk shall collect the administrative fee under subsection (e)(4) before collecting any other fee under subsection (e). All money collected by the probation department or the clerk of a city or town court under this section shall be transferred to the fiscal officer of the city or town for deposit into the local supplemental adult probation services fund. The fiscal body of the city or town shall appropriate money from the local supplemental adult probation services fund to the city or town court of the city or town for the court's use in providing probation services to adults or for the court's use for other purposes as may be appropriated by the fiscal body. Money may be appropriated under this subsection only to those city or town courts that have an adult

probation services program. If a city or town court does not have such a program, the money collected by the probation department must be transferred and appropriated as provided under subsection (f).

(h) Except as provided in subsection (j), the county or local supplemental adult probation services fund may be used only to supplement probation services and to supplement salaries for probation officers. A supplemental probation services fund may not be used to replace other funding of probation services. Any money remaining in the fund at the end of the year does not revert to any other fund but continues in the county or local supplemental adult probation services fund.

(i) A person placed on probation for more than one (1) crime:

(1) may be required to pay more than one (1) initial probation user's fee; and

(2) may not be required to pay more than one (1) monthly probation user's fee per month;

to the probation department or the clerk.

(j) This subsection applies to a city or town located in a county having a population of more than one hundred eighty-two thousand seven hundred ninety (182,790) but less than two hundred thousand (200,000). Any money remaining in the local supplemental adult probation services fund at the end of the local fiscal year may be appropriated by the city or town fiscal body to the city or town court for use by the court for purposes determined by the fiscal body.

(k) In addition to other methods of payment allowed by law, a probation department may accept payment of fees required under this section and section 1.5 of this chapter by credit card (as defined in IC 14-11-1-7). The liability for payment is not discharged until the probation department receives payment or credit from the institution responsible for making the payment or credit.

(l) The probation department may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the probation department or charged directly to the probation department's account, the probation department may collect a credit card service fee from the person using the bank or credit card. The fee collected under this subsection is a permitted additional charge to the money the probation department is required to collect under subsection (d) or (e).

(m) The probation department shall forward the credit card service fees collected under subsection (l) to the county treasurer or city or town fiscal officer in accordance with subsection (f) or (g). These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or credit card vendor.

As added by P.L.311-1983, SEC.3. Amended by P.L.182-1984, SEC.1; P.L.296-1985, SEC.2; P.L.178-1986, SEC.2; P.L.305-1987, SEC.36; P.L.123-1988, SEC.28; P.L.67-1990, SEC.10; P.L.1-1991, SEC.196; P.L.18-1995, SEC.112; P.L.216-1996, SEC.14;

P.L.117-1996, SEC.4; P.L.117-1996, SEC.6; P.L.170-2002, SEC.132; P.L.277-2003, SEC.11; P.L.98-2004, SEC.150; P.L.1-2006, SEC.529.

IC 35-38-2-1.5

Increased probation user's fee

Sec. 1.5. Notwithstanding the probation user's fee amounts established under section 1 of this chapter, a court may order a person to pay a probation user's fee that exceeds the maximum amount allowed under section 1 of this chapter if:

(1) the person was placed on probation in another state and moved or was transferred to Indiana;

(2) the other state allows a higher probation user's fee than the maximum amount allowed under section 1 of this chapter; and

(3) the probation user's fee the court orders the person to pay does not exceed the maximum amount allowed in the other state.

As added by P.L.277-2003, SEC.12.

IC 35-38-2-1.7

Early payment of probation user's fee; recalculation of probation user's fee; discharge; wage garnishment; withholding driving privileges

Sec. 1.7. (a) A person may pay a monthly probation user's fee under section 1 or 1.5 of this chapter before the date the payment is required to be made without obtaining the prior approval of a court or a probation department. However, if the person is discharged from probation before the date the person was scheduled to be released from probation, any monthly probation user's fee paid in advance by the person may not be refunded.

(b) A probation department may petition a court to:

(1) impose a probation user's fee on a person; or

(2) increase a person's probation user's fee;

under section 1 or 1.5 of this chapter if the financial ability of the person to pay a probation user's fee changes while the person is on probation.

(c) An order to pay a probation user's fee under section 1 or 1.5 of this chapter:

(1) is a judgment lien that:

(A) attaches to the property of the person subject to the order;

(B) may be perfected;

(C) may be enforced to satisfy any payment that is delinquent under section 1 or 1.5 of this chapter; and

(D) expires;

in the same manner as a judgment lien created in a civil proceeding;

(2) is not discharged by the completion of the person's probationary period or other sentence imposed on the person; and

(3) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5.

(d) If a court orders a person to pay a probation user's fee under section 1 or 1.5 of this chapter, the court may garnish the wages, salary, and other income earned by the person to enforce the order.

(e) If:

(1) a person is delinquent in paying the person's probation user's fees required under section 1 or 1.5 of this chapter; and

(2) the person's driver's license or permit has been suspended or revoked or the person has never been issued a driver's license or permit;

the court may order the bureau of motor vehicles to not issue a driver's license or permit to the person until the person has paid the person's delinquent probation user's fees.

As added by P.L.277-2003, SEC.13.

IC 35-38-2-1.8

New probation hearings allowed at any time; modification of conditions; deadlines

Sec. 1.8. (a) This section does not apply to the modification of a user's fee payment under section 1.7(b) of this chapter.

(b) The court may hold a new probation hearing at any time during a probationer's probationary period:

(1) upon motion of the probation department or upon the court's motion; and

(2) after giving notice to the probationer.

(c) At a probation hearing described in subsection (b), the court may modify the probationer's conditions of probation. If the court modifies the probationer's conditions of probation, the court shall:

(1) specify in the record the conditions of probation; and

(2) advise the probationer that if the probationer violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(d) The court may hold a new probation hearing under this section even if:

(1) the probationer has not violated the conditions of probation; or

(2) the probation department has not filed a petition to revoke probation.

As added by P.L.14-2005, SEC.1.

IC 35-38-2-2

Repealed

(*Repealed by P.L.1-1991, SEC.197.)*

IC 35-38-2-2.1

Conditions of probation; payment of alcohol and drug countermeasures fee

Sec. 2.1. As a condition of probation for a person who is found to have:

(1) committed an offense under IC 9-30-5; or

(2) been adjudicated a delinquent for an act that would be an offense under IC 9-30-5, if committed by an adult;

the court shall require the person to pay the alcohol and drug countermeasures fee under IC 33-37.

As added by P.L.126-1989, SEC.28. Amended by P.L.2-1991, SEC.104; P.L.98-2004, SEC.151.

IC 35-38-2-2.2

Conditions of probation; registration with local law enforcement authority; consent to search of computer

Sec. 2.2. As a condition of probation for a sex offender (as defined in IC 11-8-8-4.5), the court shall:

(1) require the sex offender to register with the local law enforcement authority under IC 11-8-8;

(2) prohibit the sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7), as measured from the property line of the sex offender's residence to the property line of the school property, for the period of probation, unless the sex offender obtains written approval from the court;

(3) require the sex offender to consent:

(A) to the search of the sex offender's personal computer at any time; and

(B) to the installation on the sex offender's personal computer or device with Internet capability, at the sex offender's expense, of one (1) or more hardware or software systems to monitor Internet usage; and

(4) prohibit the sex offender from:

(A) accessing or using certain web sites, chat rooms, or instant messaging programs frequented by children; and

(B) deleting, erasing, or tampering with information on the sex offender's personal computer with intent to conceal an activity prohibited by clause (A).

If the court allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2), the court shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order. However, a court may not allow a sex offender who is a sexually violent predator (as defined in IC 35-38-1-7.5) or an offender against children under IC 35-42-4-11 to reside within one thousand (1,000) feet of school property.

As added by P.L.11-1994, SEC.14. Amended by P.L.214-1999, SEC.3; P.L.238-2001, SEC.19; P.L.116-2002, SEC.21; P.L.140-2006, SEC.23 and P.L.173-2006, SEC.23; P.L.216-2007, SEC.40; P.L.119-2008, SEC.16.

IC 35-38-2-2.3

Conditions of probation; statement of conditions; term of imprisonment; intermittent service; transfers and retransfers of supervision

Sec. 2.3. (a) As a condition of probation, the court may require a person to do a combination of the following:

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

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

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

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

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

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

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

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

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

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

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

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

(13) Perform uncompensated work that benefits the community.

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

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

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the

human immunodeficiency virus (HIV); or

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

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

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

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

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

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

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

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

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

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

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

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

(22) Participate in a reentry court program.

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

(1) the conditions of probation; and

(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(c) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the

time or intervals (consecutive or intermittent) within the period of probation the court determines.

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

(1) the term of imprisonment;

(2) the days or parts of days during which a person is to be confined; and

(3) the conditions.

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

(f) When a court imposes a condition of probation described in subsection (a)(17):

(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.

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

(1) convicted of an offense described in IC 10-13-6-10;

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and

(3) whose sentence does not involve a commitment to the department of correction;

to provide a DNA sample as a condition of probation.

As added by P.L.1-1991, SEC.198. Amended by P.L.2-1992, SEC.879; P.L.23-1994, SEC.16; P.L.1-1995, SEC.75; P.L.293-1995, SEC.1; P.L.76-2002, SEC.1; P.L.2-2003, SEC.91; P.L.60-2006, SEC.9; P.L.140-2006, SEC.24 and P.L.173-2006, SEC.24; P.L.1-2007, SEC.227; P.L.125-2007, SEC.8; P.L.234-2007, SEC.170; P.L.3-2008, SEC.249; P.L.111-2009, SEC.8.

IC 35-38-2-2.4

Conditions of probation for sex offenders

Sec. 2.4. As a condition of probation, the court may require a sex offender (as defined in IC 11-8-8-4.5) to:

(1) participate in a treatment program for sex offenders approved by the court; and

(2) avoid contact with any person who is less than sixteen (16) years of age unless the probationer:

(A) receives the court's approval; or

(B) successfully completes the treatment program referred to in subdivision (1).

As added by P.L.11-1994, SEC.15. Amended by P.L.238-2001,

SEC.20; P.L.116-2002, SEC.22; P.L.140-2006, SEC.25 and P.L.173-2006, SEC.25; P.L.1-2010, SEC.142.

IC 35-38-2-2.5

Residency requirements for certain offenders

Sec. 2.5. (a) As used in this section, "offender" means an individual convicted of a sex offense.

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

(1) Rape (IC 35-42-4-1).
(2) Criminal deviate conduct (IC 35-42-4-2).
(3) Child molesting (IC 35-42-4-3).
(4) Child exploitation (IC 35-42-4-4(b)).
(5) Vicarious sexual gratification (IC 35-42-4-5).
(6) Child solicitation (IC 35-42-4-6).
(7) Child seduction (IC 35-42-4-7).
(8) Sexual battery (IC 35-42-4-8).
(9) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
(10) Incest (IC 35-46-1-3).

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

(d) An offender:

(1) who will be placed on probation shall provide the sentencing court and the probation department with the address where the offender intends to reside during the period of probation:

(A) at the time of sentencing if the offender will be placed on probation without first being incarcerated; or

(B) before the offender's release from incarceration if the offender will be placed on probation after completing a term of incarceration; or

(2) who will be placed on parole shall provide the parole board with the address where the offender intends to reside during the period of parole.

(e) An offender, while on probation or parole, may not establish a new residence within one (1) mile of the residence of the victim of the offender's sex offense unless the offender first obtains a waiver from the:

(1) court, if the offender is placed on probation; or
(2) parole board, if the offender is placed on parole;

for the change of address under subsection (f).

(f) The court or parole board may waive the requirement set forth in subsection (c) only if the court or parole board, at a hearing at which the offender is present and of which the prosecuting attorney has been notified, determines that:

(1) the offender has successfully completed a sex offender treatment program during the period of probation or parole;

(2) the offender is in compliance with all terms of the offender's probation or parole; and

(3) good cause exists to allow the offender to reside within one (1) mile of the residence of the victim of the offender's sex offense.

However, the court or parole board may not grant a waiver under this subsection if the offender is a sexually violent predator under IC 35-38-1-7.5 or if the offender is an offender against children under IC 35-42-4-11.

(g) If the court or parole board grants a waiver under subsection (f), the court or parole board shall state in writing the reasons for granting the waiver. The court's written statement of its reasons shall be incorporated into the record.

(h) The address of the victim of the offender's sex offense is confidential even if the court or parole board grants a waiver under subsection (f).

As added by P.L.116-2002, SEC.23. Amended by P.L.6-2006, SEC.6; P.L.139-2006, SEC.4, P.L.140-2006, SEC.26, and P.L.173-2006, SEC.26; P.L.216-2007, SEC.41.

IC 35-38-2-2.6

Conditions of probation or parole for persons convicted of stalking

Sec. 2.6. (a) As a condition of remaining on probation or parole after a conviction for stalking (IC 35-45-10-5), a court may prohibit a person from residing within one thousand (1,000) feet of the residence of the victim of the stalking for a period that does not exceed five (5) years.

(b) A person:

(1) who will be placed on probation shall provide the sentencing court and the probation department with the address where the person intends to reside during the period of probation:

(A) at the time of sentencing if the person will be placed on probation without first being incarcerated; or

(B) before the person's release from incarceration if the person will be placed on probation after completing a term of incarceration; or

(2) who will be placed on parole shall provide the parole board with the address where the person intends to reside during the period of parole.

(c) A person, while on probation or parole, may not reside within one thousand (1,000) feet of the residence of the victim of the stalking unless the person first obtains a waiver under subsection (d) from the:

(1) court, if the person is placed on probation; or

(2) parole board, if the person is placed on parole.

(d) The court or parole board may waive the requirement set forth in subsection (c) only if the court or parole board, at a hearing at which the person is present and of which the prosecuting attorney has been notified, determines that:

(1) the person is in compliance with all terms of the person's probation or parole; and

(2) good cause exists to allow the person to reside within one thousand (1,000) feet of the residence of the victim of the stalking.

(e) If the court or parole board grants a waiver under subsection (d), the court or parole board shall state in writing the reasons for granting the waiver. The court's written statement of its reasons shall be incorporated into the record.

(f) The address of the victim of the stalking is confidential even if the court or parole board grants a waiver under subsection (d).

As added by P.L.140-2006, SEC.27 and P.L.173-2006, SEC.27.

IC 35-38-2-3

Violation of conditions of probation

Sec. 3. (a) The court may revoke a person's probation if:

(1) the person has violated a condition of probation during the probationary period; and

(2) the petition to revoke probation is filed during the probationary period or before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

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

(1) order a summons to be issued to the person to appear; or

(2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.

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

(d) The court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing.

(e) The state must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by counsel.

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

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

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

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

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

(h) If the court finds that the person has violated a condition of

home detention at any time before termination of the period, and the petition to revoke probation is filed within the probationary period, the court shall:

(1) order one (1) or more sanctions as set forth in subsection (g); and

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

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

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

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

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

(1) order a sanction as set forth in subsection (i); and

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

(k) A judgment revoking probation is a final appealable order.

(l) Failure to pay fines or costs (including fees) required as a condition of probation may not be the sole basis for commitment to the department of correction.

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

As added by P.L.311-1983, SEC.3. Amended by P.L.67-1990, SEC.12; P.L.214-1991, SEC.1; P.L.240-1991(ss2), SEC.94; P.L.1-1992, SEC.179; P.L.216-1996, SEC.15; P.L.166-2001, SEC.1; P.L.98-2004, SEC.152; P.L.13-2005, SEC.1; P.L.156-2007, SEC.5; P.L.48-2008, SEC.1; P.L.106-2010, SEC.11.

IC 35-38-2.5

Chapter 2.5. Home Detention

IC 35-38-2.5-1

Offenders to which chapter applies

Sec. 1. This chapter applies to adult offenders and to juveniles who have committed a delinquent act that would be a crime if committed by an adult.

As added by P.L.98-1988, SEC.6.

IC 35-38-2.5-2

"Home" defined

Sec. 2. As used in this chapter, "home" means:

(1) the interior living area of the temporary or permanent residence of an offender; or

(2) if the offender's residence is a multi-family dwelling, the unit in which the offender resides, and not the:

(A) halls or common areas outside the unit where the offender resides; or

(B) other units, occupied or unoccupied, in the multi-family dwelling.

The term includes a hospital, health care facility, hospice, group home, maternity home, residential treatment facility, and boarding house. The term does not include a public correctional facility.

As added by P.L.98-1988, SEC.6. Amended by P.L.117-1990, SEC.5; P.L.137-2001, SEC.1; P.L.105-2010, SEC.11.

IC 35-38-2.5-2.3

"Constant supervision" defined

Sec. 2.3. As used in this chapter, "constant supervision" means monitoring a violent offender twenty-four (24) hours each day by means described in section 12(b) of this chapter.

As added by P.L.137-2001, SEC.2.

IC 35-38-2.5-2.5

"Contract agency" defined

Sec. 2.5. As used in this chapter, "contract agency" means an agency or a company that contracts with a community corrections program or a probation department to monitor an offender or alleged offender using a monitoring device.

As added by P.L.31-2005, SEC.1.

IC 35-38-2.5-3

"Monitoring device" defined

Sec. 3. (a) As used in this chapter, "monitoring device" means an electronic device that:

(1) can record or transmit information twenty-four (24) hours each day regarding an offender's:

(A) presence or absence from the offender's home; or

(B) precise location;

(2) is minimally intrusive upon the privacy of the offender or other persons residing in the offender's home;

(3) with the written consent of the offender and with the written consent of other persons residing in the home at the time an order for home detention is entered, may record or transmit:

(A) a visual image;

(B) an electronic communication or any sound; or

(C) information regarding the offender's activities while inside the offender's home; and

(4) can notify a probation department, a community corrections program, or a contract agency if the offender violates the terms of a home detention order.

(b) The term includes any device that can reliably determine the location of an offender and track the locations where the offender has been, including a device that uses a global positioning system satellite service.

As added by P.L.98-1988, SEC.6. Amended by P.L.31-2005, SEC.2.

IC 35-38-2.5-4

"Offender" defined

Sec. 4. As used in this chapter, "offender" has the meaning set forth in IC 11-8-1-9.

As added by P.L.98-1988, SEC.6.

IC 35-38-2.5-4.5

"Security risk" defined

Sec. 4.5. As used in this chapter, "security risk" means a person who is:

(1) a flight risk; or

(2) a threat to the physical safety of the public.

As added by P.L.137-2001, SEC.3.

IC 35-38-2.5-4.7

"Violent offender" defined

Sec. 4.7. As used in this chapter, "violent offender" means a person who is:

(1) convicted of an offense or attempted offense under IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-43-1-1, IC 35-44-3-5, IC 35-45-10-5, IC 35-47-5-1 (repealed), or IC 35-47.5-5;

(2) charged with an offense or attempted offense listed in IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-42-4, IC 35-43-1-1, IC 35-44-3-5, IC 35-45-10-5, IC 35-46-1-3, IC 35-47-5-1 (repealed), or IC 35-47.5-5; or

(3) a security risk as determined under section 10 of this chapter.

As added by P.L.137-2001, SEC.4. Amended by P.L.123-2002, SEC.32; P.L.55-2003, SEC.2; P.L.31-2005, SEC.3.

IC 35-38-2.5-5

Home detention as condition of probation

Sec. 5. (a) Except as provided in section 5.5 of this chapter, as a condition of probation a court may order an offender confined to the offender's home for a period of home detention lasting at least sixty (60) days.

(b) The period of home detention may be consecutive or nonconsecutive, as the court orders. However, the aggregate time actually spent in home detention must not exceed:

(1) the minimum term of imprisonment prescribed for a felony under IC 35-50-2; or

(2) the maximum term of imprisonment prescribed for a misdemeanor under IC 35-50-3;

for the crime committed by the offender.

(c) The court may order supervision of an offender's home detention to be provided by the probation department for the court or by a community corrections program that provides supervision of home detention.

(d) A person's term of confinement on home detention under this chapter is computed on the basis of the actual days the person spends on home detention.

(e) A person confined on home detention as a condition of probation earns credit for time served.

As added by P.L.98-1988, SEC.6. Amended by P.L.20-1994, SEC.2; P.L.137-2001, SEC.5; P.L.166-2001, SEC.2.

IC 35-38-2.5-5.5

Home detention

Sec. 5.5. (a) Except as provided in subsection (b), a court in one (1) county may not place an offender who resides in another county on home detention in the other county unless:

(1) the offender is eligible for home detention in the county in which the person resides; and

(2) supervision of the offender will be conducted by the probation department or community corrections program located in the county in which the offender resides.

(b) If the offender described in subsection (a) resides in a county that is adjacent to the county in which the sentencing court is located, the supervision of the offender may be conducted by either the:

(1) probation department; or

(2) community corrections program;

located in the county in which the sentencing court is located.

(c) All home detention fees described in section 8 of this chapter shall be collected by the probation department or community corrections program that supervises the offender.

(d) A probation department or community corrections program that supervises an offender on home detention is responsible for the expenses of the supervision.

As added by P.L.137-2001, SEC.6. Amended by P.L.48-2008, SEC.2.

IC 35-38-2.5-6

Orders for home detention; contents

Sec. 6. An order for home detention of an offender under section 5 of this chapter must include the following:

(1) A requirement that the offender be confined to the offender's home at all times except when the offender is:

(A) working at employment approved by the court or traveling to or from approved employment;

(B) unemployed and seeking employment approved for the offender by the court;

(C) undergoing medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the offender by the court;

(D) attending an educational institution or a program approved for the offender by the court;

(E) attending a regularly scheduled religious service at a place of worship; or

(F) participating in a community work release or community restitution or service program approved for the offender by the court.

(2) Notice to the offender that violation of the order for home detention may subject the offender to prosecution for the crime of escape under IC 35-44-3-5.

(3) A requirement that the offender abide by a schedule prepared by the probation department, or by a community corrections program ordered to provide supervision of the offender's home detention, specifically setting forth the times when the offender may be absent from the offender's home and the locations the offender is allowed to be during the scheduled absences.

(4) A requirement that the offender is not to commit another crime during the period of home detention ordered by the court.

(5) A requirement that the offender obtain approval from the probation department or from a community corrections program ordered to provide supervision of the offender's home detention before the offender changes residence or the schedule described in subdivision (3).

(6) A requirement that the offender maintain:

(A) a working telephone in the offender's home; and

(B) if ordered by the court, a monitoring device in the offender's home or on the offender's person, or both.

(7) A requirement that the offender pay a home detention fee set by the court in addition to the probation user's fee required under IC 35-38-2-1 or IC 31-40. However, the fee set under this subdivision may not exceed the maximum fee specified by the department of correction under IC 11-12-2-12.

(8) A requirement that the offender abide by other conditions of probation set by the court under IC 35-38-2-2.3.

(9) A requirement that an offender:

(A) who is convicted of an offense described in IC 10-13-6-10;

(B) who has not previously provided a DNA sample in accordance with IC 10-13-6; and

(C) whose sentence does not involve a commitment to the department of correction;

provide a DNA sample.

As added by P.L.98-1988, SEC.6. Amended by P.L.1-1991, SEC.199; P.L.240-1991(ss2), SEC.95; P.L.1-1997, SEC.147; P.L.32-2000, SEC.24; P.L.140-2006, SEC.28 and P.L.173-2006, SEC.28; P.L.1-2007, SEC.228.

IC 35-38-2.5-7

Home detention; where permitted

Sec. 7. (a) A court may not order home detention for an offender unless the offender agrees to abide by all of the requirements set forth in the court's order issued under this chapter.

(b) A court may not order home detention for an offender who is being held under a detainer, warrant, or process issued by a court of another jurisdiction.

(c) A court may not order home detention for an offender who has been convicted of a sex offense under IC 35-42-4 or IC 35-46-1-3 unless:

(1) the home detention is supervised by a court approved home detention program; and

(2) the conditions of home detention:

(A) include twenty-four (24) hour per day supervision of the offender; and

(B) require the use of surveillance equipment and a monitoring device that can transmit information twenty-four (24) hours each day regarding an offender's precise location.

As added by P.L.98-1988, SEC.6. Amended by P.L.144-1995, SEC.3; P.L.55-2003, SEC.3; P.L.31-2005, SEC.4.

IC 35-38-2.5-8

Home detention fees

Sec. 8. (a) All home detention fees collected by a county based probation department shall be transferred to the county treasurer who shall deposit the fees into the county supplemental adult or juvenile probation services fund. The expenses of administering a home detention program, including the purchase of monitoring devices and other supervision expenses shall be paid from the fund.

(b) All home detention fees collected by the probation department of a city or town court shall be transferred to the fiscal officer of the city or town who shall deposit the fees into the local supplemental adult or juvenile probation services fund. The expenses of administering a home detention program, including the purchase of monitoring devices and other supervision expenses shall be paid from the fund.

(c) All home detention fees collected by a community corrections program, except any funds received by a community corrections program under IC 11-12, shall be deposited into the community

corrections home detention fund established for the county under IC 11-12-7-1. The expenses of administering a community corrections home detention program, including the purchase of monitoring devices and other supervision expenses shall be paid from the fund.
As added by P.L.98-1988, SEC.6. Amended by P.L.104-1997, SEC.7.

IC 35-38-2.5-9
Responsibility for food, housing, and related costs

Sec. 9. An offender ordered to undergo home detention under section 5 of this chapter is responsible for providing food, housing, clothing, medical care, and other treatment expenses. The offender is eligible to receive government benefits allowable for persons on probation, parole, or other conditional discharge from confinement.
As added by P.L.98-1988, SEC.6.

IC 35-38-2.5-10
Violation of home detention; violent offender status; contract agencies

Sec. 10. (a) Each probation department or community corrections program shall establish written criteria and procedures for determining whether an offender or alleged offender that the department or program supervises on home detention qualifies as a violent offender.

(b) A probation department or community corrections program shall use the criteria and procedures established under subsection (a) to establish a record keeping system that allows the department or program to quickly determine whether an offender or alleged offender who violates the terms of a home detention order is a violent offender.

(c) A probation department or a community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall provide all law enforcement agencies (including any contract agencies) having jurisdiction in the place where the probation department or a community corrections program is located with a list of offenders and alleged offenders under home detention supervised by the probation department or the community corrections program. The list must include the following information about each offender and alleged offender:

(1) The offender's name, any known aliases, and the location of the offender's home detention.
(2) The crime for which the offender was convicted.
(3) The date the offender's home detention expires.
(4) The name, address, and telephone number of the offender's supervising probation or community corrections program officer for home detention.
(5) An indication of whether the offender or alleged offender is a violent offender.

(d) Except as provided under section 6(1) of this chapter, a

probation department or community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall, at the beginning of a period of home detention, set the monitoring device and surveillance equipment to minimize the possibility that the offender or alleged offender can enter another residence or structure without a violation.

(e) A probation department or community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall:

(1) maintain or contract with a contract agency to maintain constant supervision of each offender and alleged offender; and

(2) have adequate staff available twenty-four (24) hours each day to respond if an offender or alleged offender violates the conditions of a home detention order.

(f) A contract agency that maintains supervision of an offender or alleged offender under subsection (e)(1) shall notify the contracting probation department or community corrections program within one (1) hour if the offender or alleged offender violates the conditions of a home detention order. However:

(1) a community corrections advisory board, if the offender is serving home detention as part of a community corrections program; or

(2) a probation department, if the offender or alleged offender is serving home detention as a condition of probation or bail;

may shorten the time in which the contract agency must give notice of a home detention order violation.

(g) A probation department or community corrections program may contract with a contract agency under subsection (e)(1) only if the contract agency can comply with subsection (f).

As added by P.L.98-1988, SEC.6. Amended by P.L.137-2001, SEC.7; P.L.1-2002, SEC.146; P.L.31-2005, SEC.5.

IC 35-38-2.5-11

Monitoring devices; information to offender

Sec. 11. Before entering an order for home detention that requires the use of a monitoring device described in section 3(3) of this chapter the court shall inform the offender and other persons residing in the home of the nature and extent of electronic surveillance provided by the monitoring device in the home.

As added by P.L.98-1988, SEC.6.

IC 35-38-2.5-12

Supervision of violent offender on home detention

Sec. 12. (a) A probation department or community corrections program charged by a court with supervision of a violent offender placed on home detention under this chapter shall:

(1) cause a local law enforcement agency or contract agency described in section 10 of this chapter to be the initial agency contacted upon determining that the violent offender is in violation of a home detention order;

(2) maintain constant supervision of the violent offender using surveillance equipment and a monitoring device that can transmit information twenty-four (24) hours each day regarding an offender's precise location by either:

(A) using the supervising entity's equipment and personnel; or

(B) contracting with a contract agency; and

(3) have adequate staff available twenty-four (24) hours each day to respond if the violent offender violates the conditions of a home detention order.

(b) A contract agency that maintains supervision of a violent offender under subsection (a)(2) shall notify the contracting probation department or community corrections program within one (1) hour if the violent offender violates the conditions of a home detention order. However, a:

(1) community corrections advisory board, if the violent offender is serving home detention as part of a community corrections program; or

(2) probation department, if the violent offender is serving home detention as a condition of probation or bail;

may shorten the time in which the contract agency must give notice of a home detention order violation.

(c) A probation department or community corrections program may contract with a contract agency under subsection (a)(2) only if the contract agency can comply with subsection (b).

As added by P.L.137-2001, SEC.8. Amended by P.L.31-2005, SEC.6.

IC 35-38-2.5-13

Unauthorized absence from home detention

Sec. 13. An offender who:

(1) leaves the offender's home in violation of section 6(1) of this chapter or without documented permission from the supervising entity;

(2) remains outside the offender's home in violation of section 6(1) of this chapter or without documented permission from the supervising entity; or

(3) travels to a location not authorized under section 6(1) of this chapter or not authorized in writing by the supervising entity;

commits unauthorized absence from home detention, a Class A misdemeanor.

As added by P.L.137-2001, SEC.9.

IC 35-38-2.6

Chapter 2.6. Direct Placement in Community Corrections Program

IC 35-38-2.6-1

Application of chapter

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to the sentencing of a person convicted of:

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

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

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

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

(i) work release program; or

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

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

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

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

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

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

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

As added by P.L.240-1991(ss2), SEC.96. Amended by P.L.144-1995, SEC.4; P.L.242-1999, SEC.9; P.L.17-2001, SEC.13; P.L.213-2005, SEC.6; P.L.151-2006, SEC.15.

IC 35-38-2.6-2

"Community corrections program" defined

Sec. 2. As used in this chapter, "community corrections program" means a program consisting of residential and work release, electronic monitoring, day treatment, or day reporting that is:

(1) operated under a community corrections plan of a county and funded at least in part by the state subsidy provided under IC 11-12-2; or

(2) operated by or under contract with a court or county.

As added by P.L.240-1991(ss2), SEC.96. Amended by P.L.135-1993, SEC.6; P.L.20-1994, SEC.3.

IC 35-38-2.6-3

Suspension of sentence and order for placement; availability and terms of placement; DNA sample required

Sec. 3. (a) The court may, at the time of sentencing, suspend the sentence and order a person to be placed in a community corrections

program as an alternative to commitment to the department of correction. The court may impose reasonable terms on the placement. A court shall require a person:

(1) convicted of an offense described in IC 10-13-6-10;

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and

(3) whose sentence does not involve a commitment to the department of correction;

to provide a DNA sample as a term of placement.

(b) Placement in a community corrections program under this chapter is subject to the availability of residential beds or home detention units in a community corrections program.

(c) A person placed under this chapter is responsible for the person's own medical care while in the placement program.

(d) Placement under this chapter is subject to the community corrections program receiving a written presentence report or memorandum from a county probation agency.

As added by P.L.240-1991(ss2), SEC.96. Amended by P.L.135-1993, SEC.7; P.L.140-2006, SEC.29 and P.L.173-2006, SEC.29.

IC 35-38-2.6-4

Time period for suspension of sentence

Sec. 4. If the court places a person in a community corrections program under this chapter, the court shall suspend the sentence for a fixed period to end not later than the date the suspended sentence expires.

As added by P.L.240-1991(ss2), SEC.96.

IC 35-38-2.6-4.2

Community corrections direct placement

Sec. 4.2. (a) A community corrections program shall establish written criteria and procedures for determining if an offender or alleged offender is eligible for direct placement supervision under this chapter.

(b) The criteria and procedures established under subsection (a) must establish a record keeping system that allows the department or community corrections program to quickly determine if an offender or alleged offender is in violation of the terms of a direct placement order issued under this chapter.

(c) A community corrections program charged by a court with supervision of offenders and alleged offenders ordered to be placed directly in a community corrections program under this chapter shall provide all law enforcement agencies, including any contract agency (as defined in IC 35-38-2.5-2.5), having jurisdiction in the place where a community corrections program is located a list of offenders and alleged offenders under direct placement supervision. The list must include the following information about each offender and alleged offender:

(1) The offender's name, any known aliases, and the location of the offender's direct placement under this chapter.

(2) The crime for which the offender was convicted.

(3) The date the offender's direct placement expires.

(4) The name, address, and telephone number of the offender's supervising community corrections program officer for direct placement under this chapter.

(5) An indication of whether the offender is a violent offender.

(d) Except as provided in IC 35-38-2.5-6(1), a community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo direct placement under this chapter shall, at the beginning of a period of the direct placement, set any monitoring device (as defined in IC 35-38-2.5-3) and surveillance equipment to minimize the possibility that the offender or alleged offender may enter another residence or structure without the detection of a violation.

(e) A community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo direct placement under this chapter shall:

(1) maintain or contract with a contract agency to maintain constant supervision of each offender and alleged offender as described in subsection (f); and

(2) have adequate staff available twenty-four (24) hours each day to respond if an offender or alleged offender violates the conditions of the direct placement order under this chapter.

A community corrections program may contract with a contract agency under this subsection only if the contract agency is able to comply with subsection (f).

(f) A contract agency:

(1) that maintains supervision of an offender or alleged offender under subsection (e)(1) shall follow the rules set by the local community corrections advisory board as a part of community corrections program direct placement written criteria and procedures; and

(2) shall notify the contracting community corrections program within one (1) hour if the offender or alleged offender violates the conditions of the direct placement order. However, if a shorter notification time is required by the community corrections program, a community corrections advisory board must require a contract agency to comply with the shorter notification requirement for a direct placement order violation as if the offender were serving a direct placement order as part of a community corrections program.

(g) A community corrections program or contract agency charged by a court with supervision of an offender or alleged offender placed under direct placement under this chapter shall cause a local law enforcement agency or contract agency described in this section to be the initial agency contacted upon determining that the offender is in violation of a direct placement order.

As added by P.L.105-2010, SEC.12.

IC 35-38-2.6-4.5

Home detention in community corrections program

Sec. 4.5. If a court places a person on home detention as part of a community corrections program, the placement must comply with all applicable provisions in IC 35-38-2.5.

As added by P.L.137-2001, SEC.10. Amended by P.L.105-2010, SEC.13.

IC 35-38-2.6-5

Violation of terms of placement

Sec. 5. If a person who is placed under this chapter violates the terms of the placement, the court may, after a hearing, do any of the following:

(1) Change the terms of the placement.

(2) Continue the placement.

(3) Revoke the placement and commit the person to the department of correction for the remainder of the person's sentence.

As added by P.L.240-1991(ss2), SEC.96.

IC 35-38-2.6-6

Credit time

Sec. 6. (a) As used in this subsection, "home" means the actual living area of the temporary or permanent residence of a person. A person who is placed in a community corrections program under this chapter is entitled to earn credit time under IC 35-50-6.

(b) A person who is placed in a community corrections program under this chapter may be deprived of earned credit time as provided under rules adopted by the department of correction under IC 4-22-2.

As added by P.L.240-1991(ss2), SEC.96. Amended by P.L.135-1993, SEC.8; P.L.20-1994, SEC.4; P.L.105-2010, SEC.14.

IC 35-38-2.6-7

Completion of program; probation

Sec. 7. When a person completes a placement program under this chapter, the court shall place the person on probation.

As added by P.L.240-1991(ss2), SEC.96.

IC 35-38-3

Chapter 3. Commitment to the Department of Correction and Maximum, Medium, and Minimum Security Assignments

IC 35-38-3-1

Definitions

Sec. 1. As used in this chapter:

"Earliest possible release date" means the date, computed as of the date of sentencing, on which a person would be entitled to discharge or release on parole considering:

(1) the term of the sentence;

(2) the term of any other concurrent or consecutive sentence that the person must serve;

(3) credit time that the person has earned before sentencing; and

(4) the maximum amount of credit time that the person would earn if he remained in a Class I credit time assignment during his period of commitment.

"Rated capacity" means the number of inmates that can be housed at the facility as determined by the most recent jail inspection report.

"Receiving authority" means:

(1) the department of correction;

(2) a sheriff, if incarceration is authorized in a county jail; or

(3) a facility or place designated by the department of correction.

As added by P.L.311-1983, SEC.3.

IC 35-38-3-2

Certification of judgment of conviction and sentence to receiving authority; contents of judgment; commencement of term of imprisonment

Sec. 2. (a) When a convicted person is sentenced to imprisonment, the court shall, without delay, certify, under the seal of the court or through any electronic means approved by the department of correction, copies of the judgment of conviction and sentence to the receiving authority.

(b) The judgment must include:

(1) the crime for which the convicted person is adjudged guilty and the classification of the criminal offense;

(2) the period, if any, for which the person is rendered incapable of holding any office of trust or profit;

(3) the amount of the fines or costs (including fees) assessed, if any, whether or not the convicted person is indigent, and the method by which the fines or costs (including fees) are to be satisfied;

(4) the amount of credit, including credit time earned, for time spent in confinement before sentencing; and

(5) the amount to be credited toward payment of the fines or costs (including fees) for time spent in confinement before sentencing.

(c) The judgment may specify the degree of security

recommended by the court.

(d) A term of imprisonment begins on the date sentence is imposed, unless execution of the sentence is stayed according to law.
As added by P.L.311-1983, SEC.3. Amended by P.L.119-2008, SEC.17; P.L.106-2010, SEC.12.

IC 35-38-3-3
Persons convicted of misdemeanor; commitment; local facilities

Sec. 3. (a) Except as provided by subsection (b), a person convicted of a misdemeanor may not be committed to the department of correction.

(b) Upon a request from the sheriff, the commissioner may agree to accept custody of a misdemeanant:

(1) if placement in the county jail:

(A) places the inmate in danger of serious bodily injury or death; or

(B) represents a substantial threat to the safety of others;

(2) for other good cause shown; or

(3) if a person has more than five hundred forty-seven (547) days remaining before the person's earliest release date as a result of consecutive misdemeanor sentences.

As added by P.L.311-1983, SEC.3. Amended by P.L.242-1999, SEC.10.

IC 35-38-3-4
Duties of sheriff

Sec. 4. (a) The sheriff shall:

(1) transport the convicted person to a receiving authority;

(2) deliver the person to the receiving authority;

(3) deliver a copy of the judgment of conviction and sentence; and

(4) take from the receiving authority a receipt for the convicted person.

(b) The sheriff shall transport the convicted person within five (5) days after the day of sentencing, unless the court orders the sheriff to transport the person within some other specified period.
As added by P.L.311-1983, SEC.3.

IC 35-38-3-5
Determination of degree of security assigned to convicted person; change of degree; persons convicted of murder

Sec. 5. (a) The department, after diagnosis and classification, shall:

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

(2) for each offender convicted of a Class D felony whose sentence for the Class D felony is nonsuspendible under IC 35-50-2-2(b)(3) due to a prior unrelated Class C or Class D felony, determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5;

(3) for each offender convicted of a Class D felony whose sentence for the Class D felony is nonsuspendible under:
(A) IC 35-50-2-2.1(a)(1)(B);
(B) IC 35-50-2-2.1(a)(1)(C); or
(C) IC 35-50-2-2.1(a)(2);
determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5;
(4) for each offender:
(A) committed to the department because the offender has been convicted for the first time of a Class C or a Class D felony; and
(B) whose sentence may be suspended;
determine whether the offender is an appropriate candidate for home detention under IC 35-38-2.5;
(5) notify the trial court and prosecuting attorney if the degree of security assigned differs from the court's recommendations; and
(6) petition the sentencing court under IC 35-38-1-21 for review of the sentence of an offender who is not a habitual offender sentenced under IC 35-50-2-8 or IC 35-50-2-10, and who the department has determined under subdivision (2) or subdivision (3), to be an appropriate candidate for home detention.

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

As added by P.L.311-1983, SEC.3. Amended by P.L.182-1988, SEC.1; P.L.98-1988, SEC.7; P.L.164-1993, SEC.9.

IC 35-38-3-6

Classification of penal facilities and programs

Sec. 6. (a) The department shall:
(1) classify all penal facilities and programs to which convicted persons may be assigned for supervision or custodial care according to:
(A) maximum, medium, or minimum security function; and
(B) treatment program available; and
(2) furnish the classifications to all judges with general criminal jurisdiction.

(b) A maximum security assignment constitutes an assignment of a convicted person to a penal facility and correctional program that are designed to insure that the person remains within a walled or fenced facility where entry and exit of any person occurs only through department supervised gates and where periodic inmate population accounting and supervision by the department occurs each day.

(c) A medium security assignment constitutes an assignment of a convicted person to a penal facility and correctional program that are

designed to insure that if the person is permitted outside the supervised gates of a walled or fenced facility, the department will provide continuous staff supervision and the person will be accounted for throughout the day.

(d) A minimum security assignment constitutes an assignment of a convicted person to a work release center or program, to intermittent service of a sentence, or to a program requiring weekly reporting to a designated official. Assignment to minimum security need not involve a penal facility.

As added by P.L.311-1983, SEC.3.

IC 35-38-4

Chapter 4. Appeals

IC 35-38-4-1

Appeals by defendant as matter of right and according to this chapter; decisions and orders reviewable

Sec. 1. (a) An appeal to the supreme court or the court of appeals may be taken by the defendant:

(1) as a matter of right from any judgment in a criminal action; and

(2) in accordance with this chapter.

(b) Any decision of the court or intermediate order made during the proceedings may be reviewed.

As added by P.L.311-1983, SEC.3.

IC 35-38-4-2

Appeals by state as provided by court rules for certain cases

Sec. 2. Appeals to the supreme court or to the court of appeals, if the court rules so provide, may be taken by the state in the following cases:

(1) From an order granting a motion to dismiss an indictment or information.

(2) From an order or judgment for the defendant, upon his motion for discharge because of delay of his trial not caused by his act, or upon his plea of former jeopardy, presented and ruled upon prior to trial.

(3) From an order granting a motion to correct errors.

(4) Upon a question reserved by the state, if the defendant is acquitted.

(5) From an order granting a motion to suppress evidence, if the ultimate effect of the order is to preclude further prosecution.

(6) From any interlocutory order if the trial court certifies and the court on appeal or a judge thereof finds on petition that:

(A) the appellant will suffer substantial expense, damage, or injury if the order is erroneous and the determination thereof is withheld until after judgment;

(B) the order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case; or

(C) the remedy by appeal after judgment is otherwise inadequate.

As added by P.L.311-1983, SEC.3.

IC 35-38-4-3

Appeals from question reserved on part of state

Sec. 3. In case of an appeal from a question reserved on the part of the state, it is not necessary for the clerk of the court to certify in the transcript any part of the proceedings and record except the pleadings, the motion to correct errors, and the judgment of acquittal. When the question reserved is defectively stated, the supreme court

or the court of appeals may direct any part of the proceedings and record to be certified to such court.
As added by P.L.311-1983, SEC.3.

IC 35-38-4-4
Effect of appeal taken by state

Sec. 4. An appeal taken by the state does not stay, or affect the operation of, the judgment in favor of the defendant until the judgment is reversed. However, if an appeal is taken by the state from an order or judgment by which the defendant is discharged before trial, the order or judgment does not constitute a bar to further prosecution of the defendant.
As added by P.L.311-1983, SEC.3.

IC 35-38-4-5
Defendants tried jointly; appeal by one or more

Sec. 5. When defendants are tried jointly, any one (1) or more of them may take an appeal. However, those who do not join in the appeal are not affected by it.
As added by P.L.311-1983, SEC.3.

IC 35-38-4-6
Stay of execution of sentence

Sec. 6. (a) An appeal to the supreme court or to the court of appeals from a judgment of conviction does not stay the execution of the sentence, unless:

(1) the punishment is to be death; or

(2) the judgment is for a fine and costs (including fees) only, in which case the execution of the sentence may be stayed by an order of the court.

(b) If the punishment is to be imprisonment and a fine and costs (including fees), the execution of the sentence as to the fine and costs (including fees) only may be stayed by the court.

(c) In the case of an appeal from a judgment in a capital case, the order of suspension must specify the day until which the execution of the sentence is stayed.
As added by P.L.311-1983, SEC.3. Amended by P.L.106-2010, SEC.13.

IC 35-38-4-7
Reimbursement of retrial expenses

Sec. 7. (a) This section applies to state reimbursement of expenses for conducting a new trial if:

(1) a defendant is convicted of an offense in a criminal proceeding conducted in a trial court;

(2) the defendant appeals the defendant's conviction to the Indiana court of appeals or Indiana supreme court; and

(3) the court of appeals or supreme court remands the case to the trial court for a new trial.

(b) Subject to subsection (d), the state shall reimburse the trial

court, the prosecuting attorney, and, if the defendant is represented by a public defender, the public defender for expenses:

(1) incurred by the trial court, prosecuting attorney, and public defender in conducting a new trial described in subsection (a); and

(2) that would ordinarily be paid by the county in which the trial court is located.

(c) The expenses of a trial court, prosecuting attorney, and public defender reimbursed under this section:

(1) may not include any salary or other remuneration paid to a trial court judge, prosecuting attorney, deputy prosecuting attorney, or public defender; and

(2) must be paid from money in the state general fund.

(d) The office division of state court administration (IC 33-24-6-1) shall administer a program to pay claims for reimbursement under this section. The maximum amount that may be reimbursed for all proceedings and all offenses arising out of the same facts is fifty thousand dollars ($50,000). The maximum amount that may be paid in any particular year for all expenses otherwise eligible for reimbursement under this section is one million dollars ($1,000,000). If the total of all claims that would otherwise be eligible for reimbursement under this section exceeds the maximum amount that may be reimbursed under this subsection, the division of state court administration shall prorate reimbursement of eligible expenses, as determined by the division of state court administration.

As added by P.L.234-2007, SEC.71. Amended by P.L.3-2008, SEC.250.

IC 35-38-5

Chapter 5. Expungement of Arrest Records

IC 35-38-5-1

Petition; grounds; verification; filing; contents; service; notice of opposition; hearing

Sec. 1. (a) Whenever:

(1) an individual is arrested but no criminal charges are filed against the individual; or

(2) all criminal charges filed against an individual are dropped because:

(A) of a mistaken identity;

(B) no offense was in fact committed; or

(C) there was an absence of probable cause;

the individual may petition the court for expungement of the records related to the arrest.

(b) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:

(1) the date of the arrest;

(2) the charge;

(3) the law enforcement agency employing the arresting officer;

(4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;

(5) the date of the petitioner's birth; and

(6) the petitioner's Social Security number.

(c) A copy of the petition shall be served on the law enforcement agency and the state central repository for records.

(d) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals who represent the agency that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall:

(1) summarily grant the petition;

(2) set the matter for hearing; or

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

(A) the petition is insufficient; or

(B) based on information contained in sworn statements submitted by individuals who represent an agency, the petitioner is not entitled to an expungement of records.

(e) If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set

the matter for a hearing.

(f) After a hearing is held under this section, the petition shall be granted unless the court finds:

(1) the conditions in subsection (a) have not been met;

(2) the individual has a record of arrests other than minor traffic offenses; or

(3) additional criminal charges are pending against the individual.

As added by P.L.311-1983, SEC.3. Amended by P.L.295-1989, SEC.1; P.L.159-1994, SEC.1.

IC 35-38-5-2

Delivery of records to individual or destruction

Sec. 2. If the petition for expungement is granted, the law enforcement agency shall within thirty (30) days of receipt of the court order, deliver to the individual or destroy all fingerprints, photographs, or arrest records in their possession.

As added by P.L.311-1983, SEC.3.

IC 35-38-5-3

Effect of grant of petition

Sec. 3. Whenever the petition of an individual under section 1 of this chapter is granted, no information concerning the arrest may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency. However, this chapter does not require any change or alteration in any record (such as a police blotter entry) made at the time of the arrest or in the record of any court in which the criminal charges were filed.

As added by P.L.311-1983, SEC.3.

IC 35-38-5-4

Action by person whose records are expunged that might be defended with contents of such records

Sec. 4. If a person whose records are expunged brings an action that might be defended with the contents of such records, the defendant is presumed to have a complete defense to such an action. In order for the plaintiff to recover, he must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether he had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence.

As added by P.L.311-1983, SEC.3.

IC 35-38-5-5

Petition to limit access to limited criminal history of person discharged from probation, imprisonment, or parole

Sec. 5. (a) This section does not apply to a request to a law enforcement agency for the release or inspection of a limited criminal history to a noncriminal justice organization or individual whenever the subject of the request is described in IC 10-13-3-27(a)(8) or IC 10-13-3-27(a)(12).

(b) A person may petition the state police department to limit access to the person's limited criminal history to criminal justice agencies if more than fifteen (15) years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime.

(c) When a petition is filed under subsection (b), the state police department shall not release limited criminal history to noncriminal justice agencies under IC 10-13-3-27.

As added by P.L.311-1983, SEC.3. Amended by P.L.56-1998, SEC.18; P.L.10-1999, SEC.3; P.L.2-2003, SEC.92; P.L.2-2005, SEC.124.

IC 35-38-5-6

Violation of chapter

Sec. 6. A law enforcement officer who violates this chapter commits a Class B misdemeanor.

As added by P.L.311-1983, SEC.3.

IC 35-38-6

Chapter 6. Execution of Death Sentence

IC 35-38-6-1

Execution of death sentence; specified time and date; executioner

Sec. 1. (a) The punishment of death shall be inflicted by intravenous injection of a lethal substance or substances into the convicted person:

(1) in a quantity sufficient to cause the death of the convicted person; and

(2) until the convicted person is dead.

(b) The death penalty shall be inflicted before the hour of sunrise on a date fixed by the sentencing court. However, the execution must not occur until at least one hundred (100) days after the conviction.

(c) The superintendent of the state prison, or persons designated by the superintendent, shall designate the person who is to serve as the executioner.

(d) The department of correction may adopt rules under IC 4-22-2 necessary to implement subsection (a).

As added by P.L.311-1983, SEC.3. Amended by P.L.294-1995, SEC.1; P.L.20-2002, SEC.1.

IC 35-38-6-2

Court to issue warrant to sheriff; contents

Sec. 2. The court in which a death sentence is ordered shall issue a warrant to the sheriff within fourteen (14) days of the sentence:

(1) that is under the seal of the court;

(2) that contains notice of the conviction and the sentence;

(3) that is directed to the superintendent of the state prison; and

(4) that orders the superintendent to execute the convicted person at a specified time and date in the state prison.

As added by P.L.311-1983, SEC.3. Amended by P.L.20-2002, SEC.2.

IC 35-38-6-3

Delivery of person to superintendent; receipt of delivery of person

Sec. 3. A sheriff who receives a warrant under section 2 or section 7 of this chapter shall immediately:

(1) transport the person to the state prison;

(2) deliver the person and the warrant to the superintendent of the prison;

(3) obtain a receipt for the delivery of the person; and

(4) deliver the receipt to the clerk of the sentencing court.

As added by P.L.311-1983, SEC.3. Amended by P.L.20-2002, SEC.3.

IC 35-38-6-4

Confinement of convicted person; segregation of female prisoner; visits by certain persons

Sec. 4. (a) The convicted person shall be confined in the state prison until the date of the convicted person's execution. The convicted person may temporarily be held in a maximum security

facility for security purposes or during renovation of the state prison. A convicted female shall be confined in a maximum security women's prison until not more than thirty (30) days before the date of her execution. A convicted female shall be segregated from male prisoners after her transfer from the women's prison.

(b) The convicted person's:

(1) attorney;

(2) physician;

(3) relatives;

(4) friends; and

(5) spiritual advisor;

may visit the convicted person while the convicted person is confined. The department of correction shall adopt rules, under IC 4-22-2, governing such visits.

As added by P.L.311-1983, SEC.3. Amended by P.L.20-2002, SEC.4.

IC 35-38-6-5

Place of execution of death sentence

Sec. 5. The execution must take place inside the walls of the state prison in a room arranged for that purpose. The department of correction shall provide the necessary room and appliances to carry out the execution as provided in this chapter.

As added by P.L.311-1983, SEC.3. Amended by P.L.294-1995, SEC.2.

IC 35-38-6-6

Persons permitted to be present at execution of death sentence; exclusion of persons for safety or security reasons; confidentiality of identity of persons assisting in execution

Sec. 6. (a) Only the following persons may be present at the execution:

(1) The superintendent of the state prison.

(2) The person designated by the superintendent of the state prison and any assistants who are necessary to assist in the execution.

(3) The prison physician.

(4) One (1) other physician.

(5) The spiritual advisor of the convicted person.

(6) The prison chaplain.

(7) Not more than five (5) friends or relatives of the convicted person who are invited by the convicted person to attend.

(8) Except as provided in subsection (b), not more than eight (8) of the following members of the victim's immediate family who are at least eighteen (18) years of age:

(A) The victim's spouse.

(B) One (1) or more of the victim's children.

(C) One (1) or more of the victim's parents.

(D) One (1) or more of the victim's grandparents.

(E) One (1) or more of the victim's siblings.

(b) If there is more than one (1) victim, not more than eight (8)

persons who are members of the victims' immediate families may be present at the execution. The department shall determine which persons may be present in accordance with procedures adopted under subsection (c).

(c) The department shall develop procedures to determine which family members of a victim may be present at the execution if more than eight (8) family members of a victim desire to be present or if there is more than one (1) victim. Upon the request of a family member of a victim, the department shall establish a support room for the use of:

(1) an immediate family member of the victim described in subsection (a)(8) who is not selected to be present at the execution; and

(2) a person invited by an immediate family member of the victim described in subsection (a)(8) to offer support to the immediate family member.

(d) The superintendent of the state prison may exclude a person from viewing the execution if the superintendent determines that the presence of the person would threaten the safety or security of the state prison and sets forth this determination in writing.

(e) The department of correction:

(1) shall keep confidential the identities of persons who assist the superintendent of the state prison in an execution; and

(2) may:

(A) classify as confidential; and

(B) withhold from the public;

any part of a document relating to an execution that would reveal the identity of a person who assists the superintendent in the execution.

As added by P.L.311-1983, SEC.3. Amended by P.L.20-2002, SEC.5; P.L.56-2006, SEC.1.

IC 35-38-6-7

Escape and recapture of convicted person

Sec. 7. (a) If the convicted person:

(1) escapes from custody before the date set for execution; and

(2) is recaptured before the date set for execution;

the convicted person shall be confined and executed according to the terms of the warrant.

(b) If the convicted person:

(1) escapes from custody before delivery to the superintendent of the state prison; and

(2) is recaptured after the date set for execution;

any person may arrest and commit the convicted person to the jail of the county in which the convicted person was sentenced. The sheriff shall notify the sentencing court of the recapture, and the court shall fix a new date for the execution. The new execution date must not be less than thirty (30) nor more than sixty (60) days after the recapture of the person. The court shall issue a new warrant in the form prescribed by section 2 of this chapter.

(c) If the convicted person:

(1) escapes from confinement; and

(2) is recaptured after the date set for execution;

any person may arrest and commit the convicted person to the department of correction. When the convicted person is returned to the department of correction or a facility or place designated by the department of correction, the department shall notify the sentencing court, and the court shall fix a new date for the execution. The new execution date must not be less than thirty (30) nor more than sixty (60) days after the recapture of the person. The court shall issue a warrant to the department of correction directing the superintendent of the state prison to execute the convicted person at a specified time and date in the state prison.

As added by P.L.311-1983, SEC.3. Amended by P.L.20-2002, SEC.6.

IC 35-38-6-8

Suspension of execution of death sentence; reason for delay

Sec. 8. (a) If the execution of the death sentence is suspended, the department of correction shall note the reason for the delay on the warrant but shall proceed with the execution when the period of suspension ends.

(b) The warrant shall be returned to the clerk of the sentencing court after:

(1) the convicted person is executed;

(2) the convicted person has been pardoned;

(3) the convicted person's judgment has been reversed;

(4) the convicted person's sentence has been commuted; or

(5) the convicted person dies before his execution;

with a statement concerning the completion of the execution or the reason why the person was not executed.

As added by P.L.311-1983, SEC.3. Amended by P.L.20-2002, SEC.7.

IC 35-38-6-9

Application of chapter to women convicted and sentenced to death

Sec. 9. The provisions of this chapter in relation to the infliction of the death penalty extend equally, so far as applicable, to the case of any woman convicted and sentenced to death.

As added by P.L.311-1983, SEC.3.

IC 35-38-6-10

Suspension of execution of sentence when condemned woman is pregnant; certification of physicians

Sec. 10. If the physician of the state prison and one (1) other physician certify in writing to the superintendent of the state prison and the sentencing court that a condemned woman is pregnant, the superintendent shall suspend the execution of the sentence. When the state prison physician and one (1) other physician certify in writing to the superintendent of the state prison and the sentencing court that the woman is no longer pregnant, the sentencing court shall immediately fix a new execution date.

As added by P.L.311-1983, SEC.3. Amended by P.L.20-2002, SEC.8.

IC 35-38-7

Chapter 7. Postconviction DNA Testing and Analysis

IC 35-38-7-1

Applicability of chapter

Sec. 1. This chapter applies only to an offense that is any of the following:

(1) Murder.

(2) A Class A felony.

(3) A Class B felony.

(4) A Class C felony.

As added by P.L.49-2001, SEC.2.

IC 35-38-7-2

"DNA" defined

Sec. 2. As used in this chapter, "DNA" refers to deoxyribonucleic acid.

As added by P.L.49-2001, SEC.2.

IC 35-38-7-3

"Offense" defined

Sec. 3. As used in this chapter, "offense" means a felony to which a petition under this chapter relates.

As added by P.L.49-2001, SEC.2. Amended by P.L.1-2002, SEC.147.

IC 35-38-7-4

"Victim" defined

Sec. 4. As used in this chapter, "victim" means an individual who would be entitled under IC 35-40-5-8 to receive information about a release of the petitioner.

As added by P.L.49-2001, SEC.2.

IC 35-38-7-5

Petition to require testing

Sec. 5. A person who was convicted of and sentenced for an offense may file a written petition with the court that sentenced the petitioner for the offense to require the forensic DNA testing and analysis of any evidence that:

(1) is:

(A) in the possession or control of a court or the state; or

(B) otherwise contained in the Indiana DNA data base established under IC 10-13-6;

(2) is related to the investigation or prosecution that resulted in the person's conviction; and

(3) may contain biological evidence.

As added by P.L.49-2001, SEC.2. Amended by P.L.2-2003, SEC.93.

IC 35-38-7-6

Notice of petition to prosecuting attorney

Sec. 6. A petitioner must give notice of the petition to the

prosecuting attorney for the county where the offense was allegedly committed.
As added by P.L.49-2001, SEC.2.

IC 35-38-7-7
Opportunity to respond to petition
Sec. 7. The court shall give the prosecuting attorney an opportunity to respond to the petition. The court may, in its discretion, order a hearing on the petition.
As added by P.L.49-2001, SEC.2.

IC 35-38-7-8
Prima facie proof required
Sec. 8. After complying with section 7 of this chapter, the court shall determine whether the petitioner has presented prima facie proof of the following:
(1) That the evidence sought to be tested is material to identifying the petitioner as:
(A) the perpetrator of; or
(B) an accomplice to;
the offense that resulted in the petitioner's conviction.
(2) That a sample of the evidence that the petitioner seeks to subject to DNA testing and analysis is in the possession or control of either:
(A) the state or a court; or
(B) another person, and, if this clause applies, that a sufficient chain of custody for the evidence exists to suggest that the evidence has not been substituted, tampered with, replaced, contaminated, or degraded in any material aspect.
(3) The evidence sought to be tested:
(A) was not previously tested; or
(B) was tested, but the requested DNA testing and analysis will:
(i) provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice; or
(ii) have a reasonable probability of contradicting prior test results.
(4) A reasonable probability exists that the petitioner would not have:
(A) been:
(i) prosecuted for; or
(ii) convicted of;
the offense; or
(B) received as severe a sentence for the offense;
if exculpatory results had been obtained through the requested DNA testing and analysis.
As added by P.L.49-2001, SEC.2.

IC 35-38-7-9

Order for testing

Sec. 9. If the court makes the findings described in section 8(1), 8(2), 8(3), and 8(4) of this chapter, the court shall order DNA testing and analysis of the evidence.

As added by P.L.49-2001, SEC.2.

IC 35-38-7-10

Method and payment for testing

Sec. 10. If the court orders DNA testing and analysis under section 9 of this chapter, the court shall order the method and responsibility for the payment of any costs associated with the DNA testing and analysis.

As added by P.L.49-2001, SEC.2.

IC 35-38-7-11

Appointment of defense counsel

Sec. 11. The court may appoint defense counsel for the person who was convicted of the offense at any time during any proceedings under this chapter if the person is indigent.

As added by P.L.49-2001, SEC.2.

IC 35-38-7-12

Selection of laboratory

Sec. 12. If the court orders DNA testing and analysis under this chapter, the court shall select a laboratory that meets the quality assurance and proficiency testing standards applicable to laboratories conducting forensic DNA analysis under IC 10-13-6.

As added by P.L.49-2001, SEC.2. Amended by P.L.2-2003, SEC.94.

IC 35-38-7-13

Access to laboratory reports

Sec. 13. (a) If a prosecuting attorney or defense counsel has previously subjected relevant evidence to DNA testing and analysis, the court may order the prosecuting attorney or defense counsel to provide all the parties and the court with access to the laboratory reports that were prepared in connection with the testing and analysis, including underlying data and laboratory notes.

(b) If the court orders DNA testing and analysis under this chapter, the court:

(1) shall order the production of any laboratory reports that are prepared in connection with the testing and analysis; and

(2) may order the production of any underlying data and laboratory notes.

As added by P.L.49-2001, SEC.2.

IC 35-38-7-14

Preservation and inventory of testing results

Sec. 14. If a petition for DNA testing and analysis is filed under this chapter:

(1) the court shall order the state to preserve during the

pendency of the proceeding all evidence in the state's possession or control that could be subjected to DNA testing and analysis;

(2) the state shall:

(A) prepare an inventory of the evidence in the possession or control of the state that could be subjected to DNA testing and analysis; and

(B) submit a copy of the inventory to defense counsel and the court; and

(3) if evidence is intentionally destroyed after the court orders its preservation, the court may impose appropriate sanctions.

As added by P.L.49-2001, SEC.2.

IC 35-38-7-15

Discretionary orders by court; elimination samples

Sec. 15. (a) The court may make any other orders under this chapter that the court considers appropriate, including designating any of the following:

(1) The type of DNA testing and analysis to be used.

(2) That the DNA testing and analysis satisfies the pertinent evidentiary rules concerning the admission of scientific evidence or testimony in the Indiana Rules of Evidence.

(3) The procedures to be followed during the DNA testing and analysis.

(4) The preservation of some of the sample for replicating the DNA testing and analysis.

(5) Elimination samples from third parties.

(b) Elimination samples from a third party shall be required only if:

(1) the petitioner has been excluded as the perpetrator or accomplice by DNA testing and analysis; or

(2) extraordinary circumstances are shown to require the DNA test and analysis.

If the court orders elimination samples from a third party, the court shall offer the third party the choice to provide a sample that can be obtained through the least intrusive method possible.

As added by P.L.49-2001, SEC.2.

IC 35-38-7-16

Notice to victims and third parties

Sec. 16. (a) The prosecuting attorney may provide notification under the procedures of IC 35-40-12 when:

(1) the petitioner first files a petition for DNA testing and analysis under this chapter; and

(2) the prosecuting attorney knows the name and address of the victim.

If the court grants a petition for DNA testing and analysis, the prosecuting attorney shall provide notification if the name and address of the victim are known. A victim shall be notified of the results of the DNA testing and analysis.

(b) The name and address of a victim are confidential for purposes of this chapter.

(c) Notification of third parties regarding a court order to provide elimination samples shall be through the prosecuting attorney.

(d) If a petitioner is exonerated by DNA testing and analysis, the victim shall be notified before the petitioner's release.

As added by P.L.49-2001, SEC.2.

IC 35-38-7-17

Notification of convicted person

Sec. 17. Regardless of whether a petition has been filed under this chapter, if:

(1) a prosecuting attorney decides to order forensic DNA testing or analysis that was not previously performed on biological evidence that is related to the investigation or prosecution that resulted in a person's conviction; and

(2) the testing will consume the remaining biological evidence; the prosecuting attorney must notify the person of the proposed DNA testing and analysis.

As added by P.L.49-2001, SEC.2.

IC 35-38-7-18

Unfavorable results of postconviction testing

Sec. 18. If the results of the postconviction DNA testing and analysis are not favorable to the person who was convicted of the offense, the court:

(1) shall dismiss the person's petition; and

(2) may make any further orders that the court determines to be appropriate, including any of the following:

(A) An order providing for notification of the parole board or a probation department.

(B) An order requesting that the petitioner's sample be added to the Indiana data base established under IC 10-13-6.

As added by P.L.49-2001, SEC.2. Amended by P.L.2-2003, SEC.95.

IC 35-38-7-19

Favorable results of postconviction testing

Sec. 19. Notwithstanding any law that would bar a trial as untimely, if the results of postconviction DNA testing and analysis are favorable to the person who was convicted of the offense, the court shall order any of the following:

(1) Upon motion of the prosecuting attorney and good cause shown, order retesting of the identified biological material and stay the petitioner's motion for a new trial pending the results of the DNA retesting.

(2) Upon joint petition of the prosecuting attorney and the petitioner, order the release of the person.

(3) Order a new trial or any other relief as may be appropriate under Indiana law or court rule.

As added by P.L.49-2001, SEC.2.

ARTICLE 39. RESERVED

IC 35-40

ARTICLE 40. VICTIM RIGHTS

IC 35-40-1

Chapter 1. Legislative Intent

IC 35-40-1-1

Intent to protect rights of victims

Sec. 1. The legislature recognizes that many innocent persons suffer economic loss and personal injury or death as a result of criminal or delinquent acts. It is the intent of the general assembly to do the following:

(1) Enact laws that define, implement, preserve, and protect the rights guaranteed to victims by Article 1, Section 13 of the Constitution of the State of Indiana.

(2) Ensure that Article 1, Section 13 of the Constitution of the State of Indiana is fully and fairly implemented.

As added by P.L.139-1999, SEC.1.

IC 35-40-2

Chapter 2. Applicability; Standing to Invoke Rights

IC 35-40-2-1

Standing of victims

Sec. 1. A victim has standing to assert the rights established by this article. However, this article does not do any of the following:

(1) Provide grounds for a victim to challenge a charging decision or a conviction, obtain a stay of trial, or compel a new trial.

(2) Give rise to a claim for damages against the state of Indiana, a political subdivision, or any public official.

(3) Provide grounds for a person accused of or convicted of a crime or an act of delinquency to obtain any form of relief.

As added by P.L.139-1999, SEC.1.

IC 35-40-3

Chapter 3. Statutory Construction

IC 35-40-3-1

Construction of article

Sec. 1. This article shall be construed to preserve and protect the rights to which a victim is entitled without interfering with the rights of the accused to receive a fair trial or the duty of the prosecuting attorney to represent the people of Indiana.

As added by P.L.139-1999, SEC.1.

IC 35-40-3-2

Victims confined by law enforcement

Sec. 2. This article may not be construed to imply that a victim who is confined by the department of correction or by any local law enforcement agency has a right to be released to attend a hearing or that the department of correction or the local law enforcement agency has a duty to transport the confined victim to a hearing.

As added by P.L.139-1999, SEC.1.

IC 35-40-3-3

Delinquent acts

Sec. 3. In cases involving a delinquent act, a reference in this article to:

(1) a criminal court shall be treated as a reference to the juvenile court; and

(2) a criminal proceeding or an action related to a criminal proceeding shall be treated as a reference to the equivalent proceeding or action under IC 31.

As added by P.L.139-1999, SEC.1.

IC 35-40-4

Chapter 4. Definitions

IC 35-40-4-1

Applicability of definitions

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.139-1999, SEC.1.

IC 35-40-4-2

"Accused"

Sec. 2. "Accused" means that an indictment or information charging a person with a crime or a petition alleging that a child is a delinquent child has been filed.

As added by P.L.139-1999, SEC.1.

IC 35-40-4-3

"Crime"

Sec. 3. "Crime" includes a delinquent act.

As added by P.L.139-1999, SEC.1.

IC 35-40-4-4

"Delinquent act"

Sec. 4. "Delinquent act" has the meaning set forth in IC 31-37-1-2.

As added by P.L.139-1999, SEC.1.

IC 35-40-4-5

"Postarrest release"

Sec. 5. "Postarrest release" means the discharge on recognizance, bond, or other condition imposed under IC 31 or IC 35-33 of an accused person from confinement.

As added by P.L.139-1999, SEC.1.

IC 35-40-4-6

"Postconviction release"

Sec. 6. "Postconviction release" means parole, work release, home detention, or any other permanent, conditional, or temporary discharge from confinement of a person who is confined in:

(1) the custody of:
  (A) the department of correction; or
  (B) a sheriff;
(2) a county jail;
(3) a secure mental health facility; or
(4) a secure juvenile facility or shelter care facility.

As added by P.L.139-1999, SEC.1.

IC 35-40-4-7

"Public court proceeding"

Sec. 7. "Public court proceeding" means a hearing, an argument, or another matter scheduled by and held before a trial court. The

term does not include:

(1) a deposition;

(2) a lineup;

(3) a grand jury proceeding; or

(4) any other procedure not held in the presence of a court having jurisdiction.

As added by P.L.139-1999, SEC.1.

IC 35-40-4-8

"Victim"

Sec. 8. "Victim" means a person that has suffered harm as a result of a crime that was perpetrated directly against the person. The term does not include a person that has been charged with a crime arising out of the same occurrence.

As added by P.L.139-1999, SEC.1.

IC 35-40-5

Chapter 5. Victim Rights

IC 35-40-5-1

Right to fairness, dignity, and respect; right to freedom from harassment and intimidation

Sec. 1. A victim has the right to be:

(1) treated with fairness, dignity, and respect; and

(2) free from intimidation, harassment, and abuse;

throughout the criminal justice process.

As added by P.L.139-1999, SEC.1. Amended by P.L.169-2009, SEC.2.

IC 35-40-5-2

Release or escape from custody of perpetrator

Sec. 2. (a) A victim has the right to be informed, upon request, when a person who is:

(1) accused of committing; or

(2) convicted of committing;

a crime perpetrated directly against the victim is released from custody or has escaped.

(b) Whenever a person accused or convicted of committing a crime is released or escapes from the custody of a mental health treatment agency or a hospital that is not operated by a county sheriff or the department of correction, the court committing the accused or convicted person to the mental health treatment agency or hospital shall carry out this section to inform the victim of the release or escape. The mental health treatment agency or hospital shall provide the court with sufficient information about the release or escape to allow the court to carry out this section.

As added by P.L.139-1999, SEC.1.

IC 35-40-5-3

Right to confer with prosecuting attorney's office

Sec. 3. (a) This section applies if either of the following has occurred:

(1) The alleged felony or delinquent act that would have been a felony if committed by an adult was directly perpetrated against the victim.

(2) The alleged felony, misdemeanor, or delinquent act that would have been a felony or misdemeanor if committed by an adult was:

(A) a violation of IC 35-42-2 (offenses against the person), IC 35-45-2-1 (intimidation), IC 35-45-2-2 (harassment), IC 35-46-1-15.1 (invasion of privacy), or IC 35-47-4-3 (pointing a firearm); and

(B) directly perpetrated against the victim by a person who:

(i) is or was a spouse of the victim;

(ii) is or was living as if a spouse of the victim; or

(iii) has a child in common with the victim.

(3) The alleged misdemeanor or delinquent act that would have been a misdemeanor if committed by an adult, other than a misdemeanor described in subdivision (2), was directly perpetrated against the victim, and the victim has complied with the notice requirements under IC 35-40-10.

(b) A victim has the right to confer with a representative of the prosecuting attorney's office:

(1) after a crime allegedly committed against the victim has been charged;

(2) before the trial of a crime allegedly committed against the victim; and

(3) before any disposition of a criminal case involving the victim.

This right does not include the authority to direct the prosecution of a criminal case involving the victim.

As added by P.L.139-1999, SEC.1.

IC 35-40-5-4

Consideration of victim's safety

Sec. 4. A victim has the right to have the victim's safety considered in determining release from custody of a person accused of committing a crime against the victim.

As added by P.L.139-1999, SEC.1.

IC 35-40-5-5

Right to be heard at sentencing or release

Sec. 5. A victim has the right to be heard at any proceeding involving sentencing, a postconviction release decision, or a pre-conviction release decision under a forensic diversion program.

As added by P.L.139-1999, SEC.1. Amended by P.L.85-2004, SEC.7.

IC 35-40-5-6

Presentence reports

Sec. 6. (a) A victim has the right to make a written or oral statement for use in preparation of the presentence report.

(b) Notwithstanding IC 35-38-1-13, the victim has the right to read presentence reports relating to the crime committed against the victim, except those parts of the reports containing the following:

(1) The source of confidential information.

(2) Information about another victim.

(3) Other information determined confidential or privileged by the judge in a proceeding.

The information given to the victim must afford the victim a fair opportunity to respond to the material included in the presentence report.

As added by P.L.139-1999, SEC.1.

IC 35-40-5-7

Order of restitution

Sec. 7. A victim has the right to pursue an order of restitution and

other civil remedies against the person convicted of a crime against the victim.
As added by P.L.139-1999, SEC.1.

IC 35-40-5-8
Right to information about criminal case or perpetrator

Sec. 8. A victim has the right to information, upon request, about the disposition of the criminal case involving the victim or the conviction, sentence, and release of a person accused of committing a crime against the victim.
As added by P.L.139-1999, SEC.1.

IC 35-40-5-9
Right to be informed of victim's rights

Sec. 9. A victim has the right to be informed of the victim's constitutional and statutory rights.
As added by P.L.139-1999, SEC.1.

IC 35-40-5-11
Defense interview with child victims of sex crimes

Sec. 11. (a) This section applies only to a child less than sixteen (16) years of age who is the victim or alleged victim of a sex offense (as defined in IC 11-8-8-5.2).

(b) As used in this section, "defense counsel" includes an agent of:

(1) the defense counsel; or
(2) the defendant.

(c) After charges are filed against a defendant, if defense counsel would like to interview a child described in subsection (a), the defendant or defense counsel must contact the prosecuting attorney. The child has the right under section 3 of this chapter to confer with the prosecuting attorney before the interview occurs. The prosecuting attorney may not instruct the child not to speak with defense counsel.

(d) If the parties are unable to agree to the terms of the interview, the parties may petition the court for a hearing on the terms of the interview prior to the interview taking place. The court shall review the terms suggested by the parties and consider the age of the child, any special considerations, and the rights of victims provided by IC 35-40-5-1 in setting reasonable terms for the interview.
As added by P.L.169-2009, SEC.3.

IC 35-40-6

Chapter 6. Prosecuting Attorney Duties and Victim Assistance Programs

IC 35-40-6-1

Applicability of chapter

Sec. 1. This chapter applies when:

(1) law enforcement officials have received a report of an alleged offense not later than five (5) days after the alleged offense occurred or was discovered, unless the prosecuting attorney having jurisdiction finds that the report was not made within the five (5) day period due to circumstances beyond the control of a victim of the alleged offense; and

(2) a victim fully cooperates with and responds to reasonable requests from law enforcement officials and the prosecuting attorney.

As added by P.L.139-1999, SEC.1.

IC 35-40-6-2

Victims to be treated with dignity

Sec. 2. A prosecuting attorney shall provide that:

(1) victims are treated with dignity, respect, and sensitivity at all stages of the criminal justice process; and

(2) the rights of victims are protected.

As added by P.L.139-1999, SEC.1.

IC 35-40-6-3

Victim assistance program; contract to operate

Sec. 3. A prosecuting attorney may contract with a person to operate a victim assistance program to provide the services required under this chapter.

As added by P.L.139-1999, SEC.1.

IC 35-40-6-4

Victim assistance program; purposes

Sec. 4. A prosecuting attorney or a victim assistance program shall do the following:

(1) Inform a victim that the victim may be present at all public stages of the criminal justice process to the extent that:

(A) the victim's presence and statements do not interfere with a defendant's constitutional rights; and

(B) there has not been a court order restricting, limiting, or prohibiting attendance at the criminal proceedings.

(2) Timely notify a victim of all criminal justice hearings and proceedings that are scheduled for a criminal matter in which the victim was involved.

(3) Promptly notify a victim when a criminal court proceeding has been rescheduled or canceled.

(4) Obtain an interpreter or translator, if necessary, to advise a victim of the rights granted to a victim under the law.

(5) Coordinate efforts of local law enforcement agencies that are designed to promptly inform a victim after an offense occurs of the availability of, and the application process for, community services for victims and the families of victims, including information concerning services such as the following:

(A) Victim compensation funds.

(B) Victim assistance resources.

(C) Legal resources.

(D) Mental health services.

(E) Social services.

(F) Health resources.

(G) Rehabilitative services.

(H) Financial assistance services.

(I) Crisis intervention services.

(J) Transportation and child care services to promote the participation of a victim or a member of the victim's immediate family in the criminal proceedings.

(6) Inform the victim that the court may order a defendant convicted of the offense involving the victim to pay restitution to the victim under IC 35-50-5-3.

(7) Upon request of the victim, inform the victim of the terms and conditions of release of the person accused of committing a crime against the victim.

(8) Upon request of the victim, give the victim notice of the criminal offense for which:

(A) the defendant accused of committing the offense against the victim was convicted or acquitted; or

(B) the charges were dismissed against the defendant accused of committing the offense against the victim.

(9) In a county having a victim-offender reconciliation program (VORP), provide an opportunity for a victim, if the accused person or the offender agrees, to:

(A) meet with the accused person or the offender in a safe, controlled environment;

(B) give to the accused person or the offender, either orally or in writing, a summary of the financial, emotional, and physical effects of the offense on the victim and the victim's family; and

(C) negotiate a restitution agreement to be submitted to the sentencing court for damages incurred by the victim as a result of the offense.

(10) Assist a victim in preparing verified documentation necessary to obtain a restitution order under IC 35-50-5-3.

(11) Advise a victim of other rights granted to a victim under the law.

As added by P.L.139-1999, SEC.1.

IC 35-40-6-5

Victim-offender reconciliation program

Sec. 5. (a) If a victim participates in a victim-offender reconciliation program (VORP) operated by a victim assistance program under section 4(9) of this chapter, the victim shall execute a waiver releasing:

(1) the prosecuting attorney responsible for the victim assistance program; and

(2) the victim assistance program;

from civil and criminal liability for actions taken by the victim, an accused person, or an offender as a result of participation by the victim, the accused person, or the offender in a victim-offender reconciliation program (VORP).

(b) A victim is not required to participate in a victim-offender reconciliation program (VORP) under section 4(9) of this chapter.

As added by P.L.139-1999, SEC.1.

IC 35-40-6-6

Threat of harm to victim

Sec. 6. If:

(1) a victim submits to the prosecuting attorney an affidavit asserting:

(A) that an act or threat of physical violence or intimidation has been made against the victim or the immediate family of the victim; and

(B) that the act or threat described in clause (A) has been made by the defendant or at the direction of the defendant; and

(2) the prosecuting attorney has reason to believe the allegations in the affidavit are true and warrant the filing of a motion for bond revocation;

the prosecuting attorney shall file a motion under IC 35-33-8-5 requesting the court to revoke the defendant's bond or order for personal recognizance.

As added by P.L.139-1999, SEC.1.

IC 35-40-6-7

Notification requested by victim

Sec. 7. If the defendant is convicted, and upon the victim's request, the victim shall be notified, if applicable, of the following:

(1) The function of the presentence report.

(2) The name and telephone number of the probation department that is preparing the presentence report.

(3) The right to make a victim impact statement under IC 35-38-1-8.5.

(4) The defendant's right to review the presentence report.

(5) The victim's right to review the presentence report, except those parts excised by the court or made confidential by IC 35-40-5-6.

(6) The victim's right to be present and heard at any sentencing procedure under IC 35-40-5-5.

(7) The time, place, and date of the sentencing proceeding.

As added by P.L.139-1999, SEC.1. Amended by P.L.14-2000, SEC.71.

IC 35-40-6-8

Request form for revocation of bond

Sec. 8. The prosecuting attorney or a victim assistance program shall advise a victim on how the request form completed under section 6 of this chapter may be filed with the appropriate agencies and departments.

As added by P.L.139-1999, SEC.1.

IC 35-40-6-9

Contact between victim and probation department

Sec. 9. (a) Notice provided under this chapter does not relieve a probation department of responsibility under IC 35-38-1-8.5 to initiate the contact between a victim and the probation department concerning the consequences suffered by the victim as a result of the crime.

(b) At the time of contact with a victim, a probation department shall advise the victim of the date, time, and place of sentencing and of the victim's right to be present and to be heard at the proceeding.

As added by P.L.139-1999, SEC.1.

IC 35-40-6-10

Victim to be informed of status of case

Sec. 10. If a person convicted of a crime against the victim seeks appellate review or attacks the person's conviction or sentence, the prosecuting attorney or the office of the attorney general, whichever is appropriate, shall inform the victim, upon request, of the status of the case and of the decision of the court.

As added by P.L.139-1999, SEC.1.

IC 35-40-7

Chapter 7. Notice of Release on Bond or Escape

IC 35-40-7-1

Responsibility of law enforcement agency with custody

Sec. 1. The law enforcement agency having custody of a person accused of committing a crime against a victim shall notify the victim if the accused person escapes from the custody of the law enforcement agency.

As added by P.L.139-1999, SEC.1.

IC 35-40-7-2

Notifying victim of bond hearing, escape, or release

Sec. 2. Upon request of a victim, the office of the prosecuting attorney having jurisdiction or a law enforcement agency having custody of a person accused of a crime against the victim shall notify the victim of the scheduling of a bond hearing, the escape or death of a person accused of committing a crime against the victim, release of a person convicted of a crime against the victim to a work release program, or any other type of postarrest release of a person convicted of a crime against the victim.

As added by P.L.139-1999, SEC.1.

IC 35-40-7-3

Notice; timing

Sec. 3. A notice under this chapter must be given by a law enforcement agency that has custody of the person at the time of the escape or release to a victim:

(1) before the person is released by the law enforcement agency, if possible; or

(2) as soon as practicable after the person escapes or has been released by the law enforcement agency.

As added by P.L.139-1999, SEC.1.

IC 35-40-8

Chapter 8. Notice of Probation Modification, Revocation, or Termination

IC 35-40-8-1

Victim notification of termination of probation or forensic diversion

Sec. 1. Upon request of a victim, a criminal court shall notify the victim of any probation or forensic diversion revocation disposition proceeding or proceeding in which the court is asked to terminate the probation or forensic diversion of a person who is convicted of a crime against the victim.

As added by P.L.139-1999, SEC.1. Amended by P.L.85-2004, SEC.8.

IC 35-40-8-2

Victim notification of certain probation or forensic diversion program modifications

Sec. 2. Upon request of a victim, a criminal court shall notify the victim of a modification of the terms of probation or a forensic diversion program of a person convicted of a crime against the victim only if:

(1) the modification will substantially affect the person's contact with or safety of the victim; or

(2) the modification affects the person's restitution or confinement status.

As added by P.L.139-1999, SEC.1. Amended by P.L.85-2004, SEC.9.

IC 35-40-9

Chapter 9. Notice of Release, Discharge, or Escape From a Mental Health Treatment Agency

IC 35-40-9-1

Mental health treatment agency to notify victim

Sec. 1. If the court described in IC 35-40-5-2 has received a request for notice from a victim and has communicated the request to a mental health treatment agency, the mental health treatment agency shall mail a notification to the court described in IC 35-40-5-2 not later than ten (10) days before the release or discharge of a person:

(1) accused or convicted of committing a criminal offense against the victim; and

(2) placed by court order with the mental health treatment agency.

As added by P.L.139-1999, SEC.1.

IC 35-40-9-2

Mental health treatment agency to notify court

Sec. 2. A mental health treatment agency shall immediately notify the court described in IC 35-40-5-2 after the escape or subsequent readmission of a person:

(1) accused or convicted of committing a criminal offense against the victim; and

(2) placed by court order with the mental health treatment agency.

As added by P.L.139-1999, SEC.1.

IC 35-40-9-3

Court to give notice on behalf of mental health treatment agency

Sec. 3. The court described in IC 35-40-5-2 shall give the notice required under IC 35-40-5-2 on behalf of the mental health treatment agency.

As added by P.L.139-1999, SEC.1.

IC 35-40-10

Chapter 10. Request for Notice

IC 35-40-10-1

Responsibilities of victims

Sec. 1. (a) A victim shall provide to and maintain with the agency that is responsible for providing notice to the victim a request for notice on a form that is provided by that agency. The form must include a telephone number and address for the victim. If the victim fails to keep the victim's telephone number and address current, the agency may withdraw the victim's request for notice.

(b) A victim may restore a request for notice of subsequent proceedings by filing, on a request form provided by an agency, the victim's current telephone number and address.

As added by P.L.139-1999, SEC.1.

IC 35-40-10-2

Forms designated by prosecuting attorney

Sec. 2. A notice provided to a victim under this article must be on a form designated by the prosecuting attorney. The prosecuting attorneys council of Indiana established by IC 33-39-8-2 shall develop and disseminate model notice forms for use by prosecuting attorneys.

As added by P.L.139-1999, SEC.1. Amended by P.L.98-2004, SEC.153.

IC 35-40-11

Chapter 11. Victim's Discretion; Form of Statement

IC 35-40-11-1

Victim's right to be heard at court proceedings

Sec. 1. It is at the victim's discretion to exercise the victim's rights under this article to be present and to be heard at court proceedings, and the absence of the victim at a court proceeding does not preclude the court from holding the proceeding.

As added by P.L.139-1999, SEC.1.

IC 35-40-11-2

Oral, written, or taped statements allowed

Sec. 2. Except as provided in section 3 of this chapter, a victim's right to be heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement, or submission of a statement through audiotape or videotape.

As added by P.L.139-1999, SEC.1.

IC 35-40-11-3

Statement when victim in custody

Sec. 3. If a victim is in custody for committing or allegedly committing an offense, the victim may be heard by submitting a written statement to the court.

As added by P.L.139-1999, SEC.1.

IC 35-40-12

Chapter 12. Procedures Related to Notices and Consultations

IC 35-40-12-1

Consultation with victim's next of kin, parent, or guardian

Sec. 1. (a) This section applies if:

(1) the victim is an individual;

(2) the victim is incompetent, deceased, less than eighteen (18) years of age, or otherwise incapable of receiving or understanding a notice or consultation required under this article; and

(3) a person has not been designated under IC 35-40-13 to exercise the rights of the victim under this article.

(b) A notice or consultation required under this article may be performed by notifying or consulting with at least one (1) of the next of kin or the parent, guardian, or custodian of the victim.

As added by P.L.139-1999, SEC.1.

IC 35-40-12-2

Notice to victim's agent

Sec. 2. (a) This section applies if the victim is an entity other than an individual.

(b) A notice or consultation required under this article may be performed by notifying or consulting with a responsible officer or agent of the entity.

As added by P.L.139-1999, SEC.1.

IC 35-40-12-3

Notice when victim is a partnership

Sec. 3. (a) This section applies if the victim is a partnership.

(b) A notice or consultation required under this article may be performed by notifying or consulting with at least one (1) partner.

As added by P.L.139-1999, SEC.1.

IC 35-40-12-4

Name and address of person to receive notice

Sec. 4. (a) This section applies if the victim is an entity other than an individual.

(b) A request for notice under IC 35-40-10 must identify the name and the mailing address of the person who is to receive notices and consultations on behalf of the entity.

As added by P.L.139-1999, SEC.1.

IC 35-40-12-5

Notice to multiple victims

Sec. 5. (a) This section applies if there are multiple victims that are entitled to notices or consultations under this article.

(b) The prosecuting attorney for the county in which the crime occurred may adopt procedures that afford to a group of victims the rights afforded by this article.

As added by P.L.139-1999, SEC.1.

IC 35-40-13

Chapter 13. Inability to Exercise Rights; Designation of Others; Representative of a Minor

IC 35-40-13-1

Victim physically or emotionally unable to exercise rights; designation of representative

Sec. 1. (a) If a victim is physically or emotionally unable to exercise any right but is able to designate a lawful representative who is not a bona fide witness, the designated person may exercise the same rights that the victim is entitled to exercise.

(b) A victim may revoke the designation of a representative at any time and exercise the victim's rights.

As added by P.L.139-1999, SEC.1.

IC 35-40-13-2

Appointment of representative by court

Sec. 2. If a victim is incompetent, deceased, or otherwise incapable of designating another person to act in the victim's place, the court may appoint, upon request of the prosecuting attorney, a lawful representative who is not a witness.

As added by P.L.139-1999, SEC.1.

IC 35-40-13-3

Victim a minor

Sec. 3. If the victim is a minor, the victim's parents or legal guardian may exercise all of the victim's rights on behalf of the victim.

As added by P.L.139-1999, SEC.1.

IC 35-40-13-4

Victim not a minor; appointment of representative by court

Sec. 4. If section 3 of this chapter does not apply, the court shall consider appointing a relative of the incompetent, deceased, or otherwise incapable victim as the lawful representative.

As added by P.L.139-1999, SEC.1.

IC 35-40-13-5

Guidelines for court when appointing representatives

Sec. 5. The court shall consider the following guidelines in appointing a person to represent an incompetent or deceased victim:

(1) Any conflict occasioned by the allegation of criminal conduct that substantially or adversely affected the person.

(2) The person's willingness and ability to do all of the following:

(A) Work with and accompany the victim through all proceedings, including criminal, civil, and dependency proceedings.

(B) Communicate with the victim.

(C) Express the concerns of the victim to those authorized to

come in contact with the victim as a result of the proceedings.

(3) The person's training, if any, to serve as a representative of the incompetent victim.

(4) The likelihood of the person being called as a witness in the criminal case involving the incompetent victim.

As added by P.L.139-1999, SEC.1.

IC 35-40-14

Chapter 14. Rights of Victims of Identity Deception

IC 35-40-14-1

"Identity theft"

Sec. 1. As used in this chapter, "identity theft" means:

(1) identity deception (IC 35-43-5-3.5);

(2) synthetic identity deception (IC 35-43-5-3.8); or

(3) a substantially similar crime committed in another jurisdiction.

As added by P.L.137-2009, SEC.11.

IC 35-40-14-2

"Unit"

Sec. 2. As used in this chapter, "unit" refers to the identity theft unit established under IC 4-6-13-2.

As added by P.L.137-2009, SEC.11.

IC 35-40-14-3

Duties of law enforcement agencies concerning identity theft

Sec. 3. (a) A person who has learned or reasonably suspects that the person has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over the person's residence. The local law enforcement agency shall take an official report of the matter and provide the complainant with a copy of that report. Even if jurisdiction lies elsewhere for investigation and prosecution of a crime of theft, the local law enforcement agency shall take the complaint and provide the person with a copy of the complaint. The law enforcement authority may refer the complaint to a law enforcement agency in a different jurisdiction.

(b) This section does not affect the discretion of a local law enforcement agency to allocate resources for investigation of crimes. A complaint filed under this section is not required to be counted as an open case for purposes of compiling open case statistics.

As added by P.L.137-2009, SEC.11.

IC 35-40-14-4

Protections for victims of identity theft

Sec. 4. (a) A person who is injured by a crime of identity theft or who has filed a police report alleging commission of an offense of identity theft may file an application with the court in the jurisdiction where the person resides for the issuance of a court order declaring that the person is a victim of identity theft. A person may file an application under this section regardless of whether the person is able to identify each person who allegedly obtained, possessed, transferred, or used the person's identifying information in an unlawful manner.

(b) A person filing an application under subsection (a) shall file a copy of the application with the unit. The unit may appear at and present evidence in a hearing conducted under this section if the unit

determines that a court order declaring the applicant a victim of identity theft would be inappropriate.

(c) A person is presumed to be a victim of identity theft under this section if another person is charged with and convicted of an offense of identity theft for unlawfully obtaining, possessing, transferring, or using the person's identifying information.

(d) After notice and hearing, if the court is satisfied by a preponderance of the evidence that the applicant has been injured by a crime of identity theft, the court shall enter an order containing:

(1) a declaration that the person filing the application is a victim of identity theft resulting from the commission of a crime of identity theft;

(2) any known information identifying the violator or person charged with the offense;

(3) the specific personal identifying information and any related document or record used to commit the alleged offense; and

(4) information identifying any financial account or transaction affected by the alleged offense, including:

(A) the name of the financial institution in which the account is established or of the merchant or creditor involved in the transaction, as appropriate;

(B) any relevant account numbers;

(C) the dollar amount of the account or transaction affected by the alleged offense; and

(D) the date or dates of the offense.

(e) Except as provided in subsection (h), an order issued under this section must be sealed because of the confidential nature of the information required to be included in the order. The order may be opened and the order or a copy of the order may be released only:

(1) to the proper officials in a civil proceeding brought by or against the victim arising or resulting from the commission of a crime of identity theft, including a proceeding to set aside a judgment obtained against the victim;

(2) to the victim for the purpose of submitting the copy of the order to a governmental entity or private business to:

(A) prove that a financial transaction or account of the victim was directly affected by the commission of a crime of identity theft; and

(B) correct any record of the entity or business that contains inaccurate or false information as a result of the offense;

(3) on order of the judge; or

(4) as otherwise required by law.

(f) A court at any time may vacate an order issued under this section if the court finds that the application or any information submitted to the court by the applicant contains a fraudulent misrepresentation or a material misrepresentation of fact.

(g) Except as provided in subsection (h), a copy of the order provided to a person under subsection (e)(1) must remain sealed throughout and after the civil proceeding. Information contained in a copy of an order provided to a governmental entity or business

under subsection (e)(2) is confidential and may not be released to another person except as otherwise required by law.

(h) The following information regarding an application filed under this section may be released to the public:

(1) The name of the applicant.

(2) The county of residence of the applicant.

(3) Whether the application was approved or denied by the court.

As added by P.L.137-2009, SEC.11.

IC 35-41

ARTICLE 41. SUBSTANTIVE CRIMINAL PROVISIONS

IC 35-41-1

Chapter 1. Jurisdiction and Definitions

IC 35-41-1-1

Jurisdiction

Sec. 1. (a) As used in this section, "Indiana" includes:

(1) the area within the boundaries of the state of Indiana, as set forth in Article 14, Section 1 of the Constitution of the State of Indiana;

(2) the portion of the Ohio River on which Indiana possesses concurrent jurisdiction with the state of Kentucky under Article 14, Section 2 of the Constitution of the State of Indiana; and

(3) the portion of the Wabash River on which Indiana possesses concurrent jurisdiction with the state of Illinois under Article 14, Section 2 of the Constitution of the State of Indiana.

(b) A person may be convicted under Indiana law of an offense if:

(1) either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana;

(2) conduct occurring outside Indiana is sufficient under Indiana law to constitute an attempt to commit an offense in Indiana;

(3) conduct occurring outside Indiana is sufficient under Indiana law to constitute a conspiracy to commit an offense in Indiana, and an overt act in furtherance of the conspiracy occurs in Indiana;

(4) conduct occurring in Indiana establishes complicity in the commission of, or an attempt or conspiracy to commit, an offense in another jurisdiction that also is an offense under Indiana law;

(5) the offense consists of the omission to perform a duty imposed by Indiana law with respect to domicile, residence, or a relationship to a person, thing, or transaction in Indiana;

(6) conduct that is an element of the offense or the result of conduct that is an element of the offense, or both, involve the use of the Internet or another computer network (as defined in IC 35-43-2-3) and access to the Internet or other computer network occurs in Indiana; or

(7) conduct:

(A) involves the use of:

(i) the Internet or another computer network (as defined in IC 35-43-2-3); or

(ii) another form of electronic communication;

(B) occurs outside Indiana and the victim of the offense resides in Indiana at the time of the offense; and

(C) is sufficient under Indiana law to constitute an offense

in Indiana.

(c) When the offense is homicide, either the death of the victim or bodily impact causing death constitutes a result under subsection (b)(1). If the body of a homicide victim is found in Indiana, it is presumed that the result occurred in Indiana.

(d) If the offense is identity deception or synthetic identity deception, the lack of the victim's consent constitutes conduct that is an element of the offense under subsection (b)(1). If a victim of identity deception or synthetic identity deception resides in Indiana when a person knowingly or intentionally obtains, possesses, transfers, or uses the victim's identifying information, it is presumed that the conduct that is the lack of the victim's consent occurred in Indiana.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.1; P.L.295-1995, SEC.1; P.L.115-2005, SEC.3; P.L.125-2006, SEC.8; P.L.137-2009, SEC.12.

IC 35-41-1-2

Repealed

(*Repealed by P.L.311-1983, SEC.49.)*

IC 35-41-1-3

Application of definitions in chapter

Sec. 3. The definitions in this chapter apply throughout this title and to all other statutes relating to penal offenses.

As added by P.L.311-1983, SEC.4.

IC 35-41-1-3.1

Repealed

(*Repealed by P.L.1-2010, SEC.156.)*

IC 35-41-1-3.2

"Agency" defined

Sec. 3.2. (a) "Agency" means any authority, board, bureau, commission, committee, department, division, hospital, military body, or other instrumentality of:

(1) the state, a county, a township, a city, a town, a separate municipal corporation, a special taxing district, or a public corporation; or

(2) a state-assisted college or state-assisted university.

(b) The term does not include any part of the legislative department or the judicial department of state government.

As added by P.L.13-1987, SEC.13.

IC 35-41-1-3.3

Repealed

(*Repealed by P.L.1-2010, SEC.156.)*

IC 35-41-1-3.4

"Apartment complex" defined

Sec. 3.4. "Apartment complex" means real property consisting of at least five (5) units that are regularly used to rent or otherwise furnish residential accommodations for periods of at least thirty (30) days.
As added by P.L.1-2010, SEC.143.

IC 35-41-1-4
"Bodily injury" defined
Sec. 4. "Bodily injury" means any impairment of physical condition, including physical pain.
As added by P.L.311-1983, SEC.5.

IC 35-41-1-4.3
"Bomb" defined
Sec. 4.3. (a) "Bomb" means an explosive or incendiary device designed to release:
(1) destructive materials or force; or
(2) dangerous gases;
that is detonated by impact, proximity to an object, a timing mechanism, a chemical reaction, ignition, or other predetermined means.
(b) The term does not include the following:
(1) A firearm (as defined in IC 35-47-1-5) or the ammunition or components for handloading ammunition for a firearm.
(2) Fireworks regulated under IC 22-11-14.
(3) Boating, railroad, and other safety flares.
(4) Propellants used in model rockets or similar hobby activities.
(5) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.
As added by P.L.104-2000, SEC.1.

IC 35-41-1-4.4
"Community transition program" defined
Sec. 4.4. "Community transition program" has the meaning set forth in IC 11-8-1-5.5.
As added by P.L.273-1999, SEC.213.

IC 35-41-1-4.5
Repealed
(*Repealed by P.L.9-1990, SEC.17.)*

IC 35-41-1-4.6
"Community restitution or service" defined
Sec. 4.6. "Community restitution or service" means performance of services directly for a:
(1) victim;

(2) nonprofit entity; or
(3) governmental entity;
without compensation, including graffiti abatement, park maintenance, and other community service activities. The term does not include the reimbursement under IC 35-50-5-3 or another law of damages or expenses incurred by a victim or another person as the result of a violation of law.
As added by P.L.32-2000, SEC.25.

IC 35-41-1-4.7
"Community policing volunteer" defined
Sec. 4.7. "Community policing volunteer" means a person who is:
(1) not a law enforcement officer; and
(2) actively participating in a plan, system, or strategy:
(A) established by and conducted under the authority of a law enforcement agency; and
(B) in which citizens:
(i) participate with and are guided by the law enforcement agency; and
(ii) work with members of the law enforcement agency to reduce or prevent crime within a defined geographic area.
As added by P.L.175-2003, SEC.1.

IC 35-41-1-5
"Credit institution" defined
Sec. 5. "Credit institution" means a bank, insurance company, credit union, savings association, investment trust, industrial loan and investment company, or other organization held out to the public as a place of deposit of funds or a medium of savings or collective investment.
As added by P.L.311-1983, SEC.6. Amended by P.L.79-1998, SEC.104.

IC 35-41-1-5.5
"Credit restricted felon" defined
Sec. 5.5. "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.
(2) Child molesting (IC 35-42-4-3) resulting in serious bodily injury or death.
(3) 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 from testifying.

As added by P.L.80-2008, SEC.1.

IC 35-41-1-6

"Crime" defined

Sec. 6. "Crime" means a felony or a misdemeanor.

As added by P.L.311-1983, SEC.7.

IC 35-41-1-6.3

"Crime of domestic violence" defined

Sec. 6.3. "Crime of domestic violence," for purposes of IC 5-2-6.1 and IC 35-47-4-7, means an offense or the attempt to commit an offense that:

(1) has as an element the:

(A) use of physical force; or

(B) threatened use of a deadly weapon; and

(2) is committed against a:

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

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

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

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

As added by P.L.195-2003, SEC.5. Amended by P.L.98-2004, SEC.154; P.L.121-2006, SEC.29; P.L.118-2007, SEC.33.

IC 35-41-1-6.5

"Crime involving domestic or family violence" defined

Sec. 6.5. "Crime involving domestic or family violence" means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

(1) A homicide offense under IC 35-42-1.

(2) A battery offense under IC 35-42-2.

(3) Kidnapping or confinement under IC 35-42-3.

(4) Human and sexual trafficking crimes under IC 35-42-3.5.

(5) A sex offense under IC 35-42-4.

(6) Robbery under IC 35-42-5.

(7) Arson or mischief under IC 35-43-1.

(8) Burglary or trespass under IC 35-43-2.

(9) Disorderly conduct under IC 35-45-1.

(10) Intimidation or harassment under IC 35-45-2.

(11) Voyeurism under IC 35-45-4.

(12) Stalking under IC 35-45-10.

(13) An offense against family under IC 35-46-1-2 through

IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.

(14) A crime involving animal cruelty and a family or household member under IC 35-46-3-12(b)(2) or IC 35-46-3-12.5.

As added by P.L.133-2002, SEC.62. Amended by P.L.173-2006, SEC.50; P.L.171-2007, SEC.4; P.L.111-2009, SEC.9.

IC 35-41-1-6.6

"Dangerous gas" defined

Sec. 6.6. "Dangerous gas", for purposes of IC 35-41-1-4.3, means a toxic chemical or its precursors that through chemical action or properties on life processes cause death or permanent injury to human beings. The term does not include the following:

(1) Riot control agents, smoke, and obscuration materials or medical products that are manufactured, possessed, transported, or used in accordance with the laws of the United States and of this state.

(2) Tear gas devices designed to be carried on or about the person that contain not more than one-half (1/2) ounce of the chemical.

As added by P.L.104-2000, SEC.2.

IC 35-41-1-7

"Deadly force" defined

Sec. 7. "Deadly force" means force that creates a substantial risk of serious bodily injury.

As added by P.L.311-1983, SEC.8.

IC 35-41-1-8

"Deadly weapon" defined

Sec. 8. (a) Except as provided in subsection (b), "deadly weapon" means the following:

(1) A loaded or unloaded firearm.

(2) A destructive device, weapon, device, taser (as defined in IC 35-47-8-3) or electronic stun weapon (as defined in IC 35-47-8-1), equipment, chemical substance, or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.

(3) An animal (as defined in IC 35-46-3-3) that is:

(A) readily capable of causing serious bodily injury; and

(B) used in the commission or attempted commission of a crime.

(4) A biological disease, virus, or organism that is capable of causing serious bodily injury.

(b) The term does not include:

(1) a taser (as defined in IC 35-47-8-3);

(2) an electronic stun weapon (as defined in IC 35-47-8-1);

(3) a chemical designed to temporarily incapacitate a person; or

(4) another device designed to temporarily incapacitate a

person;

if the device described in subdivisions (1) through (4) is used by a law enforcement officer who has been trained in the use of the device and who uses the device in accordance with the law enforcement officer's training and while lawfully engaged in the execution of official duties.

As added by P.L.311-1983, SEC.9. Amended by P.L.318-1985, SEC.1; P.L.140-1994, SEC.4; P.L.156-2001, SEC.8; P.L.123-2002, SEC.33; P.L.143-2006, SEC.1.

IC 35-41-1-8.5

"Destructive device" defined

Sec. 8.5. "Destructive device" has the meaning set forth in IC 35-47.5-2-4.

As added by P.L.123-2002, SEC.34.

IC 35-41-1-9

"Deviate sexual conduct" defined

Sec. 9. "Deviate sexual conduct" means an act involving:

(1) a sex organ of one person and the mouth or anus of another person; or

(2) the penetration of the sex organ or anus of a person by an object.

As added by P.L.311-1983, SEC.10. Amended by P.L.183-1984, SEC.1.

IC 35-41-1-10

"Dwelling" defined

Sec. 10. "Dwelling" means a building, structure, or other enclosed space, permanent or temporary, movable or fixed, that is a person's home or place of lodging.

As added by P.L.311-1983, SEC.11.

IC 35-41-1-10.3

"Effects of battery" defined

Sec. 10.3. "The effects of battery" refers to a psychological condition of an individual who has suffered repeated physical or sexual abuse inflicted by another individual who is the:

(1) victim of an alleged crime for which the abused individual is charged in a pending prosecution; and

(2) abused individual's:

(A) spouse or former spouse;

(B) parent;

(C) guardian or former guardian;

(D) custodian or former custodian; or

(E) cohabitant or former cohabitant.

As added by P.L.1-2010, SEC.144.

IC 35-41-1-10.5

"Family housing complex" defined

Sec. 10.5. "Family housing complex" means a building or series of buildings:

(1) that contains at least twelve (12) dwelling units:

(A) where children are domiciled or are likely to be domiciled; and

(B) that are owned by a governmental unit or political subdivision;

(2) that is operated as a hotel or motel (as described in IC 22-11-18-1);

(3) that is operated as an apartment complex; or

(4) that contains subsidized housing.

As added by P.L.65-1996, SEC.10. Amended by P.L.216-1996, SEC.16; P.L.26-2006, SEC.1; P.L.146-2008, SEC.682.

IC 35-41-1-10.6

"Family or household member" of another person defined

Sec. 10.6. (a) An individual is a "family or household member" of another person if the individual:

(1) is a current or former spouse of the other person;

(2) is dating or has dated the other person;

(3) is or was engaged in a sexual relationship with the other person;

(4) is related by blood or adoption to the other person;

(5) is or was related by marriage to the other person;

(6) has or previously had an established legal relationship:

(A) as a guardian of the other person;

(B) as a ward of the other person;

(C) as a custodian of the other person;

(D) as a foster parent of the other person; or

(E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); or

(7) has a child in common with the other person.

(b) An individual is a "family or household member" of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) applies if the individual is a minor child of one (1) of the persons.

As added by P.L.1-2003, SEC.92 and P.L.221-2003, SEC.17.

IC 35-41-1-10.7

Repealed

(*Repealed by P.L.1-2003, SEC.106.)*

IC 35-41-1-10.8

"Food processing facility" defined

Sec. 10.8. "Food processing facility" means a facility used to prepare or process animal, plant, or other food ingredients into food products intended for sale or distribution to the general public for human consumption.

As added by P.L.1-2003, SEC.93.

IC 35-41-1-11
"Forcible felony" defined

Sec. 11. "Forcible felony" means a felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being.

As added by P.L.311-1983, SEC.12.

IC 35-41-1-12
"Governmental entity" defined

Sec. 12. "Governmental entity" means:

(1) the United States or any state, county, township, city, town, separate municipal corporation, special taxing district, or public school corporation;

(2) any authority, board, bureau, commission, committee, department, division, hospital, military body, or other instrumentality of any of those entities; or

(3) a state-assisted college or state-assisted university.

As added by P.L.311-1983, SEC.13.

IC 35-41-1-12.3
"Graffiti" defined

Sec. 12.3. "Graffiti" means any unauthorized inscription, work, figure, or design that is marked, etched, scratched, drawn, or painted on a component of any building, structure, or other facility.

As added by P.L.94-1996, SEC.4.

IC 35-41-1-13
"Harm" defined

Sec. 13. "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person in whose welfare he is interested.

As added by P.L.311-1983, SEC.14.

IC 35-41-1-14
"Human being" defined

Sec. 14. "Human being" means an individual who has been born and is alive.

As added by P.L.311-1983, SEC.15.

IC 35-41-1-15
"Imprison" defined

Sec. 15. "Imprison" means to:

(1) confine in a penal facility;

(2) commit to the department of correction; or

(3) assign to a community transition program under IC 11-10-11.5.

As added by P.L.311-1983, SEC.16. Amended by P.L.273-1999, SEC.214.

IC 35-41-1-16

"Included offense" defined

Sec. 16. "Included offense" means an offense that:

(1) is established by proof of the same material elements or less than all the material elements required to establish the commission of the offense charged;

(2) consists of an attempt to commit the offense charged or an offense otherwise included therein; or

(3) differs from the offense charged only in the respect that a less serious harm or risk of harm to the same person, property, or public interest, or a lesser kind of culpability, is required to establish its commission.

As added by P.L.311-1983, SEC.17.

IC 35-41-1-16.5

"Key facility" defined

Sec. 16.5. "Key facility" means any of the following:

(1) A chemical manufacturing facility.

(2) A refinery.

(3) An electric utility facility, including:

(A) a power plant;

(B) a power generation facility peaker;

(C) an electric transmission facility;

(D) an electric station or substation; or

(E) any other facility used to support the generation, transmission, or distribution of electricity.

However, the term does not include electric transmission land or right-of-way that is not completely enclosed, posted, and maintained by the electric utility.

(4) A water intake structure or water treatment facility.

(5) A natural gas utility facility, including:

(A) an age station;

(B) a compressor station;

(C) an odorization facility;

(D) a main line valve;

(E) a natural gas storage facility; or

(F) any other facility used to support the acquisition, transmission, distribution, or storage of natural gas. However, the term does not include gas transmission pipeline property that is not completely enclosed, posted, and maintained by the natural gas utility.

(6) A gasoline, propane, liquid natural gas (LNG), or other fuel terminal or storage facility.

(7) A transportation facility, including, but not limited to, a port, railroad switching yard, or trucking terminal. However, the term does not include a railroad track that is not part of a railroad switching yard.

(8) A pulp or paper manufacturing facility.

(9) A pharmaceutical manufacturing facility.

(10) A hazardous waste storage, treatment, or disposal facility.

(11) A telecommunications facility, including a central office

or cellular telephone tower site.

(12) A facility:

(A) that is substantially similar to a facility, structure, or station listed in this section; or

(B) whose owner or operator is required to submit a risk management plan under the federal Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (42 U.S.C. 7412(r)).

As added by P.L.158-2009, SEC.6.

IC 35-41-1-17

"Law enforcement officer" and "federal enforcement officer" defined

Sec. 17. (a) "Law enforcement officer" means:

(1) a police officer (including a correctional police officer), sheriff, constable, marshal, prosecuting attorney, special prosecuting attorney, special deputy prosecuting attorney, the securities commissioner, or the inspector general;

(2) a deputy of any of those persons;

(3) an investigator for a prosecuting attorney or for the inspector general;

(4) a conservation officer;

(5) an enforcement officer of the alcohol and tobacco commission; or

(6) an enforcement officer of the securities division of the office of the secretary of state.

(b) "Federal enforcement officer" means any of the following:

(1) A Federal Bureau of Investigation special agent.

(2) A United States Marshals Service marshal or deputy.

(3) A United States Secret Service special agent.

(4) A United States Fish and Wildlife Service special agent.

(5) A United States Drug Enforcement Agency agent.

(6) A Bureau of Alcohol, Tobacco, Firearms and Explosives agent.

(7) A United States Forest Service law enforcement officer.

(8) A United States Department of Defense police officer or criminal investigator.

(9) A United States Customs Service agent.

(10) A United States Postal Service investigator.

(11) A National Park Service law enforcement commissioned ranger.

(12) United States Department of Agriculture, Office of Inspector General special agent.

(13) A United States Citizenship and Immigration Services special agent.

(14) An individual who is:

(A) an employee of a federal agency; and

(B) authorized to make arrests and carry a firearm in the performance of the individual's official duties.

As added by P.L.311-1983, SEC.18. Amended by P.L.319-1987,

SEC.2; P.L.47-1987, SEC.13; P.L.101-1990, SEC.6; P.L.40-1991, SEC.2; P.L.67-1992, SEC.4; P.L.244-1993, SEC.1; P.L.106-2001, SEC.1; P.L.204-2001, SEC.64; P.L.1-2002, SEC.148; P.L.222-2005, SEC.46; P.L.1-2006, SEC.530; P.L.1-2007, SEC.229; P.L.230-2007, SEC.25; P.L.77-2009, SEC.7.

IC 35-41-1-18
"Lawful detention" defined

Sec. 18. (a) "Lawful detention" means:

(1) arrest;
(2) custody following surrender in lieu of arrest;
(3) detention in a penal facility;
(4) detention in a facility for custody of persons alleged or found to be delinquent children;
(5) detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance;
(6) detention for extradition or deportation;
(7) placement in a community corrections program's residential facility;
(8) electronic monitoring;
(9) custody for purposes incident to any of the above including transportation, medical diagnosis or treatment, court appearances, work, or recreation; or
(10) any other detention for law enforcement purposes.

(b) Except as provided in subsection (a)(7) and (a)(8), the term does not include supervision of a person on probation or parole or constraint incidental to release with or without bail.

As added by P.L.311-1983, SEC.19. Amended by P.L.17-1998, SEC.1; P.L.1-1999, SEC.78.

IC 35-41-1-18.3
"Machine gun" defined

Sec. 18.3. "Machine gun" means a weapon that:

(1) shoots; or
(2) can be readily restored to shoot;

automatically more than one (1) shot, without manual reloading, by a single function of the trigger.

As added by P.L.211-1997, SEC.1.

IC 35-41-1-18.5
"Motor vehicle" defined

Sec. 18.5. "Motor vehicle" has the meaning set forth in IC 9-13-2-105(a).

As added by P.L.134-1987, SEC.20. Amended by P.L.2-1991, SEC.105.

IC 35-41-1-19
"Offense" defined

Sec. 19. "Offense" means a crime. The term does not include an

infraction.
As added by P.L.311-1983, SEC.20.

IC 35-41-1-19.3
Offense relating to a criminal sexual act

Sec. 19.3. "Offense relating to a criminal sexual act" means the following:

(1) Rape (IC 35-42-4-1).
(2) Criminal deviate conduct (IC 35-42-4-2).
(3) Child molesting (IC 35-42-4-3).
(4) Child seduction (IC 35-42-4-7).
(5) Prostitution (IC 35-45-4-2).
(6) Patronizing a prostitute (IC 35-45-4-3).
(7) Incest (IC 35-46-1-3).
(8) Sexual misconduct with a minor under IC 35-42-4-9(a).

As added by P.L.125-2007, SEC.9.

IC 35-41-1-19.4
Offense relating to controlled substances

Sec. 19.4. "Offense relating to controlled substances" means the following:

(1) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
(2) Dealing in methamphetamine (IC 35-48-4-1.1).
(3) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
(4) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
(5) Dealing in a schedule V controlled substance (IC 35-48-4-4).
(6) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
(7) Possession of methamphetamine (IC 35-48-4-6.1).
(8) Possession of a controlled substance (IC 35-48-4-7).
(9) Possession of paraphernalia (IC 35-48-4-8.3).
(10) Dealing in paraphernalia (IC 35-48-4-8.5).
(11) Offenses relating to registration (IC 35-48-4-14).

As added by P.L.125-2007, SEC.10.

IC 35-41-1-20
"Official proceeding" defined

Sec. 20. "Official proceeding" means a proceeding held or that may be held before a legislative, judicial, administrative, or other agency or before an official authorized to take evidence under oath, including a referee, hearing examiner, commissioner, notary, or other person taking evidence in connection with a proceeding.
As added by P.L.311-1983, SEC.21.

IC 35-41-1-21
"Penal facility" defined

Sec. 21. "Penal facility" means state prison, correctional facility,

county jail, penitentiary, house of correction, or any other facility for confinement of persons under sentence, or awaiting trial or sentence, for offenses. The term includes a correctional facility constructed under IC 4-13.5.
As added by P.L.311-1983, SEC.22. Amended by P.L.240-1991(ss2), SEC.97; P.L.12-1996, SEC.16.

IC 35-41-1-22
"Person" defined
Sec. 22. (a) "Person" means a human being, corporation, limited liability company, partnership, unincorporated association, or governmental entity.
(b) "Person", for purposes of section 10.6 of this chapter, means an adult or a minor.
As added by P.L.311-1983, SEC.23. Amended by P.L.8-1993, SEC.509; P.L.133-2002, SEC.64; P.L.3-2008, SEC.251.

IC 35-41-1-23
"Property" defined
Sec. 23. (a) "Property" means anything of value. The term includes:
(1) a gain or advantage or anything that might reasonably be regarded as such by the beneficiary;
(2) real property, personal property, money, labor, and services;
(3) intangibles;
(4) commercial instruments;
(5) written instruments concerning labor, services, or property;
(6) written instruments otherwise of value to the owner, such as a public record, deed, will, credit card, or letter of credit;
(7) a signature to a written instrument;
(8) extension of credit;
(9) trade secrets;
(10) contract rights, choses-in-action, and other interests in or claims to wealth;
(11) electricity, gas, oil, and water;
(12) captured or domestic animals, birds, and fish;
(13) food and drink; and
(14) human remains.
(b) Property is that "of another person" if the other person has a possessory or proprietary interest in it, even if an accused person also has an interest in that property.
As added by P.L.311-1983, SEC.24.

IC 35-41-1-23.7
"Public park" defined
Sec. 23.7. "Public park" means any property operated by a political subdivision for park purposes (as defined in IC 36-10-1-2).
As added by P.L.296-1995, SEC.1.

IC 35-41-1-24

"Public servant" defined

Sec. 24. "Public servant" means a person who:

(1) is authorized to perform an official function on behalf of, and is paid by, a governmental entity;

(2) is elected or appointed to office to discharge a public duty for a governmental entity; or

(3) with or without compensation, is appointed in writing by a public official to act in an advisory capacity to a governmental entity concerning a contract or purchase to be made by the entity.

The term does not include a person appointed by the governor to an honorary advisory or honorary military position.

As added by P.L.311-1983, SEC.25. Amended by P.L.13-1987, SEC.15.

IC 35-41-1-24.3

"School bus" defined

Sec. 24.3. "School bus" means any motor vehicle designed and constructed for the accommodation of more than ten (10) passengers, which is used for the transportation of Indiana school children.

As added by P.L.296-1987, SEC.3.

IC 35-41-1-24.7

"School property" defined

Sec. 24.7. "School property" means the following:

(1) A building or other structure owned or rented by:

(A) a school corporation;

(B) an entity that is required to be licensed under IC 12-17.2 or IC 31-27;

(C) a private school that is not supported and maintained by funds realized from the imposition of a tax on property, income, or sales; or

(D) a federal, state, local, or nonprofit program or service operated to serve, assist, or otherwise benefit children who are at least three (3) years of age and not yet enrolled in kindergarten, including the following:

(i) A Head Start program under 42 U.S.C. 9831 et seq.

(ii) A special education preschool program.

(iii) A developmental child care program for preschool children.

(2) The grounds adjacent to and owned or rented in common with a building or other structure described in subdivision (1).

As added by P.L.296-1987, SEC.4. Amended by P.L.34-1991, SEC.27; P.L.9-1991, SEC.95; P.L.2-1992, SEC.880; P.L.81-1992, SEC.38; P.L.1-1993, SEC.240; P.L.160-1994, SEC.1; P.L.1-2005, SEC.227; P.L.145-2006, SEC.370.

IC 35-41-1-24.8

"Scientific research facility" defined

Sec. 24.8. "Scientific research facility" means a facility in which

research is conducted.
As added by P.L.151-1989, SEC.10.

IC 35-41-1-25
"Serious bodily injury" defined
Sec. 25. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes:
(1) serious permanent disfigurement;
(2) unconsciousness;
(3) extreme pain;
(4) permanent or protracted loss or impairment of the function of a bodily member or organ; or
(5) loss of a fetus.
As added by P.L.311-1983, SEC.26. Amended by P.L.261-1997, SEC.1.

IC 35-41-1-26
"Sexual intercourse" defined
Sec. 26. "Sexual intercourse" means an act that includes any penetration of the female sex organ by the male sex organ.
As added by P.L.311-1983, SEC.27.

IC 35-41-1-26.5
"Terrorism" defined
Sec. 26.5. "Terrorism" means the unlawful use of force or violence or the unlawful threat of force or violence to intimidate or coerce a government or all or part of the civilian population.
As added by P.L.156-2001, SEC.9.

IC 35-41-1-26.8
Repealed
(*Repealed by P.L.105-2010, SEC.18.)*

IC 35-41-1-27
"Utter" defined
Sec. 27. "Utter" means to issue, authenticate, transfer, publish, deliver, sell, transmit, present, or use.
As added by P.L.311-1983, SEC.28.

IC 35-41-1-28
"Vehicle" defined
Sec. 28. "Vehicle" means a device for transportation by land, water, or air. The term includes mobile equipment with provision for transport of an operator.
As added by P.L.311-1983, SEC.29.

IC 35-41-1-29
"Youth program center" defined
Sec. 29. (a) "Youth program center" means the following:
(1) A building or structure that on a regular basis provides

recreational, vocational, academic, social, or other programs or services for persons less than eighteen (18) years of age.

(2) The real property on which a building or structure described in subdivision (1) is located.

(b) The term does not include school property (as defined in section 24.7 of this chapter).

As added by P.L.17-2001, SEC.14.

IC 35-41-1-29.4

"Weapon of mass destruction" defined

Sec. 29.4. "Weapon of mass destruction" means any chemical device, biological device or organism, or radiological device that is capable of being used for terrorism.

As added by P.L.156-2001, SEC.10.

IC 35-41-2

Chapter 2. Basis of Criminal Liability

IC 35-41-2-1

Voluntary conduct

Sec. 1. (a) A person commits an offense only if he voluntarily engages in conduct in violation of the statute defining the offense. However, a person who omits to perform an act commits an offense only if he has a statutory, common law, or contractual duty to perform the act.

(b) If possession of property constitutes any part of the prohibited conduct, it is a defense that the person who possessed the property was not aware of his possession for a time sufficient for him to have terminated his possession.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.3; Acts 1978, P.L.144, SEC.3; P.L.311-1983, SEC.30.

IC 35-41-2-2

Culpability

Sec. 2. (a) A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so.

(b) A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

(c) A person engages in conduct "recklessly" if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.

(d) Unless the statute defining the offense provides otherwise, if a kind of culpability is required for commission of an offense, it is required with respect to every material element of the prohibited conduct.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.4.

IC 35-41-2-3

Liability of corporation, partnership, or unincorporated association

Sec. 3. (a) A corporation, limited liability company, partnership, or unincorporated association may be prosecuted for any offense; it may be convicted of an offense only if it is proved that the offense was committed by its agent acting within the scope of his authority.

(b) Recovery of a fine, costs (including fees), or forfeiture from a corporation, limited liability company, partnership, or unincorporated association is limited to the property of the corporation, limited liability company, partnership, or unincorporated association.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.5; P.L.8-1993, SEC.510; P.L.106-2010, SEC.14.

IC 35-41-2-4

Aiding, inducing, or causing an offense

Sec. 4. A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person:

(1) has not been prosecuted for the offense;

(2) has not been convicted of the offense; or

(3) has been acquitted of the offense.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.6.

IC 35-41-2-5

Intoxication

Sec. 5. Intoxication is not a defense in a prosecution for an offense and may not be taken into consideration in determining the existence of a mental state that is an element of the offense unless the defendant meets the requirements of IC 35-41-3-5.

As added by P.L.210-1997, SEC.3.

IC 35-41-3

Chapter 3. Defenses Relating to Culpability

IC 35-41-3-1

Legal authority

Sec. 1. A person is justified in engaging in conduct otherwise prohibited if he has legal authority to do so.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.7.

IC 35-41-3-2

Use of force to protect person or property

Sec. 2. (a) A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:

(1) is justified in using deadly force; and

(2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

(b) A person:

(1) is justified in using reasonable force, including deadly force, against another person; and

(2) does not have a duty to retreat;

if the person reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle.

(c) With respect to property other than a dwelling, curtilage, or an occupied motor vehicle, a person is justified in using reasonable force against another person if the person reasonably believes that the force is necessary to immediately prevent or terminate the other person's trespass on or criminal interference with property lawfully in the person's possession, lawfully in possession of a member of the person's immediate family, or belonging to a person whose property the person has authority to protect. However, a person:

(1) is justified in using deadly force; and

(2) does not have a duty to retreat;

only if that force is justified under subsection (a).

(d) A person is justified in using reasonable force, including deadly force, against another person and does not have a duty to retreat if the person reasonably believes that the force is necessary to prevent or stop the other person from hijacking, attempting to hijack, or otherwise seizing or attempting to seize unlawful control of an aircraft in flight. For purposes of this subsection, an aircraft is considered to be in flight while the aircraft is:

(1) on the ground in Indiana:

(A) after the doors of the aircraft are closed for takeoff; and

(B) until the aircraft takes off;

(2) in the airspace above Indiana; or

(3) on the ground in Indiana:

(A) after the aircraft lands; and

(B) before the doors of the aircraft are opened after landing.

(e) Notwithstanding subsections (a), (b), and (c), a person is not justified in using force if:

(1) the person is committing or is escaping after the commission of a crime;

(2) the person provokes unlawful action by another person with intent to cause bodily injury to the other person; or

(3) the person has entered into combat with another person or is the initial aggressor unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.

(f) Notwithstanding subsection (d), a person is not justified in using force if the person:

(1) is committing, or is escaping after the commission of, a crime;

(2) provokes unlawful action by another person, with intent to cause bodily injury to the other person; or

(3) continues to combat another person after the other person withdraws from the encounter and communicates the other person's intent to stop hijacking, attempting to hijack, or otherwise seizing or attempting to seize unlawful control of an aircraft in flight.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.8; Acts 1979, P.L.297, SEC.1; P.L.59-2002, SEC.1; P.L.189-2006, SEC.1.

IC 35-41-3-3

Use of force relating to arrest or escape

Sec. 3. (a) A person other than a law enforcement officer is justified in using reasonable force against another person to effect an arrest or prevent the other person's escape if:

(1) a felony has been committed; and

(2) there is probable cause to believe the other person committed that felony.

However, such a person is not justified in using deadly force unless that force is justified under section 2 of this chapter.

(b) A law enforcement officer is justified in using reasonable force if the officer reasonably believes that the force is necessary to effect a lawful arrest. However, an officer is justified in using deadly force only if the officer:

(1) has probable cause to believe that that deadly force is necessary:

(A) to prevent the commission of a forcible felony; or

(B) to effect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily

injury to the officer or a third person; and

(2) has given a warning, if feasible, to the person against whom the deadly force is to be used.

(c) A law enforcement officer making an arrest under an invalid warrant is justified in using force as if the warrant was valid, unless the officer knows that the warrant is invalid.

(d) A law enforcement officer who has an arrested person in custody is justified in using the same force to prevent the escape of the arrested person from custody that the officer would be justified in using if the officer was arresting that person. However, an officer is justified in using deadly force only if the officer:

(1) has probable cause to believe that deadly force is necessary to prevent the escape from custody of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person; and

(2) has given a warning, if feasible, to the person against whom the deadly force is to be used.

(e) A guard or other official in a penal facility or a law enforcement officer is justified in using reasonable force, including deadly force, if the officer has probable cause to believe that the force is necessary to prevent the escape of a person who is detained in the penal facility.

(f) Notwithstanding subsection (b), (d), or (e), a law enforcement officer who is a defendant in a criminal prosecution has the same right as a person who is not a law enforcement officer to assert self-defense under IC 35-41-3-2.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.9; Acts 1979, P.L.297, SEC.2; P.L.245-1993, SEC.1.

IC 35-41-3-4

Repealed

(*Repealed by Acts 1977, P.L.340, SEC.148.)*

IC 35-41-3-5

Intoxication

Sec. 5. It is a defense that the person who engaged in the prohibited conduct did so while he was intoxicated, only if the intoxication resulted from the introduction of a substance into his body:

(1) without his consent; or

(2) when he did not know that the substance might cause intoxication.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.10; Acts 1980, P.L.205, SEC.1; P.L.210-1997, SEC.4.

IC 35-41-3-6

Mental disease or defect

Sec. 6. (a) A person is not responsible for having engaged in prohibited conduct if, as a result of mental disease or defect, he was unable to appreciate the wrongfulness of the conduct at the time of

the offense.

(b) As used in this section, "mental disease or defect" means a severely abnormal mental condition that grossly and demonstrably impairs a person's perception, but the term does not include an abnormality manifested only by repeated unlawful or antisocial conduct.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.11; P.L.184-1984, SEC.1.

IC 35-41-3-7

Mistake of fact

Sec. 7. It is a defense that the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact, if the mistake negates the culpability required for commission of the offense.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.12.

IC 35-41-3-8

Duress

Sec. 8. (a) It is a defense that the person who engaged in the prohibited conduct was compelled to do so by threat of imminent serious bodily injury to himself or another person. With respect to offenses other than felonies, it is a defense that the person who engaged in the prohibited conduct was compelled to do so by force or threat of force. Compulsion under this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.

(b) This section does not apply to a person who:

(1) recklessly, knowingly, or intentionally placed himself in a situation in which it was foreseeable that he would be subjected to duress; or

(2) committed an offense against the person as defined in IC 35-42.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.13.

IC 35-41-3-9

Entrapment

Sec. 9. (a) It is a defense that:

(1) the prohibited conduct of the person was the product of a law enforcement officer, or his agent, using persuasion or other means likely to cause the person to engage in the conduct; and

(2) the person was not predisposed to commit the offense.

(b) Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.14.

IC 35-41-3-10

Abandonment

Sec. 10. With respect to a charge under IC 35-41-2-4, IC 35-41-5-1, or IC 35-41-5-2, it is a defense that the person who engaged in the prohibited conduct voluntarily abandoned his effort to commit the underlying crime and voluntarily prevented its commission.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.15.

IC 35-41-3-11

Mental disease or defect; use of justifiable reasonable force

Sec. 11. (a) As used in this section, "defendant" refers to an individual charged with any crime involving the use of force against a person.

(b) This section applies under the following circumstances when the defendant in a prosecution raises the issue that the defendant was at the time of the alleged crime suffering from the effects of battery as a result of the past course of conduct of the individual who is the victim of the alleged crime:

(1) The defendant raises the issue that the defendant was not responsible as a result of mental disease or defect under section 6 of this chapter, rendering the defendant unable to appreciate the wrongfulness of the conduct at the time of the crime.

(2) The defendant claims to have used justifiable reasonable force under section 2 of this chapter. The defendant has the burden of going forward to produce evidence from which a trier of fact could find support for the reasonableness of the defendant's belief in the imminence of the use of unlawful force or, when deadly force is employed, the imminence of serious bodily injury to the defendant or a third person or the commission of a forcible felony.

(c) If a defendant proposes to claim the use of justifiable reasonable force under subsection (b)(2), the defendant must file a written motion of that intent with the trial court not later than:

(1) twenty (20) days if the defendant is charged with a felony; or

(2) ten (10) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date. However, in the interest of justice and upon a showing of good cause, the court may permit the filing to be made at any time before the commencement of the trial.

(d) The introduction of any expert testimony under this section shall be in accordance with the Indiana Rules of Evidence.

As added by P.L.210-1997, SEC.5.

IC 35-41-4

Chapter 4. Standard of Proof and Bars to Prosecution

IC 35-41-4-1

Standard of proof; insanity defense

Sec. 1. (a) A person may be convicted of an offense only if his guilt is proved beyond a reasonable doubt.

(b) Notwithstanding subsection (a), the burden of proof is on the defendant to establish the defense of insanity (IC 35-41-3-6) by a preponderance of the evidence.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.16; Acts 1978, P.L.145, SEC.9.

IC 35-41-4-2

Periods of limitation

Sec. 2. (a) Except as otherwise provided in this section, a prosecution for an offense is barred unless it is commenced:

(1) within five (5) years after the commission of the offense, in the case of a Class B, Class C, or Class D felony; or

(2) within two (2) years after the commission of the offense, in the case of a misdemeanor.

(b) A prosecution for a Class B or Class C felony that would otherwise be barred under this section may be commenced within one (1) year after the earlier of the date on which the state:

(1) first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis; or

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

(c) A prosecution for a Class A felony may be commenced at any time.

(d) A prosecution for murder may be commenced:

(1) at any time; and

(2) regardless of the amount of time that passes between:

(A) the date a person allegedly commits the elements of murder; and

(B) the date the alleged victim of the murder dies.

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

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

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

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

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

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

(f) A prosecution for forgery of an instrument for payment of money, or for the uttering of a forged instrument, under IC 35-43-5-2, is barred unless it is commenced within five (5) years after the maturity of the instrument.

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

(h) The period within which a prosecution must be commenced does not include any period in which:

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

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

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

(i) For purposes of tolling the period of limitation only, a prosecution is considered commenced on the earliest of these dates:

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

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

(3) The date of arrest of the accused person by a law enforcement officer without a warrant, if the officer has authority to make the arrest.

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

(k) The following apply to the specified offenses:

(1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-9).

(2) A prosecution for an offense under IC 30-2-10-9(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-10).

(3) A prosecution for an offense under IC 30-2-13-38(f) (misuse of funeral trust or escrow account funds) is barred unless commenced within five (5) years after the date of death of the purchaser (as defined in IC 30-2-13-9).

(l) A prosecution for an offense under IC 23-14-48-9 is barred unless commenced within five (5) years after the earlier of the date on which the state:

(1) first discovers evidence sufficient to charge the offender with the offense; or

(2) could have discovered evidence sufficient to charge the offender with the offense by the exercise of due diligence.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.17; P.L.309-1985, SEC.2; P.L.232-1993, SEC.3;

P.L.9-2000, SEC.1; P.L.48-2001, SEC.1; P.L.1-2002, SEC.149; P.L.97-2004, SEC.124; P.L.6-2006, SEC.7, P.L.140-2006, SEC.30, and P.L.173-2006, SEC.30; P.L.143-2009, SEC.47.

IC 35-41-4-3

When prosecution barred for same offense

Sec. 3. (a) A prosecution is barred if there was a former prosecution of the defendant based on the same facts and for commission of the same offense and if:

(1) the former prosecution resulted in an acquittal or a conviction of the defendant (A conviction of an included offense constitutes an acquittal of the greater offense, even if the conviction is subsequently set aside.); or

(2) the former prosecution was terminated after the jury was impaneled and sworn or, in a trial by the court without a jury, after the first witness was sworn, unless (i) the defendant consented to the termination or waived, by motion to dismiss or otherwise, his right to object to the termination, (ii) it was physically impossible to proceed with the trial in conformity with law, (iii) there was a legal defect in the proceedings that would make any judgment entered upon a verdict reversible as a matter of law, (iv) prejudicial conduct, in or outside the courtroom, made it impossible to proceed with the trial without injustice to either the defendant or the state, (v) the jury was unable to agree on a verdict, or (vi) false statements of a juror on voir dire prevented a fair trial.

(b) If the prosecuting authority brought about any of the circumstances in subdivisions (a)(2)(i) through (a)(2)(vi) of this section, with intent to cause termination of the trial, another prosecution is barred.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.18.

IC 35-41-4-4

When prosecution barred for different offense

Sec. 4. (a) A prosecution is barred if all of the following exist:

(1) There was a former prosecution of the defendant for a different offense or for the same offense based on different facts.

(2) The former prosecution resulted in an acquittal or a conviction of the defendant or in an improper termination under section 3 of this chapter.

(3) The instant prosecution is for an offense with which the defendant should have been charged in the former prosecution.

(b) A prosecution is not barred under this section if the offense on which it is based was not consummated when the trial under the former prosecution began.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.19.

IC 35-41-4-5

Former prosecution in another jurisdiction a bar

Sec. 5. In a case in which the alleged conduct constitutes an offense within the concurrent jurisdiction of Indiana and another jurisdiction, a former prosecution in any other jurisdiction is a bar to a subsequent prosecution for the same conduct in Indiana, if the former prosecution resulted in an acquittal or a conviction of the defendant or in an improper termination under section 3 of this chapter.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.20.

IC 35-41-4-6

Invalid or fraudulently procured prosecution not a bar

Sec. 6. A former prosecution is not a bar under section 3, 4, or 5 of this chapter if:

(1) it was before a court that lacked jurisdiction over the defendant or the offense;

(2) it was procured by the defendant without the knowledge of the prosecuting authority and with intent to avoid a more severe sentence that might otherwise have been imposed; or

(3) it resulted in a conviction that was set aside, reversed, vacated, or held invalid in a subsequent proceeding, unless the defendant was adjudged not guilty or ordered discharged.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.21.

IC 35-41-5

Chapter 5. Offenses of General Applicability

IC 35-41-5-1

Attempt

Sec. 1. (a) A person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime. An attempt to commit a crime is a felony or misdemeanor of the same class as the crime attempted. However, an attempt to commit murder is a Class A felony.

(b) It is no defense that, because of a misapprehension of the circumstances, it would have been impossible for the accused person to commit the crime attempted.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.22.

IC 35-41-5-2

Conspiracy

Sec. 2. (a) A person conspires to commit a felony when, with intent to commit the felony, he agrees with another person to commit the felony. A conspiracy to commit a felony is a felony of the same class as the underlying felony. However, a conspiracy to commit murder is a Class A felony.

(b) The state must allege and prove that either the person or the person with whom he agreed performed an overt act in furtherance of the agreement.

(c) It is no defense that the person with whom the accused person is alleged to have conspired:

(1) has not been prosecuted;
(2) has not been convicted;
(3) has been acquitted;
(4) has been convicted of a different crime;
(5) cannot be prosecuted for any reason; or
(6) lacked the capacity to commit the crime.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.23.

IC 35-41-5-3

Multiple convictions

Sec. 3. (a) A person may not be convicted of both a conspiracy and an attempt with respect to the same underlying crime.

(b) A person may not be convicted of both a crime and an attempt to commit the same crime.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.24.

IC 35-42

ARTICLE 42. OFFENSES AGAINST THE PERSON

IC 35-42-1

Chapter 1. Homicide

IC 35-42-1-0.5

Abortions exempt

Sec. 0.5. Sections 1, 3, and 4 of this chapter do not apply to an abortion performed in compliance with:

(1) IC 16-34; or

(2) IC 35-1-58.5 (before its repeal).

As added by P.L.261-1997, SEC.2.

IC 35-42-1-1

Murder

Sec. 1. A person who:

(1) knowingly or intentionally kills another human being;

(2) kills another human being while committing or attempting to commit arson, burglary, child molesting, consumer product tampering, criminal deviate conduct, kidnapping, rape, robbery, human trafficking, promotion of human trafficking, sexual trafficking of a minor, or carjacking;

(3) kills another human being while committing or attempting to commit:

(A) dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1);

(B) dealing in or manufacturing methamphetamine (IC 35-48-4-1.1);

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

(D) dealing in a schedule IV controlled substance (IC 35-48-4-3); or

(E) dealing in a schedule V controlled substance; or

(4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365);

commits murder, a felony.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.25; P.L.326-1987, SEC.2; P.L.296-1989, SEC.1; P.L.230-1993, SEC.2; P.L.261-1997, SEC.3; P.L.17-2001, SEC.15; P.L.151-2006, SEC.16; P.L.173-2006, SEC.51; P.L.1-2007, SEC.230.

IC 35-42-1-2

Causing suicide

Sec. 2. A person who intentionally causes another human being, by force, duress, or deception, to commit suicide commits causing suicide, a Class B felony.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.26.

IC 35-42-1-2.5

Assisting suicide

Sec. 2.5. (a) This section does not apply to the following:

(1) A licensed health care provider who administers, prescribes, or dispenses medications or procedures to relieve a person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, unless such medications or procedures are intended to cause death.

(2) The withholding or withdrawing of medical treatment or life-prolonging procedures by a licensed health care provider, including pursuant to IC 16-36-4 (living wills and life-prolonging procedures), IC 16-36-1 (health care consent), or IC 30-5 (power of attorney).

(b) A person who has knowledge that another person intends to commit or attempt to commit suicide and who intentionally does either of the following commits assisting suicide, a Class C felony:

(1) Provides the physical means by which the other person attempts or commits suicide.

(2) Participates in a physical act by which the other person attempts or commits suicide.

As added by P.L.246-1993, SEC.1. Amended by P.L.1-1994, SEC.167.

IC 35-42-1-3

Voluntary manslaughter

Sec. 3. (a) A person who knowingly or intentionally:

(1) kills another human being; or

(2) kills a fetus that has attained viability (as defined in IC 16-18-2-365);

while acting under sudden heat commits voluntary manslaughter, a Class B felony. However, the offense is a Class A felony if it is committed by means of a deadly weapon.

(b) The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.27; P.L.321-1987, SEC.1; P.L.261-1997, SEC.4.

IC 35-42-1-4

Involuntary manslaughter

Sec. 4. (a) As used in this section, "child care provider" means a person who provides child care in or on behalf of:

(1) a child care center (as defined in IC 12-7-2-28.4); or

(2) a child care home (as defined in IC 12-7-2-28.6);

regardless of whether the child care center or child care home is licensed.

(b) As used in this section, "fetus" means a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) A person who kills another human being while committing or attempting to commit:

(1) a Class C or Class D felony that inherently poses a risk of serious bodily injury;
(2) a Class A misdemeanor that inherently poses a risk of serious bodily injury; or
(3) battery;

commits involuntary manslaughter, a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony.

(d) A person who kills a fetus while committing or attempting to commit:

(1) a Class C or Class D felony that inherently poses a risk of serious bodily injury;
(2) a Class A misdemeanor that inherently poses a risk of serious bodily injury;
(3) battery; or
(4) a violation of IC 9-30-5-1 through IC 9-30-5-5 (operating a vehicle while intoxicated);

commits involuntary manslaughter, a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony.

(e) If:

(1) a child care provider recklessly supervises a child; and
(2) the child dies as a result of the child care provider's reckless supervision;

the child care provider commits involuntary manslaughter, a Class D felony.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.28; P.L.261-1997, SEC.5; P.L.133-2002, SEC.65; P.L.7-2010, SEC.1.

IC 35-42-1-5

Reckless homicide

Sec. 5. A person who recklessly kills another human being commits reckless homicide, a Class C felony.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.29; Acts 1980, P.L.83, SEC.6.

IC 35-42-1-6

Feticide

Sec. 6. A person who knowingly or intentionally terminates a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus commits feticide, a Class B felony. This section does not apply to an abortion performed in compliance with:

(1) IC 16-34; or
(2) IC 35-1-58.5 (before its repeal).

As added by Acts 1979, P.L.153, SEC.3. Amended by P.L.2-1995, SEC.126; P.L.40-2009, SEC.1.

IC 35-42-1-7

Transferring contaminated body fluids

Sec. 7. (a) As used in this section, "component" means plasma, platelets, or serum of a human being.

(b) A person who recklessly, knowingly, or intentionally donates, sells, or transfers blood, a blood component, or semen for artificial insemination (as defined in IC 16-41-14-2) that contains the human immunodeficiency virus (HIV) commits transferring contaminated body fluids, a Class C felony.

(c) However, the offense is a Class A felony if it results in the transmission of the human immunodeficiency virus (HIV) to any person other than the defendant.

(d) This section does not apply to:

(1) a person who, for reasons of privacy, donates, sells, or transfers blood or a blood component at a blood center (as defined in IC 16-41-12-3) after the person has notified the blood center that the blood or blood component must be disposed of and may not be used for any purpose; or

(2) a person who transfers blood, a blood component, semen, or another body fluid that contains the human immunodeficiency virus (HIV) for research purposes.

As added by P.L.123-1988, SEC.30. Amended by P.L.184-1989, SEC.27; P.L.2-1993, SEC.184.

IC 35-42-1-8

Sale or distribution of HIV testing equipment

Sec. 8. (a) The sale or distribution of:

(1) diagnostic testing equipment or apparatus; or

(2) a blood collection kit;

intended for home use to diagnose or confirm human immunodeficiency virus (HIV) infection or disease is prohibited unless the testing equipment, apparatus, or kit has been approved for such use by the federal Food and Drug Administration.

(b) A person who violates this section commits a Class A misdemeanor.

As added by P.L.184-1989, SEC.28.

IC 35-42-1-9

Failure of carriers of dangerous communicable diseases to warn persons at risk

Sec. 9. (a) Except as provided in this section, a person who recklessly violates or fails to comply with IC 16-41-7 commits a Class B misdemeanor.

(b) A person who knowingly or intentionally violates or fails to comply with IC 16-41-7-1 commits a Class D felony.

(c) Each day a violation described in this section continues constitutes a separate offense.

As added by P.L.31-1998, SEC.2.

IC 35-42-2

Chapter 2. Battery and Related Offenses

IC 35-42-2-1

Battery

Sec. 1. (a) A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a Class B misdemeanor. However, the offense is:

(1) a Class A misdemeanor if:

(A) it results in bodily injury to any other person;

(B) it is committed against a law enforcement officer or against a person summoned and directed by the officer while the officer is engaged in the execution of the officer's official duty;

(C) it is committed against an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty;

(D) it is committed against a firefighter (as defined in IC 9-18-34-1) while the firefighter is engaged in the execution of the firefighter's official duty;

(E) it is committed against a community policing volunteer:

(i) while the volunteer is performing the duties described in IC 35-41-1-4.7; or

(ii) because the person is a community policing volunteer; or

(F) it is committed against the state chemist or the state chemist's agent while the state chemist or the state chemist's agent is performing a duty under IC 15-16-5;

(2) a Class D felony if it results in bodily injury to:

(A) a law enforcement officer or a person summoned and directed by a law enforcement officer while the officer is engaged in the execution of the officer's official duty;

(B) a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;

(C) a person of any age who has a mental or physical disability and is committed by a person having the care of the person with a mental or physical disability, whether the care is assumed voluntarily or because of a legal obligation;

(D) the other person and the person who commits the battery was previously convicted of a battery in which the victim was the other person;

(E) an endangered adult (as defined in IC 12-10-3-2);

(F) an employee of the department of correction while the employee is engaged in the execution of the employee's official duty;

(G) an employee of a school corporation while the employee is engaged in the execution of the employee's official duty;

(H) a correctional professional while the correctional professional is engaged in the execution of the correctional

professional's official duty;

(I) a person who is a health care provider (as defined in IC 16-18-2-163) while the health care provider is engaged in the execution of the health care provider's official duty;

(J) an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty;

(K) a firefighter (as defined in IC 9-18-34-1) while the firefighter is engaged in the execution of the firefighter's official duty;

(L) a community policing volunteer:

(i) while the volunteer is performing the duties described in IC 35-41-1-4.7; or

(ii) because the person is a community policing volunteer;

(M) a family or household member (as defined in IC 35-41-1-10.6) if the person who committed the offense:

(i) is at least eighteen (18) years of age; and

(ii) committed the offense in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense; or

(N) a department of child services employee while the employee is engaged in the execution of the employee's official duty;

(3) a Class C felony if it results in serious bodily injury to any other person or if it is committed by means of a deadly weapon;

(4) a Class B felony if it results in serious bodily injury to a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;

(5) a Class A felony if it results in the death of a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;

(6) a Class C felony if it results in serious bodily injury to an endangered adult (as defined in IC 12-10-3-2);

(7) a Class B felony if it results in the death of an endangered adult (as defined in IC 12-10-3-2); and

(8) a Class C felony if it results in bodily injury to a pregnant woman and the person knew the woman was pregnant.

(b) For purposes of this section:

(1) "law enforcement officer" includes an alcoholic beverage enforcement officer; and

(2) "correctional professional" means a:

(A) probation officer;

(B) parole officer;

(C) community corrections worker; or

(D) home detention officer.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.30; Acts 1979, P.L.298, SEC.1; Acts 1979, P.L.83, SEC.10; Acts 1981, P.L.299, SEC.1; P.L.185-1984, SEC.1; P.L.205-1986, SEC.1; P.L.322-1987, SEC.1; P.L.164-1993, SEC.10;

P.L.59-1995, SEC.2; P.L.31-1996, SEC.20; P.L.32-1996, SEC.20; P.L.255-1996, SEC.25; P.L.212-1997, SEC.1; P.L.37-1997, SEC.2; P.L.56-1999, SEC.1; P.L.188-1999, SEC.5; P.L.43-2000, SEC.1; P.L.222-2001, SEC.4; P.L.175-2003, SEC.2; P.L.281-2003, SEC.3; P.L.2-2005, SEC.125; P.L.99-2007, SEC.209; P.L.164-2007, SEC.1; P.L.120-2008, SEC.93; P.L.131-2009, SEC.73.

IC 35-42-2-1.3

Domestic battery

Sec. 1.3. (a) A person who knowingly or intentionally touches an individual who:

(1) is or was a spouse of the other person;

(2) is or was living as if a spouse of the other person as provided in subsection (c); or

(3) has a child in common with the other person;

in a rude, insolent, or angry manner that results in bodily injury to the person described in subdivision (1), (2), or (3) commits domestic battery, a Class A misdemeanor.

(b) However, the offense under subsection (a) is a Class D felony if the person who committed the offense:

(1) has a previous, unrelated conviction:

(A) under this section (or IC 35-42-2-1(a)(2)(E) before its repeal); or

(B) in any other jurisdiction, including a military court, in which the elements of the crime for which the conviction was entered are substantially similar to the elements described in this section; or

(2) committed the offense in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense.

(c) In considering whether a person is or was living as a spouse of another individual in subsection (a)(2), the court shall review the following:

(1) the duration of the relationship;

(2) the frequency of contact;

(3) the financial interdependence;

(4) whether the two (2) individuals are raising children together;

(5) whether the two (2) individuals have engaged in tasks directed toward maintaining a common household; and

(6) other factors the court considers relevant.

As added by P.L.188-1999, SEC.6. Amended by P.L.47-2000, SEC.3; P.L.221-2003, SEC.18; P.L.129-2006, SEC.1.

IC 35-42-2-1.5

Aggravated battery

Sec. 1.5. A person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death or causes:

(1) serious permanent disfigurement;

(2) protracted loss or impairment of the function of a bodily

member or organ; or

(3) the loss of a fetus;

commits aggravated battery, a Class B felony.

As added by P.L.213-1991, SEC.2. Amended by P.L.261-1997, SEC.6.

IC 35-42-2-2

Criminal recklessness; element of hazing; liability barred for good faith report or judicial participation

Sec. 2. (a) As used in this section, "hazing" means forcing or requiring another person:

(1) with or without the consent of the other person; and

(2) as a condition of association with a group or organization;

to perform an act that creates a substantial risk of bodily injury.

(b) A person who recklessly, knowingly, or intentionally performs:

(1) an act that creates a substantial risk of bodily injury to another person; or

(2) hazing;

commits criminal recklessness. Except as provided in subsection (c), criminal recklessness is a Class B misdemeanor.

(c) The offense of criminal recklessness as defined in subsection (b) is:

(1) a Class A misdemeanor if the conduct includes the use of a vehicle;

(2) a Class D felony if:

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

(B) the person committed aggressive driving (as defined in IC 9-21-8-55) that results in serious bodily injury to another person; or

(3) a Class C felony if:

(A) it is committed by shooting a firearm into an inhabited dwelling or other building or place where people are likely to gather; or

(B) the person committed aggressive driving (as defined in IC 9-21-8-55) that results in the death of another person.

(d) A person who recklessly, knowingly, or intentionally:

(1) inflicts serious bodily injury on another person; or

(2) performs hazing that results in serious bodily injury to a person;

commits criminal recklessness, a Class D felony. However, the offense is a Class C felony if committed by means of a deadly weapon.

(e) A person, other than a person who has committed an offense under this section or a delinquent act that would be an offense under this section if the violator was an adult, who:

(1) makes a report of hazing in good faith;

(2) participates in good faith in a judicial proceeding resulting from a report of hazing;

(3) employs a reporting or participating person described in

subdivision (1) or (2); or

(4) supervises a reporting or participating person described in subdivision (1) or (2);

is not liable for civil damages or criminal penalties that might otherwise be imposed because of the report or participation.

(f) A person described in subsection (e)(1) or (e)(2) is presumed to act in good faith.

(g) A person described in subsection (e)(1) or (e)(2) may not be treated as acting in bad faith solely because the person did not have probable cause to believe that a person committed:

(1) an offense under this section; or

(2) a delinquent act that would be an offense under this section if the offender was an adult.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.31; Acts 1981, P.L.300, SEC.1; P.L.323-1987, SEC.1; P.L.216-1996, SEC.17; P.L.1-2003, SEC.94; P.L.75-2006, SEC.3.

IC 35-42-2-3

Provocation

Sec. 3. A person who recklessly, knowingly, or intentionally engages in conduct that is likely to provoke a reasonable man to commit battery commits provocation, a Class C infraction.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.32.

IC 35-42-2-4

Obstruction of traffic

Sec. 4. (a) A person who recklessly, knowingly, or intentionally obstructs vehicular or pedestrian traffic commits obstruction of traffic, a Class B misdemeanor.

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

(1) a Class A misdemeanor if the offense includes the use of a motor vehicle; and

(2) a Class D felony if the offense results in serious bodily injury.

As added by P.L.92-1988, SEC.7.

IC 35-42-2-5

Overpass mischief

Sec. 5. (a) As used in this section, "overpass" means a bridge or other structure designed to carry vehicular or pedestrian traffic over any roadway, railroad track, or waterway.

(b) A person who knowingly, intentionally, or recklessly:

(1) drops, causes to drop, or throws an object from an overpass; or

(2) with intent that the object fall, places on an overpass an object that falls off the overpass;

causing bodily injury to another person commits overpass mischief, a Class C felony. However, the offense is a Class B felony if it results in serious bodily injury to another person.

As added by P.L.297-1995, SEC.1.

IC 35-42-2-5.5

Railroad mischief

Sec. 5.5. A person who recklessly, knowingly, or intentionally:

(1) removes an appurtenance from a railroad signal system, resulting in damage or impairment of the operation of the railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal on a railroad owned, leased, or operated by a railroad carrier without consent of the railroad carrier involved;

(2) tampers with or obstructs a switch, a frog, a rail, a roadbed, a crosstie, a viaduct, a bridge, a trestle, a culvert, an embankment, a structure, or an appliance pertaining to or connected with a railroad carrier without consent of the railroad carrier involved; or

(3) steals, removes, alters, or interferes with a journal bearing, a brass, a waste, a packing, a triple valve, a pressure cock, a brake, an air hose, or another part of the operating mechanism of a locomotive, an engine, a tender, a coach, a car, a caboose, or a motor car used or capable of being used by a railroad carrier in Indiana without consent of the railroad carrier;

commits railroad mischief, a Class D felony. However, the offense is a Class C felony if it results in serious bodily injury to another person and a Class B felony if it results in the death of another person.

As added by P.L.259-1999, SEC.2.

IC 35-42-2-6

Battery by body waste

Sec. 6. (a) As used in this section, "corrections officer" includes a person employed by:

(1) the department of correction;

(2) a law enforcement agency;

(3) a probation department;

(4) a county jail; or

(5) a circuit, superior, county, probate, city, or town court.

(b) As used in this section, "firefighter" means a person who is a:

(1) full-time, salaried firefighter;

(2) part-time, paid firefighter; or

(3) volunteer firefighter (as defined in IC 36-8-12-2).

(c) As used in this section, "first responder" means a person who:

(1) is certified under IC 16-31 and who meets the Indiana emergency medical services commission's standards for first responder certification; and

(2) responds to an incident requiring emergency medical services.

(d) As used in this section, "human immunodeficiency virus (HIV)" includes acquired immune deficiency syndrome (AIDS) and

AIDS related complex.

(e) A person who knowingly or intentionally in a rude, insolent, or angry manner places blood or another body fluid or waste on a law enforcement officer, firefighter, first responder, corrections officer, or department of child services employee, identified as such and while engaged in the performance of official duties, or coerces another person to place blood or another body fluid or waste on the law enforcement officer, firefighter, first responder, corrections officer, or department of child services employee, commits battery by body waste, a Class D felony. However, the offense is:

(1) a Class C felony if the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with:

(A) hepatitis B or hepatitis C;

(B) HIV; or

(C) tuberculosis;

(2) a Class B felony if:

(A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with hepatitis B or hepatitis C and the offense results in the transmission of hepatitis B or hepatitis C to the other person; or

(B) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class A felony if:

(A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

(f) A person who knowingly or intentionally in a rude, an insolent, or an angry manner places human blood, semen, urine, or fecal waste on another person commits battery by body waste, a Class A misdemeanor. However, the offense is:

(1) a Class D felony if the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with:

(A) hepatitis B or hepatitis C;

(B) HIV; or

(C) tuberculosis;

(2) a Class C felony if:

(A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with hepatitis B or hepatitis C and the offense results in the transmission of hepatitis B or hepatitis C to the other person; or

(B) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class B felony if:

(A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

As added by P.L.298-1995, SEC.1. Amended by P.L.88-2002, SEC.1; P.L.85-2004, SEC.53; P.L.178-2007, SEC.3; P.L.131-2009, SEC.74.

IC 35-42-2-7

Tattooing or body piercing a minor

Sec. 7. (a) As used in this section, "tattoo" means:

(1) any indelible design, letter, scroll, figure, symbol, or other mark placed with the aid of needles or other instruments; or

(2) any design, letter, scroll, figure, or symbol done by scarring; upon or under the skin.

(b) As used in this section, "body piercing" means the perforation of any human body part other than an earlobe for the purpose of inserting jewelry or other decoration or for some other nonmedical purpose.

(c) Except as provided in subsection (e), a person who provides a tattoo to a person who is less than eighteen (18) years of age commits tattooing a minor, a Class A misdemeanor.

(d) This subsection does not apply to an act of a health care professional (as defined in IC 16-27-2-1) licensed under IC 25 when the act is performed in the course of the health care professional's practice. Except as provided in subsection (e), a person who performs body piercing upon a person who is less than eighteen (18) years of age commits body piercing a minor, a Class A misdemeanor.

(e) A person may provide a tattoo to a person who is less than eighteen (18) years of age or perform body piercing upon a person who is less than eighteen (18) years of age if a parent or legal guardian of the person receiving the tattoo or undergoing the body piercing:

(1) is present at the time the tattoo is provided or the body piercing is performed; and

(2) provides written permission for the person to receive the tattoo or undergo the body piercing.

(f) Notwithstanding IC 36-1-3-8(a), a unit (as defined in IC 36-1-2-23) may adopt an ordinance that is at least as restrictive or more restrictive than this section or a rule adopted under IC 16-19-3-4.1 or IC 16-19-3-4.2.

As added by P.L.181-1997, SEC.3. Amended by P.L.166-1999, SEC.2.

IC 35-42-2-8

Obstruction of delivery of prescription drug

Sec. 8. (a) The following definitions apply throughout this section:

(1) "Health care provider" refers to a health care provider (as defined in IC 16-18-2-163(a), IC 16-18-2-163(b), or

IC 16-18-2-163(c)) or a qualified medication aide as described in IC 16-28-1-11.

(2) "Licensed health professional" has the meaning set forth in IC 25-23-1-27.1.

(3) "Practitioner" has the meaning set forth in IC 16-42-19-5. However, the term does not include a veterinarian.

(4) "Prescription drug" has the meaning set forth in IC 35-48-1-25.

(b) A person who knowingly or intentionally physically interrupts, obstructs, or alters the delivery or administration of a prescription drug:

(1) prescribed or ordered by a practitioner for a person who is a patient of the practitioner; and

(2) without the prescription or order of a practitioner;

commits interference with medical services, a Class A misdemeanor. However, the offense is a Class D felony if the offense results in bodily injury to the patient.

(c) However, an offense described in subsection (b) is:

(1) a Class C felony if it is committed by a person who is a licensed health care provider or licensed health professional;

(2) a Class B felony if it results in serious bodily injury to the patient; and

(3) a Class A felony if it results in the death of the patient.

(d) A person is justified in engaging in conduct otherwise prohibited under this section if the conduct was performed by:

(1) a health care provider or licensed health professional who acted in good faith within the scope of the person's practice or employment; or

(2) a person who was rendering emergency care at the scene of an emergency or accident in a good faith attempt to avoid or minimize serious bodily injury to the patient.

As added by P.L.154-2001, SEC.1.

IC 35-42-2-9

Strangulation

Sec. 9. (a) This section does not apply to a medical procedure.

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

(1) applies pressure to the throat or neck of another person; or

(2) obstructs the nose or mouth of the another person;

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

As added by P.L.129-2006, SEC.2.

IC 35-42-3

Chapter 3. Kidnapping and Confinement

IC 35-42-3-1

Definition

Sec. 1. As used in this chapter, "confine" means to substantially interfere with the liberty of a person.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.33.

IC 35-42-3-2

Kidnapping

Sec. 2. (a) A person who knowingly or intentionally confines another person:

(1) with intent to obtain ransom;

(2) while hijacking a vehicle;

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

(4) with intent to use the person confined as a shield or hostage;

commits kidnapping, a Class A felony.

(b) A person who knowingly or intentionally removes another person, by fraud, enticement, force, or threat of force, from one place to another:

(1) with intent to obtain ransom;

(2) while hijacking a vehicle;

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

(4) with intent to use the person removed as a shield or hostage;

commits kidnapping, a Class A felony.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.34; Acts 1978, P.L.144, SEC.4.

IC 35-42-3-3

Criminal confinement

Sec. 3. (a) A person who knowingly or intentionally:

(1) confines another person without the other person's consent; or

(2) removes another person, by fraud, enticement, force, or threat of force, from one (1) place to another;

commits criminal confinement. Except as provided in subsection (b), the offense of criminal confinement is a Class D felony.

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

(1) a Class C felony if:

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

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

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

(2) a Class B felony if it:

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

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

(C) is committed on an aircraft.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.35; Acts 1979, P.L.299, SEC.1; P.L.183-1984, SEC.2; P.L.278-1985, SEC.8; P.L.49-1989, SEC.21; P.L.59-2002, SEC.2; P.L.70-2006, SEC.1.

IC 35-42-3-4

Interference with custody

Sec. 4. (a) A person who, with the intent to deprive another person of child custody rights, knowingly or intentionally:

(1) removes another person who is less than eighteen (18) years of age to a place outside Indiana when the removal violates a child custody order of a court; or

(2) violates a child custody order of a court by failing to return a person who is less than eighteen (18) years of age to Indiana;

commits interference with custody, a Class D felony. However, the offense is a Class C felony if the other person is less than fourteen (14) years of age and is not the person's child, and a Class B felony if the offense is committed while armed with a deadly weapon or results in serious bodily injury to another person.

(b) A person who with the intent to deprive another person of custody or parenting time rights:

(1) knowingly or intentionally takes;

(2) knowingly or intentionally detains; or

(3) knowingly or intentionally conceals;

a person who is less than eighteen (18) years of age commits interference with custody, a Class C misdemeanor. However, the offense is a Class B misdemeanor if the taking, concealment, or detention is in violation of a court order.

(c) With respect to a violation of this section, a court may consider as a mitigating circumstance the accused person's return of the other person in accordance with the child custody order or parenting time order within seven (7) days after the removal.

(d) The offenses described in this section continue as long as the child is concealed or detained or both.

(e) If a person is convicted of an offense under this section, a court may impose against the defendant reasonable costs incurred by a parent or guardian of the child because of the taking, detention, or concealment of the child.

(g) It is a defense to a prosecution under this section that the accused person:

(1) was threatened; or

(2) reasonably believed the child was threatened;

which resulted in the child not being timely returned to the other parent resulting in a violation of a child custody order.

As added by P.L.49-1989, SEC.22. Amended by P.L.162-1990,

SEC.1; P.L.68-2005, SEC.60; P.L.164-2007, SEC.2.

IC 35-42-3.5

Chapter 3.5. Human and Sexual Trafficking

IC 35-42-3.5-1

Promotion of human trafficking; sexual trafficking of a minor; human trafficking

Sec. 1. (a) A person who knowingly or intentionally recruits, harbors, or transports another person by force, threat of force, or fraud:

(1) to engage the other person in:

(A) forced labor; or

(B) involuntary servitude; or

(2) to force the other person into:

(A) marriage; or

(B) prostitution;

commits promotion of human trafficking, a Class B felony.

(b) A parent, guardian, or custodian of a child less than eighteen (18) years of age who knowingly or intentionally sells or transfers custody of the child for the purpose of prostitution commits sexual trafficking of a minor, a Class A felony.

(c) A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into:

(1) forced labor;

(2) involuntary servitude; or

(3) prostitution;

commits human trafficking, a Class C felony.

As added by P.L.173-2006, SEC.52.

IC 35-42-3.5-2

Restitution orders

Sec. 2. In addition to any sentence or fine imposed for a conviction of an offense under section 1 of this chapter, the court shall order the person convicted to make restitution to the victim of the crime under IC 35-50-5-3.

As added by P.L.173-2006, SEC.52.

IC 35-42-3.5-3

Civil cause of action

Sec. 3. (a) If a person is convicted of an offense under section 1 of this chapter, the victim of the offense:

(1) has a civil cause of action against the person convicted of the offense; and

(2) may recover the following from the person in the civil action:

(A) Actual damages.

(B) Court costs (including fees).

(C) Punitive damages, when determined to be appropriate by the court.

(D) Reasonable attorney's fees.

(b) An action under this section must be brought not more than two (2) years after the date the person is convicted of the offense under section 1 of this chapter.

As added by P.L.173-2006, SEC.52. Amended by P.L.106-2010, SEC.15.

IC 35-42-3.5-4

Rights of alleged victims

Sec. 4. (a) An alleged victim of an offense under section 1 of this chapter:

(1) may not be detained in a facility that is inappropriate to the victim's status as a crime victim;

(2) may not be jailed, fined, or otherwise penalized due to having been the victim of the offense; and

(3) shall be provided protection if the victim's safety is at risk or if there is danger of additional harm by recapture of the victim by the person who allegedly committed the offense, including:

(A) taking measures to protect the alleged victim and the victim's family members from intimidation and threats of reprisals and reprisals from the person who allegedly committed the offense or the person's agent; and

(B) ensuring that the names and identifying information of the alleged victim and the victim's family members are not disclosed to the public.

This subsection shall be administered by law enforcement agencies and the Indiana criminal justice institute as appropriate.

(b) Not more than fifteen (15) days after the date a law enforcement agency first encounters an alleged victim of an offense under section 1 of this chapter, the law enforcement agency shall provide the alleged victim with a completed Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (LEA Declaration, Form I-914 Supplement B) in accordance with 8 CFR 214.11(f)(1). However, if the law enforcement agency finds that the grant of an LEA Declaration is not appropriate for the alleged victim, the law enforcement agency shall, not more than fifteen (15) days after the date the agency makes the finding, provide the alleged victim with a letter explaining the grounds for the denial of the LEA Declaration. After receiving a denial letter, the alleged victim may submit additional evidence to the law enforcement agency. If the alleged victim submits additional evidence, the law enforcement agency shall reconsider the denial of the LEA Declaration not more than seven (7) days after the date the agency receives the additional evidence.

As added by P.L.173-2006, SEC.52. Amended by P.L.130-2009, SEC.27.

IC 35-42-4

Chapter 4. Sex Crimes

IC 35-42-4-1

Rape

Sec. 1. (a) Except as provided in subsection (b), a person who knowingly or intentionally has sexual intercourse with a member of the opposite sex when:

(1) the other person is compelled by force or imminent threat of force;

(2) the other person is unaware that the sexual intercourse is occurring; or

(3) the other person is so mentally disabled or deficient that consent to sexual intercourse cannot be given;

commits rape, a Class B felony.

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

(1) it is committed by using or threatening the use of deadly force;

(2) it is committed while armed with a deadly weapon;

(3) it results in serious bodily injury to a person other than a defendant; or

(4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.36; P.L.320-1983, SEC.23; P.L.16-1984, SEC.19; P.L.297-1989, SEC.1; P.L.31-1998, SEC.3.

IC 35-42-4-2

Criminal deviate conduct

Sec. 2. (a) A person who knowingly or intentionally causes another person to perform or submit to deviate sexual conduct when:

(1) the other person is compelled by force or imminent threat of force;

(2) the other person is unaware that the conduct is occurring; or

(3) the other person is so mentally disabled or deficient that consent to the conduct cannot be given;

commits criminal deviate conduct, a Class B felony.

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

(1) it is committed by using or threatening the use of deadly force;

(2) it is committed while armed with a deadly weapon;

(3) it results in serious bodily injury to any person other than a defendant; or

(4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the

drug or controlled substance without the victim's knowledge.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.37; P.L.320-1983, SEC.24; P.L.183-1984, SEC.3; P.L.31-1998, SEC.4.

IC 35-42-4-3

Child molesting

Sec. 3. (a) A person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class B felony. However, the offense is a Class A felony if:

(1) it is committed by a person at least twenty-one (21) years of age;

(2) it is committed by using or threatening the use of deadly force or while armed with a deadly weapon;

(3) it results in serious bodily injury; or

(4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony. However, the offense is a Class A felony if:

(1) it is committed by using or threatening the use of deadly force;

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

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

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

(1) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon;

(2) the offense results in serious bodily injury; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.38; Acts 1978, P.L.82, SEC.2; Acts 1981, P.L.301, SEC.1; P.L.79-1994, SEC.12; P.L.33-1996, SEC.8; P.L.216-1996, SEC.18; P.L.31-1998, SEC.5; P.L.216-2007, SEC.42.

IC 35-42-4-4

Child exploitation; possession of child pornography; violation classification; exemption; definitions

Sec. 4. (a) As used in this section:

"Disseminate" means to transfer possession for free or for a consideration.

"Matter" has the same meaning as in IC 35-49-1-3.

"Performance" has the same meaning as in IC 35-49-1-7.

"Sexual conduct" means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who knowingly or intentionally:

(1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or

(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;

commits child exploitation, a Class C felony.

(c) A person who knowingly or intentionally possesses:

(1) a picture;

(2) a drawing;

(3) a photograph;

(4) a negative image;

(5) undeveloped film;

(6) a motion picture;

(7) a videotape;

(8) a digitized image; or

(9) any pictorial representation;

that depicts or describes sexual conduct by a child who the person knows is less than sixteen (16) years of age or who appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

(d) Subsections (b) and (c) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials is for

legitimate scientific or educational purposes.
As added by Acts 1978, P.L.148, SEC.5. Amended by P.L.325-1983, SEC.1; P.L.206-1986, SEC.1; P.L.37-1990, SEC.25; P.L.59-1995, SEC.3; P.L.216-1996, SEC.19; P.L.3-2002, SEC.2; P.L.216-2007, SEC.43.

IC 35-42-4-5
Vicarious sexual gratification; sexual conduct in presence of a minor

Sec. 5. (a) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to touch or fondle himself or another child under the age of sixteen (16) with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class D felony. However, the offense is:

(1) a Class C felony if a child involved in the offense is under the age of fourteen (14);

(2) a Class B felony if:

(A) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon; or

(B) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

(3) a Class A felony if it results in serious bodily injury.

(b) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to:

(1) engage in sexual intercourse with another child under sixteen (16) years of age;

(2) engage in sexual conduct with an animal other than a human being; or

(3) engage in deviate sexual conduct with another person;

with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class C felony. However, the offense is a Class B felony if any child involved in the offense is less than fourteen (14) years of age, and it is a Class A felony if the offense is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) A person eighteen (18) years of age or older who knowingly or intentionally:

(1) engages in sexual intercourse;

(2) engages in deviate sexual conduct; or
(3) touches or fondles the person's own body;
in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits performing sexual conduct in the presence of a minor, a Class D felony.
As added by P.L.183-1984, SEC.4. Amended by P.L.79-1994, SEC.13; P.L.31-1998, SEC.6; P.L.118-2002, SEC.1; P.L.123-2003, SEC.1.

IC 35-42-4-6
Child solicitation
Sec. 6. (a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:
(1) in person;
(2) by telephone;
(3) in writing;
(4) by using a computer network (as defined in IC 35-43-2-3(a));
(5) by advertisement of any kind; or
(6) by any other means;
to perform an act described in subsection (b) or (c).
(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:
(1) sexual intercourse;
(2) deviate sexual conduct; or
(3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;
commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)), and a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).
(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:
(1) sexual intercourse;
(2) deviate sexual conduct; or
(3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;
commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)), and a Class B felony if the person commits the offense by using a computer network (as defined in

IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

As added by P.L.183-1984, SEC.5. Amended by P.L.11-1994, SEC.16; P.L.79-1994, SEC.14; P.L.216-1996, SEC.20; P.L.118-2002, SEC.2; P.L.124-2005, SEC.1; P.L.216-2007, SEC.44.

IC 35-42-4-7

Child seduction

Sec. 7. (a) As used in this section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

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

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

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

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

(2) is employed by a:

(A) school corporation;

(B) charter school;

(C) nonpublic school; or

(D) special education cooperative;

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

(3) is:

(A) affiliated with a:

(i) school corporation;

(ii) charter school;

(iii) nonpublic school; or

(iv) special education cooperative;

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

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

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

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

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

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

(f) As used in this section, "military recruiter" means a member

of the armed forces of the United States (as defined in IC 20-33-10-2) or the Indiana National Guard whose primary job function, classification, or specialty is recruiting individuals to enlist with the armed forces of the United States or the Indiana National Guard.

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

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

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

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

(k) If a person who:

(1) is at least eighteen (18) years of age; and

(2) is:

(A) the:

(i) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or

(ii) child care worker for; or

(B) a military recruiter who is attempting to enlist;

a child at least sixteen (16) years of age but less than eighteen (18) years of age;

engages with the child in sexual intercourse, deviate sexual conduct (as defined in IC 35-41-1-9), or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult, the person commits child seduction, a Class D felony.

As added by P.L.158-1987, SEC.4. Amended by P.L.1-1997, SEC.148; P.L.71-1998, SEC.5; P.L.228-2001, SEC.5; P.L.161-2003, SEC.10; P.L.1-2005, SEC.228; P.L.125-2009, SEC.7.

IC 35-42-4-8

Sexual battery

Sec. 8. (a) A person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person, touches another person when that person is:

(1) compelled to submit to the touching by force or the imminent threat of force; or

(2) so mentally disabled or deficient that consent to the touching cannot be given;

commits sexual battery, a Class D felony.

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

(1) it is committed by using or threatening the use of deadly force;

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

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the

drug or controlled substance without the victim's knowledge.
As added by P.L.322-1987, SEC.2. Amended by P.L.31-1998, SEC.7.

IC 35-42-4-9
Sexual misconduct with a minor

Sec. 9. (a) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits sexual misconduct with a minor, a Class C felony. However, the offense is:

(1) a Class B felony if it is committed by a person at least twenty-one (21) years of age; and

(2) a Class A felony if it is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Class D felony. However, the offense is:

(1) a Class C felony if it is committed by a person at least twenty-one (21) years of age; and

(2) a Class B felony if it is committed by using or threatening the use of deadly force, while armed with a deadly weapon, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) It is a defense that the accused person reasonably believed that the child was at least sixteen (16) years of age at the time of the conduct. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(d) It is a defense that the child is or has ever been married. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

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

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

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

(3) The crime:

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

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

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

(D) did not result in serious bodily injury;

(E) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

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

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

As added by P.L.79-1994, SEC.15. Amended by P.L.33-1996, SEC.9; P.L.216-1996, SEC.21; P.L.31-1998, SEC.8; P.L.266-2003, SEC.1; P.L.216-2007, SEC.45.

IC 35-42-4-10

Unlawful employment near children

Sec. 10. (a) As used in this section, "offender against children" means a person who is an offender against children under IC 35-42-4-11.

(b) As used in this section, "sexually violent predator" means a person who is a sexually violent predator under IC 35-38-1-7.5.

(c) A sexually violent predator or an offender against children who knowingly or intentionally works for compensation or as a volunteer:

(1) on school property;

(2) at a youth program center; or

(3) at a public park;

commits unlawful employment near children by a sexual predator, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction based on the person's failure to comply with any requirement imposed on an offender under IC 11-8-8.

As added by P.L.6-2006, SEC.3; P.L.140-2006, SEC.31 and P.L.173-2006, SEC.31. Amended by P.L.1-2007, SEC.231; P.L.216-2007, SEC.46.

IC 35-42-4-11

Sex offender residency restrictions

Sec. 11. (a) As used in this section, and except as provided in subsection (d), "offender against children" means a person required to register as a sex or violent offender under IC 11-8-8 who has been:

(1) found to be a sexually violent predator under IC 35-38-1-7.5; or

(2) convicted of one (1) or more of the following offenses:

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

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

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

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

(E) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age and the person is not the child's parent or guardian.

(F) Attempt to commit or conspiracy to commit an offense listed in clauses (A) through (E).

(G) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (F).

A person is an offender against children by operation of law if the person meets the conditions described in subdivision (1) or (2) at any time.

(b) As used in this section, "reside" means to spend more than three (3) nights in:

(1) a residence; or

(2) if the person does not reside in a residence, a particular location;

in any thirty (30) day period.

(c) An offender against children who knowingly or intentionally:

(1) resides within one thousand (1,000) feet of:

(A) school property, not including property of an institution providing post-secondary education;

(B) a youth program center; or

(C) a public park; or

(2) establishes a residence within one (1) mile of the residence of the victim of the offender's sex offense;

commits a sex offender residency offense, a Class D felony.

(d) This subsection does not apply to an offender against children who has two (2) or more unrelated convictions for an offense described in subsection (a). A person who is an offender against children may petition the court to consider whether the person should no longer be considered an offender against children. The person may file a petition under this subsection not earlier than ten (10) years after the person is released from incarceration, probation, or parole, whichever occurs last. A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered an offender against children. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person should no longer be considered an offender against children. If a court finds that the person should no

longer be considered an offender against children, the court shall send notice to the department of correction that the person is no longer considered an offender against children.
As added by P.L.6-2006, SEC.8. Amended by P.L.140-2006, SEC.32 and P.L.173-2006, SEC.32; P.L.216-2007, SEC.47.

IC 35-42-4-12
Sex offender internet offense

Sec. 12. (a) This section does not apply to a person to whom all of the following apply:

(1) The person is not more than:

(A) four (4) years older than the victim if the offense was committed after June 30, 2007; or

(B) five (5) years older than the victim if the offense was committed before July 1, 2007.

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

(3) The crime:

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

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

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

(D) did not result in serious bodily injury;

(E) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

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

(b) This section applies only to a person required to register as a sex or violent offender under IC 11-8-8 who has been:

(1) found to be a sexually violent predator under IC 35-38-1-7.5; or

(2) convicted of one (1) or more of the following offenses:

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

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

(C) Possession of child pornography (IC 35-42-4-4(c)).

(D) Vicarious sexual gratification (IC 35-42-4-5(a) or IC 35-42-4-5(b)).

(E) Sexual conduct in the presence of a minor (IC 35-42-4-5(c)).

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

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

(H) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age and the person is not the child's

parent or guardian.

(I) Attempt to commit or conspiracy to commit an offense listed in clauses (A) through (H).

(J) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (H).

(c) As used in this section, "instant messaging or chat room program" means a software program that requires a person to register or create an account, a username, or a password to become a member or registered user of the program and allows two (2) or more members or authorized users to communicate over the Internet in real time using typed text. The term does not include an electronic mail program or message board program.

(d) As used in this section, "social networking web site" means an Internet web site that:

(1) facilitates the social introduction between two (2) or more persons;

(2) requires a person to register or create an account, a username, or a password to become a member of the web site and to communicate with other members;

(3) allows a member to create a web page or a personal profile; and

(4) provides a member with the opportunity to communicate with another person.

The term does not include an electronic mail program or message board program.

(e) A person described in subsection (b) who knowingly or intentionally uses:

(1) a social networking web site; or

(2) an instant messaging or chat room program;

that the offender knows allows a person who is less than eighteen (18) years of age to access or use the web site or program commits a sex offender Internet offense, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

(f) It is a defense to a prosecution under this section that the person:

(1) did not know that the web site or program allowed a person who is less than eighteen (18) years of age to access or use the web site or program; and

(2) upon discovering that the web site or program allows a person who is less than eighteen (18) years of age to access or use the web site or program, immediately ceased further use or access of the web site or program.

As added by P.L.119-2008, SEC.18.

IC 35-42-4-13

Inappropriate communication with a child

Sec. 13. (a) This section does not apply to the following:

(1) A parent, guardian, or custodian of a child.

(2) A person who acts with the permission of a child's parent,

guardian, or custodian.

(3) A person to whom a child makes a report of abuse or neglect.

(4) A person to whom a child reports medical symptoms that relate to or may relate to sexual activity.

(b) As used in this section, "sexual activity" means sexual intercourse, deviate sexual conduct, or the fondling or touching of the buttocks, genitals, or female breasts.

(c) A person at least twenty-one (21) years of age who knowingly or intentionally communicates with an individual whom the person believes to be a child less than fourteen (14) years of age concerning sexual activity with the intent to gratify the sexual desires of the person or the individual commits inappropriate communication with a child, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)).

As added by P.L.119-2008, SEC.19.

IC 35-42-5

Chapter 5. Robbery

IC 35-42-5-1

Robbery

Sec. 1. A person who knowingly or intentionally takes property from another person or from the presence of another person:

(1) by using or threatening the use of force on any person; or

(2) by putting any person in fear;

commits robbery, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant, and a Class A felony if it results in serious bodily injury to any person other than a defendant.

As added by Acts 1977, P.L.340, SEC.39. Amended by Acts 1982, P.L.204, SEC.34; P.L.186-1984, SEC.1.

IC 35-42-5-2

Carjacking

Sec. 2. A person who knowingly or intentionally takes a motor vehicle from another person or from the presence of another person:

(1) by using or threatening the use of force on any person; or

(2) by putting any person in fear;

commits carjacking, a Class B felony.

As added by P.L.230-1993, SEC.3.

IC 35-43

ARTICLE 43. OFFENSES AGAINST PROPERTY

IC 35-43-1

Chapter 1. Arson, Mischief, and Tampering

IC 35-43-1-1

Arson

Sec. 1. (a) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages:

(1) a dwelling of another person without the other person's consent;

(2) property of any person under circumstances that endanger human life;

(3) property of another person without the other person's consent if the pecuniary loss is at least five thousand dollars ($5,000); or

(4) a structure used for religious worship without the consent of the owner of the structure;

commits arson, a Class B felony. However, the offense is a Class A felony if it results in either bodily injury or serious bodily injury to any person other than a defendant.

(b) A person who commits arson for hire commits a Class B felony. However, the offense is a Class A felony if it results in bodily injury to any other person.

(c) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages property of any person with intent to defraud commits arson, a Class C felony.

(d) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages property of another person without the other person's consent so that the resulting pecuniary loss is at least two hundred fifty dollars ($250) but less than five thousand dollars ($5,000) commits arson, a Class D felony.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.40; Acts 1980, P.L.159, SEC.4; Acts 1981, P.L.302, SEC.1; Acts 1982, P.L.204, SEC.35; P.L.88-1999, SEC.1; P.L.123-2002, SEC.36.

IC 35-43-1-2

Criminal mischief; penalties

Sec. 2. (a) A person who:

(1) recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent; or

(2) knowingly or intentionally causes another to suffer pecuniary loss by deception or by an expression of intention to injure another person or to damage the property or to impair the rights of another person;

commits criminal mischief, a Class B misdemeanor. However, the offense is:

(A) a Class A misdemeanor if:

(i) the pecuniary loss is at least two hundred fifty dollars ($250) but less than two thousand five hundred dollars ($2,500);

(ii) the property damaged was a moving motor vehicle;

(iii) the property damaged contained data relating to a person required to register as a sex or violent offender under IC 11-8-8 and the person is not a sex or violent offender or was not required to register as a sex or violent offender;

(iv) the property damaged was a locomotive, a railroad car, a train, or equipment of a railroad company being operated on a railroad right-of-way;

(v) the property damaged was a part of any railroad signal system, train control system, centralized dispatching system, or highway railroad grade crossing warning signal on a railroad right-of-way owned, leased, or operated by a railroad company;

(vi) the property damaged was any rail, switch, roadbed, viaduct, bridge, trestle, culvert, or embankment on a right-of-way owned, leased, or operated by a railroad company; or

(vii) the property damage or defacement was caused by paint or other markings; and

(B) a Class D felony if:

(i) the pecuniary loss is at least two thousand five hundred dollars ($2,500);

(ii) the damage causes a substantial interruption or impairment of utility service rendered to the public;

(iii) the damage is to a public record;

(iv) the property damaged contained data relating to a person required to register as a sex or violent offender under IC 11-8-8 and the person is a sex or violent offender or was required to register as a sex or violent offender;

(v) the damage causes substantial interruption or impairment of work conducted in a scientific research facility;

(vi) the damage is to a law enforcement animal (as defined in IC 35-46-3-4.5); or

(vii) the damage causes substantial interruption or impairment of work conducted in a food processing facility.

(b) A person who recklessly, knowingly, or intentionally damages:

(1) a structure used for religious worship;

(2) a school or community center;

(3) the grounds:

(A) adjacent to; and

(B) owned or rented in common with;

a structure or facility identified in subdivision (1) or (2); or

(4) personal property contained in a structure or located at a

facility identified in subdivision (1) or (2);

without the consent of the owner, possessor, or occupant of the property that is damaged, commits institutional criminal mischief, a Class A misdemeanor. However, the offense is a Class D felony if the pecuniary loss is at least two hundred fifty dollars ($250) but less than two thousand five hundred dollars ($2,500), and a Class C felony if the pecuniary loss is at least two thousand five hundred dollars ($2,500).

(c) If a person is convicted of an offense under this section that involves the use of graffiti, the court may, in addition to any other penalty, order that the person's operator's license be suspended or invalidated by the bureau of motor vehicles for not more than one (1) year.

(d) The court may rescind an order for suspension or invalidation under subsection (c) and allow the person to receive a license or permit before the period of suspension or invalidation ends if the court determines that:

(1) the person has removed or painted over the graffiti or has made other suitable restitution; and

(2) the person who owns the property damaged or defaced by the criminal mischief or institutional criminal mischief is satisfied with the removal, painting, or other restitution performed by the person.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.41; P.L.326-1983, SEC.1; P.L.319-1985, SEC.1; P.L.151-1989, SEC.11; P.L.180-1991, SEC.6; P.L.94-1996, SEC.5; P.L.213-1997, SEC.1; P.L.100-1999, SEC.2; P.L.108-2002, SEC.1; P.L.116-2002, SEC.24; P.L.123-2002, SEC.37; P.L.1-2003, SEC.95; P.L.140-2006, SEC.33 and P.L.173-2006, SEC.33; P.L.216-2007, SEC.48.

IC 35-43-1-2.1

Cemetery mischief

Sec. 2.1. (a) This section does not apply to the following:

(1) A person who acts in a proper and acceptable manner as authorized by IC 14-21 other than a person who disturbs the earth for an agricultural purpose under the exemption to IC 14-21 that is provided in IC 14-21-1-24.

(2) A person who acts in a proper and acceptable manner as authorized by IC 23-14.

(b) A person who recklessly, knowingly, or intentionally:

(1) damages a cemetery, a burial ground (as defined in IC 14-21-1-3), or a facility used for memorializing the dead;

(2) damages the grounds owned or rented by a cemetery or facility used for memorializing the dead; or

(3) disturbs, defaces, or damages a cemetery monument, grave marker, grave artifact, grave ornamentation, or cemetery enclosure;

commits cemetery mischief, a Class A misdemeanor. However, the offense is a Class D felony if the pecuniary loss is at least two

thousand five hundred dollars ($2,500).
As added by P.L.100-1999, SEC.3. Amended by P.L.177-2001, SEC.4.

IC 35-43-1-3
Unlawful acts relating to caves; offense

Sec. 3. (a) As used in this section:

"Cave" means any naturally occurring subterranean cavity, including a cavern, pit, pothole, sinkhole, well, grotto, and tunnel whether or not it has a natural entrance.

"Owner" means the person who holds title to or is in possession of the land on or under which a cave is located, or his lessee, or agent.

"Scientific purposes" means exploration and research conducted by persons affiliated with recognized scientific organizations with the intent to advance knowledge and with the intent to publish the results of said exploration or research in an appropriate medium.

(b) A person who knowingly and without the express consent of the cave owner:

(1) disfigures, destroys, or removes any stalagmite, stalactite, or other naturally occurring mineral deposit or formation, or archeological or paleontological artifact in a cave, for other than scientific purposes;

(2) breaks any lock, gate, fence, or other structure designed to control or prevent access to a cave;

(3) deposits trash, rubbish, chemicals, or other litter in a cave; or

(4) destroys, injures, removes, or harasses any cave-dwelling animal for other than scientific purposes;

commits a Class A misdemeanor.
As added by P.L.177-1983, SEC.2.

IC 35-43-1-4
Computer tampering

Sec. 4. (a) As used in this section:

"Computer network" and "computer system" have the meanings set forth in IC 35-43-2-3.

"Computer program" means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data.

"Data" means a representation of information, facts, knowledge, concepts, or instructions that:

(1) may take any form, including computer printouts, magnetic storage media, punched cards, or stored memory;

(2) has been prepared or is being prepared; and

(3) has been processed, is being processed, or will be processed;

in a computer system or computer network.

(b) A person who knowingly or intentionally alters or damages a computer program or data, which comprises a part of a computer system or computer network without the consent of the owner of the

computer system or computer network commits computer tampering, a Class D felony. However, the offense is a:

(1) Class C felony if the offense is committed for the purpose of terrorism; and

(2) Class B felony if the offense is committed for the purpose of terrorism and results in serious bodily injury to a person.

As added by P.L.35-1986, SEC.2. Amended by P.L.156-2001, SEC.11.

IC 35-43-1-5

Tampering with a water supply; poisoning

Sec. 5. (a) A person who, with the intent to cause serious bodily injury, tampers with a:

(1) water supply;

(2) water treatment plant (as defined in IC 13-11-2-264); or

(3) water distribution system (as defined in IC 13-11-2-259);

commits tampering with a water supply, a Class B felony. However, the offense is a Class A felony if it results in the death of any person.

(b) A person who recklessly, knowingly, or intentionally poisons a public water supply with the intent to cause serious bodily injury commits poisoning, a Class B felony.

As added by P.L.137-2007, SEC.35. Amended by P.L.231-2007, SEC.3.

IC 35-43-2

Chapter 2. Burglary and Trespass

IC 35-43-2-1

Burglary

Sec. 1. A person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony. However, the offense is:

(1) a Class B felony if:

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

(B) the building or structure is a:

(i) dwelling; or

(ii) structure used for religious worship; and

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

(A) bodily injury; or

(B) serious bodily injury;

to any person other than a defendant.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.42; Acts 1982, P.L.204, SEC.36; P.L.88-1999, SEC.2.

IC 35-43-2-1.5

Residential entry

Sec. 1.5. A person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry, a Class D felony.

As added by P.L.215-1991, SEC.1.

IC 35-43-2-2

Criminal trespass; denial of entry; permission to enter; exceptions

Sec. 2. (a) A person who:

(1) not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent;

(2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person's agent;

(3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle;

(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent;

(5) not having a contractual interest in the property, knowingly or intentionally enters the dwelling of another person without the person's consent;

(6) knowingly or intentionally:

(A) travels by train without lawful authority or the railroad carrier's consent; and

(B) rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier's consent;

(7) not having a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is:

(A) vacant or designated by a municipality or county enforcement authority to be abandoned property; and

(B) subject to abatement under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36; or

(8) knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by conspicuous posting on or around the premises in areas where a person can observe the order when the property:

(A) has been designated by a municipality or county enforcement authority to be a vacant property or an abandoned property; and

(B) is subject to an abatement order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36;

commits criminal trespass, a Class A misdemeanor. However, the offense is a Class D felony if it is committed on a scientific research facility, on a key facility, on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a)), on school property, or on a school bus or the person has a prior unrelated conviction for an offense under this section concerning the same property.

(b) A person has been denied entry under subdivision (a)(1) of this section when the person has been denied entry by means of:

(1) personal communication, oral or written;

(2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public; or

(3) a hearing authority or court order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36.

(c) A law enforcement officer may not deny entry to property or ask a person to leave a property under subsection (a)(7) unless there is reasonable suspicion that criminal activity has occurred or is occurring.

(d) A person described in subsection (a)(7) violates subsection (a)(7) unless the person has the written permission of the owner, owner's agent, enforcement authority, or court to come onto the property for purposes of performing maintenance, repair, or demolition.

(e) A person described in subsection (a)(8) violates subsection (a)(8) unless the court that issued the order denying the person entry grants permission for the person to come onto the property.

(f) Subsections (a), (b), and (e) do not apply to the following:

(1) A passenger on a train.
(2) An employee of a railroad carrier while engaged in the performance of official duties.
(3) A law enforcement officer, firefighter, or emergency response personnel while engaged in the performance of official duties.
(4) A person going on railroad property in an emergency to rescue a person or animal from harm's way or to remove an object that the person reasonably believes poses an imminent threat to life or limb.
(5) A person on the station grounds or in the depot of a railroad carrier:
(A) as a passenger; or
(B) for the purpose of transacting lawful business.
(6) A:
(A) person; or
(B) person's:
(i) family member;
(ii) invitee;
(iii) employee;
(iv) agent; or
(v) independent contractor;
going on a railroad's right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to land that the person owns, leases, or operates.
(7) A person having written permission from the railroad carrier to go on specified railroad property.
(8) A representative of the Indiana department of transportation while engaged in the performance of official duties.
(9) A representative of the federal Railroad Administration while engaged in the performance of official duties.
(10) A representative of the National Transportation Safety Board while engaged in the performance of official duties.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.43; P.L.151-1989, SEC.12; P.L.242-1993, SEC.2; P.L.164-1993, SEC.11; P.L.1-1994, SEC.168; P.L.259-1999, SEC.3; P.L.158-2009, SEC.7; P.L.88-2009, SEC.4.

IC 35-43-2-3

Computer trespass; computer hoarding programs

Sec. 3. (a) As used in this section:
"Access" means to:
(1) approach;
(2) instruct;
(3) communicate with;
(4) store data in;
(5) retrieve data from; or
(6) make use of resources of;
a computer, computer system, or computer network.
"Computer network" means the interconnection of communication

lines or wireless telecommunications with a computer or wireless telecommunication device through:

(1) remote terminals;

(2) a complex consisting of two (2) or more interconnected computers; or

(3) a worldwide collection of interconnected networks operating as the Internet.

"Computer system" means a set of related computer equipment, software, or hardware.

"Hoarding program" means a computer program designed to bypass or neutralize a security measure, access control system, or similar system used by the owner of a computer network or computer system to limit the amount of merchandise that one (1) person may purchase by means of a computer network.

(b) A person who knowingly or intentionally accesses:

(1) a computer system;

(2) a computer network; or

(3) any part of a computer system or computer network;

without the consent of the owner of the computer system or computer network, or the consent of the owner's licensee, commits computer trespass, a Class A misdemeanor.

(c) A person who knowingly or intentionally uses a hoarding program to purchase merchandise by means of a computer network commits computer merchandise hoarding, a Class A misdemeanor. It is a defense to a prosecution under this subsection that the person used the hoarding program with the permission of the person selling the merchandise.

(d) A person who knowingly or intentionally sells, purchases, or distributes a hoarding program commits unlawful distribution of a hoarding program, a Class A misdemeanor. It is a defense to a prosecution under this subsection that the hoarding program was sold, purchased, or distributed for legitimate scientific or educational purposes.

As added by P.L.35-1986, SEC.3. Amended by P.L.29-2001, SEC.1; P.L.79-2009, SEC.1.

IC 35-43-3
Repealed

(*Repealed by Acts 1977, P.L.340, SEC.148.*)

IC 35-43-4

Chapter 4. Theft, Conversion, and Receiving Stolen Property

IC 35-43-4-1

Definitions

Sec. 1. (a) As used in this chapter, "exert control over property" means to obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber, or possess property, or to secure, transfer, or extend a right to property.

(b) Under this chapter, a person's control over property of another person is "unauthorized" if it is exerted:

(1) without the other person's consent;

(2) in a manner or to an extent other than that to which the other person has consented;

(3) by transferring or encumbering other property while failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of that other property;

(4) by creating or confirming a false impression in the other person;

(5) by failing to correct a false impression that the person knows is influencing the other person, if the person stands in a relationship of special trust to the other person;

(6) by promising performance that the person knows will not be performed;

(7) by expressing an intention to damage the property or impair the rights of any other person; or

(8) by transferring or reproducing:

(A) recorded sounds; or

(B) a live performance;

without consent of the owner of the master recording or the live performance, with intent to distribute the reproductions for a profit.

(c) As used in this chapter, "receiving" means acquiring possession or control of or title to property, or lending on the security of property.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.44; Acts 1979, P.L.300, SEC.1; P.L.180-1991, SEC.7.

IC 35-43-4-2

Theft; receiving stolen property

Sec. 2. (a) A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony. However, the offense is a Class C felony if:

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

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

(A) relates to transportation safety;

(B) relates to public safety; or

(C) is taken from a:

(i) hospital or other health care facility;
(ii) telecommunications provider;
(iii) public utility (as defined in IC 32-24-1-5.9(a)); or
(iv) key facility;

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

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

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

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

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

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

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.45; Acts 1979, P.L.300, SEC.2; P.L.320-1985, SEC.1; P.L.158-2009, SEC.8.

IC 35-43-4-2.3

Dealing in altered property

Sec. 2.3. (a) As used in this section, "dealer" means a person who buys or sells, or offers to buy or sell, personal property. The term does not include the original retailer of personal property.

(b) A dealer who recklessly, knowingly, or intentionally buys or sells personal property in which the identification number or manufacturer's serial number has been removed, altered, obliterated, or defaced commits dealing in altered property, a Class A misdemeanor. However the offense is a Class D felony if the dealer has a prior conviction of an offense under this chapter or if the fair market value of the property is at least one thousand dollars ($1,000).

As added by P.L.294-1989, SEC.2.

IC 35-43-4-2.5

Auto theft; receiving stolen auto parts

Sec. 2.5. (a) As used in this section, "motor vehicle" has the meaning set forth in IC 9-13-2-105(a).

(b) A person who knowingly or intentionally exerts unauthorized control over the motor vehicle of another person, with intent to deprive the owner of:

(1) the vehicle's value or use; or

(2) a component part (as defined in IC 9-13-2-34) of the

vehicle;

commits auto theft, a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection or subsection (c).

(c) A person who knowingly or intentionally receives, retains, or disposes of a motor vehicle or any part of a motor vehicle of another person that has been the subject of theft commits receiving stolen auto parts, a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection or subsection (b).

As added by P.L.321-1985, SEC.1. Amended by P.L.136-1987, SEC.6; P.L.2-1991, SEC.106.

IC 35-43-4-2.7

Unlawful entry of motor vehicle; defense; rebuttable presumption

Sec. 2.7. (a) This section does not apply to the following:

(1) A public safety officer (as defined in IC 35-47-4.5-3) or state police motor carrier inspector acting within the scope of the officer's or inspector's duties.

(2) A motor vehicle that must be moved because the motor vehicle is abandoned, inoperable, or improperly parked.

(3) An employee or agent of an entity that possesses a valid lien on a motor vehicle who is expressly authorized by the lienholder to repossess the motor vehicle based upon the failure of the owner or lessee of the motor vehicle to abide by the terms and conditions of the loan or lease agreement.

(b) As used in this section, "authorized operator" means a person who is authorized to operate a motor vehicle by an owner or a lessee of the motor vehicle.

(c) As used in this section, "motor vehicle" has the meaning set forth in IC 9-13-2-105(a).

(d) A person who:

(1) enters a motor vehicle knowing that the person does not have the permission of an owner, a lessee, or an authorized operator of the motor vehicle to enter the motor vehicle; and

(2) does not have a contractual interest in the motor vehicle;

commits unauthorized entry of a motor vehicle, a Class B misdemeanor.

(e) The offense under subsection (d) is:

(1) a Class A misdemeanor if the motor vehicle has visible steering column damage or ignition switch alteration as a result of an act described in subsection (d)(1); or

(2) a Class D felony if a person occupies the motor vehicle while the motor vehicle is used to further the commission of a crime, if the person knew or should have known that a person intended to use the motor vehicle in the commission of a crime.

(f) It is a defense to a prosecution under this section that the accused person reasonably believed that the person's entry into the vehicle was necessary to prevent bodily injury or property damage.

(g) There is a rebuttable presumption that the person did not have

the permission of an owner, a lessee, or an authorized operator of the motor vehicle to enter the motor vehicle if the motor vehicle has visible steering column damage or ignition switch alteration.
As added by P.L.143-2005, SEC.1.

IC 35-43-4-3
Conversion

Sec. 3. (a) A person who knowingly or intentionally exerts unauthorized control over property of another person commits criminal conversion, a Class A misdemeanor.

(b) The offense under subsection (a) is a Class D felony if committed by a person who exerts unauthorized control over the motor vehicle of another person with the intent to use the motor vehicle to assist the person in the commission of a crime.

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

(1) committed by a person who exerts unauthorized control over the motor vehicle of another person; and

(2) the person uses the motor vehicle to assist the person in the commission of a felony.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.46; P.L.143-2005, SEC.2.

IC 35-43-4-3.5
Failure to return or pay for articles borrowed from library, gallery, museum, collection, or exhibition

Sec. 3.5. (a) If a person:

(1) borrows any article which belongs to or is in the care of any library, gallery, museum, collection, or exhibition;

(2) borrows the article under an agreement to return the article within a specified period of time; and

(3) fails to return the article within that specified period of time;

then the lender shall comply with subsection (b).

(b) If a person commits those acts specified in subsection (a), the lender shall:

(1) send written notification of the violation of the agreement to the borrower;

(2) attach a copy of this section to the notice;

(3) include in the notice a request for return of the article within fifteen (15) days of receipt of the notice; and

(4) mail the notice to the last known address of the borrower or deliver it to the borrower in person.

The lender shall send the notice required by this subsection by certified or registered mail, return receipt requested.

(c) If the borrower willfully or knowingly fails to return the article, or reimburse the lender for the value of the article, within thirty (30) days of receipt of the notice required in subsection (b), he commits a Class C infraction.

(d) A person who commits an offense under this section may not be charged with an offense under section 2 or 3 of this chapter for the same act.

As added by Acts 1980, P.L.206, SEC.1.

IC 35-43-4-4

Evidence

Sec. 4. (a) The price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value and ownership of the property.

(b) Evidence that a person:

(1) altered, substituted, or transferred a universal product code (UPC) or another product identification code, label, price tag, or price marking on property displayed or offered for sale or hire; or

(2) transferred property displayed or offered for sale or hire from the package, bag, or container in or on which the property was displayed or offered to another package, bag, or container;

constitutes prima facie evidence of intent to deprive the owner of the property of a part of its value and that the person exerted unauthorized control over the property.

(c) Evidence that a person:

(1) concealed property displayed or offered for sale or hire; and

(2) removed the property from any place within the business premises at which it was displayed or offered to a point beyond that at which payment should be made;

constitutes prima facie evidence of intent to deprive the owner of the property of a part of its value and that the person exerted unauthorized control over the property.

(d) Except as provided in subsection (e) of this section, evidence of failure to perform as promised, by itself, does not constitute evidence that the promisor knew that the promise would not be performed.

(e) Except as provided in section 5(b) of this chapter, a person who has insufficient funds in or no account with a drawee credit institution and who makes, draws, or utters a check, draft, or order for payment on the credit institution may be inferred:

(1) to have known that the credit institution would refuse payment upon presentment in the usual course of business; and

(2) to have intended to deprive the owner of any property acquired by making, drawing, or uttering the check, draft, or order for payment of a part of the value of that property.

(f) Evidence that a person, after renting or leasing any property under a written agreement providing for the return of the property to a particular place at a particular time, failed to return the property to the place within seventy-two (72) hours after the agreed time constitutes prima facie evidence that he exerted unauthorized control over the property.

(g) A judge may find that a photograph of property over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully is competent evidence, if the photograph:

(1) will serve the purpose of demonstrating the nature of the

property; and

(2) is otherwise admissible into evidence under all other rules of law governing the admissibility of photographs into evidence.

The fact that it is impractical to introduce into evidence the actual property for any reason, including its size, weight, or unavailability, need not be established for a judge to find a photograph of that property to be competent evidence. If a photograph is found to be competent evidence under this subsection, it is admissible into evidence in place of the property and to the same extent as the property itself.

(h) A law enforcement agency that is holding as evidence property over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully, may return that property to its owner if:

(1) the property has been photographed in a manner that will serve the purpose of demonstrating the nature of the property, and if these photographs are filed with or retained by the law enforcement agency in place of the property;

(2) receipt for the property is obtained from the owner upon delivery by the law enforcement agency;

(3) the prosecuting attorney who is prosecuting a case that involves the property has not requested the law enforcement agency to decline requests for return of the property to its owner; and

(4) the property may be lawfully possessed by the owner.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.47; Acts 1980, P.L.200, SEC.2; P.L.322-1985, SEC.1; P.L.84-2001, SEC.1.

IC 35-43-4-5

Defenses

Sec. 5. (a) An owner in possession of encumbered property does not commit a crime under this chapter, as against a person having only a security interest in the property, by removing or otherwise dealing with the property contrary to the terms of the security agreement, even if title is in the credit institution under a mortgage, conditional sales contract, or bailment lease.

(b) It is a defense under this chapter if a maker or drawer:

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

(2) who makes, draws, or utters a check, draft, or order for payment on the credit institution;

pays the credit institution the amount due, together with protest fees, within ten (10) days after receiving notice that the check, draft, or order has not been paid by the credit institution. Notice sent to either (i) the address printed or written on the check, draft, or order or (ii) the address given in writing to the recipient at the time the check, draft, or order was issued or delivered constitutes notice that the check, draft, or order has not been paid by the credit institution.

(c) A person who transfers or reproduces recorded sounds in connection with a broadcast or telecast, or for archival purposes, does not commit a crime under this chapter, even if he does not have the consent of the owner of the master recording.

(d) A person who receives, retains, or disposes of personal property that has been the subject of theft with the purpose of restoring it to the owner, does not commit a crime under this chapter.
As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.48; Acts 1979, P.L.300, SEC.3; P.L.323-1985, SEC.1.

IC 35-43-4-6
Unauthorized control over property of benefit provider; prima facie evidence

Sec. 6. (a) As used in this section:

"Benefit" includes any accident, sickness, or other health care or reimbursement therefor to which a person is entitled.

"Benefit identification card" means a writing that identifies a person, his spouse, or his dependent as being entitled to a benefit.

"Benefit provider" includes an employer, insurer, or health care provider who has agreed to provide or has provided a benefit to a person who has a benefit identification card.

(b) Evidence that a person:

(1) permitted a person who was not entitled to a benefit to use his benefit identification card to obtain a benefit; or

(2) uses his benefit identification card to obtain a benefit for a person who was not entitled to the benefit;

constitutes prima facie evidence that such person exerted unauthorized control over property of the benefit provider.
As added by P.L.327-1983, SEC.1.

IC 35-43-4-7
Vending machine vandalism

Sec. 7. (a) As used in this section, "vending machine" means a mechanical or an electronic device or a receptacle designed:

(1) to receive a coin, bill, or token made for that purpose; and

(2) to automatically dispense goods, wares, merchandise, or other property in return for the insertion or deposit of a coin, bill, or token.

(b) A person who knowingly or intentionally:

(1) damages a vending machine; or

(2) removes goods, wares, merchandise, or other property from a vending machine without:

(A) inserting or depositing a coin, bill, or token made for that purpose; or

(B) the consent of the owner or operator of the vending machine;

commits vending machine vandalism, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the amount of the damage or the value of the goods, wares, merchandise, or other property removed from the vending machine is at least two hundred

fifty dollars ($250).
As added by P.L.299-1995, SEC.1.

IC 35-43-4-8
Suspension of driving privileges for fuel theft

Sec. 8. (a) A conviction for an offense under section 2 of this chapter or section 3 of this chapter that involves exerting unauthorized control over gasoline or motor vehicle fuel:

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

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

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

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

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

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

The suspension of a person's driving privileges under this section is in addition to other penalties prescribed by IC 35-50-3-2 for a Class A misdemeanor or by IC 35-50-2-7 for a Class D felony.
As added by P.L.117-2001, SEC.6.

IC 35-43-5

Chapter 5. Forgery, Fraud, and Other Deceptions

IC 35-43-5-1

Definitions

Sec. 1. (a) The definitions set forth in this section apply throughout this chapter.

(b) "Claim statement" means an insurance policy, a document, or a statement made in support of or in opposition to a claim for payment or other benefit under an insurance policy, or other evidence of expense, injury, or loss. The term includes statements made orally, in writing, or electronically, including the following:

(1) An account.
(2) A bill for services.
(3) A bill of lading.
(4) A claim.
(5) A diagnosis.
(6) An estimate of property damages.
(7) A hospital record.
(8) An invoice.
(9) A notice.
(10) A proof of loss.
(11) A receipt for payment.
(12) A physician's records.
(13) A prescription.
(14) A statement.
(15) A test result.
(16) X-rays.

(c) "Coin machine" means a coin box, vending machine, or other mechanical or electronic device or receptacle designed:

(1) to receive a coin, bill, or token made for that purpose; and
(2) in return for the insertion or deposit of a coin, bill, or token automatically:
    (A) to offer, provide, or assist in providing; or
    (B) to permit the acquisition of;
some property.

(d) "Credit card" means an instrument or device (whether known as a credit card or charge plate, or by any other name) issued by an issuer for use by or on behalf of the credit card holder in obtaining property.

(e) "Credit card holder" means the person to whom or for whose benefit the credit card is issued by an issuer.

(f) "Customer" means a person who receives or has contracted for a utility service.

(g) "Drug or alcohol screening test" means a test that:

(1) is used to determine the presence or use of alcohol, a controlled substance, or a drug in a person's bodily substance; and
(2) is administered in the course of monitoring a person who is:
    (A) incarcerated in a prison or jail;

(B) placed in a community corrections program;
(C) on probation or parole;
(D) participating in a court ordered alcohol or drug treatment program; or
(E) on court ordered pretrial release.

(h) "Entrusted" means held in a fiduciary capacity or placed in charge of a person engaged in the business of transporting, storing, lending on, or otherwise holding property of others.

(i) "Identifying information" means information that identifies a person, including a person's:

(1) name, address, date of birth, place of employment, employer identification number, mother's maiden name, Social Security number, or any identification number issued by a governmental entity;

(2) unique biometric data, including the person's fingerprint, voice print, or retina or iris image;

(3) unique electronic identification number, address, or routing code;

(4) telecommunication identifying information; or

(5) telecommunication access device, including a card, a plate, a code, a telephone number, an account number, a personal identification number, an electronic serial number, a mobile identification number, or another telecommunications service or device or means of account access that may be used to:

(A) obtain money, goods, services, or any other thing of value; or
(B) initiate a transfer of funds.

(j) "Insurance policy" includes the following:

(1) An insurance policy.

(2) A contract with a health maintenance organization (as defined in IC 27-13-1-19) or a limited service health maintenance organization (as defined in IC 27-13-1-27).

(3) A written agreement entered into under IC 27-1-25.

(k) "Insurer" has the meaning set forth in IC 27-1-2-3(x). The term also includes the following:

(1) A reinsurer.

(2) A purported insurer or reinsurer.

(3) A broker.

(4) An agent of an insurer, a reinsurer, a purported insurer or reinsurer, or a broker.

(5) A health maintenance organization.

(6) A limited service health maintenance organization.

(l) "Manufacturer" means a person who manufactures a recording. The term does not include a person who manufactures a medium upon which sounds or visual images can be recorded or stored.

(m) "Make" means to draw, prepare, complete, counterfeit, copy or otherwise reproduce, or alter any written instrument in whole or in part.

(n) "Metering device" means a mechanism or system used by a utility to measure or record the quantity of services received by a

customer.

(o) "Public relief or assistance" means any payment made, service rendered, hospitalization provided, or other benefit extended to a person by a governmental entity from public funds and includes township assistance, food stamps, direct relief, unemployment compensation, and any other form of support or aid.

(p) "Recording" means a tangible medium upon which sounds or visual images are recorded or stored. The term includes the following:

(1) An original:

(A) phonograph record;

(B) compact disc;

(C) wire;

(D) tape;

(E) audio cassette;

(F) video cassette; or

(G) film.

(2) Any other medium on which sounds or visual images are or can be recorded or otherwise stored.

(3) A copy or reproduction of an item in subdivision (1) or (2) that duplicates an original recording in whole or in part.

(q) "Slug" means an article or object that is capable of being deposited in a coin machine as an improper substitute for a genuine coin, bill, or token.

(r) "Synthetic identifying information" means identifying information that identifies:

(1) a false or fictitious person;

(2) a person other than the person who is using the information; or

(3) a combination of persons described under subdivisions (1) and (2).

(s) "Utility" means a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the production, storage, transmission, sale, or delivery of electricity, water, steam, telecommunications, information, or gas.

(t) "Written instrument" means a paper, a document, or other instrument containing written matter and includes money, coins, tokens, stamps, seals, credit cards, badges, trademarks, medals, retail sales receipts, labels or markings (including a universal product code (UPC) or another product identification code), or other objects or symbols of value, right, privilege, or identification.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.49; P.L.321-1983, SEC.4; P.L.182-1984, SEC.3; P.L.180-1991, SEC.8; P.L.216-1991, SEC.1; P.L.193-1991, SEC.2; P.L.247-1993, SEC.1; P.L.150-1994, SEC.2; P.L.2-1995, SEC.127; P.L.84-2001, SEC.2; P.L.180-2001, SEC.1; P.L.22-2003, SEC.1; P.L.160-2003, SEC.27; P.L.73-2005, SEC.170; P.L.171-2005, SEC.1; P.L.181-2005, SEC.5; P.L.137-2009, SEC.13.

IC 35-43-5-2

Forgery; counterfeiting; application fraud

Sec. 2. (a) A person who knowingly or intentionally:

(1) makes or utters a written instrument in such a manner that it purports to have been made:

(A) by another person;

(B) at another time;

(C) with different provisions; or

(D) by authority of one who did not give authority; or

(2) possesses more than one (1) written instrument knowing that the written instruments were made in a manner that they purport to have been made:

(A) by another person;

(B) at another time;

(C) with different provisions; or

(D) by authority of one who did not give authority;

commits counterfeiting, a Class D felony.

(b) A person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made:

(1) by another person;

(2) at another time;

(3) with different provisions; or

(4) by authority of one who did not give authority;

commits forgery, a Class C felony.

(c) This subsection applies to a person who applies for a driver's license (as defined in IC 9-13-2-48). A person who:

(1) knowingly or intentionally uses a false or fictitious name or gives a false or fictitious address in an application for a driver's license or for a renewal or a duplicate of a driver's license; or

(2) knowingly or intentionally makes a false statement or conceals a material fact or otherwise commits fraud in an application for a driver's license;

commits application fraud, a Class D felony.

(d) This subsection applies to a person who applies for a state identification card (as issued under IC 9-24-16). A person who:

(1) knowingly or intentionally uses false information in an application for an identification card or for a renewal or duplicate of an identification card; or

(2) knowingly or intentionally makes a false statement or otherwise commits fraud in an application for an identification card;

commits application fraud, a Class D felony.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.50; P.L.45-2005, SEC.2; P.L.106-2006, SEC.3.

IC 35-43-5-2.5

False government issued identification

Sec. 2.5. A person who knowingly or intentionally possesses, produces, or distributes a document not issued by a government entity that purports to be a government issued identification commits

a Class A misdemeanor.
As added by P.L.109-2006, SEC.1.

IC 35-43-5-3
Deception

Sec. 3. (a) A person who:

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

(2) knowingly or intentionally makes a false or misleading written statement with intent to obtain property, employment, or an educational opportunity;

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

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

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

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

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

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

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

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

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

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

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

commits deception, a Class A misdemeanor.

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

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

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.51; Acts 1978, P.L.144, SEC.5; P.L.182-1984, SEC.4; P.L.237-1989, SEC.2; P.L.247-1993, SEC.2; P.L.222-1996, SEC.1.

IC 35-43-5-3.5

Identity deception

Sec. 3.5. (a) Except as provided in subsection (c), a person who knowingly or intentionally obtains, possesses, transfers, or uses the identifying information of another person, including the identifying information of a person who is deceased:

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

(2) with intent to:

(A) harm or defraud another person;

(B) assume another person's identity; or

(C) profess to be another person;

commits identity deception, a Class D felony.

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

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

(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 identifying information of a person who is less than eighteen (18) years of age and is:

(A) the person's son or daughter;

(B) a dependent of the person;

(C) a ward of the person; or

(D) an individual for whom the person is a guardian.

(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.

As added by P.L.180-2001, SEC.2. Amended by P.L.22-2003, SEC.2; P.L.125-2006, SEC.9; P.L.137-2009, SEC.14.

IC 35-43-5-3.6

Terroristic deception

Sec. 3.6. A person who knowingly or intentionally obtains, possesses, transfers, or uses the identifying information of another person with intent to:

(1) commit terrorism; or

(2) obtain or transport a weapon of mass destruction;

commits terroristic deception, a Class C felony.

As added by P.L.123-2002, SEC.38.

IC 35-43-5-3.7

Notario publico deception

Sec. 3.7. A person who violates IC 33-42-2-10 commits notario publico deception, a Class A misdemeanor.

As added by P.L.85-2007, SEC.3.

IC 35-43-5-3.8

Synthetic identity deception

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).

(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 alcoholic beverage (as defined in IC 7.1-1-3-5); or

(2) a minor (as defined in IC 35-49-1-4) who uses the synthetic 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 on 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.

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

As added by P.L.137-2009, SEC.15.

IC 35-43-5-4

Fraud

Sec. 4. A person who:

(1) with intent to defraud, obtains property by:

(A) using a credit card, knowing that the credit card was unlawfully obtained or retained;

(B) using a credit card, knowing that the credit card is forged, revoked, or expired;

(C) using, without consent, a credit card that was issued to another person;

(D) representing, without the consent of the credit card holder, that the person is the authorized holder of the credit card; or

(E) representing that the person is the authorized holder of a credit card when the card has not in fact been issued;

(2) being authorized by an issuer to furnish property upon presentation of a credit card, fails to furnish the property and, with intent to defraud the issuer or the credit card holder, represents in writing to the issuer that the person has furnished the property;

(3) being authorized by an issuer to furnish property upon presentation of a credit card, furnishes, with intent to defraud the issuer or the credit card holder, property upon presentation of a credit card, knowing that the credit card was unlawfully obtained or retained or that the credit card is forged, revoked, or expired;

(4) not being the issuer, knowingly or intentionally sells a credit card;

(5) not being the issuer, receives a credit card, knowing that the credit card was unlawfully obtained or retained or that the credit card is forged, revoked, or expired;

(6) with intent to defraud, receives a credit card as security for debt;

(7) receives property, knowing that the property was obtained in violation of subdivision (1) of this section;

(8) with intent to defraud the person's creditor or purchaser, conceals, encumbers, or transfers property;

(9) with intent to defraud, damages property; or

(10) knowingly or intentionally:

(A) sells;

(B) rents;

(C) transports; or

(D) possesses;

a recording for commercial gain or personal financial gain that does not conspicuously display the true name and address of the

manufacturer of the recording;

commits fraud, a Class D felony.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.52; Acts 1978, P.L.82, SEC.3; P.L.180-1991, SEC.9; P.L.193-1991, SEC.3; P.L.1-1992, SEC.180; P.L.180-2001, SEC.3; P.L.181-2005, SEC.6.

IC 35-43-5-4.3

Unlawful possession of a card skimming device

Sec. 4.3. (a) As used in this section, "card skimming device" means a device that is designed to read information encoded on a credit card. The term includes a device designed to read, record, or transmit information encoded on a credit card:

(1) directly from a credit card; or

(2) from another device that reads information directly from a credit card.

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

(1) identity deception (IC 35-43-5-3.5);

(2) synthetic identity deception (IC 35-43-5-3.8);

(3) fraud (IC 35-43-5-4); or

(4) terroristic deception (IC 35-43-5-3.6);

commits unlawful possession of a card skimming device. Unlawful possession of a card skimming device under subdivision (1), (2), or (3) is a Class D felony. Unlawful possession of a card skimming device under subdivision (4) is a Class C felony.

As added by P.L.125-2006, SEC.10. Amended by P.L.137-2009, SEC.16.

IC 35-43-5-4.5

Insurance fraud; insurance application fraud

Sec. 4.5. (a) A person who, knowingly and with intent to defraud:

(1) makes, utters, presents, or causes to be presented to an insurer or an insurance claimant, a claim statement that contains false, incomplete, or misleading information concerning the claim;

(2) presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, an oral, a written, or an electronic statement that the person knows to contain materially false information as part of, in support of, or concerning a fact that is material to:

(A) the rating of an insurance policy;

(B) a claim for payment or benefit under an insurance policy;

(C) premiums paid on an insurance policy;

(D) payments made in accordance with the terms of an insurance policy;

(E) an application for a certificate of authority;

(F) the financial condition of an insurer; or

(G) the acquisition of an insurer;

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

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

(4) removes:

(A) the assets;

(B) the record of assets, transactions, and affairs; or

(C) a material part of the assets or the record of assets, transactions, and affairs;

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

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

(A) the transaction of insurance or reinsurance;

(B) the conduct of business activities by an insurer or another entity regulated under IC 27; or

(C) the formation, acquisition, or dissolution of an insurer or another entity regulated under IC 27;

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

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

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

(2) the:

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

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

is at least two thousand five hundred dollars ($2,500).

(c) A person who knowingly and with intent to defraud makes a material misstatement in support of an application for the issuance of an insurance policy commits insurance application fraud, a Class A misdemeanor.

As added by P.L.181-2005, SEC.7.

IC 35-43-5-5

Check deception

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As added by Acts 1978, P.L.144, SEC.6. Amended by Acts 1981, P.L.303, SEC.1; P.L.268-1983, SEC.2; P.L.328-1983, SEC.1; P.L.298-1989, SEC.1; P.L.42-1993, SEC.96; P.L.300-1995, SEC.1; P.L.85-2003, SEC.1.

IC 35-43-5-6

Utilizing a device or scheme to avoid being assessed for full amount of services received from utility or cable TV service provider

Sec. 6. (a) A customer who utilizes any device or scheme to avoid being assessed for the full amount of services received from a utility or a cable TV service provider commits a Class B infraction.

(b) Evidence that a customer's metering device has been altered, removed, or bypassed without the knowledge of or notification to the utility is prima facie evidence that the customer has utilized a device or scheme to avoid being assessed for the full amount of services received from the utility.

(c) Evidence that access to services of a utility or a cable TV service provider has been obtained without authority from the utility or the cable TV service provider constitutes prima facie evidence that the person benefiting from the access has utilized a device or scheme to avoid being assessed for the full amount of services received from the utility or the cable TV service provider.

As added by P.L.321-1983, SEC.5. Amended by P.L.324-1985, SEC.1.

IC 35-43-5-6.5

Sale of kit or device for unauthorized use of cable television system services

Sec. 6.5. (a) A person who manufactures, distributes, sells, leases, or offers for sale or lease:

(1) a device; or

(2) a kit of parts to construct a device;

designed in whole or in part to intercept, unscramble, or decode a transmission by a cable television system with the intent that the device or kit be used to obtain cable television system services without full payment to the cable television system commits a Class D felony.

(b) The sale or distribution by a person of:

(1) any device; or

(2) a kit of parts to construct a device;

described in subsection (a) constitutes prima facie evidence of a violation of subsection (a) if, before or at the time of sale or distribution, the person advertised or indicated that the device or the assembled kit will enable a person to receive cable television system service without making full payment to the cable television system.

As added by P.L.222-1996, SEC.2.

IC 35-43-5-7

Welfare fraud

Sec. 7. (a) A person who knowingly or intentionally:

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

(2) acquires, possesses, uses, transfers, sells, trades, issues, or

disposes of:

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

(B) public relief or assistance;

except as authorized by law;

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

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

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

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

(b) The offense is:

(1) a Class D felony if:

(A) the amount of public relief or assistance involved is more than two hundred fifty dollars ($250) but less than two thousand five hundred dollars ($2,500); or

(B) the amount involved is not more than two hundred fifty dollars ($250) and the person has a prior conviction of welfare fraud under this section; and

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

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

(1) his conviction; and

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

As added by P.L.182-1984, SEC.5.

IC 35-43-5-7.1

Medicaid fraud

Sec. 7.1. (a) Except as provided in subsection (b), a person who knowingly or intentionally:

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

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

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

(4) alters with the intent to defraud or falsifies documents or records of a provider (as defined in 42 CFR 1000.30) that are

required to be kept under the Medicaid program; or

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

commits Medicaid fraud, a Class D felony.

(b) The offense described in subsection (a) is a Class C felony if the fair market value of the offense is at least one hundred thousand dollars ($100,000).

As added by P.L.10-1994, SEC.8. Amended by P.L.273-1999, SEC.179; P.L.1-2006, SEC.531.

IC 35-43-5-7.2

Insurance fraud

Sec. 7.2. (a) Except as provided in subsection (b), a person who knowingly or intentionally:

(1) files a children's health insurance program claim, including an electronic claim, in violation of IC 12-17.6;

(2) obtains payment from the children's health insurance program under IC 12-17.6 by means of a false or misleading oral or written statement or other fraudulent means;

(3) acquires a provider number under the children's health insurance program except as authorized by law;

(4) alters with intent to defraud or falsifies documents or records of a provider (as defined in 42 CFR 1002.301) that are required to be kept under the children's health insurance program; or

(5) conceals information for the purpose of applying for or receiving unauthorized payments from the children's health insurance program;

commits insurance fraud, a Class D felony.

(b) The offense described in subsection (a) is a Class C felony if the fair market value of the offense is at least one hundred thousand dollars ($100,000).

As added by P.L.273-1999, SEC.180.

IC 35-43-5-7.3

Repealed

(*Repealed by P.L.255-2003, SEC.55.)*

IC 35-43-5-8

Fraud on financial institutions

Sec. 8. (a) A person who knowingly executes, or attempts to execute, a scheme or artifice:

(1) to defraud a state or federally chartered or federally insured financial institution; or

(2) to obtain any of the money, funds, credits, assets, securities, or other property owned by or under the custody or control of a state or federally chartered or federally insured financial institution by means of false or fraudulent pretenses, representations, or promises;

commits a Class C felony.

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

(1) an institution with accounts insured by the Federal Deposit Insurance Corporation;

(2) a credit union with accounts insured by the National Credit Union Administration Board;

(3) a federal home loan bank or a member, as defined in Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), as in effect on December 31, 1990, of the Federal Home Loan Bank System; or

(4) a bank, banking association, land bank, intermediate credit bank, bank for cooperatives, production credit association, land bank association, mortgage association, trust company, savings bank, or other banking or financial institution organized or operating under the laws of the United States or of the state.

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

As added by P.L.187-1984, SEC.1. Amended by P.L.8-1991, SEC.35; P.L.10-2006, SEC.80 and P.L.57-2006, SEC.80.

IC 35-43-5-9

Falsely representing entity as disadvantaged or women owned business enterprise

Sec. 9. (a) A person who knowingly or intentionally falsely represents any entity as a disadvantaged business enterprise (as defined in IC 5-16-6.5-1) or a women owned business enterprise (as defined in IC 5-16-6.5-3) in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5-2) designed to assist disadvantaged business enterprises or women owned business enterprises in obtaining contracts with public agencies for the provision of goods and services commits a Class D felony.

(b) A person who knowingly or intentionally falsely represents an entity with which the person will subcontract all or part of a contract with a public agency (as defined in IC 5-16-6.5-2) as a disadvantaged business enterprise (as defined in IC 5-16-6.5-1) or a women owned enterprise (as defined in IC 5-16-16.5-3) in order to qualify for certification as an eligible bidder under a program conducted by a public agency designed to assist disadvantaged business enterprises or women owned enterprises in obtaining contracts with public agencies for the provision of goods and services commits a Class D felony.

As added by P.L.70-1987, SEC.2. Amended by P.L.71-1989, SEC.3.

IC 35-43-5-10

Repealed

(*Repealed by P.L.247-1993, SEC.3.)*

IC 35-43-5-11

Government contract procurement through false information

Sec. 11. A person who knowingly or intentionally provides false

information to a governmental entity to obtain a contract from the governmental entity commits a Class A misdemeanor. However, the offense is a Class D felony if the provision of false information results in financial loss to the governmental entity.
As added by P.L.29-1993, SEC.5.

IC 35-43-5-12
Check fraud

Sec. 12. (a) As used in this section, "financial institution" refers to a state or federally chartered bank, savings bank, savings association, or credit union.

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

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

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

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

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

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

(2) by:

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

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

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

commits check fraud, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this section or the aggregate amount of property obtained is at least twenty-five thousand dollars ($25,000).
As added by P.L.161-1994, SEC.1. Amended by P.L.79-1998, SEC.105.

IC 35-43-5-13
Deception involving out of hospital do not resuscitate declarations

Sec. 13. Certain offenses concerning forgery and other deceptions involving out of hospital do not resuscitate declarations and orders are described in IC 16-36-5.
As added by P.L.148-1999, SEC.13.

IC 35-43-5-14
Possession of a fraudulent sales document

Sec. 14. (a) A person who, with intent to defraud, possesses:

(1) a retail sales receipt;

(2) a label or other item with a universal product code (UPC); or

(3) a label or other item that contains a product identification code that applies to an item other than the items to which the label or other item applies;

commits possession of a fraudulent sales document, a Class A misdemeanor.

(b) The offense under subsection (a) is a Class D felony if the person possesses at least fifteen (15):

(1) retail sales receipts;

(2) labels containing a universal product code (UPC);

(3) labels containing another product identification code; or

(4) of any combination of the items described in subdivisions (1) through (3).

As added by P.L.84-2001, SEC.3.

IC 35-43-5-15

Possession of a fraudulent sales document manufacturing device

Sec. 15. A person who, with intent to defraud, possesses a device to make retail sales receipts, universal product codes (UPC), or other product identification codes, commits possession of a fraudulent sales document manufacturing device, a Class A misdemeanor.

As added by P.L.84-2001, SEC.4.

IC 35-43-5-16

Making a false sales document

Sec. 16. A person who, with intent to defraud:

(1) makes or puts a false universal product code (UPC) or another product identification code on property displayed or offered for sale; or

(2) makes a false sales receipt;

commits making a false sales document, a Class D felony.

As added by P.L.84-2001, SEC.5.

IC 35-43-5-17

Delivery of a false sales document

Sec. 17. A person who, with intent to defraud, delivers a:

(1) false sales receipt;

(2) duplicate of a sales receipt; or

(3) label or other item with a false universal product code (UPC) or other product identification code;

to another person commits delivery of a false sales document, a Class D felony.

As added by P.L.84-2001, SEC.6.

IC 35-43-5-18

Possession of device or substance to interfere with drug or alcohol screening test

Sec. 18. A person who knowingly or intentionally possesses a:

(1) device; or

(2) substance;

designed or intended to be used to interfere with a drug or alcohol

screening test commits possession of a device or substance used to interfere with a drug or alcohol screening test, a Class B misdemeanor.
As added by P.L.171-2005, SEC.2.

IC 35-43-5-19
Interfering with drug or alcohol screening test

Sec. 19. A person who interferes with or attempts to interfere with a drug or alcohol screening test by:

(1) using a:
(A) device; or
(B) substance;
(2) substituting a human bodily substance that is tested in a drug or alcohol screening test; or
(3) adulterating a substance used in a drug or alcohol screening test;

commits interfering with a drug or alcohol screening test, a Class B misdemeanor.
As added by P.L.171-2005, SEC.3.

IC 35-43-5-20
Inmate fraud

Sec. 20. (a) As used in this section, "inmate" means a person who is confined in:

(1) the custody of:
(A) the department of correction; or
(B) a sheriff;
(2) a county jail; or
(3) a secure juvenile facility.

(b) An inmate who, with the intent of obtaining money or other property from a person who is not an inmate, knowingly or intentionally:

(1) makes a misrepresentation to a person who is not an inmate and obtains or attempts to obtain money or other property from the person who is not an inmate; or
(2) obtains or attempts to obtain money or other property from the person who is not an inmate through a misrepresentation made by another person;

commits inmate fraud, a Class C felony.
As added by P.L.81-2008, SEC.5.

IC 35-43-6

Chapter 6. Home Improvement Fraud

IC 35-43-6-1

Application of chapter

Sec. 1. This chapter applies only to residential property, which means real property used in whole or in part as a dwelling by a consumer and includes all fixtures to, structures on, and improvements to the real property.

As added by P.L.251-1987, SEC.4.

IC 35-43-6-2

"Consumer" defined

Sec. 2. As used in the chapter, "consumer" means an individual who owns, leases, or rents the residential property that is the subject of a home improvement contract.

As added by P.L.251-1987, SEC.4.

IC 35-43-6-3

"Home improvement" defined

Sec. 3. As used in this chapter, "home improvement" means any alteration, repair, or other modification of residential property. However, this chapter does not apply to the original construction of a dwelling.

As added by P.L.251-1987, SEC.4.

IC 35-43-6-4

"Home improvement contract" defined

Sec. 4. As used in this chapter, "home improvement contract" means an oral or written agreement between a home improvement supplier and a consumer to make a home improvement and for which the contract price exceeds one hundred fifty dollars ($150). Multiple contracts entered into by a home improvement supplier with a consumer are considered a home improvement contract for the purposes of this chapter if the multiple contracts arise from the same transaction.

As added by P.L.251-1987, SEC.4.

IC 35-43-6-5

"Home improvement contract price" defined

Sec. 5. As used in this chapter, "home improvement contract price" means the amount actually charged for the services, materials, and work to be performed under the home improvement contract but does not include financing costs, loan consolidation amounts, taxes, and governmental fees paid by or on behalf of the consumer, amounts returned to or on behalf of the consumer, or similar costs not related to the home improvement.

As added by P.L.251-1987, SEC.4.

IC 35-43-6-6

"Home improvement supplier" defined

Sec. 6. As used in this chapter, "home improvement supplier" means a person who engages in or solicits home improvement contracts whether or not the person deals directly with the consumer.
As added by P.L.251-1987, SEC.4.

IC 35-43-6-7

"Person" defined

Sec. 7. As used in this chapter, "person" means an individual, corporation, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.
As added by P.L.251-1987, SEC.4.

IC 35-43-6-8

Unconscionable contract

Sec. 8. For the purposes of this chapter, a home improvement contract is unconscionable if an unreasonable difference exists between the fair market value of the services, materials, and work performed or to be performed and the home improvement contract price.
As added by P.L.251-1987, SEC.4.

IC 35-43-6-9

Prima facie unconscionability

Sec. 9. For the purposes of this chapter, a home improvement contract price in excess of four (4) times greater than the fair market value of the services, materials, or work performed or to be performed is prima facie evidence of an unconscionable home improvement contract.
As added by P.L.251-1987, SEC.4.

IC 35-43-6-10

Fair market value of improvement

Sec. 10. For the purposes of this chapter, the fair market value of a home improvement is that amount which in commercial judgment or under usage of trade would be reasonable for services, materials, and work of similar quality and workmanship.
As added by P.L.251-1987, SEC.4.

IC 35-43-6-11

Determination of fair market value

Sec. 11. For the purposes of this chapter, fair market value shall be determined as of the time either the home improvement contract was formed or at the time any of the work commenced under the home improvement contract, whichever is earlier. However, if such evidence is not readily available, the fair market value prevailing within any reasonable time before or after the time described, which in commercial judgment or under usage of trade would serve as a reasonable substitute, may be used.
As added by P.L.251-1987, SEC.4.

IC 35-43-6-12

Home improvement fraud; offense

Sec. 12. (a) A home improvement supplier who enters into a home improvement contract and knowingly:

(1) misrepresents a material fact relating to:

(A) the terms of the home improvement contract; or

(B) a preexisting or existing condition of any part of the property involved, including a misrepresentation concerning the threat of:

(i) fire; or

(ii) structural damage;

if the property is not repaired;

(2) creates or confirms a consumer's impression that is false and that the home improvement supplier does not believe to be true;

(3) promises performance that the home improvement supplier does not intend to perform or knows will not be performed;

(4) uses or employs any deception, false pretense, or false promise to cause a consumer to enter into a home improvement contract;

(5) enters into an unconscionable home improvement contract with a home improvement contract price of four thousand dollars ($4,000) or more, but less than seven thousand dollars ($7,000);

(6) misrepresents or conceals the home improvement supplier's:

(A) real name;

(B) business name;

(C) physical or mailing business address; or

(D) telephone number;

(7) upon request by the consumer, fails to provide the consumer with any copy of a written warranty or guarantee that states:

(A) the length of the warranty or guarantee;

(B) the home improvement that is covered by the warranty or guarantee; or

(C) how the consumer could make a claim for a repair under the warranty or guarantee;

(8) uses a product in a home improvement that has been diluted, modified, or altered in a manner that would void the manufacturer's warranty of the product without disclosing to the consumer the reasons for the dilution, modification, or alteration and that the manufacturer's warranty may be compromised; or

(9) falsely claims to a consumer that the home improvement supplier:

(A) was referred to the consumer by a contractor who previously worked for the consumer;

(B) is licensed, certified, or insured; or

(C) has obtained all necessary permits or licenses before starting a home improvement;

commits home improvement fraud, a Class B misdemeanor, except as provided in section 13 of this chapter.

(b) A home improvement supplier who, with the intent to enter into a home improvement contract, knowingly:

(1) damages the property of a consumer;

(2) does work on the property of a consumer without the consumer's prior authorization;

(3) misrepresents that the supplier or another person is an employee or agent of the federal government, the state, a political subdivision of the state, or any other governmental agency or entity; or

(4) misrepresents that the supplier or another person is an employee or agent of any public or private utility;

commits a Class A misdemeanor, except as provided in section 13(b) of this chapter.

As added by P.L.251-1987, SEC.4. Amended by P.L.81-2006, SEC.1.

IC 35-43-6-13

Enhanced offenses

Sec. 13. (a) The offense in section 12(a) of this chapter is a Class A misdemeanor:

(1) in the case of an offense under section 12(a)(1) through 12(a)(4) or 12(a)(6) through 12(a)(9), if the home improvement contract price is one thousand dollars ($1,000) or more;

(2) for the second or subsequent offense under this chapter or in another jurisdiction for an offense that is substantially similar to another offense described in this chapter;

(3) if two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars ($1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention; or

(4) if, in a violation of section 12(a)(5) of this chapter, the home improvement contract price is at least seven thousand dollars ($7,000), but less than ten thousand dollars ($10,000).

(b) The offense in section 12 of this chapter is a Class D felony:

(1) if, in a violation of section 12(a)(5) of this chapter, the home improvement contract price is more than ten thousand dollars ($10,000);

(2) if, in a violation of:

(A) section 12(a)(1) through 12(a)(5); or

(B) section 12(a)(7) through 12(a)(9);

of this chapter, the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars ($10,000) or less;

(3) if, in a violation of section 12(b) of this chapter, the consumer is at least sixty (60) years of age; or

(4) if the home improvement supplier violates more than one (1) subdivision of section 12(a) of this chapter.

(c) The offense in section 12(a) of this chapter is a Class C felony:

(1) if, in a violation of:

(A) section 12(a)(1) through 12(a)(5); or

(B) section 12(a)(7) through 12(a)(9);

of this chapter, the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars ($10,000); or

(2) if, in a violation of:

(A) section 12(a)(1) through 12(a)(4); or

(B) section 12(a)(7) through 12(a)(9);

of this chapter, the consumer is at least sixty (60) years of age, and two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars ($1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.

As added by P.L.251-1987, SEC.4. Amended by P.L.81-2006, SEC.2; P.L.1-2007, SEC.232.

IC 35-43-6-14

Defense

Sec. 14. For the purposes of section 13 of this chapter, it is not a defense to home improvement fraud committed against a consumer who is at least sixty (60) years of age that the supplier reasonably believed the consumer to be an individual less than sixty (60) years of age.

As added by P.L.251-1987, SEC.4.

IC 35-43-7

Chapter 7. Impairment of Identification

IC 35-43-7-1

"Consent of the original manufacturer" defined

Sec. 1. As used in this chapter, "consent of the original manufacturer" includes consent:

(1) directly from the original manufacturer;

(2) from an appointed direct representative of the original manufacturer; or

(3) from a person operating under specific authorization of the original manufacturer.

As added by P.L.294-1989, SEC.3.

IC 35-43-7-2

"Identification number" defined

Sec. 2. As used in this chapter, "identification number" means a number, letter, or number and letter assigned to a product by the manufacturer of the product for the purpose of identifying the item.

As added by P.L.294-1989, SEC.3.

IC 35-43-7-3

"Product" defined

Sec. 3. As used in this chapter, "product" means the following items:

(1) Radio.

(2) Piano.

(3) Phonograph.

(4) Sewing machine.

(5) Washing machine.

(6) Typewriter.

(7) Adding machine.

(8) Comptometer.

(9) Bicycle.

(10) Safe.

(11) Vacuum cleaner.

(12) Dictaphone.

(13) Watch.

(14) Watch movement.

(15) Watch case.

(16) Any mechanical or electrical device, appliance, contrivance, material, piece of apparatus, or equipment not described in subdivisions (1) through (15).

(17) Integrated chip or panel.

(18) Printed circuit.

(19) Any other part of a computer.

As added by P.L.294-1989, SEC.3.

IC 35-43-7-4

Impairment of identification

Sec. 4. A person who intentionally or knowingly conceals, alters, damages, or removes an identification number of a product with the intent to conceal the identity of the product and without the consent of the original manufacturer of the product commits impairment of identification, a Class A misdemeanor.
As added by P.L.294-1989, SEC.3.

IC 35-43-7-5
Receiving unidentified property

Sec. 5. A person who intentionally or knowingly receives or possesses a product on which the identification number of the product has been concealed, altered, damaged, or removed with the intent to conceal the identity of the product and without the consent of the original manufacturer of the product commits receiving unidentified property, a Class A misdemeanor.
As added by P.L.294-1989, SEC.3.

IC 35-43-8

Chapter 8. Timber Spiking

IC 35-43-8-1

"Timber" defined

Sec. 1. As used in this chapter, "timber" includes standing or felled trees and logs that can be used for any of the following:

(1) Sawing or processing into lumber for building or structural purposes.

(2) Posts, poles, bolts, pulpwood, or cordwood.

(3) The manufacture of wood products.

As added by P.L.139-1992, SEC.1.

IC 35-43-8-2

Criminal offense; punishment

Sec. 2. A person who recklessly, knowingly, or intentionally, without claim or right or consent of the owner, drives, places, or fastens in timber a device of metal, ceramic, or other substance sufficiently hard to damage equipment used in the processing of timber into wood products, with the intent to hinder the felling, logging, or processing of timber, is guilty of a crime and may be sentenced under this chapter.

As added by P.L.139-1992, SEC.1.

IC 35-43-8-3

Penalties; attorney's fees and restitution

Sec. 3. (a) A person who violates section 2 of this chapter commits a Class C felony if the violation causes bodily injury to another person.

(b) A person who violates section 2 of this chapter commits a Class D felony if the violation does not cause bodily injury to another person.

(c) In addition to a penalty imposed under subsection (a) or (b), the court may order a person convicted of violating section 2 of this chapter to pay attorney's fees and restitution to the owner of property damaged because of the action of the person.

As added by P.L.139-1992, SEC.1.

IC 35-43-8-4

Infractions

Sec. 4. A person commits a Class A infraction who:

(1) possesses a device of metal, ceramic, or other substance commonly used to damage saws, wood processing, manufacturing, or transportation equipment with the intent to use the device to hinder the logging or the processing of timber; or

(2) possesses a chemical or biological substance, mechanical equipment, or a tool with the intent to use the substance, equipment, or tool or permit the use of the substance, equipment, or tool to damage timber processing, manufacturing,

or transportation equipment.

As added by P.L.139-1992, SEC.1.

IC 35-43-9

Chapter 9. Conversion or Misappropriation of Title Insurance Escrow Funds

IC 35-43-9-1

"Party" defined

Sec. 1. As used in this chapter, "party" means an individual who is:

(1) buying;
(2) selling; or
(3) refinancing;

a dwelling in a residential real property transaction.

As added by P.L.300-1995, SEC.2.

IC 35-43-9-2

"Person" defined

Sec. 2. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, a firm, an association, or another organization.

As added by P.L.300-1995, SEC.2.

IC 35-43-9-3

"Residential real property transaction" defined

Sec. 3. As used in this chapter, "residential real property transaction" means the purchase, sale, or refinancing of a dwelling that has been or will be the residence of a party in the purchase, sale, or refinancing.

As added by P.L.300-1995, SEC.2.

IC 35-43-9-4

"Title insurance agent" defined

Sec. 4. As used in this chapter, "title insurance agent" means a person who holds a limited lines producer's license issued under IC 27-1-15.6-18(4) and disburses funds from a title insurance escrow account to a party in connection with a residential real property transaction.

As added by P.L.300-1995, SEC.2. Amended by P.L.132-2001, SEC.25; P.L.178-2003, SEC.97.

IC 35-43-9-5

"Title insurance escrow account" defined

Sec. 5. As used in this chapter, "title insurance escrow account" means an account in which written instruments, money, or other items are deposited and held in escrow or trust for disbursement to a party in connection with a residential real property transaction upon the performance of a specified condition or the happening of a certain event.

As added by P.L.300-1995, SEC.2.

IC 35-43-9-6

"Title insurer" defined

Sec. 6. As used in this chapter, "title insurer" means a person holding a valid certificate of authority issued under IC 27-7-3-6.

As added by P.L.300-1995, SEC.2.

IC 35-43-9-7

Violations

Sec. 7. (a) An officer, a director, or an employee of a title insurer, an individual associated with the title insurer as an independent contractor, or a title insurance agent who knowingly or intentionally:

(1) converts or misappropriates money received or held in a title insurance escrow account; or

(2) receives or conspires to receive money described in subdivision (1);

commits a Class D felony, except as provided in subsection (b).

(b) The offense is:

(1) a Class C felony if the amount of money:

(A) converted, misappropriated, or received; or

(B) for which there is a conspiracy;

is more than ten thousand dollars ($10,000) but less than one hundred thousand dollars ($100,000); and

(2) a Class B felony if the amount of money:

(A) converted, misappropriated, or received; or

(B) for which there is a conspiracy;

is at least one hundred thousand dollars ($100,000).

As added by P.L.300-1995, SEC.2.

IC 35-43-9-8

Notice of conviction

Sec. 8. The court shall direct the clerk of court to notify the Indiana department of insurance about a conviction of an offense under section 7 of this chapter.

As added by P.L.300-1995, SEC.2.

IC 35-43-9-9

Restitution

Sec. 9. In addition to any sentence or fine imposed for a conviction of an offense in section 7 of this chapter, the court shall order the person convicted to make restitution to the victim of the crime pursuant to IC 35-50-5-3.

As added by P.L.300-1995, SEC.2.

IC 35-43-10

Chapter 10. Legend Drug Deception

IC 35-43-10-1

Definitions

Sec. 1. The definitions in IC 25-26-14 apply throughout this chapter.

As added by P.L.212-2005, SEC.76.

IC 35-43-10-2

Application of chapter

Sec. 2. Except as provided by federal law or regulation, this chapter does not apply to a pharmaceutical manufacturer that is approved by the federal Food and Drug Administration.

As added by P.L.212-2005, SEC.76.

IC 35-43-10-3

Legend drug deception; penalty

Sec. 3. A person who knowingly or intentionally:

(1) possesses a contraband legend drug;

(2) sells, delivers, or possesses with intent to sell or deliver a contraband legend drug;

(3) forges, counterfeits, or falsely creates a label for a legend drug or falsely represents a factual matter contained on a label of a legend drug; or

(4) manufactures, purchases, sells, delivers, brings into Indiana, or possesses a contraband legend drug;

commits legend drug deception, a Class D felony.

As added by P.L.212-2005, SEC.76.

IC 35-43-10-4

Legend drug deception resulting in death; penalty

Sec. 4. A person:

(1) who knowingly or intentionally manufactures, purchases, sells, delivers, brings into Indiana, or possesses a contraband legend drug; and

(2) whose act under subdivision (1) results in the death of an individual;

commits legend drug deception resulting in death, a Class A felony.

As added by P.L.212-2005, SEC.76.

IC 35-44

ARTICLE 44. OFFENSES AGAINST PUBLIC ADMINISTRATION

IC 35-44-1

Chapter 1. Bribery, Conflict of Interest, and Official Misconduct

IC 35-44-1-1

Bribery

Sec. 1. (a) A person who:

(1) confers, offers, or agrees to confer on a public servant, either before or after the public servant becomes appointed, elected, or qualified, any property except property the public servant is authorized by law to accept, with intent to control the performance of an act related to the employment or function of the public servant or because of any official act performed or to be performed by the public servant, former public servant, or person selected to be a public servant;

(2) being a public servant, solicits, accepts, or agrees to accept, either before or after the person becomes appointed, elected, or qualified, any property, except property the person is authorized by law to accept, with intent to control the performance of an act related to the person's employment or function as a public servant;

(3) confers, offers, or agrees to confer on a person any property, except property the person is authorized by law to accept, with intent to cause that person to control the performance of an act related to the employment or function of a public servant;

(4) solicits, accepts, or agrees to accept any property, except property the person is authorized by law to accept, with intent to control the performance of an act related to the employment or function of a public servant;

(5) confers, offers, or agrees to confer any property on a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, with intent that the person will fail to use the person's best efforts in connection with that contest, event, or exhibition;

(6) being a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, solicits, accepts, or agrees to accept any property with intent that the person will fail to use the person's best efforts in connection with that contest, event, or exhibition;

(7) being a witness or informant in an official proceeding or investigation, solicits, accepts, or agrees to accept any property, with intent to:

(A) withhold any testimony, information, document, or thing;

(B) avoid legal process summoning the person to testify or supply evidence; or

(C) absent the person from the proceeding or investigation to which the person has been legally summoned;

(8) confers, offers, or agrees to confer any property on a witness or informant in an official proceeding or investigation, with intent that the witness or informant:

(A) withhold any testimony, information, document, or thing;

(B) avoid legal process summoning the witness or informant to testify or supply evidence; or

(C) absent himself or herself from any proceeding or investigation to which the witness or informant has been legally summoned; or

(9) confers or offers or agrees to confer any property on an individual for:

(A) casting a ballot or refraining from casting a ballot; or

(B) voting for a political party, for a candidate, or for or against a public question;

in an election described in IC 3-5-1-2 or at a convention of a political party authorized under IC 3;

commits bribery, a Class C felony.

(b) It is no defense that the person whom the accused person sought to control was not qualified to act in the desired way.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.53; P.L.103-2005, SEC.41; P.L.222-2005, SEC.47; P.L.1-2006, SEC.532.

IC 35-44-1-2

Official misconduct

Sec. 2. A public servant who:

(1) knowingly or intentionally performs an act that the public servant is forbidden by law to perform;

(2) performs an act the public servant is not authorized by law to perform, with intent to obtain any property for himself or herself;

(3) knowingly or intentionally solicits, accepts, or agrees to accept from an appointee or employee any property other than what the public servant is authorized by law to accept as a condition of continued employment;

(4) knowingly or intentionally acquires or divests himself or herself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of the public servant's office that official action that has not been made public is contemplated;

(5) knowingly or intentionally fails to deliver public records and property in the public servant's custody to the public servant's successor in office when that successor qualifies; or

(6) knowingly or intentionally violates IC 36-6-4-17(b);

commits official misconduct, a Class D felony.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.54; Acts 1980, P.L.73, SEC.2; P.L.34-1992, SEC.2;

P.L.222-2005, SEC.48.

IC 35-44-1-3

Conflict of interest

Sec. 3. (a) A public servant who knowingly or intentionally:

(1) has a pecuniary interest in; or

(2) derives a profit from;

a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.

(b) This section does not prohibit a public servant from receiving compensation for:

(1) services provided as a public servant; or

(2) expenses incurred by the public servant as provided by law.

(c) This section does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the following conditions:

(1) If the:

(A) public servant is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity;

(B) functions and duties performed by the public servant for the governmental entity are unrelated to the contract or purchase; and

(C) public servant makes a disclosure under subsection (d)(1) through (d)(6).

(2) If the contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government.

(3) If the public servant:

(A) is an elected public servant or a member of the board of trustees of a state supported college or university; and

(B) makes a disclosure under subsection (d)(1) through (d)(6).

(4) If the public servant:

(A) was appointed by an elected public servant or the board of trustees of a state supported college or university; and

(B) makes a disclosure under subsection (d)(1) through (d)(7).

(5) If the public servant:

(A) acts in only an advisory capacity for a state supported college or university; and

(B) does not have authority to act on behalf of the college or university in a matter involving a contract or purchase.

(6) If the public servant:

(A) is employed by the governing body of a school corporation and the contract or purchase involves the employment of a dependent or the payment of fees to a dependent; and

(B) makes a disclosure under subsection (d)(1) through (d)(6).

(7) If the public servant is under the jurisdiction of the state ethics commission as provided in IC 4-2-6-2.5 and obtains from the state ethics commission, following full and truthful disclosure, written approval that the public servant will not or does not have a conflict of interest in connection with the contract or purchase under IC 4-2-6 and this section. The approval required under this subdivision must be:

(A) granted to the public servant before action is taken in connection with the contract or purchase by the governmental entity served; or

(B) sought by the public servant as soon after the contract or purchase as the public servant becomes aware of the facts that give rise to a question of conflict of interest.

(d) A disclosure required by this section must:

(1) be in writing;

(2) describe the contract or purchase to be made by the governmental entity;

(3) describe the pecuniary interest that the public servant has in the contract or purchase;

(4) be affirmed under penalty of perjury;

(5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase;

(6) be filed within fifteen (15) days after final action on the contract or purchase with:

(A) the state board of accounts; and

(B) if the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and

(7) contain, if the public servant is appointed, the written approval of the elected public servant (if any) or the board of trustees of a state supported college or university (if any) that appointed the public servant.

(e) The state board of accounts shall forward to the state ethics commission a copy of all disclosures filed with the board under IC 16-22-2 through IC 16-22-5, IC 16-23-1, or this section.

(f) The state ethics commission shall maintain an index of all disclosures received by the commission. The index must contain a listing of each public servant, setting forth the disclosures received by the commission made by that public servant.

(g) A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:

(1) the public servant; or

(2) a dependent of the public servant who:

(A) is under the direct or indirect administrative control of

the public servant; or

(B) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant.

(h) It is a defense in a prosecution under this section that the public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars ($250) or less.

(i) Notwithstanding subsection (d), a member of the board of trustees of a state supported college or university, or a person appointed by such a board of trustees, complies with the disclosure requirements of this chapter with respect to the member's or person's pecuniary interest in a particular type of contract or purchase which is made on a regular basis from a particular vendor if the member or person files with the state board of accounts and the board of trustees a statement of pecuniary interest in that particular type of contract or purchase made with that particular vendor. The statement required by this subsection must be made on an annual basis.

(j) This section does not apply to members of the governing board of a hospital organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1.

(k) As used in this section, "dependent" means any of the following:

(1) The spouse of a public servant.

(2) A child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is:

(A) unemancipated; and

(B) less than eighteen (18) years of age.

(3) Any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

As added by Acts 1978, P.L.144, SEC.7. Amended by Acts 1981, P.L.304, SEC.1; P.L.329-1983, SEC.1; P.L.66-1987, SEC.28; P.L.13-1987, SEC.16; P.L.183-1988, SEC.1; P.L.109-1988, SEC.3; P.L.197-1989, SEC.3; P.L.2-1993, SEC.185; P.L.22-1995, SEC.3; P.L.1-1997, SEC.149.

IC 35-44-1-4

Repealed

(*Repealed by P.L.329-1983, SEC.2.)*

IC 35-44-1-5

Sexual misconduct by service provider with detainee

Sec. 5. (a) As used in this section, "service provider" means a public servant or other person employed by a governmental entity or another person who provides goods or services to a person who is subject to lawful detention.

(b) A service provider who knowingly or intentionally engages in sexual intercourse or deviate sexual conduct with a person who is subject to lawful detention commits sexual misconduct, a Class C

felony.

(c) A service provider at least eighteen (18) years of age who knowingly or intentionally engages in sexual intercourse or deviate sexual conduct with a person who is:

(1) less than eighteen (18) years of age; and

(2) subject to lawful detention;

commits sexual misconduct, a Class B felony.

(d) It is not a defense that an act described in subsection (b) or (c) was consensual.

(e) This section does not apply to sexual intercourse or deviate sexual conduct between spouses.

As added by P.L.324-1987, SEC.1. Amended by P.L.69-2007, SEC.1.

IC 35-44-1-7

Profiteering from public service; pecuniary interest; application

Sec. 7. (a) As used in this section, "pecuniary interest" has the meaning set forth in section 3(g) of this chapter.

(b) A person who knowingly or intentionally:

(1) obtains a pecuniary interest in a contract or purchase with an agency within one (1) year after separation from employment or other service with the agency; and

(2) is not a public servant for the agency but who as a public servant approved, negotiated, or prepared on behalf of the agency the terms or specifications of:

(A) the contract; or

(B) the purchase;

commits profiteering from public service, a Class D felony.

(c) This section does not apply to negotiations or other activities related to an economic development grant, loan, or loan guarantee.

(d) This section does not apply if the person receives less than two hundred fifty dollars ($250) of the profits from the contract or purchase.

(e) It is a defense to a prosecution under this section that:

(1) the person was screened from any participation in the contract or purchase;

(2) the person has not received a part of the profits of the contract or purchase; and

(3) notice was promptly given to the agency of the person's interest in the contract or purchase.

As added by P.L.13-1987, SEC.17. Amended by P.L.9-1990, SEC.15; P.L.222-2005, SEC.49.

IC 35-44-2

Chapter 2. Perjury, False Reporting, Impersonation, and Ghost Employment

IC 35-44-2-1

Perjury

Sec. 1. (a) A person who:

(1) makes a false, material statement under oath or affirmation, knowing the statement to be false or not believing it to be true; or

(2) has knowingly made two (2) or more material statements, in a proceeding before a court or grand jury, which are inconsistent to the degree that one (1) of them is necessarily false;

commits perjury, a Class D felony.

(b) In a prosecution under subsection (a)(2) of this section:

(1) the indictment or information need not specify which statement is actually false; and

(2) the falsity of a statement may be established sufficient for conviction, by proof that the defendant made irreconcilably contradictory statements which are material to the point in question.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.55; Acts 1981, P.L.281, SEC.4.

IC 35-44-2-2

False reporting or informing

Sec. 2. (a) As used in this section, "consumer product" has the meaning set forth in IC 35-45-8-1.

(b) As used in this section, "misconduct" means a violation of a departmental rule or procedure of a law enforcement agency.

(c) A person who reports, by telephone, telegraph, mail, or other written or oral communication, that:

(1) the person or another person has placed or intends to place an explosive, a destructive device, or other destructive substance in a building or transportation facility;

(2) there has been or there will be tampering with a consumer product introduced into commerce; or

(3) there has been or will be placed or introduced a weapon of mass destruction in a building or a place of assembly;

knowing the report to be false commits false reporting, a Class D felony.

(d) A person who:

(1) gives a false report of the commission of a crime or gives false information in the official investigation of the commission of a crime, knowing the report or information to be false;

(2) gives a false alarm of fire to the fire department of a governmental entity, knowing the alarm to be false;

(3) makes a false request for ambulance service to an ambulance service provider, knowing the request to be false;

(4) gives a false report concerning a missing child (as defined in IC 10-13-5-4) or missing endangered adult (as defined in IC 12-7-2-131.3) or gives false information in the official investigation of a missing child or missing endangered adult knowing the report or information to be false;

(5) makes a complaint against a law enforcement officer to the state or municipality (as defined in IC 8-1-13-3) that employs the officer:

(A) alleging the officer engaged in misconduct while performing the officer's duties; and

(B) knowing the complaint to be false; or

(6) makes a false report of a missing person, knowing the report or information is false;

commits false informing, a Class B misdemeanor. However, the offense is a Class A misdemeanor if it substantially hinders any law enforcement process or if it results in harm to an innocent person.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.56; Acts 1977, P.L.341, SEC.1; P.L.326-1987, SEC.3; P.L.49-1989, SEC.23; P.L.156-2001, SEC.12; P.L.123-2002, SEC.39; P.L.2-2003, SEC.96; P.L.232-2003, SEC.1; P.L.140-2005, SEC.7; P.L.92-2007, SEC.5.

IC 35-44-2-3

Impersonation of a public servant

Sec. 3. A person who falsely represents that the person is a public servant, with intent to mislead and induce another person to submit to false official authority or otherwise to act to the other person's detriment in reliance on the false representation, commits impersonation of a public servant, a Class A misdemeanor. However, a person who falsely represents that the person is:

(1) a law enforcement officer; or

(2) an agent or employee of the department of state revenue, and collects any property from another person;

commits a Class D felony.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.57; P.L.6-1987, SEC.21; P.L.214-1997, SEC.1.

IC 35-44-2-4

Ghost employment

Sec. 4. (a) A public servant who knowingly or intentionally:

(1) hires an employee for the governmental entity that he serves; and

(2) fails to assign to the employee any duties, or assigns to the employee any duties not related to the operation of the governmental entity;

commits ghost employment, a Class D felony.

(b) A public servant who knowingly or intentionally assigns to an employee under his supervision any duties not related to the operation of the governmental entity that he serves commits ghost employment, a Class D felony.

(c) A person employed by a governmental entity who, knowing that he has not been assigned any duties to perform for the entity, accepts property from the entity commits ghost employment, a Class D felony.

(d) A person employed by a governmental entity who knowingly or intentionally accepts property from the entity for the performance of duties not related to the operation of the entity commits ghost employment, a Class D felony.

(e) Any person who accepts property from a governmental entity in violation of this section and any public servant who permits the payment of property in violation of this section are jointly and severally liable to the governmental entity for that property. The attorney general may bring a civil action to recover that property in the county where the governmental entity is located or the person or public servant resides.

(f) For the purposes of this section, an employee of a governmental entity who voluntarily performs services:

(1) that do not:

(A) promote religion;

(B) attempt to influence legislation or governmental policy; or

(C) attempt to influence elections to public office;

(2) for the benefit of:

(A) another governmental entity; or

(B) an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;

(3) with the approval of the employee's supervisor; and

(4) in compliance with a policy or regulation that:

(A) is in writing;

(B) is issued by the executive officer of the governmental entity; and

(C) contains a limitation on the total time during any calendar year that the employee may spend performing the services during normal hours of employment;

is considered to be performing duties related to the operation of the governmental entity.

As added by Acts 1977, P.L.340, SEC.58. Amended by P.L.68-1998, SEC.1.

IC 35-44-2-5

Manufacture and sale of official badge of law enforcement agency or fire department

Sec. 5. (a) A person who knowingly or intentionally manufactures and sells or manufactures and offers for sale:

(1) an official badge or a replica of an official badge that is currently used by a law enforcement agency or fire department of the state or of a political subdivision of the state; or

(2) a document that purports to be an official employment identification that is used by a law enforcement agency or fire

department of the state or of a political subdivision of the state; without the written permission of the chief executive officer of the law enforcement agency commits unlawful manufacture or sale of a police or fire insignia, a Class A misdemeanor.

(b) However, the offense described in subsection (a) is:

(1) a Class D felony if the person commits the offense with the knowledge or intent that the badge or employment identification will be used to further the commission of an offense under IC 35-44-2-3; and

(2) a Class B felony if the person commits the offense with the knowledge or intent that the badge or employment identification will be used to further the commission of an offense under IC 35-47-12.

(c) It is a defense to a prosecution under subsection (a)(1) if the area of the badge or replica that is manufactured and sold or manufactured and offered for sale as measured by multiplying the greatest length of the badge by the greatest width of the badge is:

(1) less than fifty percent (50%); or

(2) more than one hundred fifty percent (150%);

of the area of an official badge that is used by a law enforcement agency or fire department of the state or a political subdivision of the state as measured by multiplying the greatest length of the official badge by the greatest width of the official badge.

As added by P.L.110-2009, SEC.16.

IC 35-44-3

Chapter 3. Interference With, Fleeing, or Resisting Governmental Operations

IC 35-44-3-1

Repealed

(*Repealed by Acts 1978, P.L.144, SEC.13.)*

IC 35-44-3-2

Assisting a criminal; defenses

Sec. 2. (a) A person not standing in the relation of parent, child, or spouse to another person who has committed a crime or is a fugitive from justice who, with intent to hinder the apprehension or punishment of the other person, harbors, conceals, or otherwise assists the person commits assisting a criminal, a Class A misdemeanor. However, the offense is:

(1) a Class D felony if the person assisted has committed a Class B, Class C, or Class D felony; and

(2) a Class C felony if the person assisted has committed murder or a Class A felony, or if the assistance was providing a deadly weapon.

(b) It is not a defense to a prosecution under this section that the person assisted:

(1) has not been prosecuted for the offense;

(2) has not been convicted of the offense; or

(3) has been acquitted of the offense by reason of insanity.

However, the acquittal of the person assisted for other reasons may be a defense.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.60; P.L.159-2009, SEC.1.

IC 35-44-3-3 Version a

Resisting law enforcement; mandatory sentence

Note: This version of section amended by P.L.100-2010, SEC.6. See also following version of this section amended by P.L.102-2010, SEC.2.

Sec. 3. (a) A person who knowingly or intentionally:

(1) forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties;

(2) forcibly resists, obstructs, or interferes with the authorized service or execution of a civil or criminal process or order of a court; or

(3) flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop;

commits resisting law enforcement, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense under subsection (a) is a:

(1) Class D felony if:

(A) the offense is described in subsection (a)(3) and the person uses a vehicle to commit the offense; or

(B) while committing any offense described in subsection (a), the person draws or uses a deadly weapon, inflicts bodily injury on or otherwise causes bodily injury to another person, or operates a vehicle in a manner that creates a substantial risk of bodily injury to another person;

(2) Class C felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes serious bodily injury to another person; and

(3) Class B felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes the death of another person.

(c) For purposes of this section, a law enforcement officer includes an enforcement officer of the alcohol and tobacco commission and a conservation officer of the department of natural resources.

(d) If a person uses a vehicle to commit a felony offense under subsection (b)(1)(B), (b)(2), or (b)(3), as part of the criminal penalty imposed for the offense, the court shall impose a minimum executed sentence of at least:

(1) thirty (30) days, if the person does not have a prior unrelated conviction under this section;

(2) one hundred eighty (180) days, if the person has one (1) prior unrelated conviction under this section; or

(3) one (1) year, if the person has two (2) or more prior unrelated convictions under this section.

(e) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, the mandatory minimum sentence imposed under subsection (d) may not be suspended.

(f) If a person is convicted of an offense involving the use of a motor vehicle under:

(1) subsection (b)(1)(A), if the person exceeded the speed limit by at least twenty (20) miles per hour while committing the offense;

(2) subsection (b)(2); or

(3) subsection (b)(3);

the court may notify the bureau of motor vehicles to suspend or revoke the person's driver's license and all certificates of registration and license plates issued or registered in the person's name in accordance with IC 9-30-4-6(b)(3) for the period described in IC 9-30-4-6(d)(4) or IC 9-30-4-6(d)(5). The court shall inform the bureau whether the person has been sentenced to a term of incarceration. At the time of conviction, the court may obtain the person's current driver's license and return the license to the bureau of motor vehicles.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.61; Acts 1979, P.L.83, SEC.11; P.L.188-1984, SEC.1;

P.L.325-1987, SEC.1; P.L.248-1993, SEC.1; P.L.13-1998, SEC.1; P.L.143-2006, SEC.2; P.L.100-2010, SEC.6.

IC 35-44-3-3 Version b

Resisting law enforcement; mandatory sentence

Note: This version of section amended by P.L.102-2010, SEC.2. See also preceding version of this section amended by P.L.100-2010, SEC.6.

Sec. 3. (a) A person who knowingly or intentionally:

(1) forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties;

(2) forcibly resists, obstructs, or interferes with the authorized service or execution of a civil or criminal process or order of a court; or

(3) flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop;

commits resisting law enforcement, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense under subsection (a) is a:

(1) Class D felony if:

(A) the offense is described in subsection (a)(3) and the person uses a vehicle to commit the offense; or

(B) while committing any offense described in subsection (a), the person draws or uses a deadly weapon, inflicts bodily injury on or otherwise causes bodily injury to another person, or operates a vehicle in a manner that creates a substantial risk of bodily injury to another person;

(2) Class C felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes serious bodily injury to another person;

(3) Class B felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes the death of another person; and

(4) Class A felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes the death of a law enforcement officer while the law enforcement officer is engaged in the officer's official duties.

(c) For purposes of this section, a law enforcement officer includes an enforcement officer of the alcohol and tobacco commission and a conservation officer of the department of natural resources.

(d) If a person uses a vehicle to commit a felony offense under subsection (b)(1)(B), (b)(2), (b)(3), or (b)(4), as part of the criminal penalty imposed for the offense, the court shall impose a minimum executed sentence of at least:

(1) thirty (30) days, if the person does not have a prior unrelated

conviction under this section;

(2) one hundred eighty (180) days, if the person has one (1) prior unrelated conviction under this section; or

(3) one (1) year, if the person has two (2) or more prior unrelated convictions under this section.

(e) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, the mandatory minimum sentence imposed under subsection (d) may not be suspended.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.61; Acts 1979, P.L.83, SEC.11; P.L.188-1984, SEC.1; P.L.325-1987, SEC.1; P.L.248-1993, SEC.1; P.L.13-1998, SEC.1; P.L.143-2006, SEC.2; P.L.102-2010, SEC.2.

IC 35-44-3-3.5

Disarming a law enforcement officer

Sec. 3.5. (a) As used in this section, "officer" includes the following:

(1) A person employed by:

(A) the department of correction;

(B) a law enforcement agency;

(C) a probation department;

(D) a county jail; or

(E) a circuit, superior, county, probate, city, or town court;

who is required to carry a firearm in performance of the person's official duties.

(2) A law enforcement officer.

(b) A person who:

(1) knows that another person is an officer; and

(2) knowingly or intentionally takes or attempts to take a firearm (as defined in IC 35-47-1-5) or weapon that the officer is authorized to carry from the officer or from the immediate proximity of the officer:

(A) without the consent of the officer; and

(B) while the officer is engaged in the performance of his or her official duties;

commits disarming a law enforcement officer, a Class C felony. However, the offense is a Class B felony if it results in serious bodily injury to the officer, and the offense is a Class A felony if it results in death to the officer or if a firearm (as defined in IC 35-47-1-5) was taken and the offense results in serious bodily injury to the officer.

As added by P.L.64-2008, SEC.1.

IC 35-44-3-4

Obstruction of justice; exception

Sec. 4. (a) A person who:

(1) knowingly or intentionally induces, by threat, coercion, or false statement, a witness or informant in an official proceeding or investigation to:

(A) withhold or unreasonably delay in producing any testimony, information, document, or thing;

(B) avoid legal process summoning him to testify or supply evidence; or

(C) absent himself from a proceeding or investigation to which he has been legally summoned;

(2) knowingly or intentionally in an official criminal proceeding or investigation:

(A) withholds or unreasonably delays in producing any testimony, information, document, or thing after a court orders him to produce the testimony, information, document, or thing;

(B) avoids legal process summoning him to testify or supply evidence; or

(C) absents himself from a proceeding or investigation to which he has been legally summoned;

(3) alters, damages, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation;

(4) makes, presents, or uses a false record, document, or thing with intent that the record, document, or thing, material to the point in question, appear in evidence in an official proceeding or investigation to mislead a public servant; or

(5) communicates, directly or indirectly, with a juror otherwise than as authorized by law, with intent to influence the juror regarding any matter that is or may be brought before the juror;

commits obstruction of justice, a Class D felony.

(b) Subdivision (a)(2)(A) does not apply to:

(1) a person who qualifies for a special privilege under IC 34-46-4 with respect to the testimony, information, document, or thing; or

(2) a person who, as an:

(A) attorney;

(B) physician;

(C) member of the clergy; or

(D) husband or wife;

is not required to testify under IC 34-46-3-1.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.62; Acts 1981, P.L.301, SEC.2; Acts 1982, P.L.195, SEC.3; P.L.1-1998, SEC.197.

IC 35-44-3-5

Escape; failure to return to lawful detention following temporary leave

Sec. 5. (a) A person, except as provided in subsection (b), who intentionally flees from lawful detention commits escape, a Class C felony. However, the offense is a Class B felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

(b) A person who knowingly or intentionally violates a home detention order or intentionally removes an electronic monitoring device or GPS tracking device commits escape, a Class D felony.

(c) A person who knowingly or intentionally fails to return to lawful detention following temporary leave granted for a specified purpose or limited period commits failure to return to lawful detention, a Class D felony. However, the offense is a Class C felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.63; P.L.207-1986, SEC.1; P.L.17-1998, SEC.2; P.L.137-2001, SEC.11; P.L.116-2009, SEC.16.

IC 35-44-3-6

Failure to appear

Sec. 6. (a) A person who, having been released from lawful detention on condition that he appear at a specified time and place in connection with a charge of a crime, intentionally fails to appear at that time and place commits failure to appear, a Class A misdemeanor. However, the offense is a Class D felony if the charge was a felony charge.

(b) It is no defense that the accused person was not convicted of the crime with which he was originally charged.

(c) This section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.64.

IC 35-44-3-6.5

Failure to respond to a summons

Sec. 6.5. (a) A person who, having been issued:

(1) a complaint and summons in connection with an infraction or ordinance violation; or

(2) a summons, or summons and promise to appear, in connection with a misdemeanor violation;

notifying him to appear at a specific time and place, intentionally fails to appear at the specified time and place commits failure to respond to a summons, a Class C misdemeanor.

(b) It is no defense that judgment was entered in favor of the person in the infraction or ordinance proceeding or that the person was acquitted of the misdemeanor for which he was summoned to appear.

As added by Acts 1981, P.L.108, SEC.38. Amended by Acts 1982, P.L.204, SEC.37.

IC 35-44-3-7

Refusal to aid an officer

Sec. 7. A person who, when ordered by a law enforcement officer to assist the officer in the execution of the officer's duties, knowingly or intentionally, and without a reasonable cause, refuses to assist commits refusal to aid an officer, a Class B misdemeanor.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.65.

IC 35-44-3-8
Repealed
(*Repealed by P.L.191-2001, SEC.2.)*

IC 35-44-3-8.5
Obstructing an emergency medical person
Sec. 8.5. (a) A person who knowingly or intentionally obstructs or interferes with an emergency medical person performing or attempting to perform his emergency functions or duties as an emergency medical person commits obstructing an emergency medical person, a Class B misdemeanor.
(b) "Emergency medical person" means a person who holds a certificate issued by the Indiana emergency medical services commission to provide emergency medical services.
As added by Acts 1977, P.L.341, SEC.2.

IC 35-44-3-9
Trafficking with an inmate or child
Sec. 9. (a) As used in this section, "juvenile facility" means the following:
(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.
(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.
(b) Except as provided in subsection (d), a person who, without the prior authorization of the person in charge of a penal facility or juvenile facility knowingly or intentionally:
(1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility;
(2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility;
(3) delivers, or carries to a worksite with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew; or
(4) possesses in or carries into a penal facility or a juvenile facility:
(A) a controlled substance; or
(B) a deadly weapon;
commits trafficking with an inmate, a Class A misdemeanor.
(c) If the person who committed the offense under subsection (b) is an employee of:
(1) the department of correction; or
(2) a penal facility;
and the article is a cigarette or tobacco product (as defined in

IC 6-7-2-5), the court shall impose a mandatory five thousand dollar ($5,000) fine under IC 35-50-3-2, in addition to any term of imprisonment imposed under IC 35-50-3-2.

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

(1) a controlled substance;

(2) a deadly weapon; or

(3) a cellular telephone or other wireless or cellular communications device.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.67; Acts 1981, P.L.300, SEC.2; P.L.223-1996, SEC.1; P.L.183-1999, SEC.2; P.L.243-1999, SEC.2; P.L.30-2004, SEC.1; P.L.128-2009, SEC.2.

IC 35-44-3-9.3

Trafficking with an inmate outside a facility

Sec. 9.3. (a) As used in this section, "contraband" means the following:

(1) Alcohol.

(2) A cigarette or tobacco product.

(3) A controlled substance.

(4) An item that may be used as a weapon.

(b) As used in this section, "inmate outside a facility" means a person who is incarcerated in a penal facility or detained in a juvenile facility on a full-time basis as the result of a conviction or a juvenile adjudication but who has been or is being transported to another location to participate in or prepare for a judicial proceeding. The term does not include the following:

(1) An adult or juvenile pretrial detainee.

(2) A person serving an intermittent term of imprisonment or detention.

(3) A person serving a term of imprisonment or detention as:

(A) a condition of probation;

(B) a condition of a community corrections program;

(C) part of a community transition program;

(D) part of a reentry court program;

(E) part of a work release program; or

(F) part of a community based program that is similar to a program described in clauses (A) through (E).

(4) A person who has escaped from incarceration or walked away from secure detention.

(5) A person on temporary leave (as described in IC 11-10-9) or temporary release (as described in IC 11-10-10).

(c) A person who, with the intent of providing contraband to an inmate outside a facility:

(1) delivers contraband to an inmate outside a facility; or

(2) places contraband in a location where an inmate outside a facility could obtain the contraband;

commits trafficking with an inmate outside a facility, a Class A misdemeanor. However, the offense is a Class D felony if the

contraband is an item described in subsection (a)(3), and a Class C felony if the contraband is an item described in subsection (a)(4).
As added by P.L.173-2006, SEC.34.

IC 35-44-3-9.5
Possessing material capable of causing bodily injury by inmate

Sec. 9.5. A person who knowingly or intentionally while incarcerated in a penal facility possesses a device, equipment, a chemical substance, or other material that:

(1) is used; or
(2) is intended to be used;

in a manner that is readily capable of causing bodily injury commits a Class C felony. However, the offense is a Class B felony if the device, equipment, chemical substance, or other material is a deadly weapon.
As added by P.L.224-1996, SEC.1.

IC 35-44-3-9.6
Possessing cellular telephone or wireless or cellular communications device by an inmate in a county jail

Sec. 9.6. A person who knowingly or intentionally possesses a cellular telephone or other wireless or cellular communications device while incarcerated in a county jail commits a Class A misdemeanor.
As added by P.L.51-2010, SEC.1.

IC 35-44-3-10
Interference with jury service

Sec. 10. A person who knowingly or intentionally:

(1) dismisses his employee;
(2) deprives his employee of employment benefits; or
(3) threatens such a dismissal or deprivation;

because the employee has received or responded to a summons, served as a juror, or attended court for prospective jury service commits interference with jury service, a Class B misdemeanor.
As added by Acts 1977, P.L.26, SEC.20.

IC 35-44-3-11
Repealed

(*Repealed by Acts 1977, P.L.342, SEC.2.)*

IC 35-44-3-11.1
Interference with witness service

Sec. 11.1. A person who knowingly or intentionally:

(1) dismisses an employee;
(2) deprives an employee of employment benefits; or
(3) threatens such a dismissal or deprivation;

because the employee has received or responded to a subpoena in a criminal proceeding commits interference with witness service, a Class B misdemeanor.

As added by P.L.131-1985, SEC.18.

IC 35-44-3-12

Unlawful use of a police radio; exemptions; "police radio" defined

Sec. 12. (a) A person who knowingly or intentionally:

(1) possesses a police radio;

(2) transmits over a frequency assigned for police emergency purposes; or

(3) possesses or uses a police radio:

(A) while committing a crime;

(B) to further the commission of a crime; or

(C) to avoid detection by a law enforcement agency;

commits unlawful use of a police radio, a Class B misdemeanor.

(b) Subsection (a)(1) and (a)(2) do not apply to:

(1) a governmental entity;

(2) a regularly employed law enforcement officer;

(3) a common carrier of persons for hire whose vehicles are used in emergency service;

(4) a public service or utility company whose vehicles are used in emergency service;

(5) a person who has written permission from the chief executive officer of a law enforcement agency to possess a police radio;

(6) a person who holds an amateur radio license issued by the Federal Communications Commission if the person is not transmitting over a frequency assigned for police emergency purposes;

(7) a person who uses a police radio only in the person's dwelling or place of business;

(8) a person:

(A) who is regularly engaged in newsgathering activities;

(B) who is employed by a newspaper qualified to receive legal advertisements under IC 5-3-1, a wire service, or a licensed commercial or public radio or television station; and

(C) whose name is furnished by his employer to the chief executive officer of a law enforcement agency in the county in which the employer's principal office is located;

(9) a person engaged in the business of manufacturing or selling police radios; or

(10) a person who possesses or uses a police radio during the normal course of the person's lawful business.

(c) As used in this section, "police radio" means a radio that is capable of sending or receiving signals transmitted on frequencies assigned by the Federal Communications Commission for police emergency purposes and that:

(1) can be installed, maintained, or operated in a vehicle; or

(2) can be operated while it is being carried by an individual.

The term does not include a radio designed for use only in a dwelling.

As added by Acts 1977, P.L.342, SEC.1. Amended by P.L.162-1994, SEC.1.

IC 35-44-3-13

Lifetime parole violation

Sec. 13. (a) A person who is being supervised on lifetime parole (as described in IC 35-50-6-1) and who knowingly or intentionally violates a condition of lifetime parole that involves direct or indirect contact with a child less than sixteen (16) years of age or with the victim of a crime that was committed by the person commits a Class D felony if, at the time of the violation:

(1) the person's lifetime parole has been revoked two (2) or more times; or

(2) the person has completed the person's sentence, including any credit time the person may have earned.

(b) The offense described in subsection (a) is a Class C felony if the person has a prior unrelated conviction under this section.

As added by P.L.139-2006, SEC.5; P.L.140-2006, SEC.34; P.L.173-2006, SEC.35. Amended by P.L.1-2007, SEC.233; P.L.216-2007, SEC.49.

IC 35-44-4

Chapter 4. Interference With a Firefighter

IC 35-44-4-1

"Dispatched firefighter" defined

Sec. 1. As used in this chapter, "dispatched firefighter" means a member of:

(1) the fire company having jurisdiction over an emergency incident area; or

(2) a fire company that has entered into a mutual aid agreement with the fire company having jurisdiction over an emergency incident area;

who has been dispatched by the local fire department having jurisdiction over the particular emergency incident area.

As added by P.L.191-2001, SEC.1.

IC 35-44-4-2

"Emergency incident area" defined

Sec. 2. As used in this chapter, "emergency incident area" means the area surrounding a structure, vehicle, property, or area that is:

(1) defined by police or firefighters with flags, barricades, barrier tape, or other markers; or

(2) one hundred and fifty (150) feet in all directions from the perimeter of the emergency incident;

whichever is greater.

As added by P.L.191-2001, SEC.1.

IC 35-44-4-3

"Firefighter" defined

Sec. 3. As used in this chapter, "firefighter" has the meaning set forth in IC 9-18-34-1.

As added by P.L.191-2001, SEC.1.

IC 35-44-4-4

"Fire protective clothing and fire protective gear" defined

Sec. 4. As used in this chapter, "fire protective clothing and fire protective gear" includes any of the following items generally used by firefighters:

(1) Outer fire retardant clothing and headgear.

(2) Fire gloves.

(3) Selfcontained breathing apparatus.

(4) Emergency medical services protective gear.

(5) Hazardous materials protective gear.

As added by P.L.191-2001, SEC.1.

IC 35-44-4-5

Nonfirefighter's refusal to leave emergency incident area

Sec. 5. A person who is not a firefighter who knowingly or intentionally refuses to leave an emergency incident area immediately after being requested to do so by a firefighter or law

enforcement officer commits a Class A misdemeanor.
As added by P.L.191-2001, SEC.1.

IC 35-44-4-6
Firefighter's refusal to leave emergency incident area

Sec. 6. A firefighter who:

(1) has not been dispatched to an emergency incident area;
(2) enters an emergency incident area; and
(3) refuses to leave an emergency incident area immediately after being requested to do so by a dispatched firefighter or law enforcement officer;

commits a Class C infraction.
As added by P.L.191-2001, SEC.1.

IC 35-44-4-7
Misleading a firefighter

Sec. 7. A person other than a firefighter who, with intent to mislead a firefighter or law enforcement officer as to the person's status as a dispatched firefighter, knowingly or intentionally enters an emergency incident area while wearing, transporting, or otherwise possessing a uniform, fire protective clothing, or fire protective gear commits a Class A misdemeanor. However, the offense is a Class D felony if, as a proximate result of the person entering the emergency incident area, a person or firefighter suffers bodily injury (as defined in IC 35-41-1-4).
As added by P.L.191-2001, SEC.1.

IC 35-44-4-8
Intentional interference with firefighter

Sec. 8. A person who knowingly or intentionally obstructs or interferes with a firefighter performing or attempting to perform the firefighter's emergency functions or duties as a firefighter commits obstructing a firefighter, a Class A misdemeanor.
As added by P.L.191-2001, SEC.1.

IC 35-45

ARTICLE 45. OFFENSES AGAINST PUBLIC HEALTH, ORDER, AND DECENCY

IC 35-45-1

Chapter 1. Offenses Against Public Order

IC 35-45-1-1

Definitions

Sec. 1. As used in this chapter:

"Tumultuous conduct" means conduct that results in, or is likely to result in, serious bodily injury to a person or substantial damage to property.

"Unlawful assembly" means an assembly of five (5) or more persons whose common object is to commit an unlawful act, or a lawful act by unlawful means. Prior concert is not necessary to form an unlawful assembly.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.68.

IC 35-45-1-2

Rioting

Sec. 2. A person who, being a member of an unlawful assembly, recklessly, knowingly, or intentionally engages in tumultuous conduct commits rioting, a Class A misdemeanor. However, the offense is a Class D felony if it is committed while armed with a deadly weapon.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.69.

IC 35-45-1-3

Disorderly conduct

Sec. 3. (a) A person who recklessly, knowingly, or intentionally:

(1) engages in fighting or in tumultuous conduct;

(2) makes unreasonable noise and continues to do so after being asked to stop; or

(3) disrupts a lawful assembly of persons;

commits disorderly conduct, a Class B misdemeanor.

(b) The offense described in subsection (a) is a Class D felony if it:

(1) adversely affects airport security; and

(2) is committed in an airport (as defined in IC 8-21-1-1) or on the premises of an airport, including in a parking area, a maintenance bay, or an aircraft hangar.

(c) The offense described in subsection (a) is a Class D felony if it:

(1) is committed within five hundred (500) feet of:

(A) the location where a burial is being performed;

(B) a funeral procession, if the person described in

subsection (a) knows that the funeral procession is taking place; or

(C) a building in which:

(i) a funeral or memorial service; or

(ii) the viewing of a deceased person;

is being conducted; and

(2) adversely affects the funeral, burial, viewing, funeral procession, or memorial service.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.70; P.L.92-1988, SEC.8; P.L.123-2002, SEC.40; P.L.3-2006, SEC.1.

IC 35-45-1-4

Flag desecration

Sec. 4. (a) A person who knowingly or intentionally mutilates, defaces, burns, or tramples any United States flag, standard, or ensign commits flag desecration, a Class A misdemeanor.

(b) This section does not apply to a person who disposes of a flag in accordance with 36 U.S.C. 176(k).

As added by Acts 1977, P.L.26, SEC.22. Amended by P.L.163-1990, SEC.1.

IC 35-45-2

Chapter 2. Intimidation and Other Offenses Relating to Communications

IC 35-45-2-1

Intimidation

Sec. 1. (a) A person who communicates a threat to another person, with the intent:

(1) that the other person engage in conduct against the other person's will;

(2) that the other person be placed in fear of retaliation for a prior lawful act; or

(3) of causing:

(A) a dwelling, a building, or another structure; or

(B) a vehicle;

to be evacuated;

commits intimidation, a Class A misdemeanor.

(b) However, the offense is a:

(1) Class D felony if:

(A) the threat is to commit a forcible felony;

(B) the person to whom the threat is communicated:

(i) is a law enforcement officer;

(ii) is a judge or bailiff of any court;

(iii) is a witness (or the spouse or child of a witness) in any pending criminal proceeding against the person making the threat;

(iv) is an employee of a school corporation;

(v) is a community policing volunteer;

(vi) is an employee of a court;

(vii) is an employee of a probation department; or

(viii) is an employee of a community corrections program.

(C) the person has a prior unrelated conviction for an offense under this section concerning the same victim; or

(D) the threat is communicated using property, including electronic equipment or systems, of a school corporation or other governmental entity; and

(2) Class C felony if, while committing it, the person draws or uses a deadly weapon.

(c) "Threat" means an expression, by words or action, of an intention to:

(1) unlawfully injure the person threatened or another person, or damage property;

(2) unlawfully subject a person to physical confinement or restraint;

(3) commit a crime;

(4) unlawfully withhold official action, or cause such withholding;

(5) unlawfully withhold testimony or information with respect to another person's legal claim or defense, except for a reasonable claim for witness fees or expenses;

(6) expose the person threatened to hatred, contempt, disgrace, or ridicule;

(7) falsely harm the credit or business reputation of the person threatened; or

(8) cause the evacuation of a dwelling, a building, another structure, or a vehicle.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.71; Acts 1981, P.L.300, SEC.3; P.L.183-1984, SEC.6; P.L.325-1985, SEC.1; P.L.242-1993, SEC.3; P.L.164-1993, SEC.12; P.L.1-1994, SEC.169; P.L.241-2001, SEC.3; P.L.175-2003, SEC.3; P.L.3-2006, SEC.2.

IC 35-45-2-2

Harassment; "obscene message" defined

Sec. 2. (a) A person who, with intent to harass, annoy, or alarm another person but with no intent of legitimate communication:

(1) makes a telephone call, whether or not a conversation ensues;

(2) communicates with a person by telegraph, mail, or other form of written communication;

(3) transmits an obscene message, or indecent or profane words, on a Citizens Radio Service channel; or

(4) uses a computer network (as defined in IC 35-43-2-3(a)) or other form of electronic communication to:

(A) communicate with a person; or

(B) transmit an obscene message or indecent or profane words to a person;

commits harassment, a Class B misdemeanor.

(b) A message is obscene if:

(1) the average person, applying contemporary community standards, finds that the dominant theme of the message, taken as a whole, appeals to the prurient interest in sex;

(2) the message refers to sexual conduct in a patently offensive way; and

(3) the message, taken as a whole, lacks serious artistic, literary, political, or scientific value.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.72; Acts 1977, P.L.343, SEC.1; Acts 1978, P.L.82, SEC.4; P.L.216-1996, SEC.22.

IC 35-45-2-3

Unlawful use of a communications medium; definitions

Sec. 3. (a) A person who knowingly or intentionally:

(1) refuses to yield a party line upon request by another person who states that he wishes to make an emergency call from a telephone on that party line;

(2) refuses to yield a Citizens Radio Service channel upon request by another person who states that he wishes to make an emergency call on that channel; or

(3) obtains the use of a party line or Citizens Radio Service

channel by falsely stating that he wishes to make an emergency call;

commits unlawful use of a communications medium, a Class B misdemeanor.

(b) "Party line" means a common telephone line for two (2) or more subscribers.

(c) "Emergency call" means a telephone call or radio message in which the caller or sender reasonably believes that a human being or property is in jeopardy and that prompt summoning of aid is essential.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.73; Acts 1977, P.L.343, SEC.2.

IC 35-45-2-4

Unlawful disclosure

Sec. 4. (a) This section does not apply to an employee who discloses information under IC 35-33.5.

(b) An employee of a telegraph company who knowingly or intentionally discloses the contents of a message sent or received, to a person other than a sender or receiver or authorized agent of either, commits unlawful disclosure, a Class A infraction.

(c) An employee of a telephone company who knowingly or intentionally discloses the contents of a conversation over a line of the company commits unlawful disclosure, a Class A infraction.

As added by Acts 1977, P.L.26, SEC.23. Amended by P.L.161-1990, SEC.4.

IC 35-45-2-5

Interference with the reporting of a crime

Sec. 5. A person who, with the intent to commit, conceal, or aid in the commission of a crime, knowingly or intentionally interferes with or prevents an individual from:

(1) using a 911 emergency telephone system;

(2) obtaining medical assistance; or

(3) making a report to a law enforcement officer;

commits interference with the reporting of a crime, a Class A misdemeanor.

As added by P.L.71-2002, SEC.1.

IC 35-45-3

Chapter 3. Littering and Pollution

IC 35-45-3-1

Repealed

(*Repealed by P.L.137-2007, SEC.37.)*

IC 35-45-3-2

Littering a Class B infraction; littering as a Class A infraction when certain bodies of water involved; "refuse" defined; littering from a moving vehicle

Sec. 2. (a) A person who recklessly, knowingly, or intentionally places or leaves refuse on property of another person, except in a container provided for refuse, commits littering, a Class B infraction. However, the offense is a Class A infraction if the refuse is placed or left in, on, or within one hundred (100) feet of a body of water that is under the jurisdiction of the:

(1) department of natural resources; or

(2) United States Army Corps of Engineers.

Notwithstanding IC 34-28-5-4(a), a judgment of not more than one thousand dollars ($1,000) shall be imposed for each Class A infraction committed under this section.

(b) "Refuse" includes solid and semisolid wastes, dead animals, and offal.

(c) Evidence that littering was committed from a moving vehicle other than a public conveyance constitutes prima facie evidence that it was committed by the operator of that vehicle.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.75; P.L.155-1985, SEC.2; P.L.137-2007, SEC.36; P.L.231-2007, SEC.4.

IC 35-45-3-3

Throwing burning material from a moving motor vehicle

Sec. 3. A person who throws from a moving motor vehicle:

(1) a lighted cigarette, cigar, or match; or

(2) other burning material;

commits a Class A infraction.

As added by P.L.35-2002, SEC.1.

IC 35-45-4

Chapter 4. Indecent Acts and Prostitution

IC 35-45-4-1

Public indecency

Sec. 1. (a) A person who knowingly or intentionally, in a public place:

(1) engages in sexual intercourse;

(2) engages in deviate sexual conduct;

(3) appears in a state of nudity with the intent to arouse the sexual desires of the person or another person; or

(4) fondles the person's genitals or the genitals of another person;

commits public indecency, a Class A misdemeanor.

(b) A person at least eighteen (18) years of age who knowingly or intentionally, in a public place, appears in a state of nudity with the intent to be seen by a child less than sixteen (16) years of age commits public indecency, a Class A misdemeanor.

(c) However, the offense under subsection (a) or subsection (b) is a Class D felony if the person who commits the offense has a prior unrelated conviction:

(1) under subsection (a) or (b); or

(2) in another jurisdiction, including a military court, that is substantially equivalent to an offense described in subsection (a) or (b).

(d) As used in this section, "nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.

(e) A person who, in a place other than a public place, with the intent to be seen by persons other than invitees and occupants of that place:

(1) engages in sexual intercourse;

(2) engages in deviate sexual conduct;

(3) fondles the person's genitals or the genitals of another person; or

(4) appears in a state of nudity;

where the person can be seen by persons other than invitees and occupants of that place commits indecent exposure, a Class C misdemeanor.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.76; P.L.189-1984, SEC.1; P.L.215-1997, SEC.1; P.L.121-2000, SEC.1; P.L.123-2003, SEC.2.

IC 35-45-4-1.5

Public nudity

Sec. 1.5. (a) As used in this section, "nudity" has the meaning set forth in section 1(d) of this chapter.

(b) A person who knowingly or intentionally appears in a public

place in a state of nudity commits public nudity, a Class C misdemeanor.

(c) A person who knowingly or intentionally appears in a public place in a state of nudity with the intent to be seen by another person commits a Class B misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this subsection or under subsection (d).

(d) A person who knowingly or intentionally appears in a state of nudity:

(1) in or on school grounds;

(2) in a public park; or

(3) with the intent to arouse the sexual desires of the person or another person, in a department of natural resources owned or managed property;

commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this subsection or under subsection (c).

As added by P.L.123-2003, SEC.3.

IC 35-45-4-2

Prostitution

Sec. 2. A person who knowingly or intentionally:

(1) performs, or offers or agrees to perform, sexual intercourse or deviate sexual conduct; or

(2) fondles, or offers or agrees to fondle, the genitals of another person;

for money or other property commits prostitution, a Class A misdemeanor. However, the offense is a Class D felony if the person has two (2) prior convictions under this section.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.77; Acts 1979, P.L.301, SEC.1; P.L.310-1983, SEC.3.

IC 35-45-4-3

Patronizing a prostitute

Sec. 3. A person who knowingly or intentionally pays, or offers or agrees to pay, money or other property to another person:

(1) for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or deviate sexual conduct with the person or with any other person; or

(2) for having fondled, or on the understanding that the other person will fondle, the genitals of the person or any other person;

commits patronizing a prostitute, a Class A misdemeanor. However, the offense is a Class D felony if the person has two (2) prior convictions under this section.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.78; Acts 1979, P.L.301, SEC.2; P.L.310-1983, SEC.4.

IC 35-45-4-4

Promoting prostitution

Sec. 4. A person who:

(1) knowingly or intentionally entices or compels another person to become a prostitute;

(2) knowingly or intentionally procures, or offers or agrees to procure, a person for another person for the purpose of prostitution;

(3) having control over the use of a place, knowingly or intentionally permits another person to use the place for prostitution;

(4) receives money or other property from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution; or

(5) knowingly or intentionally conducts or directs another person to a place for the purpose of prostitution;

commits promoting prostitution, a Class C felony. However, the offense is a Class B felony under subdivision (1) if the person enticed or compelled is under eighteen (18) years of age.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.79; Acts 1978, P.L.148, SEC.6.

IC 35-45-4-5

Voyeurism; "peep" defined

Sec. 5. (a) A person:

(1) who:

(A) peeps; or

(B) goes upon the land of another with the intent to peep;

into an occupied dwelling of another person; or

(2) who peeps into an area where an occupant of the area reasonably can be expected to disrobe, including:

(A) restrooms;

(B) baths;

(C) showers; and

(D) dressing rooms;

without the consent of the other person, commits voyeurism, a Class B misdemeanor.

(b) However, the offense under subsection (a) is a Class D felony if:

(1) it is knowingly or intentionally committed by means of a camera, a video camera, or any other type of video recording device; or

(2) the person who commits the offense has a prior unrelated conviction:

(A) under this section; or

(B) in another jurisdiction, including a military court, for an offense that is substantially similar to an offense described in this section.

(c) "Peep" means any looking of a clandestine, surreptitious, prying, or secretive nature.

As added by P.L.311-1983, SEC.31. Amended by P.L.301-1995, SEC.1; P.L.215-1997, SEC.2; P.L.7-2005, SEC.1.

IC 35-45-5

Chapter 5. Gambling

IC 35-45-5-1

Definitions

Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Electronic gaming device" means any electromechanical device, electrical device, or machine that satisfies at least one (1) of the following requirements:

(1) It is a contrivance which for consideration affords the player an opportunity to obtain money or other items of value, the award of which is determined by chance even if accomplished by some skill, whether or not the prize is automatically paid by the contrivance.

(2) It is a slot machine or any simulation or variation of a slot machine.

(3) It is a matchup or lineup game machine or device operated for consideration, in which two (2) or more numerals, symbols, letters, or icons align in a winning combination on one (1) or more lines vertically, horizontally, diagonally, or otherwise, without assistance by the player. The use of a skill stop is not considered assistance by the player.

(4) It is a video game machine or device operated for consideration to play poker, blackjack, any other card game, keno, or any simulation or variation of these games, including any game in which numerals, numbers, pictures, representations, or symbols are used as an equivalent or substitute for the cards used in these games.

The term does not include a toy crane machine or any other device played for amusement that rewards a player exclusively with a toy, a novelty, candy, other noncash merchandise, or a ticket or coupon redeemable for a toy, a novelty, or other noncash merchandise that has a wholesale value of not more than the lesser of ten (10) times the amount charged to play the amusement device one (1) time or twenty-five dollars ($25).

(c) "Gain" means the direct realization of winnings.

(d) "Gambling" means risking money or other property for gain, contingent in whole or in part upon lot, chance, or the operation of a gambling device, but it does not include participating in:

(1) bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries; or

(2) bona fide business transactions that are valid under the law of contracts.

(e) "Gambling device" means:

(1) a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance;

(2) a mechanism that, when operated for a consideration, does

not return the same value or property for the same consideration upon each operation;

(3) a mechanism, furniture, fixture, construction, or installation designed primarily for use in connection with professional gambling;

(4) a policy ticket or wheel; or

(5) a subassembly or essential part designed or intended for use in connection with such a device, mechanism, furniture, fixture, construction, or installation.

In the application of this definition, an immediate and unrecorded right to replay mechanically conferred on players of pinball machines and similar amusement devices is presumed to be without value.

(f) "Gambling information" means:

(1) a communication with respect to a wager made in the course of professional gambling; or

(2) information intended to be used for professional gambling.

(g) "Interactive computer service" means an Internet service, an information service, a system, or an access software provider that provides or enables computer access to a computer served by multiple users. The term includes the following:

(1) A service or system that provides access or is an intermediary to the Internet.

(2) A system operated or services offered by a library, school, state educational institution, or private postsecondary educational institution.

(h) "Operator" means a person who owns, maintains, or operates an Internet site that is used for interactive gambling.

(i) "Profit" means a realized or unrealized benefit (other than a gain) and includes benefits from proprietorship or management and unequal advantage in a series of transactions.

(j) "Tournament" means a contest in which:

(1) the consideration to enter the contest may take the form of a separate entry fee or the deposit of the required consideration to play in any manner accepted by the:

(A) video golf machine; or

(B) pinball machine or similar amusement device described in subsection (m)(2);

on which the entrant will compete;

(2) each player's score is recorded; and

(3) the contest winner and other prize winners are determined by objectively comparing the recorded scores of the competing players.

(k) "Toy crane machine" means a device that is used to lift prizes from an enclosed space by manipulating a mechanical claw.

(l) For purposes of this chapter:

(1) a card game; or

(2) an electronic version of a card game;

is a game of chance and may not be considered a bona fide contest of skill.

(m) In the application of the definition of gambling set forth in

subsection (d), the payment of consideration to participate in a tournament conducted on:

(1) video golf games; or

(2) pinball machines and similar amusement devices that award no prizes other than to mechanically confer an immediate and unrecorded right to replay on players that is presumed to be without value under this section;

is not considered gambling even if the value of a prize awarded in the course of the tournament exceeds the amount of the player's consideration.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.80; P.L.70-2005, SEC.2; P.L.2-2007, SEC.377; P.L.227-2007, SEC.64; P.L.3-2008, SEC.252.

IC 35-45-5-2

Unlawful gambling

Sec. 2. (a) A person who knowingly or intentionally engages in gambling commits unlawful gambling.

(b) Except as provided in subsection (c), unlawful gambling is a Class B misdemeanor.

(c) An operator who knowingly or intentionally uses the Internet to engage in unlawful gambling:

(1) in Indiana; or

(2) with a person located in Indiana;

commits a Class D felony.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.81; P.L.70-2005, SEC.3.

IC 35-45-5-3

Professional gambling; professional gambling over the Internet

Sec. 3. (a) A person who knowingly or intentionally:

(1) engages in pool-selling;

(2) engages in bookmaking;

(3) maintains, in a place accessible to the public, slot machines, one-ball machines or variants thereof, pinball machines that award anything other than an immediate and unrecorded right of replay, roulette wheels, dice tables, or money or merchandise pushcards, punchboards, jars, or spindles;

(4) conducts lotteries or policy or numbers games or sells chances therein;

(5) conducts any banking or percentage games played with cards, dice, or counters, or accepts any fixed share of the stakes therein; or

(6) accepts, or offers to accept, for profit, money, or other property risked in gambling;

commits professional gambling, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this subsection.

(b) An operator who knowingly or intentionally uses the Internet to:

(1) engage in pool-selling:
(A) in Indiana; or
(B) in a transaction directly involving a person located in Indiana;
(2) engage in bookmaking:
(A) in Indiana; or
(B) in a transaction directly involving a person located in Indiana;
(3) maintain, on an Internet site accessible to residents of Indiana, the equivalent of:
(A) slot machines;
(B) one-ball machines or variants of one-ball machines;
(C) pinball machines that award anything other than an immediate and unrecorded right of replay;
(D) roulette wheels;
(E) dice tables; or
(F) money or merchandise pushcards, punchboards, jars, or spindles;
(4) conduct lotteries or policy or numbers games or sell chances in lotteries or policy or numbers games:
(A) in Indiana; or
(B) in a transaction directly involving a person located in Indiana;
(5) conduct any banking or percentage games played with the computer equivalent of cards, dice, or counters, or accept any fixed share of the stakes in those games:
(A) in Indiana; or
(B) in a transaction directly involving a person located in Indiana; or
(6) accept, or offer to accept, for profit, money or other property risked in gambling:
(A) in Indiana; or
(B) in a transaction directly involving a person located in Indiana;

commits professional gambling over the Internet, a Class D felony. *As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.82; P.L.70-2005, SEC.4; P.L.227-2007, SEC.65.*

IC 35-45-5-3.5

Possession of electronic gaming device; maintaining a professional gambling site; exception for antique slot machines possessed for decorative, historic, or nostalgic purposes

Sec. 3.5. (a) Except as provided in subsection (c), a person who possesses an electronic gaming device commits a Class A infraction.

(b) A person who knowingly or intentionally accepts or offers to accept for profit, money, or other property risked in gambling on an electronic gaming device possessed by the person commits maintaining a professional gambling site, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this subsection.

(c) Subsection (a) does not apply to a person who:

(1) possesses an antique slot machine;

(2) restricts display and use of the antique slot machine to the person's private residence; and

(3) does not use the antique slot machine for profit.

(d) As used in this section, "antique slot machine" refers to a slot machine that is:

(1) at least forty (40) years old; and

(2) possessed and used for decorative, historic, or nostalgic purposes.

As added by P.L.227-2007, SEC.66.

IC 35-45-5-4

Promoting professional gambling; acts constituting; boat manufacturers; public utilities

Sec. 4. (a) Except as provided in subsections (b) and (d), a person who:

(1) knowingly or intentionally owns, manufactures, possesses, buys, sells, rents, leases, repairs, or transports a gambling device, or offers or solicits an interest in a gambling device;

(2) before a race, game, contest, or event on which gambling may be conducted, knowingly or intentionally transmits or receives gambling information by any means, or knowingly or intentionally installs or maintains equipment for the transmission or receipt of gambling information; or

(3) having control over the use of a place, knowingly or intentionally permits another person to use the place for professional gambling;

commits promoting professional gambling, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this section.

(b) Subsection (a)(1) does not apply to a boat manufacturer who:

(1) transports or possesses a gambling device solely for the purpose of installing that device in a boat that is to be sold and transported to a buyer; and

(2) does not display the gambling device to the general public or make the device available for use in Indiana.

(c) When a public utility is notified by a law enforcement agency acting within its jurisdiction that any service, facility, or equipment furnished by it is being used or will be used to violate this section, it shall discontinue or refuse to furnish that service, facility, or equipment, and no damages, penalty, or forfeiture, civil or criminal, may be found against a public utility for an act done in compliance with such a notice. This subsection does not prejudice the right of a person affected by it to secure an appropriate determination, as otherwise provided by law, that the service, facility, or equipment should not be discontinued or refused, or should be restored.

(d) Subsection (a)(1) does not apply to a person who:

(1) possesses an antique slot machine;

(2) restricts display and use of the antique slot machine to the

person's private residence; and

(3) does not use the antique slot machine for profit.

(e) As used in this section, "antique slot machine" refers to a slot machine that is:

(1) at least forty (40) years old; and

(2) possessed and used for decorative, historic, or nostalgic purposes.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.83; P.L.164-1990, SEC.1; P.L.20-1995, SEC.19; P.L.227-2007, SEC.67.

IC 35-45-5-4.5

Notice of illegal gambling to operator

Sec. 4.5. (a) A prosecuting attorney may send written notice to an operator described in section 2(c) or 3(b) of this chapter. The notice must:

(1) specify the illegal gambling activity;

(2) state that the operator has not more than thirty (30) days after the date the notice is received to remove the illegal gambling activity; and

(3) state that failure to remove the illegal gambling activity not more than thirty (30) days after receiving the notice may result in the filing of criminal charges against the operator.

A prosecuting attorney who sends a notice under this section shall forward a copy of the notice to the attorney general. The attorney general shall maintain a depository to collect, maintain, and retain each notice sent under this section.

(b) The manner of service of a notice under subsection (a) must be:

(1) in compliance with Rule 4.1, 4.4, 4.6, or 4.7 of the Indiana Rules of Trial Procedure; or

(2) by publication in compliance with Rule 4.13 of the Indiana Rules of Trial Procedure if service cannot be made under subdivision (1) after a diligent search for the operator.

(c) A notice served under subsection (a):

(1) is admissible in a criminal proceeding under this chapter; and

(2) constitutes prima facie evidence that the operator had knowledge that illegal gambling was occurring on the operator's Internet site.

(d) A person outside Indiana who transmits information on a computer network (as defined in IC 35-43-2-3) and who knows or should know that the information is broadcast in Indiana submits to the jurisdiction of Indiana courts for prosecution under this section.

As added by P.L.70-2005, SEC.5.

IC 35-45-5-4.6

Blocking certain electronic mail messages

Sec. 4.6. (a) An interactive computer service may, on its own initiative, block the receipt or transmission through its service of any

commercial electronic mail message that it reasonably believes is or will be sent in violation of this chapter.

(b) An interactive computer service is not liable for such action.

As added by P.L.70-2005, SEC.6.

IC 35-45-5-4.7

Right of action by interactive computer service; defenses; remedies

Sec. 4.7. (a) An interactive computer service that handles or retransmits a commercial electronic mail message has a right of action against a person who initiates or assists the transmission of the commercial electronic mail message that violates this chapter.

(b) This chapter does not provide a right of action against:

(1) an interactive computer service;

(2) a telephone company;

(3) a CMRS provider (as defined in IC 36-8-16.5-6);

(4) a cable operator (as defined in 47 U.S.C. 522(5)); or

(5) any other entity that primarily provides connectivity to an operator;

if the entity's equipment is used only to transport, handle, or retransmit information that violates this chapter and is not capable of blocking the retransmission of information that violates this chapter.

(c) It is a defense to an action under this section if the defendant shows by a preponderance of the evidence that the violation of this chapter resulted from a good faith error and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid violating this chapter.

(d) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:

(1) An injunction to enjoin future violations of this chapter.

(2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage, the plaintiff is entitled to presumptive damages of five hundred dollars ($500) for each commercial electronic mail message that violates this chapter and that is sent by the defendant:

(A) to the plaintiff; or

(B) through the plaintiff's interactive computer service.

(3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(e) A person outside Indiana who:

(1) initiates or assists the transmission of a commercial electronic mail message that violates this chapter; and

(2) knows or should know that the commercial electronic mail message will be received in Indiana;

submits to the jurisdiction of Indiana courts for purposes of this chapter.

As added by P.L.70-2005, SEC.7. Amended by P.L.27-2006, SEC.60.

IC 35-45-5-5

Pari-mutuel wagering; application of chapter

Sec. 5. The provisions of this chapter do not apply to pari-mutuel wagering conducted at racetrack locations or satellite facilities licensed for pari-mutuel wagering under IC 4-31.

As added by Acts 1977, P.L.47, SEC.3. Amended by P.L.341-1989(ss), SEC.13; P.L.24-1992, SEC.61.

IC 35-45-5-6

Sale of lottery tickets; application of chapter

Sec. 6. This chapter does not apply to the sale of lottery tickets authorized by IC 4-30.

As added by P.L.341-1989(ss), SEC.14.

IC 35-45-5-7

Advertisements; wagering; application of chapter

Sec. 7. This chapter does not apply to the publication or broadcast of an advertisement, a list of prizes, or other information concerning:

(1) pari-mutuel wagering on horse races or a lottery authorized by the law of any state;

(2) a game of chance operated in accordance with IC 4-32.2; or

(3) a gambling game operated in accordance with IC 4-35.

As added by P.L.217-1991, SEC.1. Amended by P.L.91-2006, SEC.13; P.L.233-2007, SEC.33.

IC 35-45-5-8

Sale and use of gambling devices; application of chapter

Sec. 8. This chapter does not apply to the sale or use of gambling devices authorized under IC 4-32.2.

As added by P.L.24-1992, SEC.62. Amended by P.L.91-2006, SEC.14.

IC 35-45-5-9

Reserved

IC 35-45-5-10

Riverboat gambling

Sec. 10. This chapter does not apply to riverboat gambling authorized by IC 4-33.

As added by P.L.277-1993(ss), SEC.132.

IC 35-45-5-11

Slot machines at racetracks

Sec. 11. This chapter does not apply to a gambling game authorized by IC 4-35.

As added by P.L.233-2007, SEC.34.

IC 35-45-5-12

Authorized gaming in taverns

Sec. 12. This chapter does not apply to the following gambling games licensed or authorized under IC 4-36:

(1) Raffles and winner take all drawings conducted under IC 4-36-5-1.

(2) Type II gambling games.

As added by P.L.95-2008, SEC.16. Amended by P.L.108-2009, SEC.23.

IC 35-45-6

Chapter 6. Racketeer Influenced and Corrupt Organizations

IC 35-45-6-1

Definitions

Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

(c) "Enterprise" means:

(1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or

(2) a union, an association, or a group, whether a legal entity or merely associated in fact.

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

(e) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

(1) A provision of IC 23-19, or of a rule or order issued under IC 23-19.

(2) A violation of IC 35-45-9.

(3) A violation of IC 35-47.

(4) A violation of IC 35-49-3.

(5) Murder (IC 35-42-1-1).

(6) Battery as a Class C felony (IC 35-42-2-1).

(7) Kidnapping (IC 35-42-3-2).

(8) Human and sexual trafficking crimes (IC 35-42-3.5).

(9) Child exploitation (IC 35-42-4-4).

(10) Robbery (IC 35-42-5-1).

(11) Carjacking (IC 35-42-5-2).

(12) Arson (IC 35-43-1-1).

(13) Burglary (IC 35-43-2-1).

(14) Theft (IC 35-43-4-2).

(15) Receiving stolen property (IC 35-43-4-2).

(16) Forgery (IC 35-43-5-2).

(17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).

(18) Bribery (IC 35-44-1-1).

(19) Official misconduct (IC 35-44-1-2).

(20) Conflict of interest (IC 35-44-1-3).

(21) Perjury (IC 35-44-2-1).

(22) Obstruction of justice (IC 35-44-3-4).
(23) Intimidation (IC 35-45-2-1).
(24) Promoting prostitution (IC 35-45-4-4).
(25) Professional gambling (IC 35-45-5-3).
(26) Maintaining a professional gambling site (IC 35-45-5-3.5(b)).
(27) Promoting professional gambling (IC 35-45-5-4).
(28) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
(29) Dealing in or manufacturing methamphetamine (IC 35-48-4-1.1).
(30) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
(31) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
(32) Dealing in a schedule V controlled substance (IC 35-48-4-4).
(33) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
(34) Money laundering (IC 35-45-15-5).
(35) A violation of IC 35-47.5-5.
(36) A violation of any of the following:
(A) IC 23-14-48-9.
(B) IC 30-2-9-7(b).
(C) IC 30-2-10-9(b).
(D) IC 30-2-13-38(f).

As added by Acts 1980, P.L.199, SEC.2. Amended by P.L.190-1984, SEC.1; P.L.180-1991, SEC.10; P.L.230-1993, SEC.4; P.L.8-1993, SEC.511; P.L.112-1998, SEC.1; P.L.17-2001, SEC.16; P.L.123-2002, SEC.41; P.L.151-2006, SEC.17; P.L.173-2006, SEC.53; P.L.1-2007, SEC.234; P.L.227-2007, SEC.68; P.L.27-2007, SEC.31; P.L.3-2008, SEC.253; P.L.143-2009, SEC.48.

IC 35-45-6-2

Corrupt business influence

Sec. 2. A person:

(1) who has knowingly or intentionally received any proceeds directly or indirectly derived from a pattern of racketeering activity, and who uses or invests those proceeds or the proceeds derived from them to acquire an interest in property or to establish or to operate an enterprise;
(2) who through a pattern of racketeering activity, knowingly or intentionally acquires or maintains, either directly or indirectly, an interest in or control of property or an enterprise; or
(3) who is employed by or associated with an enterprise, and who knowingly or intentionally conducts or otherwise participates in the activities of that enterprise through a pattern of racketeering activity;

commits corrupt business influence, a Class C felony.

As added by Acts 1980, P.L.199, SEC.2. Amended by P.L.211-1991, SEC.9.

IC 35-45-7

Chapter 7. Loansharking

IC 35-45-7-1

Definitions

Sec. 1. As used in this chapter:

"Loan" means any transaction described in section 3 of this chapter, whether or not the transaction is in the form of a loan as defined in IC 24-4.5-3-106, and without regard to whether the person making the loan is regularly engaged in making consumer loans, consumer credit sales, or consumer leases.

"Principal" includes the monetary value of property which has been loaned from one (1) person to another person.

"Rate" means the monetary value of the consideration received per annum or due per annum, calculated according to the actuarial method on the unpaid balance of the principal.

As added by Acts 1980, P.L.207, SEC.1. Amended by P.L.247-1983, SEC.24.

IC 35-45-7-2

Loansharking

Sec. 2. A person who, in exchange for the loan of any property, knowingly or intentionally receives or contracts to receive from another person any consideration, at a rate greater than two (2) times the rate specified in IC 24-4.5-3-508(2)(a)(i), commits loansharking, a Class D felony. However, loansharking is a Class C felony if force or the threat of force is used to collect or to attempt to collect any of the property loaned or any of the consideration for the loan.

As added by Acts 1980, P.L.207, SEC.1.

IC 35-45-7-3

Application of chapter

Sec. 3. (a) This chapter applies only:

(1) to consumer loans, consumer related loans, consumer credit sales, consumer related sales, and consumer leases, as those terms are defined in IC 24-4.5, subject to adjustment, where applicable, of the dollar amounts set forth in those definitions under IC 24-4.5-1-106;

(2) to any loan primarily secured by an interest in land or sale of an interest in land that is a mortgage transaction (as defined in IC 24-4.5-1-301.5) if the transaction is otherwise a consumer loan or consumer credit sale; and

(3) to any other loan transaction or extension of credit, regardless of the amount of the principal of the loan or extension of credit, if unlawful force or the threat of force is used to collect or to attempt to collect any of the property loaned or any of the consideration for the loan or extension of credit in question.

(b) This chapter applies regardless of whether the contract is made directly or indirectly, and whether the receipt of the consideration is

received or is due to be received before or after the maturity date of the loan.

As added by Acts 1980, P.L.207, SEC.1. Amended by P.L.247-1983, SEC.25; P.L.14-1992, SEC.164; P.L.122-1994, SEC.121; P.L.35-2010, SEC.208.

IC 35-45-7-4

Contracts void

Sec. 4. A loan or a contract for a loan which is made through loansharking is void.

As added by Acts 1980, P.L.207, SEC.1.

IC 35-45-8

Chapter 8. Consumer Product Tampering

IC 35-45-8-1

"Consumer product" defined

Sec. 1. As used in this chapter, "consumer product" means:

(1) a food, drug, device, or cosmetic (as defined under IC 16-18-2-82, IC 16-18-2-94, IC 16-18-2-101(a), or IC 16-18-2-135(a)); or

(2) an item designed to be consumed for personal care or for performing household services.

As added by P.L.326-1987, SEC.4. Amended by P.L.2-1993, SEC.186.

IC 35-45-8-2

"Labeling" defined

Sec. 2. As used in this chapter, "labeling" has the meaning set forth in IC 16-18-2-198(a).

As added by P.L.326-1987, SEC.4. Amended by P.L.2-1993, SEC.187.

IC 35-45-8-3

Consumer product tampering; offenses

Sec. 3. A person who:

(1) recklessly, knowingly, or intentionally introduces a poison, a harmful substance, or a harmful foreign object into a consumer product; or

(2) with intent to mislead a consumer of a consumer product, tampers with the labeling of a consumer product;

that has been introduced into commerce commits consumer product tampering, a Class D felony. However, the offense is a Class C felony if it results in harm to a person, and it is a Class B felony if it results in serious bodily injury to another person.

As added by P.L.326-1987, SEC.4.

IC 35-45-9

Chapter 9. Criminal Gang Control

IC 35-45-9-1

"Criminal gang" defined

Sec. 1. As used in this chapter, "criminal gang" means a group with at least three (3) members that specifically:

(1) either:

(A) promotes, sponsors, or assists in; or

(B) participates in; or

(2) requires as a condition of membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

As added by P.L.180-1991, SEC.11. Amended by P.L.140-1994, SEC.5; P.L.192-2007, SEC.9.

IC 35-45-9-2

"Threatens" defined

Sec. 2. As used in this chapter, "threatens" includes a communication made with the intent to harm a person or the person's property or any other person or the property of another person.

As added by P.L.180-1991, SEC.11.

IC 35-45-9-3

Participation in criminal gang; offense

Sec. 3. A person who knowingly or intentionally actively participates in a criminal gang commits criminal gang activity, a Class D felony.

As added by P.L.180-1991, SEC.11.

IC 35-45-9-4

Threats; refusal to join or withdrawal from gang; intimidation offense

Sec. 4. A person who threatens another person because the other person:

(1) refuses to join a criminal gang; or

(2) has withdrawn from a criminal gang;

commits criminal gang intimidation, a Class C felony.

As added by P.L.180-1991, SEC.11.

IC 35-45-9-5

Criminal gang recruitment

Sec. 5. (a) Except as provided in subsection (b), an individual who knowingly or intentionally solicits, recruits, entices, or intimidates another individual to join a criminal gang commits criminal gang

recruitment, a Class D felony.

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

(1) the solicitation, recruitment, enticement, or intimidation occurs within one thousand (1,000) feet of school property; or

(2) the individual who is solicited, recruited, enticed, or intimidated is less than eighteen (18) years of age.

As added by P.L.192-2007, SEC.10.

IC 35-45-9-6

Restitution

Sec. 6. In addition to any sentence or fine imposed on a criminal gang member for committing a felony or misdemeanor, the court shall order a criminal gang member convicted of a felony or misdemeanor to make restitution to the victim of the crime under IC 35-50-5-3.

As added by P.L.192-2007, SEC.11.

IC 35-45-10

Chapter 10. Stalking

IC 35-45-10-1

"Stalk" defined

Sec. 1. As used in this chapter, "stalk" means a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.

As added by P.L.242-1993, SEC.4.

IC 35-45-10-2

"Harassment" defined

Sec. 2. As used in this chapter, "harassment" means conduct directed toward a victim that includes but is not limited to repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include statutorily or constitutionally protected activity, such as lawful picketing pursuant to labor disputes or lawful employer-related activities pursuant to labor disputes.

As added by P.L.242-1993, SEC.4.

IC 35-45-10-3

"Impermissible contact" defined

Sec. 3. As used in this chapter, "impermissible contact" includes but is not limited to knowingly or intentionally following or pursuing the victim.

As added by P.L.242-1993, SEC.4.

IC 35-45-10-4

"Victim" defined

Sec. 4. As used in this chapter, "victim" means a person who is the object of stalking.

As added by P.L.242-1993, SEC.4.

IC 35-45-10-5

Criminal stalking

Sec. 5. (a) A person who stalks another person commits stalking, a Class D felony.

(b) The offense is a Class C felony if at least one (1) of the following applies:

(1) A person:

(A) stalks a victim; and

(B) makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of:

(i) sexual battery (as defined in IC 35-42-4-8);

(ii) serious bodily injury; or
(iii) death.

(2) A protective order to prevent domestic or family violence, a no contact order, or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:

(A) IC 31-15 and IC 34-26-5 or IC 31-1-11.5 before its repeal (dissolution of marriage and legal separation).

(B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal (delinquent children and children in need of services).

(C) IC 31-32 or IC 31-6-7 before its repeal (procedure in juvenile court).

(D) IC 34-26-5 or IC 34-26-2 and IC 34-4-5.1 before their repeal (protective order to prevent abuse).

(E) IC 34-26-6 (workplace violence restraining orders).

(3) The person's stalking of another person violates an order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion if the person has been given actual notice of the order.

(4) The person's stalking of another person violates a no contact order issued as a condition of probation if the person has been given actual notice of the order.

(5) The person's stalking of another person violates a protective order issued under IC 31-14-16-1 and IC 34-26-5 in a paternity action if the person has been given actual notice of the order.

(6) The person's stalking of another person violates an order issued in another state that is substantially similar to an order described in subdivisions (2) through (5) if the person has been given actual notice of the order.

(7) The person's stalking of another person violates an order that is substantially similar to an order described in subdivisions (2) through (5) and is issued by an Indian:

(A) tribe;

(B) band;

(C) pueblo;

(D) nation; or

(E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians if the person has been given actual notice of the order.

(8) A criminal complaint of stalking that concerns an act by the person against the same victim or victims is pending in a court and the person has been given actual notice of the complaint.

(c) The offense is a Class B felony if:

(1) the act or acts were committed while the person was armed

with a deadly weapon; or

(2) the person has an unrelated conviction for an offense under this section against the same victim or victims.

(d) Notwithstanding subsection (a), the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly if the court finds mitigating circumstances. The court may consider the mitigating circumstances in IC 35-38-1-7.1(c) in making a determination under this subsection. However, the criteria listed in IC 35-38-1-7.1(c) do not limit the matters the court may consider in making its determination.

(e) Notwithstanding subsection (b), the court may enter judgment of conviction of a Class D felony and sentence accordingly if the court finds mitigating circumstances. The court may consider the mitigating circumstances in IC 35-38-1-7.1(c) in making a determination under this subsection. However, the criteria listed in IC 35-38-1-7.1(c) do not limit the matters the court may consider in making its determination.

As added by P.L.242-1993, SEC.4. Amended by P.L.225-1996, SEC.1; P.L.1-1997, SEC.150; P.L.1-1998, SEC.198; P.L.280-2001, SEC.52; P.L.133-2002, SEC.66.

IC 35-45-11

Chapter 11. Abuse of a Corpse

IC 35-45-11-1

Applicability of chapter

Sec. 1. (a) This chapter does not apply to the use of a corpse for:

(1) scientific;

(2) medical;

(3) organ transplantation;

(4) historical;

(5) forensic; or

(6) investigative;

purposes.

(b) This chapter does not apply to:

(1) a funeral director;

(2) an embalmer; or

(3) an employee of an individual described in subdivision (1) or (2);

engaged in the individual's normal scope of practice and employment.

As added by P.L.249-1993, SEC.1.

IC 35-45-11-2

Abuse of corpse

Sec. 2. A person who knowingly or intentionally:

(1) mutilates a corpse;

(2) has sexual intercourse or sexual deviate conduct with the corpse; or

(3) opens a casket with the intent to commit an act described in subdivision (1) or (2);

commits abuse of a corpse, a Class D felony.

As added by P.L.249-1993, SEC.1. Amended by P.L.52-1997, SEC.56.

IC 35-45-12

Chapter 12. Code Grabbing Devices

IC 35-45-12-1

"Code grabbing device" defined

Sec. 1. As used in this chapter, "code grabbing device" means a device that is capable of:

(1) receiving and recording the code signal sent by the transmitter of:

(A) a motor vehicle security alarm system;

(B) a motor vehicle automatic door locking system; or

(C) a residential or commercial automatic garage door opening system; and

(2) disarming:

(A) a motor vehicle security alarm system;

(B) a motor vehicle automatic door locking system; or

(C) a residential or commercial automatic garage door opening system.

As added by P.L.302-1995, SEC.1.

IC 35-45-12-2

Criminal use or possession of code grabbing device

Sec. 2. A person who, while committing a crime or to further the commission of a crime, knowingly or intentionally:

(1) possesses a code grabbing device; or

(2) uses a code grabbing device to disarm the security alarm system of a motor vehicle;

commits a Class C misdemeanor.

As added by P.L.302-1995, SEC.1.

IC 35-45-13

Chapter 13. Unauthorized Use of Telecommunications Services

IC 35-45-13-1

"Manufacture of an unlawful telecommunications device" defined

Sec. 1. As used in this chapter, "manufacture of an unlawful telecommunications device" means:

(1) the production or assembly of an unlawful telecommunications device; or

(2) the modification, alteration, programming, or reprogramming of a telecommunications device to render it capable of acquiring or facilitating the acquisition of telecommunications service without the consent of the telecommunications service provider.

As added by P.L.216-1996, SEC.23.

IC 35-45-13-2

"Publish" defined

Sec. 2. As used in this chapter, "publish" means the communication or dissemination of information to at least one (1) person by any of the following methods:

(1) Orally.

(2) In person.

(3) By telephone, radio, or television.

(4) In a writing of any kind, including a letter, memorandum, circular handbill, newspaper, magazine article, or book.

As added by P.L.216-1996, SEC.23.

IC 35-45-13-3

"Telecommunications device" defined

Sec. 3. As used in this chapter, "telecommunications device" means:

(1) a type of instrument, device, machine, or piece of equipment that is capable of transmitting or receiving telephonic, electronic, or radio communications;

(2) a part of an instrument, a device, a machine, or a piece of equipment that is capable of transmitting or receiving telephonic, electronic, or radio communications; or

(3) a computer circuit, a computer chip, an electronic mechanism, or any other component that is capable of facilitating the transmission or reception of telephonic, electronic, or radio communications.

As added by P.L.216-1996, SEC.23.

IC 35-45-13-4

"Telecommunications service" defined

Sec. 4. As used in this chapter, "telecommunications service" means a service provided for a charge or compensation to facilitate the origination, transmission, emission, or reception of signs, signals, data, writings, images, sounds, or intelligence of any nature by:

(1) telephone, including cellular or other wireless telephones;
(2) wire;
(3) radio; or
(4) an electromagnetic, a photoelectronic, or a photo-optical system.

As added by P.L.216-1996, SEC.23.

IC 35-45-13-5

"Telecommunications service provider" defined

Sec. 5. As used in this chapter, "telecommunications service provider" means a person or an entity:

(1) providing telecommunications service, including a cellular, paging, or other wireless communications company; or
(2) that, for a fee, supplies the facility, cell site, mobile telephone switching office, or other equipment for a telecommunications service.

As added by P.L.216-1996, SEC.23.

IC 35-45-13-6

"Unlawful telecommunications device" defined

Sec. 6. (a) As used in this chapter, "unlawful telecommunications device" means a telecommunications device that:

(1) is capable of; or
(2) has been altered, modified, programmed, or reprogrammed, alone or in conjunction with another access device or other equipment, to render the telecommunications device capable of;

acquiring or facilitating the acquisition of an electronic serial number, a mobile identification number, or a personal identification number of any telecommunications service without the consent of a telecommunications service provider.

(b) The term does not include a device operated by a law enforcement agency in the course of its activities.

As added by P.L.216-1996, SEC.23.

IC 35-45-13-7

Unauthorized use of telecommunication services

Sec. 7. A person who knowingly or intentionally:

(1) makes, distributes, possesses, uses, or assembles an unlawful telecommunications device that is designed, adapted, or used to:
    (A) commit a theft of telecommunications service;
    (B) acquire or facilitate the acquisition of telecommunications service without the consent of the telecommunications service provider; or
    (C) conceal, or assist another in concealing, from a telecommunication services provider or authority, or from another person with enforcement authority, the existence or place of origin or destination of telecommunications;
(2) sells, possesses, distributes, gives, transports, or otherwise transfers to another or offers or advertises for sale:

(A) an unlawful telecommunications device, with the intent to use the unlawful telecommunications device or allow the device to be used for a purpose described in subdivision (1), or while knowing or having reason to believe that the device is intended to be so used;

(B) plans or instructions for making or assembling an unlawful telecommunications device, knowing or having reason to believe that the plans or instructions are intended to be used for making or assembling an unlawful telecommunications device; or

(C) material, including hardware, cables, tools, data, computer software, or other information or equipment, knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunications device; or

(3) publishes:

(A) the number or code of an existing, a canceled, a revoked, or a nonexistent telephone number, credit number, or other credit device; or

(B) the method of numbering or coding that is employed in the issuance of telephone numbers, credit numbers, or other credit devices;

with knowledge or reason to believe that the information may be used to avoid the payment of a lawful telephone or telegraph toll charge;

commits unauthorized use of telecommunication services, a Class A misdemeanor. However, if the commission of the offense involves at least five (5) unlawful telecommunications devices the offense is a Class D felony.

As added by P.L.216-1996, SEC.23.

IC 35-45-13-8

Restitution; civil action to obtain relief

Sec. 8. (a) The court may, in addition to any other sentence imposed for a conviction under this chapter, order a person convicted under this chapter to make restitution for the offense.

(b) A person or an entity that is the victim of an offense under this chapter may, in a civil action brought in the circuit or superior court in the county in which the person who committed the offense under this chapter was convicted, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expense, court costs (including fees), and attorney's fees.

As added by P.L.216-1996, SEC.23. Amended by P.L.106-2010, SEC.16.

IC 35-45-14

Chapter 14. Unlawful Solicitation

IC 35-45-14-1

"Attorney" defined

Sec. 1. As used in this chapter, "attorney" means an individual in good standing admitted to the practice of law in Indiana or another state.

As added by P.L.216-1997, SEC.1.

IC 35-45-14-2

Unlawful solicitation

Sec. 2. A person who is not an attorney and who:

(1) knowingly or intentionally solicits, advises, requests, or induces another person to bring an action in a court; and

(2) in making a solicitation under subdivision (1), directly or indirectly receives any compensation, fee, or commission from the attorney for the solicitation;

commits unlawful solicitation, a Class A misdemeanor.

As added by P.L.216-1997, SEC.1. Amended by P.L.64-2001, SEC.2.

IC 35-45-15

Chapter 15. Money Laundering

IC 35-45-15-1

"Criminal activity" defined

Sec. 1. As used in this chapter, "criminal activity" means any offense that:

(1) is classified as a felony under Indiana or United States law; or

(2) occurs in another state and is punishable by confinement for more than one (1) year under the laws of that state.

As added by P.L.112-1998, SEC.2.

IC 35-45-15-2

"Funds" defined

Sec. 2. As used in this chapter, "funds" includes the following:

(1) Coin or paper money of the United States or any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issue.

(2) United States silver certificates, United States Treasury notes, and Federal Reserve System notes.

(3) Official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(4) Foreign bank drafts.

As added by P.L.112-1998, SEC.2.

IC 35-45-15-3

"Law enforcement officer" defined

Sec. 3. As used in this chapter, "law enforcement officer" includes a federal enforcement officer.

As added by P.L.112-1998, SEC.2.

IC 35-45-15-4

"Proceeds" defined

Sec. 4. As used in this chapter, "proceeds" means funds acquired or derived directly or indirectly from, produced through, or realized through an act.

As added by P.L.112-1998, SEC.2.

IC 35-45-15-5

Money laundering; defenses

Sec. 5. (a) A person that knowingly or intentionally:

(1) acquires or maintains an interest in, receives, conceals, possesses, transfers, or transports the proceeds of criminal activity;

(2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; or

(3) invests, expends, receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that are the

proceeds of criminal activity, and the person knows that the proceeds or funds are the result of criminal activity;

commits money laundering, a Class D felony. However, the offense is:

(A) a Class C felony if the value of the proceeds or funds is at least fifty thousand dollars ($50,000);

(B) a Class C felony if a person commits the crime with the intent to:

(i) commit or promote an act of terrorism; or

(ii) obtain or transport a weapon of mass destruction; and

(C) a Class B felony if the value of the proceeds or funds is at least fifty thousand dollars ($50,000) and a person commits the crime with the intent to:

(i) commit or promote an act of terrorism; or

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

(b) It is a defense to prosecution under this section that the person acted with intent to facilitate the lawful seizure, forfeiture, or disposition of funds or other legitimate law enforcement purpose under Indiana or United States law.

(c) It is a defense to prosecution under this section that:

(1) the transaction was necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment of the United States Constitution or Article 1, Section 13, of the Constitution of the State of Indiana; or

(2) the funds were received as bona fide legal fees by a licensed attorney and, at the time of the receipt of the funds, the attorney did not have actual knowledge that the funds were derived from criminal activity.

As added by P.L.112-1998, SEC.2. Amended by P.L.123-2002, SEC.42.

IC 35-45-16

Chapter 16. Malicious Mischief

IC 35-45-16-1

"HIV"

Sec. 1. (a) As used in this chapter, "HIV" refers to the human immunodeficiency virus.

(b) The term includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.

As added by P.L.88-2002, SEC.2.

IC 35-45-16-2

Malicious mischief

Sec. 2. (a) A person who recklessly, knowingly, or intentionally places human:

(1) blood;
(2) semen;
(3) urine; or
(4) fecal waste;

in a location with the intent that another person will involuntarily touch the blood, semen, urine, or fecal waste commits malicious mischief, a Class B misdemeanor.

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

(1) Class D felony if the person knew or recklessly failed to know that the blood, urine, or waste was infected with:
(A) hepatitis B;
(B) HIV; or
(C) tuberculosis;

(2) Class C felony if:
(A) the person knew or recklessly failed to know that the blood, urine, or waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or
(B) the person knew or recklessly failed to know that the waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) Class B felony if:
(A) the person knew or recklessly failed to know that the waste was infected with HIV; and
(B) the offense results in the transmission of HIV to the other person.

(c) A person who recklessly, knowingly, or intentionally places human:

(1) blood;
(2) body fluid; or
(3) fecal waste;

in a location with the intent that another person will ingest the blood, body fluid, or fecal waste, commits malicious mischief with food, a Class A misdemeanor.

(d) An offense described in subsection (c) is:

(1) a Class D felony if the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with:

(A) hepatitis B;

(B) HIV; or

(C) tuberculosis;

(2) a Class C felony if:

(A) the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or

(B) the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class B felony if:

(A) the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

As added by P.L.88-2002, SEC.2.

IC 35-45-17

Chapter 17. Panhandling

IC 35-45-17-1

"Panhandling"

Sec. 1. (a) As used in this chapter, "panhandling" means to solicit an individual:

(1) on a street or in another public place; and

(2) by requesting an immediate donation of money or something else of value.

(b) The term includes soliciting an individual:

(1) by making an oral request;

(2) in exchange for:

(A) performing music;

(B) singing; or

(C) engaging in another type of performance; or

(3) by offering the individual an item of little or no monetary value in exchange for money or another gratuity under circumstances that would cause a reasonable individual to understand that the transaction is only a donation.

(c) The term does not include an act of passively standing, sitting, performing music, singing, or engaging in another type of performance:

(1) while displaying a sign or other indication that a donation is being sought; and

(2) without making an oral request other than in response to an inquiry by another person.

As added by P.L.140-2005, SEC.8.

IC 35-45-17-2

Panhandling; Class C misdemeanor

Sec. 2. A person who knowingly or intentionally does any of the following commits panhandling, a Class C misdemeanor:

(1) Panhandling after sunset and before sunrise.

(2) Panhandling when the individual being solicited is:

(A) at a bus stop;

(B) in a:

(i) vehicle; or

(ii) facility;

used for public transportation;

(C) in a motor vehicle that is parked or stopped on a public street or alley, unless the person soliciting the individual has the approval to do so by a unit of local government that has jurisdiction over the public street or alley;

(D) in the sidewalk dining area of a restaurant; or

(E) within twenty (20) feet of:

(i) an automated teller machine; or

(ii) the entrance to a bank.

(3) Panhandling while touching the individual being solicited without the solicited individual's consent.

(4) Panhandling while the individual being solicited is standing in line and waiting to be admitted to a commercial establishment.

(5) Panhandling while blocking:

(A) the path of the individual being solicited; or

(B) the entrance to a building or motor vehicle.

(6) Panhandling while using profane or abusive language:

(A) during a solicitation; or

(B) after the individual being solicited has declined to donate money or something else of value.

(7) Panhandling while making a statement, a gesture, or another communication to the individual being solicited that would cause a reasonable individual to:

(A) fear for the individual's safety; or

(B) feel compelled to donate.

(8) Panhandling with at least one (1) other individual.

(9) Panhandling and then following or accompanying the solicited individual without the solicited individual's consent after the solicited individual has declined to donate money or something else of value.

As added by P.L.140-2005, SEC.8.

IC 35-45-18

Chapter 18. Combative Fighting

IC 35-45-18-1

"Combative fighting"

Sec. 1. (a) As used in this chapter, "combative fighting" (also known as "toughman fighting", "badman fighting", and "extreme fighting") means a match, contest, or exhibition that involves at least (2) contestants, with or without gloves or protective headgear, in which the contestants:

(1) use their:

(A) hands;

(B) feet; or

(C) both hands and feet;

to strike each other; and

(2) compete for a financial prize or any item of pecuniary value.

(b) The term does not include:

(1) a boxing, sparring, or unarmed combat match regulated under IC 4-33-22;

(2) mixed martial arts (as defined by IC 4-33-22-2);

(3) martial arts, as regulated by the gaming commission in rules adopted under IC 4-33-22;

(4) professional wrestling, as regulated by the gaming commission in rules adopted under IC 4-33-22; or

(5) a match, contest, or game in which a fight breaks out among the participants as an unplanned, spontaneous event and not as an intended part of the match, contest, or game.

As added by P.L.112-2007, SEC.2. Amended by P.L.160-2009, SEC.49; P.L.113-2010, SEC.107.

IC 35-45-18-2

Combative fighting

Sec. 2. A person who knowingly or intentionally participates in combative fighting commits unlawful combative fighting, a Class C misdemeanor.

As added by P.L.112-2007, SEC.2.

IC 35-45-18-3

Unlawful promotion or organization of combative fighting

Sec. 3. A person who knowingly or intentionally promotes or organizes combative fighting commits unlawful promotion or organization of combative fighting, a Class A misdemeanor. However, the offense is a Class D felony if, within the five (5) years preceding the commission of the offense, the person had a prior unrelated conviction under this section.

As added by P.L.112-2007, SEC.2.

IC 35-45-19

Chapter 19. Failure to Report a Dead Body

IC 35-45-19-1

Applicability of chapter

Sec. 1. This chapter does not:

(1) apply to the driver of a vehicle involved in an accident that:

(A) results in the death of a person; and

(B) must be reported under IC 9-26-1-1; or

(2) supersede any law governing the reporting of a death by a hospital, health care facility, or provider.

As added by P.L.68-2008, SEC.1.

IC 35-45-19-2

"Public safety officer"

Sec. 2. As used in this chapter, "public safety officer" means:

(1) a law enforcement officer;

(2) a correctional officer;

(3) a state university police officer;

(4) a firefighter;

(5) an emergency medical technician; or

(6) a paramedic.

As added by P.L.68-2008, SEC.1.

IC 35-45-19-3

Failure to report a dead body

Sec. 3. A person who:

(1) discovers or has custody of the body of a deceased person when it appears the deceased person died:

(A) by violence, suicide, or accident;

(B) suddenly, while in apparent good health;

(C) while unattended;

(D) from poisoning or an overdose of drugs;

(E) as the result of a disease that may constitute a threat to public health;

(F) as the result of:

(i) a disease;

(ii) an injury;

(iii) a toxic effect; or

(iv) unusual exertion;

incurred within the scope of the deceased person's employment;

(G) due to sudden infant death syndrome;

(H) as the result of a diagnostic or therapeutic procedure; or

(I) under any other suspicious or unusual circumstances; and

(2) knowingly or intentionally fails to report the body of the deceased person to a:

(A) public safety officer;

(B) coroner;

(C) physician; or

(D) 911 telephone call center;

within three (3) hours after finding the body;

commits failure to report a dead body, a Class A misdemeanor.

As added by P.L.68-2008, SEC.1.

IC 35-45-20

Chapter 20. Dispensing Contact Lenses Without a Prescription

IC 35-45-20-1

"Prescription"

Sec. 1. As used in this chapter, "prescription" means a written or electronically transmitted contact lens prescription or order that:

(1) is issued by an optometrist licensed under IC 25-24 or a physician licensed under IC 25-22.5; and

(2) was issued within the previous year.

As added by P.L.49-2009, SEC.1.

IC 35-45-20-2

Unlawful contact lens dispensing

Sec. 2. A person who dispenses a contact lens, including a contact lens without corrective power, to an individual who does not have a prescription for the contact lens being dispensed commits a Class A infraction.

As added by P.L.49-2009, SEC.1.

IC 35-46

ARTICLE 46. MISCELLANEOUS OFFENSES

IC 35-46-1

Chapter 1. Offenses Against the Family

IC 35-46-1-1

Definitions

Sec. 1. As used in this chapter:

"Dependent" means:

(1) an unemancipated person who is under eighteen (18) years of age; or

(2) a person of any age who has a mental or physical disability.

"Endangered adult" has the meaning set forth in IC 12-10-3-2.

"Support" means food, clothing, shelter, or medical care.

"Tobacco business" means a sole proprietorship, corporation, partnership, or other enterprise in which:

(1) the primary activity is the sale of tobacco, tobacco products, and tobacco accessories; and

(2) the sale of other products is incidental.

As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.84; P.L.185-1984, SEC.2; P.L.208-1986, SEC.1; P.L.41-1987, SEC.19; P.L.2-1992, SEC.881; P.L.256-1996, SEC.10; P.L.99-2007, SEC.210.

IC 35-46-1-1.7

"Tobacco" defined

Sec. 1.7. As used in this chapter, "tobacco" includes:

(1) chewing tobacco;

(2) cigars, cigarettes, and snuff that contain tobacco; and

(3) pipe tobacco.

As added by P.L.318-1987, SEC.2.

IC 35-46-1-2

Bigamy

Sec. 2. (a) A person who, being married and knowing that his spouse is alive, marries again commits bigamy, a Class D felony.

(b) It is a defense that the accused person reasonably believed that he was eligible to remarry.

As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.85.

IC 35-46-1-3

Incest

Sec. 3. (a) A person eighteen (18) years of age or older who engages in sexual intercourse or deviate sexual conduct with another person, when the person knows that the other person is related to the person biologically as a parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew, commits incest, a Class C felony. However, the offense is a Class B felony if the other person

is less than sixteen (16) years of age.

(b) It is a defense that the accused person's otherwise incestuous relation with the other person was based on their marriage, if it was valid where entered into.

As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.86; P.L.158-1987, SEC.5; P.L.79-1994, SEC.16.

IC 35-46-1-4

Neglect of a dependent; child selling

Sec. 4. (a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:

(1) places the dependent in a situation that endangers the dependent's life or health;

(2) abandons or cruelly confines the dependent;

(3) deprives the dependent of necessary support; or

(4) deprives the dependent of education as required by law;

commits neglect of a dependent, a Class D felony.

(b) However, the offense is:

(1) a Class C felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and:

(A) results in bodily injury; or

(B) is:

(i) committed in a location where a person is violating IC 35-48-4-1 (delivery, financing, or manufacture of cocaine, methamphetamine, or a narcotic drug); or

(ii) the result of a violation of IC 35-48-4-1 (delivery, financing, or manufacture of cocaine, methamphetamine, or a narcotic drug);

(2) a Class B felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and results in serious bodily injury;

(3) a Class A felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) by a person at least eighteen (18) years of age and results in the death of a dependent who is less than fourteen (14) years of age; and

(4) a Class C felony if it is committed under subsection (a)(2) and consists of cruel confinement or abandonment that:

(A) deprives a dependent of necessary food, water, or sanitary facilities;

(B) consists of confinement in an area not intended for human habitation; or

(C) involves the unlawful use of handcuffs, a rope, a cord, tape, or a similar device to physically restrain a dependent.

(c) It is a defense to a prosecution based on an alleged act under this section that:

(1) the accused person left a dependent child who was, at the time the alleged act occurred, not more than thirty (30) days of age with an emergency medical provider who took custody of the child under IC 31-34-2.5 when:

(A) the prosecution is based solely on the alleged act of

leaving the child with the emergency medical services provider; and

(B) the alleged act did not result in bodily injury or serious bodily injury to the child; or

(2) the accused person, in the legitimate practice of the accused person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the accused person's dependent.

(d) Except for property transferred or received:

(1) under a court order made in connection with a proceeding under IC 31-15, IC 31-16, IC 31-17, or IC 31-35 (or IC 31-1-11.5 or IC 31-6-5 before their repeal); or

(2) under IC 35-46-1-9(b);

a person who transfers or receives any property in consideration for the termination of the care, custody, or control of a person's dependent child commits child selling, a Class D felony.

As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.87; Acts 1978, P.L.144, SEC.8; Acts 1980, P.L.208, SEC.1; Acts 1981, P.L.299, SEC.2; Acts 1981, P.L.301, SEC.3; P.L.1-1997, SEC.151; P.L.197-1999, SEC.6; P.L.133-2000, SEC.10; P.L.46-2004, SEC.1; P.L.26-2006, SEC.2; P.L.15-2007, SEC.1; P.L.109-2007, SEC.1.

IC 35-46-1-5

Nonsupport of a dependent child

Sec. 5. (a) A person who knowingly or intentionally fails to provide support to the person's dependent child commits nonsupport of a child, a Class D felony. However, the offense is a Class C felony if the total amount of unpaid support that is due and owing for one (1) or more children is at least fifteen thousand dollars ($15,000).

(b) It is a defense that the child had abandoned the home of his family without the consent of his parent or on the order of a court, but it is not a defense that the child had abandoned the home of his family if the cause of the child's leaving was the fault of his parent.

(c) It is a defense that the accused person, in the legitimate practice of his religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to his dependent child.

(d) It is a defense that the accused person was unable to provide support.

As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.88; Acts 1978, P.L.144, SEC.9; P.L.213-1996, SEC.4; P.L.123-2001, SEC.4.

IC 35-46-1-6

Nonsupport of a spouse

Sec. 6. (a) A person who knowingly or intentionally fails to provide support to his spouse, when the spouse needs support, commits nonsupport of a spouse, a Class D felony.

(b) It is a defense that the accused person was unable to provide support.

As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.89; Acts 1978, P.L.144, SEC.10.

IC 35-46-1-7

Nonsupport of a parent

Sec. 7. (a) A person who knowingly or intentionally fails to provide support to his parent, when the parent is unable to support himself, commits nonsupport of a parent, a Class A misdemeanor.

(b) It is a defense that the accused person had not been supported by the parent during the time he was a dependent child under eighteen (18) years of age, unless the parent was unable to provide support.

(c) It is a defense that the accused person was unable to provide support.

As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.90; Acts 1978, P.L.144, SEC.11.

IC 35-46-1-8

Contributing to the delinquency of a minor

Sec. 8. (a) A person at least eighteen (18) years of age who knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act of delinquency (as defined by IC 31-37-1 or IC 31-37-2) commits contributing to delinquency, a Class A misdemeanor.

(b) However, the offense described in subsection (a) is a Class C felony:

(1) if:

(A) the person committing the offense is at least twenty-one (21) years of age and knowingly or intentionally furnishes:

(i) an alcoholic beverage to a person less than eighteen (18) years of age in violation of IC 7.1-5-7-8 when the person committing the offense knew or reasonably should have known that the person furnished the alcoholic beverage was less than eighteen (18) years of age; or

(ii) a controlled substance (as defined in IC 35-48-1-9) or a drug (as defined in IC 9-13-2-49.1) in violation of Indiana law; and

(B) the consumption, ingestion, or use of the alcoholic beverage, controlled substance, or drug is the proximate cause of the death of any person; or

(2) if the person committing the offense knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act that would be a felony if committed by an adult under any of the following:

(A) IC 35-48-4-1.

(B) IC 35-48-4-1.1.

(C) IC 35-48-4-2.

(D) IC 35-48-4-3.

(E) IC 35-48-4-4.

(F) IC 35-48-4-4.5.

(G) IC 35-48-4-4.6.
(H) IC 35-48-4-5.

As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.91; Acts 1978, P.L.144, SEC.12; Acts 1979, P.L.276, SEC.58; P.L.216-1996, SEC.24; P.L.1-1997, SEC.152; P.L.46-2004, SEC.2; P.L.2-2005, SEC.126; P.L.1-2006, SEC.533; P.L.151-2006, SEC.18.

IC 35-46-1-9

Profiting from adoption

Sec. 9. (a) Except as provided in subsection (b), a person who, with respect to an adoption, transfers or receives any property in connection with the waiver of parental rights, the termination of parental rights, the consent to adoption, or the petition for adoption commits profiting from an adoption, a Class D felony.

(b) This section does not apply to the transfer or receipt of:

(1) reasonable attorney's fees;

(2) hospital and medical expenses concerning childbirth and pregnancy incurred by the adopted person's birth mother;

(3) reasonable charges and fees levied by a child placing agency licensed under IC 31-27 or the department of child services;

(4) reasonable expenses for psychological counseling relating to adoption incurred by the adopted person's birth parents;

(5) reasonable costs of housing, utilities, and phone service for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth;

(6) reasonable costs of maternity clothing for the adopted person's birth mother;

(7) reasonable travel expenses incurred by the adopted person's birth mother that relate to the pregnancy or adoption;

(8) any additional itemized necessary living expenses for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth, not listed in subdivisions (5) through (7) in an amount not to exceed one thousand dollars ($1,000); or

(9) other charges and fees approved by the court supervising the adoption, including reimbursement of not more than actual wages lost as a result of the inability of the adopted person's birth mother to work at her regular, existing employment due to a medical condition, excluding a psychological condition, if:

(A) the attending physician of the adopted person's birth mother has ordered or recommended that the adopted person's birth mother discontinue her employment; and

(B) the medical condition and its direct relationship to the pregnancy of the adopted person's birth mother are documented by her attending physician.

In determining the amount of reimbursable lost wages, if any, that are reasonably payable to the adopted person's birth mother under subdivision (9), the court shall offset against the reimbursable lost

wages any amounts paid to the adopted person's birth mother under subdivisions (5) and (8) and any unemployment compensation received by or owed to the adopted person's birth mother.

(c) Except as provided in this subsection, payments made under subsection (b)(5) through (b)(9) may not exceed three thousand dollars ($3,000) and must be disclosed to the court supervising the adoption. The amounts paid under subsection (b)(5) through (b)(9) may exceed three thousand dollars ($3,000) to the extent that a court in Indiana with jurisdiction over the child who is the subject of the adoption approves the expenses after determining that:

(1) the expenses are not being offered as an inducement to proceed with an adoption; and

(2) failure to make the payments may seriously jeopardize the health of either the child or the mother of the child and the direct relationship is documented by a licensed social worker or the attending physician.

(d) The payment limitation under subsection (c) applies to the total amount paid under subsection (b)(5) through (b)(9) in connection with an adoption from all prospective adoptive parents, attorneys, and licensed child placing agencies.

(e) An attorney or licensed child placing agency shall inform a birth mother of the penalties for committing adoption deception under section 9.5 of this chapter before the attorney or agency transfers a payment for adoption related expenses under subsection (b) in relation to the birth mother.

(f) The limitations in this section apply regardless of the state or country in which the adoption is finalized.

As added by Acts 1980, P.L.208, SEC.2. Amended by P.L.117-1990, SEC.6; P.L.2-1992, SEC.882; P.L.81-1992, SEC.39; P.L.1-1993, SEC.241; P.L.4-1993, SEC.326; P.L.5-1993, SEC.333; P.L.226-1996, SEC.1; P.L.200-1999, SEC.32; P.L.130-2005, SEC.14; P.L.145-2006, SEC.371; P.L.146-2007, SEC.18; P.L.146-2008, SEC.683.

IC 35-46-1-9.5

Adoption deception

Sec. 9.5. A person who is a birth mother, or a woman who holds herself out to be a birth mother, and who knowingly or intentionally benefits from adoption related expenses paid:

(1) when the person knows or should have known that the person is not pregnant;

(2) by or on behalf of a prospective adoptive parent who is unaware that at the same time another prospective adoptive parent is also paying adoption related expenses described under section 9(b) of this chapter in an effort to adopt the same child; or

(3) when the person does not intend to make an adoptive placement;

commits adoption deception, a Class A misdemeanor. In addition to any other penalty imposed under this section, a court may order the

person who commits adoption deception to make restitution to a prospective adoptive parent, attorney, or licensed child placing agency that incurs an expense as a result of the offense.
As added by P.L.200-1999, SEC.33. Amended by P.L.61-2003, SEC.21; P.L.146-2007, SEC.19.

IC 35-46-1-10
Sale or distribution of tobacco to minors; defenses

Sec. 10. (a) A person who knowingly:

(1) sells or distributes tobacco to a person less than eighteen (18) years of age; or

(2) purchases tobacco for delivery to another person who is less than eighteen (18) years of age;

commits a Class C infraction. For a sale to take place under this section, the buyer must pay the seller for the tobacco product.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a person accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph, showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1, or a similar card issued under the laws of another state or the federal government, showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused person sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons

under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-4(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

As added by Acts 1980, P.L.209, SEC.1. Amended by P.L.330-1983, SEC.1; P.L.318-1987, SEC.3; P.L.125-1988, SEC.4; P.L.177-1999, SEC.10; P.L.1-2001, SEC.37; P.L.204-2001, SEC.65; P.L.252-2003, SEC.17.

IC 35-46-1-10.1

Establishment's selling or furnishing alcoholic beverages to minors; civil penalties; defenses

Sec. 10.1. (a) If a permit holder or an agent or employee of a permit holder violates IC 7.1-5-7-8 on the licensed premises, in addition to any other penalty, a civil judgment may be imposed against the permit holder as follows:

(1) If the licensed premises at that specific business location has not been issued a citation or summons for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars ($200).

(2) If the licensed premises at that specific business location has had one (1) citation or summons for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars ($400).

(3) If the licensed premises at that specific business location has had two (2) citations or summonses for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars ($700).

(4) If the licensed premises at that specific business location has had three (3) or more citations or summonses for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars ($1,000).

(b) The defenses set forth in IC 7.1-5-7-5.1 are available to a permit holder in an action under this section.

(c) Unless a person less than twenty-one (21) years of age buys or receives an alcoholic beverage under the direction of a law enforcement officer as part of an enforcement action, a permit holder that sells alcoholic beverages is not liable under this section unless the person less than twenty-one (21) years of age who bought or received the alcoholic beverage is charged for violating IC 7.1-5-7-7.

(d) All civil penalties collected under this section shall be deposited in the alcohol and tobacco commission's enforcement and administration fund under IC 7.1-4-10.

As added by P.L.94-2008, SEC.61.

IC 35-46-1-10.2

Retail establishment's sale or distribution of tobacco to minors; defenses

Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than eighteen (18) years of age commits a

Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars ($200).

(2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars ($400).

(3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars ($700).

(4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars ($1,000).

A retail establishment may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours for each specific business location.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

(h) A person who violates subsection (a) at least six (6) times in any one hundred eighty (180) day period commits habitual illegal sale of tobacco, a Class B infraction.

As added by P.L.177-1999, SEC.11. Amended by P.L.14-2000, SEC.72; P.L.1-2001, SEC.38; P.L.250-2003, SEC.17; P.L.252-2003, SEC.18; P.L.94-2008, SEC.62.

IC 35-46-1-10.5

Purchase, acceptance, or possession of tobacco; defenses

Sec. 10.5. (a) A person less than eighteen (18) years of age who:

(1) purchases tobacco;

(2) accepts tobacco for personal use; or

(3) possesses tobacco on his person;

commits a Class C infraction.

(b) It is a defense under subsection (a) that the accused person acted in the ordinary course of employment in a business concerning tobacco:

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing.

As added by P.L.125-1988, SEC.5. Amended by P.L.256-1996, SEC.13.

IC 35-46-1-11

Retail sale of tobacco; warning notices required; failure to post; offenses

Sec. 11. (a) A tobacco vending machine that is located in a public place must bear the following conspicuous notices:

(1) A notice:

(A) that reads as follows, with the capitalization indicated: "If you are under 18 years of age, YOU ARE FORBIDDEN by Indiana law to buy tobacco from this machine."; or

(B) that:

(i) conveys a message substantially similar to the message described in clause (A); and

(ii) is formatted with words and in a form authorized under the rules adopted by the alcohol and tobacco commission.

(2) A notice that reads as follows, "Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight."

(3) A notice printed in letters and numbers at least one-half (1/2) inch high that displays a toll free phone number for assistance to callers in quitting smoking, as determined by the state department of health.

(b) A person who owns or has control over a tobacco vending machine in a public place and who:

(1) fails to post a notice required by subsection (a) on the vending machine; or

(2) fails to replace a notice within one (1) month after it is removed or defaced;

commits a Class C infraction.

(c) An establishment selling tobacco at retail shall post and maintain in a conspicuous place, at the point of sale, the following:

(1) Signs printed in letters at least one-half (1/2) inch high, reading as follows:

(A) "The sale of tobacco to persons under 18 years of age is forbidden by Indiana law."

(B) "Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight."

(2) A sign printed in letters and numbers at least one-half (1/2) inch high that displays a toll free phone number for assistance to callers in quitting smoking, as determined by the state department of health.

(d) A person who:

(1) owns or has control over an establishment selling tobacco at retail; and

(2) fails to post and maintain the sign required by subsection (c);

commits a Class C infraction.

As added by P.L.330-1983, SEC.2. Amended by P.L.318-1987, SEC.4; P.L.204-2001, SEC.66; P.L.94-2008, SEC.63.

IC 35-46-1-11.2

Operation of tobacco business near school prohibited

Sec. 11.2. (a) This section does not apply to a tobacco business:

(1) operating as a tobacco business before April 1, 1996; or

(2) that begins operating as a tobacco business after April 1, 1996, if at the time the tobacco business begins operation the tobacco business is not located in an area prohibited under this section.

(b) A person may not operate a tobacco business within two hundred (200) feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco business and the nearest point of a building used by the school for instructional purposes.

(c) A person who violates this section commits a Class C misdemeanor.
As added by P.L.256-1996, SEC.11.

IC 35-46-1-11.3
Repealed
(*Repealed by P.L.250-2003, SEC.19.)*

IC 35-46-1-11.5
Coin machines for sale or distribution of tobacco
Sec. 11.5. (a) Except for a coin machine that is placed in or directly adjacent to an entranceway or an exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than eighteen (18) years of age, this section does not apply to a coin machine that is located in the following:

(1) That part of a licensed premises (as defined in IC 7.1-1-3-20) where entry is limited to persons who are at least eighteen (18) years of age.
(2) Private industrial or office locations that are customarily accessible only to persons who are at least eighteen (18) years of age.
(3) Private clubs if the membership is limited to persons who are at least eighteen (18) years of age.
(4) Riverboats where entry is limited to persons who are at least twenty-one (21) years of age and on which lawful gambling is authorized.

(b) As used in this section, "coin machine" has the meaning set forth in IC 35-43-5-1.
(c) Except as provided in subsection (a), an owner of a retail establishment may not:

(1) distribute or sell tobacco by use of a coin machine; or
(2) install or maintain a coin machine that is intended to be used for the sale or distribution of tobacco.

(d) An owner of a retail establishment who violates this section commits a Class C infraction. A citation or summons issued under this section must provide notice that the coin machine must be moved within two (2) business days. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the owner of the retail establishment has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars ($50).
(2) If the owner of the retail establishment has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars ($250).
(3) If the owner of the retail establishment has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days for the same machine, the coin machine shall be removed or impounded by a law enforcement

officer having jurisdiction where the violation occurs.

An owner of a retail establishment may not be issued a citation or summons for a violation of this section more than once every two (2) business days for each business location.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

As added by P.L.49-1990, SEC.20. Amended by P.L.177-1999, SEC.13; P.L.14-2000, SEC.73; P.L.1-2001, SEC.40; P.L.252-2003, SEC.20.

IC 35-46-1-11.7

Minors prohibited from entering retail establishment that primarily sells tobacco products; posting notices required; civil penalties

Sec. 11.7. (a) A retail establishment that has as its primary purpose the sale of tobacco products may not allow an individual who is less than eighteen (18) years of age to enter the retail establishment.

(b) An individual who is less than eighteen (18) years of age may not enter a retail establishment described in subsection (a).

(c) A retail establishment described in subsection (a) must conspicuously post on all entrances to the retail establishment the following:

(1) A sign in boldface type that states "NOTICE: It is unlawful for a person less than 18 years old to enter this store.".

(2) A sign printed in letters and numbers at least one-half (1/2) inch high that displays a toll free phone number for assistance to callers in quitting smoking, as determined by the state department of health.

(d) A person who violates this section commits a Class C infraction. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the person has not been cited for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars ($200).

(2) If the person has had one (1) violation in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars ($400).

(3) If the person has had two (2) violations in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars ($700).

(4) If the person has had three (3) or more violations in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars ($1,000).

A person may not be cited more than once every twenty-four (24) hours.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth

tobacco education and enforcement fund established under IC 7.1-6-2-6.

(f) A person who violates subsection (a) at least six (6) times in any one hundred eighty (180) day period commits habitual illegal entrance by a minor, a Class B infraction.

As added by P.L.177-1999, SEC.14. Amended by P.L.14-2000, SEC.74; P.L.1-2001, SEC.41; P.L.252-2003, SEC.21; P.L.94-2008, SEC.64.

IC 35-46-1-11.8

Cigarette self-service displays

Sec. 11.8. (a) As used in this section, "self-service display" means a display that contains cigarettes in an area where a customer:

(1) is permitted; and

(2) has access to the cigarettes without assistance from a sales person.

(b) This section does not apply to a self-service display located in a retail establishment that:

(1) has a primary purpose to sell cigarettes; and

(2) prohibits entry by persons who are less than eighteen (18) years of age.

(c) The owner of a retail establishment that sells or distributes cigarettes through a self-service display, other than a coin operated machine operated under IC 35-46-1-11 or IC 35-46-1-11.5, commits a Class C infraction.

(d) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

As added by P.L.37-2007, SEC.1.

IC 35-46-1-12

Exploitation of dependent or endangered adult; financial exploitation of endangered adult; violation classification

Sec. 12. (a) Except as provided in subsection (b), a person who recklessly, knowingly, or intentionally exerts unauthorized use of the personal services or the property of:

(1) an endangered adult; or

(2) a dependent eighteen (18) years of age or older;

for the person's own profit or advantage or for the profit or advantage of another person commits exploitation of a dependent or an endangered adult, a Class A misdemeanor.

(b) The offense described in subsection (a) is a Class D felony if:

(1) the fair market value of the personal services or property is more than ten thousand dollars ($10,000); or

(2) the endangered adult or dependent is at least sixty (60) years of age.

(c) Except as provided in subsection (d), a person who recklessly, knowingly, or intentionally deprives an endangered adult or a dependent of the proceeds of the endangered adult's or the dependent's benefits under the Social Security Act or other

retirement program that the division of family resources has budgeted for the endangered adult's or dependent's health care commits financial exploitation of an endangered adult or a dependent, a Class A misdemeanor.

(d) The offense described in subsection (c) is a Class D felony if:

(1) the amount of the proceeds is more than ten thousand dollars ($10,000); or

(2) the endangered adult or dependent is at least sixty (60) years of age.

(e) It is not a defense to an offense committed under subsection (b)(2) or (d)(2) that the accused person reasonably believed that the endangered adult or dependent was less than sixty (60) years of age at the time of the offense.

(f) It is a defense to an offense committed under subsection (a), (b), or (c) if the accused person:

(1) has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or a dependent; and

(2) was acting within the scope of the accused person's fiduciary responsibility.

As added by Acts 1981, P.L.299, SEC.3. Amended by P.L.185-1984, SEC.3; P.L.37-1990, SEC.26; P.L.2-1992, SEC.883; P.L.4-1993, SEC.327; P.L.5-1993, SEC.334; P.L.145-2001, SEC.1; P.L.145-2006, SEC.372; P.L.146-2008, SEC.684.

IC 35-46-1-13

Battery, neglect, or exploitation of endangered adult; failure to report; unlawful disclosure; referrals; retaliation

Sec. 13. (a) A person who:

(1) believes or has reason to believe that an endangered adult is the victim of battery, neglect, or exploitation as prohibited by this chapter, IC 35-42-2-1(a)(2)(C), or IC 35-42-2-1(a)(2)(E); and

(2) knowingly fails to report the facts supporting that belief to the division of disability and rehabilitative services, the division of aging, the adult protective services unit designated under IC 12-10-3, or a law enforcement agency having jurisdiction over battery, neglect, or exploitation of an endangered adult;

commits a Class B misdemeanor.

(b) An officer or employee of the division or adult protective services unit who unlawfully discloses information contained in the records of the division of aging under IC 12-10-3-12 through IC 12-10-3-16 commits a Class C infraction.

(c) A law enforcement agency that receives a report that an endangered adult is or may be a victim of battery, neglect, or exploitation as prohibited by this chapter, IC 35-42-2-1(a)(2)(C), or IC 35-42-2-1(a)(2)(E) shall immediately communicate the report to the adult protective services unit designated under IC 12-10-3.

(d) An individual who discharges, demotes, transfers, prepares a negative work performance evaluation, reduces benefits, pay, or

work privileges, or takes other action to retaliate against an individual who in good faith makes a report under IC 12-10-3-9 concerning an endangered individual commits a Class A infraction. *As added by Acts 1981, P.L.299, SEC.4. Amended by P.L.185-1984, SEC.4; P.L.39-1985, SEC.3; P.L.41-1987, SEC.20; P.L.42-1987, SEC.14; P.L.2-1992, SEC.884; P.L.4-1993, SEC.328; P.L.5-1993, SEC.335; P.L.2-1997, SEC.75; P.L.281-2003, SEC.4; P.L.141-2006, SEC.112.*

IC 35-46-1-14

Reporting or documenting battery, neglect, or exploitation; immunity from civil or criminal liability

Sec. 14. Any person acting in good faith who:

(1) makes or causes to be made a report of neglect, battery, or exploitation under this chapter, IC 35-42-2-1(a)(2)(C), or IC 35-42-2-1(a)(2)(E);

(2) makes or causes to be made photographs or x-rays of a victim of suspected neglect or battery of an endangered adult or a dependent eighteen (18) years of age or older; or

(3) participates in any official proceeding or a proceeding resulting from a report of neglect, battery, or exploitation of an endangered adult or a dependent eighteen (18) years of age or older relating to the subject matter of that report;

is immune from any civil or criminal liability that might otherwise be imposed because of these actions. However, this section does not apply to a person accused of neglect, battery, or exploitation of an endangered adult or a dependent eighteen (18) years of age or older. *As added by Acts 1981, P.L.299, SEC.5. Amended by P.L.185-1984, SEC.5; P.L.2-1997, SEC.76; P.L.2-1998, SEC.81; P.L.2-2005, SEC.127.*

IC 35-46-1-15

Repealed

(*Repealed by P.L.1-1991, SEC.200.)*

IC 35-46-1-15.1

Invasion of privacy; offense; penalties

Sec. 15.1. A person who knowingly or intentionally violates:

(1) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);

(2) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);

(3) a workplace violence restraining order issued under IC 34-26-6;

(4) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or

IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

(5) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;

(6) a no contact order issued as a condition of probation;

(7) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);

(8) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;

(9) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;

(10) an order issued in another state that is substantially similar to an order described in subdivisions (1) through (9);

(11) an order that is substantially similar to an order described in subdivisions (1) through (9) and is issued by an Indian:

(A) tribe;

(B) band;

(C) pueblo;

(D) nation; or

(E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

(12) an order issued under IC 35-33-8-3.2; or

(13) an order issued under IC 35-38-1-30;

commits invasion of privacy, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction for an offense under this section.

As added by P.L.1-1991, SEC.201. Amended by P.L.49-1993, SEC.14; P.L.242-1993, SEC.5; P.L.1-1994, SEC.170; P.L.23-1994, SEC.17; P.L.303-1995, SEC.1; P.L.1-1997, SEC.153; P.L.37-1997, SEC.3; P.L.1-1998, SEC.199; P.L.1-2001, SEC.42; P.L.280-2001, SEC.53; P.L.1-2002, SEC.150; P.L.133-2002, SEC.67; P.L.104-2008, SEC.22; P.L.94-2010, SEC.12.

IC 35-46-1-16

Invasion of privacy convictions; record of persons protected by orders

Sec. 16. The law enforcement agency with custody of a person who is sentenced to a term of imprisonment of more than ten (10) days following conviction of a crime under section 15.1 of this

chapter shall maintain a confidential record of the:

(1) name;

(2) address; and

(3) telephone number;

of each person that the person convicted under section 15.1 of this chapter is required to refrain from direct or indirect contact with under an order described by section 15.1 of this chapter.

As added by P.L.53-1989, SEC.10. Amended by P.L.1-1991, SEC.202.

IC 35-46-1-17

Persons convicted of invasion of privacy; denial of access to protective order information

Sec. 17. A person convicted of a crime under section 15.1 of this chapter may not have access to the information maintained under section 16 of this chapter.

As added by P.L.53-1989, SEC.11. Amended by P.L.1-1991, SEC.203.

IC 35-46-1-18

Invasion of privacy convictions; release and hearings; notice to persons protected by orders

Sec. 18. The law enforcement agency having custody of a person who is sentenced to a term of imprisonment of more than ten (10) days following conviction of a crime under section 15.1 of this chapter shall:

(1) provide each person described in section 16 of this chapter with written notification of:

(A) the release of a person convicted of a crime under section 15.1 of this chapter; and

(B) the date, time, and place of any substantive hearing concerning a violation of section 15.1 of this chapter by a person who is sentenced to a term of imprisonment of more than ten (10) days following conviction of a crime under section 15.1 of this chapter; and

(2) attempt to notify each person described in section 16 of this chapter by telephone to provide the information described in subdivision (1).

As added by P.L.53-1989, SEC.12. Amended by P.L.1-1991, SEC.204.

IC 35-46-1-19

Invasion of privacy convictions; time of notice to persons protected by orders

Sec. 19. The law enforcement agency shall:

(1) provide written notice; and

(2) attempt notification by telephone;

under section 18 of this chapter at least twenty-four (24) hours before the release or hearing.

As added by P.L.53-1989, SEC.13.

IC 35-46-1-20

Enforcement of foreign protection orders

Sec. 20. A law enforcement officer shall enforce a foreign protection order (as defined in IC 34-6-2-48.5) in conformity with the procedures in IC 34-26-5-17.

As added by P.L.280-2001, SEC.54. Amended by P.L.133-2002, SEC.68.

IC 35-46-1-21

Unauthorized adoption advertising; telephone directory publisher requirements

Sec. 21. (a) Only a person that is an attorney licensed to practice law or a child placing agency licensed under the laws of Indiana may place a paid advertisement or paid listing of the person's telephone number, on the person's own behalf, in a telephone directory that:

(1) a child is offered or wanted for adoption; or

(2) the person is able to place, locate, or receive a child for adoption.

(b) A person that publishes a telephone directory that is distributed in Indiana:

(1) shall include, at the beginning of any classified heading for adoption and adoption services, a statement that informs directory users that only attorneys licensed to practice law and licensed child placing agencies may legally provide adoption services under Indiana law; and

(2) may publish an advertisement described in subsection (a) in the telephone directory only if the advertisement contains the following:

(A) For an attorney licensed to practice law in Indiana, the person's attorney number.

(B) For a child placing agency licensed under the laws of Indiana, the number on the person's child placing agency license.

(c) A person who knowingly or intentionally violates subsection (a) commits unauthorized adoption advertising, a Class A misdemeanor.

As added by P.L.146-2007, SEC.20. Amended by P.L.21-2010, SEC.10.

IC 35-46-1-22

Unauthorized adoption facilitation

Sec. 22. (a) As used in this section, "adoption services" means at least one (1) of the following services that is provided for compensation, an item of value, or reimbursement, either directly or indirectly, and provided either before or after the services are rendered:

(1) Arranging for the placement of a child.

(2) Identifying a child for adoption.

(3) Matching adoptive parents with biological parents.

(4) Arranging or facilitating an adoption.

(5) Taking or acknowledging consents or surrenders for termination of parental rights for adoption purposes.

(6) Performing background studies on:

(A) a child who is going to be adopted; or

(B) adoptive parents.

(7) Making determinations concerning the best interests of a child and the appropriateness in placing the child for adoption.

(8) Postplacement monitoring of a child before the child is adopted.

(b) As used in this section, the term "adoption services" does not include the following:

(1) Legal services provided by an attorney licensed in Indiana.

(2) Adoption related services provided by a governmental entity or a person appointed to perform an investigation by the court.

(3) General education and training on adoption issues.

(4) Postadoption services, including supportive services to families to promote the well-being of members of adoptive families or birth families.

(c) This section does not apply to the following persons:

(1) The department of child services, an agency or person authorized to act on behalf of the department of child services, or a similar agency or county office with similar responsibilities in another state.

(2) The division of family resources, an agency or person authorized to act on behalf of the division of family resources, or a similar agency or county office with similar responsibilities in another state.

(3) A child placing agency licensed under the laws of Indiana.

(4) An attorney licensed to practice law in Indiana.

(5) A prospective biological parent or adoptive parent acting on the individual's own behalf.

(d) A person who knowingly or intentionally provides, engages in, or facilitates adoption services to a birth parent or prospective adoptive parent who resides in Indiana commits unauthorized adoption facilitation, a Class A misdemeanor.

As added by P.L.146-2007, SEC.21. Amended by P.L.146-2008, SEC.685; P.L.21-2010, SEC.11.

IC 35-46-2

Chapter 2. Offenses Relating to Civil Rights

IC 35-46-2-1

Violation of civil rights

Sec. 1. A person who knowingly or intentionally denies to another person, because of color, creed, disability, national origin, race, religion, or sex, the full and equal use of the services, facilities, or goods in:

(1) an establishment that caters or offers its services, facilities, or goods to the general public; or

(2) a housing project owned or subsidized by a governmental entity;

commits a civil rights violation, a Class B misdemeanor.

As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.92; P.L.23-1993, SEC.162.

IC 35-46-2-2

Discrimination in jury selection

Sec. 2. A public servant having the duty to select or summon persons for grand jury or trial jury service who knowingly or intentionally fails to select or summon a person because of color, creed, disability, national origin, race, religion, or sex commits discrimination in jury selection, a Class A misdemeanor.

As added by Acts 1977, P.L.340, SEC.93. Amended by P.L.23-1993, SEC.163.

IC 35-46-3

Chapter 3. Offenses Relating to Animals

IC 35-46-3-0.5

Definitions

Sec. 0.5. The following definitions apply throughout this chapter:

(1) "Abandon" means to desert an animal or to leave the animal permanently in a place without making provision for adequate long term care of the animal. The term does not include leaving an animal in a place that is temporarily vacated for the protection of human life during a disaster.

(2) "Beat" means to unnecessarily or cruelly strike an animal, or to throw the animal against an object causing the animal to suffer severe pain or injury. The term does not include reasonable training or disciplinary techniques.

(3) "Mutilate" means to wound, injure, maim, or disfigure an animal by irreparably damaging the animal's body parts or to render any part of the animal's body useless. The term includes bodily injury involving:

(A) serious permanent disfigurement;

(B) serious temporary disfigurement;

(C) permanent or protracted loss or impairment of the function of a bodily part or organ; or

(D) a fracture.

(4) "Neglect" means:

(A) endangering an animal's health by failing to provide or arrange to provide the animal with food or drink, if the animal is dependent upon the person for the provision of food or drink;

(B) restraining an animal for more than a brief period in a manner that endangers the animal's life or health by the use of a rope, chain, or tether that:

(i) is less than three (3) times the length of the animal;

(ii) is too heavy to permit the animal to move freely; or

(iii) causes the animal to choke;

(C) restraining an animal in a manner that seriously endangers the animal's life or health;

(D) failing to:

(i) provide reasonable care for; or

(ii) seek veterinary care for;

an injury or illness to a dog or cat that seriously endangers the life or health of the dog or cat; or

(E) leaving a dog or cat outside and exposed to:

(i) excessive heat without providing the animal with a means of shade from the heat; or

(ii) excessive cold if the animal is not provided with straw or another means of protection from the cold;

regardless of whether the animal is restrained or kept in a kennel.

(5) "Torture" means:

(A) to inflict extreme physical pain or injury on an animal with the intent of increasing or prolonging the animal's pain; or

(B) to administer poison to a domestic animal (as defined in section 12(d) of this chapter) or expose a domestic animal to a poisonous substance with the intent that the domestic animal ingest the substance and suffer harm, pain, or physical injury.

As added by P.L.171-2007, SEC.5. Amended by P.L.111-2009, SEC.10.

IC 35-46-3-1

Harboring a non-immunized dog

Sec. 1. A person who knowingly or intentionally harbors a dog that is over the age of six (6) months and not immunized against rabies commits harboring a non-immunized dog, a Class C infraction. However, the offense is a Class B misdemeanor if the dog causes bodily injury by biting a person.

As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.94.

IC 35-46-3-2

Repealed

(*Repealed by P.L.193-1987, SEC.17.)*

IC 35-46-3-3

"Animal"

Sec. 3. As used in this chapter, "animal" does not include a human being.

As added by P.L.193-1987, SEC.6.

IC 35-46-3-4

"Animal fighting contest"

Sec. 4. As used in this chapter, "animal fighting contest" means a conflict between two (2) or more animals. The term does not include a conflict that is unorganized or accidental.

As added by P.L.193-1987, SEC.7.

IC 35-46-3-4.3

"Animal fighting paraphernalia"

Sec. 4.3. As used in this chapter, "animal fighting paraphernalia" means equipment used to train or condition animals for participation in an animal fighting contest.

As added by P.L.76-2002, SEC.2.

IC 35-46-3-4.5

"Law enforcement animal"

Sec. 4.5. (a) As used in this chapter, "law enforcement animal" means an animal that is owned or used by a law enforcement agency for the principal purposes of:

(1) aiding in:
(A) the detection of criminal activity;
(B) the enforcement of laws; and
(C) the apprehension of offenders; and
(2) ensuring the public welfare.
(b) The term includes, but is not limited to, the following:
(1) A horse.
(2) An arson investigation dog.
(3) A bomb detection dog.
(4) A narcotic detection dog.
(5) A patrol dog.

As added by P.L.213-1997, SEC.2. Amended by P.L.9-2003, SEC.1.

IC 35-46-3-5

Exceptions from chapter; electrocution

Sec. 5. (a) Except as provided in subsections (b) through (c), this chapter does not apply to the following:

(1) Fishing, hunting, trapping, or other conduct authorized under IC 14-22.
(2) Conduct authorized under IC 15-20-2.
(3) Veterinary practices authorized by standards adopted under IC 25-38.1-2-14.
(4) Conduct authorized by a local ordinance.
(5) Acceptable farm management practices.
(6) Conduct authorized by IC 15-17, and rules adopted under IC 15-17 for state or federally inspected livestock slaughtering facilities and state or federal animal disease control programs.
(7) A research facility registered with the United States Department of Agriculture under the federal Animal Welfare Act (7 U.S.C. 2131 et seq.).
(8) Destruction of a vertebrate defined as a pest under IC 15-16-5-24.
(9) Destruction of or injury to a fish.
(10) Destruction of a vertebrate animal that is:
(A) endangering, harassing, or threatening livestock or a domestic animal; or
(B) destroying or damaging a person's property.
(11) Destruction of an animal by an animal control program, including an animal control facility, an animal shelter, or a humane society.
(12) Destruction of an injured or ill animal by an individual to prevent the animal from prolonged suffering.
(13) Conduct not resulting in serious injury or illness to the animal that is incidental to exhibiting an animal for show, competition, or display, or that is incidental to transporting the animal for show, competition, or display.
(14) Parking an animal.
(15) Humane destruction of an animal that the person owns.

(b) Section 1 of this chapter applies to conduct described in subsection (a).

(c) Destruction of an animal by electrocution is authorized under this section only if it is conducted by a person who is engaged in an acceptable farm management practice, by a research facility registered with the United States Department of Agriculture under the Animal Welfare Act, or for the animal disease diagnostic laboratory established under IC 21-46-3-1, a research facility licensed by the United States Department of Agriculture, a college, or a university.

As added by P.L.193-1987, SEC.8. Amended by P.L.2-1993, SEC.188; P.L.1-1995, SEC.76; P.L.137-1996, SEC.74; P.L.41-1998, SEC.1; P.L.2-2007, SEC.378; P.L.171-2007, SEC.6; P.L.2-2008, SEC.79; P.L.111-2009, SEC.11.

IC 35-46-3-6

Impoundment of animals; probable cause hearing; penalties; custody; bond

Sec. 6. (a) This section does not apply to a violation of section 1 of this chapter.

(b) Any law enforcement officer or any other person having authority to impound animals who has probable cause to believe there has been a violation of this chapter or IC 15-20-1-4 may take custody of the animal involved.

(c) The owner of an animal that has been impounded under this section may prevent disposition of the animal by an animal shelter that is caring for the animal by posting, not later than ten (10) days after the animal has been impounded, a bond with the court in an amount sufficient to provide for the animal's care and keeping for at least thirty (30) days, beginning from the date the animal was impounded. The owner may renew a bond by posting a new bond, in an amount sufficient to provide for the animal's care and keeping for at least an additional thirty (30) days, not later than ten (10) days after the expiration of the period for which a previous bond was posted. If a bond expires and is not renewed, the animal shelter may determine disposition of the animal, subject to court order. If the owner of an animal impounded under this section is convicted of an offense under this chapter or IC 15-20-1-4, the owner shall reimburse the animal shelter for the expense of the animal's care and keeping. If the owner has paid a bond under this subsection, the animal shelter may euthanize an animal if a veterinarian determines that an animal is suffering extreme pain.

(d) If the owner requests, the court having jurisdiction of criminal charges filed under this chapter or IC 15-20-1 shall hold a hearing to determine whether probable cause exists to believe that a violation of this chapter or IC 15-20-1 has occurred. If the court determines that probable cause does not exist, the court shall order the animal returned to its owner, and the return of any bond posted by its owner.

(e) Whenever charges are filed under this chapter, the court shall appoint the state veterinarian under IC 15-17-4-1 or the state veterinarian's designee to:

(1) investigate the condition of the animal and the

circumstances relating to the animal's condition; and

(2) make a recommendation to the court under subsection (f) regarding the confiscation of the animal.

(f) The state veterinarian or the state veterinarian's designee who is appointed under subsection (e) shall do the following:

(1) Make a recommendation to the court concerning whether confiscation is necessary to protect the safety and well-being of the animal.

(2) If confiscation is recommended under subdivision (1), recommend a manner for handling the confiscation and disposition of the animal that is in the best interests of the animal.

The state veterinarian or the state veterinarian's designee who submits a recommendation under this subsection shall articulate to the court the reasons supporting the recommendation.

(g) The court:

(1) shall give substantial weight to; and

(2) may enter an order based upon;

a recommendation submitted under subsection (f).

(h) If a person is convicted of an offense under this chapter or IC 15-20-1, the court may impose the following additional penalties against the person:

(1) A requirement that the person pay the costs of caring for an animal involved in the offenses that are incurred during a period of impoundment authorized under subsection (b).

(2) An order terminating or imposing conditions on the person's right to possession, title, custody, or care of:

(A) an animal that was involved in the offense; or

(B) any other animal in the custody or care of the person.

(i) If a person's right to possession, title, custody, or care of an animal is terminated under subsection (h), the court may:

(1) award the animal to a humane society or other organization that has as its principal purpose the humane treatment of animals; or

(2) order the disposition of the animal as recommended under subsection (f).

As added by P.L.193-1987, SEC.9. Amended by P.L.176-1993, SEC.6; P.L.166-1993, SEC.5; P.L.14-2000, SEC.75; P.L.76-2002, SEC.3; P.L.171-2007, SEC.7; P.L.2-2008, SEC.80.

IC 35-46-3-7

Abandonment or neglect of vertebrate animals; defense

Sec. 7. (a) A person who:

(1) has a vertebrate animal in the person's custody; and

(2) recklessly, knowingly, or intentionally abandons or neglects the animal;

commits cruelty to an animal, a Class A misdemeanor. However, except for a conviction under section 1 of this chapter, the offense is a Class D felony if the person has a prior unrelated conviction under this chapter.

(b) It is a defense to a prosecution for abandoning a vertebrate animal under this section that the person who had the animal in the person's custody reasonably believed that the vertebrate animal was capable of surviving on its own.

(c) For purposes of this section, an animal that is feral is not in a person's custody.

As added by P.L.193-1987, SEC.10. Amended by P.L.171-2007, SEC.8; P.L.111-2009, SEC.12.

IC 35-46-3-8

Purchase or possession of animals for fighting contests

Sec. 8. A person who knowingly or intentionally purchases or possesses an animal for the purpose of using the animal in an animal fighting contest commits a Class D felony.

As added by P.L.193-1987, SEC.11. Amended by P.L.171-2007, SEC.9.

IC 35-46-3-8.5

Possession of animal fighting paraphernalia

Sec. 8.5. A person who knowingly or intentionally possesses animal fighting paraphernalia with the intent to commit a violation of IC 35-46-3-9 commits possession of animal fighting paraphernalia, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

As added by P.L.76-2002, SEC.4.

IC 35-46-3-9

Promotion, use of animals, or attendance with animal at animal fighting contest

Sec. 9. A person who knowingly or intentionally:

(1) promotes or stages an animal fighting contest;

(2) uses an animal in a fighting contest; or

(3) attends an animal fighting contest having an animal in the person's possession;

commits a Class D felony.

As added by P.L.193-1987, SEC.12.

IC 35-46-3-9.5

Promoting an animal fighting contest

Sec. 9.5. A person who knowingly or intentionally:

(1) possesses animal fighting paraphernalia with the intent to commit a violation of IC 35-46-3-9; and

(2) possesses, harbors, or trains a dog, cock, fowl, or bird bearing:

(A) a scar;

(B) a wound; or

(C) an injury;

consistent with participation in or training for an animal fighting contest;

commits promoting an animal fighting contest, a Class D felony.
As added by P.L.76-2002, SEC.5.

IC 35-46-3-10
Attendance at fighting contest

Sec. 10. A person who knowingly or intentionally attends a fighting contest involving animals commits cruelty to an animal, a Class A misdemeanor. However, except for a conviction under section 1 of this chapter, the offense is a Class D felony if the person has a prior unrelated conviction under this chapter.
As added by P.L.193-1987, SEC.13. Amended by P.L.111-2009, SEC.13.

IC 35-46-3-11
Cruelty to a law enforcement animal

Sec. 11. (a) A person who knowingly or intentionally:

(1) strikes, torments, injures, or otherwise mistreats a law enforcement animal; or

(2) interferes with the actions of a law enforcement animal while the animal is engaged in assisting a law enforcement officer in the performance of the officer's duties;

commits a Class A misdemeanor.

(b) An offense under subsection (a)(1) is a Class D felony if the act results in:

(1) serious permanent disfigurement;

(2) unconsciousness;

(3) permanent or protracted loss or impairment of the function of a bodily member or organ; or

(4) death;

of the law enforcement animal.

(c) It is a defense that the accused person:

(1) engaged in a reasonable act of training, handling, or discipline; and

(2) acted as an employee or agent of a law enforcement agency.

(d) In addition to any sentence or fine imposed for a conviction of an offense under this section, the court may order the person convicted to make restitution to the person or law enforcement agency owning the animal for reimbursement of:

(1) veterinary bills; and

(2) replacement costs of the animal if the animal is disabled or killed.

As added by P.L.193-1987, SEC.14. Amended by P.L.213-1997, SEC.3; P.L.9-2003, SEC.2.

IC 35-46-3-11.3
Cruelty to a search and rescue dog

Sec. 11.3. (a) As used in this section, "search and rescue dog" means a dog that receives special training to locate or attempt to locate by air scent or ground or water tracking a person who is an offender or is lost, trapped, injured, or incapacitated.

(b) A person who knowingly or intentionally:

(1) interferes with the actions of a search and rescue dog while the dog is performing or is attempting to perform a search and rescue task; or

(2) strikes, torments, injures, or otherwise mistreats a search and rescue dog;

commits a Class A misdemeanor.

(c) An offense under subsection (b)(2) is a Class D felony if the act results in:

(1) serious permanent disfigurement;

(2) unconsciousness;

(3) permanent or protracted loss or impairment of the function of a bodily member or organ; or

(4) death;

of the search and rescue dog.

(d) It is a defense that the accused person:

(1) engaged in a reasonable act of training, handling, or disciplining the search and rescue dog; or

(2) reasonably believed the conduct was necessary to prevent injury to the accused person or another person.

(e) In addition to any sentence or fine imposed for a conviction of an offense under this section, the court may order the person to make restitution to the person who owns the search and rescue dog for reimbursement of:

(1) veterinary bills; and

(2) replacement costs of the dog if the dog is disabled or killed.

As added by P.L.9-2003, SEC.3.

IC 35-46-3-11.5

Cruelty to a service animal

Sec. 11.5. (a) As used in this section, "service animal" means an animal that a person who is impaired by:

(1) blindness or any other visual impairment;

(2) deafness or any other aural impairment;

(3) a physical disability; or

(4) a medical condition;

relies on for navigation, assistance in performing daily activities, or alert signals regarding the onset of the person's medical condition.

(b) A person who knowingly or intentionally:

(1) interferes with the actions of a service animal; or

(2) strikes, torments, injures, or otherwise mistreats a service animal;

while the service animal is engaged in assisting an impaired person described in subsection (a) commits a Class A misdemeanor.

(c) An offense under subsection (b)(2) is a Class D felony if the act results in the:

(1) serious permanent disfigurement;

(2) unconsciousness;

(3) permanent or protracted loss or impairment of the function of a bodily member or organ; or

(4) death;
of the service animal.

(d) It is a defense that the accused person:

(1) engaged in a reasonable act of training, handling, or disciplining the service animal; or

(2) reasonably believed the conduct was necessary to prevent injury to the accused person or another person.

As added by P.L.143-1996, SEC.2. Amended by P.L.9-2003, SEC.4.

IC 35-46-3-12

Torture or mutilation of a vertebrate animal; killing a domestic animal

Sec. 12. (a) This section does not apply to a person who euthanizes an injured, a sick, a homeless, or an unwanted domestic animal if:

(1) the person is employed by a humane society, an animal control agency, or a governmental entity operating an animal shelter or other animal impounding facility; and

(2) the person euthanizes the domestic animal in accordance with guidelines adopted by the humane society, animal control agency, or governmental entity operating the animal shelter or other animal impounding facility.

(b) A person who knowingly or intentionally beats a vertebrate animal commits cruelty to an animal, a Class A misdemeanor. However, the offense is a Class D felony if:

(1) the person has a previous, unrelated conviction under this section; or

(2) the person committed the offense with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

(c) A person who knowingly or intentionally tortures or mutilates a vertebrate animal commits torturing or mutilating a vertebrate animal, a Class D felony.

(d) As used in this subsection, "domestic animal" means an animal that is not wild. The term is limited to:

(1) cattle, calves, horses, mules, swine, sheep, goats, dogs, cats, poultry, ostriches, rhea, and emus; and

(2) an animal of the bovine, equine, ovine, caprine, porcine, canine, feline, camelid, cervidae, or bison species.

A person who knowingly or intentionally kills a domestic animal without the consent of the owner of the domestic animal commits killing a domestic animal, a Class D felony.

(e) It is a defense to a prosecution under this section that the accused person:

(1) reasonably believes the conduct was necessary to:

(A) prevent injury to the accused person or another person;

(B) protect the property of the accused person from destruction or substantial damage; or

(C) prevent a seriously injured vertebrate animal from prolonged suffering; or

(2) engaged in a reasonable and recognized act of training, handling, or disciplining the vertebrate animal.

(f) When a court imposes a sentence or enters a dispositional decree under this section, the court:

(1) shall consider requiring:

(A) a person convicted of an offense under this section; or

(B) a child adjudicated a delinquent child for committing an act that would be a crime under this section if committed by an adult;

to receive psychological, behavioral, or other counseling as a part of the sentence or dispositional decree; and

(2) may order an individual described in subdivision (1) to receive psychological, behavioral, or other counseling as a part of the sentence or dispositional decree.

As added by P.L.193-1987, SEC.15. Amended by P.L.41-1998, SEC.2; P.L.132-2002, SEC.1; P.L.7-2007, SEC.1; P.L.171-2007, SEC.10; P.L.111-2009, SEC.14.

IC 35-46-3-12.5

Domestic violence animal cruelty

Sec. 12.5. A person who knowingly or intentionally kills a vertebrate animal with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member commits domestic violence animal cruelty, a Class D felony.

As added by P.L.171-2007, SEC.11.

IC 35-46-3-13

Removal of attack dog's vocal cords; animal cruelty

Sec. 13. (a) A person who knowingly or intentionally removes the vocal cords of a trained attack dog commits cruelty to an animal, a Class A misdemeanor.

(b) It is a defense to a prosecution under this section that the accused person reasonably believes that the conduct was necessary to prevent a seriously injured dog from prolonged injury.

As added by P.L.76-2002, SEC.7.

IC 35-46-3-14

Bestiality

Sec. 14. A person who knowingly or intentionally performs an act involving:

(1) a sex organ of a person and the mouth or anus of an animal;

(2) a sex organ of an animal and the mouth or anus of a person;

(3) any penetration of the human female sex organ by an animal's sex organ; or

(4) any penetration of an animal's sex organ by the human male sex organ;

commits bestiality, a Class D felony.

As added by P.L.171-2007, SEC.12.

IC 35-46-3-15

Electrocution or decompression of animals

Sec. 15. (a) This section does not apply to the following:

(1) A state or federally inspected livestock slaughtering facility (for conduct authorized by IC 15-17-5 and rules adopted under that chapter).

(2) An animal disease diagnostic laboratory established under IC 21-46-3-1.

(3) A postsecondary educational institution.

(4) A research facility licensed by the United States Department of Agriculture.

(b) As used in this section, "animal" has the meaning set forth in IC 35-46-3-3.

(c) A person who knowingly or intentionally destroys or authorizes the destruction of an animal by:

(1) placing the animal in a decompression chamber and lowering the pressure of or the oxygen content in the air surrounding the animal; or

(2) electrocution;

commits a Class B misdemeanor.

As added by P.L.2-2008, SEC.13.

IC 35-46-4

Chapter 4. Failure of a Student Athlete to Disclose Recruitment

IC 35-46-4-1

"Agent contract"

Sec. 1. As used in this chapter, "agent contract" means a contract or agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete:

(1) an agreement with a professional sports team for:

(A) the employment of the student athlete by a professional sports team or organization; or

(B) the employment of the student athlete as a professional athlete; or

(2) an endorsement contract.

As added by P.L.184-1988, SEC.1. Amended by P.L.54-2001, SEC.7.

IC 35-46-4-1.5

"Endorsement contract"

Sec. 1.5. As used in this chapter, "endorsement contract" means an agreement under which a student athlete is employed or receives consideration to use, on behalf of the other party, any value that the student athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance. The term includes the value of any part of the student athlete's right of publicity (as defined in IC 32-36-1-7).

As added by P.L.54-2001, SEC.8. Amended by P.L.1-2003, SEC.96.

IC 35-46-4-2

"Professional sports services contract"

Sec. 2. As used in this chapter, "professional sports services contract" means a contract or agreement in which a person is employed or agrees to render services:

(1) as a player on a professional sports team;

(2) as a professional athlete; or

(3) with a professional sports organization.

As added by P.L.184-1988, SEC.1. Amended by P.L.54-2001, SEC.9.

IC 35-46-4-3

"Student athlete"

Sec. 3. As used in this chapter, "student athlete" means a person who is:

(1) enrolled or intends to enroll in a course of study in a public or private college or university; and

(2) eligible to engage in, or may be eligible in the future to engage in, an intercollegiate sporting event, contest, exhibition, or program for the college or university in which the person is enrolled or intends to enroll.

As added by P.L.184-1988, SEC.1. Amended by P.L.54-2001, SEC.10.

IC 35-46-4-4

Failure to disclose recruitment

Sec. 4. A person who knowingly or intentionally:

(1) enters into an agent contract, an endorsement contract, or a professional sports services contract with a student athlete; and

(2) no later than ten (10) days before the contract is executed, fails to give written notice to the head of the athletic department for the college or university in which the student athlete is enrolled as a student or intends to enroll as a student that identifies:

(A) the name and business address of each party to the contract;

(B) whether the contract is an agent contract, an endorsement contract, or a professional sports services contract; and

(C) the date that the contract will be executed;

commits failure to disclose recruitment, a Class D felony.

As added by P.L.184-1988, SEC.1. Amended by P.L.54-2001, SEC.11.

IC 35-46-5

Chapter 5. Offenses Against Public Sensibility

IC 35-46-5-1

Human tissue trafficking

Sec. 1. (a) As used in this section, "fetal tissue" means tissue from an infant or a fetus who is stillborn or aborted.

(b) As used in this section, "human organ" means the kidney, liver, heart, lung, cornea, eye, bone marrow, bone, pancreas, or skin of a human body.

(c) As used in this section, "item of value" means money, real estate, funeral related services, and personal property. "Item of value" does not include:

(1) the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ; or

(2) the reimbursement of travel, housing, lost wages, and other expenses incurred by the donor of a human organ related to the donation of the human organ.

(d) A person who intentionally acquires, receives, sells, or transfers in exchange for an item of value:

(1) a human organ for use in human organ transplantation; or

(2) fetal tissue;

commits unlawful transfer of human tissue, a Class C felony.

As added by P.L.131-1992, SEC.2. Amended by P.L.217-1997, SEC.1.

IC 35-46-5-2

Unlawful participation in human cloning; exception

Sec. 2. (a) This section does not apply to in vitro fertilization.

(b) As used in this section, "cloning" has the meaning set forth in IC 16-18-2-56.5.

(c) A person who knowingly or intentionally:

(1) participates in cloning;

(2) implants or attempts to implant a cloned human embryo into a uterine environment to initiate a pregnancy; or

(3) ships or receives a cloned human embryo;

commits unlawful participation in human cloning, a Class D felony.

As added by P.L.126-2005, SEC.9.

IC 35-46-5-3

Unlawful transfer of human organisms; exceptions

Sec. 3. (a) A person who knowingly or intentionally purchases or sells a human ovum, zygote, embryo, or fetus commits unlawful transfer of a human organism, a Class C felony.

(b) This section does not apply to the following:

(1) The transfer to or receipt by a woman donor of an ovum of an amount for:

(A) earnings lost due to absence from employment;

(B) travel expenses;

(C) hospital expenses;
(D) medical expenses; and
(E) recovery time in an amount not to exceed three thousand dollars ($3,000);

concerning a treatment or procedure to enhance human reproductive capability through in vitro fertilization, gamete intrafallopian transfer, or zygote intrafallopian transfer.

(2) The following types of stem cell research:
(A) Adult stem cell.
(B) Fetal stem cell, as long as the biological parent has given written consent for the use of the fetal stem cells.

As added by P.L.126-2005, SEC.10.

IC 35-46-5-4

Unlawful documentation of a gift of organs, tissue, eyes, or body parts

Sec. 4. An individual who, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document that:

(1) expresses;
(2) makes an amendment or revocation of; or
(3) refuses;

a gift of organs, tissues, eyes, or other body parts intended to be used in research or in transplants, commits a Class A misdemeanor.

As added by P.L.147-2007, SEC.18.

IC 35-46-6

Chapter 6. Glue Sniffing

IC 35-46-6-1

"Model glue" defined

Sec. 1. As used in this chapter, "model glue" means a glue or cement containing toluene or acetone, or both.

As added by P.L.2-1993, SEC.189. Amended by P.L.151-2006, SEC.19.

IC 35-46-6-2

Inhaling toxic vapors

Sec. 2. A person who, with intent to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses, ingests or inhales the fumes of:

(1) model glue; or

(2) a substance that contains:

(A) toluene;

(B) acetone;

(C) benzene;

(D) N-butyl nitrite;

(E) any aliphatic nitrite, unless prescribed by a physician;

(F) butane;

(G) amyl butrate;

(H) isobutyl nitrate;

(I) freon;

(J) chlorinated hydrocarbons;

(K) methylene chloride;

(L) hexane;

(M) ether;

(N) chloroform; or

(O) halothane; or

(3) any other chemical having the property of releasing toxic vapors;

commits inhaling toxic vapors, a Class B misdemeanor.

As added by P.L.2-1993, SEC.189. Amended by P.L.151-2006, SEC.20.

IC 35-46-6-3

Nitrous oxide distribution; nonmedical purposes

Sec. 3. A person who knowingly or intentionally uses or distributes nitrous oxide with intent to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses of another person, unless the nitrous oxide is to be used for medical purposes, commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

As added by P.L.163-1994, SEC.1. Amended by P.L.218-1997, SEC.1.

IC 35-46-7

Chapter 7. Offenses Against Persons Receiving Care

IC 35-46-7-1

"Health care provider"

Sec. 1. As used in this chapter, "health care provider" means:

(1) a hospital licensed under IC 16-21;

(2) a health facility licensed under IC 16-28;

(3) a housing services establishment that is required to file a disclosure statement under IC 12-15;

(4) a continuing care retirement community that is required to file a disclosure statement under IC 23-2-4;

(5) a home health agency licensed under IC 16-27;

(6) a hospice licensed under IC 16-25;

(7) an entity that provides licensed or certified health care professionals to:

(A) a health care provider; or

(B) a person who is in need of, or receives, professional health care services;

(8) a community mental health center (as defined in IC 12-7-2-38);

(9) a private psychiatric hospital licensed under IC 12-25;

(10) a state institution (as defined in IC 12-7-2-184); or

(11) a community residential facility for the developmentally disabled that is licensed under IC 12-28-5.

As added by P.L.139-2002, SEC.1.

IC 35-46-7-2

Excluded transactions

Sec. 2. This chapter does not apply to the following:

(1) A gift or donation of money or other asset given to:

(A) a health care provider in the corporate name of the health care provider; or

(B) a health care provider that is organized under Section 501(c)(3) of the Internal Revenue Code.

(2) A gift or loan of money or other asset given by a person who receives services from a health care provider to a member of the person's family who:

(A) is employed by a health care provider; or

(B) owns, wholly or jointly, a health care provider.

(3) A bequest of personal property or devise of real property made in an executable will as described in IC 29-1-5-5 to a health care provider or an owner, employee, or agent of a health care provider.

(4) The purchase of a security (as defined in IC 23-19-1-2(28)) that is traded on a national or regional exchange.

(5) A gift or gratuity, not exceeding five hundred dollars ($500) in the aggregate per year per person receiving services from the health care provider, to an employee of a health care provider.

(6) A gift or donation of money or other asset given to purchase

or otherwise acquire a product, service, or amenity for the use, entertainment, or enjoyment of persons receiving services from a health care provider.

As added by P.L.139-2002, SEC.1. Amended by P.L.27-2007, SEC.32.

IC 35-46-7-3

Regulated transactions; requirement that transaction be executed in writing; penalty

Sec. 3. (a) The following transactions are subject to the requirements of subsection (b):

(1) A gift, a donation, a loan, or an investment from a person who receives services from a health care provider to:

(A) the health care provider; or

(B) an owner, employee, or agent of the health care provider.

(2) A loan or an investment from a person who receives services from a health care provider to the health care provider in the corporate name of the health care provider.

(b) A transaction under subsection (a) must be executed by a competent person (including a person other than the health care provider exercising a durable power of attorney on behalf of the donor) in writing and witnessed by two (2) disinterested parties. Each witness shall sign a document that describes the transaction in the presence of:

(1) the person who makes the transaction; and

(2) the other witness.

(c) A health care provider, or an owner, an employee, or an agent of a health care provider, who:

(1) receives a gift, a donation, a loan, or an investment from a person who receives services from a health care provider; and

(2) fails to comply with the requirements of subsection (b);

commits a Class A infraction. Without regard to the amount of the transaction, the court that imposes the penalty for the infraction violation may, upon the request of the prosecuting attorney, order the person to return assets or repay money received in violation of this section, plus interest from the date of the transaction, to the person who made the gift, donation, loan, or investment. In addition, if the court finds that the person knowingly violated the requirements of subsection (b), the court may order the person to pay treble damages and reasonable attorney's fees.

As added by P.L.139-2002, SEC.1.

IC 35-46-8

Chapter 8. Unlawful Recording

IC 35-46-8-1

Application

Sec. 1. This chapter does not apply to a law enforcement officer acting within the scope of the officer's employment.

As added by P.L.94-2005, SEC.6.

IC 35-46-8-2

"Audiovisual recording device"

Sec. 2. As used in this chapter, "audiovisual recording device" means:

(1) a digital or an analog photographic or video camera; or

(2) any other technology capable of enabling the recording or transmission of a motion picture or other audiovisual work;

regardless of whether audiovisual recording is the sole or primary purpose of the device.

As added by P.L.94-2005, SEC.6.

IC 35-46-8-3

"Motion picture exhibition facility"

Sec. 3. (a) As used in this chapter, "motion picture exhibition facility" means:

(1) an indoor or outdoor screening venue; or

(2) any other premises;

where motion pictures or other audiovisual works are shown to the public for a charge, regardless of whether an admission fee is charged.

(b) The term does not include a dwelling.

As added by P.L.94-2005, SEC.6.

IC 35-46-8-4

Unlawful recording; defense

Sec. 4. (a) A person who knowingly or intentionally uses an audiovisual recording device in a motion picture exhibition facility with the intent to transmit or record a motion picture commits unlawful recording, a Class B misdemeanor.

(b) It is a defense to a prosecution under this section that the accused person had the written permission of the motion picture exhibition facility owner to transmit or record the motion picture.

As added by P.L.94-2005, SEC.6.

IC 35-46-8-5

Additional penalties

Sec. 5. In addition to a criminal penalty imposed for an offense under this chapter, a court may order the forfeiture, destruction, or other disposition of:

(1) all unauthorized copies of motion pictures or other audiovisual works; and

(2) any audiovisual recording devices or other equipment used in connection with the offense.

As added by P.L.94-2005, SEC.6.

IC 35-47

ARTICLE 47. WEAPONS AND INSTRUMENTS OF VIOLENCE

IC 35-47-1

Chapter 1. Definitions

IC 35-47-1-1

Application of definitions in chapter

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.311-1983, SEC.32.

IC 35-47-1-2

"Alcohol abuser"

Sec. 2. "Alcohol abuser" means an individual who has had two (2) or more alcohol related offenses, any one (1) of which resulted in conviction by a court or treatment in an alcohol abuse facility within three (3) years prior to the date of the application.

As added by P.L.311-1983, SEC.32.

IC 35-47-1-3

"Dealer"

Sec. 3. "Dealer" means any person who holds himself out as a buyer and seller of handguns on a regular and continuing basis.

As added by P.L.311-1983, SEC.32.

IC 35-47-1-4

"Drug abuser"

Sec. 4. "Drug abuser" means an individual who has had two (2) or more violations of IC 35-48-1, IC 35-48-2, IC 35-48-3, or IC 35-48-4, any one (1) of which resulted in conviction by a court or treatment in a drug abuse facility within five (5) years prior to the date of application.

As added by P.L.311-1983, SEC.32.

IC 35-47-1-5

"Firearm"

Sec. 5. "Firearm" means any weapon:

(1) that is:

(A) capable of expelling; or

(B) designed to expel; or

(2) that may readily be converted to expel;

a projectile by means of an explosion.

As added by P.L.311-1983, SEC.32. Amended by P.L.3-2008, SEC.254.

IC 35-47-1-5.5

"Gun show"

Sec. 5.5. "Gun show" has the meaning set forth in 27 CFR

478.100.
As added by P.L.148-1987, SEC.2. Amended by P.L.1-2006, SEC.534.

IC 35-47-1-6
"Handgun"
Sec. 6. "Handgun" means any firearm:
(1) designed or adapted so as to be aimed and fired from one (1) hand, regardless of barrel length; or
(2) any firearm with:
(A) a barrel less than sixteen (16) inches in length; or
(B) an overall length of less than twenty-six (26) inches.
As added by P.L.311-1983, SEC.32.

IC 35-47-1-7
"Proper person"
Sec. 7. "Proper person" means a person who:
(1) does not have a conviction for resisting law enforcement under IC 35-44-3-3 within five (5) years before the person applies for a license or permit under this chapter;
(2) does not have a conviction for a crime for which the person could have been sentenced for more than one (1) year;
(3) does not have a conviction for a crime of domestic violence (as defined in IC 35-41-1-6.3), unless a court has restored the person's right to possess a firearm under IC 35-47-4-7;
(4) is not prohibited by a court order from possessing a handgun;
(5) does not have a record of being an alcohol or drug abuser as defined in this chapter;
(6) does not have documented evidence which would give rise to a reasonable belief that the person has a propensity for violent or emotionally unstable conduct;
(7) does not make a false statement of material fact on the person's application;
(8) does not have a conviction for any crime involving an inability to safely handle a handgun;
(9) does not have a conviction for violation of the provisions of this article within five (5) years of the person's application; or
(10) does not have an adjudication as a delinquent child for an act that would be a felony if committed by an adult, if the person applying for a license or permit under this chapter is less than twenty-three (23) years of age.
As added by P.L.311-1983, SEC.32. Amended by P.L.191-1984, SEC.1; P.L.148-1987, SEC.3; P.L.269-1995, SEC.5; P.L.49-2005, SEC.1; P.L.118-2007, SEC.34.

IC 35-47-1-8
"Proper reason"
Sec. 8. "Proper reason" means for the defense of oneself or the state of Indiana.

As added by P.L.311-1983, SEC.32.

IC 35-47-1-9
"Retail"

Sec. 9. "Retail" means the sale of handguns singly or in small quantities to one who intends to be the ultimate user thereof.
As added by P.L.311-1983, SEC.32.

IC 35-47-1-10
"Sawed-off shotgun"

Sec. 10. "Sawed-off shotgun" means:

(1) a shotgun having one (1) or more barrels less than eighteen (18) inches in length; and

(2) any weapon made from a shotgun (whether by alteration, modification, or otherwise) if the weapon as modified has an overall length of less than twenty-six (26) inches.

As added by P.L.311-1983, SEC.32.

IC 35-47-1-11
"Shotgun"

Sec. 11. "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.
As added by P.L.311-1983, SEC.32.

IC 35-47-1-12
"Superintendent"

Sec. 12. "Superintendent" refers to the superintendent of the Indiana state police department.
As added by P.L.311-1983, SEC.32.

IC 35-47-1-13
"Wholesale"

Sec. 13. "Wholesale" means the sale of handguns singly or in bulk lots to one lawfully licensed to deal in handguns, or the sale of a handgun to a governmental law enforcement agency for issue to its employees.
As added by P.L.311-1983, SEC.32.

IC 35-47-2

Chapter 2. Regulation of Handguns

IC 35-47-2-1

Carrying a handgun without a license or by person convicted of domestic battery

Sec. 1. (a) Except as provided in subsection (b) and section 2 of this chapter, a person shall not carry a handgun in any vehicle or on or about the person's body, except in the person's dwelling, on the person's property or fixed place of business, without a license issued under this chapter being in the person's possession.

(b) Unless the person's right to possess a firearm has been restored under IC 35-47-4-7, a person who has been convicted of domestic battery under IC 35-42-2-1.3 may not possess or carry a handgun in any vehicle or on or about the person's body in the person's dwelling or on the person's property or fixed place of business.

As added by P.L.311-1983, SEC.32. Amended by P.L.326-1987, SEC.1; P.L.195-2003, SEC.6; P.L.98-2004, SEC.155; P.L.118-2007, SEC.35.

IC 35-47-2-2

Excepted persons

Sec. 2. Section 1 of this chapter does not apply to:

(1) marshals;

(2) sheriffs;

(3) the commissioner of the department of correction or persons authorized by him in writing to carry firearms;

(4) judicial officers;

(5) law enforcement officers;

(6) members of the armed forces of the United States or of the national guard or organized reserves while they are on duty;

(7) regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this state who are at or are going to or from their place of assembly or target practice;

(8) employees of the United States duly authorized to carry handguns;

(9) employees of express companies when engaged in company business;

(10) any person engaged in the business of manufacturing, repairing, or dealing in firearms or the agent or representative of any such person having in his possession, using, or carrying a handgun in the usual or ordinary course of that business; or

(11) any person while carrying a handgun unloaded and in a secure wrapper from the place of purchase to his dwelling or fixed place of business, or to a place of repair or back to his dwelling or fixed place of business, or in moving from one dwelling or business to another.

As added by P.L.311-1983, SEC.32.

IC 35-47-2-3

Application for license to carry handgun; procedure

Sec. 3. (a) A person desiring a license to carry a handgun shall apply:

(1) to the chief of police or corresponding law enforcement officer of the municipality in which the applicant resides;

(2) if that municipality has no such officer, or if the applicant does not reside in a municipality, to the sheriff of the county in which the applicant resides after the applicant has obtained an application form prescribed by the superintendent; or

(3) if the applicant is a resident of another state and has a regular place of business or employment in Indiana, to the sheriff of the county in which the applicant has a regular place of business or employment.

The superintendent and local law enforcement agencies shall allow an applicant desiring to obtain or renew a license to carry a handgun to submit an application electronically under this chapter if funds are available to establish and maintain an electronic application system.

(b) The law enforcement agency which accepts an application for a handgun license shall collect the following application fees:

(1) From a person applying for a four (4) year handgun license, a ten dollar ($10) application fee, five dollars ($5) of which shall be refunded if the license is not issued.

(2) From a person applying for a lifetime handgun license who does not currently possess a valid Indiana handgun license, a fifty dollar ($50) application fee, thirty dollars ($30) of which shall be refunded if the license is not issued.

(3) From a person applying for a lifetime handgun license who currently possesses a valid Indiana handgun license, a forty dollar ($40) application fee, thirty dollars ($30) of which shall be refunded if the license is not issued.

Except as provided in subsection (h), the fee shall be deposited into the law enforcement agency's firearms training fund or other appropriate training activities fund and used by the agency to train law enforcement officers in the proper use of firearms or in other law enforcement duties, or to purchase firearms, firearm related equipment, or body armor (as defined in IC 35-47-5-13(a)) for the law enforcement officers employed by the law enforcement agency. The state board of accounts shall establish rules for the proper accounting and expenditure of funds collected under this subsection.

(c) The officer to whom the application is made shall ascertain the applicant's name, full address, length of residence in the community, whether the applicant's residence is located within the limits of any city or town, the applicant's occupation, place of business or employment, criminal record, if any, and convictions (minor traffic offenses excepted), age, race, sex, nationality, date of birth, citizenship, height, weight, build, color of hair, color of eyes, scars and marks, whether the applicant has previously held an Indiana license to carry a handgun and, if so, the serial number of the license and year issued, whether the applicant's license has ever been

suspended or revoked, and if so, the year and reason for the suspension or revocation, and the applicant's reason for desiring a license. The officer to whom the application is made shall conduct an investigation into the applicant's official records and verify thereby the applicant's character and reputation, and shall in addition verify for accuracy the information contained in the application, and shall forward this information together with the officer's recommendation for approval or disapproval and one (1) set of legible and classifiable fingerprints of the applicant to the superintendent.

(d) The superintendent may make whatever further investigation the superintendent deems necessary. Whenever disapproval is recommended, the officer to whom the application is made shall provide the superintendent and the applicant with the officer's complete and specific reasons, in writing, for the recommendation of disapproval.

(e) If it appears to the superintendent that the applicant:

(1) has a proper reason for carrying a handgun;

(2) is of good character and reputation;

(3) is a proper person to be licensed; and

(4) is:

(A) a citizen of the United States; or

(B) not a citizen of the United States but is allowed to carry a firearm in the United States under federal law;

the superintendent shall issue to the applicant a qualified or an unlimited license to carry any handgun lawfully possessed by the applicant. The original license shall be delivered to the licensee. A copy shall be delivered to the officer to whom the application for license was made. A copy shall be retained by the superintendent for at least four (4) years in the case of a four (4) year license. The superintendent may adopt guidelines to establish a records retention policy for a lifetime license. A four (4) year license shall be valid for a period of four (4) years from the date of issue. A lifetime license is valid for the life of the individual receiving the license. The license of police officers, sheriffs or their deputies, and law enforcement officers of the United States government who have been honorably retired by a lawfully created pension board or its equivalent after twenty (20) or more years of service, shall be valid for the life of these individuals. However, a lifetime license is automatically revoked if the license holder does not remain a proper person.

(f) At the time a license is issued and delivered to a licensee under subsection (e), the superintendent shall include with the license information concerning handgun safety rules that:

(1) neither opposes nor supports an individual's right to bear arms; and

(2) is:

(A) recommended by a nonprofit educational organization that is dedicated to providing education on safe handling and use of firearms;

(B) prepared by the state police department; and

(C) approved by the superintendent.

The superintendent may not deny a license under this section because the information required under this subsection is unavailable at the time the superintendent would otherwise issue a license. The state police department may accept private donations or grants to defray the cost of printing and mailing the information required under this subsection.

(g) A license to carry a handgun shall not be issued to any person who:

(1) has been convicted of a felony;

(2) has had a license to carry a handgun suspended, unless the person's license has been reinstated;

(3) is under eighteen (18) years of age;

(4) is under twenty-three (23) years of age if the person has been adjudicated a delinquent child for an act that would be a felony if committed by an adult; or

(5) has been arrested for a Class A or Class B felony, or any other felony that was committed while armed with a deadly weapon or that involved the use of violence, if a court has found probable cause to believe that the person committed the offense charged.

In the case of an arrest under subdivision (5), a license to carry a handgun may be issued to a person who has been acquitted of the specific offense charged or if the charges for the specific offense are dismissed. The superintendent shall prescribe all forms to be used in connection with the administration of this chapter.

(h) If the law enforcement agency that charges a fee under subsection (b) is a city or town law enforcement agency, the fee shall be deposited in the law enforcement continuing education fund established under IC 5-2-8-2.

(i) If a person who holds a valid license to carry a handgun issued under this chapter:

(1) changes the person's name;

(2) changes the person's address; or

(3) experiences a change, including an arrest or a conviction, that may affect the person's status as a proper person (as defined in IC 35-47-1-7) or otherwise disqualify the person from holding a license;

the person shall, not later than thirty (30) days after the date of a change described under subdivision (3), and not later than sixty (60) days after the date of the change described under subdivision (1) or (2), notify the superintendent, in writing, of the event described under subdivision (3) or, in the case of a change under subdivision (1) or (2), the person's new name or new address.

(j) The state police shall indicate on the form for a license to carry a handgun the notification requirements of subsection (i).

(k) The state police department shall adopt rules under IC 4-22-2 to implement an electronic application system under subsection (a). Rules adopted under this section must require the superintendent to keep on file one (1) set of classifiable and legible fingerprints from

every person who has received a license to carry a handgun so that a person who applies to renew a license will not be required to submit an additional set of fingerprints.

(l) Except as provided in subsection (m), for purposes of IC 5-14-3-4(a)(1), the following information is confidential, may not be published, and is not open to public inspection:

(1) Information submitted by a person under this section to:

(A) obtain; or

(B) renew;

a license to carry a handgun.

(2) Information obtained by a federal, state, or local government entity in the course of an investigation concerning a person who applies to:

(A) obtain; or

(B) renew;

a license to carry a handgun issued under this chapter.

(3) The name, address, and any other information that may be used to identify a person who holds a license to carry a handgun issued under this chapter.

(m) Notwithstanding subsection (l):

(1) any information concerning an applicant for or a person who holds a license to carry a handgun issued under this chapter may be released to a federal, state, or local government entity:

(A) for law enforcement purposes; or

(B) to determine the validity of a license to carry a handgun; and

(2) general information concerning the issuance of licenses to carry handguns in Indiana may be released to a person conducting journalistic or academic research, but only if all personal information that could disclose the identity of any person who holds a license to carry a handgun issued under this chapter has been removed from the general information.

As added by P.L.311-1983, SEC.32. Amended by P.L.26-1990, SEC.15; P.L.48-1993, SEC.5; P.L.140-1994, SEC.6; P.L.269-1995, SEC.6; P.L.2-1996, SEC.284; P.L.27-2001, SEC.1; P.L.120-2001, SEC.1; P.L.49-2005, SEC.2; P.L.187-2005, SEC.3; P.L.190-2006, SEC.2; P.L.155-2007, SEC.1; P.L.47-2010, SEC.1; P.L.34-2010, SEC.4.

IC 35-47-2-4

Qualified or unlimited licenses to carry handguns; fees; exemptions from payment of fees

Sec. 4. (a) Licenses to carry handguns shall be either qualified or unlimited, and are valid for:

(1) four (4) years from the date of issue in the case of a four (4) year license; or

(2) the life of the individual receiving the license in the case of a lifetime license.

A qualified license shall be issued for hunting and target practice. The superintendent may adopt rules imposing limitations on the use

and carrying of handguns under a license when handguns are carried by a licensee as a condition of employment. Unlimited licenses shall be issued for the purpose of the protection of life and property.

(b) In addition to the application fee, the fee for:

(1) a qualified license shall be:

(A) five dollars ($5) for a four (4) year qualified license;

(B) twenty-five dollars ($25) for a lifetime qualified license from a person who does not currently possess a valid Indiana handgun license; or

(C) twenty dollars ($20) for a lifetime qualified license from a person who currently possesses a valid Indiana handgun license; and

(2) an unlimited license shall be:

(A) thirty dollars ($30) for a four (4) year unlimited license;

(B) seventy-five dollars ($75) for a lifetime unlimited license from a person who does not currently possess a valid Indiana handgun license; or

(C) sixty dollars ($60) for a lifetime unlimited license from a person who currently possesses a valid Indiana handgun license.

The superintendent shall charge a twenty dollar ($20) fee for the issuance of a duplicate license to replace a lost or damaged license. These fees shall be deposited in accordance with subsection (e).

(c) Licensed dealers are exempt from the payment of fees specified in subsection (b) for a qualified license or an unlimited license.

(d) The following officers of this state or the United States who have been honorably retired by a lawfully created pension board or its equivalent after at least twenty (20) years of service or because of a disability are exempt from the payment of fees specified in subsection (b):

(1) Police officers.

(2) Sheriffs or their deputies.

(3) Law enforcement officers.

(4) Correctional officers.

(e) Fees collected under this section shall be deposited in the state general fund.

(f) The superintendent may not issue a lifetime qualified license or a lifetime unlimited license to a person who is a resident of another state. The superintendent may issue a four (4) year qualified license or a four (4) year unlimited license to a person who is a resident of another state and who has a regular place of business or employment in Indiana as described in section 3(a)(3) of this chapter.

As added by P.L.311-1983, SEC.32. Amended by P.L.209-1986, SEC.1; P.L.148-1987, SEC.4; P.L.75-1989, SEC.9; P.L.190-2006, SEC.3; P.L.1-2007, SEC.235; P.L.155-2007, SEC.2.

IC 35-47-2-5

Suspension or revocation of license; failure to return license; rules concerning procedure for suspending or revoking license

Sec. 5. (a) The superintendent may suspend or revoke any license issued under this chapter if he has reasonable grounds to believe that the person's license should be suspended or revoked.

(b) Documented evidence that a person is not a "proper person" to be licensed as defined by IC 35-47-1-7, or is prohibited under section 3(g)(5) of this chapter from being issued a license, shall be grounds for immediate suspension or revocation of a license previously issued under this chapter. However, if a license is suspended or revoked based solely on an arrest under section 3(g)(5) of this chapter, the license shall be reinstated upon the acquittal of the defendant in that case or upon the dismissal of the charges for the specific offense.

(c) A person who fails to promptly return his license after written notice of suspension or revocation commits a Class A misdemeanor. The observation of a handgun license in the possession of a person whose license has been suspended or revoked constitutes a sufficient basis for the arrest of that person for violation of this subsection.

(d) The superintendent shall establish rules under IC 4-22-2 concerning the procedure for suspending or revoking a person's license.

As added by P.L.311-1983, SEC.32. Amended by P.L.140-1994, SEC.7; P.L.2-1996, SEC.285; P.L.120-2001, SEC.2; P.L.1-2006, SEC.535.

IC 35-47-2-6

Granting or rejecting initial application; renewals

Sec. 6. (a) Every initial application for any license under this chapter shall be granted or rejected within sixty (60) days after the application is filed.

(b) The period during which an application for the renewal of an existing license may be filed begins three hundred sixty-five (365) days before the expiration of the existing license. If the application for renewal of an existing license is filed within thirty (30) days of its expiration, the existing license is automatically extended until the application for renewal is passed upon.

As added by P.L.311-1983, SEC.32. Amended by P.L.190-2006, SEC.4; P.L.47-2010, SEC.2.

IC 35-47-2-7

Prohibited sales or transfers of ownership

Sec. 7. (a) Except an individual acting within a parent-minor child or guardian-minor protected person relationship or any other individual who is also acting in compliance with IC 35-47-10, a person may not sell, give, or in any other manner transfer the ownership or possession of a handgun or assault weapon (as defined in IC 35-50-2-11) to any person under eighteen (18) years of age.

(b) It is unlawful for a person to sell, give, or in any manner transfer the ownership or possession of a handgun to another person who the person has reasonable cause to believe:

(1) has been:

(A) convicted of a felony; or
(B) adjudicated a delinquent child for an act that would be a felony if committed by an adult, if the person seeking to obtain ownership or possession of the handgun is less than twenty-three (23) years of age;
(2) is a drug abuser;
(3) is an alcohol abuser; or
(4) is mentally incompetent.

As added by P.L.311-1983, SEC.32. Amended by P.L.33-1989, SEC.126; P.L.140-1994, SEC.8; P.L.269-1995, SEC.7.

IC 35-47-2-8

Regulation of sale of handguns imposed by this chapter; application

Sec. 8. The regulation of the sale of handguns imposed by this chapter shall apply equally to an occasional sale, trade, or transfer between individual persons and to retail transactions between dealers and individual persons.

As added by P.L.311-1983, SEC.32. Amended by P.L.17-1997, SEC.6.

IC 35-47-2-9

Repealed

(*Repealed by P.L.17-1997, SEC.9.)*

IC 35-47-2-10

Repealed

(*Repealed by P.L.17-1997, SEC.9.)*

IC 35-47-2-11

Repealed

(*Repealed by P.L.17-1997, SEC.9.)*

IC 35-47-2-12

Repealed

(*Repealed by P.L.17-1997, SEC.9.)*

IC 35-47-2-13

Repealed

(*Repealed by P.L.17-1997, SEC.10.)*

IC 35-47-2-14

Necessity of retail handgun dealer's license; display

Sec. 14. A retail dealer who:
(1) sells;
(2) trades;
(3) transfers;
(4) exposes for sale, trade, or transfer; or
(5) possesses with intent to sell, trade, or transfer;

any handgun without being licensed under sections 15 and 16 of this

chapter and without displaying his license at all times commits a Class B misdemeanor.
As added by P.L.311-1983, SEC.32.

IC 35-47-2-15
Retail handgun dealer's license; application procedure

Sec. 15. (a) A person desiring a retail handgun dealer's license shall apply to the sheriff of the county in which he resides, or if he is a resident of another state and has a regular place of business in Indiana, then to the sheriff of the county in which he has a regular place of business. The applicant shall state his name, full address, occupation, sex, race, age, place of birth, date of birth, nationality, height, weight, build, color of eyes, color of hair, complexion, scars and marks, and any criminal record (minor traffic offenses excepted). The officer to whom the application is made shall verify the application and search his records concerning the applicant's character and reputation.

(b) The officer to whom the application is made shall send to the superintendent:

(1) the verified application;
(2) the results of the officer's investigation; and
(3) the officer's recommendation for approval or disapproval of the application;

in as many copies as the superintendent shall designate, and one (1) set of legible and classifiable fingerprints of the applicant. The superintendent may make whatever further investigation he deems necessary. Whenever disapproval is recommended by the officer to whom the application was made, he shall provide the superintendent and the applicant with his complete reasons for the disapproval in writing. If the officer to whom the application is made recommends approval, he shall instruct the applicant in the proper method of taking legible and classifiable fingerprints. If it appears to the superintendent that the applicant is of good character and reputation and a proper person to be licensed, he shall issue to the applicant a retail handgun dealer's license which shall be valid for a period of two (2) years from the date of issue. The fee for the license shall be twenty dollars ($20), which shall be deposited with the officer to whom the application is made, who shall in turn forward it to the superintendent for deposit with the treasurer of state when the application is approved by the superintendent. In the event that the application is disapproved by the superintendent, the fee shall be returned to the applicant along with the complete reasons, in writing, for the disapproval.

(c) No retail dealer's license shall be issued to any person who has been:

(1) convicted of a felony; or
(2) adjudicated a delinquent child for an act that would be a felony if committed by an adult, if the person applying for the retail dealer's license is less than twenty-three (23) years of age;

in Indiana or any other state or country.

(d) A retail dealer's license shall permit the licensee to sell handguns at retail within this state subject to the conditions specified in this chapter. The license may be suspended or revoked in accordance with applicable law, and the licensee may be subject to punishment as provided in this chapter.
As added by P.L.311-1983, SEC.32. Amended by P.L.191-1984, SEC.4; P.L.269-1995, SEC.9.

IC 35-47-2-16
Retail handgun dealer's license; restrictions; display; prohibited sales; gun show

Sec. 16. (a) A retail dealer's business shall be carried on only in the site designated in the license. A separate license shall be required for each separate retail outlet. Whenever a licensed dealer moves his place of business, he shall promptly notify the superintendent, who shall at once issue an amended license certificate valid for the balance of the license period. This subsection does not apply to sales at wholesale.

(b) The license, certified by the issuing authority, shall be displayed on the business premises in a prominent place where it can be seen easily by prospective customers.

(c) No handgun shall be sold:

(1) in violation of any provision of this chapter; or

(2) under any circumstances unless the purchaser is personally known to the seller or presents clear evidence of his identity.

(d) Notwithstanding subsection (a), a retail dealer may display, sell, or transfer handguns at a gun show in accordance with this chapter and federal law.
As added by P.L.311-1983, SEC.32. Amended by P.L.191-1984, SEC.5; P.L.148-1987, SEC.5.

IC 35-47-2-17
Giving false information or offering false evidence of identity; violation of section

Sec. 17. No person, in purchasing or otherwise securing delivery of a handgun or in applying for a license to carry a handgun, shall give false information or offer false evidence of identity. In addition to any penalty provided by this chapter, any handgun obtained through false information shall be subject to confiscation and disposition as provided in this chapter. Upon notice of a violation of this section by the superintendent, it shall be the duty of the sheriff or chief of police or corresponding officer of the jurisdiction in which the purchaser resides to confiscate the firearm and retain it as evidence pending trial for the offense.
As added by P.L.311-1983, SEC.32.

IC 35-47-2-18
Obliterating identification marks on handgun or possession of such handguns prohibited

Sec. 18. No person shall:

(1) change, alter, remove, or obliterate the name of the maker, model, manufacturer's serial number, or other mark of identification on any handgun; or

(2) possess any handgun on which the name of the maker, model, manufacturer's serial number, or other mark of identification has been changed, altered, removed, or obliterated;

except as provided by applicable United States statute.

As added by P.L.311-1983, SEC.32.

IC 35-47-2-19

Application of chapter

Sec. 19. This chapter does not apply to any firearm not designed to use fixed cartridges or fixed ammunition, or any firearm made before January 1, 1899.

As added by P.L.311-1983, SEC.32.

IC 35-47-2-20

Removal of disability under this chapter

Sec. 20. (a) A full pardon from the governor of Indiana for:

(1) a felony other than a felony that is included in IC 35-42; or

(2) a violation of this chapter;

removes any disability under this chapter imposed because of that offense, if fifteen (15) years have elapsed between the time of the offense and the application for a license under this chapter.

(b) A conditional pardon described in IC 11-9-2-4 for:

(1) a felony; or

(2) a violation of this chapter;

removes a disability under this chapter if the superintendent determines after an investigation that circumstances have changed since the pardoned conviction was entered to such an extent that the pardoned person is likely to handle handguns in compliance with the law.

As added by P.L.311-1983, SEC.32. Amended by P.L.191-1984, SEC.6; P.L.148-1987, SEC.6.

IC 35-47-2-21

Recognition of retail dealers' licenses and licenses to carry handguns issued by other states

Sec. 21. (a) Retail dealers' licenses issued by other states or foreign countries will not be recognized in Indiana except for sales at wholesale.

(b) Licenses to carry handguns, issued by other states or foreign countries, will be recognized according to the terms thereof but only while the holders are not residents of Indiana.

As added by P.L.311-1983, SEC.32.

IC 35-47-2-22

Use of unlawful handgun-carrying license to obtain handgun prohibited

Sec. 22. It is unlawful for any person to use, or to attempt to use, a false, counterfeit, spurious, or altered handgun-carrying license to obtain a handgun contrary to the provisions of this chapter.
As added by P.L.311-1983, SEC.32.

IC 35-47-2-23
Violations; classes of misdemeanors and felonies

Sec. 23. (a) A person who violates section 3, 4, 5, 14, 15, or 16 of this chapter commits a Class B misdemeanor.

(b) A person who violates section 7, 17, or 18 of this chapter commits a Class C felony.

(c) A person who violates section 1 of this chapter commits a Class A misdemeanor. However, the offense is a Class C felony:

(1) if the offense is committed:
(A) on or in school property;
(B) within one thousand (1,000) feet of school property; or
(C) on a school bus; or

(2) if the person:
(A) has a prior conviction of any offense under:
(i) this subsection; or
(ii) subsection (d); or
(B) has been convicted of a felony within fifteen (15) years before the date of the offense.

(d) A person who violates section 22 of this chapter commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior conviction of any offense under this subsection or subsection (c), or if the person has been convicted of a felony within fifteen (15) years before the date of the offense.
As added by P.L.311-1983, SEC.32. Amended by P.L.16-1984, SEC.20; P.L.140-1994, SEC.9; P.L.17-1997, SEC.7.

IC 35-47-2-24
Indictment or information; defendant's burden to prove exemption or license; arrest, effect of production of valid license, or establishment of exemption

Sec. 24. (a) In an information or indictment brought for the enforcement of any provision of this chapter, it is not necessary to negate any exemption specified under this chapter, or to allege the absence of a license required under this chapter. The burden of proof is on the defendant to prove that he is exempt under section 2 of this chapter, or that he has a license as required under this chapter.

(b) Whenever a person who has been arrested or charged with a violation of section 1 of this chapter presents a valid license to the prosecuting attorney or establishes that he is exempt under section 2 of this chapter, any prosecution for a violation of section 1 of this chapter shall be dismissed immediately, and all records of an arrest or proceedings following arrest shall be destroyed immediately.
As added by P.L.311-1983, SEC.32.

IC 35-47-2.5

Chapter 2.5. Sale of Handguns

IC 35-47-2.5-1

Applicability; conflicts

Sec. 1. (a) This chapter does not apply to the following:

(1) Transactions between persons who are licensed as firearms importers or collectors or firearms manufacturers or dealers under 18 U.S.C. 923.

(2) Purchases by or sales to a law enforcement officer or agent of the United States, the state, or a county or local government.

(3) Indiana residents licensed to carry handguns under IC 35-47-2-3.

(b) Notwithstanding any other provision of this chapter, the state shall participate in the NICS if federal funds are available to assist the state in participating in the NICS. If:

(1) the state participates in the NICS; and

(2) there is a conflict between:

(A) a provision of this chapter; and

(B) a procedure required under the NICS;

the procedure required under the NICS prevails over the conflicting provision of this chapter.

As added by P.L.17-1997, SEC.8. Amended by P.L.190-2006, SEC.5.

IC 35-47-2.5-2

"Dealer" defined

Sec. 2. As used in this chapter, "dealer" includes any person licensed under 18 U.S.C. 923.

As added by P.L.17-1997, SEC.8.

IC 35-47-2.5-2.5

"NICS"

Sec. 2.5. As used in this chapter, "NICS" refers to the National Instant Criminal Background Check System maintained by the Federal Bureau of Investigation in accordance with the federal Brady Handgun Violence Prevention Act (18 U.S.C. 921 et seq.).

As added by P.L.190-2006, SEC.6.

IC 35-47-2.5-3

Form 4473

Sec. 3. A person purchasing a handgun from a dealer shall complete and sign Bureau of Alcohol, Tobacco, Firearms and Explosives Form 4473.

As added by P.L.17-1997, SEC.8. Amended by P.L.190-2006, SEC.7; P.L.155-2007, SEC.3.

IC 35-47-2.5-4

Dealer requirements before sale, rent, trade, or transfer

Sec. 4. (a) A dealer may not sell, rent, trade, or transfer from the dealer's inventory a handgun to a person until the dealer has done all

of the following:

(1) Obtained from the prospective purchaser a completed and signed Form 4473 as specified in section 3 of this chapter.

(2) Contacted NICS:

(A) by telephone; or

(B) electronically;

to request a background check on the prospective purchaser.

(3) Received authorization from NICS to transfer the handgun to the prospective purchaser.

(b) The dealer shall record the NICS transaction number on Form 4473 and retain Form 4473 for auditing purposes.

As added by P.L.17-1997, SEC.8. Amended by P.L.190-2006, SEC.8.

IC 35-47-2.5-5

Documentation of personal identification and residence

Sec. 5. (a) To establish personal identification and residence in Indiana for purposes of this chapter, a dealer must require a prospective purchaser to present one (1) photographic identification form issued by a governmental agency of the state or by the United States Department of Defense, or other documentation of residence.

(b) Except when photographic identification was issued by the United States Department of Defense, other documentation of residence must show an address identical to that shown on the photographic identification form or as amended by proper notice of change of address filed with the issuing authority. Suitable other documentation of residence includes:

(1) evidence of currently paid personal property tax or real estate tax, a current lease, utility, or telephone bill, a voter registration card, a bank check, a passport, an automobile registration, or a hunting or fishing license;

(2) other current identification allowed as evidence of residency by 27 CFR 178.124 and United States Alcohol, Tobacco, and Firearms Ruling 79-7; or

(3) other documentation of residence, determined to be acceptable by the state police department, that corroborates that the prospective purchaser currently resides in Indiana.

(c) If the photographic identification was issued by the United States Department of Defense, permanent orders may be used as documentation of residence.

As added by P.L.17-1997, SEC.8.

IC 35-47-2.5-6

Repealed

(*Repealed by P.L.190-2006, SEC.10.)*

IC 35-47-2.5-7

Repealed

(*Repealed by P.L.190-2006, SEC.10.)*

IC 35-47-2.5-8

Repealed

(*Repealed by P.L.190-2006, SEC.10.)*

IC 35-47-2.5-9

Repealed

(*Repealed by P.L.190-2006, SEC.10.)*

IC 35-47-2.5-10

Repealed

(*Repealed by P.L.190-2006, SEC.10.)*

IC 35-47-2.5-11

Repealed

(*Repealed by P.L.190-2006, SEC.10.)*

IC 35-47-2.5-12

Criminal history check; false statement on consent form

Sec. 12. A person who knowingly or intentionally makes a materially false statement on Form 4473 completed under section 3 of this chapter commits a Class D felony.

As added by P.L.17-1997, SEC.8. Amended by P.L.190-2006, SEC.9; P.L.155-2007, SEC.4.

IC 35-47-2.5-13

Dealer violations

Sec. 13. Except as otherwise provided in this chapter, a dealer who knowingly or intentionally sells, rents, trades, or transfers a handgun in violation of this chapter commits a Class A misdemeanor.

As added by P.L.17-1997, SEC.8.

IC 35-47-2.5-14

Providing handgun to ineligible purchaser; exemptions

Sec. 14. (a) This section does not apply to a person who provides a handgun to the following:

(1) A child who is attending a hunters safety course or a firearms safety course or an adult who is supervising the child during the course.

(2) A child engaging in practice in using a firearm for target shooting at an established range or in an area where the discharge of a firearm is not prohibited or is supervised by:

(A) a qualified firearms instructor; or

(B) an adult who is supervising the child while the child is at the range.

(3) A child engaging in an organized competition involving the use of a firearm or participating in or practicing for a performance by an organized group under Section 501(c)(3) of the Internal Revenue Code that uses firearms as a part of a performance or an adult who is involved in the competition or performance.

(4) A child who is hunting or trapping under a valid license

issued to the child under IC 14-22.

(5) A child who is traveling with an unloaded firearm to or from an activity described in this section.

(6) A child who:

(A) is on real property that is under the control of the child's parent, an adult family member of the child, or the child's legal guardian; and

(B) has permission from the child's parent or legal guardian to possess a firearm.

(b) A person who purchases a handgun with the intent to:

(1) resell or otherwise provide the handgun to another person who the person knows or has reason to believe is ineligible for any reason to purchase or otherwise receive from a dealer a handgun; or

(2) transport the handgun out of the state to be resold or otherwise provided to another person who the transferor knows is ineligible to purchase or otherwise receive a firearm;

commits a Class D felony.

(c) If the violation of this section involves a transfer of more than one (1) handgun, the offense is a Class C felony.

As added by P.L.17-1997, SEC.8.

IC 35-47-2.5-15

Ineligible purchaser attempting to purchase handgun; violation

Sec. 15. (a) A person who is ineligible to purchase or otherwise receive or possess a handgun in Indiana who knowingly or intentionally solicits, employs, or assists any person in violating section 14 of this chapter commits a Class D felony.

(b) If the violation involves a transfer of more than one (1) handgun, the offense is a Class C felony.

As added by P.L.17-1997, SEC.8.

IC 35-47-3

Chapter 3. Disposal of Confiscated Weapons

IC 35-47-3-1

Disposal of confiscated weapons in accordance with chapter

Sec. 1. All firearms confiscated pursuant to statute shall, upon conviction of the person for the offense for which the confiscation was made, be disposed of in accordance with this chapter.

As added by P.L.311-1983, SEC.32.

IC 35-47-3-2

Application of section to firearms not required to be registered in National Firearms Registration and Transfer Record; return of firearms to rightful owners; disposal procedure

Sec. 2. (a) This section applies only to firearms which are not required to be registered in the National Firearms Registration and Transfer Record.

(b) Firearms shall be returned to the rightful owner at once following final disposition of the cause if a return has not already occurred under the terms of IC 35-33-5. If the rightful ownership is not known the law enforcement agency holding the firearm shall make a reasonable attempt to ascertain the rightful ownership and cause the return of the firearm. However, nothing in this chapter shall be construed as requiring the return of firearms to rightful owners who have been convicted for the misuse of firearms. In such cases, the court may provide for the return of the firearm in question or order that the firearm be at once delivered:

(1) except as provided in subdivision (2), to the sheriff's department of the county in which the offense occurred; or

(2) to the city or town police force that confiscated the firearm, if:

(A) a member of the city or town police force confiscated the firearm; and

(B) the city or town has a population of more than two thousand five hundred (2,500) and less than two hundred fifty thousand (250,000).

(c) The receiving law enforcement agency shall dispose of firearms under subsection (b), at the discretion of the law enforcement agency, not more than one hundred twenty (120) days following receipt by use of any of the following procedures:

(1) Public sale of the firearms to the general public as follows:

(A) Notice of the sale shall be:

(i) posted for ten (10) days in the county courthouse in a place readily accessible to the general public; and

(ii) advertised in the principal newspaper of the county for two (2) days in an advertisement that appears in the newspaper at least five (5) days prior to the sale.

(B) Disposition of the firearm shall be by public auction in a place convenient to the general public, with disposition going to the highest bidder. However, no firearm shall be

transferred to any bidder if that bidder is not lawfully eligible to receive and possess firearms according to the laws of the United States and Indiana.

(C) All handguns transferred under this subdivision shall also be transferred according to the transfer procedures set forth in this article.

(D) Money collected pursuant to the sales shall first be used to defray the necessary costs of administering this subdivision with any surplus to be:

(i) deposited into the receiving law enforcement agency's firearms training fund, if the law enforcement agency is a county law enforcement agency, or into a continuing education fund established under IC 5-2-8-2, if the law enforcement agency is a city or town law enforcement agency; and

(ii) used by the agency exclusively for the purpose of training law enforcement officers in the proper use of firearms or other law enforcement duties, if the law enforcement agency is a county law enforcement agency, or for law enforcement purposes, if the law enforcement agency is a city or town law enforcement agency.

(2) Sale of the firearms to a licensed firearms dealer as follows:

(A) Notice of the sale must be:

(i) posted for ten (10) days in the county courthouse in a place readily accessible to the general public; and

(ii) advertised in the principal newspaper of the county for two (2) days in an advertisement that appears in the newspaper at least five (5) days before the sale.

(B) Disposition of the firearm shall be by auction with disposition going to the highest bidder who is a licensed firearms dealer.

(C) Money collected from the sales shall first be used to defray the necessary costs of administering this subdivision and any surplus shall be:

(i) deposited into the receiving law enforcement agency's firearms training fund or other appropriate training activities fund; and

(ii) used by the agency exclusively for the purpose of training law enforcement officers in the proper use of firearms or other law enforcement duties.

(3) Sale or transfer of the firearms to another law enforcement agency.

(4) Release to the state police department laboratory or other forensic laboratory administered by the state or a political subdivision (as defined in IC 36-1-2-13) for the purposes of research, training, and comparison in conjunction with the forensic examination of firearms evidence.

(5) Destruction of the firearms.

(d) Notwithstanding the requirement of this section mandating disposal of firearms not more than one hundred twenty (120) days

following receipt, the receiving law enforcement agency may at its discretion hold firearms it may receive until a sufficient number has accumulated to defray the costs of administering this section if a delay does not exceed one hundred eighty (180) days from the date of receipt of the first firearm in the sale lot. In any event, all confiscated firearms shall be disposed of as promptly as possible.

(e) When a firearm is delivered to the state police department laboratory or other forensic laboratory under subsection (c)(4) and the state police department laboratory or other forensic laboratory determines the laboratory has no further need for the firearm in question, the laboratory shall return the firearm to the law enforcement agency for disposal under subsection (c).

As added by P.L.311-1983, SEC.32. Amended by P.L.209-1986, SEC.2; P.L.57-1992, SEC.7; P.L.48-1993, SEC.7.

IC 35-47-3-3

Application of section to firearms required to be registered in National Firearms Registration and Transfer Record; return of firearms to rightful owners; unreturnable firearms; registry of firearms; disposal

Sec. 3. (a) This section applies to firearms that are required to be registered in the National Firearms Registration and Transfer Record.

(b) Firearms shall be returned to the rightful owner at once following final disposition of the cause, if such return has not already occurred under the terms of IC 35-33-5, and if such owner remains lawfully entitled to possess such firearms according to applicable United States and Indiana statutes. If rightful ownership is not known, the law enforcement agency holding the firearm shall make a reasonable and diligent effort to ascertain the rightful ownership and cause the return of the firearm being held, providing the owner remains lawfully entitled to possess such firearms.

(c) Firearms that are not returnable under this section shall be at once delivered to:

(1) the sheriff's department of the county in which the offense occurred, unless subdivision (2) applies; or

(2) the city or town police force that confiscated the firearm if:

(A) a member of the city or town police force confiscated the firearm; and

(B) the city or town has a population of more than two thousand five hundred (2,500) and less than two hundred fifty thousand (250,000);

following final disposition of the cause.

(d) When firearms are sent to a law enforcement agency under subsection (c), the law enforcement agency may upon request release the firearms to the state police department laboratory or other forensic laboratory administered by the state or a political subdivision (as defined in IC 36-1-2-13) for the purposes of research, training, and comparison in conjunction with the forensic examination of firearms evidence.

(e) The receiving law enforcement agency or laboratory shall

cause the registry of such firearms in the United States National Firearms Registration and Transfer Record within thirty (30) days following receipt from the court.

(f) The court may order such firearms as are not returnable destroyed, specifying the exact manner of destruction and requiring the receiving law enforcement agency or laboratory to make due return to the ordering court the time, date, method of destruction, and disposition of the remains of the destroyed firearm.

(g) No portion of this section shall be construed as requiring the receiving law enforcement agency or laboratory to retain firearms which are inoperable or unserviceable, or which the receiving law enforcement agency or laboratory may choose to transfer as public property in the ordinary course of lawful commerce and exchange.

As added by P.L.311-1983, SEC.32. Amended by P.L.209-1986, SEC.3; P.L.57-1992, SEC.8.

IC 35-47-3-4

Unlawful delivery of confiscated firearm

Sec. 4. A person who knowingly or intentionally:

(1) delivers a confiscated firearm to a person convicted of a felony:

(A) involving use of a firearm; and

(B) which is the basis of the confiscation;

(2) delivers a confiscated firearm to another with knowledge that there is a rightful owner to whom the firearm must be returned; or

(3) fails to deliver a confiscated firearm to the sheriff's department, a city or town police force, the state police department laboratory or a forensic laboratory under this chapter, the state under IC 14-22-39-6, or for disposition after a determination that the rightful owner of the firearm cannot be ascertained or is no longer entitled to possess the confiscated firearm;

commits a Class D felony.

As added by P.L.311-1983, SEC.32. Amended by P.L.209-1986, SEC.4; P.L.57-1992, SEC.9; P.L.1-1995, SEC.77.

IC 35-47-4

Chapter 4. Miscellaneous Provisions

IC 35-47-4-1

Delivery of deadly weapon to intoxicated person

Sec. 1. A person who sells, barters, gives, or delivers any deadly weapon to any person at the time in a state of intoxication, knowing him to be in a state of intoxication, or to any person who is in the habit of becoming intoxicated, and knowing him to be a person who is in the habit of becoming intoxicated, commits a Class B misdemeanor.

As added by P.L.311-1983, SEC.32.

IC 35-47-4-2

Loans secured by handguns

Sec. 2. A person who makes a loan secured by a:

(1) mortgage;

(2) deposit; or

(3) pledge;

of a handgun commits a Class B misdemeanor.

As added by P.L.311-1983, SEC.32.

IC 35-47-4-3

Pointing firearm at another person

Sec. 3. (a) This section does not apply to a law enforcement officer who is acting within the scope of the law enforcement officer's official duties or to a person who is justified in using reasonable force against another person under:

(1) IC 35-41-3-2; or

(2) IC 35-41-3-3.

(b) A person who knowingly or intentionally points a firearm at another person commits a Class D felony. However, the offense is a Class A misdemeanor if the firearm was not loaded.

As added by P.L.296-1995, SEC.2.

IC 35-47-4-4

Repealed

(*Repealed by P.L.247-1999, SEC.2.)*

IC 35-47-4-5

Unlawful possession of firearm by serious violent felon

Sec. 5. (a) As used in this section, "serious violent felon" means a person who has been convicted of:

(1) committing a serious violent felony in:

(A) Indiana; or

(B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a serious violent felony; or

(2) attempting to commit or conspiring to commit a serious violent felony in:

(A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2; or

(B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of attempting to commit or conspiring to commit a serious violent felony.

(b) As used in this section, "serious violent felony" means:

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

(2) voluntary manslaughter (IC 35-42-1-3);

(3) reckless homicide not committed by means of a vehicle (IC 35-42-1-5);

(4) battery as a:

(A) Class A felony (IC 35-42-2-1(a)(5));

(B) Class B felony (IC 35-42-2-1(a)(4)); or

(C) Class C felony (IC 35-42-2-1(a)(3));

(5) aggravated battery (IC 35-42-2-1.5);

(6) kidnapping (IC 35-42-3-2);

(7) criminal confinement (IC 35-42-3-3);

(8) rape (IC 35-42-4-1);

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

(10) child molesting (IC 35-42-4-3);

(11) sexual battery as a Class C felony (IC 35-42-4-8);

(12) robbery (IC 35-42-5-1);

(13) carjacking (IC 35-42-5-2);

(14) arson as a Class A felony or Class B felony (IC 35-43-1-1(a));

(15) burglary as a Class A felony or Class B felony (IC 35-43-2-1);

(16) assisting a criminal as a Class C felony (IC 35-44-3-2);

(17) resisting law enforcement as a Class B felony or Class C felony (IC 35-44-3-3);

(18) escape as a Class B felony or Class C felony (IC 35-44-3-5);

(19) trafficking with an inmate as a Class C felony (IC 35-44-3-9);

(20) criminal gang intimidation (IC 35-45-9-4);

(21) stalking as a Class B felony or Class C felony (IC 35-45-10-5);

(22) incest (IC 35-46-1-3);

(23) dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1);

(24) dealing in methamphetamine (IC 35-48-4-1.1);

(25) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);

(26) dealing in a schedule IV controlled substance (IC 35-48-4-3); or

(27) dealing in a schedule V controlled substance (IC 35-48-4-4).

(c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a

serious violent felon, a Class B felony.
As added by P.L.247-1999, SEC.1. Amended by P.L.14-2000, SEC.76; P.L.17-2001, SEC.17; P.L.222-2001, SEC.5; P.L.151-2006, SEC.21.

IC 35-47-4-6
Unlawful possession of a firearm by a domestic batterer

Sec. 6. (a) A person who has been convicted of domestic battery under IC 35-42-2-1.3 and who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a domestic batterer, a Class A misdemeanor.

(b) It is a defense to a prosecution under this section that the person's right to possess a firearm has been restored under IC 35-47-4-7.
As added by P.L.195-2003, SEC.7. Amended by P.L.98-2004, SEC.156; P.L.118-2007, SEC.36.

IC 35-47-4-7
Persons prohibited from possessing a firearm; restoration of right to possess a firearm

Sec. 7. (a) Notwithstanding IC 35-47-2, IC 35-47-2.5, the restoration of the right to serve on a jury under IC 33-28-5-18, or the restoration of the right to vote under IC 3-7-13-5, and except as provided in subsections (b), (c), and (f), a person who has been convicted of a crime of domestic violence may not possess a firearm after the person's release from imprisonment or lawful detention.

(b) Not earlier than five (5) years after the date of conviction, a person who has been convicted of a crime of domestic violence may petition the court for restoration of the person's right to possess a firearm. In determining whether to restore the person's right to possess a firearm, the court shall consider the following factors:

(1) Whether the person has been subject to:
(A) a protective order;
(B) a no contact order;
(C) a workplace violence restraining order; or
(D) any other court order that prohibits the person from possessing a firearm.

(2) Whether the person has successfully completed a substance abuse program, if applicable.

(3) Whether the person has successfully completed a parenting class, if applicable.

(4) Whether the person still presents a threat to the victim of the crime.

(5) Whether there is any other reason why the person should not possess a firearm, including whether the person failed to satisfy a specified condition under subsection (c) or whether the person has committed a subsequent offense.

(c) The court may condition the restoration of a person's right to possess a firearm upon the person's satisfaction of specified conditions.

(d) If the court denies a petition for restoration of the right to possess a firearm, the person may not file a second or subsequent petition until one (1) year has elapsed after the filing of the most recent petition.

(e) A person has not been convicted of a crime of domestic violence for purposes of subsection (a) if the conviction has been expunged or if the person has been pardoned.

(f) The right to possess a firearm shall be restored to a person whose conviction is reversed on appeal or on postconviction review at the earlier of the following:

(1) At the time the prosecuting attorney states on the record that the charges that gave rise to the conviction will not be refiled.

(2) Ninety (90) days after the final disposition of the appeal or the postconviction proceeding.

As added by P.L.118-2007, SEC.37.

IC 35-47-4.5

Chapter 4.5. Regulation of Laser Pointers

IC 35-47-4.5-1

Exceptions

Sec. 1. This chapter does not apply to the use of a laser pointer:

(1) for educational purposes by individuals engaged in an organized meeting or training class; or

(2) during the normal course of work or trade activities.

As added by P.L.70-2000, SEC.1.

IC 35-47-4.5-2

"Laser pointer" defined

Sec. 2. As used in this chapter, "laser pointer" means a device that emits light amplified by the stimulated emission of radiation that is visible to the human eye.

As added by P.L.70-2000, SEC.1.

IC 35-47-4.5-3

"Public safety officer" defined

Sec. 3. As used in this chapter, "public safety officer" means:

(1) a state police officer;

(2) a county sheriff;

(3) a county police officer;

(4) a correctional officer;

(5) an excise police officer;

(6) a county police reserve officer;

(7) a city police officer;

(8) a city police reserve officer;

(9) a conservation enforcement officer;

(10) a gaming agent;

(11) a town marshal;

(12) a deputy town marshal;

(13) a state educational institution police officer appointed under IC 21-39-4;

(14) a probation officer;

(15) a firefighter (as defined in IC 9-18-34-1);

(16) an emergency medical technician;

(17) a paramedic;

(18) a member of a consolidated law enforcement department established under IC 36-3-1-5.1; or

(19) a gaming control officer.

As added by P.L.70-2000, SEC.1. Amended by P.L.227-2005, SEC.11; P.L.170-2005, SEC.18; P.L.1-2006, SEC.536; P.L.2-2007, SEC.379; P.L.227-2007, SEC.69; P.L.3-2008, SEC.255.

IC 35-47-4.5-4

Directing laser pointer at public safety officer or state police motor carrier inspector

Sec. 4. A person who knowingly or intentionally directs light

amplified by the stimulated emission of radiation that is visible to the human eye or any other electromagnetic radiation from a laser pointer at a public safety officer or a state police motor carrier inspector without the consent of the public safety officer or state police motor carrier inspector commits a Class B misdemeanor.

As added by P.L.70-2000, SEC.1. Amended by P.L.232-2003, SEC.2.

IC 35-47-5

Chapter 5. Prohibited Instruments of Violence

IC 35-47-5-1

Repealed

(*Repealed by P.L.123-2002, SEC.51.)*

IC 35-47-5-2

Knife with blade that opens automatically or may be propelled

Sec. 2. It is a Class B misdemeanor for a person to manufacture, possess, display, offer, sell, lend, give away, or purchase any knife with a blade that:

(1) opens automatically; or

(2) may be propelled;

by hand pressure applied to a button, device containing gas, spring, or other device in the handle of the knife.

As added by P.L.311-1983, SEC.32. Amended by P.L.70-2000, SEC.2.

IC 35-47-5-2.5

Possession of a knife on school property

Sec. 2.5. (a) As used in this section, "knife" means an instrument that:

(1) consists of a sharp edged or sharp pointed blade capable of inflicting cutting, stabbing, or tearing wounds; and

(2) is intended to be used as a weapon.

(b) The term includes a dagger, dirk, poniard, stiletto, switchblade knife, or gravity knife.

(c) A person who recklessly, knowingly, or intentionally possesses a knife on:

(1) school property (as defined in IC 35-41-1-24.7);

(2) a school bus (as defined in IC 20-27-2-8); or

(3) a special purpose bus (as defined in IC 20-27-2-10);

commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this section and a Class D felony if the offense results in bodily injury or serious bodily injury to another person.

(d) This section does not apply to a person who possesses a knife:

(1) if:

(A) the knife is provided to the person by the school corporation or possession of the knife is authorized by the school corporation; and

(B) the person uses the knife for a purpose authorized by the school corporation; or

(2) if the knife is secured in a motor vehicle.

As added by P.L.72-2006, SEC.9.

IC 35-47-5-3

Repealed

(*Repealed by P.L.269-1995, SEC.10.)*

IC 35-47-5-4
Repealed
(*Repealed by P.L.1-1990, SEC.350.)*

IC 35-47-5-4.1
Sawed-off shotgun
Sec. 4.1. (a) A person who:
(1) manufactures;
(2) causes to be manufactured;
(3) imports into Indiana;
(4) keeps for sale;
(5) offers or exposes for sale; or
(6) gives, lends, or possesses;
any sawed-off shotgun commits dealing in a sawed-off shotgun, a Class D felony.

(b) The presence of a weapon referred to in subsection (a) in a motor vehicle (as defined under IC 9-13-2-105(a)) except for school buses and a vehicle operated in the transportation of passengers by a common carrier (as defined in IC 8-2.1-17-4) creates an inference that the weapon is in the possession of the persons occupying the motor vehicle. However, the inference does not apply to all the persons occupying the motor vehicle if the weapon is found upon, or under the control of, one (1) of the occupants. In addition, the inference does not apply to a duly licensed driver of a motor vehicle for hire who finds the weapon in the licensed driver's motor vehicle in the proper pursuit of the licensed driver's trade.

(c) This section does not apply to a law enforcement officer who is acting in the course of the officer's official duties or to a person who manufactures or imports for sale or sells a sawed-off shotgun to a law enforcement agency.
As added by P.L.1-1990, SEC.351. Amended by P.L.2-1991, SEC.107.

IC 35-47-5-5
Application of chapter
Sec. 5. This chapter does not apply to any firearm not designed to use fixed cartridges or fixed ammunition, or any firearm made before January 1, 1899.
As added by P.L.311-1983, SEC.32.

IC 35-47-5-6
Purchasing or obtaining a rifle or shotgun
Sec. 6. (a) Any resident of Indiana:
(1) who is eighteen (18) years of age or older; and
(2) who is not prohibited by law from obtaining, possessing, or using a firearm;
may purchase or obtain a rifle or shotgun in Ohio, Kentucky, Michigan, or Illinois.

(b) Any resident of Ohio, Kentucky, Michigan, or Illinois:
(1) who is eighteen (18) years of age or older; and

(2) who is not prohibited by the laws of Indiana, his domicile, or the United States from obtaining, possessing, or using a firearm;

may purchase or obtain a rifle, shotgun, or ammunition for a rifle or a shotgun in Indiana.

(c) Any transaction under this section is subject to the provisions of the Gun Control Act of 1968 (82 Stat. 1213, 18 U.S.C. 0.922(B)(3)).

As added by P.L.311-1983, SEC.32.

IC 35-47-5-7

Repealed

(*Repealed by P.L.175-1984, SEC.5.)*

IC 35-47-5-8

Machine gun

Sec. 8. A person who owns or possesses a machine gun commits a Class C felony.

As added by P.L.311-1983, SEC.32. Amended by P.L.104-2000, SEC.3; P.L.123-2002, SEC.43.

IC 35-47-5-9

Operating loaded machine gun

Sec. 9. A person who operates a loaded machine gun commits a Class B felony.

As added by P.L.311-1983, SEC.32. Amended by P.L.104-2000, SEC.4; P.L.123-2002, SEC.44.

IC 35-47-5-10

Applicability of statutes relating to machine guns

Sec. 10. The provisions of section 8 or 9 of this chapter shall not be construed to apply to any of the following:

(1) Members of the military or naval forces of the United States, National Guard of Indiana, or Indiana State Guard, when on duty or practicing.

(2) Machine guns kept for display as relics and which are rendered harmless and not usable.

(3) Any of the law enforcement officers of this state or the United States while acting in the furtherance of their duties.

(4) Persons lawfully engaged in the display, testing, or use of fireworks.

(5) Agencies of state government.

(6) Persons permitted by law to engage in the business of manufacturing, assembling, conducting research on, or testing machine guns, airplanes, tanks, armored vehicles, or ordnance equipment or supplies while acting within the scope of such business.

(7) Persons possessing, or having applied to possess, machine guns under applicable United States statutes. Such machine guns must be transferred as provided in this article.

(8) Persons lawfully engaged in the manufacture, transportation, distribution, use or possession of any material, substance, or device for the sole purpose of industrial, agricultural, mining, construction, educational, or any other lawful use.

As added by P.L.311-1983, SEC.32. Amended by P.L.104-2000, SEC.5; P.L.123-2002, SEC.45.

IC 35-47-5-11

"Armor-piercing handgun ammunition" defined; related offenses

Sec. 11. (a) As used in this section, "armor-piercing handgun ammunition" means a cartridge that:

(1) can be fired in a handgun; and

(2) will, upon firing, expel a projectile that has a metal core and an outer coating of plastic.

(b) A person who knowingly or intentionally:

(1) manufactures;

(2) possesses;

(3) transfers possession of; or

(4) offers to transfer possession of;

armor-piercing handgun ammunition commits a Class C felony.

(c) This section does not apply to nylon coated ammunition, plastic shot capsules, or ammunition designed to be used in rifles or shotguns.

(d) This section does not apply to a law enforcement officer who is acting in the course of the officer's official duties or to a person who manufactures or imports for sale or sells armor-piercing handgun ammunition to a law enforcement agency.

As added by P.L.332-1983, SEC.1. Amended by P.L.327-1987, SEC.2.

IC 35-47-5-12

"Chinese throwing star" defined; related offenses

Sec. 12. (a) A person who:

(1) manufactures;

(2) causes to be manufactured;

(3) imports into Indiana;

(4) keeps for sale;

(5) offers or exposes for sale; or

(6) gives, lends, or possesses;

a Chinese throwing star commits a Class C misdemeanor.

(b) As used in this section, "Chinese throwing star" means a throwing-knife, throwing-iron, or other knife-like weapon with blades set at different angles.

As added by P.L.318-1985, SEC.2.

IC 35-47-5-13

Unlawful use of body armor

Sec. 13. (a) As used in this section, "body armor" means bullet resistant metal or other material worn by a person to provide protection from weapons or bodily injury.

(b) A person who knowingly or intentionally uses body armor while committing a felony commits unlawful use of body armor, a Class D felony.

As added by P.L.227-1996, SEC.1.

IC 35-47-6

Chapter 6. Weapons on Aircraft

IC 35-47-6-0.5

Applicability of chapter

Sec. 0.5. (a) Except as provided in subsection (b), this chapter does not apply to an official or employee:

(1) of:

(A) the United States;

(B) a state or political subdivision of a state;

(C) an operator (as defined in IC 5-23-2-8); or

(D) any other entity that has been granted statutory authority to enforce the penal laws of Indiana;

(2) who has been granted the power to effect arrests under Indiana law; and

(3) who has been authorized by the official's or employee's agency or employer to carry firearms.

(b) An individual described in subsection (a) is subject to the applicable regulations of the United States concerning the possession and carriage of firearms on aircraft or in areas of an airport to which access is controlled by the inspection of persons and property.

As added by P.L.84-1996, SEC.2. Amended by P.L.49-1997, SEC.67.

IC 35-47-6-1

Firearm, explosive, or deadly weapon; possession in commercial or chartered aircraft

Sec. 1. A person who boards a commercial or charter aircraft having in his possession:

(1) a firearm;

(2) an explosive; or

(3) any other deadly weapon;

commits a Class C felony.

As added by P.L.311-1983, SEC.32.

IC 35-47-6-1.1

Undisclosed transport of dangerous device

Sec. 1.1. (a) As used in this section, "dangerous device" means:

(1) a firearm;

(2) a destructive device (as defined in IC 35-47.5-2-4); or

(3) a weapon of mass destruction (IC 35-41-1-29.4).

(b) A person who checks an item to be transported on a commercial passenger airline and who:

(1) knows the item contains a dangerous device; and

(2) knowingly or intentionally fails to disclose orally or in writing to the person to whom possession of the item is delivered for carriage that the item contains a dangerous device;

commits undisclosed transport of a dangerous device, a Class A misdemeanor.

As added by P.L.50-2005, SEC.2.

IC 35-47-6-1.3

Firearm, explosive, or deadly weapon; possession in controlled access areas of an airport

Sec. 1.3. A person who knowingly or intentionally enters an area of an airport to which access is controlled by the inspection of persons and property while the person:

(1) possesses:

(A) a firearm;

(B) an explosive; or

(C) any other deadly weapon; or

(2) has access to property that contains:

(A) a firearm;

(B) an explosive; or

(C) any other deadly weapon;

commits a Class A misdemeanor.

As added by P.L.84-1996, SEC.3.

IC 35-47-6-1.4

Unlawful entry to restricted area of airport

Sec. 1.4. (a) This section does not apply to a person who is:

(1) employed by:

(A) an airport;

(B) an airline; or

(C) a law enforcement agency; and

(2) acting lawfully within the scope of the person's employment.

(b) A person who knowingly or intentionally enters an area of an airport to which access is controlled by the inspection of persons or property without submitting to the inspection commits a Class A misdemeanor.

As added by P.L.59-2002, SEC.3.

IC 35-47-6-1.6

Disrupting operation of aircraft; Class B felony

Sec. 1.6. (a) A person who knowingly or intentionally uses force or violence or the threat of force or violence to disrupt the operation of an aircraft commits a Class B felony.

(b) A person who knowingly or intentionally uses force or violence or the threat of force or violence to hijack an aircraft in flight commits a Class A felony.

(c) For purposes of this section, an aircraft is considered to be in flight while the aircraft is:

(1) on the ground in Indiana:

(A) after the doors of the aircraft are closed for takeoff; and

(B) until the aircraft takes off;

(2) in the airspace above Indiana; or

(3) on the ground in Indiana:

(A) after the aircraft lands; and

(B) before the doors of the aircraft are opened after landing.

As added by P.L.59-2002, SEC.4.

IC 35-47-6-2
Repealed
(*Repealed by P.L.84-1996, SEC.4.)*

IC 35-47-6-3
Consent to search of person or personal belongings
Sec. 3. Any person purchasing a ticket to board any commercial or charter aircraft shall by such purchase consent to a search of his person or personal belongings by the company selling said ticket to him. In case said person shall refuse to submit to a search of his person or personal belongings by said aircraft company, the person refusing may be denied the right to board said commercial or charter aircraft.
As added by P.L.311-1983, SEC.32.

IC 35-47-6-4
Action against airline company for denial of person refusing search to board aircraft
Sec. 4. No action, either at law or equity, shall be brought against any commercial or charter airline company operating in Indiana for the refusal of said company to permit a person to board said aircraft where said person has refused to be searched as set out in section 3 of this chapter.
As added by P.L.311-1983, SEC.32.

IC 35-47-7

Chapter 7. Reporting of Wounds Inflicted by Weapons and Burn Injuries

IC 35-47-7-1

Persons required to report wounds

Sec. 1. Every case of a bullet wound, gunshot wound, powder burn, or any other injury arising from or caused by the discharge of a firearm, and every case of a wound which is likely to or may result in death and is actually or apparently inflicted by a knife, ice pick, or other sharp or pointed instrument, shall be reported at once to the law enforcement authorities of the county, city, or town in which the person reporting is located by either the physician attending or treating the case, or by the manager, superintendent, or other person in charge if the case is treated in a hospital, clinic, sanitarium, or other facility or institution. A person who violates this section commits a Class A misdemeanor.

As added by P.L.311-1983, SEC.32.

IC 35-47-7-2

Application of chapter

Sec. 2. The provisions of this chapter shall not apply to a wound or other injury received by a member of the armed forces of the United States or the state while engaged in the actual performance of duty.

As added by P.L.311-1983, SEC.32.

IC 35-47-7-3

Burn injury reporting

Sec. 3. (a) As used in this section, "burn" includes chemical burns, flash burns, and thermal burns.

(b) If a person is treated for:

(1) a second or third degree burn to ten percent (10%) or more of the body;

(2) any burn to the upper respiratory tract or laryngeal edema due to the inhalation of superheated air; or

(3) a burn that results in serious bodily injury;

the physician treating the person, or the hospital administrator or the hospital administrator's designee of the hospital or ambulatory outpatient surgical center (if the person is treated in a hospital or outpatient surgical center), shall report the case to the state fire marshal within seventy-two (72) hours. This report may be made orally or in writing and shall be considered confidential information.

(c) If a person is treated for a second or third degree burn to less than ten percent (10%) of the body, the attending physician may report the case to the state fire marshal under subsection (b).

(d) The state fire marshal shall ascertain the following when a report is made under this chapter:

(1) Victim's name, address, and date of birth.

(2) Address where burn injury occurred.

(3) Date and time of injury.
(4) Degree of burns and percent of body burned.
(5) Area of body burned.
(6) Injury severity.
(7) Apparent cause of burn injury.
(8) Name and address of reporting facility.
(9) Attending physician.

As added by P.L.328-1987, SEC.1.

IC 35-47-7-4

Dog bite injury reporting

Sec. 4. The:

(1) physician who treats a person for a dog bite or an apparent dog bite; or
(2) administrator or the administrator's designee of the hospital or outpatient surgical center if a person is treated in a hospital or an outpatient surgical center for a dog bite or an apparent dog bite;

shall report the case to the Indiana state department of health not more than seventy-two (72) hours after the time the person is treated. The report may be made orally or in writing.

As added by P.L.176-1993, SEC.7.

IC 35-47-7-5

Destructive device injury reporting

Sec. 5. The:

(1) physician who treats a person; or
(2) administrator or the administrator's designee of the hospital or outpatient surgical center where a person was treated;

who has reason to believe that the physician or hospital is treating a person for an injury that was inflicted while the person was making or using a destructive device shall report the case to a local law enforcement agency not more than seventy-two (72) hours after the person is treated. The report may be made orally or in writing.

As added by P.L.123-2002, SEC.46.

IC 35-47-7-6

Repealed

(*Repealed by P.L.187-2006, SEC.18.)*

IC 35-47-7-7

Fireworks or pyrotechnics injury reporting

Sec. 7. (a) If:

(1) a practitioner (as defined in IC 25-1-9-2) initially treats a person for an injury and identifies the person's injury as resulting from fireworks or pyrotechnics, the practitioner; or
(2) a hospital or an outpatient surgical center initially treats a person for an injury and the administrator of the hospital or outpatient surgical center identifies the person's injury as resulting from fireworks or pyrotechnics, the administrator or

the administrator's designee;

shall report the case to the state health data center of the state department of health not more than five (5) business days after the time the person is treated. The report may be made in writing on a form prescribed by the state department of health.

(b) A person submitting a report under subsection (a) shall make a reasonable attempt to include the following information:

(1) The name, address, and age of the injured person.

(2) The date and time of the injury and the location where the injury occurred.

(3) If the injured person was less than eighteen (18) years of age at the time of the injury, whether an adult was present when the injury occurred.

(4) Whether the injured person consumed an alcoholic beverage within three (3) hours before the occurrence of the injury.

(5) A description of the firework or pyrotechnic that caused the injury.

(6) The nature and extent of the injury.

(c) A report made under this section is confidential for purposes of IC 5-14-3-4(a)(1).

(d) The state department of health shall compile the data collected under this section and submit a report of the compiled data to the legislative council in an electronic format under IC 5-14-6 not later than December 31 of each year.

As added by P.L.187-2006, SEC.17.

IC 35-47-8

Chapter 8. Regulation of Electronic Stun Weapons, Tasers, and Stun Guns

IC 35-47-8-1

"Electronic stun weapon" defined

Sec. 1. As used in this chapter, "electronic stun weapon" means any mechanism that is:

(1) designed to emit an electronic, magnetic, or other type of charge that exceeds the equivalency of a five (5) milliamp sixty (60) hertz shock; and

(2) used for the purpose of temporarily incapacitating a person.

As added by P.L.318-1985, SEC.3.

IC 35-47-8-2

"Stun gun" defined

Sec. 2. As used in this chapter, "stun gun" means any mechanism that is:

(1) designed to emit an electronic, magnetic, or other type of charge that equals or does not exceed the equivalency of a five (5) milliamp sixty (60) hertz shock; and

(2) used for the purpose of temporarily incapacitating a person.

As added by P.L.318-1985, SEC.3.

IC 35-47-8-3

"Taser" defined

Sec. 3. As used in this chapter, "taser" means any mechanism that is:

(1) designed to emit an electronic, magnetic, or other type of charge or shock through the use of a projectile; and

(2) used for the purpose of temporarily incapacitating a person.

As added by P.L.318-1985, SEC.3.

IC 35-47-8-4

Applicability of handgun provisions

Sec. 4. IC 35-47-2 applies to an electronic stun weapon or taser.

As added by P.L.318-1985, SEC.3.

IC 35-47-8-5

Stun guns; purchase, possession, and sale; use in commission of crime; use on law enforcement officer

Sec. 5. (a) A person eighteen (18) years of age or over may purchase or possess a stun gun.

(b) A person who sells or furnishes a stun gun to a person who is less than eighteen (18) years of age commits a Class B misdemeanor.

(c) A person who uses a stun gun in the commission of a crime commits a Class A misdemeanor.

(d) A person who uses a stun gun on a law enforcement officer while the officer is performing the officer's duties commits a Class D felony.

As added by P.L.318-1985, SEC.3.

IC 35-47-9

Chapter 9. Possession of Firearms on School Property and School Buses

IC 35-47-9-1

Exemptions from chapter

Sec. 1. This chapter does not apply to the following:

(1) A:

(A) federal;

(B) state; or

(C) local;

law enforcement officer.

(2) A person who has been employed or authorized by:

(A) a school; or

(B) another person who owns or operates property being used by a school for a school function;

to act as a security guard, perform or participate in a school function, or participate in any other activity authorized by a school.

(3) A person who:

(A) may legally possess a firearm; and

(B) possesses the firearm in a motor vehicle that is being operated by the person to transport another person to or from a school or a school function.

As added by P.L.140-1994, SEC.11.

IC 35-47-9-2

Possession of firearms on school property, at school function, or on school bus; felony

Sec. 2. A person who possesses a firearm:

(1) in or on school property;

(2) in or on property that is being used by a school for a school function; or

(3) on a school bus;

commits a Class D felony.

As added by P.L.140-1994, SEC.11.

IC 35-47-10

Chapter 10. Children and Firearms

IC 35-47-10-1

Exemptions from chapter

Sec. 1. This chapter does not apply to the following:

(1) A child who is attending a hunters safety course or a firearms safety course or an adult who is supervising the child during the course.

(2) A child engaging in practice in using a firearm for target shooting at an established range or in an area where the discharge of a firearm is not prohibited or supervised by:

(A) a qualified firearms instructor; or

(B) an adult who is supervising the child while the child is at the range.

(3) A child engaging in an organized competition involving the use of a firearm or participating in or practicing for a performance by an organized group under Section 501(c)(3) of the Internal Revenue Code that uses firearms as a part of a performance or an adult who is involved in the competition or performance.

(4) A child who is hunting or trapping under a valid license issued to the child under IC 14-22.

(5) A child who is traveling with an unloaded firearm to or from an activity described in this section.

(6) A child who:

(A) is on real property that is under the control of the child's parent, an adult family member of the child, or the child's legal guardian; and

(B) has permission from the child's parent or legal guardian to possess a firearm.

(7) A child who:

(A) is at the child's residence; and

(B) has the permission of the child's parent, an adult family member of the child, or the child's legal guardian to possess a firearm.

As added by P.L.140-1994, SEC.12. Amended by P.L.1-1995, SEC.78; P.L.203-1996, SEC.2.

IC 35-47-10-2

"Adult" defined

Sec. 2. As used in this chapter, "adult" means a person who is at least eighteen (18) years of age.

As added by P.L.140-1994, SEC.12.

IC 35-47-10-3

"Child" defined

Sec. 3. As used in this chapter, "child" means a person who is less than eighteen (18) years of age.

As added by P.L.140-1994, SEC.12.

IC 35-47-10-4

"Loaded" defined

Sec. 4. As used in this chapter, "loaded" means having any of the following:

(1) A cartridge in the chamber or cylinder of a firearm.

(2) Ammunition in close proximity to a firearm so that a person can readily place the ammunition in the firearm.

As added by P.L.140-1994, SEC.12. Amended by P.L.203-1996, SEC.3.

IC 35-47-10-5

Dangerous possession of a firearm

Sec. 5. A child who knowingly, intentionally, or recklessly:

(1) possesses a firearm for any purpose other than a purpose described in section 1 of this chapter; or

(2) provides a firearm to another child with or without remuneration for any purpose other than a purpose described in section 1 of this chapter;

commits dangerous possession of a firearm, a Class A misdemeanor. However, the offense is a Class C felony if the child has a prior conviction under this section.

As added by P.L.140-1994, SEC.12. Amended by P.L.203-1996, SEC.4.

IC 35-47-10-6

Dangerous control of a firearm

Sec. 6. An adult who knowingly, intentionally, or recklessly provides a firearm to a child for any purpose other than those described in section 1 of this chapter, with or without remuneration, commits dangerous control of a firearm, a Class C felony. However, the offense is a Class B felony if the adult has a prior conviction under this section.

As added by P.L.140-1994, SEC.12. Amended by P.L.203-1996, SEC.5.

IC 35-47-10-7

Permitting child to possess a firearm

Sec. 7. A child's parent or legal guardian who knowingly, intentionally, or recklessly permits the child to possess a firearm:

(1) while:

(A) aware of a substantial risk that the child will use the firearm to commit a felony; and

(B) failing to make reasonable efforts to prevent the use of a firearm by the child to commit a felony; or

(2) when the child has been convicted of a crime of violence or has been adjudicated as a juvenile for an offense that would constitute a crime of violence if the child were an adult;

commits dangerous control of a child, a Class C felony. However, the offense is a Class B felony if the child's parent or legal guardian has a prior conviction under this section.

As added by P.L.140-1994, SEC.12. Amended by P.L.203-1996, SEC.6.

IC 35-47-10-8

Term of imprisonment in addition to criminal penalty

Sec. 8. (a) In addition to any criminal penalty imposed for an offense under this chapter, the court shall order the following:

(1) That a person who has committed an offense be incarcerated for five (5) consecutive days in an appropriate facility.

(2) That the additional five (5) day term must be served within two (2) weeks after the date of sentencing.

(b) Notwithstanding IC 35-50-6, a person does not earn credit time while serving an additional five (5) day term of imprisonment imposed by a court under this section.

As added by P.L.140-1994, SEC.12.

IC 35-47-10-9

Consecutive sentences imposed

Sec. 9. A court shall impose consecutive sentences upon a person who has a conviction under this chapter and a conviction under IC 35-47-2-7.

As added by P.L.140-1994, SEC.12.

IC 35-47-10-10

Rehabilitation of child; placement in quasi-military program

Sec. 10. When sentencing a child who has committed an offense under this chapter, a court may elect to place the child in a facility that uses a quasi-military program for rehabilitative purposes.

As added by P.L.140-1994, SEC.12.

IC 35-47-11

Chapter 11. Local Regulation of Firearms

IC 35-47-11-1

Applicability of chapter

Sec. 1. (a) This chapter applies to all units (as defined in IC 36-1-2-23).

(b) This chapter does not affect the validity of an ordinance adopted before, and in effect on, January 1, 1994.

As added by P.L.140-1994, SEC.13. Amended by P.L.90-2010, SEC.8.

IC 35-47-11-2

Regulation of firearms by units other than townships

Sec. 2. Notwithstanding IC 36-1-3, a unit may not regulate in any manner the ownership, possession, sale, transfer, or transportation of firearms (as defined in IC 35-47-1-5) or ammunition except as follows:

(1) This chapter does not apply to land, buildings, or other real property owned or administered by a unit, except highways (as defined in IC 8-23-1-23) or public highways (as defined in IC 8-2.1-17-14).

(2) Notwithstanding the limitation in this section, a unit may use the unit's planning and zoning powers under IC 36-7-4 to prohibit the sale of firearms within two hundred (200) feet of a school by a person having a business that did not sell firearms within two hundred (200) feet of a school before April 1, 1994.

As added by P.L.140-1994, SEC.13. Amended by P.L.90-2010, SEC.9.

IC 35-47-11-3

Repealed

(*Repealed by P.L.90-2010, SEC.10.)*

IC 35-47-11-4

Repealed

(*Repealed by P.L.90-2010, SEC.10.)*

IC 35-47-11-5

Repealed

(*Repealed by P.L.90-2010, SEC.10.)*

IC 35-47-11-6

Repealed

(*Repealed by P.L.90-2010, SEC.10.)*

IC 35-47-12

Chapter 12. Weapons of Mass Destruction

IC 35-47-12-1

Terrorism

Sec. 1. A person who knowingly or intentionally:

(1) possesses;

(2) manufactures;

(3) places;

(4) disseminates; or

(5) detonates;

a weapon of mass destruction with the intent to carry out terrorism commits a Class B felony. However, the offense is a Class A felony if the conduct results in serious bodily injury or death of any person.

As added by P.L.156-2001, SEC.13. Amended by P.L.123-2002, SEC.47.

IC 35-47-12-2

Agricultural terrorism

Sec. 2. A person who knowingly or intentionally:

(1) possesses;

(2) manufactures;

(3) places;

(4) disseminates; or

(5) detonates;

a weapon of mass destruction with the intent to damage, destroy, sicken, or kill crops or livestock of another person without the consent of the other person commits agricultural terrorism, a Class C felony.

As added by P.L.156-2001, SEC.13. Amended by P.L.123-2002, SEC.48.

IC 35-47-12-3

Terroristic mischief

Sec. 3. A person who knowingly or intentionally places or disseminates a device or substance with the intent to cause a reasonable person to believe that the device or substance is a weapon of mass destruction (as defined in IC 35-41-1-29.4), commits terroristic mischief, a Class C felony. However, the offense is a Class B felony if, as a result of the terroristic mischief:

(1) a physician prescribes diagnostic testing or medical treatment for any person other than the person who committed the terroristic mischief; or

(2) a person suffers serious bodily injury.

As added by P.L.123-2002, SEC.49.

IC 35-47-13
Repealed

(*Repealed by P.L.1-2006, SEC.588.)*

IC 35-47-14

Chapter 14. Proceedings for the Seizure and Retention of a Firearm

IC 35-47-14-1

"Dangerous"

Sec. 1. (a) For the purposes of this chapter, an individual is "dangerous" if:

(1) the individual presents an imminent risk of personal injury to the individual or to another individual; or

(2) the individual may present a risk of personal injury to the individual or to another individual in the future and the individual:

(A) has a mental illness (as defined in IC 12-7-2-130) that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking the individual's medication while not under supervision; or

(B) is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or emotionally unstable conduct.

(b) The fact that an individual has been released from a mental health facility or has a mental illness that is currently controlled by medication does not establish that the individual is dangerous for the purposes of this chapter.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-2

Warrant to search for firearm in possession of dangerous individual

Sec. 2. A circuit or superior court may issue a warrant to search for and seize a firearm in the possession of an individual who is dangerous if:

(1) a law enforcement officer provides the court a sworn affidavit that:

(A) states why the law enforcement officer believes that the individual is dangerous and in possession of a firearm; and

(B) describes the law enforcement officer's interactions and conversations with:

(i) the individual who is alleged to be dangerous; or

(ii) another individual, if the law enforcement officer believes that information obtained from this individual is credible and reliable;

that have led the law enforcement officer to believe that the individual is dangerous and in possession of a firearm;

(2) the affidavit specifically describes the location of the firearm; and

(3) the circuit or superior court determines that probable cause exists to believe that the individual is:

(A) dangerous; and

(B) in possession of a firearm.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-3

Warrantless seizure of firearm from individual believed to be dangerous

Sec. 3. (a) If a law enforcement officer seizes a firearm from an individual whom the law enforcement officer believes to be dangerous without obtaining a warrant, the law enforcement officer shall submit to the circuit or superior court having jurisdiction over the individual believed to be dangerous a written statement under oath or affirmation describing the basis for the law enforcement officer's belief that the individual is dangerous.

(b) The court shall review the written statement submitted under subsection (a). If the court finds that probable cause exists to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to retain the firearm. If the court finds that there is no probable cause to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual.

(c) This section does not authorize a law enforcement officer to perform a warrantless search or seizure if a warrant would otherwise be required.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-4

Filing of return after warrant is served

Sec. 4. If a court issued a warrant to seize a firearm under this chapter, the law enforcement officer who served the warrant shall, not later than forty-eight (48) hours after the warrant was served, file a return with the court that:

(1) states that the warrant was served; and

(2) sets forth:

(A) the time and date on which the warrant was served;

(B) the name and address of the individual named in the warrant; and

(C) the quantity and identity of any firearms seized by the law enforcement officer.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-5

Requirement of hearing on whether firearm should be returned or retained

Sec. 5. (a) Not later than fourteen (14) days after a return is filed under section 4 of this chapter or a written statement is submitted under section 3 of this chapter, the court shall conduct a hearing to determine whether the seized firearm should be:

(1) returned to the individual from whom the firearm was seized; or

(2) retained by the law enforcement agency having custody of

the firearm.

(b) The court shall set the hearing date as soon as possible after the return is filed under section 4 of this chapter. The court shall inform:

(1) the prosecuting attorney; and

(2) the individual from whom the firearm was seized;

of the date, time, and location of the hearing. The court may conduct the hearing at a facility or other suitable place not likely to have a harmful effect upon the individual's health or well-being.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-6

Burden of proof at hearing; court orders

Sec. 6. (a) In a hearing conducted under section 5 of this chapter, the state has the burden of proving all material facts by clear and convincing evidence.

(b) If the court, in a hearing under section 5 of this chapter, determines that the state has proved by clear and convincing evidence that the individual is dangerous, the court may order that the law enforcement agency having custody of the seized firearm retain the firearm. In addition, if the individual has received a license to carry a handgun, the court shall suspend the individual's license to carry a handgun. If the court determines that the state has failed to prove that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual from whom it was seized.

(c) If the court, in a hearing under section 5 of this chapter, orders a law enforcement agency to retain a firearm, the law enforcement agency shall retain the firearm until the court orders the firearm returned or otherwise disposed of.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-7

If firearm seized is owned by another individual

Sec. 7. If the court, in a hearing conducted under section 5 of this chapter, determines that:

(1) the individual from whom a firearm was seized is dangerous; and

(2) the firearm seized from the individual is owned by another individual;

the court may order the law enforcement agency having custody of the firearm to return the firearm to the owner of the firearm.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-8

Petition for return of a firearm

Sec. 8. (a) At least one hundred eighty (180) days after the date on which a court orders a law enforcement agency to retain an individual's firearm under section 6(b) of this chapter, the individual may petition the court for return of the firearm.

(b) Upon receipt of a petition described in subsection (a), the court shall:

(1) enter an order setting a date for a hearing on the petition; and

(2) inform the prosecuting attorney of the date, time, and location of the hearing.

(c) The prosecuting attorney shall represent the state at the hearing on a petition under this section.

(d) In a hearing on a petition under this section, the individual:

(1) may be represented by an attorney; and

(2) must prove by a preponderance of the evidence that the individual is not dangerous.

(e) If, upon the completion of the hearing and consideration of the record, the court finds that the individual is not dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual.

(f) If the court denies an individual's petition under this section, the individual may not file a subsequent petition until at least one hundred eighty (180) days after the date on which the court denied the petition.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-9

When law enforcement agency may be ordered to destroy firearm

Sec. 9. If at least five (5) years have passed since a court conducted the first hearing to retain a firearm under this chapter, the court, after giving notice to the parties and conducting a hearing, may order the law enforcement agency having custody of the firearm to destroy or otherwise permanently dispose of the firearm.

As added by P.L.1-2006, SEC.537.

IC 35-47-15

Chapter 15. Retired Law Enforcement Officers Identification for Carrying Firearms

IC 35-47-15-1

"Firearm"

Sec. 1. As used in this chapter, "firearm" has the meaning set forth in 18 U.S.C. 926C(e).

As added by P.L.1-2006, SEC.538.

IC 35-47-15-2

"Law enforcement agency"

Sec. 2. As used in this chapter, "law enforcement agency" means an agency or department of:

(1) the state; or

(2) a political subdivision of the state;

whose principal function is the apprehension of criminal offenders.

As added by P.L.1-2006, SEC.538.

IC 35-47-15-3

"Law enforcement officer"

Sec. 3. As used in this chapter, "law enforcement officer" has the meaning set forth in IC 35-41-1-17(a). The term includes an arson investigator employed by the office of the state fire marshal.

As added by P.L.1-2006, SEC.538.

IC 35-47-15-4

Photo identification for retired law enforcement officers

Sec. 4. After June 30, 2005, all law enforcement agencies shall issue annually to each person who has retired from that agency as a law enforcement officer a photographic identification.

As added by P.L.1-2006, SEC.538.

IC 35-47-15-5

Additional requirement for retired law enforcement officer to carry concealed firearm

Sec. 5. (a) In addition to the photographic identification issued under section 4 of this chapter, after June 30, 2005, a retired law enforcement officer who carries a concealed firearm under 18 U.S.C. 926C must obtain annually, for each type of firearm that the retired officer intends to carry as a concealed firearm, evidence that the retired officer meets the training and qualification standards for carrying that type of firearm that are established:

(1) by the retired officer's law enforcement agency, for active officers of the agency; or

(2) by the state, for active law enforcement officers in the state.

A retired law enforcement officer bears any expense associated with obtaining the evidence required under this subsection.

(b) The evidence required under subsection (a) is one (1) of the following:

(1) For compliance with the standards described in subsection (a)(1), an endorsement issued by the retired officer's law enforcement agency with or as part of the photographic identification issued under section 4 of this chapter.

(2) For compliance with the standards described in subsection (a)(2), a certification issued by the state.

As added by P.L.1-2006, SEC.538.

IC 35-47-15-6

Immunity from civil or criminal liability

Sec. 6. An entity that provides evidence required under section 5 of this chapter is immune from civil or criminal liability for providing the evidence.

As added by P.L.1-2006, SEC.538.

IC 35-47.5

ARTICLE 47.5. CONTROLLED EXPLOSIVES

IC 35-47.5-1

Chapter 1. Applicability

IC 35-47.5-1-1

Application

Sec. 1. This article does not apply to the following:

(1) Fertilizers, propellant actuated devices, or propellant activated industrial tools:

(A) manufactured;

(B) imported;

(C) distributed; or

(D) used;

for their designed purposes.

(2) A pesticide that is:

(A) manufactured;

(B) stored;

(C) transported;

(D) distributed;

(E) possessed; or

(F) used;

for its designed purposes or in accordance with Chapter 7 of Title 2, the federal Insecticide, Fungicide, and Rodenticide Act, 61 Stat. 163, as amended, and the federal Environmental Pesticide Control Act of 1972, P.L.92-516, as amended.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2

Chapter 2. Definitions

IC 35-47.5-2-1

Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2-2

"Booby trap"

Sec. 2. "Booby trap" means a device meant to cause death or bodily injury by:

(1) hiding the device; or

(2) activating the device by trip wires, switches, antidisturbance, or other remote means.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2-3

"Commission"

Sec. 3. "Commission" refers to the fire prevention and building safety commission established by IC 22-12-2-1.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2-4

"Destructive device"

Sec. 4. (a) "Destructive device" means:

(1) an explosive, incendiary, or overpressure device that is configured as a:

(A) bomb;

(B) grenade;

(C) rocket with a propellant charge of more than four (4) ounces;

(D) missile having an explosive or incendiary charge of more than one-quarter (1/4) ounce;

(E) mine;

(F) Molotov cocktail; or

(G) device that is substantially similar to an item described in clauses (A) through (F);

(2) a type of weapon that may be readily converted to expel a projectile by the action of an explosive or other propellant through a barrel that has a bore diameter of more than one-half (1/2) inch; or

(3) a combination of parts designed or intended for use in the conversion of a device into a destructive device.

(b) The term does not include the following:

(1) A pistol, rifle, shotgun, or weapon suitable for sporting or personal safety purposes or ammunition.

(2) A device that is neither designed nor redesigned for use as a weapon.

(3) A device that, although originally designed for use as a weapon, is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device.

(4) A surplus military ordnance sold, loaned, or given by authority of the appropriate official of the United States Department of Defense.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2-5

"Detonator"

Sec. 5. "Detonator" means a device containing a detonating charge that is used to initiate detonation in an explosive, including the following:

(1) Electric blasting caps.

(2) Blasting caps for use with safety fuses.

(3) Detonating cord delay connectors.

(4) Blasting caps for use with a shock tube.

(5) Improvised devices designed to function as a detonator.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2-6

"Distribute"

Sec. 6. "Distribute" means the actual, constructive, or attempted transfer from one (1) person to another.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2-7

"Explosives"

Sec. 7. "Explosives" means a chemical compound or other substance or mechanical system intended to produce an explosion capable of causing injury to persons or damage to property or containing oxidizing and combustible units or other ingredients in such proportions or quantities that ignition, fire, friction, concussion, percussion, or detonation may produce an explosion capable of causing injury to persons or damage to property, including the substances designated in IC 35-47.5-3. The term does not include the following:

(1) A model rocket and model rocket engine designed, sold, and used to propel recoverable aero models.

(2) A paper cap in which the explosive content does not average more than twenty-five hundredths (0.25) grains of explosive mixture per paper cap for toy pistols, toy cannons, toy canes, toy guns, or other devices using paper caps unless the paper cap is used as a component of a destructive device.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2-8

"Hoax device"; "replica"

Sec. 8. "Hoax device" or "replica" means a device or article that has the appearance of a destructive device or detonator.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2-9
"Incendiary"

Sec. 9. "Incendiary" means a flammable liquid or compound with a flash point not greater than one hundred fifty (150) degrees Fahrenheit, as determined by a Tagliabue or an equivalent closed cup device, including gasoline, kerosene, fuel oil, or a derivative of these substances.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2-10
"Division"

Sec. 10. "Division" refers to the division of fire and building safety.

As added by P.L.123-2002, SEC.50. Amended by P.L.1-2006, SEC.539.

IC 35-47.5-2-11
"Overpressure device"

Sec. 11. "Overpressure device" means:

(1) a frangible container filled with an explosive gas or expanding gas that is designed or constructed to cause the container to break or fracture in a manner that is capable of causing death, bodily harm, or property damage; or

(2) a container filled with an explosive gas or expanding gas or chemicals that generate an expanding gas.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2-12
"Property"

Sec. 12. "Property" means real or personal property of any kind, including money, choses in action, and other similar interests in property.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-2-13
"Regulated explosive"

Sec. 13. (a) "Regulated explosive" includes:

(1) a destructive device; and

(2) an explosive.

(b) The term does not include the following:

(1) An explosive in a manufactured article that is designed and packaged in a manner that is likely to prevent an explosion resulting in property damage or personal injury. A manufactured article to which this subdivision applies includes fixed ammunition for small arms, a firework, and a safety fuse match.

(2) Gasoline, kerosene, naphtha, turpentine, or benzine.

(3) An explosive that is being transported on or in a vessel,

railroad car, or highway vehicle in conformity with the regulations adopted by the United States Department of Transportation.

(4) A blasting explosive that is transported or used for agricultural purposes and that is in a quantity that does not exceed two hundred (200) pounds.

(5) Ammonium nitrate or other explosive compounds kept for mining purposes at coal mines regulated under IC 14-34.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-3

Chapter 3. Classification of Regulated Explosives

IC 35-47.5-3-1

Regulated explosives

Sec. 1. The following materials are regulated explosives within the meaning of this article:

(1) Acetylides of heavy metals.
(2) Aluminum containing polymeric propellant.
(3) Aluminum ophorite explosive.
(4) Amatex.
(5) Amatol.
(6) Ammonal.
(7) Ammonium nitrate explosive mixtures, cap sensitive.
(8) Ammonium nitrate explosive mixtures, noncap sensitive.
(9) Aromatic nitro-compound explosive mixtures.
(10) Ammonium perchlorate explosive mixtures.
(11) Ammonium perchlorate composite propellant.
(12) Ammonium picrate (picrate of ammonia, explosive D).
(13) Ammonium salt lattice with isomorphously substituted inorganic salts.
(14) Ammonium tri-iodide.
(15) ANFO (ammonium nitrate-fuel oil).
(16) Baratol.
(17) Baronol.
(18) BEAF (1,2-bis (2,2-difluoro-2-nitroacetoxyethane)).
(19) Black powder.
(20) Black powder based explosive mixtures.
(21) Blasting agents, nitro-carbo-nitrates, including noncap sensitive slurry and water-gel explosives.
(22) Blasting caps.
(23) Blasting gelatin.
(24) Blasting powder.
(25) BTNEC (bis (trinitroethyl) carbonate).
(26) Bulk salutes.
(27) BTNEN (bis (trinitroethyl) nitramine).
(28) BTTN (1,2,4 butanetriol trinitrate).
(29) Butyl tetryl.
(30) Calcium nitrate explosive mixture.
(31) Cellulose hexanitrate explosive mixture.
(32) Chlorate explosive mixtures.
(33) Composition A and variations.
(34) Composition B and variations.
(35) Composition C and variations.
(36) Copper acetylide.
(37) Cyanuric triazide.
(38) Cyclotrimethylenetrinitramine (RDX).
(39) Cyclotetramethylenetetranitramine (HMX).
(40) Cyclonite (RDX).
(41) Cyclotol.

(42) DATB (diaminotrinitrobenzene).
(43) DDNP (diazodinitrophenol).
(44) DEGDN (diethyleneglycol dinitrate).
(45) Detonating cord.
(46) Detonators.
(47) Dimethylol dimethyl methane dinitrate composition.
(48) Dinitroethyleneurea.
(49) Dinitroglycerine (glycerol dinitrate).
(50) Dinitrophenol.
(51) Dinitrophenolates.
(52) Dinitrophenyl hydrazine.
(53) Dinitroresorcinol.
(54) Dinitrotoluene-sodium nitrate explosive mixtures.
(55) DIPAM.
(56) Dipicryl sulfone.
(57) Dipicrylamine.
(58) DNDP (dinitropentano nitrile).
(59) DNPA (2,2-dinitropropyl acrylate).
(60) Dynamite.
(61) EDDN (ethylene diamine dinitrate).
(62) EDNA.
(63) Ednatol.
(64) EDNP (ethyl 4,4-dinitropentanoate).
(65) Erythritol tetranitrate explosives.
(66) Esters of nitro substituted alcohols.
(67) EGDN (ethylene glycol dinitrate).
(68) Ethyl-tetryl.
(69) Explosive conitrates.
(70) Explosive gelatins.
(71) Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
(72) Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
(73) Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
(74) Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
(75) Explosive mixtures containing sensitized nitromethane.
(76) Explosive mixtures containing tetranitromethane (nitroform).
(77) Explosive nitro compounds of aromatic hydrocarbons.
(78) Explosive organic nitrate mixtures.
(79) Explosive liquids.
(80) Explosive powders.
(81) Flash powder.
(82) Fulminate of mercury.
(83) Fulminate of silver.
(84) Fulminating gold.
(85) Fulminating mercury.
(86) Fulminating platinum.

(87) Fulminating silver.
(88) Gelatinized nitrocellulose.
(89) Gem-dinitro aliphatic explosive mixtures.
(90) Guanyl nitrosamino guanyl tetrazene.
(91) Guanyl nitrosamino guanylidene hydrazine.
(92) Hexogene or octogene and a nitrated N-methylaniline.
(93) Hexolites.
(94) HMX(cyclo-l,3,5,7-tetramethylene-2,4,6,8-tetranitramine; octogen).
(95) Hydrazinium nitrate/hydrazine/aluminum explosive system.
(96) Hydrazoic acid.
(97) Igniter cord.
(98) Igniters.
(99) Initiating tube systems.
(100) KDNBF (potassium dinitrobenzo-furoxane).
(101) Lead azide.
(102) Lead mannite.
(103) Lead mononitroresorcinate.
(104) Lead picrate.
(105) Lead salts, explosive.
(106) Lead styphnate (styphnate of lead, lead trinitroresorcinate).
(107) Liquid nitrated polyol and trimethylolethane.
(108) Liquid oxygen explosives.
(109) Magnesium ophorite explosives.
(110) Mannitol hexanitrate.
(111) MDNP (methyl 4,4-dinitropentanoate).
(112) MEAN (monoethanolamine nitrate).
(113) Mercuric fulminate.
(114) Mercury oxalate.
(115) Mercury tartrate.
(116) Metriol trinitrate.
(117) Minol-2 (40% TNT, 40% ammonium nitrate, 20% aluminum).
(118) MMAN (monomethylamine nitrate); methylamine nitrate.
(119) Mononitrotoluene-nitroglycerin mixture.
(120) Monopropellants.
(121) NIBTN (nitroisobutametriol trinitrate).
(122) Nitrate sensitized with gelled nitroparaffin.
(123) Nitrated carbohydrate explosive.
(124) Nitrated glucoside explosive.
(125) Nitrated polyhydric alcohol explosives.
(126) Nitrates of soda explosive mixtures.
(127) Nitric acid and a nitro aromatic compound explosive.
(128) Nitric acid and carboxylic fuel explosive.
(129) Nitric acid explosive mixtures.
(130) Nitro aromatic explosive mixtures.
(131) Nitro compounds of furane explosive mixtures.
(132) Nitrocellulose explosive.

(133) Nitroderivative of urea explosive mixture.
(134) Nitrogelatin explosive.
(135) Nitrogen trichloride.
(136) Nitrogen tri-iodide.
(137) Nitroglycerine (NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine).
(138) Nitroglycide.
(139) Nitroglycol (ethylene glycol dinitrate, EGDN).
(140) Nitroguanidine explosives.
(141) Nitroparaffins explosive grade and ammonium nitrate mixtures.
(142) Nitronium perchlorate propellant mixtures.
(143) Nitrostarch.
(144) Nitro substituted carboxylic acids.
(145) Nitrourea.
(146) Octogen (HMX).
(147) Octol (75% HMX, 25% TNT).
(148) Organic amine nitrates.
(149) Organic nitramines.
(150) PBX (RDX and plasticizer).
(151) Pellet powder.
(152) Penthrinite composition.
(153) Pentolit.
(154) Perchlorate explosive mixtures.
(155) Peroxide based explosive mixtures.
(156) PETN (nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate).
(157) Picramic acid and its salts.
(158) Picramide.
(159) Picrate of potassium explosive mixtures.
(160) Picratol.
(161) Picric acid (manufactured as an explosive).
(162) Picryl chloride.
(163) Picryl fluoride.
(164) PLX (95% nitromethane, 5% ethylenediamine).
(165) Polynitro aliphatic compounds.
(166) Polyolpolynitrate-nitrocellulose explosive gels.
(167) Potassium chlorate and lead sulfocyanate explosive.
(168) Potassium nitrate explosive mixtures.
(169) Potassium nitroaminotetrazole.
(170) Pyrotechnic compositions.
(171) PYX (2,6-bis(picrylamino)-3,5-dinitropyridine).
(172) RDX (cyclonite, hexogen, T4,cyclo-l,3, 5,-trimethylene-2,4,6,-rinitramine; hexahydro-l,3,5-trinitro-S-triazine).
(173) Safety fuse.
(174) Salutes (bulk).
(175) Salts of organic amino sulfonic acid explosive mixture.
(176) Silver acetylide.
(177) Silver azide.

(178) Silver fulminate.
(179) Silver oxalate explosive mixtures.
(180) Silver styphnate.
(181) Silver tartrate explosive mixtures.
(182) Silver tetrazene.
(183) Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer, cap sensitive.
(184) Smokeless powder.
(185) Sodatol.
(186) Sodium amatol.
(187) Sodium azide explosive mixture.
(188) Sodium dinitro-ortho-cresolate.
(189) Sodium nitrate-potassium nitrate explosive mixture.
(190) Sodium picramate.
(191) Special fireworks (as defined in IC 22-11-14-1).
(192) Squibs.
(193) Styphnic acid explosives.
(194) Tacot (tetranitro-2,3,5,6-dibenzo-l,3a,4,6a tetrazapentalene).
(195) TATB (triaminotrinitrobenzene).
(196) TATP (triacetone triperoxide).
(197) TEGDN (triethylene glycol dinitrate).
(198) Tetrazene (tetracene, tetrazine, l(5-tetrazolyl)-4-guanyl tetrazene hydrate).
(199) Tetranitrocarbazole.
(200) Tetryl (2,4,6 tetranitro-N-methylaniline).
(201) Tetrytol.
(202) Thickened inorganic oxidizer salt slurried explosive mixture.
(203) TMETN (trimethylolethane trinitrate).
(204) TNEF (trinitroethyl formal).
(205) TNEOC (trinitroethylorthocarbonate).
(206) TNEOF (trinitroethylorthoformate).
(207) TNT (trinitrotoluene, trotyl, trilite, triton).
(208) Torpex.
(209) Tridite.
(210) Trimethylol ethyl methane trinitrate composition.
(211) Trimethylolthane trinitrate-nitrocellulose.
(212) Trimonite.
(213) Trinitroanisole.
(214) Trinitrobenzene.
(215) Trinitrobenzoic acid.
(216) Trinitrocresol.
(217) Trinitro-meta-cresol.
(218) Trinitronaphthalene.
(219) Trinitrophenetol.
(220) Trinitrophloroglucinol.
(221) Trinitroresorcinol.
(222) Tritonal.
(223) Urea nitrate.

(224) Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates, cap sensitive.

(225) Water in oil emulsion explosive compositions.

(226) Xanthamonas hydrophilic colloid explosive mixture.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-4

Chapter 4. Registration and Control

IC 35-47.5-4-1

Inspection of places regulated explosives manufactured

Sec. 1. The division shall carry out a program to periodically inspect places where regulated explosives are manufactured.

As added by P.L.123-2002, SEC.50. Amended by P.L.1-2006, SEC.540.

IC 35-47.5-4-2

Insurance required of regulated explosive manufacturer; proof of insurance; exemption

Sec. 2. (a) The division may order any person engaged in the manufacture or handling of a regulated explosive and any person with control over a place where regulated explosives are manufactured or handled to maintain insurance covering fire and explosion losses. The order is not effective until sixty (60) days after the date that notice of the order is received.

(b) The state fire marshal shall specify the insurance required under subsection (a) in an amount not less than ten thousand dollars ($10,000) nor more than two hundred fifty thousand dollars ($250,000).

(c) Proof of the insurance required under this section must be maintained with the department of insurance.

(d) The insurance commissioner may exempt a person from the insurance requirements under this section if an applicant for the exemption submits proof that the applicant has the financial ability to discharge all judgments in the amount specified by the state fire marshal. The insurance commissioner may revoke an exemption under this subsection if the commissioner requires additional proof of financial ability and:

(1) the exempted person fails to comply with the order; or

(2) the insurance commissioner determines that the exempted person has failed to provide adequate proof of financial ability.

As added by P.L.123-2002, SEC.50. Amended by P.L.1-2006, SEC.541.

IC 35-47.5-4-3

Inspection of places regulated explosives stored

Sec. 3. The division shall carry out a program to periodically inspect places where regulated explosives are stored.

As added by P.L.123-2002, SEC.50. Amended by P.L.1-2006, SEC.542.

IC 35-47.5-4-4

Regulated explosives magazine permits; expiration of permits

Sec. 4. (a) The division shall issue a regulated explosives magazine permit to maintain an explosives magazine to an applicant who qualifies under section 5 of this chapter.

(b) A permit issued under subsection (a) expires one (1) year after it is issued. The permit is limited to storage of the types and maximum quantities of explosives specified in the permit in the place covered by the permit and under the construction and location requirements specified in the rules of the commission.
As added by P.L.123-2002, SEC.50. Amended by P.L.1-2006, SEC.543.

IC 35-47.5-4-4.5
Rules

Sec. 4.5. (a) This section does not apply to:
(1) a person who is regulated under IC 14-34; or
(2) near surface or subsurface use of regulated explosives associated with oil and natural gas:
(A) exploration;
(B) development;
(C) production; or
(D) abandonment activities or procedures.

(b) The commission shall adopt rules under IC 4-22-2 to:
(1) govern the use of a regulated explosive; and
(2) establish requirements for the issuance of a license for the use of a regulated explosive.

(c) The commission shall include the following requirements in the rules adopted under subsection (b):
(1) Relicensure every three (3) years after the initial issuance of a license.
(2) Continuing education as a condition of relicensure.
(3) An application for licensure or relicensure must be submitted to the division on forms approved by the commission.
(4) A fee for licensure and relicensure.
(5) Reciprocal recognition of a license for the use of a regulated explosive issued by another state if the licensure requirements of the other state are substantially similar to the licensure requirements established by the commission.

(d) A person may not use a regulated explosive unless the person has a license issued under this section for the use of a regulated explosive.

(e) The division shall carry out the licensing and relicensing program under the rules adopted by the commission.

(f) As used in this section, "regulated explosive" does not include either of the following:
(1) Consumer fireworks (as defined in 27 CFR 555.11).
(2) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

As added by P.L.35-2004, SEC.2. Amended by P.L.25-2004, SEC.6; P.L.2-2005, SEC.128; P.L.80-2005, SEC.7; P.L.1-2006, SEC.544.

IC 35-47.5-4-5

Qualifications for issuance and renewal of permit

Sec. 5. (a) To qualify for a regulated explosives permit, an applicant must:

(1) submit information on the form provided by the state fire marshal describing:

(A) the location of the affected magazine;

(B) the types and maximum quantities of explosives that will be kept in the place covered by the application; and

(C) the distance that the affected magazine will be located from the nearest highway, railway, and structure that is also used as a place of habitation or assembly other than for the manufacture of explosives;

(2) except as provided in subdivision (3), demonstrate through an inspection that the magazine is constructed and located in accordance with the rules adopted by the commission;

(3) demonstrate through an inspection that smoking, matches, open flames, and spark producing devices are not allowed within a room containing an indoor magazine; and

(4) pay the fee under IC 22-12-6-6.

(b) To qualify for the renewal of a regulated explosives permit, the applicant must pay the fee under IC 22-12-6-6.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-4-6

Violation of permit requirement; exception

Sec. 6. (a) This section does not apply to storage that is exempted from the requirements of this section in the rules adopted by the commission under IC 22-13-3.

(b) A person who:

(1) stores a regulated explosive;

(2) has control over a regulated explosive that is stored; or

(3) has control over a place where a regulated explosive is stored;

without a regulated explosives magazine permit issued under this chapter that covers the storage commits a Class C infraction.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-4-7

Reporting injuries caused by destructive device

Sec. 7. A physician or hospital that has reason to believe that the physician or hospital is treating a person for an injury inflicted while the person was making or using a destructive device shall report the injury to a local law enforcement agency under IC 35-47-7-5.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-5

Chapter 5. Offenses Relating to Regulated Explosives

IC 35-47.5-5-1

Application

Sec. 1. Sections 2, 3, 4, 5, and 6 of this chapter do not apply to the following:

(1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.

(2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.

(3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.

(4) A law enforcement agency, a fire service agency, the department of homeland security, or an emergency management agency of Indiana, an agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent of the United States while in performance of official duties.

(5) A law enforcement officer, a fire official, or an emergency management official of the United States or any other state if that person is attending training in Indiana.

(6) The armed forces of the United States or of Indiana.

(7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:

(A) authorized by the chief executive officer of the educational institution or the officer's designee; or

(B) conducted under the policy of the educational institution; and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.

(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.

As added by P.L.123-2002, SEC.50. Amended by P.L.1-2006, SEC.545.

IC 35-47.5-5-2

Destructive devices

Sec. 2. A person who knowingly or intentionally:

(1) possesses;
(2) manufactures;
(3) transports;
(4) distributes;
(5) possesses with the intent to distribute; or
(6) offers to distribute;

a destructive device, unless authorized by law, commits a Class C felony.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-5-3

Regulated explosives; persons convicted of felonies; prior unrelated convictions

Sec. 3. A person who has been convicted of a felony by an Indiana court or a court of any other state, the United States, or another country and knowingly or intentionally:

(1) possesses;
(2) manufactures;
(3) transports;
(4) distributes;
(5) possesses with the intent to distribute; or
(6) offers to distribute;

a regulated explosive commits a Class C felony. However, the offense is a Class B felony if the person has a prior unrelated conviction for an offense under this section.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-5-4

Distribution of regulated explosives to persons convicted of felony

Sec. 4. A person who knowingly or intentionally distributes a regulated explosive to a person who has been convicted of a felony by an Indiana court or a court of another state, the United States, or another country commits a Class C felony.

As added by P.L.123-2002, SEC.50.

IC 35-47.5-5-5

Distribution of destructive device, explosive, or detonator to a minor

Sec. 5. A person who knowingly or intentionally distributes or offers to distribute:

(1) a destructive device;
(2) an explosive; or

(3) a detonator;
to a person who is less than eighteen (18) years of age commits a Class B felony.
As added by P.L.123-2002, SEC.50.

IC 35-47.5-5-6
Hoax devices or replicas
Sec. 6. A person who:
(1) manufactures;
(2) possesses;
(3) transports;
(4) distributes; or
(5) uses;
a hoax device or replica with the intent to cause another to believe that the hoax device or replica is a destructive device or detonator commits a Class D felony.
As added by P.L.123-2002, SEC.50.

IC 35-47.5-5-7
Hindering or obstructing detection, disarming, or destruction of destructive device
Sec. 7. A person who knowingly or intentionally hinders or obstructs:
(1) a law enforcement officer;
(2) a fire official;
(3) an emergency management official;
(4) an animal trained to detect destructive devices; or
(5) a robot or mechanical device designed or used by a law enforcement officer, fire official, or emergency management official;
of Indiana or of the United States in the detection, disarming, or destruction of a destructive device commits a Class B felony.
As added by P.L.123-2002, SEC.50.

IC 35-47.5-5-8
Destructive device or explosive to kill, injure, or intimidate or to destroy property
Sec. 8. A person who:
(1) possesses;
(2) transports;
(3) receives;
(4) places; or
(5) detonates;
a destructive device or explosive with the knowledge or intent that it will be used to kill, injure, or intimidate an individual or to destroy property commits a Class A felony.
As added by P.L.123-2002, SEC.50.

IC 35-47.5-5-9
Use of overpressure device

Sec. 9. A person who knowingly or intentionally uses an overpressure device commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction for an offense under this section.
As added by P.L.123-2002, SEC.50.

IC 35-47.5-5-10
Deploying a booby trap
Sec. 10. A person who knowingly or intentionally deploys a booby trap commits a Class D felony.
As added by P.L.123-2002, SEC.50.

IC 35-47.5-5-11
Use of regulated explosive in violation of commission rule
Sec. 11. A person who recklessly violates a rule regarding the use of a regulated explosive adopted by the commission under IC 35-47.5-4-4.5 commits a Class A misdemeanor. However, the offense is a Class D felony if the violation of the rule proximately causes bodily injury or death.
As added by P.L.35-2004, SEC.3.

IC 35-48

ARTICLE 48. CONTROLLED SUBSTANCES

IC 35-48-1

Chapter 1. Definitions

IC 35-48-1-1

Repealed

(*Repealed by P.L.5-1988, SEC.208.)*

IC 35-48-1-2

Definitions; application

Sec. 2. The definitions in this chapter apply throughout this article.

As added by P.L.5-1988, SEC.182.

IC 35-48-1-3

"Administer" defined

Sec. 3. "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(1) a practitioner or by his authorized agent; or

(2) the patient or research subject at the direction and in the presence of the practitioner.

As added by P.L.5-1988, SEC.183.

IC 35-48-1-4

Repealed

(*Repealed by P.L.84-2010, SEC.102.)*

IC 35-48-1-5

"Agent" defined

Sec. 5. "Agent" means an authorized person who acts on behalf of, or at the direction of, a manufacturer, distributor, or dispenser, but it does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

As added by P.L.5-1988, SEC.185.

IC 35-48-1-6

"Board" defined

Sec. 6. "Board" refers to the Indiana state board of pharmacy.

As added by P.L.5-1988, SEC.186.

IC 35-48-1-7

"Cocaine" defined

Sec. 7. "Cocaine" includes coca leaves and any salt, compound, or derivative of coca leaves, and any salt, compound, isomer, derivative, or preparation which is chemically equivalent or identical to any of these substances. However, decocainized coca leaves or extraction of coca leaves that do not contain cocaine or ecgonine are

not included.
As added by P.L.5-1988, SEC.187.

IC 35-48-1-8
Repealed
(*Repealed by P.L.3-1989, SEC.224.)*

IC 35-48-1-9
"Controlled substance" defined
Sec. 9. "Controlled substance" means a drug, substance, or immediate precursor in schedule I, II, III, IV, or V under:
(1) IC 35-48-2-4, IC 35-48-2-6, IC 35-48-2-8, IC 35-48-2-10, or IC 35-48-2-12, if IC 35-48-2-14 does not apply; or
(2) a rule adopted by the board, if IC 35-48-2-14 applies.
As added by P.L.5-1988, SEC.189.

IC 35-48-1-9.3
"Controlled substance analog" defined
Sec. 9.3. (a) "Controlled substance analog" means a substance:
(1) the chemical structure of which is substantially similar to that of a controlled substance included in schedule I or II and that has; or
(2) that a person represents or intends to have;
a narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II.
(b) The definition set forth in subsection (a) does not include:
(1) a controlled substance;
(2) a substance for which there is an approved new drug application;
(3) a substance for which an exemption is in effect for investigational use by a person under Section 505 of the federal Food, Drug and Cosmetic Act (chapter 675, 52 Stat. 1052 (21 U.S.C. 355)), to the extent that conduct with respect to the substance is permitted under the exemption; or
(4) a substance to the extent not intended for human consumption before an exemption takes effect regarding the substance.
As added by P.L.225-2003, SEC.1.

IC 35-48-1-10
"Counterfeit substance" defined
Sec. 10. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

As added by P.L.5-1988, SEC.190.

IC 35-48-1-11
"Delivery" defined

Sec. 11. "Delivery" means:

(1) an actual or constructive transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship; or

(2) the organizing or supervising of an activity described in subdivision (1).

As added by P.L.5-1988, SEC.191. Amended by P.L.165-1990, SEC.1.

IC 35-48-1-12
"Dispense" defined

Sec. 12. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner and includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

As added by P.L.5-1988, SEC.192.

IC 35-48-1-13
"Dispenser" defined

Sec. 13. "Dispenser" means a practitioner who dispenses.

As added by P.L.5-1988, SEC.193.

IC 35-48-1-14
"Distribute" defined

Sec. 14. "Distribute" means to deliver other than by administering or dispensing a controlled substance.

As added by P.L.5-1988, SEC.194.

IC 35-48-1-15
"Distributor" defined

Sec. 15. "Distributor" means a person who distributes.

As added by P.L.5-1988, SEC.195.

IC 35-48-1-16
"Drug" defined

Sec. 16. "Drug" has the meaning set forth in IC 16-42-19-2. It does not include devices or their components, parts, or accessories, nor does it include food.

As added by P.L.5-1988, SEC.196. Amended by P.L.2-1993, SEC.190.

IC 35-48-1-17
"Immediate precursor" defined

Sec. 17. "Immediate precursor" means a substance which the board has found to be and by rule designates as being the principal

compound commonly used or produced primarily for use, and which is an immediate chemical intermediate used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.
As added by P.L.5-1988, SEC.197.

IC 35-48-1-18
"Manufacture" defined

Sec. 18. "Manufacture" means:

(1) the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. It does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(B) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

(2) the organizing or supervising of an activity described in subdivision (1).

As added by P.L.5-1988, SEC.198. Amended by P.L.165-1990, SEC.2; P.L.17-2001, SEC.18.

IC 35-48-1-19
"Marijuana" defined

Sec. 19. "Marijuana" means any part of the plant genus Cannabis whether growing or not; the seeds thereof; the resin extracted from any part of the plant, including hashish and hash oil; any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom); or the sterilized seed of the plant which is incapable of germination.
As added by P.L.5-1988, SEC.199.

IC 35-48-1-20
"Narcotic drug" defined

Sec. 20. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical to any of the substances referred to in subdivision (1) of this definition, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

As added by P.L.5-1988, SEC.200.

IC 35-48-1-21

"Opiate" defined

Sec. 21. "Opiate" means a substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under IC 35-48-2, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

As added by P.L.5-1988, SEC.201.

IC 35-48-1-22

"Opium poppy" defined

Sec. 22. "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

As added by P.L.5-1988, SEC.202.

IC 35-48-1-23

"Poppy straw" defined

Sec. 23. "Poppy straw" means any part, except the seeds, of the opium poppy, after mowing.

As added by P.L.5-1988, SEC.203.

IC 35-48-1-24

"Practitioner" defined

Sec. 24. "Practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other institution or individual licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in Indiana.

As added by P.L.5-1988, SEC.204.

IC 35-48-1-25

"Prescription drug" defined

Sec. 25. "Prescription drug" means a controlled substance or a legend drug (as defined in IC 16-18-2-199).

As added by P.L.5-1988, SEC.205. Amended by P.L.2-1993, SEC.191.

IC 35-48-1-26

"Production" defined

Sec. 26. "Production" includes the manufacture, planting,

cultivation, growing, or harvesting of a controlled substance.
As added by P.L.5-1988, SEC.206.

IC 35-48-1-27
"Ultimate user" defined

Sec. 27. "Ultimate user" means a person who lawfully possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administering to an animal owned by the person or by a member of the person's household.
As added by P.L.5-1988, SEC.207.

IC 35-48-2

Chapter 2. Classification of Drugs

IC 35-48-2-1

Considerations of board determinations on substances; exclusion of a narcotic substance from schedule

Sec. 1. (a) The board shall administer this article and may recommend to the general assembly the addition, deletion, or rescheduling of all substances listed in the schedules in sections 4, 6, 8, 10, and 12 of this chapter by submitting in an electronic format under IC 5-14-6 a report of such recommendations to the legislative council. In making a determination regarding a substance, the board shall consider the following:

(1) The actual or relative potential for abuse.

(2) The scientific evidence of its pharmacological effect, if known.

(3) The state of current scientific knowledge regarding the substance.

(4) The history and current pattern of abuse.

(5) The scope, duration, and significance of abuse.

(6) The risk to public health.

(7) The potential of the substance to produce psychic or physiological dependence liability.

(8) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a), the board shall make findings and recommendations concerning the control of the substance if it finds the substance has a potential for abuse.

(c) If the board finds that a substance is an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated or rescheduled to a more restrictive schedule as a controlled substance under federal law and notice is given to the board, the board shall recommend similar control of the substance under this article in the board's report to the general assembly, unless the board objects to inclusion or rescheduling. In that case, the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall publish its findings.

(e) If a substance is rescheduled to a less restrictive schedule or deleted as a controlled substance under federal law, the substance is rescheduled or deleted under this article. If the board objects to inclusion, rescheduling, or deletion of the substance, the board shall notify the chairman of the legislative council not more than thirty (30) days after the federal law is changed and the substance may not be rescheduled or deleted until the conclusion of the next complete session of the general assembly. The notice from the board to the chairman of the legislative council must be published.

(f) The board shall conduct hearings regarding revocations, suspensions, and restrictions of registrations as provided in IC 35-48-3-4. All hearings shall be conducted in accordance with IC 4-21.5-3.

(g) Authority to control under this section does not extend to distilled spirits, wine, or malt beverages, as those terms are defined or used in IC 7.1, or to tobacco.

(h) The board shall exclude any nonnarcotic substance from a schedule if that substance may, under the Federal Food, Drug, and Cosmetic Act or state law, be sold over the counter without a prescription.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.344, SEC.1; P.L.137-1985, SEC.17; P.L.200-1987, SEC.4; P.L.188-1989, SEC.4; P.L.33-1993, SEC.73; P.L.163-1994, SEC.2; P.L.177-1997, SEC.8; P.L.14-2000, SEC.77; P.L.107-2002, SEC.31; P.L.28-2004, SEC.178; P.L.84-2010, SEC.92.

IC 35-48-2-1.1
Repealed

(*Repealed by P.L.2-1995, SEC.140.)*

IC 35-48-2-1.5
Repealed

(*Repealed by P.L.84-2010, SEC.102.)*

IC 35-48-2-2
Nomenclature

Sec. 2. Nomenclature. The controlled substances listed in the schedules in sections 4, 6, 8, 10 and 12 of this chapter are included by whatever official, common, usual, chemical, or trade name designated. The number placed in brackets after each substance is its federal Drug Enforcement Administration Controlled Substances Code Number which is to be used for identification purposes on certain certificates of registration.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1979, P.L.303, SEC.2.

IC 35-48-2-3
Schedule I tests

Sec. 3. (a) The board shall recommend placement of a substance in schedule I under this chapter if it finds that the substance:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

(b) The board may recommend placement of a substance in schedule I under this chapter if it finds that the substance is classified as a controlled substance in schedule I under federal law.

As added by Acts 1976, P.L.148, SEC.7. Amended by P.L.200-1987, SEC.6.

IC 35-48-2-4

Schedule I

Sec. 4. (a) The controlled substances listed in this section are included in schedule I.

(b) Opiates. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted by rule of the board or unless listed in another schedule, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide) (9815)

Acetylmethadol (9601)

Allylprodine (9602)

Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide) (9832)

Alphacetylmethadol (9603)

Alphameprodine (9604)

Alphamethadol (9605)

Alphamethylfentanyl (9814)

Benzethidine (9606)

Beta-hydroxy-3-methylfentanyl (9831). Other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide.

Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide) (9830)

Betacetylmethadol (9607)

Betameprodine (9608)

Betamethadol (9609)

Betaprodine (9611)

Clonitazene (9612)

Dextromoramide (9613)

Diampromide (9615)

Diethylthiambutene (9616)

Difenoxin (9168)

Dimenoxadol (9617)

Dimepheptanol (9618)

Dimethylthiambutene (9619)

Dioxaphetyl butyrate (9621)

Dipipanone (9622)

Ethylmethylthiambutene (9623)

Etonitazene (9624)

Etoxeridine (9625)

Furethidine (9626)

Hydroxypethidine (9627)

Ketobemidone (9628)

Levomoramide (9629)

Levophenacylmorphan (9631)

3-Methylfentanyl [N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenyl-propanimide](9813)

3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-

piperidinyl]-N-phenylpropanamide) (9833)
MPPP (1-methyl-4-phenyl-4-propionoxypiperidine) (9961)
Morpheridine (9632)
N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), including any isomers, salts, or salts of isomers (9818)
N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), including any isomers, salts, or salts of isomers (9834)
Noracymethadol (9633)
Norlevorphanol (9634)
Normethadone (9635)
Norpipanone (9636)
Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide (9812)
Phenadoxone (9637)
Phenampromide (9638)
Phenomorphan (9647)
Phenoperidine (9641)
PEPAP [1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine] (9663)
Piritramide (9642)
Proheptazine (9643)
Properidine (9644)
Propiram (9649)
Racemoramide (9645)
Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide) (9835)
Tilidine (9750)
Trimeperidine (9646)

(c) Opium derivatives. Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted by rule of the board or unless listed in another schedule, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine (9319)
Acetyldihydrocodeine (9051)
Benzylmorphine (9052)
Codeine methylbromide (9070)
Codeine-N-Oxide (9053)
Cyprenorphine (9054)
Desomorphine (9055)
Dihydromorphine (9145)
Drotebanol (9335)
Etorphine (except hydrochloride salt) (9056)
Heroin (9200)
Hydromorphinol (9301)
Methyldesorphine (9302)
Methyldihydromorphine (9304)
Morphine methylbromide (9305)
Morphine methylsulfonate (9306)

Morphine-N-Oxide (9307)
Myrophine (9308)
Nicocodeine (9309)
Nicomorphine (9312)
Normorphine (9313)
Pholcodine (9314)
Thebacon (9315)

(d) Hallucinogenic substances. Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic, psychedelic, or psychogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted by rule of the board or unless listed in another schedule, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (7473). Other name: TCPy.

(2) 4-Bromo-2, 5-Dimethoxyamphetamine (7391). Some trade or other names: 4-Bromo-2, 5-Dimethoxy-a-methylphenethylamine; 4-Bromo-2, 5-DMA.

(3) 4-Bromo-2, 5-dimethoxphenethylamine (7392). Some trade or other names:
2-[4-bromo-2,5-dimethoxyphenyl]-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.

(4) 2, 5-Dimethoxy-4-ethylamphet-amine (7399). Other name: DOET.

(5) 2, 5-Dimethoxy-4-(n)-propylthiophenethylamine (7348). Other name: 2C-T-7.

(6) 2, 5-Dimethoxyamphetamine (7396). Some trade or other names: 2, 5-Dimethoxy-a-methylphenethylamine; 2, 5-DMA.

(7) 4-Methoxyamphetamine (7411). Some trade or other names: 4-Methoxy-a-methylphenethylamine; Paramethoxyamphetamine; PMA.

(8) 5-Methoxy-3, 4-methylenedioxy amphetamine (7401). Other Name: MMDA.

(9) 5-Methoxy-N, N-diisopropyltryptamine, including any isomers, salts, or salts of isomers (7439). Other name: 5-MeO-DIPT.

(10) 4-methyl-2, 5-dimethoxyamphetamine (7395). Some trade and other names: 4-methyl-2, 5-dimethoxy-a-methylphenethylamine; DOM; and STP.

(11) 3, 4-methylenedioxy amphetamine (7400). Other name: MDA.

(12) 3,4-methylenedioxy-N-ethylamphetamine (7404). Other names: N-ethyl-alpha-methyl-3,4(methylenedioxy) phenethylamine; N-ethyl MDA; MDE; and MDEA.

(13) 3, 4-methylenedioxymethamphetamine (MDMA) (7405).

(14) 3, 4, 5-trimethoxy amphetamine (7390). Other name: TMA.

(15) Alpha-ethyltryptamine (7249). Some trade and other names: Etryptamine; Monase;

[alpha]-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; [alpha]-ET; and AET.

(16) Alpha-methyltryptamine (7432). Other name: AMT.

(17) Bufotenine (7433). Some trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminonethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.

(18) Diethyltryptamine (7434). Some trade or other names: N, N-Diethyltryptamine; DET.

(19) Dimethyltrytamine (7435). Some trade or other names: DMT.

(20) Ibogaine (7260). Some trade and other names: 7-Ethyl-6, 6b, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido (1', 2': 1, 2, azepino 4, 5-b) indole; tabernanthe iboga.

(21) Lysergic acid diethylamide (7315). Other name: LSD.

(22) Marijuana (7360).

(23) Mescaline (7381).

(24) Parahexyl (7374). Some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-Tetrahydro-6, 6, 9-trimethyl-6H-dibenzo (b,d) pyran; Snyhexyl.

(25) Peyote (7415), including:

(A) all parts of the plant that are classified botanically as lophophora williamsii lemaire, whether growing or not;

(B) the seeds thereof;

(C) any extract from any part of the plant; and

(D) every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts.

(26) N-ethyl-3-piperidyl benzilate (7482). Other name: DMZ.

(27) N-hydroxy-3,4-methylenedioxyamphetamine (7402). Other names: N-hydroxy-alpha-methyl-3,4 (methylenedioxy)phenethylamine; and N-hydroxy MDA.

(28) N-methyl-3-piperidyl benzilate (7484). Other name: LBJ.

(29) Psilocybin (7437).

(30) Psilocyn (7438).

(31) Tetrahydrocannabinols (7370), including synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:

(A) π^1 cis or trans tetrahydrocannabinol, and their optical isomers;

(B) π^6 cis or trans tetrahydrocannabinol, and their optical isomers; and

(C) $\pi^{3,}{}_4$ cis or trans tetrahydrocannabinol, and their optical isomers.

Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered. Other name: THC.

(32) Ethylamine analog of phencyclidine (7455). Some trade or other names: N-Ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine; cyclohexamine; PCE.

(33) Pyrrolidine analog of phencyclidine (7458). Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine; PCP_y; PHP.

(34) Thiophene analog of phencyclidine (7470). Some trade or other names: 1-(1-(2-thienyl) cyclohexyl) piperidine; 2-Thienyl Analog of Phencyclidine; TPCP.

(e) Depressants. Unless specifically excepted in a rule adopted by the board or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Gamma-hydroxybutyric acid (other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate) (2010)

Mecloqualone (2572)

Methaqualone (2565)

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

([+/-]) cis-4-methylaminorex (([+/-])cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine) (1590)

Aminorex (1585). Other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine.

Cathinone (1235). Some trade or other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone.

Fenethylline (1503)

N-Benzylpiperazine (7493). Other names: BZP; and 1-benzylpiperazine.

N-ethylamphetamine (1475)

Methcathinone (1237) Some other trade names: 2-Methylamino-1-Phenylpropan-I-one; Ephedrone; Monomethylpropion; UR 1431.

N, N-dimethylamphetamine (1480). Other names: N, N-alpha-trimethyl-benzeneethanamine; and N, N-alpha-trimethylphenethylamine.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1979, P.L.303, SEC.3; Acts 1981, P.L.170, SEC.2; P.L.333-1983, SEC.1; P.L.327-1985, SEC.1; P.L.156-1986, SEC.4; P.L.200-1987, SEC.7; P.L.163-1994, SEC.3; P.L.2-1996, SEC.286; P.L.288-2001, SEC.15; P.L.22-2008, SEC.1.

IC 35-48-2-5

Schedule II tests

Sec. 5. (a) The board shall recommend placement of a substance in schedule II under this chapter if it finds that:

(1) the substance has high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) the abuse of the substance may lead to severe psychological or physical dependence.

(b) The board may recommend placement of a substance in schedule II under this chapter if it finds that the substance is classified as a controlled substance in schedule II under federal law.

As added by Acts 1976, P.L.148, SEC.7. Amended by P.L.200-1987, SEC.8.

IC 35-48-2-6

Schedule II

Sec. 6. (a) The controlled substances listed in this section are included in schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, naltrexone, and their respective salts but including:

(A) raw opium (9600);

(B) opium extracts (9610);

(C) opium fluid extracts (9620);

(D) powdered opium (9639);

(E) granulated opium (9640);

(F) tincture of opium (9630);

(G) codeine (9050);

(H) dihydroetorphine (9334);

(I) ethylmorphine (9190);

(J) etorphine hydrochloride (9059);

(K) hydrocodone (9193);

(L) hydromorphone (9150);

(M) metopon (9260);

(N) morphine (9300);

(O) oxycodone (9143);

(P) oxymorphone (9652); and

(Q) thebaine (9333).

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (b)(1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Cocaine (9041).

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy) (9670).

(c) Opiates. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alfentanil (9737)
Alphaprodine (9010)
Anileridine (9020)
Bezitramide (9800)
Bulk dextropropoxyphene (nondosage forms) (9273)
Carfentanil (9743)
Dihydrocodeine (9120)
Diphenoxylate (9170)
Fentanyl (9801)
Isomethadone (9226)
Levo-alphacetylmethadol (9648). Other names: Levo-alpha-acetylmethadol; levomethadyl acetate; and LAAM.
Levomethorphan (9210)
Levorphanol (9220)
Metazocine (9240)
Methadone (9250)
Methadone-Intermediate, 4-cyano-2-dimethyl-amino-4, 4-diphenyl butane (9254)
Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane- carboxylic acid (9802)
Pethidine (Meperidine) (9230)
Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine (9232)
Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate (9233)
Pethidine-Intermediate-C,1-methyl-4-phenylpiperidine-4-carboxylic acid (9234)
Phenazodine (9715)
Piminodine (9730)
Racemethorphan (9732)
Racemorphan (9733)
Remifentanil (9739)
Sufentanil (9740)

(d) Stimulants. Any material compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).

(2) Methamphetamine, including its salts, isomers, and salts of its isomers (1105).

(3) Phenmetrazine and its salts (1631).

(4) Methylphenidate (1724).

(e) Depressants. Unless specifically excepted by rule of the board or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Amobarbital (2125)

Glutethimide (2550)

Pentobarbital (2270)

Phencyclidine (7471)

Secobarbital (2315)

(f) Immediate precursors. Unless specifically excepted by rule of the board or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone (8501). Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine (7460); or

(B) 1-piperidinocyclohexanecarbonitrile (PCC) (8603).

(g) Hallucinogenic substances:

Nabilone (7379). Other name: (+/-)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy -6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1979, P.L.303, SEC.4; Acts 1981, P.L.170, SEC.3; P.L.333-1983, SEC.2; P.L.77-1984, SEC.13; P.L.327-1985, SEC.2; P.L.156-1986, SEC.5; P.L.329-1987, SEC.1; P.L.31-1998, SEC.9; P.L.22-2008, SEC.2.

IC 35-48-2-7

Schedule III tests

Sec. 7. (a) The board shall recommend placement of a substance in schedule III under this chapter if it finds that:

(1) the substance has a potential for abuse less than the substances listed in schedule I and II under this chapter;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(b) The board may recommend placement of a substance in schedule III under this chapter if it finds that the substance is classified as a controlled substance in schedule III under federal law.

As added by Acts 1976, P.L.148, SEC.7. Amended by P.L.200-1987, SEC.9.

IC 35-48-2-8

Schedule III

Sec. 8. (a) The controlled substances listed in this section are included in schedule III.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on April 1, 1986, as excepted compounds under 21 CFR 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or that is the same except that it contains a lesser quantity of controlled substances (1405).

(2) Benzphetamine (1228).

(3) Chlorphentermine (1645).

(4) Clortermine (1647).

(5) Phendimetrazine (1615).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture, or preparation containing:

(A) amobarbital (2126);

(B) secobarbital (2316);

(C) pentobarbital (2271); or

(D) any of their salts;

and one (1) or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

(A) amobarbital (2126);

(B) secobarbital (2316);

(C) pentobarbital (2271); or

(D) any of their salts;

and approved by the Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt thereof (2100).

(4) Chlorhexadol (2510).

(5) Embutramide (2020).

(6) Lysergic acid (7300).

(7) Lysergic acid amide (7310).

(8) Methyprylon (2575).

(9) Sulfondiethylmethane (2600).

(10) Sulfonethylmethane (2605).

(11) Sulfonmethane (2610).

(12) A combination product containing Tiletamine and Zolazepam or any salt thereof (Telazol) (7295).

(13) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq. (2012).

(d) Nalorphine (a narcotic drug) (9400).

(e) Narcotic Drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in the following limited quantities:

(1) Not more than 1.8 grams of codeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium (9803).

(2) Not more than 1.8 grams of codeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts (9804).

(3) Not more than 300 milligrams of dihydrocodeinone, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium (9805).

(4) Not more than 300 milligrams of dihydrocodeinone, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active nonnarcotic ingredients in recognized therapeutic amounts (9806).

(5) Not more than 1.8 grams of dihydrocodeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts (9807).

(6) Not more than 300 milligrams of ethylmorphine, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts (9808).

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts (9809).

(8) Not more than 50 milligrams of morphine, per 100 milliliters or per 100 grams with one (1) or more active nonnarcotic ingredients in recognized therapeutic amounts (9810).

(9) Buprenorphine (9064).

(f) Anabolic steroid (as defined in 21 U.S.C. 802(41)(A) and 21 U.S.C. 802(41)(B)).

(g) The board shall except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) through (e) from the application of any part of this article if the compound, mixture, or preparation contains one (1) or

more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(h) Any material, compound, mixture, or preparation which contains any quantity of Ketamine (7285).

(i) Hallucinogenic substances:

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product (7369).

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.2, SEC.86; Acts 1979, P.L.303, SEC.5; Acts 1981, P.L.170, SEC.4; P.L.333-1983, SEC.3; P.L.200-1987, SEC.10; P.L.48-1991, SEC.76; P.L.1-1994, SEC.171; P.L.31-1998, SEC.10; P.L.288-2001, SEC.16; P.L.22-2008, SEC.3.

IC 35-48-2-9

Schedule IV tests

Sec. 9. (a) The board shall recommend placement of a substance in schedule IV under this chapter if it finds that:

(1) the substance has a low potential for abuse relative to substances in schedule III under this chapter;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III under this chapter.

(b) The board may recommend placement of a substance in schedule IV under this chapter if it finds that the substance is classified as a controlled substance in schedule IV under federal law.

As added by Acts 1976, P.L.148, SEC.7. Amended by P.L.200-1987, SEC.11.

IC 35-48-2-10

Schedule IV

Sec. 10. (a) The controlled substances listed in this section are included in schedule IV.

(b) Narcotic drugs. Unless specifically excepted in a rule adopted by the board or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in the following limited quantities:

(1) Not more than 1 milligram of difenoxin (9618) and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha- (+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane (9278).

(c) Depressants. Unless specifically excepted in a rule adopted by the board or unless listed in another schedule, any material,

compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Alprazolam (2882).
Barbital (2145).
Bromazepam (2748).
Camazepam (2749).
Carisoprodol.
Chloral betaine (2460).
Chloral hydrate (2465).
Chlordiazepoxide (2744).
Clobazam (2751).
Clonazepam (2737).
Clorazepate (2768).
Clotiazepam (2752).
Cloxazolam (2753).
Delorazepam (2754).
Diazepam (2765).
Dichloralphenazone (2467).
Estazolam (2756).
Ethchlorvynol (2540).
Ethinamate (2545).
Ethyl loflazepate (2758).
Fludiazepam (2759).
Flunitrazepam (2763).
Flurazepam (2767).
Halazepam (2762).
Haloxazolam (2771).
Ketazolam (2772).
Loprazolam (2773).
Lorazepam (2885).
Lormetazepam (2774).
Mebutamate (2800).
Medazepam (2836).
Meprobamate (2820).
Methohexital (2264).
Methylphenobarbital (mephobarbital) (2250).
Midazolam (2884).
Nimetazepam (2837).
Nitrazepam (2834).
Nordiazepam (2838).
Oxazepam (2835).
Oxazolam (2839).
Paraldehyde (2585).
Petrichloral (2591).
Phenobarbital (2285).
Pinazepam (2883).
Prazepam (2764).
Quazepam (2881).

Temazepam (2925).
Tetrazepam (2886).
Triazolam (2887).
Zaleplon (2781).
Zolpidem (Ambien) (2783).
Zopiclone (2784).

(d) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

Fenfluramine (1670).

(e) Stimulants. Unless specifically excepted in a rule adopted by the board or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Cathine ((+)-norpseudoephedrine) (1230).
Diethylpropion (1610).
Fencamfamin (1760).
Fenproporex (1575).
Mazindol (1605).
Mefenorex (1580).
Modafinil (1680).
Phentermine (1640).
Pemoline (including organometallic complexes and chelates thereof) (1530).
Pipradrol (1750).
Sibutramine (1675).
SPA ((-)-1-dimethylamino-1,2-diphenylethane (1635).

(f) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances including its salts:

Butorphanol (including its optical isomers) (9720).
Pentazocine (9709).

(g) The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b), (c), (d), (e), or (f) from the application of any part of this article if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.344, SEC.2; Acts 1979, P.L.303, SEC.6; Acts 1981, P.L.170,

SEC.5; P.L.333-1983, SEC.4; P.L.77-1984, SEC.14; P.L.200-1987, SEC.12; P.L.288-2001, SEC.17; P.L.8-2004, SEC.3; P.L.22-2008, SEC.4.

IC 35-48-2-11

Schedule V tests

Sec. 11. (a) The board shall recommend placement of a substance in schedule V under this chapter if it finds that:

(1) the substance has low potential for abuse relative to the controlled substances listed in schedule IV under this chapter;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV under this chapter.

(b) The board may recommend placement of a substance in schedule V under this chapter if it finds that the substance is classified as a controlled substance in schedule V under federal law.

As added by Acts 1976, P.L.148, SEC.7. Amended by P.L.200-1987, SEC.13.

IC 35-48-2-12

Schedule V

Sec. 12. (a) The controlled substances listed in this section are included in schedule V.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in the following quantities, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than 0.5 milligrams of difenoxin (9168), and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Pregabalin (2782).

(d) Pyrovalerone (1485).

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1979, P.L.303, SEC.7; Acts 1981, P.L.170, SEC.6; P.L.327-1985, SEC.3; P.L.22-2008, SEC.5.

IC 35-48-2-13
Repealed

(*Repealed by Acts 1979, P.L.303, SEC.13.)*

IC 35-48-2-14
Reclassification; rules

Sec. 14. (a) The board may adopt rules under IC 4-22-2 to reclassify a controlled substance:

(1) from a more restrictive schedule to a less restrictive schedule; or

(2) as a substance that is not a controlled substance;

if the board finds that the substance qualifies for reclassification under this chapter and that the same reclassification has been made in a controlled substance schedule under federal law.

(b) If the board reclassifies a controlled substance under subsection (a), the board shall recommend the same reclassification to the general assembly under section 1 of this chapter.

(c) Notwithstanding a provision in this chapter that classifies a controlled substance in a more restrictive schedule than a rule adopted under subsection (a), a person who manufactures, distributes, dispenses, possesses, or uses a controlled substance in compliance with the requirements applicable to the less restrictive schedule to which a controlled substance is reclassified under subsection (a) does not commit an offense under this article.

(d) Notwithstanding a provision in this chapter that classifies a substance as a controlled substance, a person does not commit an offense under this article if the board has reclassified the controlled substance as a substance that is not a controlled substance.

As added by P.L.200-1987, SEC.14.

IC 35-48-3

Chapter 3. Registration and Control

IC 35-48-3-1

Rules

Sec. 1. Rules. The board may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

As added by Acts 1976, P.L.148, SEC.7.

IC 35-48-3-2

Limited permits for entities operating animal shelters

Sec. 2. (a) Any humane society, animal control agency, or governmental entity operating an animal shelter or other animal impounding facility is entitled to receive a limited permit only for the purpose of buying, possessing, and using:

(1) sodium pentobarbital to euthanize injured, sick, homeless, or unwanted domestic pets and animals;

(2) ketamine and ketamine products to anesthetize or immobilize fractious domestic pets and animals; and

(3) a combination product containing tiletimine and zolazepam as an agent for the remote chemical capture of domestic pets or animals that otherwise cannot be restrained or captured.

(b) A humane society, animal control agency, or governmental entity entitled to receive a permit under this chapter must:

(1) apply to the board according to the rules established by the board;

(2) pay annually to the board a fee set by the board for the limited permit; and

(3) submit proof, as determined by the board, that the employees of an applicant who will handle a controlled substance are sufficiently trained to use and administer the controlled substance.

(c) All fees collected by the board under this section shall be credited to the state board of pharmacy account.

(d) Storage, handling, and use of controlled substances obtained according to this section are subject to the rules adopted by the board.

(e) Before issuing a permit under this section, the board may consult with the board of veterinary medical examiners.

As added by Acts 1976, P.L.148, SEC.7. Amended by P.L.193-1987, SEC.16; P.L.136-2001, SEC.1; P.L.84-2010, SEC.93.

IC 35-48-3-3

Registration requirements

Sec. 3. (a) Every person who manufactures or distributes any controlled substance within this state or who proposes to engage in the manufacture or distribution of any controlled substance within this state, must obtain biennially a registration issued by the board in

accordance with its rules.

(b) Every person who dispenses or proposes to dispense any controlled substance within Indiana must have a registration issued by the board in accordance with its rules. A registration issued to a dispenser under this subsection expires whenever the dispenser's license as a practitioner expires. The board shall renew a dispenser's registration under this subsection concurrently with any state license authorizing the dispenser to act as a practitioner.

(c) Persons registered by the board under this article to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this chapter.

(d) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment.

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.

(3) An ultimate user or a person in possession of any controlled substance under a lawful order of a practitioner or in lawful possession of a schedule V substance.

(e) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(f) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, dispenses, or possesses controlled substances.

(g) The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's rules.

As added by Acts 1976, P.L.148, SEC.7. Amended by P.L.156-1986, SEC.6.

IC 35-48-3-4

Registration

Sec. 4. (a) The board shall register an applicant to manufacture or distribute controlled substances unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's

establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under this article;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in schedules I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this chapter for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under this chapter in another capacity, to the extent authorized by his registration in that other capacity.

(d) Registration to conduct research or instructional activities with controlled substances in schedules I through V does not entitle a registrant to conduct research or instructional activities with controlled substances other than those approved by the board in accordance with the registration.

(e) The board may consult with the board of veterinary medical examiners before issuing a registration to a person:

(1) who seeks to conduct research or instructional activities with controlled substances in schedules I through IV; and

(2) whose activities constitute the practice of veterinary medicine (as defined by IC 25-38.1-1-12).

(f) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1981, P.L.170, SEC.7; P.L.84-2010, SEC.94.

IC 35-48-3-5

Denial, revocation, and suspension of registration; reinstatement

Sec. 5. (a) An application for registration or reregistration submitted pursuant to and a registration issued under section 3 of this chapter to manufacture, distribute, or dispense a controlled substance may be denied, suspended, or revoked by the board upon a finding that the applicant or registrant:

(1) has furnished false or fraudulent material information in any application filed under this article;

(2) has violated any state or federal law relating to any controlled substance;

(3) has had the applicant's or registrant's federal registration

suspended or revoked to manufacture, distribute, or dispense controlled substances; or

(4) has failed to maintain reasonable controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels.

(b) The board may limit revocation or suspension of a registration or the denial of an application for registration or reregistration to the particular controlled substance with respect to which grounds for revocation, suspension, or denial exist.

(c) If the board suspends or revokes a registration or denies an application for reregistration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation or denial order may be placed under seal. The board may require the removal of such substances from the premises. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation or denial order becoming final, all controlled substances may be forfeited to the state.

(d) The board shall promptly notify the drug enforcement administration of all orders suspending or revoking registration, all orders denying any application for registration or reregistration, and all forfeitures of controlled substances.

(e) If the Drug Enforcement Administration terminates, denies, suspends, or revokes a federal registration for the manufacture, distribution, or dispensing of controlled substances, a registration issued by the board under this chapter is automatically suspended.

(f) The board may reinstate a registration that has been suspended under subsection (e), after a hearing, if the board is satisfied that the applicant is able to manufacture, distribute, or dispense controlled substances with reasonable skill and safety to the public. As a condition of reinstatement, the board may impose disciplinary or corrective measures authorized under IC 25-1-9-9 or this article.

(g) A registration issued under this chapter is automatically revoked if any state license authorizing a dispenser to act as a practitioner is revoked.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1981, P.L.170, SEC.8; P.L.197-2007, SEC.93; P.L.84-2010, SEC.95.

IC 35-48-3-6

Order to show cause

Sec. 6. (a) Before recommending a denial, suspension, or revocation of a registration, or before refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be denied. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the board at a time and place not less than thirty (30) days after the date of service

of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. These proceedings shall be conducted in accordance with IC 4-21.5 without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing.

(b) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 4 of this chapter, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

(c) If an applicant for reregistration (who is doing business under a registration previously granted and not revoked nor suspended) has applied for reregistration at least forty-five (45) days before the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the board so issues its order. The board may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least forty-five (45) days before expiration of the existing registration, with or without request by the registrant, if the board finds that such extension is not inconsistent with the public health and safety.

As added by Acts 1976, P.L.148, SEC.7. Amended by P.L.7-1987, SEC.166; P.L.84-2010, SEC.96.

IC 35-48-3-7

Records of registrants

Sec. 7. Records of Registrants. Persons registered to manufacture, distribute, or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the board issues.

As added by Acts 1976, P.L.148, SEC.7.

IC 35-48-3-8

Order forms

Sec. 8. Order Forms. Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms is deemed compliance with this section.

As added by Acts 1976, P.L.148, SEC.7.

IC 35-48-3-9

Prescriptions

Sec. 9. (a) Except for dosages medically required for a period of not more than forty-eight (48) hours that are dispensed by or on the direction of a practitioner or medication dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 7 of this chapter. No prescription for a schedule II substance may be refilled.

(c) Except for dosages medically required for a period of not more than forty-eight (48) hours that are dispensed by or on the direction of a practitioner, or medication dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under IC 16-42-19, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner. Prescriptions for schedule III, IV, and V controlled substances may be transmitted by facsimile from the practitioner or the agent of the practitioner to a pharmacy. The facsimile prescription is equivalent to an original prescription to the extent permitted under federal law.

(d) A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

As added by Acts 1976, P.L.148, SEC.7. Amended by P.L.2-1993, SEC.192; P.L.163-1994, SEC.4; P.L.204-2005, SEC.21.

IC 35-48-3-10

Repealed

(*Repealed by P.L.157-1999, SEC.2.)*

IC 35-48-3-11

Treatment for weight reduction or to control obesity

Sec. 11. (a) Only a physician licensed under IC 25-22.5 may treat a patient with a Schedule III or Schedule IV controlled substance for the purpose of weight reduction or to control obesity.

(b) A physician licensed under IC 25-22.5 may not prescribe, dispense, administer, supply, sell, or give any amphetamine, sympathomimetic amine drug, or compound designated as a Schedule III or Schedule IV controlled substance under IC 35-48-2-8 and IC 35-48-2-10 for a patient for purposes of weight reduction or to control obesity, unless the physician does the following:

(1) Determines:

(A) through review of:

(i) the physician's records of prior treatment of the patient; or

(ii) the records of prior treatment of the patient provided by a previous treating physician or weight loss program;

that the physician's patient has made a reasonable effort to lose weight in a treatment program using a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, and exercise without using controlled substances; and

(B) that the treatment described in clause (A) has been ineffective for the physician's patient.

(2) Obtains a thorough history and performs a thorough physical examination of the physician's patient before initiating a treatment plan using a Schedule III or Schedule IV controlled substance for purposes of weight reduction or to control obesity.

(c) A physician licensed under IC 25-22.5 may not begin and shall discontinue using a Schedule III or Schedule IV controlled substance for purposes of weight reduction or to control obesity after the physician determines in the physician's professional judgment that:

(1) the physician's patient has failed to lose weight using a treatment plan involving the controlled substance;

(2) the controlled substance has provided a decreasing contribution toward further weight loss for the patient unless continuing to take the controlled substance is medically necessary or appropriate for maintenance therapy;

(3) the physician's patient:

(A) has a history of; or

(B) shows a propensity for;

alcohol or drug abuse; or

(4) the physician's patient has consumed or disposed of a controlled substance in a manner that does not strictly comply with a treating physician's direction.

As added by P.L.157-1999, SEC.1. Amended by P.L.37-2001, SEC.1.

IC 35-48-4

Chapter 4. Offenses Relating to Controlled Substances

IC 35-48-4-0.5

Controlled substance analog; schedule I controlled substance

Sec. 0.5. For purposes of this chapter, a "controlled substance analog" is considered to be a controlled substance in schedule I if the analog is in whole or in part intended for human consumption.

As added by P.L.225-2003, SEC.2.

IC 35-48-4-1

Dealing in cocaine or narcotic drug

Sec. 1. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

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

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

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

commits dealing in cocaine or a narcotic drug, a Class B felony, except as provided in subsection (b).

(b) The offense is a Class A felony if:

(1) the amount of the drug involved weighs three (3) grams or more;

(2) the person:

(A) delivered; or

(B) financed the delivery of;

the drug to a person under eighteen (18) years of age at least three (3) years junior to the person; or

(3) the person manufactured, delivered, or financed the delivery of the drug:

(A) on a school bus; or

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

(i) school property;

(ii) a public park;

(iii) a family housing complex; or

(iv) a youth program center.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.96; Acts 1979, P.L.303, SEC.8; P.L.296-1987, SEC.5; P.L.165-1990, SEC.3; P.L.296-1995, SEC.3; P.L.65-1996, SEC.11; P.L.17-2001, SEC.19; P.L.151-2006, SEC.22.

IC 35-48-4-1.1

Dealing in methamphetamine

Sec. 1.1. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

methamphetamine, pure or adulterated; or

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

methamphetamine, pure or adulterated;

commits dealing in methamphetamine, a Class B felony, except as provided in subsection (b).

(b) The offense is a Class A felony if:

(1) the amount of the drug involved weighs three (3) grams or more;

(2) the person:

(A) delivered; or

(B) financed the delivery of;

the drug to a person under eighteen (18) years of age at least three (3) years junior to the person; or

(3) the person manufactured, delivered, or financed the delivery of the drug:

(A) on a school bus; or

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

(i) school property;

(ii) a public park;

(iii) a family housing complex; or

(iv) a youth program center.

As added by P.L.151-2006, SEC.23.

IC 35-48-4-2

Dealing in a schedule I, II, or III controlled substance

Sec. 2. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

a controlled substance, pure or adulterated, classified in schedule I, II, or III, except marijuana, hash oil, or hashish; or

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

a controlled substance, pure or adulterated, classified in schedule I, II, or III, except marijuana, hash oil, or hashish;

commits dealing in a schedule I, II, or III controlled substance, a Class B felony, except as provided in subsection (b).

(b) The offense is a Class A felony if:

(1) the person:

(A) delivered; or

(B) financed the delivery of;

the substance to a person under eighteen (18) years of age at least three (3) years junior to the person; or

(2) the person delivered or financed the delivery of the substance:

(A) on a school bus; or

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

(i) school property;

(ii) a public park;

(iii) a family housing complex; or

(iv) a youth program center.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.97; Acts 1979, P.L.303, SEC.9; P.L.296-1987, SEC.6; P.L.165-1990, SEC.4; P.L.296-1995, SEC.4; P.L.65-1996, SEC.12; P.L.17-2001, SEC.20.

IC 35-48-4-3

Dealing in a schedule IV controlled substance

Sec. 3. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

a controlled substance, pure or adulterated, classified in schedule IV; or

(2) possesses, with intent to manufacture or deliver, a controlled substance, pure or adulterated, classified in schedule IV;

commits dealing in a schedule IV controlled substance, a Class C felony, except as provided in subsection (b).

(b) The offense is a Class B felony if:

(1) the person:

(A) delivered; or

(B) financed the delivery of;

the substance to a person under eighteen (18) years of age at least three (3) years junior to the person; or

(2) the person delivered or financed the delivery of the substance:

(A) on a school bus; or

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

(i) school property;

(ii) a public park;

(iii) a family housing complex; or

(iv) a youth program center.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.98; P.L.296-1987, SEC.7; P.L.165-1990, SEC.5; P.L.296-1995, SEC.5; P.L.65-1996, SEC.13; P.L.17-2001, SEC.21.

IC 35-48-4-4

Dealing in a schedule V controlled substance

Sec. 4. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

a controlled substance, pure or adulterated, classified in schedule V; or

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

a controlled substance, pure or adulterated, classified in schedule V;

commits dealing in a schedule V controlled substance, a Class D felony, except as provided in subsection (b).

(b) The offense is a Class B felony if:

(1) the person:

(A) delivered; or

(B) financed the delivery of;

the substance to a person under eighteen (18) years of age at least three (3) years junior to the person; or

(2) the person delivered or financed the delivery of the substance:

(A) on a school bus; or

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

(i) school property;

(ii) a public park;

(iii) a family housing complex; or

(iv) a youth program center.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.99; P.L.296-1987, SEC.8; P.L.165-1990, SEC.6; P.L.296-1995, SEC.6; P.L.65-1996, SEC.14; P.L.17-2001, SEC.22.

IC 35-48-4-4.1

Dumping controlled substance waste

Sec. 4.1. (a) A person who dumps, discharges, discards, transports, or otherwise disposes of:

(1) chemicals, knowing the chemicals were used in the illegal manufacture of a controlled substance or an immediate precursor; or

(2) waste, knowing that the waste was produced from the illegal

manufacture of a controlled substance or an immediate precursor;

commits dumping controlled substance waste, a Class D felony.

(b) It is not a defense in a prosecution under subsection (a) that the person did not manufacture the controlled substance or immediate precursor.

As added by P.L.17-2001, SEC.23.

IC 35-48-4-4.5

Dealing in a substance represented to be a controlled substance

Sec. 4.5. (a) A person who knowingly or intentionally delivers or finances the delivery of any substance, other than a controlled substance or a drug for which a prescription is required under federal or state law, that:

(1) is expressly or impliedly represented to be a controlled substance;

(2) is distributed under circumstances that would lead a reasonable person to believe that the substance is a controlled substance; or

(3) by overall dosage unit appearance, including shape, color, size, markings, or lack of markings, taste, consistency, or any other identifying physical characteristic of the substance, would lead a reasonable person to believe the substance is a controlled substance;

commits dealing in a substance represented to be a controlled substance, a Class D felony.

(b) In determining whether representations have been made, subject to subsection (a)(1), or whether circumstances of distribution exist, subject to subsection (a)(2), the trier of fact may consider, in addition to other relevant factors, the following:

(1) Statements made by the owner or other person in control of the substance, concerning the substance's nature, use, or effect.

(2) Statements made by any person, to the buyer or recipient of the substance, that the substance may be resold for profit.

(3) Whether the substance is packaged in a manner uniquely used for the illegal distribution of controlled substances.

(4) Whether:

(A) the distribution included an exchange of, or demand for, money or other property as consideration; and

(B) the amount of the consideration was substantially greater than the reasonable retail market value of the substance.

As added by Acts 1981, P.L.305, SEC.1. Amended by P.L.210-1986, SEC.1; P.L.165-1990, SEC.7.

IC 35-48-4-4.6

Unlawful manufacture, distribution, or possession of counterfeit substance

Sec. 4.6. (a) A person who knowingly or intentionally:

(1) manufactures;

(2) finances the manufacture of;

(3) advertises;
(4) distributes; or
(5) possesses with intent to manufacture, finance the manufacture of, advertise, or distribute;

a substance described in section 4.5 of this chapter commits a Class C felony.

(b) A person who knowingly or intentionally possesses a substance described in section 4.5 of this chapter commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous conviction under this section.

(c) In any prosecution brought under this section it is not a defense that the person believed the substance actually was a controlled substance.

(d) This section does not apply to the following:

(1) The manufacture, financing the manufacture of, processing, packaging, distribution, or sale of noncontrolled substances to licensed medical practitioners for use as placebos in professional practice or research.

(2) Persons acting in the course and legitimate scope of their employment as law enforcement officers.

(3) The retention of production samples of noncontrolled substances produced before September 1, 1986, where such samples are required by federal law.

As added by P.L.210-1986, SEC.2. Amended by P.L.165-1990, SEC.8; P.L.150-1999, SEC.1; P.L.225-2003, SEC.3.

IC 35-48-4-5

Dealing in a counterfeit substance

Sec. 5. A person who:

(1) knowingly or intentionally:
(A) creates;
(B) delivers; or
(C) finances the delivery of;

a counterfeit substance; or

(2) possesses, with intent to:
(A) deliver; or
(B) finance the delivery of;

a counterfeit substance;

commits dealing in a counterfeit substance, a Class D felony.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.100; P.L.165-1990, SEC.9.

IC 35-48-4-6

Possession of cocaine or narcotic drug

Sec. 6. (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses cocaine (pure or adulterated) or a narcotic drug (pure or adulterated) classified in schedule I or II, commits possession of cocaine or a narcotic drug, a Class D felony, except as provided in subsection (b).

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

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.101; Acts 1979, P.L.303, SEC.10; P.L.138-1983, SEC.3; P.L.296-1987, SEC.9; P.L.296-1995, SEC.7; P.L.65-1996, SEC.15; P.L.188-1999, SEC.7; P.L.17-2001, SEC.24; P.L.151-2006, SEC.24.

IC 35-48-4-6.1

Possession of methamphetamine

Sec. 6.1. (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses methamphetamine (pure or adulterated) commits possession of methamphetamine, a Class D felony, except as provided in subsection (b).

(b) The offense is:
(1) a Class C felony if:
(A) the amount of the drug involved (pure or adulterated) weighs three (3) grams or more; or
(B) the person was also in possession of a firearm (as defined in IC 35-47-1-5);
(2) a Class B felony if the person in possession of the methamphetamine possesses less than three (3) grams of pure or adulterated methamphetamine:
(A) on a school bus; or
(B) in, on, or within one thousand (1,000) feet of:
(i) school property;
(ii) a public park;

(iii) a family housing complex; or
(iv) a youth program center; and
(3) a Class A felony if the person possesses the methamphetamine in an amount (pure or adulterated) weighing at least three (3) grams:
(A) on a school bus; or
(B) in, on, or within one thousand (1,000) feet of:
(i) school property;
(ii) a public park;
(iii) a family housing complex; or
(iv) a youth program center.
As added by P.L.151-2006, SEC.25.

IC 35-48-4-7
Possession of a controlled substance; obtaining a schedule V controlled substance

Sec. 7. (a) A person who, without a valid prescription or order of a practitioner acting in the course of his professional practice, knowingly or intentionally possesses a controlled substance (pure or adulterated) classified in schedule I, II, III, or IV, except marijuana or hashish, commits possession of a controlled substance, a Class D felony. However, the offense is a Class C felony if the person in possession of the controlled substance possesses the controlled substance:
(1) on a school bus; or
(2) in, on, or within one thousand (1,000) feet of:
(A) school property;
(B) a public park;
(C) a family housing complex; or
(D) a youth program center.

(b) A person who, without a valid prescription or order of a practitioner acting in the course of his professional practice, knowingly or intentionally obtains:
(1) more than four (4) ounces of schedule V controlled substances containing codeine in any given forty-eight (48) hour period unless pursuant to a prescription;
(2) a schedule V controlled substance pursuant to written or verbal misrepresentation; or
(3) possession of a schedule V controlled substance other than by means of a prescription or by means of signing an exempt narcotic register maintained by a pharmacy licensed by the Indiana state board of pharmacy;
commits a Class D felony.
As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.102; P.L.138-1983, SEC.4; P.L.327-1985, SEC.4; P.L.296-1987, SEC.10; P.L.296-1995, SEC.8; P.L.65-1996, SEC.16; P.L.17-2001, SEC.25.

IC 35-48-4-8
Repealed

(*Repealed by Acts 1980, P.L.115, SEC.5.)*

IC 35-48-4-8.1

Manufacture of paraphernalia

Sec. 8.1. (a) A person who manufactures, finances the manufacture of, or designs an instrument, a device, or other object that is intended to be used primarily for:

(1) introducing into the human body a controlled substance;

(2) testing the strength, effectiveness, or purity of a controlled substance; or

(3) enhancing the effect of a controlled substance;

in violation of this chapter commits a Class A infraction for manufacturing paraphernalia.

(b) A person who:

(1) knowingly or intentionally violates this section; and

(2) has a previous judgment for violation of this section;

commits manufacture of paraphernalia, a Class D felony.

As added by Acts 1980, P.L.115, SEC.2. Amended by P.L.202-1989, SEC.3; P.L.165-1990, SEC.10.

IC 35-48-4-8.2

Repealed

(*Repealed by P.L.1-1991, SEC.205.)*

IC 35-48-4-8.3

Possession of paraphernalia

Sec. 8.3. (a) A person who possesses a raw material, an instrument, a device, or other object that the person intends to use for:

(1) introducing into the person's body a controlled substance;

(2) testing the strength, effectiveness, or purity of a controlled substance; or

(3) enhancing the effect of a controlled substance;

in violation of this chapter commits a Class A infraction for possessing paraphernalia.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated judgment or conviction under this section.

(c) A person who recklessly possesses a raw material, an instrument, a device, or other object that is to be used primarily for:

(1) introducing into the person's body a controlled substance;

(2) testing the strength, effectiveness, or purity of a controlled substance; or

(3) enhancing the effect of a controlled substance;

in violation of this chapter commits reckless possession of paraphernalia, a Class B misdemeanor. However, the offense is a Class D felony if the person has a previous judgment or conviction under this section.

As added by Acts 1980, P.L.115, SEC.4. Amended by P.L.202-1989,

SEC.5; P.L.166-1990, SEC.2; P.L.58-2003, SEC.1.

IC 35-48-4-8.5

Dealing in paraphernalia

Sec. 8.5. (a) A person who keeps for sale, offers for sale, delivers, or finances the delivery of a raw material, an instrument, a device, or other object that is intended to be or that is designed or marketed to be used primarily for:

(1) ingesting, inhaling, or otherwise introducing into the human body marijuana, hash oil, hashish, or a controlled substance;

(2) testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, or a controlled substance;

(3) enhancing the effect of a controlled substance;

(4) manufacturing, compounding, converting, producing, processing, or preparing marijuana, hash oil, hashish, or a controlled substance;

(5) diluting or adulterating marijuana, hash oil, hashish, or a controlled substance by individuals; or

(6) any purpose announced or described by the seller that is in violation of this chapter;

commits a Class A infraction for dealing in paraphernalia.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated judgment or conviction under this section.

(c) A person who recklessly keeps for sale, offers for sale, or delivers an instrument, a device, or other object that is to be used primarily for:

(1) ingesting, inhaling, or otherwise introducing into the human body marijuana, hash oil, hashish, or a controlled substance;

(2) testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, or a controlled substance;

(3) enhancing the effect of a controlled substance;

(4) manufacturing, compounding, converting, producing, processing, or preparing marijuana, hash oil, hashish, or a controlled substance;

(5) diluting or adulterating marijuana, hash oil, hashish, or a controlled substance by individuals; or

(6) any purpose announced or described by the seller that is in violation of this chapter;

commits reckless dealing in paraphernalia, a Class B misdemeanor. However, the offense is a Class D felony if the person has a previous judgment or conviction under this section.

(d) This section does not apply to the following:

(1) Items marketed for use in the preparation, compounding, packaging, labeling, or other use of marijuana, hash oil, hashish, or a controlled substance as an incident to lawful research, teaching, or chemical analysis and not for sale.

(2) Items marketed for or historically and customarily used in connection with the planting, propagating, cultivating, growing,

harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling of tobacco or any other lawful substance.

As added by P.L.1-1991, SEC.206. Amended by P.L.58-2003, SEC.2.

IC 35-48-4-9

Repealed

(*Repealed by Acts 1980, P.L.115, SEC.5.)*

IC 35-48-4-10

Dealing in marijuana, hash oil, or hashish

Sec. 10. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

marijuana, hash oil, or hashish, pure or adulterated; or

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

marijuana, hash oil, or hashish, pure or adulterated;

commits dealing in marijuana, hash oil, or hashish, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense is:

(1) a Class D felony if:

(A) the recipient or intended recipient is under eighteen (18) years of age;

(B) the amount involved is more than thirty (30) grams but less than ten (10) pounds of marijuana or two (2) grams but less than three hundred (300) grams of hash oil or hashish; or

(C) the person has a prior conviction of an offense involving marijuana, hash oil, or hashish; and

(2) a Class C felony if the amount involved is ten (10) pounds or more of marijuana or three hundred (300) or more grams of hash oil or hashish or the person delivered or financed the delivery of marijuana, hash oil, or hashish:

(A) on a school bus; or

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

(i) school property;

(ii) a public park;

(iii) a family housing complex; or

(iv) a youth program center.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.105; Acts 1979, P.L.303, SEC.11; Acts 1982, P.L.204, SEC.38; P.L.296-1987, SEC.11; P.L.165-1990, SEC.12;

P.L.296-1995, SEC.9; P.L.65-1996, SEC.17; P.L.17-2001, SEC.26.

IC 35-48-4-11

Possession of marijuana, hash oil, or hashish

Sec. 11. A person who:

(1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, or hashish;

(2) knowingly or intentionally grows or cultivates marijuana; or

(3) knowing that marijuana is growing on his premises, fails to destroy the marijuana plants;

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

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.106; Acts 1979, P.L.303, SEC.12; P.L.138-1983, SEC.5.

IC 35-48-4-12

Conditional discharge for possession as first offense

Sec. 12. If a person who has no prior conviction of an offense under this article or under a law of another jurisdiction relating to controlled substances pleads guilty to possession of marijuana or hashish as a Class A misdemeanor, the court, without entering a judgment of conviction and with the consent of the person, may defer further proceedings and place him in the custody of the court under such conditions as the court determines. Upon violation of a condition of the custody, the court may enter a judgment of conviction. However, if the person fulfills the conditions of the custody, the court shall dismiss the charges against him. There may be only one (1) dismissal under this section with respect to a person.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.107.

IC 35-48-4-13

Visiting or maintaining a common nuisance

Sec. 13. (a) A person who knowingly or intentionally visits a building, structure, vehicle, or other place that is used by any person to unlawfully use a controlled substance commits visiting a common nuisance, a Class B misdemeanor.

(b) A person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used one (1) or more times:

(1) by persons to unlawfully use controlled substances; or

(2) for unlawfully:

(A) manufacturing;

(B) keeping;

(C) offering for sale;

(D) selling;

(E) delivering; or

(F) financing the delivery of;

controlled substances, or items of drug paraphernalia as described in IC 35-48-4-8.5;

commits maintaining a common nuisance, a Class D felony.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.108; P.L.210-1986, SEC.4; P.L.165-1990, SEC.13; P.L.1-1991, SEC.207; P.L.31-1998, SEC.11; P.L.17-2001, SEC.27.

IC 35-48-4-13.3

Taking juvenile or endangered adult to location used for drug sale, manufacture, or possession

Sec. 13.3. A person who recklessly, knowingly, or intentionally takes a person less than eighteen (18) years of age or an endangered adult (as defined in IC 12-10-3-2) into a building, structure, vehicle, or other place that is being used by any person to:

(1) unlawfully possess drugs or controlled substances; or

(2) unlawfully:

(A) manufacture;

(B) keep;

(C) offer for sale;

(D) sell;

(E) deliver; or

(F) finance the delivery of;

drugs or controlled substances;

commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

As added by P.L.225-2003, SEC.4.

IC 35-48-4-14

Offenses relating to registration labeling and prescription forms

Sec. 14. (a) A person who:

(1) is subject to IC 35-48-3 and who recklessly, knowingly, or intentionally distributes or dispenses a controlled substance in violation of IC 35-48-3;

(2) is a registrant and who recklessly, knowingly, or intentionally:

(A) manufactures; or

(B) finances the manufacture of;

a controlled substance not authorized by his registration or distributes or dispenses a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) recklessly, knowingly, or intentionally fails to make, keep, or furnish a record, a notification, an order form, a statement, an invoice, or information required under this article; or

(4) recklessly, knowingly, or intentionally refuses entry into any premises for an inspection authorized by this article;

commits a Class D felony.

(b) A person who knowingly or intentionally:

(1) distributes as a registrant a controlled substance classified

in schedule I or II, except under an order form as required by IC 35-48-3;

(2) uses in the course of the:

(A) manufacture of;

(B) the financing of the manufacture of; or

(C) distribution of;

a controlled substance a federal or state registration number that is fictitious, revoked, suspended, or issued to another person;

(3) furnishes false or fraudulent material information in, or omits any material information from, an application, report, or other document required to be kept or filed under this article; or

(4) makes, distributes, or possesses a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or a likeness of any of the foregoing on a drug or container or labeling thereof so as to render the drug a counterfeit substance;

commits a Class D felony.

(c) A person who knowingly or intentionally acquires possession of a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, alteration of a prescription order, concealment of a material fact, or use of a false name or false address commits a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection.

(d) A person who knowingly or intentionally affixes any false or forged label to a package or receptacle containing a controlled substance commits a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection. This subsection does not apply to law enforcement agencies or their representatives while engaged in enforcing IC 16-42-19 or this chapter (or IC 16-6-8 before its repeal).

(e) A person who duplicates, reproduces, or prints any prescription pads or forms without the prior written consent of a practitioner commits a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection. This subsection does not apply to the printing of prescription pads or forms upon a written, signed order placed by a practitioner or pharmacist, by legitimate printing companies.

As added by Acts 1976, P.L.148, SEC.7. Amended by Acts 1977, P.L.340, SEC.109; P.L.131-1986, SEC.3; P.L.165-1990, SEC.14; P.L.2-1993, SEC.193.

IC 35-48-4-14.5

Possession or sale of drug precursors

Sec. 14.5. (a) As used in this section, "chemical reagents or precursors" refers to one (1) or more of the following:

(1) Ephedrine.

(2) Pseudoephedrine.

(3) Phenylpropanolamine.

(4) The salts, isomers, and salts of isomers of a substance

identified in subdivisions (1) through (3).

(5) Anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1).

(6) Organic solvents.

(7) Hydrochloric acid.

(8) Lithium metal.

(9) Sodium metal.

(10) Ether.

(11) Sulfuric acid.

(12) Red phosphorous.

(13) Iodine.

(14) Sodium hydroxide (lye).

(15) Potassium dichromate.

(16) Sodium dichromate.

(17) Potassium permanganate.

(18) Chromium trioxide.

(19) Benzyl cyanide.

(20) Phenylacetic acid and its esters or salts.

(21) Piperidine and its salts.

(22) Methylamine and its salts.

(23) Isosafrole.

(24) Safrole.

(25) Piperonal.

(26) Hydriodic acid.

(27) Benzaldehyde.

(28) Nitroethane.

(29) Gamma-butyrolactone.

(30) White phosphorus.

(31) Hypophosphorous acid and its salts.

(32) Acetic anhydride.

(33) Benzyl chloride.

(34) Ammonium nitrate.

(35) Ammonium sulfate.

(36) Hydrogen peroxide.

(37) Thionyl chloride.

(38) Ethyl acetate.

(39) Pseudoephedrine hydrochloride.

(b) A person who possesses more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated, commits a Class D felony. However, the offense is a Class C felony if the person possessed:

(1) a firearm while possessing more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated; or

(2) more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated, in, on, or within one thousand (1,000) feet of:

(A) school property;

(B) a public park;

(C) a family housing complex; or

(D) a youth program center.

(c) A person who possesses anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with the intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6, commits a Class D felony. However, the offense is a Class C felony if the person possessed:

(1) a firearm while possessing anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6; or

(2) anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6, in, on, or within one thousand (1,000) feet of:

(A) school property;

(B) a public park;

(C) a family housing complex; or

(D) a youth program center.

(d) Subsection (b) does not apply to a:

(1) licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier or an agent of any of these persons if the possession is in the regular course of lawful business activities; or

(2) person who possesses more than ten (10) grams of a substance described in subsection (b) if the substance is possessed under circumstances consistent with typical medicinal or household use, including:

(A) the location in which the substance is stored;

(B) the possession of the substance in a variety of:

(i) strengths;

(ii) brands; or

(iii) types; or

(C) the possession of the substance:

(i) with different expiration dates; or

(ii) in forms used for different purposes.

(e) A person who possesses two (2) or more chemical reagents or precursors with the intent to manufacture a controlled substance commits a Class D felony.

(f) An offense under subsection (e) is a Class C felony if the person possessed:

(1) a firearm while possessing two (2) or more chemical reagents or precursors with intent to manufacture a controlled substance; or

(2) two (2) or more chemical reagents or precursors with intent to manufacture a controlled substance in, on, or within one thousand (1,000) feet of:

(A) school property;

(B) a public park;

(C) a family housing complex; or

(D) a youth program center.

(g) A person who sells, transfers, distributes, or furnishes a chemical reagent or precursor to another person with knowledge or the intent that the recipient will use the chemical reagent or precursors to manufacture a controlled substance commits unlawful sale of a precursor, a Class D felony.

As added by P.L.150-1999, SEC.2. Amended by P.L.17-2001, SEC.28; P.L.225-2003, SEC.5; P.L.192-2005, SEC.8; P.L.151-2006, SEC.26.

IC 35-48-4-14.7

Sale and storage of ephedrine or pseudoephedrine; application; age requirements; identification; record keeping; warning signs; convenience packages; suspicious orders and thefts; penalties

Sec. 14.7. (a) This section does not apply to the following:

(1) Ephedrine or pseudoephedrine dispensed pursuant to a prescription.

(2) The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (f).

(3) The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or manufacturer, the person is required to report a suspicious order to the state police department in accordance with subsection (f).

(b) The following definitions apply throughout this section:

(1) "Constant video monitoring" means the surveillance by an automated camera that:

(A) records at least one (1) photograph or digital image every ten (10) seconds;

(B) retains a photograph or digital image for at least seventy-two (72) hours;

(C) has sufficient resolution and magnification to permit the identification of a person in the area under surveillance; and

(D) stores a recorded photograph or digital image at a location that is immediately accessible to a law enforcement officer.

(2) "Convenience package" means a package that contains a drug having as an active ingredient not more than one hundred twenty (120) milligrams of ephedrine or pseudoephedrine, or both.

(3) "Ephedrine" means pure or adulterated ephedrine.

(4) "Pseudoephedrine" means pure or adulterated pseudoephedrine.

(5) "Suspicious order" means a sale or transfer of a drug

containing ephedrine or pseudoephedrine if the sale or transfer:

(A) is a sale or transfer that the retail distributor, wholesaler, or manufacturer is required to report to the United States Drug Enforcement Administration;

(B) appears suspicious to the retail distributor, wholesaler, or manufacturer in light of the recommendations contained in Appendix A of the report to the United States attorney general by the suspicious orders task force under the federal Comprehensive Methamphetamine Control Act of 1996; or

(C) is for cash or a money order in a total amount of at least two hundred dollars ($200).

(6) "Unusual theft" means the theft or unexplained disappearance from a particular retail store of drugs containing ten (10) grams or more of ephedrine, pseudoephedrine, or both in a twenty-four (24) hour period.

(c) This subsection does not apply to a convenience package. A person may sell a drug that contains the active ingredient of ephedrine, pseudoephedrine, or both only if the person complies with the following conditions:

(1) The person does not sell the drug to a person less than eighteen (18) years of age.

(2) The person does not sell drugs containing more than three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, to one (1) individual on one (1) day, or nine (9) grams of ephedrine or pseudoephedrine, or both, to one (1) individual in a thirty (30) day period.

(3) The person requires:

(A) the purchaser to produce a state or federal identification card;

(B) the purchaser to complete a paper or an electronic log in a format approved by the state police department with the purchaser's name, address, and driver's license or other identification number; and

(C) the clerk who is conducting the transaction to initial or electronically record the clerk's identification on the log.

Records from the completion of a log must be retained for at least two (2) years. A law enforcement officer has the right to inspect and copy a log or the records from the completion of a log in accordance with state and federal law. A person may not sell or release a log or the records from the completion of a log for a commercial purpose. The Indiana criminal justice institute may obtain information concerning a log or the records from the completion of a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. A retailer who in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

(4) The person stores the drug:

(A) behind a counter in an area inaccessible to a customer or

in a locked display case that makes the drug unavailable to a customer without the assistance of an employee; or

(B) directly in front of the pharmacy counter in the direct line of sight of an employee at the pharmacy counter, in an area under constant video monitoring, if the drug is sold in a retail establishment that:

(i) is a pharmacy; or

(ii) contains a pharmacy that is open for business.

(5) The person posts a sign warning that:

(A) it is a criminal offense for a person to purchase drugs containing more than nine (9) grams of ephedrine or pseudoephedrine, or both, in a thirty (30) day period;

(B) it is a criminal offense for a person to purchase drugs containing more than three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, on one (1) day; and

(C) depending on the amount of ephedrine or pseudoephedrine contained in the drug, purchasing more than one (1) package of drugs containing ephedrine or pseudoephedrine on one (1) day may be a crime.

The warning sign must list maximum amounts of ephedrine or pseudoephedrine that may be purchased in both grams and milligrams.

(d) A person may not purchase drugs containing more than three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, on one (1) day, or more than nine (9) grams of ephedrine or pseudoephedrine, or both, in a thirty (30) day period.

(e) This subsection only applies to convenience packages. A person may not sell drugs containing more than one hundred twenty (120) milligrams of ephedrine or pseudoephedrine, or both in any one (1) transaction if the drugs are sold in convenience packages. A person who sells convenience packages must secure the convenience packages in at least one (1) of the following ways:

(1) The convenience package must be stored not more than thirty (30) feet away from a checkout station or counter and must be in the direct line of sight of an employee at the checkout station or counter.

(2) The convenience package must be protected by a reliable anti-theft device that uses package tags and detection alarms designed to prevent theft.

(3) The convenience package must be stored in restricted access shelving that permits a purchaser to remove not more than one (1) package every fifteen (15) seconds.

(4) The convenience package must be stored in an area that is under constant video monitoring, and a sign placed near the convenience package must warn that the area is under constant video monitoring.

(f) A retail distributor, wholesaler, or manufacturer shall report a suspicious order to the state police department in writing.

(g) Not later than three (3) days after the discovery of an unusual theft at a particular retail store, the retailer shall report the unusual

theft to the state police department in writing. If three (3) unusual thefts occur in a thirty (30) day period at a particular retail store, the retailer shall, for at least one hundred eighty (180) days after the date of the last unusual theft, locate all drugs containing ephedrine or pseudoephedrine at that particular retail store behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to customers without the assistance of an employee.

(h) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance after February 1, 2005, that is more stringent than this section.

(i) A person who knowingly or intentionally violates this section commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

(j) Before June 30, 2007, the state police department shall submit a report to the legislative council detailing the effectiveness of this section in reducing the illicit production of methamphetamine. The report must describe the number of arrests or convictions that are attributable to the identification and logging requirements contained in this section, and must include recommendations for future action. The report must be in an electronic format under IC 5-14-6.

As added by P.L.192-2005, SEC.9. Amended by P.L.151-2006, SEC.27; P.L.186-2007, SEC.9; P.L.97-2010, SEC.1.

IC 35-48-4-15

Driver's license and motor vehicle registration; suspension

Sec. 15. (a) If a person is convicted of an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, or conspiracy to commit an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, and the court finds that a motor vehicle was used in the commission of the offense, the court shall, in addition to any other order the court enters, order that the person's:

(1) operator's license be suspended;

(2) existing motor vehicle registrations be suspended; and

(3) ability to register motor vehicles be suspended;

by the bureau of motor vehicles for a period specified by the court of at least six (6) months but not more than two (2) years.

(b) If a person is convicted of an offense described in subsection (a) and the person does not hold an operator's license or a learner's permit, the court shall order that the person may not receive an operator's license or a learner's permit from the bureau of motor vehicles for a period of not less than six (6) months.

As added by P.L.67-1990, SEC.13. Amended by P.L.107-1991, SEC.3; P.L.129-1993, SEC.2; P.L.64-1994, SEC.6; P.L.76-2004, SEC.23.

IC 35-48-4-16

Defenses to charge of selling narcotics near school or family housing

Sec. 16. (a) For an offense under this chapter that requires proof of:

(1) delivery of cocaine, a narcotic drug, methamphetamine, or a controlled substance;

(2) financing the delivery of cocaine, a narcotic drug, methamphetamine, or a controlled substance; or

(3) possession of cocaine, narcotic drug, methamphetamine, or controlled substance;

within one thousand (1,000) feet of school property, a public park, a family housing complex, or a youth program center, the person charged may assert the defense in subsection (b) or (c).

(b) It is a defense for a person charged under this chapter with an offense that contains an element listed in subsection (a) that:

(1) a person was briefly in, on, or within one thousand (1,000) feet of school property, a public park, a family housing complex, or a youth program center; and

(2) no person under eighteen (18) years of age at least three (3) years junior to the person was in, on, or within one thousand (1,000) feet of the school property, public park, family housing complex, or youth program center at the time of the offense.

(c) It is a defense for a person charged under this chapter with an offense that contains an element listed in subsection (a) that a person was in, on, or within one thousand (1,000) feet of school property, a public park, a family housing complex, or a youth program center at the request or suggestion of a law enforcement officer or an agent of a law enforcement officer.

(d) The defense under this section applies only to the element of the offense that requires proof that the delivery, financing of the delivery, or possession of cocaine, a narcotic drug, methamphetamine, or a controlled substance occurred in, on, or within one thousand (1,000) feet of school property, a public park, a family housing complex, or a youth program center.

As added by P.L.17-2001, SEC.29.

IC 35-48-4-17

Restitution for environmental cleanup

Sec. 17. (a) In addition to any other penalty imposed for conviction of an offense under this chapter involving the manufacture or intent to manufacture methamphetamine, a court shall order restitution under IC 35-50-5-3 to cover the costs, if necessary, of an environmental cleanup incurred by a law enforcement agency or other person as a result of the offense.

(b) The amount collected under subsection (a) shall be used to reimburse the law enforcement agency that assumed the costs associated with the environmental cleanup described in subsection (a).

As added by P.L.225-2003, SEC.6.

IC 35-48-5
Repealed

(*Repealed by P.L.202-1989, SEC.6.)*

IC 35-48-6
Repealed

(*Repealed by P.L.2-1995, SEC.140.)*

IC 35-48-7

Chapter 7. Central Repository for Controlled Substances Data

IC 35-48-7-1

Repealed

(*Repealed by P.L.84-2010, SEC.102.)*

IC 35-48-7-2

Repealed

(*Repealed by P.L.65-2006, SEC.18.)*

IC 35-48-7-2.9

"Dispense" defined

Sec. 2.9. (a) As used in this chapter, "dispense" has the meaning set forth in IC 35-48-1-12.

(b) The term does not apply to the following:

(1) A drug administered directly to a patient.

(2) A drug dispensed by a practitioner, if the quantity dispensed is not more than a seventy-two (72) hour supply of a controlled substance listed in schedule II, III, IV, or V as set forth in IC 35-48-3-9.

As added by P.L.105-2008, SEC.65.

IC 35-48-7-3

Repealed

(*Repealed by P.L.105-2008, SEC.66.)*

IC 35-48-7-4

"Exception report" defined

Sec. 4. As used in this chapter, "exception report" means a record of data concerning:

(1) a practitioner practicing a particular specialty or field of health care;

(2) a dispenser doing business in a particular location; or

(3) a recipient;

that indicates dispensing or receiving of controlled substances outside norms for dispensing or receiving controlled substances established by the advisory committee under this chapter.

As added by P.L.163-1994, SEC.5.

IC 35-48-7-5

"Identification number" defined

Sec. 5. As used in this chapter, "identification number" refers to the following:

(1) The unique number contained on any of the following:

(A) A valid driver's license of a recipient or a recipient's representative issued under Indiana law or the law of any other state.

(B) A recipient's or a recipient representative's valid military identification card.

(C) A valid identification card of a recipient or a recipient's representative issued by:

(i) the bureau of motor vehicles as described in IC 9-24-16-3; or

(ii) any other state and that is similar to the identification card issued by the bureau of motor vehicles.

(D) If the recipient is an animal:

(i) the valid driver's license issued under Indiana law or the law of any other state;

(ii) the valid military identification card; or

(iii) the valid identification card issued by the bureau of motor vehicles and described in IC 9-24-16-3 or a valid identification card of similar description that is issued by any other state;

of the animal's owner.

(2) The identification number or phrase designated by the central repository.

As added by P.L.163-1994, SEC.5. Amended by P.L.204-2005, SEC.22.

IC 35-48-7-5.2

"INSPECT" defined

Sec. 5.2. As used in this chapter, "INSPECT" means the Indiana scheduled prescription electronic collection and tracking program established by IC 25-1-13-4.

As added by P.L.65-2006, SEC.3.

IC 35-48-7-5.4

"Interoperability" defined

Sec. 5.4. As used in this chapter, "interoperability" refers to the INSPECT program electronically sharing reported information with another state concerning the dispensing of a controlled substance:

(1) to a recipient who resides in the other state; or

(2) prescribed by a practitioner whose principal place of business is located in another state.

As added by P.L.65-2006, SEC.4.

IC 35-48-7-5.6

"Patient" defined

Sec. 5.6. As used in this chapter, "patient" means an individual who has requested or received health care services from a provider for the examination, treatment, diagnosis, or prevention of a physical or mental condition.

As added by P.L.65-2006, SEC.5.

IC 35-48-7-5.8

"Practitioner" defined

Sec. 5.8. As used in this chapter, "practitioner" means a physician, dentist, veterinarian, podiatrist, nurse practitioner, scientific investigator, pharmacist, hospital, or other institution or individual

licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in the United States.
As added by P.L.65-2006, SEC.6.

IC 35-48-7-6
"Recipient" defined
Sec. 6. As used in this chapter, "recipient" means an individual for whom a controlled substance is dispensed.
As added by P.L.163-1994, SEC.5.

IC 35-48-7-7
"Recipient representative" defined
Sec. 7. As used in this chapter, "recipient representative" means the individual to whom a controlled substance is dispensed if the recipient is either less than eighteen (18) years of age or unavailable to receive the controlled substance.
As added by P.L.163-1994, SEC.5.

IC 35-48-7-7.5
"State" defined
Sec. 7.5. As used in this chapter, "state" means any state of the United States or the District of Columbia.
As added by P.L.65-2006, SEC.7.

IC 35-48-7-8
Repealed
(*Repealed by P.L.3-2008, SEC.269.)*

IC 35-48-7-8.1 Version a
Controlled substance prescription monitoring program; information; prescription forms
Note: This version of section amended by P.L.84-2010, SEC.97. See also following version of this section amended by P.L.94-2010, SEC.13.
Sec. 8.1. (a) The board shall provide for a controlled substance prescription monitoring program that includes the following components:
(1) Each time a controlled substance designated by the board under IC 35-48-2-5 through IC 35-48-2-10 is dispensed, the dispenser shall transmit to the INSPECT program the following information:
(A) The controlled substance recipient's name.
(B) The controlled substance recipient's or the recipient representative's identification number or the identification number or phrase designated by the INSPECT program.
(C) The controlled substance recipient's date of birth.
(D) The national drug code number of the controlled substance dispensed.

(E) The date the controlled substance is dispensed.
(F) The quantity of the controlled substance dispensed.
(G) The number of days of supply dispensed.
(H) The dispenser's United States Drug Enforcement Agency registration number.
(I) The prescriber's United States Drug Enforcement Agency registration number.
(J) An indication as to whether the prescription was transmitted to the pharmacist orally or in writing.
(K) Other data required by the board.

(2) The information required to be transmitted under this section must be transmitted not more than seven (7) days after the date on which a controlled substance is dispensed.

(3) A dispenser shall transmit the information required under this section by:
(A) uploading to the INSPECT web site;
(B) a computer diskette; or
(C) a CD-ROM disk;
that meets specifications prescribed by the board.

(4) The board may require that prescriptions for controlled substances be written on a one (1) part form that cannot be duplicated. However, the board may not apply such a requirement to prescriptions filled at a pharmacy with a Type II permit (as described in IC 25-26-13-17) and operated by a hospital licensed under IC 16-21, or prescriptions ordered for and dispensed to bona fide enrolled patients in facilities licensed under IC 16-28. The board may not require multiple copy prescription forms for any prescriptions written. The board may not require different prescription forms for any individual drug or group of drugs. Prescription forms required under this subdivision must be approved by the Indiana board of pharmacy established by IC 25-26-13-3.

(5) The costs of the program.

(b) This subsection applies only to a retail pharmacy. A pharmacist, pharmacy technician, or person authorized by a pharmacist to dispense a controlled substance may not dispense a controlled substance to a person who is not personally known to the pharmacist, pharmacy technician, or person authorized by a pharmacist to dispense a controlled substance unless the person taking possession of the controlled substance provides documented proof of the person's identification to the pharmacist, pharmacy technician, or person authorized by a pharmacist to dispense a controlled substance.

As added by P.L.65-2006, SEC.9. Amended by P.L.182-2009(ss), SEC.399; P.L.84-2010, SEC.97.

IC 35-48-7-8.1 Version b

Controlled substance prescription monitoring program; information; prescription forms; identification

Note: This version of section amended by P.L.94-2010, SEC.13.

See also preceding version of this section amended by P.L.84-2010, SEC.97.

Sec. 8.1. (a) The advisory committee shall provide for a controlled substance prescription monitoring program that includes the following components:

(1) Each time a controlled substance designated by the advisory committee under IC 35-48-2-5 through IC 35-48-2-10 is dispensed, the dispenser shall transmit to the INSPECT program the following information:

(A) The controlled substance recipient's name.

(B) The controlled substance recipient's or the recipient representative's identification number or the identification number or phrase designated by the INSPECT program.

(C) The controlled substance recipient's date of birth.

(D) The national drug code number of the controlled substance dispensed.

(E) The date the controlled substance is dispensed.

(F) The quantity of the controlled substance dispensed.

(G) The number of days of supply dispensed.

(H) The dispenser's United States Drug Enforcement Agency registration number.

(I) The prescriber's United States Drug Enforcement Agency registration number.

(J) An indication as to whether the prescription was transmitted to the pharmacist orally or in writing.

(K) Other data required by the advisory committee.

(2) The information required to be transmitted under this section must be transmitted not more than seven (7) days after the date on which a controlled substance is dispensed.

(3) A dispenser shall transmit the information required under this section by:

(A) uploading to the INSPECT web site;

(B) a computer diskette; or

(C) a CD-ROM disk;

that meets specifications prescribed by the advisory committee.

(4) The advisory committee may require that prescriptions for controlled substances be written on a one (1) part form that cannot be duplicated. However, the advisory committee may not apply such a requirement to prescriptions filled at a pharmacy with a Type II permit (as described in IC 25-26-13-17) and operated by a hospital licensed under IC 16-21, or prescriptions ordered for and dispensed to bona fide enrolled patients in facilities licensed under IC 16-28. The committee may not require multiple copy prescription forms for any prescriptions written. The advisory committee may not require different prescription forms for any individual drug or group of drugs. Prescription forms required under this subdivision must be jointly approved by the committee and by the Indiana board of pharmacy established by IC 25-26-13-3.

(5) The costs of the program.

(b) This subsection applies only to a retail pharmacy. A pharmacist, pharmacy technician, or person authorized by a pharmacist to dispense a controlled substance may not dispense a controlled substance to a person who is not personally known to the pharmacist, pharmacy technician, or person authorized by a pharmacist to dispense a controlled substance unless the person taking possession of the controlled substance provides documented proof of the person's identification to the pharmacist, pharmacy technician, or person authorized by a pharmacist to dispense a controlled substance.

As added by P.L.65-2006, SEC.9. Amended by P.L.182-2009(ss), SEC.399; P.L.94-2010, SEC.13.

IC 35-48-7-9

Repealed

(*Repealed by P.L.65-2006, SEC.18.)*

IC 35-48-7-10

Repealed

(*Repealed by P.L.3-2008, SEC.269.)*

IC 35-48-7-10.1

INSPECT program; designation; powers and duties; funding

Sec. 10.1. (a) The INSPECT program must do the following:

(1) Create a data base for information required to be transmitted under section 8.1 of this chapter in the form required under rules adopted by the board, including search capability for the following:

(A) A controlled substance recipient's name.

(B) A controlled substance recipient's or recipient representative's identification number.

(C) A controlled substance recipient's date of birth.

(D) The national drug code number of a controlled substance dispensed.

(E) The dates a controlled substance is dispensed.

(F) The quantities of a controlled substance dispensed.

(G) The number of days of supply dispensed.

(H) A dispenser's United States Drug Enforcement Agency registration number.

(I) A prescriber's United States Drug Enforcement Agency registration number.

(J) Whether a prescription was transmitted to the pharmacist orally or in writing.

(K) A controlled substance recipient's method of payment for the controlled substance dispensed.

(2) Provide the board with continuing twenty-four (24) hour a day online access to the data base.

(3) Secure the information collected and the data base maintained against access by unauthorized persons.

(b) The board may execute a contract with a vendor designated by

the board to perform any function associated with the administration of the INSPECT program.

(c) The INSPECT program may gather prescription data from the Medicaid retrospective drug utilization review (DUR) program established under IC 12-15-35.

(d) The board may accept and designate grants, public and private financial assistance, and licensure fees to provide funding for the INSPECT program.

As added by P.L.65-2006, SEC.11. Amended by P.L.84-2010, SEC.98.

IC 35-48-7-11

Repealed

(*Repealed by P.L.3-2008, SEC.269.)*

IC 35-48-7-11.1

Confidentiality

Sec. 11.1. (a) Information received by the INSPECT program under section 8.1 of this chapter is confidential.

(b) The board shall carry out a program to protect the confidentiality of the information described in subsection (a). The board may disclose the information to another person only under subsection (c), (d), or (g).

(c) The board may disclose confidential information described in subsection (a) to any person who is authorized to engage in receiving, processing, or storing the information.

(d) Except as provided in subsections (e) and (f), the board may release confidential information described in subsection (a) to the following persons:

(1) A member of the board or another governing body that licenses practitioners and is engaged in an investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance.

(2) An investigator for the consumer protection division of the office of the attorney general, a prosecuting attorney, the attorney general, a deputy attorney general, or an investigator from the office of the attorney general, who is engaged in:

(A) an investigation;

(B) an adjudication; or

(C) a prosecution;

of a violation under any state or federal law that involves a controlled substance.

(3) A law enforcement officer who is an employee of:

(A) a local, state, or federal law enforcement agency; or

(B) an entity that regulates controlled substances or enforces controlled substances rules or laws in another state;

that is certified to receive information from the INSPECT program.

(4) A practitioner or practitioner's agent certified to receive information from the INSPECT program.

(5) A controlled substance monitoring program in another state with which Indiana has established an interoperability agreement.
(6) The state toxicologist.
(7) A certified representative of the Medicaid retrospective and prospective drug utilization review program.
(8) A substance abuse assistance program for a licensed health care provider who:
(A) has prescriptive authority under IC 25; and
(B) is participating in the assistance program.

(e) Information provided to an individual under:
(1) subsection (d)(3) is limited to information:
(A) concerning an individual or proceeding involving the unlawful diversion or misuse of a schedule II, III, IV, or V controlled substance; and
(B) that will assist in an investigation or proceeding; and
(2) subsection (d)(4) may be released only for the purpose of:
(A) providing medical or pharmaceutical treatment; or
(B) evaluating the need for providing medical or pharmaceutical treatment to a patient.

(f) Before the board releases confidential information under subsection (d), the applicant must be approved by the INSPECT program in a manner prescribed by the board.

(g) The board may release to:
(1) a member of the board or another governing body that licenses practitioners;
(2) an investigator for the consumer protection division of the office of the attorney general, a prosecuting attorney, the attorney general, a deputy attorney general, or an investigator from the office of the attorney general; or
(3) a law enforcement officer who is:
(A) authorized by the state police department to receive the type of information released; and
(B) approved by the board to receive the type of information released;

confidential information generated from computer records that identifies practitioners who are prescribing or dispensing large quantities of a controlled substance.

(h) The information described in subsection (g) may not be released until it has been reviewed by:
(1) a member of the board who is licensed in the same profession as the prescribing or dispensing practitioner identified by the data; or
(2) the board's designee;

and until that member or the designee has certified that further investigation is warranted. However, failure to comply with this subsection does not invalidate the use of any evidence that is otherwise admissible in a proceeding described in subsection (i).

(i) An investigator or a law enforcement officer receiving confidential information under subsection (c), (d), or (g) may

disclose the information to a law enforcement officer or an attorney for the office of the attorney general for use as evidence in the following:

(1) A proceeding under IC 16-42-20.

(2) A proceeding under any state or federal law that involves a controlled substance.

(3) A criminal proceeding or a proceeding in juvenile court that involves a controlled substance.

(j) The board may compile statistical reports from the information described in subsection (a). The reports must not include information that identifies any practitioner, ultimate user, or other person administering a controlled substance. Statistical reports compiled under this subsection are public records.

(k) This section may not be construed to require a practitioner to obtain information about a patient from the data base.

(l) A practitioner is immune from civil liability for an injury, death, or loss to a person solely due to a practitioner seeking or not seeking information from the INSPECT program. The civil immunity described in this subsection does not extend to a practitioner if the practitioner receives information directly from the INSPECT program and then negligently misuses this information. This subsection does not apply to an act or omission that is a result of gross negligence or intentional misconduct.

(m) The board may review the records of the INSPECT program. If the board determines that a violation of the law may have occurred, the board shall notify the appropriate law enforcement agency or the relevant government body responsible for the licensure, regulation, or discipline of practitioners authorized by law to prescribe controlled substances.

(n) A practitioner who in good faith discloses information based on a report from the INSPECT program to a law enforcement agency is immune from criminal or civil liability. A practitioner that discloses information to a law enforcement agency under this subsection is presumed to have acted in good faith.

As added by P.L.65-2006, SEC.13. Amended by P.L.84-2010, SEC.99.

IC 35-48-7-11.5

Dissemination of exception reports

Sec. 11.5. (a) Each board of a health care provider that prescribes or dispenses prescription drugs shall do the following:

(1) Establish prescribing norms and dispensing guidelines for the unsolicited dissemination of exception reports under section 11.1(d) of this chapter.

(2) Provide the information determined in subdivision (1) to the board.

(b) The exception reports that are disseminated based on the prescribing norms and dispensing guidelines established under subsection (a) must comply with the following requirements:

(1) A report of prescriptive activity of a practitioner to the

practitioner's professional licensing board designee when the practitioner deviates from the dispensing guidelines or the prescribing norms for the prescribing of a controlled substance within a particular drug class.

(2) A reporting of recipient activity to the practitioners who prescribed or dispensed the controlled substance when the recipient deviates from the dispensing guidelines of a controlled substance within a particular drug class.

(c) The board designee may, at the designee's discretion, forward the exception report under subsection (b)(2) to only the following for purposes of an investigation:

(1) A law enforcement agency.

(2) The attorney general.

As added by P.L.84-2010, SEC.100.

IC 35-48-7-12

Repealed

(*Repealed by P.L.3-2008, SEC.269.)*

IC 35-48-7-12.1

Rules to implement chapter

Sec. 12.1. (a) The board shall adopt rules under IC 4-22-2 to implement this chapter, including the following:

(1) Information collection and retrieval procedures for the INSPECT program, including the controlled substances to be included in the program required under section 8.1 of this chapter.

(2) Design for the creation of the data base required under section 10.1 of this chapter.

(3) Requirements for the development and installation of online electronic access by the board to information collected by the INSPECT program.

(4) Identification of emergency situations or other circumstances in which a practitioner may prescribe, dispense, and administer a prescription drug specified in section 8.1 of this chapter without a written prescription or on a form other than a form specified in section 8.1(4) of this chapter.

(b) The board may:

(1) set standards for education courses for individuals authorized to use the INSPECT program;

(2) identify treatment programs for individuals addicted to controlled substances monitored by the INSPECT program; and

(3) work with impaired practitioner associations to provide intervention and treatment.

As added by P.L.65-2006, SEC.15. Amended by P.L.84-2010, SEC.101.

IC 35-48-7-13

Repealed

(*Repealed by P.L.3-2008, SEC.269.)*

IC 35-48-7-13.1

Controlled substances data fund; establishment

Sec. 13.1. (a) This section applies after June 30, 2007.

(b) The controlled substances data fund is established to fund the operation of the INSPECT program. The fund shall be administered by the Indiana professional licensing agency.

(c) Expenses of administering the fund shall be paid from money in the fund. The fund consists of grants, public and private financial assistance, and sixteen percent (16%) of the controlled substances registration fees imposed under rules adopted under IC 35-48-3-1.

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

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

As added by P.L.65-2006, SEC.17.

IC 35-48-7-14

Violations of chapter; misdemeanor offense

Sec. 14. A person who knowingly or intentionally violates this chapter commits a Class A misdemeanor.

As added by P.L.163-1994, SEC.5.

IC 35-48-7-15

Repealed

(*Repealed by P.L.214-2001, SEC.1.)*

IC 35-49

ARTICLE 49. OBSCENITY AND PORNOGRAPHY

IC 35-49-1

Chapter 1. Definitions

IC 35-49-1-1

Definitions applicable throughout article

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.311-1983, SEC.33.

IC 35-49-1-2

"Distribute"

Sec. 2. "Distribute" means to transfer possession for a consideration.

As added by P.L.311-1983, SEC.33.

IC 35-49-1-3

"Matter"

Sec. 3. "Matter" means:

(1) any book, magazine, newspaper, or other printed or written material;

(2) any picture, drawing, photograph, motion picture, digitized image, or other pictorial representation;

(3) any statue or other figure;

(4) any recording, transcription, or mechanical, chemical, or electrical reproduction; or

(5) any other articles, equipment, machines, or materials.

As added by P.L.311-1983, SEC.33. Amended by P.L.3-2002, SEC.3.

IC 35-49-1-4

"Minor"

Sec. 4. "Minor" means any individual under the age of eighteen (18) years.

As added by P.L.311-1983, SEC.33.

IC 35-49-1-5

"Nudity"

Sec. 5. "Nudity" means:

(1) the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering;

(2) the showing of the female breast with less than a fully opaque covering of any part of the nipple; or

(3) the depiction of covered male genitals in a discernibly turgid state.

As added by P.L.311-1983, SEC.33.

IC 35-49-1-6

"Owner"

Sec. 6. "Owner" means any person who owns or has legal right to possession of any matter.
As added by P.L.311-1983, SEC.33.

IC 35-49-1-7
"Performance"
Sec. 7. "Performance" means any play, motion picture, dance, or other exhibition or presentation, whether pictured, animated, or live, performed before an audience of one (1) or more persons.
As added by P.L.311-1983, SEC.33.

IC 35-49-1-8
"Sado-masochistic abuse"
Sec. 8. "Sado-masochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.
As added by P.L.311-1983, SEC.33.

IC 35-49-1-9
"Sexual conduct"
Sec. 9. "Sexual conduct" means:
(1) sexual intercourse or deviate sexual conduct;
(2) exhibition of the uncovered genitals in the context of masturbation or other sexual activity;
(3) exhibition of the uncovered genitals of a person under sixteen (16) years of age;
(4) sado-masochistic abuse; or
(5) sexual intercourse or deviate sexual conduct with an animal.
As added by P.L.311-1983, SEC.33.

IC 35-49-1-10
"Sexual excitement"
Sec. 10. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
As added by P.L.311-1983, SEC.33.

IC 35-49-2

Chapter 2. General Provisions

IC 35-49-2-1

Obscene matter or performance

Sec. 1. A matter or performance is obscene for purposes of this article if:

(1) the average person, applying contemporary community standards, finds that the dominant theme of the matter or performance, taken as a whole, appeals to the prurient interest in sex;

(2) the matter or performance depicts or describes, in a patently offensive way, sexual conduct; and

(3) the matter or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value.

As added by P.L.311-1983, SEC.33.

IC 35-49-2-2

Matter or performance harmful to minors

Sec. 2. A matter or performance is harmful to minors for purposes of this article if:

(1) it describes or represents, in any form, nudity, sexual conduct, sexual excitement, or sado-masochistic abuse;

(2) considered as a whole, it appeals to the prurient interest in sex of minors;

(3) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable matter for or performance before minors; and

(4) considered as a whole, it lacks serious literary, artistic, political, or scientific value for minors.

As added by P.L.311-1983, SEC.33.

IC 35-49-2-3

Arrest; search; seizure of matter; motion pictures

Sec. 3. (a) Whenever a person:

(1) offers matter for distribution to the public as stock-in-trade of a lawful business or activity; or

(2) exhibits matter at a commercial theater showing regularly scheduled performances to the general public;

the person may be arrested under this article only if the arresting officer has first obtained an arrest warrant, and matter may be seized as evidence only if a search warrant has first been obtained.

(b) The quantity of matter seized may encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

(c) If:

(1) the subject of a seizure under this chapter is a motion picture that is allegedly harmful to minors; and

(2) the defendant or owner of the motion picture proves that other copies of the motion picture are not available for exhibition;

the court shall order that the defendant or owner may, at his own expense, copy the motion picture and continue showing the motion picture to adults pending a preliminary determination under section 4(b) of this chapter.
As added by P.L.311-1983, SEC.33.

IC 35-49-2-4
Adversary hearing; application; preliminary determination
Sec. 4. (a) Within ten (10) days after:
(1) matter is obtained by seizure or by purchase under this article; or
(2) the defendant is arrested under this article;
whichever is later, and before trial, the state, the defendant, an owner, or any other party in interest of any matter seized or purchased may apply for and obtain a prompt adversary hearing for the purpose described in subsection (b).
(b) At the adversary hearing, the court shall make a preliminary determination of whether the matter is:
(1) probably obscene; or
(2) probably harmful to minors.
As added by P.L.311-1983, SEC.33.

IC 35-49-2-5
Application of article
Sec. 5. This article does not limit the power of political subdivisions to adopt or enforce zoning ordinances regulating the use of real property.
As added by P.L.311-1983, SEC.33.

IC 35-49-3

Chapter 3. Crimes

IC 35-49-3-1

Sale, distribution, or exhibition of obscene matter

Sec. 1. A person who knowingly or intentionally:

(1) sends or brings into Indiana obscene matter for sale or distribution; or

(2) offers to distribute, distributes, or exhibits to another person obscene matter;

commits a Class A misdemeanor. However, the offense is a Class D felony if the obscene matter depicts or describes sexual conduct involving any person who is or appears to be under sixteen (16) years of age.

As added by P.L.311-1983, SEC.33.

IC 35-49-3-2

Obscene performance

Sec. 2. A person who knowingly or intentionally engages in, participates in, manages, produces, sponsors, presents, exhibits, photographs, films, or videotapes any obscene performance commits a Class A misdemeanor. However, the offense is a Class D felony if the obscene performance depicts or describes sexual conduct involving any person who is or appears to be under sixteen (16) years of age.

As added by P.L.311-1983, SEC.33.

IC 35-49-3-3

Dissemination of matter or conducting performance harmful to minors

Sec. 3. (a) Except as provided in subsection (b), a person who knowingly or intentionally:

(1) disseminates matter to minors that is harmful to minors;

(2) displays matter that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;

(3) sells, rents, or displays for sale or rent to any person matter that is harmful to minors within five hundred (500) feet of the nearest property line of a school or church;

(4) engages in or conducts a performance before minors that is harmful to minors;

(5) engages in or conducts a performance that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;

(6) misrepresents the minor's age for the purpose of obtaining admission to an area from which minors are restricted because of the display of matter or a performance that is harmful to minors; or

(7) misrepresents that the person is a parent or guardian of a

minor for the purpose of obtaining admission of the minor to an area where minors are being restricted because of display of matter or performance that is harmful to minors;

commits a Class D felony.

(b) This section does not apply if a person disseminates, displays, or makes available the matter described in subsection (a) through the Internet, computer electronic transfer, or a computer network unless:

(1) the matter is obscene under IC 35-49-2-1;

(2) the matter is child pornography under IC 35-42-4-4; or

(3) the person distributes the matter to a child less than eighteen (18) years of age believing or intending that the recipient is a child less than eighteen (18) years of age.

As added by P.L.311-1983, SEC.33. Amended by P.L.59-1995, SEC.4; P.L.3-2002, SEC.4; P.L.140-2006, SEC.35.

IC 35-49-3-4

Defense to prosecution for dissemination of matter or conducting performance harmful to minors

Sec. 4. It is a defense to a prosecution under section 3 of this chapter for the defendant to show:

(1) that the matter was disseminated or that the performance was performed for legitimate scientific or educational purposes;

(2) that the matter was disseminated or displayed to or that the performance was performed before the recipient by a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or by an employee of such a school, museum, or public library acting within the scope of his employment;

(3) that he had reasonable cause to believe that the minor involved was eighteen (18) years old or older and that the minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years old or older; or

(4) that he was a salesclerk, motion picture projectionist, usher, or ticket taker, acting within the scope of his employment and that he had no financial interest in the place where he was so employed.

As added by P.L.311-1983, SEC.33.

IC 35-50

ARTICLE 50. SENTENCES

IC 35-50-1

Chapter 1. General Provisions

IC 35-50-1-1

Authority to sentence

Sec. 1. The court shall fix the penalty of and sentence a person convicted of an offense.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.110.

IC 35-50-1-2

Consecutive and concurrent terms

Sec. 2. (a) As used in this section, "crime of violence" means the following:

(1) Murder (IC 35-42-1-1).

(2) Attempted murder (IC 35-41-5-1).

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

(4) Involuntary manslaughter (IC 35-42-1-4).

(5) Reckless homicide (IC 35-42-1-5).

(6) Aggravated battery (IC 35-42-2-1.5).

(7) Kidnapping (IC 35-42-3-2).

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

(9) Criminal deviate conduct (IC 35-42-4-2).

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

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

(12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1).

(13) Burglary as a Class A felony or a Class B felony (IC 35-43-2-1).

(14) Operating a motor vehicle while intoxicated causing death (IC 9-30-5-5).

(15) Operating a motor vehicle while intoxicated causing serious bodily injury to another person (IC 9-30-5-4).

(16) Resisting law enforcement as a felony (IC 35-44-3-3).

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

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:

(1) aggravating circumstances in IC 35-38-1-7.1(a); and

(2) mitigating circumstances in IC 35-38-1-7.1(b);

in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for

crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

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

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

(2) while the person is released:

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

(B) on bond;

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

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

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.111; P.L.330-1987, SEC.1; P.L.164-1994, SEC.1; P.L.304-1995, SEC.1; P.L.203-1996, SEC.7; P.L.219-1997, SEC.1; P.L.228-2001, SEC.6; P.L.266-2003, SEC.2; P.L.71-2005, SEC.4; P.L.213-2005, SEC.4; P.L.1-2006, SEC.549; P.L.126-2008, SEC.12.

IC 35-50-1-3

Repealed

(*Repealed by P.L.305-1987, SEC.38.)*

IC 35-50-1-4

Repealed

(*Repealed by P.L.5-1986, SEC.61.)*

IC 35-50-1-5

Postconviction remedy; imposition of penalty more severe than originally imposed; credit for time served

Sec. 5. If:

(1) prosecution is initiated against a petitioner who has successfully sought relief under any proceeding for postconviction remedy and a conviction is subsequently obtained; or

(2) a sentence has been set aside under a postconviction remedy and the successful petitioner is to be resentenced;

the sentencing court may impose a more severe penalty than that originally imposed, and the court shall give credit for time served.

As added by P.L.179-1984, SEC.3.

IC 35-50-1-6

Placement in secure private facility

Sec. 6. (a) Before a person who has been convicted of an offense and committed to the department of correction is assigned to a department of correction program or facility under IC 11-10-1, the sentencing court may recommend that the department of correction place the person in a secure private facility (as defined in IC 31-9-2-115) if:

(1) the person was less than sixteen (16) years of age on the date of sentencing; and

(2) the court determines that the person would benefit from the treatment offered by the facility.

(b) A secure private facility may terminate a placement and request the department of correction to reassign a convicted person to another department of correction facility or program.

(c) When a convicted person becomes twenty-one (21) years of age or if a secure private facility terminates a placement under subsection (b) a convicted person shall:

(1) be assigned to a department of correction facility or program under IC 11-10-1-3(b); and

(2) serve the remainder of the sentence in the department of correction facility or program.

(d) A person who is placed in a secure private facility under this section:

(1) is entitled to earn credit time under IC 35-50-6; and

(2) may be deprived of earned credit time as provided under rules adopted by the department of correction under IC 4-22-2.

As added by P.L.79-1994, SEC.17. Amended by P.L.1-1997, SEC.154; P.L.1-2002, SEC.151.

IC 35-50-1-7

Notifying department of name and address of victim

Sec. 7. Whenever a court commits a person to the department of correction as a result of a conviction, the court shall notify the department of correction of the last known name and address of any victim of the offense for which the person is convicted.

As added by P.L.90-2000, SEC.19.

IC 35-50-2

Chapter 2. Death Sentence and Sentences for Felonies and Habitual Offenders

IC 35-50-2-1

Definitions

Sec. 1. (a) As used in this chapter, "Class D felony conviction" means a conviction of a Class D felony in Indiana and a conviction, in any other jurisdiction at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year. However, it does not include a conviction with respect to which the person has been pardoned, or a conviction of a Class A misdemeanor under section 7(b) of this chapter.

(b) As used in this chapter, "felony conviction" means a conviction, in any jurisdiction at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year. However, it does not include a conviction with respect to which the person has been pardoned, or a conviction of a Class A misdemeanor under section 7(b) of this chapter.

(c) As used in this chapter, "minimum sentence" means:

(1) for murder, forty-five (45) years;

(2) for a Class A felony, twenty (20) years;

(3) for a Class B felony, six (6) years;

(4) for a Class C felony, two (2) years; and

(5) for a Class D felony, one-half (1/2) year.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.114; P.L.334-1983, SEC.1; P.L.98-1988, SEC.8; P.L.243-2001, SEC.2 and P.L.291-2001, SEC.225.

IC 35-50-2-1.3

Advisory sentences

Sec. 1.3. (a) For purposes of sections 3 through 7 of this chapter, "advisory sentence" means a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence.

(b) Except as provided in subsection (c), a court is not required to use an advisory sentence.

(c) In imposing:

(1) consecutive sentences for felony convictions that are not crimes of violence (as defined in IC 35-50-1-2(a)) arising out of an episode of criminal conduct, in accordance with IC 35-50-1-2;

(2) an additional fixed term to an habitual offender under section 8 of this chapter; or

(3) an additional fixed term to a repeat sexual offender under section 14 of this chapter;

a court is required to use the appropriate advisory sentence in imposing a consecutive sentence or an additional fixed term. However, the court is not required to use the advisory sentence in imposing the sentence for the underlying offense.

(d) This section does not require a court to use an advisory sentence in imposing consecutive sentences for felony convictions that do not arise out of an episode of criminal conduct.
As added by P.L.71-2005, SEC.5. Amended by P.L.178-2007, SEC.4.

IC 35-50-2-1.4
"Criminal gang" defined

Sec. 1.4. For purposes of section 15 of this chapter, "criminal gang" means a group with at least three (3) members that specifically:

(1) either:
(A) promotes, sponsors, or assists in; or
(B) participates in; or
(2) requires as a condition of membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).
As added by P.L.109-2006, SEC.2. Amended by P.L.192-2007, SEC.12.

IC 35-50-2-1.5
"Individual with mental retardation" defined

Sec. 1.5. As used in this chapter, "individual with mental retardation" has the meaning set forth in IC 35-36-9-2.
As added by P.L.158-1994, SEC.4. Amended by P.L.99-2007, SEC.211.

IC 35-50-2-1.8
"Sex offense against a child" defined

Sec. 1.8. As used in this chapter, "sex offense against a child" means an offense under IC 35-42-4 in which the victim is a child less than eighteen (18) years of age.
As added by P.L.53-2005, SEC.1.

IC 35-50-2-2
Suspension of sentence; limitations

Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

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

(1) The crime committed was a Class A felony or Class B felony and the person has a prior unrelated felony conviction.
(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the

person committed the Class C felony for which the person is being sentenced.

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

(4) The felony committed was:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) school property;
(ii) a public park;
(iii) a family housing complex; or
(iv) a youth program center;

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

(i) school property;
(ii) a public park;
(iii) a family housing complex; or
(iv) a youth program center;

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

(i) school property;
(ii) a public park;
(iii) a family housing complex; or
(iv) a youth program center;

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

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

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

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

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

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

(e) Whenever the court suspends that part of the sentence of a sex or violent offender (as defined in IC 11-8-8-5) that is suspendible

under subsection (b), the court shall place the sex or violent offender on probation under IC 35-38-2 for not more than ten (10) years.

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

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

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

(i) If a person is:

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

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

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

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.115; Acts 1979, P.L.305, SEC.1; Acts 1982, P.L.204, SEC.39; P.L.334-1983, SEC.2; P.L.284-1985, SEC.3; P.L.211-1986, SEC.1; P.L.98-1988, SEC.9; P.L.351-1989(ss), SEC.4; P.L.214-1991, SEC.2; P.L.240-1991(ss2), SEC.98; P.L.11-1994, SEC.17; P.L.203-1996, SEC.8; P.L.96-1996, SEC.7; P.L.220-1997, SEC.1; P.L.188-1999, SEC.8; P.L.17-2001, SEC.30; P.L.222-2001, SEC.6; P.L.238-2001, SEC.21; P.L.116-2002, SEC.25; P.L.224-2003, SEC.126; P.L.85-2004, SEC.11; P.L.213-2005, SEC.7; P.L.151-2006, SEC.28; P.L.140-2006, SEC.36 and P.L.173-2006, SEC.36; P.L.1-2007, SEC.236; P.L.216-2007, SEC.50; P.L.64-2008, SEC.2.

IC 35-50-2-2.1

Suspension; persons with juvenile record

Sec. 2.1. (a) Except as provided in subsection (b) or section 2 of this chapter, the court may not suspend a sentence for a felony for a person with a juvenile record when:

(1) the juvenile record includes findings that the juvenile acts, if committed by an adult, would constitute:

(A) one (1) Class A or Class B felony;

(B) two (2) Class C or Class D felonies; or

(C) one (1) Class C and one (1) Class D felony; and

(2) less than three (3) years have elapsed between commission of the juvenile acts that would be felonies if committed by an adult and the commission of the felony for which the person is being sentenced.

(b) Notwithstanding subsection (a), the court may suspend any part of the sentence for a felony, except as provided in section 2 of this chapter, if it finds that:

(1) the crime was the result of circumstances unlikely to recur;

(2) the victim of the crime induced or facilitated the offense;

(3) there are substantial grounds tending to excuse or justify the crime, though failing to establish a defense; or

(4) the acts in the juvenile record would not be Class A or Class B felonies if committed by an adult, and the convicted person is to undergo home detention under IC 35-38-1-21 instead of the minimum sentence specified for the crime under this chapter.

As added by P.L.284-1985, SEC.4. Amended by P.L.331-1987, SEC.1; P.L.98-1988, SEC.10.

IC 35-50-2-3

Murder

Sec. 3. (a) A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

(b) Notwithstanding subsection (a), a person who was:

(1) at least eighteen (18) years of age at the time the murder was committed may be sentenced to:

(A) death; or

(B) life imprisonment without parole; and

(2) at least sixteen (16) years of age but less than eighteen (18) years of age at the time the murder was committed may be sentenced to life imprisonment without parole;

under section 9 of this chapter unless a court determines under IC 35-36-9 that the person is an individual with mental retardation.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.116; P.L.332-1987, SEC.1; P.L.250-1993, SEC.1; P.L.164-1994, SEC.2; P.L.158-1994, SEC.5; P.L.2-1995, SEC.128; P.L.148-1995, SEC.4; P.L.117-2002, SEC.1; P.L.71-2005, SEC.6; P.L.99-2007, SEC.212.

IC 35-50-2-4

Class A felony

Sec. 4. A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.117; P.L.164-1994, SEC.3; P.L.148-1995, SEC.5; P.L.71-2005, SEC.7.

IC 35-50-2-5

Class B felony

Sec. 5. A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.118; P.L.71-2005, SEC.8.

IC 35-50-2-6

Class C felony; commission of nonsupport of child as Class D felony

Sec. 6. (a) A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

(b) Notwithstanding subsection (a), if a person has committed nonsupport of a child as a Class C felony under IC 35-46-1-5, upon motion of the prosecuting attorney, the court may enter judgment of conviction of a Class D felony under IC 35-46-1-5 and sentence the person accordingly. The court shall enter in the record detailed reasons for the court's action when the court enters a judgment of conviction of a Class D felony under this subsection.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.119; P.L.167-1990, SEC.1; P.L.213-1996, SEC.5; P.L.71-2005, SEC.9.

IC 35-50-2-7

Class D felony

Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:

(1) the court finds that:

(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and

(B) the prior felony was committed less than three (3) years before the second felony was committed;

(2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; or

(3) the offense is possession of child pornography (IC 35-42-4-4(c)).

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

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.120; Acts 1982, P.L.204, SEC.40; P.L.334-1983, SEC.3; P.L.136-1987, SEC.7; P.L.167-1990, SEC.2; P.L.188-1999, SEC.9; P.L.98-2003, SEC.3; P.L.71-2005, SEC.10.

IC 35-50-2-7.1

Repealed

(*Repealed by P.L.164-1993, SEC.14.)*

IC 35-50-2-8

Habitual offenders

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

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

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

(2) the offense is an offense under IC 9-30-10-16 or IC 9-30-10-17; or

(3) all of the following apply:

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

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

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

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

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

(iii) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);

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

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

does not exceed one (1).

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

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

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

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

(1) the conviction has been set aside;

(2) the conviction is one for which the person has been pardoned; or

(3) all of the following apply:

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

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

(C) The total number of unrelated convictions that the

person has for:

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

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

(iii) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);

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

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

does not exceed one (1).

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

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

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

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

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.121; Acts 1980, P.L.210, SEC.1; P.L.335-1983, SEC.1; P.L.328-1985, SEC.2; P.L.1-1990, SEC.353; P.L.164-1993, SEC.13; P.L.140-1994, SEC.14; P.L.305-1995, SEC.1; P.L.166-2001, SEC.3; P.L.291-2001, SEC.226; P.L.71-2005, SEC.11.

IC 35-50-2-8.5

Life imprisonment without parole upon third felony conviction or second sex offense against a child

Sec. 8.5. (a) The state may seek to have a person sentenced to life imprisonment without parole for any felony described in section 2(b)(4) of this chapter by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions described in section 2(b)(4) of this chapter.

(b) The state may seek to have a person sentenced to life

imprisonment without parole for a Class A felony under IC 35-42-4 that is a sex offense against a child by alleging, on a page separate from the rest of the charging instrument, that the person has a prior unrelated Class A felony conviction under IC 35-42-4 that is a sex offense against a child.

(c) If the person was convicted of the felony in a jury trial, the jury shall reconvene to hear evidence on the life imprisonment without parole allegation. If the person was convicted of the felony by trial to the court without a jury or if the judgment was entered to guilty plea, the court alone shall hear evidence on the life imprisonment without parole allegation.

(d) A person is subject to life imprisonment without parole if the jury (in a case tried by a jury) or the court (in a case tried by the court or on a judgment entered on a guilty plea) finds that the state has proved beyond a reasonable doubt that the person:

(1) has accumulated two (2) prior unrelated convictions for offenses described in section 2(b)(4) of this chapter; or

(2) has a prior unrelated Class A felony conviction under IC 35-42-4 that is a sex offense against a child.

(e) The court may sentence a person found to be subject to life imprisonment without parole under this section to life imprisonment without parole.

As added by P.L.158-1994, SEC.6. Amended by P.L.53-2005, SEC.2.

IC 35-50-2-9

Death penalty sentencing procedure

Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with mental retardation.

(b) The aggravating circumstances are as follows:

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

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

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

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

(D) Criminal deviate conduct (IC 35-42-4-2).

(E) Kidnapping (IC 35-42-3-2).

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

(G) Robbery (IC 35-42-5-1).

(H) Carjacking (IC 35-42-5-2).

(I) Criminal gang activity (IC 35-45-9-3).

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

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

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

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

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

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

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

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

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

(8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.

(9) The defendant was:

(A) under the custody of the department of correction;

(B) under the custody of a county sheriff;

(C) on probation after receiving a sentence for the commission of a felony; or

(D) on parole;

at the time the murder was committed.

(10) The defendant dismembered the victim.

(11) The defendant burned, mutilated, or tortured the victim while the victim was alive.

(12) The victim of the murder was less than twelve (12) years of age.

(13) The victim was a victim of any of the following offenses for which the defendant was convicted:

(A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.

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

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

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

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under

this section are as follows:

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

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

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

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (l) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

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

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

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (l). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends.

The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

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

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

(1) sentence the defendant to death; or

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

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

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

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

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

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

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

(k) A person who has been sentenced to death and who has

completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

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

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

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

As added by Acts 1977, P.L.340, SEC.122. Amended by P.L.336-1983, SEC.1; P.L.212-1986, SEC.1; P.L.332-1987, SEC.2; P.L.320-1987, SEC.2; P.L.296-1989, SEC.2; P.L.138-1989, SEC.6; P.L.1-1990, SEC.354; P.L.230-1993, SEC.5; P.L.250-1993, SEC.2; P.L.158-1994, SEC.7; P.L.306-1995, SEC.1; P.L.228-1996, SEC.1; P.L.216-1996, SEC.25; P.L.261-1997, SEC.7; P.L.80-2002, SEC.1; P.L.117-2002, SEC.2; P.L.1-2003, SEC.97; P.L.147-2003, SEC.1; P.L.1-2006, SEC.550; P.L.99-2007, SEC.213.

IC 35-50-2-10

Habitual substance offenders

Sec. 10. (a) As used in this section:

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

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

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

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

(1) it has been set aside; or

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

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

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

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

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

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

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

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

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

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

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

does not exceed one (1);

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

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

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

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

As added by P.L.335-1983, SEC.2. Amended by P.L.327-1985, SEC.5; P.L.98-1988, SEC.11; P.L.1-1990, SEC.355; P.L.96-1996, SEC.8; P.L.97-1996, SEC.5; P.L.2-1997, SEC.77; P.L.291-2001,

SEC.227; P.L.71-2005, SEC.12; P.L.213-2005, SEC.5; P.L.1-2006, SEC.551.

IC 35-50-2-11

Firearm used in commission of offense; separate charge; additional sentence

Sec. 11. (a) As used in this section, "firearm" has the meaning set forth in IC 35-47-1-5.

(b) As used in this section, "offense" means:

(1) a felony under IC 35-42 that resulted in death or serious bodily injury;

(2) kidnapping; or

(3) criminal confinement as a Class B felony.

(c) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense.

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

(e) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense, the court may sentence the person to an additional fixed term of imprisonment of five (5) years.

As added by P.L.140-1994, SEC.15. Amended by P.L.203-1996, SEC.9; P.L.71-2005, SEC.13.

IC 35-50-2-12

Characteristics of incarcerated offenders; publication of findings

Sec. 12. The Indiana criminal justice institute shall review characteristics of offenders committed to the department of correction over such period of time it deems appropriate and of the offenses committed by those offenders in order to ascertain norms used by the trial courts in sentencing. The Indiana criminal justice institute shall from time to time publish its findings in the Indiana Register and provide its findings to the legislative services agency and the judicial conference of Indiana.

As added by P.L.164-1994, SEC.4.

IC 35-50-2-13

Use of firearms in controlled substance offenses under IC 35-48-4-1 through IC 35-48-4-4

Sec. 13. (a) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense of dealing in a controlled substance under IC 35-48-4-1 through IC 35-48-4-4 sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that

the person knowingly or intentionally:

(1) used a firearm; or

(2) possessed a:

(A) handgun in violation of IC 35-47-2-1;

(B) sawed-off shotgun in violation of IC 35-47-5-4.1; or

(C) machine gun in violation of IC 35-47-5-8;

while committing the offense.

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

(c) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally committed an offense as described in subsection (a), the court may sentence the person to an additional fixed term of imprisonment of not more than five (5) years, except as follows:

(1) If the firearm is a sawed-off shotgun, the court may sentence the person to an additional fixed term of imprisonment of not more than ten (10) years.

(2) If the firearm is a machine gun or is equipped with a firearm silencer or firearm muffler, the court may sentence the person to an additional fixed term of imprisonment of not more than twenty (20) years. The additional sentence under this subdivision is in addition to any additional sentence imposed under section 11 of this chapter for use of a firearm in the commission of an offense.

As added by P.L.148-1995, SEC.6. Amended by P.L.71-2005, SEC.14.

IC 35-50-2-14

Repeat sexual offender

Sec. 14. (a) As used in this section, "sex offense" means a felony conviction:

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

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

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

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

(c) After a person has been convicted and sentenced for a felony described in subsection (a)(1) or (a)(2) after having been sentenced for a prior unrelated sex offense described in subsection (a), the person has accumulated one (1) prior unrelated felony sex offense

conviction. However, a conviction does not count for purposes of this subsection, if:

(1) it has been set aside; or

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

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

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

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

As added by P.L.214-1999, SEC.4. Amended by P.L.71-2005, SEC.15; P.L.6-2006, SEC.9, P.L.140-2006, SEC.37, and P.L.173-2006, SEC.37; P.L.125-2009, SEC.8.

IC 35-50-2-15

Criminal gang enhancement

Sec. 15. (a) This section does not apply to an individual who is convicted of a felony offense under IC 35-45-9-3.

(b) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed a felony offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally:

(1) was a member of a criminal gang while committing the offense; and

(2) committed the felony offense at the direction of or in affiliation with a criminal gang.

(c) If the person is convicted of the felony offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(d) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally was a member of a criminal gang while committing the felony offense and committed the felony offense at the direction of or in affiliation with a criminal gang as described in subsection (b), the court shall:

(1) sentence the person to an additional fixed term of imprisonment equal to the sentence imposed for the underlying felony, if the person is sentenced for only one (1) felony; or

(2) sentence the person to an additional fixed term of imprisonment equal to the longest sentence imposed for the

underlying felonies, if the person is being sentenced for more than one (1) felony.

(e) A sentence imposed under this section shall run consecutively to the underlying sentence.

(f) A term of imprisonment imposed under this section may not be suspended.

(g) For purposes of subsection (c), evidence that a person was a member of a criminal gang or committed a felony at the direction of or in affiliation with a criminal gang may include expert testimony pursuant to the Indiana Rules of Evidence that may be admitted to prove that particular conduct, status, and customs are indicative of criminal gang activity. The expert testimony may include the following:

(1) Characteristics of persons who are members of criminal gangs.

(2) Descriptions of rivalries between criminal gangs.

(3) Common practices and operations of criminal gangs.

(4) Behavior of criminal gangs.

(5) Terminology used by members of criminal gangs.

(6) Codes of conduct, including criminal conduct, of particular criminal gangs.

(7) Types of crimes that are likely to be committed by a particular criminal gang.

As added by P.L.109-2006, SEC.3.

IC 35-50-2-16

Termination of a human pregnancy; enhancement

Sec. 16. (a) The state may seek, on a page separate from the rest of the charging instrument, to have a person who allegedly committed or attempted to commit murder under IC 35-42-1-1(1) or IC 35-42-1-1(2) sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person, while committing or attempting to commit murder under IC 35-42-1-1(1) or IC 35-42-1-1(2), caused the termination of a human pregnancy.

(b) If the person is convicted of the murder or attempted murder in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(c) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person, while committing or attempting to commit murder under IC 35-42-1-1(1) or IC 35-42-1-1(2), caused the termination of a human pregnancy, the court shall sentence the person to an additional fixed term of imprisonment of not less than six (6) or more than twenty (20) years.

(d) A sentence imposed under this section runs consecutively to the underlying sentence.

(e) For purposes of this section, prosecution of the murder or

attempted murder under IC 35-42-1-1(1) or IC 35-42-1-1(2) and the enhancement of the penalty for that crime does not require proof that:

(1) the person committing or attempting to commit the murder had knowledge or should have had knowledge that the victim was pregnant; or

(2) the defendant intended to cause the termination of a human pregnancy.

As added by P.L.40-2009, SEC.2.

IC 35-50-3

Chapter 3. Sentences for Misdemeanors

IC 35-50-3-1

Suspension; probation

Sec. 1. (a) The court may suspend any part of a sentence for a misdemeanor.

(b) Except as provided in subsection (c), whenever the court suspends in whole or in part a sentence for a Class A, Class B, or Class C misdemeanor, it may place the person on probation under IC 35-38-2 for a fixed period of not more than one (1) year, notwithstanding the maximum term of imprisonment for the misdemeanor set forth in sections 2 through 4 of this chapter. However, the combined term of imprisonment and probation for a misdemeanor may not exceed one (1) year.

(c) Whenever the court suspends a sentence for a misdemeanor, if the court finds that the use or abuse of alcohol, drugs, or harmful substances is a contributing factor or a material element of the offense, the court may place the person on probation under IC 35-38-2 for a fixed period of not more than two (2) years. However, a court may not place a person on probation for a period of more than twelve (12) months in the absence of a report that substantiates the need for a period of probation that is longer than twelve (12) months for the purpose of completing a course of substance abuse treatment. A probation user's fee that exceeds fifty percent (50%) of the maximum probation user's fee allowed under IC 35-38-2-1 may not be required beyond the first twelve (12) months of probation.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.123; P.L.5-1988, SEC.210; P.L.135-1993, SEC.9; P.L.90-2001, SEC.1; P.L.1-2002, SEC.152.

IC 35-50-3-2

Class A misdemeanor

Sec. 2. A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars ($5,000).

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.124.

IC 35-50-3-3

Class B misdemeanor

Sec. 3. A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars ($1,000).

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.125.

IC 35-50-3-4

Class C misdemeanor

Sec. 4. A person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty (60) days; in addition, he may be fined not more than five hundred dollars ($500).

As added by Acts 1978, P.L.2, SEC.3554.

IC 35-50-4
Repealed

(*Repealed by Acts 1981, P.L.108, SEC.40.*)

IC 35-50-5

Chapter 5. Additional Penalties

IC 35-50-5-1

Repealed

(*Repealed by Acts 1980, P.L.73, SEC.23.)*

IC 35-50-5-1.1

Bribery or official misconduct; filling vacancy under IC 5-8-6

Sec. 1.1. (a) Whenever a person is convicted of a misdemeanor under IC 35-44-1, the court may include in the sentence an order rendering the person incapable of holding a public office of trust or profit for a fixed period of not more than ten (10) years.

(b) If any officer of a governmental entity is convicted of a misdemeanor under IC 35-44-1, the court may enter an order removing the officer from office.

(c) This subsection applies whenever:

(1) the court enters an order under this section that applies to a person who is an officer of a governmental entity (as defined in IC 35-41-1-12); and

(2) a vacancy occurs in the office held by the person as the result of the court's order.

The court must file a certified copy of the order with the person who is entitled under IC 5-8-6 to receive notice of the death of an individual holding the office. The person receiving the copy of the order must give notice of the order in the same manner as if the person had received a notice of the death of the officeholder under IC 5-8-6. The person required or permitted to fill the vacancy that results from a removal under this section must comply with IC 3-13 or IC 20, whichever applies, to fill the vacancy.

As added by Acts 1980, P.L.73, SEC.3. Amended by P.L.4-1991, SEC.140; P.L.119-2005, SEC.35.

IC 35-50-5-2

Alternative fine

Sec. 2. In the alternative to the provisions concerning fines in this article, a person may be fined a sum equal to twice his pecuniary gain, or twice the pecuniary loss sustained by victims of the offense he committed.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.131.

IC 35-50-5-3

Restitution order

Sec. 3. (a) Except as provided in subsection (i) or (j), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order

upon a consideration of:

(1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);

(2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;

(3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;

(4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and

(5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a), or (i), or (j) is a judgment lien that:

(1) attaches to the property of the person subject to the order;

(2) may be perfected;

(3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and

(4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to:

(1) the victim services division of the Indiana criminal justice institute in an amount not exceeding:

(A) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

(B) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; or

(2) a probation department that shall forward restitution or part of restitution to:

(A) a victim of a crime;

(B) a victim's estate; or

(C) the family of a victim who is deceased.

The victim services division of the Indiana criminal justice institute shall deposit the restitution it receives under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a), (i), or (j), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the restitution.

(2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-32-3-2. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a), (i), or (j), does not bar a civil action for:

(1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and

(2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

(g) A restitution order under subsection (a), (i), or (j), is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6, IC 34-1-12, or IC 34-2-7 before their repeal).

(h) The attorney general may pursue restitution ordered by the court under subsections (a) and (c) on behalf of the victim services division of the Indiana criminal justice institute established under IC 5-2-6-8.

(i) The court may order the person convicted of an offense under IC 35-43-9 to make restitution to the victim of the crime. The court shall base its restitution order upon a consideration of the amount of money that the convicted person converted, misappropriated, or received, or for which the convicted person conspired. The restitution order issued for a violation of IC 35-43-9 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for a violation of IC 35-43-9.

(j) The court may order the person convicted of an offense under IC 35-43-5-3.5 to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of the amount of fraud or harm caused by the convicted person and any reasonable expenses (including lost wages) incurred by the victim in correcting the victim's credit report and addressing any other issues caused by the commission of the offense under IC 35-43-5-3.5. If, after a person is sentenced for an offense under IC 35-43-5-3.5, a victim, a victim's estate, or the family of a victim discovers or incurs additional expenses that result from the convicted person's commission of the offense under IC 35-43-5-3.5, the court may issue one (1) or more restitution orders to require the convicted person to make restitution, even if the court issued a restitution order at the time of sentencing. For purposes of entering a restitution order after sentencing, a court has continuing jurisdiction over a person convicted of an offense under IC 35-43-5-3.5 for five (5) years after the date of sentencing.

Each restitution order issued for a violation of IC 35-43-5-3.5 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for an offense under IC 35-43-5-3.5.

(k) The court shall order a person convicted of an offense under IC 35-42-3.5 to make restitution to the victim of the crime in an amount equal to the greater of the following:

(1) The gross income or value to the person of the victim's labor or services.

(2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of:

(A) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209); or

(B) IC 22-2-2 (Minimum Wage);

whichever is greater.

As added by P.L.337-1983, SEC.1. Amended by P.L.149-1988, SEC.6; P.L.240-1991(ss2), SEC.99; P.L.2-1992, SEC.885; P.L.2-1993, SEC.194; P.L.47-1993, SEC.13; P.L.4-1994, SEC.21; P.L.307-1995, SEC.1; P.L.300-1995, SEC.3; P.L.1-1998, SEC.200; P.L.2-2002, SEC.105; P.L.88-2002, SEC.3; P.L.85-2004, SEC.54; P.L.98-2004, SEC.157; P.L.2-2005, SEC.129; P.L.125-2006, SEC.11; P.L.173-2006, SEC.54.

IC 35-50-5-4

Reimbursement order

Sec. 4. (a) This section applies only:

(1) if the county in which a criminal proceeding was filed adopts an ordinance under IC 36-2-13-15; and

(2) to a person who is sentenced under this article for a felony or a misdemeanor.

(b) At the time the court imposes a sentence, the court may order the person to execute a reimbursement plan as directed by the court and make repayments under the plan to the county for the costs described in IC 36-2-13-15.

(c) The court shall fix an amount under this section that:

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

(2) does not harm the person's ability to reasonably be self-supporting or to reasonably support any dependent of the person; and

(3) takes into consideration and gives priority to any other restitution, reparation, repayment, costs (including fees), fine, or child support obligations the person is required to pay.

(d) When an order is issued under this section, the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-32-3-2.

(e) An order under this section is not discharged:

(1) by the completion of a sentence imposed for a felony or misdemeanor; or

(2) by the liquidation of a person's estate by a receiver under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, and IC 34-48-6 before their repeal).

As added by P.L.123-1998, SEC.1. Amended by P.L.1-1999, SEC.79; P.L.2-2002, SEC.106; P.L.98-2004, SEC.158; P.L.106-2010, SEC.17.

IC 35-50-6

Chapter 6. Release From Imprisonment and Credit Time

IC 35-50-6-1

Parole; discharge to community transition program or probation; lifetime parole for sexually violent predators and murderers

Sec. 1. (a) Except as provided in subsection (d) or (e), when a person imprisoned for a felony completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to that term, the person shall be:

(1) released on parole for not more than twenty-four (24) months, as determined by the parole board, unless:

(A) the person is being placed on parole for the first time;

(B) the person is not being placed on parole for a conviction for a crime of violence (as defined in IC 35-50-1-2);

(C) the person is not a sex offender (as defined in IC 11-8-8-4.5); and

(D) in the six (6) months before being placed on parole, the person has not violated a rule of the department of correction or a rule of the penal facility in which the person is imprisoned;

(2) discharged upon a finding by the committing court that the person was assigned to a community transition program and may be discharged without the requirement of parole; or

(3) released to the committing court if the sentence included a period of probation.

A person described in subdivision (1) shall be released on parole for not more than twelve (12) months, as determined by the parole board.

(b) This subsection does not apply to a person described in subsection (d), (e), or (f). A person released on parole remains on parole from the date of release until the person's fixed term expires, unless the person's parole is revoked or the person is discharged from that term by the parole board. In any event, if the person's parole is not revoked, the parole board shall discharge the person after the period set under subsection (a) or the expiration of the person's fixed term, whichever is shorter.

(c) A person whose parole is revoked shall be imprisoned for all or part of the remainder of the person's fixed term. However, the person shall again be released on parole when the person completes that remainder, less the credit time the person has earned since the revocation. The parole board may reinstate the person on parole at any time after the revocation.

(d) This subsection does not apply to a person who is a sexually violent predator under IC 35-38-1-7.5. When a sex offender (as defined in IC 11-8-8-4.5) completes the sex offender's fixed term of imprisonment, less credit time earned with respect to that term, the sex offender shall be placed on parole for not more than ten (10) years.

(e) This subsection applies to a person who:

(1) is a sexually violent predator under IC 35-38-1-7.5;
(2) has been convicted of murder (IC 35-42-1-1); or
(3) has been convicted of voluntary manslaughter (IC 35-42-1-3).

When a person described in this subsection completes the person's fixed term of imprisonment, less credit time earned with respect to that term, the person shall be placed on parole for the remainder of the person's life.

(f) This subsection applies to a parolee in another jurisdiction who is a person described in subsection (e) and whose parole supervision is transferred to Indiana from another jurisdiction. In accordance with IC 11-13-4-1(2) (Interstate Compact for Out-of-State Probationers and Parolees) and rules adopted under Article VII (d)(8) of the Interstate Compact for Adult Offender Supervision (IC 11-13-4.5), a parolee who is a person described in subsection (e) and whose parole supervision is transferred to Indiana is subject to the same conditions of parole as a person described in subsection (e) who was convicted in Indiana, including:

(1) lifetime parole (as described in subsection (e)); and
(2) the requirement that the person wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location, if applicable.

(g) If a person being supervised on lifetime parole as described in subsection (e) is also required to be supervised by a court, a probation department, a community corrections program, a community transition program, or another similar program upon the person's release from imprisonment, the parole board may:

(1) supervise the person while the person is being supervised by the other supervising agency; or
(2) permit the other supervising agency to exercise all or part of the parole board's supervisory responsibility during the period in which the other supervising agency is required to supervise the person, if supervision by the other supervising agency will be, in the opinion of the parole board:
    (A) at least as stringent; and
    (B) at least as effective;

as supervision by the parole board.

(h) The parole board is not required to supervise a person on lifetime parole during any period in which the person is imprisoned. However, upon the person's release from imprisonment, the parole board shall recommence its supervision of a person on lifetime parole.

(i) If a court orders the parole board to place a sexually violent predator whose sentence does not include a commitment to the department of correction on lifetime parole under IC 35-38-1-29, the parole board shall place the sexually violent predator on lifetime parole and supervise the person in the same manner in which the parole board supervises a sexually violent predator on lifetime parole whose sentence includes a commitment to the department of

correction.
As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.132; Acts 1979, P.L.120, SEC.11; Acts 1981, P.L.298, SEC.7; P.L.240-1991(ss2), SEC.100; P.L.11-1994, SEC.18; P.L.273-1999, SEC.215; P.L.90-2000, SEC.20; P.L.238-2001, SEC.22; P.L.116-2002, SEC.26; P.L.139-2006, SEC.6; P.L.140-2006, SEC.38 and P.L.173-2006, SEC.38; P.L.1-2007, SEC.237; P.L.216-2007, SEC.51; P.L.105-2010, SEC.15.

IC 35-50-6-2
Discharge from imprisonment for a misdemeanor

Sec. 2. A person imprisoned for a misdemeanor shall be discharged when he completes his fixed term of imprisonment, less the credit time he has earned with respect to that term.
As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.133.

IC 35-50-6-3
Credit time classes

Sec. 3. (a) A person assigned to Class I earns one (1) day of credit time for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.

(b) A person assigned to Class II earns one (1) day of credit time for every two (2) days the person is imprisoned for a crime or confined awaiting trial or sentencing.

(c) A person assigned to Class III earns no credit time.

(d) A person assigned to Class IV earns one (1) day of credit time for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing.
As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.134; P.L.80-2008, SEC.2.

IC 35-50-6-3.3
Credit time for successful completion of educational degree or certificate

Sec. 3.3. (a) In addition to any credit time a person earns under subsection (b) or section 3 of this chapter, a person earns credit time if the person:

(1) is in credit Class I;

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

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

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

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

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

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

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

(1) is in credit Class I;

(2) demonstrates a pattern consistent with rehabilitation; and

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

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

(B) A certificate of completion of a substance abuse program approved by the department of correction.

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

(D) A certificate of completion of a reformative program approved by the department of correction.

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

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

(1) Six (6) months for completion of a state of Indiana general educational development (GED) diploma under IC 20-20-6.

(2) One (1) year for graduation from high school.

(3) One (1) year for completion of an associate's degree.

(4) Two (2) years for completion of a bachelor's degree.

(5) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more career and technical education programs approved by the department of correction.

(6) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more substance abuse programs approved by the department of correction.

(7) Not more than a total of six (6) months credit, as determined by the department of correction, for the completion of one (1) or more literacy and basic life skills programs approved by the department of correction.

(8) Not more than a total of six (6) months credit time, as determined by the department of correction, for completion of one (1) or more reformative programs approved by the department of correction. However, a person who is serving a sentence for an offense listed under IC 11-8-8-4.5 may not earn credit time under this subdivision.

However, a person who does not have a substance abuse problem that qualifies the person to earn credit in a substance abuse program may earn not more than a total of twelve (12) months of credit, as

determined by the department of correction, for the completion of one (1) or more career and technical education programs approved by the department of correction. If a person earns more than six (6) months of credit for the completion of one (1) or more career and technical education programs, the person is ineligible to earn credit for the completion of one (1) or more substance abuse programs.

(e) Credit time earned by a person under this section is subtracted from the release date that would otherwise apply to the person after subtracting all other credit time earned by the person.

(f) A person does not earn credit time under subsection (a) unless the person completes at least a portion of the degree requirements after June 30, 1993.

(g) A person does not earn credit time under subsection (b) unless the person completes at least a portion of the program requirements after June 30, 1999.

(h) Credit time earned by a person under subsection (a) for a diploma or degree completed before July 1, 1999, shall be subtracted from:

(1) the release date that would otherwise apply to the person after subtracting all other credit time earned by the person, if the person has not been convicted of an offense described in subdivision (2); or

(2) the period of imprisonment imposed on the person by the sentencing court, if the person has been convicted of one (1) of the following crimes:

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

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

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

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

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

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

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

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

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

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

(K) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.

(L) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.

(M) An attempt or a conspiracy to commit a crime listed in clauses (A) through (L).

(i) The maximum amount of credit time a person may earn under this section is the lesser of:

(1) four (4) years; or

(2) one-third (1/3) of the person's total applicable credit time.

(j) The amount of credit time earned under this section is reduced to the extent that application of the credit time would otherwise result in:

(1) postconviction release (as defined in IC 35-40-4-6); or

(2) assignment of the person to a community transition program;

in less than forty-five (45) days after the person earns the credit time.

(k) A person may earn credit time for multiple degrees at the same education level under subsection (d) only in accordance with guidelines approved by the department of correction. The department of correction may approve guidelines for proper sequence of education degrees under subsection (d).

(l) A person may not earn credit time:

(1) for a general educational development (GED) diploma if the person has previously earned a high school diploma; or

(2) for a high school diploma if the person has previously earned a general educational development (GED) diploma.

(m) A person may not earn credit time under this section if the person:

(1) commits an offense listed in IC 11-8-8-4.5 while the person is required to register as a sex or violent offender under IC 11-8-8-7; and

(2) is committed to the department of correction after being convicted of the offense listed in IC 11-8-8-4.5.

As added by P.L.243-1993, SEC.2. Amended by P.L.149-1995, SEC.17; P.L.148-1995, SEC.7; P.L.183-1999, SEC.3; P.L.243-1999, SEC.3; P.L.14-2000, SEC.78; P.L.90-2000, SEC.21; P.L.164-2003, SEC.1; P.L.1-2005, SEC.229; P.L.2-2007, SEC.380; P.L.234-2007, SEC.171; P.L.80-2008, SEC.3; P.L.42-2010, SEC.2.

IC 35-50-6-4

Credit time assignments

Sec. 4. (a) A person who is not a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I.

(b) A person who is a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class IV. A credit restricted felon may not be assigned to Class I or Class II.

(c) A person who is not assigned to Class IV may be reassigned to Class II or Class III if the person violates any of the following:

(1) A rule of the department of correction.

(2) A rule of the penal facility in which the person is imprisoned.

(3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to a lower credit time class, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

(d) A person who is assigned to Class IV may be reassigned to Class III if the person violates any of the following:

(1) A rule of the department of correction.

(2) A rule of the penal facility in which the person is imprisoned.

(3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to Class III, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

(e) In connection with the hearing granted under subsection (c) or (d), the person is entitled to:

(1) have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct and the rule the misconduct is alleged to have violated;

(2) have reasonable time to prepare for the hearing;

(3) have an impartial decisionmaker;

(4) appear and speak in the person's own behalf;

(5) call witnesses and present evidence;

(6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;

(7) have the assistance of a lay advocate (the department may require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);

(8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;

(9) have immunity if the person's testimony or any evidence derived from the person's testimony is used in any criminal proceedings; and

(10) have the person's record expunged of any reference to the charge if the person is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(f) A person may be reassigned from Class III to Class I, Class II, or Class IV, or from Class II to Class I. A person's assignment to Class III or Class II shall be reviewed at least once every six (6) months to determine if the person should be reassigned to a higher credit time class. A credit restricted felon may not be reassigned to Class I or Class II.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.135; Acts 1979, P.L.120, SEC.12; P.L.90-2000, SEC.22; P.L.80-2008, SEC.4.

IC 35-50-6-5

Deprivation of credit time

Sec. 5. (a) A person may, with respect to the same transaction, be deprived of any part of the credit time the person has earned for any of the following:

(1) A violation of one (1) or more rules of the department of correction.
(2) If the person is not committed to the department, a violation of one (1) or more rules of the penal facility in which the person is imprisoned.
(3) A violation of one (1) or more rules or conditions of a:
(A) community transition program; or
(B) community corrections program.
(4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or groundless.
(5) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to register before being released from the department as required under IC 11-8-8-7.
(6) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction.

However, the violation of a condition of parole or probation may not be the basis for deprivation. Whenever a person is deprived of credit time, the person may also be reassigned to Class II (if the person is not a credit restricted felon) or Class III.

(b) Before a person may be deprived of earned credit time, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether deprivation of earned credit time is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in section 4(e) of this chapter. The person may waive the person's right to the hearing.

(c) Any part of the credit time of which a person is deprived under this section may be restored.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.136; Acts 1979, P.L.120, SEC.13; P.L.146-1995, SEC.6; P.L.90-2000, SEC.23; P.L.140-2006, SEC.39 and P.L.173-2006, SEC.39; P.L.80-2008, SEC.5; P.L.105-2010, SEC.16.

IC 35-50-6-5.5

Credit time appeals

Sec. 5.5. A person who has been reassigned to a lower credit time class or has been deprived of earned credit time may appeal the decision to the commissioner of the department of correction or the sheriff.

As added by Acts 1979, P.L.120, SEC.14. Amended by P.L.204-1986, SEC.3.

IC 35-50-6-6

Degree of security, parole, or probation; imprisonment upon revocation of parole; days spent on parole outside institution

Sec. 6. (a) A person imprisoned for a crime earns credit time

irrespective of the degree of security to which he is assigned. Except as set forth under IC 35-38-2.5.-5, a person does not earn credit time while on parole or probation.

(b) A person imprisoned upon revocation of parole is initially assigned to the same credit time class to which he was assigned at the time he was released on parole.

(c) A person who, upon revocation of parole, is imprisoned on an intermittent basis does not earn credit time for the days he spends on parole outside the institution.

As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.137; Acts 1979, P.L.120, SEC.15; P.L.166-2001, SEC.4.

IC 35-50-6-7

Charge of new crime or violation of rule while confined; effect on credit time; assignment to Class III

Sec. 7. (a) A person under the control of a county detention facility or the department of correction who:

(1) has been charged with a new crime while confined; or

(2) has allegedly violated a rule of the department or county facility;

may be immediately assigned to Class III and may have all earned credit time suspended pending disposition of the allegation.

(b) A person assigned to Class III under subsection (a) shall be denied release on parole or discharge until:

(1) he is in the actual custody of the department or the county detention facility to which he was sentenced; and

(2) he is granted a hearing concerning the allegations.

The department or sheriff may waive the hearing if the person is restored to his former credit time class and receives all previously earned credit time and any credit time that he would have earned if he had not been assigned to Class III.

(c) A person who is assigned to Class III under subsection (a) and later found not guilty of the alleged misconduct shall have all earned credit time restored and shall be reassigned to the same credit time class that he was in before his assignment to Class III. In addition, the person shall be credited with any credit time that he would have earned if he had not been assigned to Class III.

As added by P.L.338-1983, SEC.1.

IC 35-50-6-8

Person serving sentence of life imprisonment without parole does not earn credit time

Sec. 8. A person serving a sentence of life imprisonment without parole does not earn credit time under this chapter.

As added by P.L.53-2005, SEC.3.

IC 35-50-7

Chapter 7. Probation Orders

IC 35-50-7-1

Applicability of chapter

Sec. 1. This chapter applies when a person is placed on probation after being convicted of an offense.

As added by P.L.216-1996, SEC.26.

IC 35-50-7-2

Power of court to prohibit entry to area where offense committed

Sec. 2. The court that places a person on probation following conviction may issue an order, reasonable in scope, under this chapter that prohibits the person from entering the:

(1) area or property where an offense was committed by the person; and

(2) area immediately surrounding the area or property where an offense was committed by the person.

As added by P.L.216-1996, SEC.26.

IC 35-50-7-3

Specificity

Sec. 3. An order issued under this chapter must describe the area or property that the person is prohibited from entering with sufficient specificity to:

(1) allow the person to guide the person's conduct accordingly; and

(2) enable a law enforcement officer to enforce the order.

As added by P.L.216-1996, SEC.26.

IC 35-50-7-4

Power of court to allow limited reentry

Sec. 4. A court that issues an order under this chapter may:

(1) allow a person to return to the person's residential premises to pick up personal belongings and effects;

(2) restrict the time and duration of the person's return; and

(3) provide for supervision of the person's return by a law enforcement officer.

As added by P.L.216-1996, SEC.26.

IC 35-50-7-5

Copy to defendant

Sec. 5. A person shall be given a copy of an order issued under this chapter concerning the person and shall acknowledge the receipt of the order in writing.

As added by P.L.216-1996, SEC.26.

IC 35-50-7-6

Notice; persons to receive

Sec. 6. The court shall provide notice of an order issued under this

chapter to:

(1) the law enforcement agency that arrested the person; and

(2) the prosecuting attorney.

As added by P.L.216-1996, SEC.26.

IC 35-50-7-7

Notice; stayed, modified, or vacated orders

Sec. 7. A court shall immediately notify all appropriate law enforcement agencies when an order issued under this chapter is stayed, modified, or vacated.

As added by P.L.216-1996, SEC.26.

IC 35-50-7-8

Power of court to consider evidence

Sec. 8. In determining whether to issue an order under this chapter, the court may consider evidence regarding whether the order would:

(1) cause undue hardship to innocent persons; and

(2) constitute a serious injustice that overrides the need to protect the rights, safety, and health of other tenants and residents of the property or area affected by the order.

As added by P.L.216-1996, SEC.26.

IC 35-50-7-9

Violation

Sec. 9. A person who knowingly or intentionally violates an order issued by a court under this chapter commits a Class C misdemeanor.

As added by P.L.216-1996, SEC.26.

IC 35-50-8

Chapter 8. Primary or Secondary School Student Delinquency and Criminal Conviction Information

IC 35-50-8-1

Student delinquency and criminal conviction information

Sec. 1. (a) If an individual is enrolled in a primary or secondary school, including a public or nonpublic school, and:

(1) is convicted of:

(A) a Class A felony;

(B) a Class B felony;

(C) a Class C felony; or

(D) at least two (2) Class D felonies; or

(2) has been adjudicated as a delinquent child for:

(A) an act that would be:

(i) a Class A felony;

(ii) a Class B felony; or

(iii) a Class C felony; or

(B) acts that would be at least two (2) Class D felonies;

if committed by an adult;

the judge who presided over the trial, accepted the plea agreement, or adjudicated the child a delinquent child shall give written notification of the conviction or adjudication to the chief administrative officer of the primary or secondary school, including a public or nonpublic school, or, if the individual is enrolled in a public school, the superintendent of the school district in which the individual is enrolled.

(b) Notification under subsection (a) must occur within seven (7) days after the conclusion of the trial, the date a plea agreement is accepted, or the date the child is adjudicated a delinquent child.

(c) The notification sent to a school or school district under subsection (a) must include only:

(1) the felony for which the individual was convicted or that the individual would have committed if the individual were an adult; and

(2) the individual's sentence or juvenile law disposition.

(d) If the court later modifies the individual's sentence or juvenile law disposition after giving notice under this section, the court shall notify the school or the school district in which the individual is enrolled of the sentence or disposition modification.

As added by P.L.67-2007, SEC.7.

IC 35-50-9

Chapter 9. Additional Sentence Requirements for Domestic Battery Convictions

IC 35-50-9-1

Batterer's intervention program

Sec. 1. (a) At the time of sentencing for a person convicted of domestic battery under IC 35-42-2-1.3 or a crime that involved domestic abuse, neglect, or violence, the court may require the person to complete a batterer's intervention program approved by the court.

(b) The person convicted of domestic battery or another crime described in subsection (a) shall pay all expenses of the batterer's intervention program.

(c) The batterer's intervention program must be a certified intervention program.

As added by P.L.94-2010, SEC.14.