

## SENATE BILL No. 239

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-11-2-15; IC 34-18-2-18; IC 34-24-5; IC 35-31.5-2-161.2; IC 35-41-4-2; IC 35-45-21-6.

**Synopsis:** Fertility fraud. Provides that a physician who treats a patient of that physician for infertility: (1) by using the physician's own spermatozoon or ovum, without the patient's consent; or (2) by using donated human reproductive material without the consent of the donor; commits fertility fraud, a Level 6 felony. Provides that a prosecution for criminal fertility fraud that would otherwise be barred by the statute of limitations may be brought not later than five (5) years after the earliest of the date on which: (1) the state first discovers evidence sufficient to charge the offender with the offense through DNA analysis; (2) the state first becomes aware of the existence of a recording that provides evidence sufficient to charge the offender with the offense; or (3) a person confesses to the offense. Establishes a cause of action for civil fertility fraud and provides that a prevailing plaintiff may be awarded actual damages or liquidated damages of \$10,000. Specifies that the statute of limitations for civil fertility fraud is 10 years from the eighteenth birthday of the child, or not later than five years after the earliest of the date on which: (1) the person first discovers evidence sufficient to bring an action against the defendant through DNA analysis; (2) the person first becomes aware of the existence of a recording that provides evidence sufficient to bring an action against the defendant; or (3) the defendant confesses to the offense.

**Effective:** July 1, 2018.

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January 3, 2018, read first time and referred to Committee on Corrections and Criminal Law.

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Second Regular Session 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

# SENATE BILL No. 239

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

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

1 SECTION 1. IC 34-11-2-15 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2018]: **Sec. 15. (a) Except as provided in subsection (b), an action**  
4 **for civil fertility fraud (IC 34-24-5) must be commenced not later**  
5 **than:**  
6 (1) **ten (10) years after the eighteenth birthday of the child; or**  
7 (2) **if subdivision (1) does not apply, twenty (20) years after**  
8 **the procedure was performed.**  
9 (b) **An action for civil fertility fraud that would otherwise be**  
10 **barred under this section may be commenced not later than five (5)**  
11 **years after the earliest of the date on which:**  
12 (1) **the person first discovers evidence sufficient to bring a**  
13 **action against the defendant through DNA (deoxyribonucleic**  
14 **acid) analysis;**  
15 (2) **the person first becomes aware of the existence of a**  
16 **recording (as defined in IC 35-31.5-2-273) that provides**  
17 **evidence sufficient to bring an action against the defendant;**



1           **or**

2           **(3) the defendant confesses to the offense.**

3           SECTION 2. IC 34-18-2-18 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 18. "Malpractice"  
5 means a tort or breach of contract based on health care or professional  
6 services that were provided, or that should have been provided, by a  
7 health care provider, to a patient. **The term does not include civil  
8 fertility fraud under IC 34-24-5.**

9           SECTION 3. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS  
10 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
11 1, 2018]:

12           **Chapter 5. Civil Fertility Fraud**

13           **Sec. 1. The following definitions apply throughout this chapter:**

14           (1) "Human reproductive material" has the meaning set forth  
15 in IC 35-45-21-6.

16           (2) "Physician" means a physician licensed under IC 25-22.5.

17           **Sec. 2. A:**

18           (1) woman who gives birth to a child after being treated for  
19 infertility by a physician; or

20           (2) surviving spouse of the woman;

21 may bring an action against a physician who knowingly or  
22 intentionally treated the woman for infertility by using the  
23 physician's own spermatozoon or ovum, without the patient's  
24 informed written consent to treatment using these spermatozoon  
25 or ovum.

26           **Sec. 3. A donor of human reproductive material may bring an  
27 action against a physician who:**

28           (1) treats a patient for infertility by using human reproductive  
29 material donated by the donor; and

30           (2) knows or reasonably should have known that the human  
31 reproductive material was used:

32           (A) without the donor's consent; or

33           (B) in a manner or to an extent other than that to which  
34 the donor consented.

35           **Sec. 4. A plaintiff who prevails in an action under this chapter  
36 is entitled to the person's reasonable attorney's fees, the costs of the  
37 infertility treatment (in an action brought under section 2 of this  
38 chapter), and:**

39           (1) actual damages; or

40           (2) liquidated damages of ten thousand dollars (\$10,000).

41           **Sec. 5. (a) A person who brings an action under section 2 of this  
42 chapter has a separate cause of action for each child born as the**



1 **result of the fraudulent fertility treatment.**

2 **(b) A person who brings an action under section 3 of this**  
 3 **chapter has a separate cause of action for each individual who**  
 4 **received fertility treatment with the donor's human reproductive**  
 5 **material.**

6 SECTION 4. IC 35-31.5-2-161.2 IS ADDED TO THE INDIANA  
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 8 [EFFECTIVE JULY 1, 2018]: **Sec. 161.2. "Human reproductive**  
 9 **material", for purposes of IC 35-45-21-6, has the meaning set forth**  
 10 **in IC 35-45-21-6.**

11 SECTION 5. IC 35-41-4-2, AS AMENDED BY P.L.158-2017,  
 12 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2018]: Sec. 2. (a) Except as otherwise provided in this section,  
 14 a prosecution for an offense is barred unless it is commenced:

- 15 (1) within five (5) years after the commission of the offense, in  
 16 the case of a Class B, Class C, or Class D felony (for a crime  
 17 committed before July 1, 2014) or a Level 3, Level 4, Level 5, or  
 18 Level 6 felony (for a crime committed after June 30, 2014); or  
 19 (2) within two (2) years after the commission of the offense, in the  
 20 case of a misdemeanor.

21 (b) A prosecution for a Class B or Class C felony (for a crime  
 22 committed before July 1, 2014) or a Level 3, Level 4, or Level 5 felony  
 23 (for a crime committed after June 30, 2014) that would otherwise be  
 24 barred under this section may be commenced within one (1) year after  
 25 the earlier of the date on which the state:

- 26 (1) first discovers evidence sufficient to charge the offender with  
 27 the offense through DNA (deoxyribonucleic acid) analysis; or  
 28 (2) could have discovered evidence sufficient to charge the  
 29 offender with the offense through DNA (deoxyribonucleic acid)  
 30 analysis by the exercise of due diligence.

31 (c) A prosecution for a Class A felony (for a crime committed  
 32 before July 1, 2014) or a Level 1 felony or Level 2 felony (for a crime  
 33 committed after June 30, 2014) may be commenced at any time.

34 (d) A prosecution for murder may be commenced:

- 35 (1) at any time; and  
 36 (2) regardless of the amount of time that passes between:  
 37 (A) the date a person allegedly commits the elements of  
 38 murder; and  
 39 (B) the date the alleged victim of the murder dies.

40 (e) A prosecution for the following offenses is barred unless  
 41 commenced before the date that the alleged victim of the offense  
 42 reaches thirty-one (31) years of age:



- 1 (1) IC 35-42-4-3(a) (Child molesting).  
 2 (2) IC 35-42-4-5 (Vicarious sexual gratification).  
 3 (3) IC 35-42-4-6 (Child solicitation).  
 4 (4) IC 35-42-4-7 (Child seduction).  
 5 (5) IC 35-46-1-3 (Incest).
- 6 (f) A prosecution for forgery of an instrument for payment of  
 7 money, or for the uttering of a forged instrument, under IC 35-43-5-2,  
 8 is barred unless it is commenced within five (5) years after the maturity  
 9 of the instrument.
- 10 (g) If a complaint, indictment, or information is dismissed because  
 11 of an error, defect, insufficiency, or irregularity, a new prosecution may  
 12 be commenced within ninety (90) days after the dismissal even if the  
 13 period of limitation has expired at the time of dismissal, or will expire  
 14 within ninety (90) days after the dismissal.
- 15 (h) The period within which a prosecution must be commenced does  
 16 not include any period in which:
- 17 (1) the accused person is not usually and publicly resident in  
 18 Indiana or so conceals himself or herself that process cannot be  
 19 served;
- 20 (2) the accused person conceals evidence of the offense, and  
 21 evidence sufficient to charge the person with that offense is  
 22 unknown to the prosecuting authority and could not have been  
 23 discovered by that authority by exercise of due diligence; or
- 24 (3) the accused person is a person elected or appointed to office  
 25 under statute or constitution, if the offense charged is theft or  
 26 conversion of public funds or bribery while in public office.
- 27 (i) For purposes of tolling the period of limitation only, a  
 28 prosecution is considered commenced on the earliest of these dates:
- 29 (1) The date of filing of an indictment, information, or complaint  
 30 before a court having jurisdiction.
- 31 (2) The date of issuance of a valid arrest warrant.
- 32 (3) The date of arrest of the accused person by a law enforcement  
 33 officer without a warrant, if the officer has authority to make the  
 34 arrest.
- 35 (j) A prosecution is considered timely commenced for any offense  
 36 to which the defendant enters a plea of guilty, notwithstanding that the  
 37 period of limitation has expired.
- 38 (k) The following apply to the specified offenses:
- 39 (1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of  
 40 funeral trust funds) is barred unless commenced within five (5)  
 41 years after the date of death of the settlor (as described in  
 42 IC 30-2-9).



- 1 (2) A prosecution for an offense under IC 30-2-10-9(b) (misuse  
2 of funeral trust funds) is barred unless commenced within five (5)  
3 years after the date of death of the settlor (as described in  
4 IC 30-2-10).
- 5 (3) A prosecution for an offense under IC 30-2-13-38(f) (misuse  
6 of funeral trust or escrow account funds) is barred unless  
7 commenced within five (5) years after the date of death of the  
8 purchaser (as defined in IC 30-2-13-9).
- 9 (l) A prosecution for an offense under IC 23-2-5, IC 23-2-6,  
10 IC 23-14-48-9, or IC 23-19 is barred unless commenced within five (5)  
11 years after the earlier of the date on which the state:  
12 (1) first discovers evidence sufficient to charge the offender with  
13 the offense; or  
14 (2) could have discovered evidence sufficient to charge the  
15 offender with the offense by the exercise of due diligence.
- 16 (m) A prosecution for a sex offense listed in IC 11-8-8-4.5 that is  
17 committed against a child and that is not:  
18 (1) a Class A felony (for a crime committed before July 1, 2014)  
19 or a Level 1 felony or Level 2 felony (for a crime committed after  
20 June 30, 2014); or  
21 (2) listed in subsection (e);  
22 is barred unless commenced within ten (10) years after the commission  
23 of the offense, or within four (4) years after the person ceases to be a  
24 dependent of the person alleged to have committed the offense,  
25 whichever occurs later.
- 26 (n) A prosecution for rape (IC 35-42-4-1) as a Class B felony (for a  
27 crime committed before July 1, 2014) or as a Level 3 felony (for a  
28 crime committed after June 30, 2014) that would otherwise be barred  
29 under this section may be commenced not later than five (5) years after  
30 the earlier of the date on which:  
31 (1) the state first discovers evidence sufficient to charge the  
32 offender with the offense through DNA (deoxyribonucleic acid)  
33 analysis;  
34 (2) the state first becomes aware of the existence of a recording  
35 (as defined in IC 35-31.5-2-273) that provides evidence sufficient  
36 to charge the offender with the offense; or  
37 (3) a person confesses to the offense.
- 38 (o) A prosecution for criminal deviate conduct (IC 35-42-4-2)  
39 (repealed) as a Class B felony for a crime committed before July 1,  
40 2014, that would otherwise be barred under this section may be  
41 commenced not later than five (5) years after the earliest of the date on  
42 which:



1 (1) the state first discovers evidence sufficient to charge the  
 2 offender with the offense through DNA (deoxyribonucleic acid)  
 3 analysis;

4 (2) the state first becomes aware of the existence of a recording  
 5 (as defined in IC 35-31.5-2-273) that provides evidence sufficient  
 6 to charge the offender with the offense; or

7 (3) a person confesses to the offense.

8 **(p) A prosecution for fertility fraud (IC 35-45-21-6) that would**  
 9 **otherwise be barred under this section may be commenced not**  
 10 **later than five (5) years after the earliest of the date on which:**

11 **(1) the state first discovers evidence sufficient to charge the**  
 12 **offender with the offense through DNA (deoxyribonucleic**  
 13 **acid) analysis;**

14 **(2) the state first becomes aware of the existence of a**  
 15 **recording (as defined in IC 35-31.5-2-273) that provides**  
 16 **evidence sufficient to charge the offender with the offense; or**

17 **(3) a person confesses to the offense.**

18 SECTION 6. IC 35-45-21-6 IS ADDED TO THE INDIANA CODE  
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 20 1, 2018]: Sec. 6. (a) As used in this section, "human reproductive  
 21 material" means:

22 **(1) a human spermatozoon or ovum; or**

23 **(2) a human organism at any stage of development from**  
 24 **fertilized ovum to embryo.**

25 **(b) A physician who knowingly or intentionally treats a patient**  
 26 **of that physician for infertility by using the physician's own**  
 27 **spermatozoon or ovum, without the patient's informed written**  
 28 **consent to treatment using these spermatozoon or ovum, commits**  
 29 **fertility fraud, a Level 6 felony.**

30 **(c) A physician who:**

31 **(1) treats a patient for infertility by using human reproductive**  
 32 **material donated by another person; and**

33 **(2) knows or reasonably should have known that the human**  
 34 **reproductive material was used:**

35 **(A) without the donor's consent; or**

36 **(B) in a manner or to an extent other than that to which**  
 37 **the donor consented;**

38 **commits fertility fraud, a Level 6 felony.**

