

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE ENROLLED ACT No. 1269

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

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

SECTION 1. IC 1-1-5.5-21 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 21. (a) A SECTION of P.L.158-2013 or HEA 1006-2014 does not affect:**

- (1) penalties incurred;**
- (2) crimes committed; or**
- (3) proceedings begun;**

before the effective date of that SECTION of P.L.158-2013 or HEA 1006-2014. Those penalties, crimes, and proceedings continue and shall be imposed and enforced under prior law as if that SECTION of P.L.158-2013 or HEA 1006-2014 had not been enacted.

(b) The general assembly does not intend the doctrine of amelioration (see *Vicory v. State*, 400 N.E.2d 1380 (Ind. 1980)) to apply to any SECTION of P.L.158-2013 or HEA 1006-2014.

SECTION 2. IC 11-8-8-4.5, AS AMENDED BY P.L.214-2013, SECTION 4, AND AS AMENDED BY P.L.158-2013, SECTION 171, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4.5. (a) Except as provided in section 22 of this chapter, as used in this chapter, "sex offender" means a person convicted of any of the following offenses:

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

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- (2) Criminal deviate conduct (IC 35-42-4-2) ~~(repealed (before its repeal). (before its repeal on July 1, 2014).~~
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b)).
- (5) Vicarious sexual gratification (including performing sexual conduct in the presence of a minor) (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual misconduct with a minor (**IC 35-42-4-9**) as a Class A, Class B, or Class C *felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a crime committed after June 30, 2014), (~~IC 35-42-4-9~~)*; unless:
- (A) the person is convicted of sexual misconduct with a minor as a Class C *felony (for a crime committed before July 1, 2014) or a Level 5 felony (for a crime committed after June 30, 2014)*;
 - (B) the person is not more than:
 - (i) four (4) years older than the victim if the offense was committed after June 30, 2007; or
 - (ii) five (5) years older than the victim if the offense was committed before July 1, 2007; and
 - (C) the sentencing court finds that the person should not be required to register as a sex offender.
- (9) Incest (IC 35-46-1-3).
- (10) Sexual battery (IC 35-42-4-8).
- (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age, and the person who kidnapped the victim is not the victim's parent or guardian.
- (12) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age, and the person who confined or removed the victim is not the victim's parent or guardian.
- (13) Possession of child pornography (IC 35-42-4-4(c)).
- (14) Promoting prostitution (IC 35-45-4-4) as a Class B *felony (for a crime committed before July 1, 2014) or a Level 4 felony (for a crime committed after June 30, 2014)*.
- (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less than eighteen (18) years of age.
- (16) Sexual trafficking of a minor (IC 35-42-3.5-1(c)).
- (17) Human trafficking (IC 35-42-3.5-1(d)(3)) if the victim is less than eighteen (18) years of age.
- (18) Sexual misconduct by a service provider with a detained or supervised child (IC 35-44.1-3-10(c)).



(19) An attempt or conspiracy to commit a crime listed in subdivisions (1) through (18).

(20) A crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in subdivisions (1) through (19).

(b) The term includes:

(1) a person who is required to register as a sex offender in any jurisdiction; and

(2) a child who has committed a delinquent act and who:

(A) is at least fourteen (14) years of age;

(B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in IC 31-9-2-115), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and

(C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

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

SECTION 3. IC 11-8-8-5, AS AMENDED BY P.L.13-2013, SECTION 42, AS AMENDED BY P.L.214-2013, SECTION 5, AND AS AMENDED BY P.L.158-2013, SECTION 172, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) Except as provided in section 22 of this chapter, as used in this chapter, "sex or violent offender" means a person convicted of any of the following offenses:

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

(2) Criminal deviate conduct (IC 35-42-4-2) *(before its repeal)*.
~~on July 1, 2014 (repealed).~~

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

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

(5) Vicarious sexual gratification (including performing sexual conduct in the presence of a minor) (IC 35-42-4-5).

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

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

(8) Sexual misconduct with a minor (**IC 35-42-4-9**) as a Class A, Class B, or Class C *felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a crime*



committed after June 30, 2014), (~~IC 35-42-4-9~~), unless:

(A) the person is convicted of sexual misconduct with a minor as a Class C felony (*for a crime committed before July 1, 2014*) or a Level 5 felony (*for a crime committed after June 30, 2014*);

(B) the person is not more than:

(i) four (4) years older than the victim if the offense was committed after June 30, 2007; or

(ii) five (5) years older than the victim if the offense was committed before July 1, 2007; and

(C) the sentencing court finds that the person should not be required to register as a sex offender.

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

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

(11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age, and the person who kidnapped the victim is not the victim's parent or guardian.

(12) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age, and the person who confined or removed the victim is not the victim's parent or guardian.

(13) Possession of child pornography (IC 35-42-4-4(c)).

(14) Promoting prostitution (IC 35-45-4-4) as a Class B felony (*for a crime committed before July 1, 2014*) or a Level 4 felony (*for a crime committed after June 30, 2014*).

(15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less than eighteen (18) years of age.

(16) Sexual trafficking of a minor (IC 35-42-3.5-1(c)).

(17) Human trafficking (IC 35-42-3.5-1(d)(3)) if the victim is less than eighteen (18) years of age.

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

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

(20) Sexual misconduct by a service provider with a detained **or supervised** child (IC 35-44.1-3-10(c)).

(21) An attempt or conspiracy to commit a crime listed in subdivisions (1) through (20).

(22) A crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in subdivisions (1) through (21).

(b) The term includes:

(1) a person who is required to register as a sex or violent offender in any jurisdiction; and

(2) a child who has committed a delinquent act and who:



- (A) is at least fourteen (14) years of age;
- (B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in IC 31-9-2-115), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and
- (C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

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

SECTION 4. IC 35-31.5-2-186.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 186.2. "Lawful supervision", for purposes of IC 35-44.1-3-10, has the meaning set forth in IC 35-44.1-3-10.**

SECTION 5. IC 35-38-2.6-1, AS AMENDED BY P.L.158-2013, SECTION 400, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to the sentencing of a person convicted of a **felony whenever any part of the sentence may not be suspended under IC 35-50-2-2.1 or IC 35-50-2-2.2.**

(1) a felony whenever any part of the sentence may not be suspended under ~~IC 35-50-2-2.2 or IC 35-50-2-2.1~~;

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

(3) an offense under ~~IC 9-30-5~~ (operating a vehicle while intoxicated) if the person who committed the offense has accumulated at least two (2) prior unrelated convictions under ~~IC 9-30-5~~; and 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 following felonies:

- (A) Murder (IC 35-42-1-1).
- (B) Battery (IC 35-42-2-1) with a deadly weapon or battery causing death.
- (C) Kidnapping (IC 35-42-3-2).
- (D) Criminal confinement (IC 35-42-3-3) with a deadly weapon.
- (E) Robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon.
- (F) Arson (IC 35-43-1-1) for hire resulting in serious bodily injury.
- (G) Burglary (IC 35-43-2-1) resulting in serious bodily injury.
- (H) Resisting law enforcement (IC 35-44.1-3-1) with a deadly weapon.
- (I) Escape (IC 35-44.1-3-4) with a deadly weapon.
- (J) Rioting (IC 35-45-1-2) with a deadly weapon.
- ~~(K) 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 five hundred (500) feet of:

 - (i) school property; or
 - (ii) a public park.~~
- ~~(L) 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 five hundred (500) feet of:

 - (i) school property; or
 - (ii) a public park.~~
- ~~(M) 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 five hundred (500) feet of:

 - (i) school property; or~~



(ii) a public park.

(N) 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.

(O) An offense under IC 9-30-5-5(b) (operating a vehicle while intoxicated causing death).

(P) (K) Aggravated battery (IC 35-42-2-1.5).

(Q) (L) Disarming a law enforcement officer (IC 35-44.1-3-2).

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

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

SECTION 6. IC 35-44.1-3-10, AS AMENDED BY P.L.158-2013, SECTION 516, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) ~~As used in this section;~~ **The following definitions apply throughout this section:**

(1) "Lawful supervision" means supervision by:

(A) the department of correction;

(B) a court;

(C) a probation department;

(D) a community corrections program, a community transition program, or another similar program; or

(E) parole.

(2) "Service provider" means:

(A) with respect to a person subject to lawful detention:

(i) a public servant; ~~or other~~

(ii) a person employed by a governmental entity; ~~or another~~

(iii) a person who provides goods or services to a person who is subject to lawful detention; **and**

(B) with respect to a person subject to lawful supervision:

(i) a public servant whose official duties include the supervision of the person subject to lawful supervision;

(ii) a person employed by a governmental entity to provide supervision for the person subject to lawful supervision; or

(iii) a person who is employed by or contracts with a governmental entity to provide treatment or other services to the person subject to lawful supervision as a condition of the person's lawful supervision.

(b) A service provider who knowingly or intentionally engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with a person who is subject to lawful detention **or lawful supervision** commits sexual misconduct, a Level 5 felony.



(c) A service provider at least eighteen (18) years of age who knowingly or intentionally engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with a person who is:

(1) less than eighteen (18) years of age; and

(2) subject to lawful detention **or lawful supervision;**
commits sexual misconduct, a Level 4 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 other sexual conduct (as defined in IC 35-31.5-2-221.5) between spouses.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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