

NEW LEGISLATION

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SEX OFFENDER REGISTRY / SEXUALLY VIOLENT PREDATOR

IC 5-2-12-4.5 (P.L. 56, § 7)

- ▶ Defines “sexually violent predator” as one who suffers from a mental abnormality or personality disorder making them likely to repeatedly engage in felony sex offenses.

IC 35-38-1-7.5 (P.L. 56, § 17)

- ▶ Requires Court at sentencing of felony sex offender to determine whether defendant is a “sexually violent predator” after appointment of 2 board certified psychologists.

IC 5-2-12 (P.L. 56, § 6-16)

- ▶ Expands Sex Offender Registry to include those convicted of Kidnapping and Confinement of a victim less than 18 years of age.
- ▶ Requires a local law enforcement agency to send a mailing at least once a year to verify the offender’s address following his release from prison, or when placed on probation or parole. Requires a verification mailing at least every 90 days for sexually violent predators.
- ▶ Extends registration requirement for sexually violent predators indefinitely beyond the 10-year period, unless a Court finds he is no longer a sexually violent predator.
- ▶ Prohibits an offender who is required to register from seeking a change of name. If name is changed due to marriage, offender must notify ICJI within 30 days.
- ▶ Requires Department of Correction to send to the State Police, within 3 days of the release of an inmate required to register, complete mental and criminal history and other identifying data.
- ▶ Requires local law enforcement agency to notify ICJI whenever an offender registers.

IC 35-42-4-7 (P.L. 71, § 5)

- ▶ Amends Child Seduction (Class D Felony) statute to include “child care worker.”

DATE RAPE / “KNOCKOUT” DRUGS

IC 35-48-2-6 (P.L. 31, § 9)

- ▶ Adds Gamma Hydroxybutyrate to the list of Schedule II Controlled Substances.

IC 35-48-2-6 (P.L. 31, § 9)

- ▶ Adds Ketamine to the list of Schedule III Controlled Substances.

IC 35-42-4-1 (P.L. 31, § 3)

- ▶ Increases the penalty for Rape from a Class B Felony to a Class A Felony if it is facilitated by furnishing the victim a drug or controlled substance without the victim's knowledge.

IC 35-42-4-2 (P.L. 31, § 4)

- ▶ Increases the penalty for Criminal Deviate Conduct from a Class B Felony to a Class A Felony if it is facilitated by furnishing the victim a drug or controlled substance without the victim's knowledge.

IC 35-42-4-3 (P.L. 31, § 5)

- ▶ Increases the penalty for Child Molesting (intercourse with child under 14) from a Class B Felony to a Class A Felony if it is facilitated by furnishing the victim a drug or controlled substance without the victim's knowledge.
- ▶ Increases the penalty for Child Molesting (fondling or touching of child under 14) from a Class C Felony to a Class A Felony if it is facilitated by furnishing the victim a drug or controlled substance without the victim's knowledge.

IC 35-42-4-5 (P.L. 31, § 6)

- ▶ Increases the penalty for Vicarious Sexual Gratification (fondling or touching) from a Class D Felony to a Class B Felony if it is facilitated by furnishing the victim a drug or controlled substance without the victim's knowledge.
- ▶ Increases the penalty for Vicarious Sexual Gratification (intercourse or animals) from a Class C Felony to a Class A Felony if it is facilitated by furnishing the victim a drug or controlled substance without the victim's knowledge.

IC 35-42-4-8 (P.L. 31, § 7)

- ▶ Increases the penalty for Sexual Battery from a Class D Felony to a Class C Felony if it is facilitated by furnishing the victim a drug or controlled substance without the victim's knowledge.

IC 35-42-4-9 (P.L. 31, § 9)

- ▶ Increases the penalty for Sexual Misconduct With a Minor (intercourse with 14 or 15 year old) from a Class C Felony to a Class A Felony if it is facilitated by furnishing the victim a drug or controlled substance without the victim's knowledge.
- ▶ Increases the penalty for Sexual Misconduct With a Minor (fondling or touching with 14 or 15 year old) from a Class D Felony to a Class B Felony if it is facilitated by furnishing the victim a drug or controlled substance without the victim's knowledge.

IC 35-38-1-7.1 (P.L. 31, § 1)

- ▶ Adds to the list of Aggravating Circumstances that a court may consider as favoring consecutive or enhanced terms of imprisonment - that the victim of the crime was administered a sedative or hypnotic drug.

POLICE / CORRECTIONS

IC 35-44-3-3 (P.L. 13, § 1)

- ▶ Increases the penalty for Resisting Law Enforcement from a Class A Misdemeanor to a Class D Felony where the person uses a vehicle to flee from a law enforcement officer after the officer has, by visual or audible means, identified himself and ordered the person to stop. (no longer necessary to show that the vehicle is operated in a manner causing a substantial risk of bodily injury to another)

IC 35-44-3-5 (P.L. 17, § 2)

- ▶ Amends Escape (Class D Felony) statute to specifically include violation of a home detention order by removal of an electronic monitoring device.

IC 34-28-2-1.5 (P.L. 18, § 3)

- ▶ Prohibits a Department of Corrections inmate from seeking a change of name.

IC 10-1-9-10 (P.L. 108, § 1)

- ▶ Requires those convicted after June 30, 1996 of a crime against the person (IC 35-42), Burglary, or Child Solicitation, to provide a DNA sample to the Indiana Department of Correction. (also includes those convicted before July 1, 1996 if held in jail or prison after that date)

IC 5-10-10-6 (P.L. 49, § 1)

- ▶ Increases the survivor benefits from \$75,000 to \$150,000 when a public safety officer dies in the line of duty.

IC 36-8-6-9.8 (P.L. 49, § 2)

- ▶ Increases the funeral benefits from \$6,000 to \$9,000 for an active or retired member of the police department who has died from any cause. (Beginning January 1, 1999)

IC 10-1-1-4 (P.L. 62, § 2)

- ▶ Allows an Indiana State Police officer to run for and serve in a part-time local elected office. Requires the officer to resign in order to serve in any other elected office.

TRAFFIC / SEAT BELTS

IC 9-19-10-3 (P.L. 57, § 2) (P.L. 116, § 2)

- ▶ Amends the "seatbelt statute" to allow for authorities to stop, inspect, and detain a person to determine compliance with seatbelt requirements. (1 of only 13 states to allow)

IC 9-19-10-2.5 (P.L. 57, § 1) (P.L. 116, § 1)

- ▶ CREATES A NEW CLASS D INFRACTION (\$25) for a person to operate a passenger motor vehicle equipped with a safety belt in which there is a child between 4-11 years old and is not restrained by a safety belt or a child restraint system.

IC 9-19-10-8 (P.L. 57, § 3) (P.L. 116, §3)

- ▶ Amends statute requiring front passengers to wear seatbelts, making it a Class D Infraction (\$25) only if the person is at least 16 years old.

IC 9-19-11-2 & IC 9-19-11-3 (P.L. 57, § 4-5) (P.L. 116, §4-5)

- ▶ Amends statutes to reduce penalty from a Class C Infraction (\$500) to a Class D Infraction (\$25) where a child less than four years old is not restrained by a child passenger restraint system. Allows for exception where child will not fit in a child restraint system, and if so, the child must be restrained by a safety belt.

IC 9-24-11-3 (P.L. 57, § 6) Effective January 1, 1999

- ▶ Amends the probationary license statute to include the following restrictions on drivers under 18 years of age:
 - (1) Except when accompanied by a parent, an adult specified by the parent, or going to and from work, school or religious events, the individual may not operate a motor vehicle after 11 p.m., except on Friday and Saturday nights until 1 a.m.
 - (2) During the 90 days following the issuance of the probationary license, the individual may not operate a motor vehicle in which there are passengers unless another individual who is at least 21 years old and holds a valid license is in the front seat of the vehicle.
 - (3) Each and every occupant of the vehicle must have a safety belt properly fastened about their body at all times.
(Penalty Class C Infraction \$500 under IC 9-24-11-8)
- ▶ Allows a probationary licensee to receive an Operator's License at age 18 unless he has 2 moving traffic offenses or accidents over \$750.

IC 9-21-16-7 (P.L. 60, §1)

- ▶ Amends statute requiring vehicle to be parked within 12" of the curb, to allow for a motorcycle with the rear wheel to the curb and the front tire facing the flow of traffic.

HIV / AIDS

IC 35-38-1-10.7 (P.L. 71, § 4)

- ▶ Allows the Court, before conviction, to order the Defendant to undergo a screening test for HIV upon a written request by the victim and a finding of probable cause that the victim was exposed to HIV by a sex offense committed by the Defendant.
- ▶ Victim's request is filed by the Prosecutor and sealed; hearing by affidavit only.
- ▶ Results of screening are confidential; unlawful disclosure is Class B Misdemeanor.

IC 35-42-1-9 (P.L. 31, § 2)

- ▶ CREATES A NEW CRIME, generally making it a Class B Misdemeanor for carriers of dangerous communicable diseases (Aids, HIV, Hepatitis B) to recklessly fail to warn persons at risk (sexual or needle sharing partners). Enhanced to a Class D Felony for a knowing or intentional failure to warn.

IMMUNITY

IC 34-29-2-1 (P.L. 1, § 25)

- ▶ Provides for Immunity from **civil arrest** (infractions) to the following individuals:
 - (1) All officers of the General Assembly during their attendance at the General Assembly and during the time they are going to and returning from the place of meeting.
 - (2) All voters during attendance at, going to, and returning from elections.
 - (3) Members of the Board of County Commissioners during the session of their board, and while going to and from the session.
 - (4) Justices, while engaged in hearing or determining any trial.
 - (5) All persons in necessary attendance at a court and in going to and from the court.
 - (6) The Governor, Treasurer of State, Secretary of State, Auditor of State and Supt. Of Public Instruction.
 - (7) All persons while actively engaged in the discharge of military duty.

IC 34-29-2-2 (P.L. 1, § 25)

- ▶ Provides that a person shall not be arrested (civil or criminal) in any place of worship during service, except in cases of emergency.

COURTS / SENTENCING

IC 35-34-2-2 (P.L. 4, §12)

- ▶ Requires that an alternate juror must be chosen when a Grand Jury is impaneled.

IC 35-36-6-11 (P.L. 1, § 61)

- ▶ Statutory authorization for the accepted practice of choosing jurors from another county in high profile cases as an alternative to change of venue.

IC 35-38-1-7.1 (P.L. 51, § 4)

- ▶ Adds to the list of Aggravating Circumstances that a court may consider as favoring consecutive or enhanced terms of imprisonment - that the injury to the victim was the result of “shaken baby syndrome” as defined in IC 14-41-40-2.

IC 35-38-1-7.1 (P.L. 31, § 1)

- ▶ Adds to the list of Aggravating Circumstances that a court may consider as favoring consecutive or enhanced terms of imprisonment - that the victim of the crime was administered a sedative or hypnotic drug.

IC 35-38-1-7.5 (P.L. 56, § 17)

- ▶ Requires Court at sentencing of felony sex offender to determine whether defendant is a “sexually violent predator” after appointment of 2 board certified psychologists.

Indiana Constitution, Article 7, § 4 (P.L. 132)

- ▶ Removes language in Constitution requiring all criminal appeals involving a life sentence or a term greater than 50 years be heard directly by the Indiana Supreme Court. (In order for Constitutional amendment to become effective, it must pass both houses of the General Assembly at two consecutive sessions, then be ratified by statewide voter referendum)

IC 35-33-8-3.2 (P.L. 107, § 2)

IC 35-33-8-5 (P.L. 107, § 3)

- ▶ Allows a Court to set bail by requiring a defendant to deposit 10% or more of the amount of the bail in cash. Upon conviction, a Court may order that the cash amount posted be used to pay fines, costs, fees and restitution.
- ▶ Allows the Court to increase or revoke bail when it is shown by clear and convincing evidence that the defendant poses a risk to the physical safety of another person or the community.

MISCELLANEOUS

IC 35-48-4-13 (P.L. 31, § 11)

- ▶ Amends the Maintaining a Common Nuisance statute to make clear that the building, structure, or vehicle need be used for controlled substances only once. (No need to prove recurring violation)

IC 34-19-3 (P.L. 117, § 1)

- ▶ Creates a new civil cause of action to abate a drug nuisance which may be filed by the Prosecutor, a City or County attorney, or by the property owner.
- ▶ Court may issue an injunction, order a tenant evicted, order restitution, or grant any other appropriate equitable relief.

IC 35-46-3-12 (P.L. 41, § 2)

- ▶ Amends the Cruelty to an Animal statute to remove the requirement that the torture, beating or mutilation result in serious injury or death to the animal. The mere act of torture, beating or mutilation is enough. Also increases the penalty to a Class D felony if the person has a previous unrelated conviction.

IC 35-44-2-4 (P.L. 68, § 1)

- ▶ Amends Ghost Employment (Class D Felony) statute to exclude activities performed for the benefit of another government agency or for a charity, as long as it is not to promote religion or elections, and is authorized by supervisor in compliance with written policy.

IC 35-15-15 (P.L. 112, § 2)

- ▶ CREATES A NEW CRIME OF MONEY LAUNDERING (CLASS D FELONY) - knowingly or intentionally acquiring an interest in, possessing, or offering to invest proceeds of criminal activity.

IC 35-50-2-4 (P.L. 123, § 1)

IC 36-2-13-15 (P.L. 123, § 2-3)

- ▶ Allows the Court at sentencing to enter an order for reimbursement of jail costs up to \$30 per day if Commissioners adopt an Ordinance.
- ▶ Defendant must have ability to pay and must not be member of family that makes less than 150% of federal income poverty level.

IC 23-7-8 (P.L. 48, § 1-6)

- ▶ Requires professional fundraisers and solicitors to be registered, increasing fee from \$50 to \$1000, and requires records and detailed financial information on each fundraising campaign to be turned over to Attorney General Consumer Protection.

- ▶ Requires professional fundraiser or solicitor to disclose their full individual name and, upon request, a telephone number to confirm.
- ▶ Increases penalty for violation of chapter from Infraction to a Class B Misdemeanor.

IC 24-5-12-25 (P.L. 48, § 7)

- ▶ CREATES A NEW CRIME as a Class B Misdemeanor for a professional fundraiser or solicitor to knowingly or intentionally attempt to block display of a telephone number or identity by caller ID. Enhanced to a Class A Misdemeanor for subsequent offenses.

LEGISLATION FROM 1997 RELATING TO THE KILLING OF A FETUS

(Vetoed by Governor O'Bannon and overridden by the General Assembly on January 22, 1998 - Applicable to crimes committed after June 30, 1997)

IC 35-4-1-25 (P.L. 261, § 1)

- ▶ Amends definition of "serious bodily injury" to include "loss of a fetus."

IC 35-42-1-1 (P.L. 261, § 3)

- ▶ Amends Murder statute to include knowingly or intentionally killing a fetus that has attained viability. (defined in IC 16-18-2-365 as a fetus that has the ability to live outside the womb)

IC 35-42-1-3 (P.L. 261, § 4)

- ▶ Amends Voluntary Manslaughter (Class B Felony) statute to include knowingly or intentionally and under sudden heat killing a fetus that has attained viability. Class A Felony if committed by means of a deadly weapon.

IC 35-42-1-4 (P.L. 261, § 5)

- ▶ Amends Involuntary Manslaughter (Class C Felony) statute to include killing a fetus that has attained viability, while committing a battery.

IC 35-42-2-1.5 (P.L. 261, § 6)

- ▶ Amends Aggravated Battery statute to include loss of a fetus as one of the causes which constitutes the Class B Felony.

IC 35-50-2-9 (P.L. 261, § 7)

- ▶ Adds a new Aggravating Circumstance justifying the imposition of a death sentence where the victim was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability.

* This is a summary and should not be relied upon. Please refer to text of statute.

* All statutes are effective July 1, 1998 unless otherwise indicated.

This is a publication of the Clark County Prosecuting Attorney, covering various topics of interest to police and prosecutors. It is directed solely toward issues of evidence, criminal law and procedure. Please consult your city, town or county attorney for legal advice relating to civil liability.