

SENATE BILL No. 264

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-8-8; IC 11-10-11.5-11; IC 11-13-3-4; IC 31-27-4-35; IC 31-34; IC 31-35-3-4; IC 35-38-2; IC 35-42-4; IC 35-44.1-3-9; IC 35-50-2-14.

Synopsis: Age of consent. Adds the criminal offense of indiscretion, which is committed when a person who is at least 22 years of age engages in sexual intercourse or other sexual conduct, fondling, or touching with a child who is at least 16 years of age but less than 18 years of age. Adds indiscretion to the list of: (1) sex offenses; and (2) offenses that would determine if a child is a child in need of services. Makes conforming amendments.

Effective: July 1, 2019.

Mrvan

January 3, 2019, read first time and referred to Committee on Corrections and Criminal Law.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 264

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 11-8-8-4.5, AS AMENDED BY P.L.144-2018,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 4.5. (a) Except as provided in section 22 of this
4 chapter, as used in this chapter, "sex offender" means a person
5 convicted of any of the following offenses:
6 (1) Rape (IC 35-42-4-1).
7 (2) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
8 (3) Child molesting (IC 35-42-4-3).
9 (4) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).
10 (5) Vicarious sexual gratification (including performing sexual
11 conduct in the presence of a minor) (IC 35-42-4-5).
12 (6) Child solicitation (IC 35-42-4-6).
13 (7) Child seduction (IC 35-42-4-7).
14 (8) Sexual misconduct with a minor (IC 35-42-4-9) as a Class A,
15 Class B, or Class C felony (for a crime committed before July 1,
16 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a
17 crime committed after June 30, 2014), unless:



- 1 (A) the person is convicted of sexual misconduct with a minor
 2 as a Class C felony (for a crime committed before July 1,
 3 2014) or a Level 5 felony (for a crime committed after June
 4 30, 2014);
 5 (B) the person is not more than:
 6 (i) four (4) years older than the victim if the offense was
 7 committed after June 30, 2007; or
 8 (ii) five (5) years older than the victim if the offense was
 9 committed before July 1, 2007; and
 10 (C) the sentencing court finds that the person should not be
 11 required to register as a sex offender.
 12 (9) Incest (IC 35-46-1-3).
 13 (10) Sexual battery (IC 35-42-4-8).
 14 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
 15 (18) years of age, and the person who kidnapped the victim is not
 16 the victim's parent or guardian.
 17 (12) Criminal confinement (IC 35-42-3-3), if the victim is less
 18 than eighteen (18) years of age, and the person who confined or
 19 removed the victim is not the victim's parent or guardian.
 20 (13) Possession of child pornography (IC 35-42-4-4(d) or
 21 IC 35-42-4-4(e)).
 22 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony
 23 (for a crime committed before July 1, 2014) or a Level 4 felony
 24 (for a crime committed after June 30, 2014).
 25 (15) Promotion of human sexual trafficking under
 26 IC 35-42-3.5-1.1.
 27 (16) Promotion of child sexual trafficking under
 28 IC 35-42-3.5-1.2(a).
 29 (17) Promotion of sexual trafficking of a younger child
 30 (IC 35-42-3.5-1.2(c)).
 31 (18) Child sexual trafficking (IC 35-42-3.5-1.3).
 32 (19) Human trafficking under IC 35-42-3.5-1.4 if the victim is
 33 less than eighteen (18) years of age.
 34 (20) Sexual misconduct by a service provider with a detained or
 35 supervised child (IC 35-44.1-3-10(c)).
 36 **(21) Indiscretion (IC 35-42-4-9.5).**
 37 ~~(21)~~ **(22)** An attempt or conspiracy to commit a crime listed in
 38 this subsection.
 39 ~~(22)~~ **(23)** A crime under the laws of another jurisdiction,
 40 including a military court, that is substantially equivalent to any
 41 of the offenses listed in this subsection.
 42 (b) The term includes:



- 1 (1) a person who is required to register as a sex offender in any
 2 jurisdiction; and
 3 (2) a child who has committed a delinquent act and who:
 4 (A) is at least fourteen (14) years of age;
 5 (B) is on probation, is on parole, is discharged from a facility
 6 by the department of correction, is discharged from a secure
 7 private facility (as defined in IC 31-9-2-115), or is discharged
 8 from a juvenile detention facility as a result of an adjudication
 9 as a delinquent child for an act that would be an offense
 10 described in subsection (a) if committed by an adult; and
 11 (C) is found by a court by clear and convincing evidence to be
 12 likely to repeat an act that would be an offense described in
 13 subsection (a) if committed by an adult.
 14 (c) In making a determination under subsection (b)(2)(C), the court
 15 shall consider expert testimony concerning whether a child is likely to
 16 repeat an act that would be an offense described in subsection (a) if
 17 committed by an adult.
 18 SECTION 2. IC 11-8-8-5, AS AMENDED BY P.L.144-2018,
 19 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2019]: Sec. 5. (a) Except as provided in section 22 of this
 21 chapter, as used in this chapter, "sex or violent offender" means a
 22 person convicted of any of the following offenses:
 23 (1) Rape (IC 35-42-4-1).
 24 (2) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
 25 (3) Child molesting (IC 35-42-4-3).
 26 (4) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).
 27 (5) Vicarious sexual gratification (including performing sexual
 28 conduct in the presence of a minor) (IC 35-42-4-5).
 29 (6) Child solicitation (IC 35-42-4-6).
 30 (7) Child seduction (IC 35-42-4-7).
 31 (8) Sexual misconduct with a minor (IC 35-42-4-9) as a Class A,
 32 Class B, or Class C felony (for a crime committed before July 1,
 33 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a
 34 crime committed after June 30, 2014), unless:
 35 (A) the person is convicted of sexual misconduct with a minor
 36 as a Class C felony (for a crime committed before July 1,
 37 2014) or a Level 5 felony (for a crime committed after June
 38 30, 2014);
 39 (B) the person is not more than:
 40 (i) four (4) years older than the victim if the offense was
 41 committed after June 30, 2007; or
 42 (ii) five (5) years older than the victim if the offense was



- 1 committed before July 1, 2007; and
 2 (C) the sentencing court finds that the person should not be
 3 required to register as a sex offender.
 4 (9) Incest (IC 35-46-1-3).
 5 (10) Sexual battery (IC 35-42-4-8).
 6 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
 7 (18) years of age, and the person who kidnapped the victim is not
 8 the victim's parent or guardian.
 9 (12) Criminal confinement (IC 35-42-3-3), if the victim is less
 10 than eighteen (18) years of age, and the person who confined or
 11 removed the victim is not the victim's parent or guardian.
 12 (13) Possession of child pornography (IC 35-42-4-4(d) or
 13 IC 35-42-4-4(e)).
 14 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony
 15 (for a crime committed before July 1, 2014) or a Level 4 felony
 16 (for a crime committed after June 30, 2014).
 17 (15) Promotion of human sexual trafficking under
 18 IC 35-42-3.5-1.1.
 19 (16) Promotion of child sexual trafficking under
 20 IC 35-42-3.5-1.2(a).
 21 (17) Promotion of sexual trafficking of a younger child
 22 (IC 35-42-3.5-1.2(c)).
 23 (18) Child sexual trafficking (IC 35-42-3.5-1.3).
 24 (19) Human trafficking under IC 35-42-3.5-1.4 if the victim is
 25 less than eighteen (18) years of age.
 26 (20) Murder (IC 35-42-1-1).
 27 (21) Voluntary manslaughter (IC 35-42-1-3).
 28 (22) Sexual misconduct by a service provider with a detained or
 29 supervised child (IC 35-44.1-3-10(c)).
 30 **(23) Indiscretion (IC 35-42-4-9.5).**
 31 ~~(23)~~ **(24)** An attempt or conspiracy to commit a crime listed in
 32 this subsection.
 33 ~~(24)~~ **(25)** A crime under the laws of another jurisdiction,
 34 including a military court, that is substantially equivalent to any
 35 of the offenses listed in this subsection.
 36 (b) The term includes:
 37 (1) a person who is required to register as a sex or violent
 38 offender in any jurisdiction; and
 39 (2) a child who has committed a delinquent act and who:
 40 (A) is at least fourteen (14) years of age;
 41 (B) is on probation, is on parole, is discharged from a facility
 42 by the department of correction, is discharged from a secure



1 private facility (as defined in IC 31-9-2-115), or is discharged
 2 from a juvenile detention facility as a result of an adjudication
 3 as a delinquent child for an act that would be an offense
 4 described in subsection (a) if committed by an adult; and
 5 (C) is found by a court by clear and convincing evidence to be
 6 likely to repeat an act that would be an offense described in
 7 subsection (a) if committed by an adult.

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

12 SECTION 3. IC 11-10-11.5-11, AS AMENDED BY P.L.209-2015,
 13 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2019]: Sec. 11. (a) While assigned to a community transition
 15 program, a person must comply with:

16 (1) the rules concerning the conduct of persons in the community
 17 transition program, including rules related to payments described
 18 in section 12 of this chapter, that are adopted by the community
 19 corrections advisory board establishing the program or, in
 20 counties that are not served by a community corrections program,
 21 that are jointly adopted by the courts in the county with felony
 22 jurisdiction; and

23 (2) any conditions established by the sentencing court for the
 24 person.

25 (b) As a rule of the community transition program, a person
 26 convicted of a sex offense (as defined in IC 11-8-8-5.2) may not use a
 27 social networking web site (as defined in IC 35-31.5-2-307) or an
 28 instant messaging or chat room program (as defined in
 29 IC 35-31.5-2-173) to communicate, directly or through an intermediary,
 30 with a child less than ~~sixteen (16)~~ **eighteen (18)** years of age. However,
 31 the rules of the community transition program may permit the offender
 32 to communicate using a social networking web site or an instant
 33 messaging or chat room program with:

34 (1) the offender's own child, stepchild, or sibling; or

35 (2) another relative of the offender specifically named in the rules
 36 applicable to that person.

37 (c) As a rule of the community transition program, an individual
 38 may be required to receive:

39 (1) addiction counseling;

40 (2) inpatient detoxification;

41 (3) case management;

42 (4) daily living skills; and



1 (5) medication assisted treatment, including a federal Food and
 2 Drug Administration approved long acting, nonaddictive
 3 medication for the treatment of opioid or alcohol dependence.

4 SECTION 4. IC 11-13-3-4, AS AMENDED BY P.L.95-2017,
 5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2019]: Sec. 4. (a) A condition to remaining on parole is that
 7 the parolee not commit a crime during the period of parole.

8 (b) The parole board may also adopt, under IC 4-22-2, additional
 9 conditions to remaining on parole and require a parolee to satisfy one
 10 (1) or more of these conditions. These conditions must be reasonably
 11 related to the parolee's successful reintegration into the community and
 12 not unduly restrictive of a fundamental right.

13 (c) If a person is released on parole, the parolee shall be given a
 14 written statement of the conditions of parole. Signed copies of this
 15 statement shall be:

- 16 (1) retained by the parolee;
- 17 (2) forwarded to any person charged with the parolee's
- 18 supervision; and
- 19 (3) placed in the parolee's master file.

20 (d) The parole board may modify parole conditions if the parolee
 21 receives notice of that action and had ten (10) days after receipt of the
 22 notice to express the parolee's views on the proposed modification.
 23 This subsection does not apply to modification of parole conditions
 24 after a revocation proceeding under section 10 of this chapter.

25 (e) As a condition of parole, the parole board may require the
 26 parolee to reside in a particular parole area. In determining a parolee's
 27 residence requirement, the parole board shall:

- 28 (1) consider:
- 29 (A) the residence of the parolee prior to the parolee's
- 30 incarceration; and
- 31 (B) the parolee's place of employment; and

32 (2) assign the parolee to reside in the county where the parolee
 33 resided prior to the parolee's incarceration unless assignment on
 34 this basis would be detrimental to the parolee's successful
 35 reintegration into the community.

36 (f) As a condition of parole, the parole board may require the
 37 parolee to:

- 38 (1) periodically undergo a laboratory chemical test (as defined in
- 39 IC 9-13-2-22) or series of tests to detect and confirm the presence
- 40 of a controlled substance (as defined in IC 35-48-1-9); and
- 41 (2) have the results of any test under this subsection reported to
- 42 the parole board by the laboratory.



1 The parolee is responsible for any charges resulting from a test
2 required under this subsection. However, a person's parole may not be
3 revoked on the basis of the person's inability to pay for a test under this
4 subsection.

5 (g) As a condition of parole, the parole board:

6 (1) may require a parolee who is a sex offender (as defined in
7 IC 11-8-8-4.5) to:

8 (A) participate in a treatment program for sex offenders
9 approved by the parole board; and

10 (B) avoid contact with any person who is less than ~~sixteen (16)~~
11 **eighteen (18)** years of age unless the parolee:

12 (i) receives the parole board's approval; or

13 (ii) successfully completes the treatment program referred to
14 in clause (A); and

15 (2) shall:

16 (A) require a parolee who is a sex or violent offender (as
17 defined in IC 11-8-8-5) to register with a local law
18 enforcement authority under IC 11-8-8;

19 (B) prohibit a parolee who is a sex offender from residing
20 within one thousand (1,000) feet of school property (as defined
21 in IC 35-31.5-2-285) for the period of parole, unless the sex
22 offender obtains written approval from the parole board;

23 (C) prohibit a parolee who is a sex offender convicted of a sex
24 offense (as defined in IC 35-38-2-2.5) from residing within
25 one (1) mile of the victim of the sex offender's sex offense
26 unless the sex offender obtains a waiver under IC 35-38-2-2.5;

27 (D) prohibit a parolee who is a sex offender from owning,
28 operating, managing, being employed by, or volunteering at
29 any attraction designed to be primarily enjoyed by children
30 less than ~~sixteen (16)~~ **eighteen (18)** years of age;

31 (E) require a parolee who is a sex offender to consent:

32 (i) to the search of the sex offender's personal computer at
33 any time; and

34 (ii) to the installation on the sex offender's personal
35 computer or device with Internet capability, at the sex
36 offender's expense, of one (1) or more hardware or software
37 systems to monitor Internet usage; and

38 (F) prohibit the sex offender from:

39 (i) accessing or using certain web sites, chat rooms, or
40 instant messaging programs frequented by children; and

41 (ii) deleting, erasing, or tampering with information on the
42 sex offender's personal computer with intent to conceal an



1 activity prohibited by item (i).
2 The parole board may not grant a sexually violent predator (as defined
3 in IC 35-38-1-7.5) or a sex offender who is an offender against children
4 under IC 35-42-4-11 a waiver under subdivision (2)(B) or (2)(C). If the
5 parole board allows the sex offender to reside within one thousand
6 (1,000) feet of school property under subdivision (2)(B), the parole
7 board shall notify each school within one thousand (1,000) feet of the
8 sex offender's residence of the order.

9 (h) The address of the victim of a parolee who is a sex offender
10 convicted of a sex offense (as defined in IC 35-38-2-2.5) is
11 confidential, even if the sex offender obtains a waiver under
12 IC 35-38-2-2.5.

13 (i) As a condition of parole, the parole board may require a parolee
14 to participate in a reentry court program.

15 (j) As a condition of parole, the parole board shall require a parolee
16 who is a sexually violent predator under IC 35-38-1-7.5 or who is a sex
17 or violent offender (as defined in IC 11-8-8-5) to wear a monitoring
18 device (as described in IC 35-38-2.5-3) that can transmit information
19 twenty-four (24) hours each day regarding a person's precise location,
20 subject to a validated sex offender risk assessment, and subject to the
21 amount appropriated to the department for a monitoring program as a
22 condition of parole.

23 (k) As a condition of parole, the parole board may prohibit, in
24 accordance with IC 35-38-2-2.6, a parolee who has been convicted of
25 stalking from residing within one thousand (1,000) feet of the residence
26 of the victim of the stalking for a period that does not exceed five (5)
27 years.

28 (l) As a condition of parole, the parole board may prohibit a parolee
29 convicted of an offense under IC 35-46-3 from owning, harboring, or
30 training an animal, and, if the parole board prohibits a parolee
31 convicted of an offense under IC 35-46-3 from having direct or indirect
32 contact with an individual, the parole board may also prohibit the
33 parolee from having direct or indirect contact with any animal
34 belonging to the individual.

35 (m) As a condition of parole, the parole board may require a parolee
36 to receive:

- 37 (1) addiction counseling;
38 (2) inpatient detoxification;
39 (3) case management;
40 (4) daily living skills; and
41 (5) medication assisted treatment, including a federal Food and
42 Drug Administration approved long acting, nonaddictive



1 medication for the treatment of opioid or alcohol dependence.

2 (n) A parolee may be responsible for the reasonable expenses, as
3 determined by the department, of the parolee's participation in a
4 treatment or other program required as a condition of parole under this
5 section. However, a person's parole may not be revoked solely on the
6 basis of the person's inability to pay for a program required as a
7 condition of parole under this section.

8 (o) When an offender is placed on lifetime parole, the parole board
9 shall inform the sheriff and the prosecuting attorney of the county in
10 which the offender committed the offense:

11 (1) that the offender has been placed on lifetime parole; and

12 (2) whether the offender is required to wear a monitoring device
13 as described in subsection (j).

14 SECTION 5. IC 31-27-4-35, AS ADDED BY P.L.145-2006,
15 SECTION 273, IS AMENDED TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2019]: Sec. 35. (a) A licensee must immediately
17 contact the department if:

18 (1) a foster child less than ~~sixteen (16)~~ **eighteen (18)** years of age,
19 while living in a foster home, engages in or is the victim of sexual
20 contact (as defined in IC 25-1-9-3.5);

21 (2) a foster child, while living in a foster home, is:

22 (A) charged with or adjudicated as having committed an act
23 that would be a crime under IC 35-42-4 if committed by an
24 adult;

25 (B) charged with or convicted of an offense under IC 35-42-4;
26 or

27 (C) the victim of an offense under IC 35-42-4; or

28 (3) the licensee learns that a foster child has, before placement
29 with the licensee, engaged in or been the victim of an act
30 described in subdivision (1) or (2).

31 (b) The information provided to the department under subsection (a)
32 must include:

33 (1) the name of the child;

34 (2) the date of the occurrence of the act if it can be determined;

35 (3) a description of the act;

36 (4) the name of the responding law enforcement agency if a law
37 enforcement agency is contacted; and

38 (5) any other information the licensee determines is relevant.

39 (c) Notwithstanding any other law, the department shall provide
40 information described in subsection (b)(1) through (b)(4), whether
41 received from a licensee or another reliable source, to:

42 (1) a prospective licensee before the placement of the foster child



- 1 with that licensee; and
- 2 (2) each licensee with whom the foster child has previously been
- 3 placed.
- 4 (d) The notification requirements of subsection (c) apply to a foster
- 5 child who has:
- 6 (1) engaged in sexual contact (as defined in IC 25-1-9-3.5) if the
- 7 foster child is less than ~~sixteen (16)~~ **eighteen (18)** years of age;
- 8 (2) been charged with or adjudicated as having committed an act
- 9 that would be a crime under IC 35-42-4 if committed by an adult;
- 10 or
- 11 (3) been charged with or convicted of an offense under
- 12 IC 35-42-4.
- 13 SECTION 6. IC 31-34-1-3, AS AMENDED BY P.L.144-2018,
- 14 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 15 JULY 1, 2019]: Sec. 3. (a) A child is a child in need of services if,
- 16 before the child becomes eighteen (18) years of age:
- 17 (1) the child is the victim of an offense under:
- 18 (A) IC 35-42-4-1;
- 19 (B) IC 35-42-4-2 (before its repeal);
- 20 (C) IC 35-42-4-3;
- 21 (D) IC 35-42-4-4;
- 22 (E) IC 35-42-4-5;
- 23 (F) IC 35-42-4-6;
- 24 (G) IC 35-42-4-7;
- 25 (H) IC 35-42-4-8;
- 26 (I) IC 35-42-4-9;
- 27 **(J) IC 35-42-4-9.5;**
- 28 ~~(K)~~ **(K)** IC 35-45-4-1;
- 29 ~~(L)~~ **(L)** IC 35-45-4-2;
- 30 ~~(M)~~ **(M)** IC 35-45-4-3;
- 31 ~~(N)~~ **(N)** IC 35-45-4-4;
- 32 ~~(O)~~ **(O)** IC 35-46-1-3; or
- 33 ~~(P)~~ **(P)** the law of another jurisdiction, including a military
- 34 court, that is substantially equivalent to any of the offenses
- 35 listed in clauses (A) through ~~(N)~~; **(O)**; and
- 36 (2) the child needs care, treatment, or rehabilitation that:
- 37 (A) the child is not receiving; and
- 38 (B) is unlikely to be provided or accepted without the coercive
- 39 intervention of the court.
- 40 (b) A child is a child in need of services if, before the child becomes
- 41 eighteen (18) years of age, the child:
- 42 (1) lives in the same household as an adult who:



- 1 (A) committed an offense described in subsection (a)(1)
- 2 against a child and the offense resulted in a conviction or a
- 3 judgment under IC 31-34-11-2; or
- 4 (B) has been charged with an offense described in subsection
- 5 (a)(1) against a child and is awaiting trial; and
- 6 (2) needs care, treatment, or rehabilitation that:
- 7 (A) the child is not receiving; and
- 8 (B) is unlikely to be provided or accepted without the coercive
- 9 intervention of the court.
- 10 (c) A child is a child in need of services if, before the child becomes
- 11 eighteen (18) years of age:
- 12 (1) the child lives in the same household as another child who is
- 13 the victim of an offense described in subsection (a)(1);
- 14 (2) the child needs care, treatment, or rehabilitation that:
- 15 (A) the child is not receiving; and
- 16 (B) is unlikely to be provided or accepted without the coercive
- 17 intervention of the court; and
- 18 (3) a caseworker assigned to provide services to the child:
- 19 (A) places the child in a program of informal adjustment or
- 20 other family or rehabilitative services based on the existence
- 21 of the circumstances described in subdivisions (1) and (2), and
- 22 the caseworker subsequently determines further intervention
- 23 is necessary; or
- 24 (B) determines that a program of informal adjustment or other
- 25 family or rehabilitative services is inappropriate.
- 26 (d) A child is a child in need of services if, before the child becomes
- 27 eighteen (18) years of age:
- 28 (1) the child lives in the same household as an adult who:
- 29 (A) committed a human or sexual trafficking offense under
- 30 IC 35-42-3.5-1 through IC 35-42-3.5-1.4 or the law of another
- 31 jurisdiction, including federal law, that resulted in a conviction
- 32 or a judgment under IC 31-34-11-2; or
- 33 (B) has been charged with a human or sexual trafficking
- 34 offense under IC 35-42-3.5-1 through IC 35-42-3.5-1.4 or the
- 35 law of another jurisdiction, including federal law, and is
- 36 awaiting trial; and
- 37 (2) the child needs care, treatment, or rehabilitation that:
- 38 (A) the child is not receiving; and
- 39 (B) is unlikely to be provided or accepted without the coercive
- 40 intervention of the court.

41 SECTION 7. IC 31-34-21-5.6, AS AMENDED BY THE
 42 TECHNICAL CORRECTIONS BILL OF THE 2019 GENERAL



1 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2019]: Sec. 5.6. (a) Except as provided in subsection (c), a
3 court may make a finding described in this section at any phase of a
4 child in need of services proceeding.

5 (b) Reasonable efforts to reunify a child with the child's parent,
6 guardian, or custodian or preserve a child's family as described in
7 section 5.5 of this chapter are not required if the court finds any of the
8 following:

9 (1) A parent, guardian, or custodian of a child who is a child in
10 need of services has been convicted of:

11 (A) an offense described in IC 31-35-3-4(1)(B) or
12 IC 31-35-3-4(1)(D) through ~~IC 31-35-3-4(1)(J)~~
13 **IC 31-35-3-4(1)(K)** against a victim who is:

14 (i) a child described in IC 31-35-3-4(2); or

15 (ii) a parent of the child; or

16 (B) a comparable offense as described in clause (A) in any
17 other state, territory, or country by a court of competent
18 jurisdiction.

19 (2) A parent, guardian, or custodian of a child who is a child in
20 need of services:

21 (A) has been convicted of:

22 (i) the murder (IC 35-42-1-1) or voluntary manslaughter
23 (IC 35-42-1-3) of a victim who is a child described in
24 IC 31-35-3-4(2)(B) or a parent of the child; or

25 (ii) a comparable offense described in item (i) in any other
26 state, territory, or country; or

27 (B) has been convicted of:

28 (i) aiding, inducing, or causing another person;

29 (ii) attempting; or

30 (iii) conspiring with another person;

31 to commit an offense described in clause (A).

32 (3) A parent, guardian, or custodian of a child who is a child in
33 need of services has been convicted of:

34 (A) battery as a Class A felony (for a crime committed before
35 July 1, 2014) or Level 2 felony (for a crime committed after
36 June 30, 2014);

37 (B) battery as a Class B felony (for a crime committed before
38 July 1, 2014) or Level 3 or Level 4 felony (for a crime
39 committed after June 30, 2014);

40 (C) battery as a Class C felony (for a crime committed before
41 July 1, 2014) or Level 5 felony (for a crime committed after
42 June 30, 2014);



- 1 (D) aggravated battery (IC 35-42-2-1.5);
 2 (E) criminal recklessness (IC 35-42-2-2) as a Class C felony
 3 (for a crime committed before July 1, 2014) or a Level 5
 4 felony (for a crime committed after June 30, 2014);
 5 (F) neglect of a dependent (IC 35-46-1-4) as a Class B felony
 6 (for a crime committed before July 1, 2014) or a Level 1 or
 7 Level 3 felony (for a crime committed after June 30, 2014);
 8 (G) promotion of human labor trafficking, promotion of human
 9 sexual trafficking, promotion of child sexual trafficking,
 10 promotion of sexual trafficking of a younger child, child
 11 sexual trafficking, or human trafficking (IC 35-42-3.5-1
 12 through IC 35-42-3.5-1.4) as a felony; or
 13 (H) a comparable offense described in clauses (A) through (G)
 14 under federal law or in another state, territory, or country;
 15 against a child described in IC 31-35-3-4(2)(B).
 16 (4) The parental rights of a parent with respect to a biological or
 17 adoptive sibling of a child who is a child in need of services have
 18 been involuntarily terminated by a court under:
 19 (A) IC 31-35-2 (involuntary termination involving a
 20 delinquent child or a child in need of services);
 21 (B) IC 31-35-3 (involuntary termination involving an
 22 individual convicted of a criminal offense); or
 23 (C) any comparable law described in clause (A) or (B) in any
 24 other state, territory, or country.
 25 (5) The child is an abandoned infant, provided that the court:
 26 (A) has appointed a guardian ad litem or court appointed
 27 special advocate for the child; and
 28 (B) after receiving a written report and recommendation from
 29 the guardian ad litem or court appointed special advocate, and
 30 after a hearing, finds that reasonable efforts to locate the
 31 child's parents or reunify the child's family would not be in the
 32 best interests of the child.
 33 (c) During or at any time after the first periodic case review under
 34 IC 31-34-21-2 of a child in need of services proceeding, if the court
 35 finds that a parent, guardian, or custodian of the child has been charged
 36 with an offense described in subsection (b)(3) and is awaiting trial, the
 37 court may make a finding that reasonable efforts to reunify the child
 38 with the child's parent, guardian, or custodian or preserve the child's
 39 family as described in section 5.5 of this chapter may be suspended
 40 pending the disposition of the parent's, guardian's, or custodian's
 41 criminal charge.

42 SECTION 8. IC 31-35-3-4, AS AMENDED BY P.L.214-2013,



1 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2019]: Sec. 4. If:

- 3 (1) an individual is convicted of the offense of:
4 (A) murder (IC 35-42-1-1);
5 (B) causing suicide (IC 35-42-1-2);
6 (C) voluntary manslaughter (IC 35-42-1-3);
7 (D) involuntary manslaughter (IC 35-42-1-4);
8 (E) rape (IC 35-42-4-1);
9 (F) criminal deviate conduct (IC 35-42-4-2) (repealed);
10 (G) child molesting (IC 35-42-4-3);
11 (H) child exploitation (IC 35-42-4-4);
12 (I) sexual misconduct with a minor (IC 35-42-4-9); ~~or~~
13 **(J) indiscretion (IC 35-42-4-9.5); or**
14 ~~(K)~~ **(K)** incest (IC 35-46-1-3); and
15 (2) the victim of the offense:
16 (A) was less than:
17 (i) sixteen (16) years of age at the time of the offense **for an**
18 **offense described in subdivision (1)(A) through (1)(I) or**
19 **subdivision (1)(K); and or**
20 **(ii) eighteen (18) years of age at the time of the offense**
21 **for an offense described in subdivision (1)(J); and**
22 (B) is:
23 (i) the individual's biological or adoptive child; or
24 (ii) the child of a spouse of the individual who has
25 committed the offense;

26 the attorney for the department, the child's guardian ad litem, or the
27 court appointed special advocate may file a petition with the juvenile
28 or probate court to terminate the parent-child relationship of the
29 individual who has committed the offense with the victim of the
30 offense, the victim's siblings, or any biological or adoptive child of that
31 individual.

32 SECTION 9. IC 35-38-2-2.4, AS AMENDED BY P.L.1-2010,
33 SECTION 142, IS AMENDED TO READ AS FOLLOWS
34 [EFFECTIVE JULY 1, 2019]: Sec. 2.4. As a condition of probation, the
35 court may require a sex offender (as defined in IC 11-8-8-4.5) to:

- 36 (1) participate in a treatment program for sex offenders approved
37 by the court; and
38 (2) avoid contact with any person who is less than ~~sixteen (16)~~
39 **eighteen (18)** years of age unless the probationer:
40 (A) receives the court's approval; or
41 (B) successfully completes the treatment program referred to
42 in subdivision (1).



1 SECTION 10. IC 35-38-2-2.5, AS AMENDED BY P.L.13-2016,
 2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2019]: Sec. 2.5. (a) As used in this section, "offender" means
 4 an individual convicted of a sex offense.

5 (b) As used in this section, "sex offense" means any of the
 6 following:

- 7 (1) Rape (IC 35-42-4-1).
- 8 (2) Criminal deviate conduct (IC 35-42-4-2) (repealed).
- 9 (3) Child molesting (IC 35-42-4-3).
- 10 (4) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).
- 11 (5) Vicarious sexual gratification (IC 35-42-4-5).
- 12 (6) Child solicitation (IC 35-42-4-6).
- 13 (7) Child seduction (IC 35-42-4-7).
- 14 (8) Sexual battery (IC 35-42-4-8).
- 15 (9) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
- 16 **(10) Indiscretion (IC 35-42-4-9.5).**
- 17 ~~(11)~~ **(11) Incest (IC 35-46-1-3).**

18 (c) A condition of remaining on probation or parole after conviction
 19 for a sex offense is that the offender not reside within one (1) mile of
 20 the residence of the victim of the offender's sex offense.

21 (d) An offender:

- 22 (1) who will be placed on probation shall provide the sentencing
 23 court and the probation department with the address where the
 24 offender intends to reside during the period of probation:
 - 25 (A) at the time of sentencing if the offender will be placed on
 26 probation without first being incarcerated; or
 - 27 (B) before the offender's release from incarceration if the
 28 offender will be placed on probation after completing a term
 29 of incarceration; or
- 30 (2) who will be placed on parole shall provide the parole board
 31 with the address where the offender intends to reside during the
 32 period of parole.

33 (e) An offender, while on probation or parole, may not establish a
 34 new residence within one (1) mile of the residence of the victim of the
 35 offender's sex offense unless the offender first obtains a waiver from
 36 the:

- 37 (1) court, if the offender is placed on probation; or
- 38 (2) parole board, if the offender is placed on parole;

39 for the change of address under subsection (f).

40 (f) The court or parole board may waive the requirement set forth in
 41 subsection (c) only if the court or parole board, at a hearing at which
 42 the offender is present and of which the prosecuting attorney has been



1 notified, determines that:

- 2 (1) the offender has successfully completed a sex offender
 3 treatment program during the period of probation or parole;
 4 (2) the offender is in compliance with all terms of the offender's
 5 probation or parole; and
 6 (3) good cause exists to allow the offender to reside within one (1)
 7 mile of the residence of the victim of the offender's sex offense.

8 However, the court or parole board may not grant a waiver under this
 9 subsection if the offender is a sexually violent predator under
 10 IC 35-38-1-7.5 or if the offender is an offender against children under
 11 IC 35-42-4-11.

12 (g) If the court or parole board grants a waiver under subsection (f),
 13 the court or parole board shall state in writing the reasons for granting
 14 the waiver. The court's written statement of its reasons shall be
 15 incorporated into the record.

16 (h) The address of the victim of the offender's sex offense is
 17 confidential even if the court or parole board grants a waiver under
 18 subsection (f).

19 SECTION 11. IC 35-38-2-2.7, AS ADDED BY P.L.247-2013,
 20 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2019]: Sec. 2.7. As a condition of probation or parole after
 22 conviction for a sex offense (as defined in IC 11-8-8-5.2), the court
 23 shall prohibit the convicted person from using a social networking web
 24 site or an instant messaging or chat room program to communicate,
 25 directly or through an intermediary, with a child less than ~~sixteen (16)~~
 26 **eighteen (18)** years of age. However, the court may permit the offender
 27 to communicate using a social networking web site or an instant
 28 messaging or chat room program with:

- 29 (1) the offender's own child, stepchild, or sibling; or
 30 (2) another relative of the offender specifically named in the
 31 court's order.

32 SECTION 12. IC 35-42-4-9.5 IS ADDED TO THE INDIANA
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9.5. (a) A person at least
 34 **twenty-two (22) years of age who, with a child at least sixteen (16)**
 35 **years of age but less than eighteen (18) years of age, performs or**
 36 **submits to sexual intercourse or other sexual conduct (as defined**
 37 **in IC 35-31.5-2-221.5) commits indiscretion, a Level 5 felony.**

38 (b) A person at least twenty-two (22) years of age who, with a
 39 **child at least sixteen (16) years of age but less than eighteen (18)**
 40 **years of age, performs or submits to any fondling or touching of**
 41 **either the child or the older person, with intent to arouse or to**
 42



1 satisfy the sexual desires of either the child or the older person,
2 commits indiscretion, a Level 6 felony.

3 (c) It is a defense that the accused person reasonably believed
4 that the child was at least eighteen (18) years of age at the time of
5 the conduct.

6 (d) It is a defense that the child is or has ever been married.

7 SECTION 13. IC 35-42-4-12, AS AMENDED BY P.L.168-2014,
8 SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2019]: Sec. 12. (a) This section applies only to a sex offender
10 (as defined in IC 11-8-8-4.5).

11 (b) A sex offender who knowingly or intentionally violates a:

12 (1) condition of probation;

13 (2) condition of parole; or

14 (3) rule of a community transition program;

15 that prohibits the offender from using a social networking web site or
16 an instant messaging or chat room program to communicate, directly
17 or through an intermediary, with a child less than ~~sixteen (16)~~ **eighteen**
18 **(18)** years of age commits a sex offender Internet offense, a Class A
19 misdemeanor. However, the offense is a Level 6 felony if the person
20 has a prior unrelated conviction under this section.

21 (c) It is a defense to a prosecution under subsection (b) that the
22 person reasonably believed that the child was at least ~~sixteen (16)~~
23 **eighteen (18)** years of age.

24 SECTION 14. IC 35-44.1-3-9, AS AMENDED BY P.L.95-2017,
25 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2019]: Sec. 9. (a) A person who is being supervised on
27 lifetime parole (as described in IC 35-50-6-1) and who knowingly or
28 intentionally violates a condition of lifetime parole that involves direct
29 or indirect contact with a child less than ~~sixteen (16)~~ **eighteen (18)**
30 years of age or with the victim of a crime that was committed by the
31 person commits criminal parole violation by a sexual predator, a Level
32 6 felony.

33 (b) The offense described in subsection (a) is a Level 5 felony if the
34 person has a prior unrelated conviction under this section.

35 SECTION 15. IC 35-50-2-14, AS AMENDED BY P.L.125-2009,
36 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2019]: Sec. 14. (a) As used in this section, "sex offense"
38 means a felony conviction:

39 (1) under IC 35-42-4-1 through ~~IC 35-42-4-9~~ **IC 35-42-4-9.5** or
40 under IC 35-46-1-3;

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



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

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

9 (c) After a person has been convicted and sentenced for a felony
10 described in subsection (a)(1) or (a)(2) after having been sentenced for
11 a prior unrelated sex offense described in subsection (a), the person has
12 accumulated one (1) prior unrelated felony sex offense conviction.
13 However, a conviction does not count for purposes of this subsection,
14 if:

15 (1) it has been set aside; or

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

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

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

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

