



January 14, 2016

SENATE BILL No. 198

DIGEST OF SB 198 (Updated January 12, 2016 1:23 pm - DI 106)

Citations Affected: IC 5-2; IC 8-1; IC 11-12; IC 12-7; IC 12-10; IC 16-41; IC 20-19; IC 20-26; IC 20-33; IC 31-19; IC 31-34; IC 31-37; IC 33-37; IC 35-36; IC 35-37; IC 35-38; IC 35-42; IC 35-45; IC 35-46; IC 35-47; IC 35-50.

Synopsis: Domestic battery. Removes the sentencing enhancement for battery committed against a family or household member in the presence of a child from the battery statute and places it in the domestic battery statute. Specifies that numerous provisions in the battery statute constitute domestic battery if they are committed against a family or household member. Makes conforming amendments.

Effective: July 1, 2016.

Crider, Young R Michael, Zakas

January 6, 2016, read first time and referred to Committee on Corrections & Criminal Law.
January 13, 2016, amended, reported favorably — Do Pass.

SB 198—LS 6615/DI 106



January 14, 2016

Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

SENATE BILL No. 198

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 5-2-6.1-8, AS AMENDED BY P.L.238-2015,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 8. As used in this chapter, "violent crime" means
4 the following:
5 (1) A crime under the Indiana Code that is a felony of any kind or
6 a Class A misdemeanor that results in bodily injury or death to the
7 victim but does not include any of the following:
8 (A) A crime under IC 9-30-5 resulting from the operation of a
9 vehicle other than a motor vehicle.
10 (B) Involuntary manslaughter resulting from the operation of
11 a motor vehicle by a person who was not intoxicated
12 (IC 35-42-1-4).
13 (C) Reckless homicide resulting from the operation of a motor
14 vehicle by a person who was not intoxicated (IC 35-42-1-5).
15 (D) Criminal recklessness involving the use of a motor
16 vehicle, unless the offense was intentional or the person using
17 the motor vehicle was intoxicated (IC 35-42-2-2).

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- 1 (E) A crime involving the operation of a motor vehicle if the
 2 driver of the motor vehicle was not charged with an offense
 3 under IC 9-30-5.
- 4 (F) **A battery offense included in IC 35-42-2** upon a child less
 5 than fourteen (14) years of age. (~~IC 35-42-2-1~~);
- 6 (G) Child molesting (IC 35-42-4-3).
- 7 (H) Child seduction (IC 35-42-4-7).
- 8 (2) A crime in another jurisdiction in which the elements of the
 9 crime are substantially similar to the elements of a crime that, if
 10 the crime results in death or bodily injury to the victim, would be
 11 a felony or a Class A misdemeanor if committed in Indiana.
 12 However, the term does not include any of the following:
- 13 (A) A crime in another jurisdiction resulting from operating a
 14 vehicle, other than a motor vehicle, while intoxicated.
- 15 (B) A crime in another jurisdiction with elements substantially
 16 similar to involuntary manslaughter resulting from the
 17 operation of a motor vehicle if the crime was committed by a
 18 person who was not intoxicated.
- 19 (C) A crime in another jurisdiction with elements substantially
 20 similar to reckless homicide resulting from the operation of a
 21 motor vehicle if the crime was committed by a person who was
 22 not intoxicated.
- 23 (D) A crime in another jurisdiction with elements substantially
 24 similar to criminal recklessness involving the use of a motor
 25 vehicle unless the offense was intentional or the person using
 26 the motor vehicle was intoxicated.
- 27 (E) A crime involving the operation of a motor vehicle if the
 28 driver of the motor vehicle was not charged with an offense
 29 under IC 9-30-5.
- 30 (3) A terrorist act.
- 31 SECTION 2. IC 5-2-6.1-16, AS AMENDED BY P.L.238-2015,
 32 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2016]: Sec. 16. (a) A person eligible for assistance under
 34 section 12 of this chapter may file an application for assistance with the
 35 division if the violent crime was committed in Indiana.
- 36 (b) Except as provided in subsection (e), the application must be
 37 received by the division not more than one hundred eighty (180) days
 38 after the date the crime was committed. The division may grant an
 39 extension of time for good cause shown by the claimant. However, and
 40 except as provided in subsection (e), the division may not accept an
 41 application that is received more than two (2) years after the date the
 42 crime was committed.



1 (c) The application must be filed in the office of the division in
 2 person, through the division's web site, or by first class or certified
 3 mail. If requested, the division shall assist a victim in preparing the
 4 application.

5 (d) The division shall accept all applications filed in compliance
 6 with this chapter. Upon receipt of a complete application, the division
 7 shall promptly begin the investigation and processing of an application.

8 (e) An alleged victim of a child sex crime may submit an application
 9 to the division until the victim becomes thirty-one (31) years of age.

10 (f) An alleged victim of a battery **offense included in IC 35-42-2**
 11 upon a child less than fourteen (14) years of age ~~under IC 35-42-2-1~~
 12 may submit an application to the division not later than five (5) years
 13 after the commission of the offense.

14 SECTION 3. IC 8-1-34-30, AS ADDED BY P.L.241-2013,
 15 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2016]: Sec. 30. (a) As used in this section, "designated
 17 employee" means a holder's:

- 18 (1) employee; or
 19 (2) authorized agent;

20 whom the holder designates or will designate to receive direct
 21 marketing authority.

22 (b) As used in this section, "direct marketing authority" means the
 23 authority granted by the commission to a holder to market any service
 24 or product offered by the holder directly to all households in a service
 25 area served by the holder.

26 (c) As used in this section, "political subdivision" has the meaning
 27 set forth in IC 36-1-2-13.

28 (d) A holder may apply to the commission, in the manner and form
 29 prescribed by the commission, for direct marketing authority. An
 30 application must include the following information with respect to each
 31 designated employee of the holder:

- 32 (1) Name.
 33 (2) Home address.
 34 (3) Driver's license number.
 35 (4) A certification described in subsection (e)(1).

36 (e) In an application under subsection (d), a holder shall include the
 37 following:

- 38 (1) A certification by the holder that each designated employee
 39 satisfies the following requirements:
 40 (A) The employee is at least eighteen (18) years of age.
 41 (B) The employee has a high school diploma or the equivalent
 42 of a high school diploma.



- 1 (C) The employee has not been convicted of a felony within
 2 the seven (7) years immediately preceding the date of the
 3 application.
- 4 (D) Within the seven (7) years immediately preceding the date
 5 of the application, the employee has not been released from
 6 incarceration after serving time for a felony conviction.
- 7 (E) The employee has not been convicted of:
 8 (i) a misdemeanor involving fraud, deceit, or dishonesty;
 9 (ii) **a battery offense included in IC 35-42-2** as a
 10 misdemeanor; or
 11 (iii) two (2) or more misdemeanors involving the illegal use
 12 of alcohol or the illegal sale, use, or possession of a
 13 controlled substance;
 14 within the five (5) years immediately preceding the date of the
 15 application.
- 16 (F) The employee has a valid driver's license.
- 17 (2) Proof of financial responsibility.
- 18 (f) A holder may comply with subsection (e)(1) by submitting to the
 19 commission a document signed by the holder in which the holder:
 20 (1) identifies each designated employee by name, home address,
 21 and driver's license number;
 22 (2) certifies that each designated employee has been the subject
 23 of a criminal history background check for each jurisdiction in the
 24 United States in which the designated employee has lived or
 25 worked within the seven (7) years immediately preceding the date
 26 of the application; and
 27 (3) affirms that the background check described in subdivision (2)
 28 for each designated employee indicates that the designated
 29 employee satisfies the requirements set forth in subsection (e)(1),
 30 as applicable.
- 31 (g) Not more than fifteen (15) days after the commission receives an
 32 application under subsection (d), the commission shall determine
 33 whether the application is complete and properly verified. If the
 34 commission determines that the application is incomplete or not
 35 properly verified, the commission shall notify the applicant holder of
 36 the deficiency and allow the holder to resubmit the application after
 37 correcting the deficiency. If the commission determines that the
 38 application is complete and properly verified, the commission shall
 39 issue an order granting the holder direct marketing authority. The order
 40 must contain the following:
 41 (1) The name of the holder.
 42 (2) The names of designated employees of the holder.



- 1 (3) A grant of direct marketing authority to the holder and
 2 designated employees of the holder.
 3 (4) The date on which the order takes effect.
 4 The commission shall provide public notice of an order granting direct
 5 marketing authority under this subsection by posting the order on the
 6 commission's Internet web site.
 7 (h) A holder that has direct marketing authority shall notify the
 8 commission in a timely manner of any changes to the holder's list of
 9 designated employees. A designated employee may exercise direct
 10 marketing authority immediately upon the holder's submission to the
 11 commission of all information required under subsection (e)(1) with
 12 respect to the designated employee.
 13 (i) Only the commission is authorized to grant direct marketing
 14 authority to a holder under this section. However, subject to subsection
 15 (j), with respect to direct marketing activities in a holder's service area
 16 within a political subdivision, this section does not prohibit a holder
 17 from electing to:
 18 (1) apply for marketing or solicitation authority directly from the
 19 political subdivision; and
 20 (2) exercise any marketing or solicitation authority under a
 21 license, permit, or other authority granted by the political
 22 subdivision before, on, or after June 30, 2013;
 23 instead of applying for and exercising direct marketing authority
 24 granted by the commission under this section.
 25 (j) A political subdivision may not do any of the following:
 26 (1) Require a holder that is granted direct marketing authority
 27 from the commission under this section to also obtain marketing
 28 or solicitation authority from the political subdivision in order to
 29 engage in direct marketing in the holder's service area within the
 30 political subdivision.
 31 (2) Impose any licensing requirement or fee on a holder in
 32 connection with any direct marketing authority granted to the
 33 holder by the commission under this section with respect to the
 34 holder's service area within the political subdivision.
 35 (3) Except as provided in subsection (k), otherwise regulate a
 36 holder that is granted direct marketing authority from the
 37 commission under this section and that engages in direct
 38 marketing in the holder's service area within the political
 39 subdivision.
 40 (k) A political subdivision may enforce any ordinance or regulation
 41 that:
 42 (1) imposes restrictions as to the hours or manner in which direct



- 1 marketing activities may be performed in the political
 2 subdivision; and
 3 (2) applies uniformly to all persons engaging in direct marketing
 4 or other soliciting in the political subdivision, regardless of:
 5 (A) the product or service being marketed; or
 6 (B) the type of business engaged in by the person engaging in
 7 the direct marketing or other soliciting.
- 8 SECTION 4. IC 11-12-3.7-6, AS AMENDED BY P.L.158-2013,
 9 SECTION 178, IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2016]: Sec. 6. As used in this chapter, "violent
 11 offense" means one (1) or more of the following offenses:
 12 (1) Murder (IC 35-42-1-1).
 13 (2) Attempted murder (IC 35-41-5-1).
 14 (3) Voluntary manslaughter (IC 35-42-1-3).
 15 (4) Involuntary manslaughter (IC 35-42-1-4).
 16 (5) Reckless homicide (IC 35-42-1-5).
 17 (6) Aggravated battery (IC 35-42-2-1.5).
 18 (7) Battery (IC 35-42-2-1) as a:
 19 (A) Class A felony, Class B felony, or Class C felony (for a
 20 crime committed before July 1, 2014); or
 21 (B) Level 2 felony, Level 3 felony, or Level 5 felony (for a
 22 crime committed after June 30, 2014).
 23 (8) Kidnapping (IC 35-42-3-2).
 24 (9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8 that
 25 is a:
 26 (A) Class A felony, Class B felony, or Class C felony (for a
 27 crime committed before July 1, 2014); or
 28 (B) Level 1 felony, Level 2 felony, Level 3 felony, Level 4
 29 felony, or Level 5 felony (for a crime committed after June 30,
 30 2014).
 31 (10) Sexual misconduct with a minor (IC 35-42-4-9) as a:
 32 (A) Class A felony or Class B felony (for a crime committed
 33 before July 1, 2014); or
 34 (B) Level 1 felony, Level 2 felony, or Level 4 felony (for a
 35 crime committed after June 30, 2014).
 36 (11) Incest (IC 35-46-1-3).
 37 (12) Robbery (IC 35-42-5-1) as a:
 38 (A) Class A felony or a Class B felony (for a crime committed
 39 before July 1, 2014); or
 40 (B) Level 2 felony or Level 3 felony (for a crime committed
 41 after June 30, 2014).
 42 (13) Burglary (IC 35-43-2-1) as a:



- 1 (A) Class A felony or a Class B felony (for a crime committed
2 before July 1, 2014); or
3 (B) Level 1 felony, Level 2 felony, Level 3 felony, or Level 4
4 felony (for a crime committed after June 30, 2014).
5 (14) Carjacking (IC 35-42-5-2) (repealed).
6 (15) Assisting a criminal (IC 35-44.1-2-5) as a:
7 (A) Class C felony (for a crime committed before July 1,
8 2014); or
9 (B) Level 5 felony (for a crime committed after June 30,
10 2014).
11 (16) Escape (IC 35-44.1-3-4) as a:
12 (A) Class B felony or Class C felony (for a crime committed
13 before July 1, 2014); or
14 (B) Level 4 felony or Level 5 felony (for a crime committed
15 after June 30, 2014).
16 (17) Trafficking with an inmate (IC 35-44.1-3-5) as a:
17 (A) Class C felony (for a crime committed before July 1,
18 2014); or
19 (B) Level 5 felony (for a crime committed after June 30,
20 2014).
21 (18) Causing death when operating a vehicle (IC 9-30-5-5).
22 (19) Criminal confinement (IC 35-42-3-3) as a:
23 (A) Class B felony (for a crime committed before July 1,
24 2014); or
25 (B) Level 3 felony (for a crime committed after June 30,
26 2014).
27 (20) Arson (IC 35-43-1-1) as a:
28 (A) Class A or Class B felony (for a crime committed before
29 July 1, 2014); or
30 (B) Level 2, Level 3, or Level 4 felony (for a crime committed
31 after June 30, 2014).
32 (21) Possession, use, or manufacture of a weapon of mass
33 destruction (IC 35-47-12-1).
34 (22) Terroristic mischief (IC 35-47-12-3) as a:
35 (A) Class B felony (for a crime committed before July 1,
36 2014); or
37 (B) Level 4 felony (for a crime committed after June 30,
38 2014).
39 (23) Hijacking or disrupting an aircraft (IC 35-47-6-1.6).
40 (24) A violation of IC 35-47.5 (controlled explosives) as a:
41 (A) Class A or Class B felony (for a crime committed before
42 July 1, 2014); or



- 1 (B) Level 2 or Level 4 felony (for a crime committed after
2 June 30, 2014).
- 3 **(25) Domestic battery (IC 35-42-2-1.3) as a Level 2 felony,**
4 **Level 3 felony, or Level 5 felony.**
- 5 ~~(25)~~ **(26)** A crime under the laws of another jurisdiction,
6 including a military court, that is substantially similar to any of
7 the offenses listed in this subdivision.
- 8 ~~(26)~~ **(27)** Any other crimes evidencing a propensity or history of
9 violence.
- 10 SECTION 5. IC 12-7-2-20.8 IS ADDED TO THE INDIANA CODE
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 2016]: **Sec. 20.8. "Battery", for purposes of IC 12-10-3, includes**
13 **battery (IC 35-42-2-1), domestic battery (IC 35-42-2-1.3), and**
14 **aggravated battery (IC 35-42-2-1.5).**
- 15 SECTION 6. IC 12-10-3-2, AS AMENDED BY P.L.117-2015,
16 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2016]: Sec. 2. (a) Except as provided in subsection (b), as
18 used in this chapter, "endangered adult" means an individual who is:
19 (1) at least eighteen (18) years of age;
20 (2) incapable by reason of mental illness, intellectual disability,
21 dementia, habitual drunkenness, excessive use of drugs, or other
22 physical or mental incapacity of managing or directing the
23 management of the individual's property or providing or directing
24 the provision of self-care; and
25 (3) harmed or threatened with harm as a result of:
26 (A) neglect;
27 (B) **a battery offense included in IC 35-42-2;** or
28 (C) exploitation of the individual's personal services or
29 property.
- 30 (b) For purposes of IC 12-10-3-17, IC 35-42-2-1, **IC 35-42-2-1.3,**
31 **and IC 35-46-1-13, "endangered adult" means an individual who is:**
32 (1) at least eighteen (18) years of age;
33 (2) incapable by reason of mental illness, intellectual disability,
34 dementia, or other physical or mental incapacity of managing or
35 directing the management of the individual's property or
36 providing or directing the provision of self-care; and
37 (3) harmed or threatened with harm as a result of:
38 (A) neglect; or
39 (B) battery.
- 40 (c) An individual is not an endangered adult solely:
41 (1) for the reason that the individual is being provided spiritual
42 treatment in accordance with a recognized religious method of



1 healing instead of specified medical treatment if the individual
 2 would not be considered to be an endangered adult if the
 3 individual were receiving the medical treatment; or

4 (2) on the basis of being physically unable to provide self care
 5 when appropriate care is being provided.

6 SECTION 7. IC 16-41-8-1, AS AMENDED BY THE TECHNICAL
 7 CORRECTIONS BILL OF THE 2016 GENERAL ASSEMBLY, IS
 8 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:
 9 Sec. 1. (a) As used in this chapter, "potentially disease transmitting
 10 offense" means any of the following:

11 (1) Battery ~~(IC 35-42-2-1(b)(2))~~. **(IC 35-42-2-1) or domestic**
 12 **battery (IC 35-42-2-1.3) involving placing a bodily fluid or**
 13 **waste on another person.**

14 (2) An offense relating to a criminal sexual act (as defined in
 15 IC 35-31.5-2-216), if sexual intercourse or other sexual conduct
 16 (as defined in IC 35-31.5-2-221.5) occurred.

17 The term includes an attempt to commit an offense, if sexual
 18 intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5)
 19 occurred, and a delinquent act that would be a crime if committed by
 20 an adult.

21 (b) Except as provided in this chapter, a person may not disclose or
 22 be compelled to disclose medical or epidemiological information
 23 involving a communicable disease or other disease that is a danger to
 24 health (as defined under rules adopted under IC 16-41-2-1). This
 25 information may not be released or made public upon subpoena or
 26 otherwise, except under the following circumstances:

27 (1) Release may be made of medical or epidemiologic information
 28 for statistical purposes if done in a manner that does not identify
 29 an individual.

30 (2) Release may be made of medical or epidemiologic information
 31 with the written consent of all individuals identified in the
 32 information released.

33 (3) Release may be made of medical or epidemiologic information
 34 to the extent necessary to enforce public health laws, laws
 35 described in IC 31-37-19-4 through IC 31-37-19-6, IC 31-37-19-9
 36 through IC 31-37-19-10, IC 31-37-19-12 through IC 31-37-19-23,
 37 IC 35-38-1-7.1, and IC 35-45-21-1 or to protect the health or life
 38 of a named party.

39 (4) Release may be made of the medical information of a person
 40 in accordance with this chapter.

41 (c) Except as provided in this chapter, a person responsible for
 42 recording, reporting, or maintaining information required to be reported



1 under IC 16-41-2 who recklessly, knowingly, or intentionally discloses
 2 or fails to protect medical or epidemiologic information classified as
 3 confidential under this section commits a Class A misdemeanor.

4 (d) In addition to subsection (c), a public employee who violates this
 5 section is subject to discharge or other disciplinary action under the
 6 personnel rules of the agency that employs the employee.

7 (e) Release shall be made of the medical records concerning an
 8 individual to:

9 (1) the individual;

10 (2) a person authorized in writing by the individual to receive the
 11 medical records; or

12 (3) a coroner under IC 36-2-14-21.

13 (f) An individual may voluntarily disclose information about the
 14 individual's communicable disease.

15 (g) The provisions of this section regarding confidentiality apply to
 16 information obtained under IC 16-41-1 through IC 16-41-16.

17 SECTION 8. IC 16-41-8-5, AS AMENDED BY THE TECHNICAL
 18 CORRECTIONS BILL OF THE 2016 GENERAL ASSEMBLY, IS
 19 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

20 Sec. 5. (a) This section does not apply to medical testing of an
 21 individual for whom an indictment or information is filed for a sex
 22 crime and for whom a request to have the individual tested under
 23 section 6 of this chapter is filed.

24 (b) The following definitions apply throughout this section:

25 (1) "Bodily fluid" means blood, human waste, or any other bodily
 26 fluid.

27 (2) "Dangerous disease" means any of the following:

28 (A) Chancroid.

29 (B) Chlamydia.

30 (C) Gonorrhea.

31 (D) Hepatitis.

32 (E) Human immunodeficiency virus (HIV).

33 (F) Lymphogranuloma venereum.

34 (G) Syphilis.

35 (H) Tuberculosis.

36 (3) "Offense involving the transmission of a bodily fluid" means
 37 any offense (including a delinquent act that would be a crime if
 38 committed by an adult) in which a bodily fluid is transmitted from
 39 the defendant to the victim in connection with the commission of
 40 the offense.

41 (c) This subsection applies only to a defendant who has been
 42 charged with a potentially disease transmitting offense. At the request



1 of an alleged victim of the offense, the parent, guardian, or custodian
 2 of an alleged victim who is less than eighteen (18) years of age, or the
 3 parent, guardian, or custodian of an alleged victim who is an
 4 endangered adult (as defined in IC 12-10-3-2), the prosecuting attorney
 5 shall petition a court to order a defendant charged with the commission
 6 of a potentially disease transmitting offense to submit to a screening
 7 test to determine whether the defendant is infected with a dangerous
 8 disease. In the petition, the prosecuting attorney must set forth
 9 information demonstrating that the defendant has committed a
 10 potentially disease transmitting offense. The court shall set the matter
 11 for hearing not later than forty-eight (48) hours after the prosecuting
 12 attorney files a petition under this subsection. The alleged victim, the
 13 parent, guardian, or custodian of an alleged victim who is less than
 14 eighteen (18) years of age, and the parent, guardian, or custodian of an
 15 alleged victim who is an endangered adult (as defined in IC 12-10-3-2)
 16 are entitled to receive notice of the hearing and are entitled to attend
 17 the hearing. The defendant and the defendant's counsel are entitled to
 18 receive notice of the hearing and are entitled to attend the hearing. If,
 19 following the hearing, the court finds probable cause to believe that the
 20 defendant has committed a potentially disease transmitting offense, the
 21 court may order the defendant to submit to a screening test for one (1)
 22 or more dangerous diseases. If the defendant is charged with battery
 23 (~~IC 35-42-2-1(b)(2)~~); **(IC 35-42-2-1) or domestic battery**
 24 **(IC 35-42-2-1.3) involving placing a bodily fluid or waste on**
 25 **another person**, the court may limit testing under this subsection to a
 26 test only for human immunodeficiency virus (HIV). However, the court
 27 may order additional testing for human immunodeficiency virus (HIV)
 28 as may be medically appropriate. The court shall take actions to ensure
 29 the confidentiality of evidence introduced at the hearing.

30 (d) This subsection applies only to a defendant who has been
 31 charged with an offense involving the transmission of a bodily fluid. At
 32 the request of an alleged victim of the offense, the parent, guardian, or
 33 custodian of an alleged victim who is less than eighteen (18) years of
 34 age, or the parent, guardian, or custodian of an alleged victim who is
 35 an endangered adult (as defined in IC 12-10-3-2), the prosecuting
 36 attorney shall petition a court to order a defendant charged with the
 37 commission of an offense involving the transmission of a bodily fluid
 38 to submit to a screening test to determine whether the defendant is
 39 infected with a dangerous disease. In the petition, the prosecuting
 40 attorney must set forth information demonstrating that:

- 41 (1) the defendant has committed an offense; and
- 42 (2) a bodily fluid was transmitted from the defendant to the victim



1 in connection with the commission of the offense.

2 The court shall set the matter for hearing not later than forty-eight (48)
 3 hours after the prosecuting attorney files a petition under this
 4 subsection. The alleged victim of the offense, the parent, guardian, or
 5 custodian of an alleged victim who is less than eighteen (18) years of
 6 age, and the parent, guardian, or custodian of an alleged victim who is
 7 an endangered adult (as defined in IC 12-10-3-2) are entitled to receive
 8 notice of the hearing and are entitled to attend the hearing. The
 9 defendant and the defendant's counsel are entitled to receive notice of
 10 the hearing and are entitled to attend the hearing. If, following the
 11 hearing, the court finds probable cause to believe that the defendant has
 12 committed an offense and that a bodily fluid was transmitted from the
 13 defendant to the alleged victim in connection with the commission of
 14 the offense, the court may order the defendant to submit to a screening
 15 test for one (1) or more dangerous diseases. If the defendant is charged
 16 with battery (~~IC 35-42-2-1(b)(2)~~); **(IC 35-42-2-1) or domestic battery**
 17 **(IC 35-42-2-1.3) involving placing bodily fluid or waste on another**
 18 **person**, the court may limit testing under this subsection to a test only
 19 for human immunodeficiency virus (HIV). However, the court may
 20 order additional testing for human immunodeficiency virus (HIV) as
 21 may be medically appropriate. The court shall take actions to ensure
 22 the confidentiality of evidence introduced at the hearing.

23 (e) The testimonial privileges applying to communication between
 24 a husband and wife and between a health care provider and the health
 25 care provider's patient are not sufficient grounds for not testifying or
 26 providing other information at a hearing conducted in accordance with
 27 this section.

28 (f) A health care provider (as defined in IC 16-18-2-163) who
 29 discloses information that must be disclosed to comply with this
 30 section is immune from civil and criminal liability under Indiana
 31 statutes that protect patient privacy and confidentiality.

32 (g) The results of a screening test conducted under this section shall
 33 be kept confidential if the defendant ordered to submit to the screening
 34 test under this section has not been convicted of the potentially disease
 35 transmitting offense or offense involving the transmission of a bodily
 36 fluid with which the defendant is charged. The results may not be made
 37 available to any person or public or private agency other than the
 38 following:

- 39 (1) The defendant and the defendant's counsel.
- 40 (2) The prosecuting attorney.
- 41 (3) The department of correction or the penal facility, juvenile
- 42 detention facility, or secure private facility where the defendant



- 1 is housed.
- 2 (4) The alleged victim or the parent, guardian, or custodian of an
3 alleged victim who is less than eighteen (18) years of age, or the
4 parent, guardian, or custodian of an alleged victim who is an
5 endangered adult (as defined in IC 12-10-3-2), and the alleged
6 victim's counsel.
- 7 The results of a screening test conducted under this section may not be
8 admitted against a defendant in a criminal proceeding or against a child
9 in a juvenile delinquency proceeding.
- 10 (h) As soon as practicable after a screening test ordered under this
11 section has been conducted, the alleged victim or the parent, guardian,
12 or custodian of an alleged victim who is less than eighteen (18) years
13 of age, or the parent, guardian, or custodian of an alleged victim who
14 is an endangered adult (as defined in IC 12-10-3-2), and the victim's
15 counsel shall be notified of the results of the test.
- 16 (i) An alleged victim may disclose the results of a screening test to
17 which a defendant is ordered to submit under this section to an
18 individual or organization to protect the health and safety of or to seek
19 compensation for:
- 20 (1) the alleged victim;
21 (2) the alleged victim's sexual partner; or
22 (3) the alleged victim's family.
- 23 (j) The court shall order a petition filed and any order entered under
24 this section sealed.
- 25 (k) A person that knowingly or intentionally:
26 (1) receives notification or disclosure of the results of a screening
27 test under this section; and
28 (2) discloses the results of the screening test in violation of this
29 section;
30 commits a Class B misdemeanor.
- 31 SECTION 9. IC 20-19-3-4, AS AMENDED BY P.L.213-2015,
32 SECTION 152, IS AMENDED TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) The department shall:
- 34 (1) perform the duties required by statute;
35 (2) implement the policies and procedures established by the state
36 board;
37 (3) conduct analytical research to assist the state board in
38 determining the state's educational policy;
39 (4) compile statistics concerning the ethnicity, gender, and
40 disability status of students in Indiana schools, including statistics
41 for all information that the department receives from school
42 corporations on enrollment, number of suspensions, and number



- 1 of expulsions; and
 2 (5) provide technical assistance to school corporations.
 3 (b) In compiling statistics by gender, ethnicity, and disability status
 4 under subsection (a)(4), the department shall also categorize
 5 suspensions and expulsions by cause as follows:
 6 (1) Alcohol.
 7 (2) Drugs.
 8 (3) Deadly weapons (other than firearms).
 9 (4) Handguns.
 10 (5) Rifles or shotguns.
 11 (6) Other firearms.
 12 (7) Tobacco.
 13 (8) Attendance.
 14 (9) Destruction of property.
 15 (10) Legal settlement (under IC 20-33-8-17).
 16 (11) Fighting (incident does not rise to the level of battery).
 17 (12) **A battery offense included in IC 35-42-2.** (~~IC 35-42-2-1~~).
 18 (13) Intimidation (IC 35-45-2-1).
 19 (14) Verbal aggression or profanity.
 20 (15) Defiance.
 21 (16) Other.
 22 (c) The department shall provide the state board any data, including
 23 fiscal data, as determined by the state board, in a reasonable time frame
 24 established by the state board after consultation with the department,
 25 necessary to conduct an audit or evaluation of any federal or state
 26 supported program principally engaged in the provision of education,
 27 including, but not limited to:
 28 (1) early childhood education;
 29 (2) elementary and secondary education;
 30 (3) postsecondary education;
 31 (4) special education;
 32 (5) job training;
 33 (6) career and technical education; and
 34 (7) adult education;
 35 or for the enforcement of or compliance with federal legal requirements
 36 related to those education programs as determined by the state board.
 37 The state board and the department are considered state educational
 38 authorities within the meaning of the federal Family Educational Rights
 39 and Privacy Act (20 U.S.C. 1232g and 34 CFR Part 99) for the purpose
 40 of allowing the free exchange of information between the department
 41 and the state board.
 42 (d) The department shall develop guidelines necessary to implement



- 1 this section.
- 2 SECTION 10. IC 20-26-5-11, AS AMENDED BY P.L.233-2015,
 3 SECTION 100, IS AMENDED TO READ AS FOLLOWS
 4 [EFFECTIVE JULY 1, 2016]: Sec. 11. (a) This section applies to:
- 5 (1) a school corporation;
 - 6 (2) a charter school; and
 - 7 (3) an entity:
 - 8 (A) with which the school corporation contracts for services;
 - 9 and
 - 10 (B) that has employees who are likely to have direct, ongoing
 - 11 contact with children within the scope of the employees'
 - 12 employment.
- 13 (b) A school corporation, charter school, or entity may use
 14 information obtained under section 10 of this chapter concerning an
 15 individual's conviction for one (1) of the following offenses as grounds
 16 to not employ or contract with the individual:
- 17 (1) Murder (IC 35-42-1-1).
 - 18 (2) Causing suicide (IC 35-42-1-2).
 - 19 (3) Assisting suicide (IC 35-42-1-2.5).
 - 20 (4) Voluntary manslaughter (IC 35-42-1-3).
 - 21 (5) Reckless homicide (IC 35-42-1-5).
 - 22 (6) Battery (IC 35-42-2-1) unless ten (10) years have elapsed from
 - 23 the date the individual was discharged from probation,
 - 24 imprisonment, or parole, whichever is later.
 - 25 (7) Aggravated battery (IC 35-42-2-1.5).
 - 26 (8) Kidnapping (IC 35-42-3-2).
 - 27 (9) Criminal confinement (IC 35-42-3-3).
 - 28 (10) A sex offense under IC 35-42-4.
 - 29 (11) Carjacking (IC 35-42-5-2) (repealed).
 - 30 (12) Arson (IC 35-43-1-1), unless ten (10) years have elapsed
 - 31 from the date the individual was discharged from probation,
 - 32 imprisonment, or parole, whichever is later.
 - 33 (13) Incest (IC 35-46-1-3).
 - 34 (14) Neglect of a dependent as a Class B felony (for a crime
 - 35 committed before July 1, 2014) or a Level 1 felony or Level 3
 - 36 felony (for a crime committed after June 30, 2014)
 - 37 (IC 35-46-1-4(b)(2)), unless ten (10) years have elapsed from the
 - 38 date the individual was discharged from probation, imprisonment,
 - 39 or parole, whichever is later.
 - 40 (15) Child selling (IC 35-46-1-4(d)).
 - 41 (16) Contributing to the delinquency of a minor (IC 35-46-1-8),
 - 42 unless ten (10) years have elapsed from the date the individual



- 1 was discharged from probation, imprisonment, or parole,
- 2 whichever is later.
- 3 (17) An offense involving a weapon under IC 35-47 or
- 4 IC 35-47.5, unless ten (10) years have elapsed from the date the
- 5 individual was discharged from probation, imprisonment, or
- 6 parole, whichever is later.
- 7 (18) An offense relating to controlled substances under
- 8 IC 35-48-4, unless ten (10) years have elapsed from the date the
- 9 individual was discharged from probation, imprisonment, or
- 10 parole, whichever is later.
- 11 (19) An offense relating to material or a performance that is
- 12 harmful to minors or obscene under IC 35-49-3, unless ten (10)
- 13 years have elapsed from the date the individual was discharged
- 14 from probation, imprisonment, or parole, whichever is later.
- 15 (20) An offense relating to operating a motor vehicle while
- 16 intoxicated under IC 9-30-5, unless five (5) years have elapsed
- 17 from the date the individual was discharged from probation,
- 18 imprisonment, or parole, whichever is later.
- 19 **(21) Domestic battery (IC 35-42-2-1.3), unless ten (10) years**
- 20 **have elapsed from the date the individual was discharged**
- 21 **from probation, imprisonment, or parole, whichever is latest.**
- 22 ~~(21)~~ **(22)** An offense that is substantially equivalent to any of the
- 23 offenses listed in this subsection in which the judgment of
- 24 conviction was entered under the law of any other jurisdiction.
- 25 (c) An individual employed by a school corporation, charter school,
- 26 or an entity described in subsection (a) shall notify the governing body
- 27 of the school corporation, if during the course of the individual's
- 28 employment, the individual is convicted in Indiana or another
- 29 jurisdiction of an offense described in subsection (b).
- 30 SECTION 11. IC 20-33-9-1.3, AS ADDED BY P.L.72-2006,
- 31 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 32 JULY 1, 2016]: Sec. 1.3. As used in this chapter, "battery" refers to:
- 33 (1) battery under IC 35-42-2-1;
- 34 (2) **domestic battery under IC 35-42-2-1.3; and**
- 35 (3) **aggravated battery under IC 35-42-2-1.5.**
- 36 SECTION 12. IC 31-19-9-10, AS AMENDED BY P.L.168-2014,
- 37 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 38 JULY 1, 2016]: Sec. 10. A court shall determine that consent to
- 39 adoption is not required from a parent if:
- 40 (1) the parent is convicted of and incarcerated at the time of the
- 41 filing of a petition for adoption for:
- 42 (A) murder (IC 35-42-1-1);



- 1 (B) causing suicide (IC 35-42-1-2);
 2 (C) voluntary manslaughter (IC 35-42-1-3);
 3 (D) rape (IC 35-42-4-1);
 4 (E) criminal deviate conduct (IC 35-42-4-2) (before its repeal);
 5 (F) child molesting (IC 35-42-4-3) as a:
 6 (i) Class A or Class B felony, for a crime committed before
 7 July 1, 2014; or
 8 (ii) Level 1, Level 2, Level 3, or Level 4 felony, for a crime
 9 committed after June 30, 2014;
 10 (G) incest (IC 35-46-1-3) as a:
 11 (i) Class B felony, for a crime committed before July 1,
 12 2014; or
 13 (ii) Level 4 felony, for a crime committed after June 30,
 14 2014;
 15 (H) neglect of a dependent (IC 35-46-1-4) as a:
 16 (i) Class B felony, for a crime committed before July 1,
 17 2014; or
 18 (ii) Level 1 or Level 3 felony, for a crime committed after
 19 June 30, 2014;
 20 (I) battery (IC 35-42-2-1) of a child as a:
 21 (i) Class C felony, for a crime committed before July 1,
 22 2014; or
 23 (ii) Level 5 felony, for a crime committed after June 30,
 24 2014;
 25 (J) battery (IC 35-42-2-1) as a:
 26 (i) Class A or Class B felony, for a crime committed before
 27 July 1, 2014; or
 28 (ii) Level 2, ~~or~~ Level 3, ~~or~~ Level 4 felony, for a crime
 29 committed after June 30, 2014; ~~or~~
 30 **(K) domestic battery (IC 35-42-2-1.3) as a Level 5, Level 4,**
 31 **Level 3, or Level 2 felony;**
 32 **(L) aggravated battery (IC 35-42-2-1.5) as a Level 3 or**
 33 **Level 1 felony; or**
 34 ~~(K)~~ **(M) an attempt under IC 35-41-5-1 to commit an offense**
 35 **described in clauses (A) through (J); this subdivision;**
 36 (2) the child or the child's sibling, half-blood sibling, or
 37 step-sibling of the parent's current marriage is the victim of the
 38 offense; and
 39 (3) after notice to the parent and a hearing, the court determines
 40 that dispensing with the parent's consent to adoption is in the
 41 child's best interests.
 42 SECTION 13. IC 31-34-4-2, AS AMENDED BY P.L.123-2014,



1 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2016]: Sec. 2. (a) If a child alleged to be a child in need of
3 services is taken into custody under an order of the court under this
4 chapter and the court orders out-of-home placement, the department is
5 responsible for that placement and care and must consider placing the
6 child with a:

7 (1) suitable and willing relative; or

8 (2) de facto custodian;

9 before considering any other out-of-home placement.

10 (b) The department shall consider placing a child described in
11 subsection (a) with a relative related by blood, marriage, or adoption
12 before considering any other placement of the child.

13 (c) Before the department places a child in need of services with a
14 relative or a de facto custodian, the department shall complete an
15 evaluation based on a home visit of the relative's home.

16 (d) Except as provided in subsection (f), before placing a child in
17 need of services in an out-of-home placement, the department shall
18 conduct a criminal history check of each person who is currently
19 residing in the location designated as the out-of-home placement.

20 (e) Except as provided in subsection (g), the department may not
21 make an out-of-home placement if a person described in subsection (d)
22 has:

23 (1) committed an act resulting in a substantiated report of child
24 abuse or neglect; or

25 (2) been convicted of a felony listed in IC 31-27-4-13 or had a
26 juvenile adjudication for an act that would be a felony listed in
27 IC 31-27-4-13 if committed by an adult.

28 (f) The department is not required to conduct a criminal history
29 check under subsection (d) if the department makes an out-of-home
30 placement to an entity or a facility that is not a residence (as defined in
31 IC 3-5-2-42.5) or that is licensed by the state.

32 (g) A court may order or the department may approve an
33 out-of-home placement if:

34 (1) a person described in subsection (d) has:

35 (A) committed an act resulting in a substantiated report of
36 child abuse or neglect;

37 (B) been convicted of:

38 (i) a battery **offense included in IC 35-42-2** (~~IC 35-42-2-1~~)
39 as a felony;

40 (ii) criminal confinement (IC 35-42-3-3) as a felony;

41 (iii) carjacking (IC 35-42-5-2) (repealed) as a felony;

42 (iv) arson (IC 35-43-1-1) as a felony;



- 1 (v) a felony involving a weapon under IC 35-47 or
 2 IC 35-47.5;
 3 (vi) a felony relating to controlled substances under
 4 IC 35-48-4;
 5 (vii) a felony under IC 9-30-5; or
 6 (viii) a felony that is substantially equivalent to a felony
 7 listed in ~~items (i) through (vii)~~ **this clause** for which the
 8 conviction was entered in another ~~state~~; **jurisdiction**;
 9 if the conviction did not occur within the past five (5) years; or
 10 (C) had a juvenile adjudication for an act listed in
 11 IC 31-27-4-13(a) that, if committed by an adult, would be a
 12 felony; and
 13 (2) the person's commission of the offense, delinquent act, or act
 14 of abuse or neglect described in subdivision (1) is not relevant to
 15 the person's present ability to care for a child, and the placement
 16 is in the best interest of the child.

17 However, a court or the department may not make an out-of-home
 18 placement if the person has been convicted of a felony listed in
 19 IC 31-27-4-13 that is not specifically excluded under subdivision
 20 (1)(B).

21 (h) In considering the placement under subsection (g), the court or
 22 the department shall consider the following:

- 23 (1) The length of time since the person committed the offense,
 24 delinquent act, or abuse or neglect.
 25 (2) The severity of the offense, delinquent act, or abuse or neglect.
 26 (3) Evidence of the person's rehabilitation, including the person's
 27 cooperation with a treatment plan, if applicable.

28 SECTION 14. IC 31-34-20-1.5, AS AMENDED BY P.L.158-2013,
 29 SECTION 322, IS AMENDED TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2016]: Sec. 1.5. (a) Except as provided in
 31 subsection (d), the juvenile court may not enter a dispositional decree
 32 approving or ordering placement of a child in another home under
 33 section 1(a)(3) of this chapter or awarding wardship to the department
 34 that will place the child in another home under section 1(a)(4) of this
 35 chapter if a person who is currently residing in the home in which the
 36 child would be placed under section 1(a)(3) or 1(a)(4) of this chapter
 37 has committed an act resulting in a substantiated report of child abuse
 38 or neglect, has a juvenile adjudication for an act that would be a felony
 39 listed in IC 31-27-4-13 if committed by an adult, or has a conviction for
 40 a felony listed in IC 31-27-4-13.

41 (b) The department or caseworker who prepared the predispositional
 42 report shall conduct a criminal history check (as defined in



1 IC 31-9-2-22.5) to determine if a person described in subsection (a) has
 2 committed an act resulting in a substantiated report of child abuse or
 3 neglect, has a juvenile adjudication for an act that would be a felony
 4 listed in IC 31-27-4-13 if committed by an adult, or has a conviction for
 5 a felony listed in IC 31-27-4-13. However, the department or
 6 caseworker is not required to conduct a criminal history check under
 7 this section if criminal history information under IC 31-34-4-2 or
 8 IC 31-34-18-6.1 establishes whether a person described in subsection
 9 (a) has committed an act resulting in a substantiated report of child
 10 abuse or neglect, has a juvenile adjudication for an act that would be
 11 a felony listed in IC 31-27-4-13(a) if committed by an adult, or has a
 12 conviction for a felony listed in IC 31-27-4-13(a).

13 (c) The department or caseworker is not required to conduct a
 14 criminal history check under this section if:

15 (1) the department or caseworker is considering only an
 16 out-of-home placement to an entity or a facility that:

17 (A) is not a residence (as defined in IC 3-5-2-42.5); or

18 (B) is licensed by the state; or

19 (2) placement under this section is undetermined at the time the
 20 predispositional report is prepared.

21 (d) A juvenile court may enter a dispositional decree that approves
 22 placement of a child in another home or award wardship to the
 23 department that will place the child in a home with a person described
 24 in subsection (a) if:

25 (1) the person described in subsection (a) has:

26 (A) committed an act resulting in a substantiated report of
 27 child abuse or neglect;

28 (B) been convicted of:

29 (i) **a battery offense included in IC 35-42-2** (~~IC 35-42-2-1~~)
 30 as a felony;

31 (ii) criminal confinement (IC 35-42-3-3) as a felony;

32 (iii) carjacking (IC 35-42-5-2) (repealed) as a felony;

33 (iv) arson (IC 35-43-1-1) as a felony;

34 (v) a felony involving a weapon under IC 35-47 or
 35 IC 35-47.5;

36 (vi) a felony relating to controlled substances under
 37 IC 35-48-4;

38 (vii) a felony under IC 9-30-5; or

39 (viii) a felony that is substantially equivalent to a felony
 40 listed in ~~items (i) through (vii)~~ **this clause** for which the
 41 conviction was entered in another ~~state~~; **jurisdiction**;

42 if the conviction did not occur within the past five (5) years; or



- 1 (C) had a juvenile adjudication for an act listed in
 2 IC 31-27-4-13(a) that, if committed by an adult, would be a
 3 felony; and
 4 (2) the person's commission of the offense, delinquent act, or act
 5 of abuse or neglect described in subdivision (1) is not relevant to
 6 the person's present ability to care for a child, and placing a child
 7 in another home or awarding wardship to the department is in the
 8 best interest of the child.

9 However, a court may not enter a dispositional decree that approves
 10 placement of a child in another home or awards wardship to the
 11 department if the person has been convicted of a felony listed in
 12 IC 31-27-4-13(a) that is not specifically excluded under subdivision
 13 (1)(B).

14 (e) In considering the placement under subsection (d), the court
 15 shall consider the following:

- 16 (1) The length of time since the person committed the offense,
 17 delinquent act, or act that resulted in the substantiated report of
 18 abuse or neglect.
 19 (2) The severity of the offense, delinquent act, or abuse or neglect.
 20 (3) Evidence of the person's rehabilitation, including the person's
 21 cooperation with a treatment plan, if applicable.

22 SECTION 15. IC 31-34-21-7.5, AS AMENDED BY P.L.104-2015,
 23 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2016]: Sec. 7.5. (a) Except as provided in subsection (d), the
 25 juvenile court may not approve a permanency plan under subsection
 26 (c)(1)(D), (c)(1)(E), or (c)(1)(F) if a person who is currently residing
 27 with a person described in subsection (c)(1)(D) or (c)(1)(E) or in a
 28 residence in which the child would be placed under subsection
 29 (c)(1)(F) has committed an act resulting in a substantiated report of
 30 child abuse or neglect, has a juvenile adjudication for an act that would
 31 be a felony listed in IC 31-27-4-13 if committed by an adult, or has a
 32 conviction for a felony listed in IC 31-27-4-13.

33 (b) Before requesting juvenile court approval of a permanency plan,
 34 the department shall conduct a criminal history check (as defined in
 35 IC 31-9-2-22.5) to determine if a person described in subsection (a) has
 36 committed an act resulting in a substantiated report of child abuse or
 37 neglect, has a juvenile adjudication for an act that would be a felony
 38 listed in IC 31-27-4-13 if committed by an adult, or has a conviction for
 39 a felony listed in IC 31-27-4-13. However, the department is not
 40 required to conduct a criminal history check under this section if
 41 criminal history information under IC 31-34-4-2, IC 31-34-18-6.1, or
 42 IC 31-34-20-1.5 establishes whether a person described in subsection



1 (a) has committed an act resulting in a substantiated report of child
 2 abuse or neglect, has a juvenile adjudication for an act that would be
 3 a felony listed in IC 31-27-4-13 if committed by an adult, or has a
 4 conviction for a felony listed in IC 31-27-4-13.

5 (c) A permanency plan under this chapter includes the following:

6 (1) The intended permanent or long term arrangements for care
 7 and custody of the child that may include any of the following
 8 arrangements that the department or the court considers most
 9 appropriate and consistent with the best interests of the child:

10 (A) Return to or continuation of existing custodial care within
 11 the home of the child's parent, guardian, or custodian or
 12 placement of the child with the child's noncustodial parent.

13 (B) Initiation of a proceeding for termination of the
 14 parent-child relationship under IC 31-35.

15 (C) Placement of the child for adoption.

16 (D) Placement of the child with a responsible person,
 17 including:

18 (i) an adult sibling;

19 (ii) a grandparent;

20 (iii) an aunt;

21 (iv) an uncle;

22 (v) a custodial parent of a sibling of the child; or

23 (vi) another relative;

24 who is able and willing to act as the child's permanent
 25 custodian and carry out the responsibilities required by the
 26 permanency plan.

27 (E) Appointment of a legal guardian. The legal guardian
 28 appointed under this section is a caretaker in a judicially
 29 created relationship between the child and caretaker that is
 30 intended to be permanent and self-sustaining as evidenced by
 31 the transfer to the caretaker of the following parental rights
 32 with respect to the child:

33 (i) Care, custody, and control of the child.

34 (ii) Decision making concerning the child's upbringing.

35 (F) A supervised independent living arrangement or foster care
 36 for the child with a permanency plan of another planned,
 37 permanent living arrangement. However, a child less than
 38 sixteen (16) years of age may not have another planned,
 39 permanent living arrangement as the child's permanency plan.

40 (2) A time schedule for implementing the applicable provisions
 41 of the permanency plan.

42 (3) Provisions for temporary or interim arrangements for care and



- 1 custody of the child, pending completion of implementation of the
 2 permanency plan.
- 3 (4) Other items required to be included in a case plan under
 4 IC 31-34-15 or federal law, consistent with the permanent or long
 5 term arrangements described by the permanency plan.
- 6 (d) A juvenile court may approve a permanency plan if:
- 7 (1) a person described in subsection (a) has:
- 8 (A) committed an act resulting in a substantiated report of
 9 child abuse or neglect;
- 10 (B) been convicted of:
- 11 (i) **a battery offense included in IC 35-42-2** (~~IC 35-42-2-1~~)
 12 as a felony;
- 13 (ii) criminal confinement (IC 35-42-3-3) as a felony;
- 14 (iii) carjacking (IC 35-42-5-2) (repealed) as a felony;
- 15 (iv) arson (IC 35-43-1-1) as a felony;
- 16 (v) a felony involving a weapon under IC 35-47 or
 17 IC 35-47.5;
- 18 (vi) a felony relating to controlled substances under
 19 IC 35-48-4;
- 20 (vii) a felony under IC 9-30-5; or
- 21 (viii) a felony that is substantially equivalent to a felony
 22 listed in ~~items (i) through (vii)~~ **this clause** for which the
 23 conviction was entered in another ~~state~~; **jurisdiction**;
 24 if the conviction did not occur within the past five (5) years; or
- 25 (C) had a juvenile adjudication for an act listed in
 26 IC 31-27-4-13(a) that, if committed by an adult, would be a
 27 felony; and
- 28 (2) the person's commission of the offense, delinquent act, or act
 29 of abuse or neglect described in subdivision (1) is not relevant to
 30 the person's present ability to care for a child, and that approval
 31 of the permanency plan is in the best interest of the child.
- 32 However, a court may not approve a permanency plan if the person has
 33 been convicted of a felony listed in IC 31-27-4-13 that is not
 34 specifically excluded under subdivision (1)(B), or has a juvenile
 35 adjudication for an act that would be a felony listed in IC 31-27-4-13
 36 if committed by an adult that is not specifically excluded under
 37 subdivision (1)(B).
- 38 (e) In making its written finding under subsection (d), the court shall
 39 consider the following:
- 40 (1) The length of time since the person committed the offense,
 41 delinquent act, or act that resulted in the substantiated report of
 42 abuse or neglect.



- 1 (2) The severity of the offense, delinquent act, or abuse or neglect.
 2 (3) Evidence of the person's rehabilitation, including the person's
 3 cooperation with a treatment plan, if applicable.
 4 SECTION 16. IC 31-37-4-3, AS AMENDED BY P.L.168-2014,
 5 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2016]: Sec. 3. (a) This section applies if a child is arrested or
 7 taken into custody for allegedly committing an act that would be any of
 8 the following crimes if committed by an adult:
 9 (1) Murder (IC 35-42-1-1).
 10 (2) Attempted murder (IC 35-41-5-1).
 11 (3) Voluntary manslaughter (IC 35-42-1-3).
 12 (4) Involuntary manslaughter (IC 35-42-1-4).
 13 (5) Reckless homicide (IC 35-42-1-5).
 14 (6) Aggravated battery (IC 35-42-2-1.5).
 15 (7) Battery (IC 35-42-2-1).
 16 (8) Kidnapping (IC 35-42-3-2).
 17 (9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8.
 18 (10) Sexual misconduct with a minor (IC 35-42-4-9).
 19 (11) Incest (IC 35-46-1-3).
 20 (12) Robbery as a Level 2 felony or a Level 3 felony
 21 (IC 35-42-5-1).
 22 (13) Burglary as a Level 1 felony, Level 2 felony, Level 3 felony,
 23 or Level 4 felony (IC 35-43-2-1).
 24 (14) Assisting a criminal as a Level 5 felony (IC 35-44.1-2-5).
 25 (15) Escape (IC 35-44.1-3-4) as a Level 4 felony or Level 5
 26 felony.
 27 (16) Trafficking with an inmate as a Level 5 felony
 28 (IC 35-44.1-3-5).
 29 (17) Causing death when operating a vehicle (IC 9-30-5-5).
 30 (18) Criminal confinement (IC 35-42-3-3) as a Level 2 or Level
 31 3 felony.
 32 (19) Arson (IC 35-43-1-1) as a Level 2 felony, Level 3 felony, or
 33 Level 4 felony.
 34 (20) Possession, use, or manufacture of a weapon of mass
 35 destruction (IC 35-47-12-1).
 36 (21) Terroristic mischief (IC 35-47-12-3) as a Level 2 or Level 3
 37 felony.
 38 (22) Hijacking or disrupting an aircraft (IC 35-47-6-1.6).
 39 (23) A violation of IC 35-47.5 (controlled explosives) as a Level
 40 2 felony, Level 3 felony, or Level 4 felony.
 41 (24) A controlled substances offense under IC 35-48.
 42 (25) A criminal gang offense under IC 35-45-9.



1 **(26) Domestic battery (IC 35-42-2-1.3).**

2 (b) If a child is taken into custody under this chapter for a crime or
3 act listed in subsection (a) or a situation to which IC 12-26-4-1 applies,
4 the law enforcement agency that employs the law enforcement officer
5 who takes the child into custody shall notify the chief administrative
6 officer of the primary or secondary school, including a public or
7 nonpublic school, in which the child is enrolled or, if the child is
8 enrolled in a public school, the superintendent of the school district in
9 which the child is enrolled:

10 (1) that the child was taken into custody; and

11 (2) of the reason why the child was taken into custody.

12 (c) The notification under subsection (b) must occur within
13 forty-eight (48) hours after the child is taken into custody.

14 (d) A law enforcement agency may not disclose information that is
15 confidential under state or federal law to a school or school district
16 under this section.

17 (e) A law enforcement agency shall include in its training for law
18 enforcement officers training concerning the notification requirements
19 under subsection (b).

20 SECTION 17. IC 31-37-19-6.5, AS AMENDED BY P.L.158-2013,
21 SECTION 329, IS AMENDED TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 2016]: Sec. 6.5. (a) Except as provided in
23 subsection (d), the juvenile court may not enter a dispositional decree
24 approving placement of a child in another home under section 1(a)(3)
25 or 6(b)(2)(D) of this chapter or awarding wardship to a person or
26 facility that results in a placement with a person under section 1(a)(4)
27 or 6(b)(2)(E) of this chapter if a person who is currently residing in the
28 home in which the child would be placed under section 1(a)(3), 1(a)(4),
29 6(b)(2)(D), or 6(b)(2)(E) of this chapter has committed an act resulting
30 in a substantiated report of child abuse or neglect, has a juvenile
31 adjudication for an act that would be a felony listed in IC 31-27-4-13
32 if committed by an adult, or has a conviction for a felony listed in
33 IC 31-27-4-13.

34 (b) The juvenile probation officer who prepared the predispositional
35 report shall conduct a criminal history check (as defined in
36 IC 31-9-2-22.5) to determine if a person described in subsection (a) has
37 committed an act resulting in a substantiated report of child abuse or
38 neglect, has a juvenile adjudication for an act that would be a felony
39 listed in IC 31-27-4-13 if committed by an adult, or has a conviction for
40 a felony listed in IC 31-27-4-13. However, the probation officer is not
41 required to conduct a criminal history check under this section if
42 criminal history information obtained under IC 31-37-17-6.1



1 establishes whether a person described in subsection (a) has committed
 2 an act resulting in a substantiated report of child abuse or neglect, has
 3 a juvenile adjudication for an act that would be a felony listed in
 4 IC 31-27-4-13 if committed by an adult, or has a conviction for a felony
 5 listed in IC 31-27-4-13.

6 (c) The juvenile probation officer is not required to conduct a
 7 criminal history check under this section if:

8 (1) the probation officer is considering only an out-of-home
 9 placement to an entity or a facility that:

10 (A) is not a residence (as defined in IC 3-5-2-42.5); or

11 (B) is licensed by the state; or

12 (2) placement under this section is undetermined at the time the
 13 predispositional report is prepared.

14 (d) The juvenile court may enter a dispositional decree approving
 15 placement of a child in another home under section 1(a)(3) or
 16 6(b)(2)(D) of this chapter or awarding wardship to a person or facility
 17 that results in a placement with a person under section 1(a)(4) or
 18 6(b)(2)(E) of this chapter if:

19 (1) a person described in subsection (a) has:

20 (A) committed an act resulting in a substantiated report of
 21 child abuse or neglect;

22 (B) been convicted of:

23 (i) **a battery offense included in IC 35-42-2** (~~IC 35-42-2-1~~)
 24 as a felony;

25 (ii) criminal confinement (IC 35-42-3-3) as a felony;

26 (iii) carjacking (IC 35-42-5-2) (repealed) as a felony;

27 (iv) arson (IC 35-43-1-1) as a felony;

28 (v) a felony involving a weapon under IC 35-47 or
 29 IC 35-47.5;

30 (vi) a felony relating to controlled substances under
 31 IC 35-48-4; or

32 (vii) a felony that is substantially equivalent to a felony
 33 listed in ~~items (i) through (vi)~~ **this clause** for which the
 34 conviction was entered in another ~~state~~; **jurisdiction**;

35 if the conviction did not occur within the past five (5) years; or

36 (C) had a juvenile adjudication for an act listed in
 37 IC 31-27-4-13(a) that, if committed by an adult, would be a
 38 felony; and

39 (2) the person's commission of the offense, delinquent act, or act
 40 of abuse or neglect described in subdivision (1) is not relevant to
 41 the person's present ability to care for a child, and placing the
 42 child in another home is in the best interest of the child.



1 However, a court may not enter a dispositional decree placing a child
 2 in another home under section 1(a)(3) or 6(b)(2)(D) of this chapter or
 3 awarding wardship to a person or facility under this subsection if a
 4 person with whom the child is or will be placed has been convicted of
 5 a felony listed in IC 31-27-4-13 that is not specifically excluded under
 6 subdivision (1)(B).

7 (e) In considering the placement under subsection (d), the court
 8 shall consider the following:

9 (1) The length of time since the person committed the offense,
 10 delinquent act, or act that resulted in the substantiated report of
 11 abuse or neglect.

12 (2) The severity of the offense, delinquent act, or abuse or neglect.

13 (3) Evidence of the person's rehabilitation, including the person's
 14 cooperation with a treatment plan, if applicable.

15 SECTION 18. IC 33-37-5-12, AS AMENDED BY P.L.214-2013,
 16 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2016]: Sec. 12. The court shall order a person to pay a child
 18 abuse prevention fee of one hundred dollars (\$100) to the clerk in each
 19 criminal action in which:

20 (1) the person is found to have committed the offense of:

21 (A) murder (IC 35-42-1-1);

22 (B) causing suicide (IC 35-42-1-2);

23 (C) voluntary manslaughter (IC 35-42-1-3);

24 (D) reckless homicide (IC 35-42-1-5);

25 (E) battery (IC 35-42-2-1);

26 **(F) domestic battery (IC 35-42-2-1.3);**

27 **(G) aggravated battery (IC 35-42-2-1.5);**

28 ~~(H)~~ **(H)** rape (IC 35-42-4-1);

29 ~~(I)~~ **(I)** criminal deviate conduct (IC 35-42-4-2) (repealed);

30 ~~(J)~~ **(J)** child molesting (IC 35-42-4-3);

31 ~~(K)~~ **(K)** child exploitation (IC 35-42-4-4);

32 ~~(L)~~ **(L)** vicarious sexual gratification (IC 35-42-4-5);

33 ~~(M)~~ **(M)** child solicitation (IC 35-42-4-6);

34 ~~(N)~~ **(N)** incest (IC 35-46-1-3);

35 ~~(O)~~ **(O)** neglect of a dependent (IC 35-46-1-4);

36 ~~(P)~~ **(P)** child selling (IC 35-46-1-4); or

37 ~~(Q)~~ **(Q)** child seduction (IC 35-42-4-7); and

38 (2) the victim of the offense is less than eighteen (18) years of
 39 age.

40 SECTION 19. IC 35-36-7-3, AS AMENDED BY P.L.169-2009,
 41 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2016]: Sec. 3. (a) This section applies to criminal actions for:

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- 1 (1) an offense listed in IC 11-8-8-4.5(a);
 2 (2) neglect of a dependent (IC 35-46-1-4);
 3 (3) **a battery offense included in IC 35-42-2** (~~IC 35-42-2-1~~) if the
 4 victim is:

- 5 (A) less than eighteen (18) years of age; or
 6 (B) an endangered adult (as defined in IC 12-10-3-2); and
 7 (4) attempts of the crimes listed in subdivisions (1) through (3).

8 (b) If a motion is made to postpone a trial or other court proceeding
 9 that involves an offense listed in subsection (a), the court shall consider
 10 whether a postponement will have an adverse impact upon an
 11 endangered adult (as defined in IC 12-10-3-2) or a child who is less
 12 than sixteen (16) years of age and who:

- 13 (1) is the alleged victim of an offense listed in subsection (a); or
 14 (2) will be a witness in the trial.

15 SECTION 20. IC 35-37-4-6, AS AMENDED BY THE
 16 TECHNICAL CORRECTIONS BILL OF THE 2016 GENERAL
 17 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2016]: Sec. 6. (a) This section applies to a criminal action
 19 involving the following offenses where the victim is a protected person
 20 under subsection (c)(1) or (c)(2):

- 21 (1) Sex crimes (IC 35-42-4).
 22 (2) **A battery offense included in IC 35-42-2** upon a child less
 23 than fourteen (14) years of age. (~~IC 35-42-2-1~~).
 24 (3) Kidnapping and confinement (IC 35-42-3).
 25 (4) Incest (IC 35-46-1-3).
 26 (5) Neglect of a dependent (IC 35-46-1-4).
 27 (6) Human and sexual trafficking crimes (IC 35-42-3.5).
 28 (7) An attempt under IC 35-41-5-1 **for to commit** an offense
 29 listed in ~~subdivisions (1) through (6)~~ **this subsection**.

30 (b) This section applies to a criminal action involving the following
 31 offenses where the victim is a protected person under subsection (c)(3):

- 32 (1) Exploitation of a dependent or endangered adult
 33 (IC 35-46-1-12).
 34 (2) A sex crime (IC 35-42-4).
 35 (3) **A battery offense included in IC 35-42-2**. (~~IC 35-42-2-1~~).
 36 (4) Kidnapping, confinement, or interference with custody
 37 (IC 35-42-3).
 38 (5) Home improvement fraud (IC 35-43-6).
 39 (6) Fraud (IC 35-43-5).
 40 (7) Identity deception (IC 35-43-5-3.5).
 41 (8) Synthetic identity deception (IC 35-43-5-3.8).
 42 (9) Theft (IC 35-43-4-2).



- 1 (10) Conversion (IC 35-43-4-3).
 2 (11) Neglect of a dependent (IC 35-46-1-4).
 3 (12) Human and sexual trafficking crimes (IC 35-42-3.5).
 4 (c) As used in this section, "protected person" means:
 5 (1) a child who is less than fourteen (14) years of age;
 6 (2) an individual with a mental disability who has a disability
 7 attributable to an impairment of general intellectual functioning
 8 or adaptive behavior that:
 9 (A) is manifested before the individual is eighteen (18) years
 10 of age;
 11 (B) is likely to continue indefinitely;
 12 (C) constitutes a substantial impairment of the individual's
 13 ability to function normally in society; and
 14 (D) reflects the individual's need for a combination and
 15 sequence of special, interdisciplinary, or generic care,
 16 treatment, or other services that are of lifelong or extended
 17 duration and are individually planned and coordinated; or
 18 (3) an individual who is:
 19 (A) at least eighteen (18) years of age; and
 20 (B) incapable by reason of mental illness, *mental retardation*,
 21 *intellectual disability*, dementia, or other physical or mental
 22 incapacity of:
 23 (i) managing or directing the management of the individual's
 24 property; or
 25 (ii) providing or directing the provision of self-care.
 26 (d) A statement or videotape that:
 27 (1) is made by a person who at the time of trial is a protected
 28 person;
 29 (2) concerns an act that is a material element of an offense listed
 30 in subsection (a) or (b) that was allegedly committed against the
 31 person; and
 32 (3) is not otherwise admissible in evidence;
 33 is admissible in evidence in a criminal action for an offense listed in
 34 subsection (a) or (b) if the requirements of subsection (e) are met.
 35 (e) A statement or videotape described in subsection (d) is
 36 admissible in evidence in a criminal action listed in subsection (a) or
 37 (b) if, after notice to the defendant of a hearing and of the defendant's
 38 right to be present, all of the following conditions are met:
 39 (1) The court finds, in a hearing:
 40 (A) conducted outside the presence of the jury; and
 41 (B) attended by the protected person in person or by using
 42 closed circuit television testimony as described in section 8(f)



- 1 and 8(g) of this chapter;
 2 that the time, content, and circumstances of the statement or
 3 videotape provide sufficient indications of reliability.
- 4 (2) The protected person:
 5 (A) testifies at the trial; or
 6 (B) is found by the court to be unavailable as a witness for one
 7 (1) of the following reasons:
 8 (i) From the testimony of a psychiatrist, physician, or
 9 psychologist, and other evidence, if any, the court finds that
 10 the protected person's testifying in the physical presence of
 11 the defendant will cause the protected person to suffer
 12 serious emotional distress such that the protected person
 13 cannot reasonably communicate.
 14 (ii) The protected person cannot participate in the trial for
 15 medical reasons.
 16 (iii) The court has determined that the protected person is
 17 incapable of understanding the nature and obligation of an
 18 oath.
- 19 (f) If a protected person is unavailable to testify at the trial for a
 20 reason listed in subsection (e)(2)(B), a statement or videotape may be
 21 admitted in evidence under this section only if the protected person was
 22 available for cross-examination:
 23 (1) at the hearing described in subsection (e)(1); or
 24 (2) when the statement or videotape was made.
- 25 (g) A statement or videotape may not be admitted in evidence under
 26 this section unless the prosecuting attorney informs the defendant and
 27 the defendant's attorney at least ten (10) days before the trial of:
 28 (1) the prosecuting attorney's intention to introduce the statement
 29 or videotape in evidence; and
 30 (2) the content of the statement or videotape.
- 31 (h) If a statement or videotape is admitted in evidence under this
 32 section, the court shall instruct the jury that it is for the jury to
 33 determine the weight and credit to be given the statement or videotape
 34 and that, in making that determination, the jury shall consider the
 35 following:
 36 (1) The mental and physical age of the person making the
 37 statement or videotape.
 38 (2) The nature of the statement or videotape.
 39 (3) The circumstances under which the statement or videotape
 40 was made.
 41 (4) Other relevant factors.
- 42 (i) If a statement or videotape described in subsection (d) is



- 1 admitted into evidence under this section, a defendant may introduce
 2 a:
- 3 (1) transcript; or
 - 4 (2) videotape;
- 5 of the hearing held under subsection (e)(1) into evidence at trial.
- 6 SECTION 21. IC 35-37-4-8, AS AMENDED BY P.L.238-2015,
 7 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2016]: Sec. 8. (a) This section applies to a criminal action
 9 under the following:
- 10 (1) Sex crimes (IC 35-42-4).
 - 11 (2) **A battery offense included in IC 35-42-2** upon a child less
 12 than fourteen (14) years of age. ~~(IC 35-42-2-1)~~.
 - 13 (3) Kidnapping and confinement (IC 35-42-3).
 - 14 (4) Incest (IC 35-46-1-3).
 - 15 (5) Neglect of a dependent (IC 35-46-1-4).
 - 16 (6) Human and sexual trafficking crimes (IC 35-42-3.5).
 - 17 (7) An attempt under IC 35-41-5-1 for an offense listed in
 18 subdivisions (1) through (6).
- 19 (b) As used in this section, "protected person" has the meaning set
 20 forth in section 6 of this chapter.
- 21 (c) On the motion of the prosecuting attorney, the court may order
 22 that the testimony of a protected person be taken in a room other than
 23 the courtroom, and that the questioning of the protected person by the
 24 prosecution and the defense be transmitted using a two-way closed
 25 circuit television arrangement that:
- 26 (1) allows the protected person to see the accused and the trier of
 27 fact; and
 - 28 (2) allows the accused and the trier of fact to see and hear the
 29 protected person.
- 30 (d) On the motion of the prosecuting attorney or the defendant, the
 31 court may order that the testimony of a protected person be videotaped
 32 for use at trial. The videotaping of the testimony of a protected person
 33 under this subsection must meet the requirements of subsection (c).
- 34 (e) The court may not make an order under subsection (c) or (d)
 35 unless:
- 36 (1) the testimony to be taken is the testimony of a protected
 37 person who:
 - 38 (A) is the alleged victim of an offense listed in subsection (a)
 39 for which the defendant is being tried or is a witness in a trial
 40 for an offense listed in subsection (a); and
 - 41 (B) is found by the court to be a protected person who should
 42 be permitted to testify outside the courtroom because:



- 1 (i) the court finds from the testimony of a psychiatrist,
 2 physician, or psychologist and any other evidence that the
 3 protected person's testifying in the physical presence of the
 4 defendant would cause the protected person to suffer serious
 5 emotional harm and the court finds that the protected person
 6 could not reasonably communicate in the physical presence
 7 of the defendant to the trier of fact;
- 8 (ii) a physician has certified that the protected person cannot
 9 be present in the courtroom for medical reasons; or
- 10 (iii) evidence has been introduced concerning the effect of
 11 the protected person's testifying in the physical presence of
 12 the defendant, and the court finds that it is more likely than
 13 not that the protected person's testifying in the physical
 14 presence of the defendant creates a substantial likelihood of
 15 emotional or mental harm to the protected person;
- 16 (2) the prosecuting attorney has informed the defendant and the
 17 defendant's attorney of the intention to have the protected person
 18 testify outside the courtroom; and
- 19 (3) the prosecuting attorney informed the defendant and the
 20 defendant's attorney under subdivision (2) at least ten (10) days
 21 before the trial of the prosecuting attorney's intention to have the
 22 protected person testify outside the courtroom.
- 23 (f) If the court makes an order under subsection (c), only the
 24 following persons may be in the same room as the protected person
 25 during the protected person's testimony:
- 26 (1) A defense attorney if:
- 27 (A) the defendant is represented by the defense attorney; and
 28 (B) the prosecuting attorney is also in the same room.
- 29 (2) The prosecuting attorney if:
- 30 (A) the defendant is represented by a defense attorney; and
 31 (B) the defense attorney is also in the same room.
- 32 (3) Persons necessary to operate the closed circuit television
 33 equipment.
- 34 (4) Persons whose presence the court finds will contribute to the
 35 protected person's well-being.
- 36 (5) A court bailiff or court representative.
- 37 (g) If the court makes an order under subsection (d), only the
 38 following persons may be in the same room as the protected person
 39 during the protected person's videotaped testimony:
- 40 (1) The judge.
 41 (2) The prosecuting attorney.
 42 (3) The defendant's attorney (or the defendant, if the defendant is



- 1 not represented by an attorney).
- 2 (4) Persons necessary to operate the electronic equipment.
- 3 (5) The court reporter.
- 4 (6) Persons whose presence the court finds will contribute to the
- 5 protected person's well-being.
- 6 (7) The defendant, who can observe and hear the testimony of the
- 7 protected person with the protected person being able to observe
- 8 or hear the defendant. However, if the defendant is not
- 9 represented by an attorney, the defendant may question the
- 10 protected person.
- 11 (h) If the court makes an order under subsection (c) or (d), only the
- 12 following persons may question the protected person:
- 13 (1) The prosecuting attorney.
- 14 (2) The defendant's attorney (or the defendant, if the defendant is
- 15 not represented by an attorney).
- 16 (3) The judge.
- 17 SECTION 22. IC 35-37-4-14 IS AMENDED TO READ AS
- 18 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 14. (a) This section
- 19 applies even if no criminal charges were filed concerning the act that
- 20 is the basis of the evidence of a previous battery.
- 21 (b) As used in this section, "evidence of a previous battery" means
- 22 evidence that a person charged with a crime described in subsection
- 23 (c)(1) through ~~(c)(3)~~ **(c)(5)** committed a prior unrelated act of battery
- 24 or attempted battery on the victim of a crime described in subsection
- 25 (c)(1) through ~~(c)(3)~~ **(c)(5)** within five (5) years before the person
- 26 allegedly committed the crime described in subsection (c)(1) through
- 27 (c)(3).
- 28 (c) In a prosecution for:
- 29 (1) battery (IC 35-42-2-1);
- 30 **(2) domestic battery (IC 35-42-2-1.3);**
- 31 ~~(2)~~ **(3)** aggravated battery (IC 35-42-2-1.5);
- 32 ~~(3)~~ **(4)** murder (IC 35-42-1-1); or
- 33 ~~(4)~~ **(5)** voluntary manslaughter (IC 35-42-1-3);
- 34 evidence of a previous battery is admissible into evidence in the state's
- 35 case-in-chief for purposes of proving motive, intent, identity, or
- 36 common scheme and design.
- 37 (d) If the state proposes to offer evidence described in subsection
- 38 (b), the following procedure must be followed:
- 39 (1) The state shall file a written motion not less than ten (10) days
- 40 before trial stating that the state has an offer of proof concerning
- 41 evidence described in subsection (b) and the relevancy of the
- 42 evidence to the case. The motion must be accompanied by an



1 affidavit in which the offer of proof is stated.

2 (2) If the court finds that the offer of proof is sufficient, the court
3 shall order a hearing out of the presence of the jury. At the
4 hearing, the court shall allow the questioning of the victim or
5 witness regarding the offer of proof made by the state.

6 At the conclusion of the hearing, if the court finds that evidence
7 proposed to be offered by the state is admissible, the court shall make
8 an order stating what evidence may be introduced by the state and the
9 nature of the questions to be permitted. The state may then offer
10 evidence under the order of the court.

11 (e) This section shall not be construed to limit the admissibility of
12 evidence of a previous battery in any civil or criminal proceeding.

13 SECTION 23. IC 35-38-2.6-1, AS AMENDED BY P.L.185-2014,
14 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2016]: Sec. 1. (a) Except as provided in subsection (b), this
16 chapter applies to the sentencing of a person convicted of a felony
17 whenever any part of the sentence may not be suspended under
18 IC 35-50-2-2.1 or IC 35-50-2-2.2.

19 (b) This chapter does not apply to persons convicted of any of the
20 following:

21 (1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.

22 (2) Any of the following felonies:

23 (A) Murder (IC 35-42-1-1).

24 (B) A battery **offense included in IC 35-42-2** (~~IC 35-42-2-1~~)
25 with a deadly weapon or battery causing death.

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

27 (D) Criminal confinement (IC 35-42-3-3) with a deadly
28 weapon.

29 (E) Robbery (IC 35-42-5-1) resulting in serious bodily injury
30 or with a deadly weapon.

31 (F) Arson (IC 35-43-1-1) for hire resulting in serious bodily
32 injury.

33 (G) Burglary (IC 35-43-2-1) resulting in serious bodily injury.

34 (H) Resisting law enforcement (IC 35-44.1-3-1) with a deadly
35 weapon.

36 (I) Escape (IC 35-44.1-3-4) with a deadly weapon.

37 (J) Rioting (IC 35-45-1-2) with a deadly weapon.

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

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

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

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

42 SECTION 24. IC 35-42-1-4, AS AMENDED BY P.L.158-2013,



1 SECTION 414, IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) As used in this section,
 3 "fetus" means a fetus that has attained viability (as defined in
 4 IC 16-18-2-365).

5 (b) A person who kills another human being while committing or
 6 attempting to commit:

7 (1) a Level 5 or Level 6 felony that inherently poses a risk of
 8 serious bodily injury;

9 (2) a Class A misdemeanor that inherently poses a risk of serious
 10 bodily injury; or

11 (3) battery;

12 commits involuntary manslaughter, a Level 5 felony.

13 (c) A person who kills a fetus while committing or attempting to
 14 commit:

15 (1) a Level 5 or Level 6 felony that inherently poses a risk of
 16 serious bodily injury;

17 (2) a Class A misdemeanor that inherently poses a risk of serious
 18 bodily injury;

19 (3) a battery **offense included in IC 35-42-2**; or

20 (4) a violation of IC 9-30-5-1 through IC 9-30-5-5 (operating a
 21 vehicle while intoxicated);

22 commits involuntary manslaughter, a Level 5 felony.

23 SECTION 25. IC 35-42-2-1, AS AMENDED BY P.L.147-2014,
 24 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2016]: Sec. 1. (a) As used in this section, "public safety
 26 official" means:

27 (1) a law enforcement officer, including an alcoholic beverage
 28 enforcement officer;

29 (2) an employee of a penal facility or a juvenile detention facility
 30 (as defined in IC 31-9-2-71);

31 (3) an employee of the department of correction;

32 (4) a probation officer;

33 (5) a parole officer;

34 (6) a community corrections worker;

35 (7) a home detention officer;

36 (8) a department of child services employee;

37 (9) a firefighter;

38 (10) an emergency medical services provider; or

39 (11) a judicial officer.

40 (b) Except as provided in subsections (c) through (j), a person who
 41 knowingly or intentionally:

42 (1) touches another person in a rude, insolent, or angry manner;



- 1 or
 2 (2) in a rude, insolent, or angry manner places any bodily fluid or
 3 waste on another person;
 4 commits battery, a Class B misdemeanor.
 5 (c) The offense described in subsection (b)(1) or (b)(2) is a Class A
 6 misdemeanor if it results in bodily injury to any other person.
 7 (d) The offense described in subsection (b)(1) or (b)(2) is a Level 6
 8 felony if one (1) or more of the following apply:
 9 (1) The offense results in moderate bodily injury to any other
 10 person.
 11 (2) The offense is committed against a public safety official while
 12 the official is engaged in the official's official duty.
 13 (3) The offense is committed against a person less than fourteen
 14 (14) years of age and is committed by a person at least eighteen
 15 (18) years of age.
 16 (4) The offense is committed against a person of any age who has
 17 a mental or physical disability and is committed by a person
 18 having the care of the person with the mental or physical
 19 disability, whether the care is assumed voluntarily or because of
 20 a legal obligation.
 21 (5) The offense is committed against an endangered adult (as
 22 defined in IC 12-10-3-2).
 23 ~~(6) The offense is committed against a family or household~~
 24 ~~member (as defined in IC 35-31.5-2-128) if the person who~~
 25 ~~committed the offense:~~
 26 ~~(A) is at least eighteen (18) years of age; and~~
 27 ~~(B) committed the offense in the physical presence of a child~~
 28 ~~less than sixteen (16) years of age; knowing that the child was~~
 29 ~~present and might be able to see or hear the offense.~~
 30 (e) The offense described in subsection (b)(2) is a Level 6 felony if
 31 the person knew or recklessly failed to know that the bodily fluid or
 32 waste placed on another person was infected with hepatitis,
 33 tuberculosis, or human immunodeficiency virus.
 34 (f) The offense described in subsection (b)(1) or (b)(2) is a Level 5
 35 felony if one (1) or more of the following apply:
 36 (1) The offense results in serious bodily injury to another person.
 37 (2) The offense is committed with a deadly weapon.
 38 (3) The offense results in bodily injury to a pregnant woman if the
 39 person knew of the pregnancy.
 40 (4) The person has a previous conviction for a battery **offense**
 41 **included in this chapter** against the same victim.
 42 (5) The offense results in bodily injury to one (1) or more of the



- 1 following:
- 2 (A) A public safety official while the official is engaged in the
- 3 official's official duties.
- 4 (B) A person less than fourteen (14) years of age if the offense
- 5 is committed by a person at least eighteen (18) years of age.
- 6 (C) A person who has a mental or physical disability if the
- 7 offense is committed by an individual having care of the
- 8 person with the disability, regardless of whether the care is
- 9 assumed voluntarily or because of a legal obligation.
- 10 (D) An endangered adult (as defined in IC 12-10-3-2).
- 11 (g) The offense described in subsection (b)(2) is a Level 5 felony if:
- 12 (1) the person knew or recklessly failed to know that the bodily
- 13 fluid or waste placed on another person was infected with
- 14 hepatitis, tuberculosis, or human immunodeficiency virus; and
- 15 (2) the person placed the bodily fluid or waste on a public safety
- 16 official.
- 17 (h) The offense described in subsection (b)(1) or (b)(2) is a Level 4
- 18 felony if it results in serious bodily injury to an endangered adult (as
- 19 defined in IC 12-10-3-2).
- 20 (i) The offense described in subsection (b)(1) or (b)(2) is a Level 3
- 21 felony if it results in serious bodily injury to a person less than fourteen
- 22 (14) years of age if the offense is committed by a person at least
- 23 eighteen (18) years of age.
- 24 (j) The offense described in subsection (b)(1) or (b)(2) is a Level 2
- 25 felony if it results in the death of one (1) or more of the following:
- 26 (1) A person less than fourteen (14) years of age if the offense is
- 27 committed by a person at least eighteen (18) years of age.
- 28 (2) An endangered adult (as defined in IC 12-10-3-2).
- 29 SECTION 26. IC 35-42-2-1.3, AS AMENDED BY P.L.158-2013,
- 30 SECTION 421, IS AMENDED TO READ AS FOLLOWS
- 31 [EFFECTIVE JULY 1, 2016]: Sec. 1.3. (a) **Except as provided in**
- 32 **subsections (b) through (f)**, a person who knowingly or intentionally:
- 33 touches an individual who:
- 34 (1) is or was a spouse of the other person;
- 35 (2) is or was living as if a spouse of the other person as provided
- 36 in subsection (c); or
- 37 (3) has a child in common with the other person;
- 38 in a rude, insolent, or angry manner that results in bodily injury to the
- 39 person described in subdivision (1), (2), or (3)
- 40 (1) touches a family or household member in a rude, insolent,
- 41 or angry manner; or
- 42 (2) in a rude, insolent, or angry manner places any bodily



1 **fluid or waste on a family or household member;**

2 commits domestic battery, a Class A misdemeanor.

3 (b) ~~However,~~ The offense under subsection ~~(a)~~ **(a)(1) or (a)(2)** is a
4 Level 6 felony if one (1) or more of the following apply: ~~the person~~
5 **who committed the offense:**

6 (1) **The person who committed the offense** has a previous,
7 unrelated conviction:

8 (A) ~~under this section (or IC 35-42-2-1(a)(2)(E) before that~~
9 ~~provision was removed by P.L.188-1999, SECTION 5); for a~~
10 **battery offense included in this chapter; or**

11 (B) in any other jurisdiction, including a military court, in
12 which the elements of the crime for which the conviction was
13 entered are substantially similar to the elements ~~described in~~
14 ~~this section: of a battery offense included in this chapter. or~~

15 (2) **The person who committed the offense is at least eighteen**
16 **(18) years of age and committed the offense against a family or**
17 **household member** in the physical presence of a child less than
18 sixteen (16) years of age, knowing that the child was present and
19 might be able to see or hear the offense.

20 (3) **The offense results in moderate bodily injury to a family**
21 **or household member.**

22 (4) **The offense is committed against a family or household**
23 **member who is less than fourteen (14) years of age and is**
24 **committed by a person at least eighteen (18) years of age.**

25 (5) **The offense is committed against a family or household**
26 **member of any age who has a mental or physical disability**
27 **and is committed by a person having the care of the family or**
28 **household member with the mental or physical disability,**
29 **whether the care is assumed voluntarily or because of a legal**
30 **obligation.**

31 (6) **The offense is committed against a family or household**
32 **member who is an endangered adult (as defined in**
33 **IC 12-10-3-2).**

34 (c) In considering whether a person is or was living as a spouse of
35 another individual for purposes of subsection (a)(2), the court shall
36 review:

37 (1) the duration of the relationship;

38 (2) the frequency of contact;

39 (3) the financial interdependence;

40 (4) whether the two (2) individuals are raising children together;

41 (5) whether the two (2) individuals have engaged in tasks directed
42 toward maintaining a common household; and



1 (6) other factors the court considers relevant.

2 (c) The offense described in subsection (a)(1) or (a)(2) is a Level

3 **5 felony if one (1) or more of the following apply:**

4 (1) The offense results in serious bodily injury to a family or

5 household member.

6 (2) The offense is committed with a deadly weapon against a

7 family or household member.

8 (3) The offense results in bodily injury to a pregnant family or

9 household member if the person knew of the pregnancy.

10 (4) The person has a previous conviction for a battery offense

11 included in IC 35-42-2 against the same family or household

12 member.

13 (5) The offense results in bodily injury to one (1) or more of

14 the following:

15 (A) A family or household member who is less than

16 fourteen (14) years of age if the offense is committed by a

17 person at least eighteen (18) years of age.

18 (B) A family or household member who has a mental or

19 physical disability if the offense is committed by an

20 individual having care of the family or household member

21 with the disability, regardless of whether the care is

22 assumed voluntarily or because of a legal obligation.

23 (C) A family or household member who is an endangered

24 adult (as defined in IC 12-10-3-2).

25 (d) The offense described in subsection (a)(1) or (a)(2) is a Level

26 **4 felony if it results in serious bodily injury to a family or**

27 **household member who is an endangered adult (as defined in**

28 **IC 12-10-3-2).**

29 (e) The offense described in subsection (a)(1) or (a)(2) is a Level

30 **3 felony if it results in serious bodily injury to a family or**

31 **household member who is less than fourteen (14) years of age if the**

32 **offense is committed by a person at least eighteen (18) years of age.**

33 (f) The offense described in subsection (a)(1) or (a)(2) is a Level

34 **2 felony if it results in the death of one (1) or more of the following:**

35 (1) A family or household member who is less than fourteen

36 (14) years of age if the offense is committed by a person at

37 least eighteen (18) years of age.

38 (2) A family or household member who is an endangered

39 adult (as defined in IC 12-10-3-2).

40 SECTION 27. IC 35-45-9-1, AS AMENDED BY P.L.192-2007,

41 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

42 JULY 1, 2016]: Sec. 1. As used in this chapter, "criminal gang" means



1 a group with at least three (3) members that specifically:

2 (1) either:

3 (A) promotes, sponsors, or assists in; or

4 (B) participates in; or

5 (2) requires as a condition of membership or continued
6 membership;

7 the commission of a felony or an act that would be a felony if
8 committed by an adult or ~~the a battery offense of battery~~
9 ~~(IC 35-42-2-1)~~ **included in IC 35-42-2.**

10 SECTION 28. IC 35-46-1-14, AS AMENDED BY P.L.238-2015,
11 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2016]: Sec. 14. Any person acting in good faith who:

13 (1) makes or causes to be made a report of neglect, **a battery**
14 **offense included in IC 35-42-2**, or exploitation under this chapter
15 ~~or IC 35-42-2-1~~ concerning an endangered adult or person of any
16 age who has a mental or physical disability;

17 (2) makes or causes to be made photographs or x-rays of a victim
18 of suspected neglect or **a battery offense included in IC 35-42-2**
19 of an endangered adult or a dependent eighteen (18) years of age
20 or older; or

21 (3) participates in any official proceeding or a proceeding
22 resulting from a report of neglect, **a battery offense included in**
23 **IC 35-42-2**, or exploitation of an endangered adult or a dependent
24 eighteen (18) years of age or older relating to the subject matter
25 of that report;

26 is immune from any civil or criminal liability that might otherwise be
27 imposed because of these actions. However, this section does not apply
28 to a person accused of neglect, **a battery offense**, or exploitation of an
29 endangered adult or a dependent eighteen (18) years of age or older.

30 SECTION 29. IC 35-47-4-5, AS AMENDED BY P.L.168-2014,
31 SECTION 88, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2016]: Sec. 5. (a) As used in this section, "serious violent
33 felon" means a person who has been convicted of:

34 (1) committing a serious violent felony in:

35 (A) Indiana; or

36 (B) any other jurisdiction in which the elements of the crime
37 for which the conviction was entered are substantially similar
38 to the elements of a serious violent felony; or

39 (2) attempting to commit or conspiring to commit a serious
40 violent felony in:

41 (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2;

42 or



- 1 (B) any other jurisdiction in which the elements of the crime
 2 for which the conviction was entered are substantially similar
 3 to the elements of attempting to commit or conspiring to
 4 commit a serious violent felony.
- 5 (b) As used in this section, "serious violent felony" means:
- 6 (1) murder (IC 35-42-1-1);
 7 (2) voluntary manslaughter (IC 35-42-1-3);
 8 (3) reckless homicide not committed by means of a vehicle
 9 (IC 35-42-1-5);
 10 (4) battery (IC 35-42-2-1) as a:
 11 (A) Class A felony, Class B felony, or Class C felony, for a
 12 crime committed before July 1, 2014; or
 13 (B) Level 2 felony, Level 3 felony, Level 4 felony, or Level 5
 14 felony, for a crime committed after June 30, 2014;
- 15 **(5) domestic battery (IC 35-42-2-1.3) as a Level 2 felony, Level**
 16 **3 felony, Level 4 felony, or Level 5 felony;**
 17 ~~(5) (6) aggravated battery (IC 35-42-2-1.5);~~
 18 ~~(6) (7) kidnapping (IC 35-42-3-2);~~
 19 ~~(7) (8) criminal confinement (IC 35-42-3-3);~~
 20 ~~(8) (9) rape (IC 35-42-4-1);~~
 21 ~~(9) (10) criminal deviate conduct (IC 35-42-4-2) (before its~~
 22 ~~repeal);~~
 23 ~~(10) (11) child molesting (IC 35-42-4-3);~~
 24 ~~(11) (12) sexual battery (IC 35-42-4-8) as a:~~
 25 (A) Class C felony, for a crime committed before July 1, 2014;
 26 or
 27 (B) Level 5 felony, for a crime committed after June 30, 2014;
 28 ~~(12) (13) robbery (IC 35-42-5-1);~~
 29 ~~(13) (14) carjacking (IC 5-42-5-2) (before its repeal);~~
 30 ~~(14) (15) arson (IC 35-43-1-1(a)) as a:~~
 31 (A) Class A felony or Class B felony, for a crime committed
 32 before July 1, 2014; or
 33 (B) Level 2 felony, Level 3 felony, or Level 4 felony, for a
 34 crime committed after June 30, 2014;
 35 ~~(15) (16) burglary (IC 35-43-2-1) as a:~~
 36 (A) Class A felony or Class B felony, for a crime committed
 37 before July 1, 2014; or
 38 (B) Level 1 felony, Level 2 felony, Level 3 felony, or Level 4
 39 felony, for a crime committed after June 30, 2014;
 40 ~~(16) (17) assisting a criminal (IC 35-44.1-2-5) as a:~~
 41 (A) Class C felony, for a crime committed before July 1, 2014;
 42 or



- 1 (B) Level 5 felony, for a crime committed after June 30, 2014;
 2 ~~(17)~~ **(18)** resisting law enforcement (IC 35-44.1-3-1) as a:
 3 (A) Class B felony or Class C felony, for a crime committed
 4 before July 1, 2014; or
 5 (B) Level 2 felony, Level 3 felony, or Level 5 felony, for a
 6 crime committed after June 30, 2014;
 7 ~~(18)~~ **(19)** escape (IC 35-44.1-3-4) as a:
 8 (A) Class B felony or Class C felony, for a crime committed
 9 before July 1, 2014; or
 10 (B) Level 4 felony or Level 5 felony, for a crime committed
 11 after June 30, 2014;
 12 ~~(19)~~ **(20)** trafficking with an inmate (IC 35-44.1-3-5) as a:
 13 (A) Class C felony, for a crime committed before July 1, 2014;
 14 or
 15 (B) Level 5 felony, for a crime committed after June 30, 2014;
 16 ~~(20)~~ **(21)** criminal gang intimidation (IC 35-45-9-4);
 17 ~~(21)~~ **(22)** stalking (IC 35-45-10-5) as a:
 18 (A) Class B felony or Class C felony, for a crime committed
 19 before July 1, 2014; or
 20 (B) Level 4 felony or Level 5 felony, for a crime committed
 21 after June 30, 2014;
 22 ~~(22)~~ **(23)** incest (IC 35-46-1-3);
 23 ~~(23)~~ **(24)** dealing in or manufacturing cocaine or a narcotic drug
 24 (IC 35-48-4-1);
 25 ~~(24)~~ **(25)** dealing in methamphetamine (IC 35-48-4-1.1);
 26 ~~(25)~~ **(26)** dealing in a schedule I, II, or III controlled substance
 27 (IC 35-48-4-2);
 28 ~~(26)~~ **(27)** dealing in a schedule IV controlled substance
 29 (IC 35-48-4-3); or
 30 ~~(27)~~ **(28)** dealing in a schedule V controlled substance
 31 (IC 35-48-4-4).
 32 (c) A serious violent felon who knowingly or intentionally possesses
 33 a firearm commits unlawful possession of a firearm by a serious violent
 34 felon, a Level 4 felony.
 35 SECTION 30. IC 35-50-2-9, AS AMENDED BY P.L.187-2015,
 36 SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2016]: Sec. 9. (a) The state may seek either a death sentence
 38 or a sentence of life imprisonment without parole for murder by
 39 alleging, on a page separate from the rest of the charging instrument,
 40 the existence of at least one (1) of the aggravating circumstances listed
 41 in subsection (b). In the sentencing hearing after a person is convicted
 42 of murder, the state must prove beyond a reasonable doubt the



1 existence of at least one (1) of the aggravating circumstances alleged.
 2 However, the state may not proceed against a defendant under this
 3 section if a court determines at a pretrial hearing under IC 35-36-9 that
 4 the defendant is an individual with an intellectual disability.

5 (b) The aggravating circumstances are as follows:

6 (1) The defendant committed the murder by intentionally killing
 7 the victim while committing or attempting to commit any of the
 8 following:

9 (A) Arson (IC 35-43-1-1).

10 (B) Burglary (IC 35-43-2-1).

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

12 (D) Criminal deviate conduct (IC 35-42-4-2) (before its
 13 repeal).

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

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

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

17 (H) Carjacking (IC 35-42-5-2) (before its repeal).

18 (I) Criminal gang activity (IC 35-45-9-3).

19 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

20 (K) Criminal confinement (IC 35-42-3-3).

21 (2) The defendant committed the murder by the unlawful
 22 detonation of an explosive with intent to injure a person or
 23 damage property.

24 (3) The defendant committed the murder by lying in wait.

25 (4) The defendant who committed the murder was hired to kill.

26 (5) The defendant committed the murder by hiring another person
 27 to kill.

28 (6) The victim of the murder was a corrections employee,
 29 probation officer, parole officer, community corrections worker,
 30 home detention officer, fireman, judge, or law enforcement
 31 officer, and either:

32 (A) the victim was acting in the course of duty; or

33 (B) the murder was motivated by an act the victim performed
 34 while acting in the course of duty.

35 (7) The defendant has been convicted of another murder.

36 (8) The defendant has committed another murder, at any time,
 37 regardless of whether the defendant has been convicted of that
 38 other murder.

39 (9) The defendant was:

40 (A) under the custody of the department of correction;

41 (B) under the custody of a county sheriff;

42 (C) on probation after receiving a sentence for the commission



- 1 of a felony; or
 2 (D) on parole;
 3 at the time the murder was committed.
 4 (10) The defendant dismembered the victim.
 5 (11) The defendant:
 6 (A) burned, mutilated, or tortured the victim; or
 7 (B) decapitated or attempted to decapitate the victim;
 8 while the victim was alive.
 9 (12) The victim of the murder was less than twelve (12) years of
 10 age.
 11 (13) The victim was a victim of any of the following offenses for
 12 which the defendant was convicted:
 13 (A) **A battery offense included in IC 35-42-2** committed
 14 before July 1, 2014, as a Class D felony or as a Class C felony,
 15 ~~under IC 35-42-2-1~~ or **a battery offense included in**
 16 **IC 35-42-2** committed after June 30, 2014, as a Level 6
 17 felony, a Level 5 felony, a Level 4 felony, or a Level 3 felony.
 18 (B) Kidnapping (IC 35-42-3-2).
 19 (C) Criminal confinement (IC 35-42-3-3).
 20 (D) A sex crime under IC 35-42-4.
 21 (14) The victim of the murder was listed by the state or known by
 22 the defendant to be a witness against the defendant and the
 23 defendant committed the murder with the intent to prevent the
 24 person from testifying.
 25 (15) The defendant committed the murder by intentionally
 26 discharging a firearm (as defined in IC 35-47-1-5):
 27 (A) into an inhabited dwelling; or
 28 (B) from a vehicle.
 29 (16) The victim of the murder was pregnant and the murder
 30 resulted in the intentional killing of a fetus that has attained
 31 viability (as defined in IC 16-18-2-365).
 32 (17) The defendant knowingly or intentionally:
 33 (A) committed the murder:
 34 (i) in a building primarily used for an educational purpose;
 35 (ii) on school property; and
 36 (iii) when students are present; or
 37 (B) committed the murder:
 38 (i) in a building or other structure owned or rented by a state
 39 educational institution or any other public or private
 40 postsecondary educational institution and primarily used for
 41 an educational purpose; and
 42 (ii) at a time when classes are in session.



- 1 (18) The murder is committed:
2 (A) in a building that is primarily used for religious worship;
3 and
4 (B) at a time when persons are present for religious worship or
5 education.
- 6 (c) The mitigating circumstances that may be considered under this
7 section are as follows:
8 (1) The defendant has no significant history of prior criminal
9 conduct.
10 (2) The defendant was under the influence of extreme mental or
11 emotional disturbance when the murder was committed.
12 (3) The victim was a participant in or consented to the defendant's
13 conduct.
14 (4) The defendant was an accomplice in a murder committed by
15 another person, and the defendant's participation was relatively
16 minor.
17 (5) The defendant acted under the substantial domination of
18 another person.
19 (6) The defendant's capacity to appreciate the criminality of the
20 defendant's conduct or to conform that conduct to the
21 requirements of law was substantially impaired as a result of
22 mental disease or defect or of intoxication.
23 (7) The defendant was less than eighteen (18) years of age at the
24 time the murder was committed.
25 (8) Any other circumstances appropriate for consideration.
- 26 (d) If the defendant was convicted of murder in a jury trial, the jury
27 shall reconvene for the sentencing hearing. If the trial was to the court,
28 or the judgment was entered on a guilty plea, the court alone shall
29 conduct the sentencing hearing. The jury or the court may consider all
30 the evidence introduced at the trial stage of the proceedings, together
31 with new evidence presented at the sentencing hearing. The court shall
32 instruct the jury concerning the statutory penalties for murder and any
33 other offenses for which the defendant was convicted, the potential for
34 consecutive or concurrent sentencing, and the availability of
35 educational credit, good time credit, and clemency. The court shall
36 instruct the jury that, in order for the jury to recommend to the court
37 that the death penalty or life imprisonment without parole should be
38 imposed, the jury must find at least one (1) aggravating circumstance
39 beyond a reasonable doubt as described in subsection (l) and shall
40 provide a special verdict form for each aggravating circumstance
41 alleged. The defendant may present any additional evidence relevant
42 to:



- 1 (1) the aggravating circumstances alleged; or
 2 (2) any of the mitigating circumstances listed in subsection (c).
- 3 (e) For a defendant sentenced after June 30, 2002, except as
 4 provided by IC 35-36-9, if the hearing is by jury, the jury shall
 5 recommend to the court whether the death penalty or life imprisonment
 6 without parole, or neither, should be imposed. The jury may
 7 recommend:
 8 (1) the death penalty; or
 9 (2) life imprisonment without parole;
- 10 only if it makes the findings described in subsection (l). If the jury
 11 reaches a sentencing recommendation, the court shall sentence the
 12 defendant accordingly. After a court pronounces sentence, a
 13 representative of the victim's family and friends may present a
 14 statement regarding the impact of the crime on family and friends. The
 15 impact statement may be submitted in writing or given orally by the
 16 representative. The statement shall be given in the presence of the
 17 defendant.
- 18 (f) If a jury is unable to agree on a sentence recommendation after
 19 reasonable deliberations, the court shall discharge the jury and proceed
 20 as if the hearing had been to the court alone.
- 21 (g) If the hearing is to the court alone, except as provided by
 22 IC 35-36-9, the court shall:
 23 (1) sentence the defendant to death; or
 24 (2) impose a term of life imprisonment without parole;
- 25 only if it makes the findings described in subsection (l).
- 26 (h) If a court sentences a defendant to death, the court shall order
 27 the defendant's execution to be carried out not later than one (1) year
 28 and one (1) day after the date the defendant was convicted. The
 29 supreme court has exclusive jurisdiction to stay the execution of a
 30 death sentence. If the supreme court stays the execution of a death
 31 sentence, the supreme court shall order a new date for the defendant's
 32 execution.
- 33 (i) If a person sentenced to death by a court files a petition for
 34 post-conviction relief, the court, not later than ninety (90) days after the
 35 date the petition is filed, shall set a date to hold a hearing to consider
 36 the petition. If a court does not, within the ninety (90) day period, set
 37 the date to hold the hearing to consider the petition, the court's failure
 38 to set the hearing date is not a basis for additional post-conviction
 39 relief. The attorney general shall answer the petition for post-conviction
 40 relief on behalf of the state. At the request of the attorney general, a
 41 prosecuting attorney shall assist the attorney general. The court shall
 42 enter written findings of fact and conclusions of law concerning the



1 petition not later than ninety (90) days after the date the hearing
 2 concludes. However, if the court determines that the petition is without
 3 merit, the court may dismiss the petition within ninety (90) days
 4 without conducting a hearing under this subsection.

5 (j) A death sentence is subject to automatic review by the supreme
 6 court. The review, which shall be heard under rules adopted by the
 7 supreme court, shall be given priority over all other cases. The supreme
 8 court's review must take into consideration all claims that the:

9 (1) conviction or sentence was in violation of the:

10 (A) Constitution of the State of Indiana; or

11 (B) Constitution of the United States;

12 (2) sentencing court was without jurisdiction to impose a
 13 sentence; and

14 (3) sentence:

15 (A) exceeds the maximum sentence authorized by law; or

16 (B) is otherwise erroneous.

17 If the supreme court cannot complete its review by the date set by the
 18 sentencing court for the defendant's execution under subsection (h), the
 19 supreme court shall stay the execution of the death sentence and set a
 20 new date to carry out the defendant's execution.

21 (k) A person who has been sentenced to death and who has
 22 completed state post-conviction review proceedings may file a written
 23 petition with the supreme court seeking to present new evidence
 24 challenging the person's guilt or the appropriateness of the death
 25 sentence if the person serves notice on the attorney general. The
 26 supreme court shall determine, with or without a hearing, whether the
 27 person has presented previously undiscovered evidence that
 28 undermines confidence in the conviction or the death sentence. If
 29 necessary, the supreme court may remand the case to the trial court for
 30 an evidentiary hearing to consider the new evidence and its effect on
 31 the person's conviction and death sentence. The supreme court may not
 32 make a determination in the person's favor nor make a decision to
 33 remand the case to the trial court for an evidentiary hearing without
 34 first providing the attorney general with an opportunity to be heard on
 35 the matter.

36 (l) Before a sentence may be imposed under this section, the jury,
 37 in a proceeding under subsection (e), or the court, in a proceeding
 38 under subsection (g), must find that:

39 (1) the state has proved beyond a reasonable doubt that at least
 40 one (1) of the aggravating circumstances listed in subsection (b)
 41 exists; and

42 (2) any mitigating circumstances that exist are outweighed by the



1 aggravating circumstance or circumstances.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 198, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 44, line 17, reset in roman "or".

Page 44, line 17, delete "Level 3 felony," and insert "Level 3 felony.".

Page 44, delete line 18.

and when so amended that said bill do pass.

(Reference is to SB 198 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 9, Nays 0.

