

[H. 1259. Approved February 25, 1976.]

AN ACT to amend the Indiana Code to revise the criminal law of the state.

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

SECTION 1. IC Title 35 is amended by adding a new article 41 to read as follows:

ARTICLE 41. GENERAL SUBSTANTIVE PROVISIONS

Chapter 1. Jurisdiction; Definitions.

Sec. 1. Jurisdiction. (a) A person may be convicted under Indiana law of an offense if:

- (1) either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana;
- (2) conduct occurring outside Indiana is sufficient under Indiana law to constitute an attempt to commit an offense in Indiana;
- (3) conduct occurring outside Indiana is sufficient under Indiana law to constitute a conspiracy to commit an offense in Indiana, and an overt act in furtherance of the conspiracy occurs in Indiana;
- (4) conduct occurring in Indiana establishes complicity in the commission of, or an attempt or conspiracy to commit, an offense in another jurisdiction that also is an offense under Indiana law;
- (5) the offense consists of the omission to perform a legal duty imposed by Indiana law with respect to domicile, residence, or a relationship to a person, thing, or transaction in Indiana.

(b) When the offense is homicide, either the death of the victim or bodily impact causing death constitutes a "result" within the meaning of clause (a)(1) of this section. If the body of a homicide victim is found in Indiana, it is presumed that the result occurred in Indiana.

Sec. 2. Definitions. As used in this title:

“Bodily injury” means any impairment of physical condition, including physical pain.

“Credit institution” means a bank, insurance company, credit union, building and loan association, investment trust, industrial loan and investment company, or other organization held out to the public as a place of deposit of funds or a medium of savings or collective investment.

“Crime” means a felony or a misdemeanor.

“Deadly force” means force that creates a substantial risk of death, serious permanent disfigurement, or permanent or protracted loss or impairment of the function of a bodily member or organ.

“Deadly weapon” means a weapon, device, equipment, chemical substance, or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.

“Deviate sexual conduct” means an act of sexual gratification involving a sex organ of one person and the mouth or anus of another person.

“Dwelling” means a building, structure, or other enclosed space, permanent or temporary, movable or fixed, that is a person’s home or place of lodging.

“Forcible felony” means a felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being.

“Governmental entity” means (i) the United States or any state, county, township, city, town, separate municipal corporation, special taxing district, or public school corporation, or (ii) any authority, board, bureau, commission, committee, department, division, hospital, military body, or other instrumentality of any of these entities; and includes state-supported colleges and state-supported universities.

“Harm” means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person in whose welfare he is interested.

“Human being” means a person who has been born and is alive.

“Imprison” means to confine in a penal facility or to commit to the department of correction.

“Included offense” means an offense that:

- (1) is established by proof of the same facts or less than all the facts required to establish the commission of the offense charged;
- (2) consists of an attempt to commit the offense charged or an offense otherwise included therein; or
- (3) differs from the offense charged only in the respect that a less serious harm or risk of harm to the same person, property, or public interest or a lesser kind of culpability is required to establish its commission.

“Law enforcement officer” means a police officer, sheriff, constable, marshal, or prosecuting attorney, or a deputy of any of these.

“Offense” means a felony, a misdemeanor, or an infraction.

“Official proceeding” means a proceeding held or that may be held before a legislative, judicial, administrative, or other agency or before an official authorized to take evidence under oath, including a referee, hearing examiner, commissioner, notary, or other person taking evidence in connection with a proceeding.

“Penal facility” means state prison, reformatory, county jail, penitentiary, house of correction, state farm, or any other facility for confinement of persons under sentence, or awaiting trial or sentence, for offenses.

“Person” means a human being, corporation, partnership, unincorporated association, or governmental entity.

“Property” means anything of value and includes a gain or advantage or anything that might reasonably be regarded as such by the beneficiary; real property, personal property, money, labor, and services; intangibles; commercial instruments; written instruments concerning labor, services, or property; written instruments otherwise of value to the

owner, such as a public record, deed, will, credit card, or letter of credit; a signature to a written instrument; extension of credit; contract rights, choses-in-action and other interests in or claims to wealth; electricity, gas, oil, and water; captured or domestic animals, birds, and fish; food and drink; and human remains as defined in IC 23-14-1-1.

Property is that "of another person" if the other person has a possessory or proprietary interest in it, even if an accused person also has an interest in that property.

"Public servant" means a person who:

- (1) is authorized to perform an official function on behalf of, and is paid by, a governmental entity;
- (2) is elected or appointed to office to discharge a public duty for a governmental entity; or
- (3) performs a function for a governmental entity.

"Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, unconsciousness, extreme pain, or permanent or protracted loss or impairment of the function of a bodily member or organ.

"Utter" means to issue, authenticate, transfer, publish, deliver, sell, transmit, present, or use.

"Vehicle" means a device for transportation by land, water, or air, including mobile equipment with provision for transport of an operator.

Chapter 2. Basis of Liability.

Sec. 1. Voluntary Conduct. (a) A person commits an offense only if he voluntarily engages in conduct in violation of the provision of law defining the offense. However, a person who omits to perform an act commits an offense only if the provision of law defining the offense provides that he has a duty to perform the act.

(b) If possession of property constitutes any part of the prohibited conduct, it is a defense that the person who possessed the property was unaware of his possession for a time sufficient for him to have terminated his possession.

Sec. 2. Culpability. (a) A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so, whether or not there is a further objective toward which the conduct is directed.

(b) A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

(c) A person engages in conduct "recklessly" if he engages in the conduct in plain, conscious, and unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks and the disregard involves a gross deviation from acceptable standards of conduct.

(d) Unless the provision of law defining the offense provides otherwise, if a kind of culpability is required for commission of an offense, it is required with respect to every material element of the prohibited conduct and its attendant circumstances.

Sec. 3. Liability of a Corporation or Unincorporated Association. (a) A corporation or unincorporated association may be prosecuted for an offense committed by its agent acting within the scope of his authority.

(b) Recovery of a fine or forfeiture from a corporation or unincorporated association is limited to the property of the corporation or unincorporated association.

Sec. 4. Aiding, Inducing, or Causing an Offense. A person who knowingly or intentionally aids, induces, or otherwise causes another person to commit an offense commits that offense, even if the other person:

- (1) has not been prosecuted for the offense;
- (2) has not been convicted of the offense; or
- (3) has been acquitted of the offense.

Chapter 3. Defenses Relating to Culpability.

Sec. 1. Legal Authority. A person is justified in engaging in conduct otherwise prohibited if he has legal authority to do so.

Sec. 2. Use of Force to Protect Person or Property. (a) A person is justified in using reasonable force against another person to protect himself or a third person from what he reasonably believes to be the imminent use of unlawful force. However, a person is justified in using deadly force only if he reasonably believes that that force is necessary to prevent serious bodily injury to himself or a third person or the commission of a forcible felony.

(b) A person is justified in using reasonable force, including force that creates a substantial risk of serious bodily injury, against another person if he reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on his dwelling or curtilage.

(c) With respect to property other than a dwelling or curtilage, a person is justified in using force against another person if he reasonably believes that the force is necessary to immediately prevent or terminate the other person's trespass on or criminal interference with property lawfully in his possession, or in possession of a member of his immediate family, or belonging to a person whose property he has authority to protect. However, a person is not justified in using deadly force unless that force is justified under subsection (a) of this section.

(d) Notwithstanding subsections (a), (b), and (c) of this section, a person is not justified in using force if:

- (1)** he is committing, or is escaping after the commission of, a crime;
- (2)** he provokes unlawful action by another person with intent to cause bodily injury to the other person; or
- (3)** he has entered into combat with another person or is the initial aggressor, unless he withdraws from the encounter and communicates to the other person his intent to do so and the other person nevertheless continues or threatens to continue unlawful action.

Sec. 3. Use of Force Relating to Arrest or Escape. (a) A person other than a law enforcement officer is justified in using force against another person to effect his arrest or prevent his escape if there is probable cause to believe the other

person has committed a felony. However, such a person is not justified in using deadly force unless that force is justified under section 2 of this chapter.

(b) A law enforcement officer is justified in using force if he reasonably believes that the force is necessary to effect a lawful arrest. However, an officer is justified in using force that creates a substantial risk of serious bodily injury only if he reasonably believes that that force is necessary (i) to prevent serious bodily injury to himself or a third person or the commission of a forcible felony or (ii) to effect an arrest of a person who has committed or attempted to commit a felony.

(c) A law enforcement officer making an arrest under an invalid warrant is justified in using force as if the warrant were valid, unless he knows that the warrant is invalid.

(d) A law enforcement officer who has an arrested person in his custody is justified in using the same force to prevent the escape of the arrested person from his custody that he would be justified in using if he were arresting that person.

(e) A guard or other official in a penal facility or a law enforcement officer is justified in using force if he reasonably believes that the force is necessary to prevent the escape of a person who is detained in a penal facility.

(f) A person is justified in using force to resist an arrest only if the arrest is clearly unlawful. A person is justified in using reasonable force to resist excessive force used by another person effecting his arrest.

Sec. 4. Avoidance of Greater Harm. A person is justified in engaging in conduct otherwise prohibited if :

(1) the person reasonably believes that the conduct is necessary to prevent harm, except for social or moral harm, greater than the harm that might result from the conduct; and

(2) the person is not at fault in bringing about the situation that makes the conduct necessary.

Sec. 5. Intoxication. (a) It is a defense that the person who engaged in the prohibited conduct did so while he was

intoxicated, if the intoxication resulted from the introduction of a substance into his body:

- (1) without his consent; or
- (2) when he did not know that the substance might cause intoxication.

(b) Voluntary intoxication is a defense only to the extent that it negates specific intent.

Sec. 6. Mental Disease or Defect. It is a defense that the person who engaged in the prohibited conduct lacked culpability as a result of mental disease or defect.

Sec. 7. Mistake of Fact. It is a defense that the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact if the mistake negates the culpability required for commission of the offense.

Sec. 8. Duress. (a) With respect to an offense other than an offense against the person, it is a defense that the person who engaged in the prohibited conduct was compelled to do so by threat of imminent serious bodily injury to himself or another person. With respect to a misdemeanor or infraction other than an offense against the person, it is a defense that the person who engaged in the prohibited conduct was compelled to do so by force or threat of force. Compulsion under this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.

(b) The defense of duress is not available to a person who recklessly, knowingly, or intentionally placed himself in a situation in which it was foreseeable that he would be subjected to duress.

Sec. 9. Entrapment. (a) It is a defense that:

- (1) the prohibited conduct of the person was the product of a public servant using persuasion or other means likely to cause the person to engage in the conduct; and
- (2) the person was not predisposed to commit the offense.

(b) Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.

Sec. 10. Abandonment. (a) With respect to an offense under IC 35-41-2-4 or under IC 35-41-5-1, it is a defense that the person who engaged in the prohibited conduct voluntarily abandoned his effort to commit the crime or voluntarily prevented its commission.

(b) With respect to an offense under IC 35-41-5-2, it is a defense that the person who engaged in the prohibited conduct voluntarily prevented the commission of the crime he intended to commit.

Chapter 4. Standard of Proof; Bars to Prosecution.

Sec. 1. Standard of Proof. A person may not be convicted of an offense unless his guilt is proved beyond a reasonable doubt.

Sec. 2. Periods of Limitation. (a) Except as otherwise provided in this section, a prosecution for an offense is barred unless it is commenced:

- (1) at any time for a capital felony or a Class A felony;
- (2) within five (5) years after the commission of any other felony;
- (3) within two (2) years after the commission of a misdemeanor;
- (4) within one (1) year after the commission of an infraction.

(b) A prosecution for forgery of an instrument for payment of money, or for the uttering of a forged instrument, under IC 35-43-5-2, is barred unless it is commenced within five (5) years after the maturity of the instrument.

(c) If a complaint, indictment, or information is dismissed because of an error, defect, insufficiency, or irregularity, a new prosecution may be commenced within ninety (90) days after the dismissal even if the period of limitation has expired at the time of dismissal or will expire within ninety (90) days after the dismissal.

(d) The period within which a prosecution must be commenced does not include any period in which:

(1) the accused person is not usually and publicly resident in Indiana or so conceals himself that process cannot be served on him;

(2) the accused person conceals evidence of the offense, and evidence sufficient to charge him with that offense is unknown to the prosecuting authority and could not have been discovered by that authority by exercise of due diligence; or

(3) the accused person is a person elected or appointed to office under statute or constitution, if the offense charged is theft or conversion of public funds while in public office.

(e) For purposes of tolling the period of limitation only, a prosecution is commenced on the earliest of these dates:

(1) The date of filing of an indictment, information, or complaint before a court of competent jurisdiction.

(2) The date of issuance of a valid arrest warrant.

(3) The date of arrest of the accused person by a law enforcement officer without a warrant, if the officer is legally competent to make the arrest.

(f) A prosecution is considered timely commenced for any offense to which the defendant enters a plea of guilty notwithstanding that the period of limitation has expired.

Sec. 3. When Prosecution Barred for Same Offense. (a) A prosecution is barred if there was a former prosecution of the defendant based on the same facts and for commission of the same offense and if:

(1) the former prosecution resulted in an acquittal or a conviction of the defendant (A conviction of an included offense is an acquittal of the greater offense, even if the conviction is subsequently set aside.); or

(2) the former prosecution was terminated after the jury was impaneled and sworn or, in a trial by the court without a jury, after the first witness was sworn, unless:

(i) the defendant consented to the termination or waived, by motion to dismiss or otherwise, his right to object to the termination;

(ii) it was physically impossible to proceed with the trial in conformity with law;

(iii) there was a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law;

(iv) prejudicial conduct, in or outside the courtroom, made it impossible to proceed with the trial without injustice to either the defendant or the state;

(c) the jury was unable to agree on a verdict; or

(vi) false statement of a juror on voir dire prevented a fair trial.

(b) If the prosecuting authority brought about any of the circumstances in clauses (a)(2)(i) through (a)(2)(vi) of this section with intent to cause termination of the trial, another prosecution is barred.

Sec. 4. When Prosecution Barred for Different Offense.

(a) A prosecution is barred:

(1) if there was a former prosecution of the defendant for a different offense or for the same offense based on different facts;

(2) if the former prosecution resulted in an acquittal or a conviction of the defendant or in an improper termination under section 3 of this chapter; and

(3) if the instant prosecution is for an offense with which the defendant should have been charged in the former prosecution.

(b) A prosecution is not barred under this section if the offense on which it is based was not consummated when the trial under the former prosecution began.

Sec. 5. Former Prosecution in Another Jurisdiction, a Bar. When conduct constitutes an offense within the concurrent jurisdiction of Indiana and another jurisdiction, a former prosecution in any other jurisdiction is a bar to a subsequent prosecution for the same conduct in Indiana if the former prosecution resulted in an acquittal or a conviction of the

defendant or in an improper termination under section 3 of this chapter.

Sec. 6. Invalid or Fraudulently Procured Prosecution, Not a Bar. A former prosecution is not a bar under sections 3, 4, and 5 of this chapter if:

- (1) it was before a court that lacked jurisdiction over the defendant or the offense;
- (2) it was procured by the defendant without the knowledge of the prosecuting authority and with the intent to avoid a higher sentence that might otherwise be imposed; or
- (3) it resulted in a conviction that was set aside, reversed, vacated, or held invalid in a subsequent proceeding unless the defendant was adjudged not guilty or ordered discharged.

Chapter 5. Offenses of General Applicability.

Sec. 1. Attempt. (a) A person attempts to commit a crime if, acting with the culpability required for the commission of the crime:

- (1) he engages in conduct that constitutes a substantial step toward the commission of the crime and the crime would have been consummated but for the intervention of, or discovery by, another person; or
- (2) he engages in conduct that would constitute the crime if the attendant circumstances were as he believed them to be.

(b) An attempt to commit a crime is the same class felony or misdemeanor as the crime attempted. However, an attempt to commit a capital felony is a Class A felony.

Sec. 2. Conspiracy. (a) A person who, with intent to commit a felony, agrees with another person to commit that felony commits a felony of the same class as the felony he intended to commit. However, conspiracy to commit a capital felony is a Class A felony.

(b) The state must allege and prove that either the person or the person with whom he agreed performed an overt act in furtherance of the agreement.

(c) It is no defense that the person with whom the accused person is alleged to have conspired:

- (1) has not been prosecuted;
- (2) has not been convicted;
- (3) has been acquitted;
- (4) has been convicted of a different crime;
- (5) cannot be prosecuted for any reason; or
- (6) lacked the capacity to commit the crime.

Sec. 3. Multiple Convictions. (a) A person may not be convicted of both conspiracy and attempt with respect to the same crime.

(b) A person may not be convicted of both a crime and an attempt to commit the same crime.

SECTION 2. IC Title 35 is amended by adding a new article 42 to read as follows:

ARTICLE 42. OFFENSES AGAINST THE PERSON

Chapter 1. Homicide.

Sec. 1. Murder. (a) A person who:

- (1) knowingly or intentionally kills another human being;
or
- (2) kills another human being while committing or attempting to commit kidnapping, arson, burglary, rape, robbery, or unlawful deviate conduct;

commits a Class A felony.

(b) A person who:

- (1) intentionally kills a judge, law enforcement officer, corrections employee, or firefighter acting in the line of duty;
- (2) kills another human being by the unlawful detonation of an explosive with intent to injure person or damage property; or
- (3) kills another human being while committing or attempting to commit kidnapping;

commits a capital felony.

(c) A person lying in wait or a person hired to kill who intentionally kills another human being commits a capital felony.

(d) A person having a prior unrelated conviction of murder or serving a term of life imprisonment who violates this section commits a capital felony.

(e) Murder as a capital felony must be specifically stated in the charge against the accused person. Notwithstanding any other law, a charge of murder as a capital felony includes no other offense.

Sec. 2. Causing Suicide. A person who intentionally causes another person, by force, duress, or deception, to commit suicide commits a Class B felony.

Sec. 3. Voluntary Manslaughter. A person who knowingly or intentionally kills another human being while acting under an intense passion resulting from grave and sudden provocation commits a Class B felony. A provocation is grave if it is sufficient to excite an intense passion in a reasonable man. The state is not required to prove intense passion resulting from grave and sudden provocation. Intense passion resulting from grave and sudden provocation is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter.

Sec. 4. Involuntary Manslaughter. A person who kills another human being while committing an offense commits a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony.

Sec. 5. Reckless Homicide. A person who recklessly kills another human being commits a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony.

Chapter 2. Battery and Related Offenses.

Sec. 1. Battery. A person who knowingly or intentionally touches another in a rude, insolent, or angry manner commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the offense results in bodily injury or if

committed against a law enforcement officer or against a person summoned and directed by the officer while the officer is engaged in the execution of his official duty, a Class D felony if the offense results in bodily injury to such an officer or person summoned and directed, and a Class C felony if the offense results in serious bodily injury to another person or if the offense is committed by means of a deadly weapon.

Sec. 2. Recklessness. (a) A person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the conduct includes the use of a vehicle or deadly weapon.

(b) A person who recklessly, knowingly, or intentionally inflicts serious bodily injury on another person commits a Class D felony.

Sec. 3. Provocation. A person who recklessly, knowingly, or intentionally engages in conduct that is likely to provoke a reasonable man to commit battery commits a Class A infraction.

Chapter 3. Kidnapping; Confinement.

Sec. 1. Definition. As used in this chapter, "confines" means to substantially interfere with the liberty of a person.

Sec. 2. Kidnapping. A person who knowingly or intentionally removes another person by force or threat of force from one place to another:

- (1) with intent to obtain ransom;
- (2) while hijacking a vehicle;
- (3) with intent to obtain the release, or intent to aid in the escape, of any person from official custody; or
- (4) with intent to use the person removed as a shield or hostage;

commits a Class A felony.

Sec. 3. Confinement. A person who knowingly or intentionally (i) confines another person without his consent or (ii) removes another person, by force or threat of force, from

one place to another commits a Class D felony. However, the offense is:

- (1) a Class C felony if the other person is a child under the age of fourteen (14) years, and is not his child; and
- (2) a Class B felony if committed by means of a deadly weapon.

Chapter 4. Sex Crimes.

Sec. 1. Rape. (a) A person who knowingly or intentionally has sexual intercourse with a member of the opposite sex, not his spouse, when:

- (1) the other person is compelled by force or imminent threat of force;
- (2) the other person is unaware that the sexual intercourse is occurring; or
- (3) the other person is so mentally disabled or deficient that consent to sexual intercourse cannot be given;

commits a Class C felony. However, the offense is a Class B felony if it is committed by using force that creates a substantial risk of serious bodily injury to the other person.

(b) Sexual intercourse occurs when there is any penetration of the female sex organ by the male sex organ.

(c) The exclusion for spouses provided in subsection (a) of this section does not apply if a petition for dissolution of the marriage is pending and the spouses are living apart.

Sec. 2. Unlawful Deviate Conduct. (a) A person who knowingly or intentionally causes another person to perform or submit to deviate sexual conduct when:

- (1) the other person is compelled by force or imminent threat of force;
- (2) the other person is unaware that the conduct is occurring; or
- (3) the other person is so mentally disabled or deficient that consent to the conduct cannot be given;

commits a Class C felony. However, the offense is a Class B felony if it is committed by using force that creates a substantial risk of serious bodily injury to the other person.

(b) A person who, under circumstances not covered by section 1 of this chapter or subsection (a) of this section, knowingly or intentionally causes penetration, by an object or any other means, of a sex organ or anus of another person when:

- (1) the other person is compelled by force or imminent threat of force;
- (2) the other person is unaware that the conduct is occurring; or
- (3) the other person is so mentally disabled or deficient that consent to the conduct cannot be given;

commits a Class C felony. However, the offense is a Class B felony if it is committed by using force that creates a substantial risk of serious bodily injury to the other person.

Sec. 3. Child Molesting. (a) A person who, with a child under the age of twelve (12) years, performs or submits to sexual intercourse or deviate sexual conduct commits a Class B felony. However, the offense is a Class A felony if it is committed by using force that creates a substantial risk of serious bodily injury to the child.

(b) A person who, with a child under the age of twelve (12) years, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits a Class C felony. However, the offense is a Class A felony if it is committed by using force that creates a substantial risk of serious bodily injury to the child.

(c) A person sixteen (16) years old or older who, with a child twelve (12) years old or older but under the age of sixteen (16) years, performs or submits to sexual intercourse or deviate sexual conduct commits a Class C felony. However, the offense is a Class B felony if it is committed by using force that creates a substantial risk of serious bodily injury to the child.

(d) A person sixteen (16) years old or older who, with a child twelve (12) years old or older but under the age of sixteen (16) years, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits a Class D felony. However, the offense is a Class B felony if it is committed by using force that creates a substantial risk of serious bodily injury to the child.

(e) It is a defense that the older person reasonably believed that the child was sixteen (16) years old or older at the time of the conduct.

(f) It is a defense that the child has ever been married.

SECTION 3. IC Title 35 is amended by adding a new article 43 to read as follows:

ARTICLE 43. OFFENSES AGAINST PROPERTY

Chapter 1. Arson; Mischief.

Sec. 1. Arson. (a) A person who, by means of fire or explosive, knowingly or intentionally damages:

- (1) a dwelling of another person without his consent;
- (2) property of any person under circumstances that endanger human life; or
- (3) property of another person if the pecuniary loss is at least twenty thousand dollars (\$20,000);

commits a Class C felony. However, the offense is a Class B felony if it results in bodily injury to another person and a Class B felony if it results in serious bodily injury to another person.

(b) A person who, with intent to injure person or damage property, unlawfully detonates an explosive commits a Class C felony. However, the offense is a Class B felony if it results in bodily injury to another person and a Class B felony if it results in serious bodily injury to another person.

(c) A person who, for hire, violates subsection (a) or (b) of this section commits a Class B felony. However, the offense

is a Class A felony if it results in bodily injury to another person.

Sec. 2. Mischief. A person who:

- (1) recklessly, knowingly, or intentionally damages property of another person without his consent; or
- (2) knowingly or intentionally causes another to suffer pecuniary loss by deception or by an expression of intention to injure another person or to damage the property or to impair the rights of another person, under circumstances not amounting to theft;

commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500), and a Class D felony if (i) the pecuniary loss is at least two thousand five hundred dollars (\$2,500), (ii) the damage causes a substantial interruption or impairment of utility service rendered to the public, or (iii) the damage is to a public record.

Chapter 2. Burglary; Trespass.

Sec. 1. Burglary. A person who enters the building or structure of another person with intent to commit a felony in it commits a Class D felony. However, the offense is a Class C felony if it is committed while armed with a deadly weapon, a Class B felony if it results in bodily injury to any other person, and a Class B felony if it results in serious bodily injury to any other person.

Sec. 2. Trespass. (a) A person who:

- (1) not having a contractual interest in the property, knowingly or intentionally enters the property of another person after having been denied entry by the other person or his agent;
- (2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the property of another person after having been asked to leave by the other person or his agent;

(3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle; or

(4) otherwise knowingly or intentionally interferes with the possession or use of the property of another person without his consent and under circumstances not amounting to theft;

commits a Class A misdemeanor.

(b) A person has been denied entry within the meaning of this section when he has been denied entry by means of:

(1) personal communication, oral or written; or

(2) posting or exhibiting a notice at the main entrance and in a manner that is either prescribed by law or likely to come to the attention of the public.

Chapter 3. Robbery.

Sec. 1. Robbery. A person who knowingly or intentionally takes property from the presence of another person by using force or by threatening the use of force commits a Class D felony. However, the offense is a Class C felony if it is committed while armed with a deadly weapon, a Class B felony if it results in bodily injury to another person and a Class B felony if it results in serious bodily injury to any other person.

Chapter 4. Theft; Conversion.

Sec. 1. Definition. As used in this chapter, "exert control over property" means to obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber, or possess property, or to secure, transfer, or extend a right to property.

Sec. 2. Theft. A person who, with intent either (i) to accept, use, or withhold property of another person so as to appropriate any portion of its value or benefit or (ii) to return property of another person only after payment of a reward or other consideration, knowingly or intentionally exerts control over that property either:

(1) in a manner or to an extent other than that to which the other person has consented;

- (2) by creating or confirming a false impression in the other person;
- (3) by transferring or encumbering other property while failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of that other property;
- (4) by failing to correct a false impression that he knows is influencing the other person if he stands in a relationship of special trust to that person;
- (5) by promising performance that he knows will not be performed; or
- (6) by expressing an intention to injure any other person or to damage the property or impair the rights of any other person;

commits a Class D felony.

Sec. 3. Conversion. A person who, under circumstances not amounting to theft, knowingly or intentionally exerts control over property of another person either:

- (1) in a manner or to an extent other than that to which the other person has consented;
- (2) by creating or confirming a false impression in the other person;
- (3) by transferring or encumbering other property while failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of that other property;
- (4) by failing to correct a false impression that he knows is influencing the other person if he stands in a relationship of special trust to that person;
- (5) by promising performance that he knows will not be performed; or
- (6) by expressing an intention to injure any other person or to damage the property or impair the rights of any other person;

commits a Class A misdemeanor.

Sec. 4. Evidence. (a) The price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value and ownership of the property.

(b) Evidence that a person:

(1) altered, substituted, or transferred a label, price tag, or price marking on property displayed or offered for sale or hire; or

(2) transferred property displayed or offered for sale or hire from the package, bag, or container in or on which the property was displayed or offered to another package, bag, or container;

constitutes prima facie evidence of intent to withhold the property so as to appropriate a portion of its value.

(c) Evidence that a person:

(1) concealed property displayed or offered for sale or hire; and

(2) removed the property from any place within the business premises at which it was displayed or offered to a point beyond that at which payment should be made;

constitutes prima facie evidence of intent to withhold the property so as to appropriate a portion of its value.

(d) Except as provided in subsection (e) of this section, evidence of failure to perform as promised, by itself, does not constitute evidence that the promisor knew that the promise would not be performed.

(e) Except as provided in section 5(b) of this chapter, a person who has insufficient funds in or no account with a drawee credit institution and who makes, draws, or utters a check, draft, or order for payment on the credit institution may be inferred:

(1) to have known that the credit institution would refuse payment upon presentment in the usual course of business; and

(2) to have intended to accept so as to appropriate a portion of its value any property acquired by making, drawing, or uttering the check, draft, or order for payment.

(f) Evidence that a person, after renting or leasing a motor vehicle under a written agreement providing for the return of the vehicle to a particular place at a particular time, failed to return the vehicle to the place within seventy-two (72) hours after the agreed time constitutes prima facie evidence that he exerted control over the vehicle to an extent other than that to which the lessor had consented.

Sec. 5. Defenses. (a) An owner in possession of encumbered property does not commit a crime under this chapter, as against a person having only a security interest, by removing or otherwise dealing with the property contrary to the terms of the security agreement, even if title is in the credit institution under a mortgage, conditional sales contract, or bailment lease.

(b) A maker or drawer :

(1) who has an account in a credit institution but does not have sufficient funds in that account; and

(2) who makes, draws, or utters a check, draft, or order for payment on the credit institution;

does not commit a crime under this chapter if he pays the credit institution the amount due, together with protest fees, within ten (10) days after receiving notice that the check, draft, or order has not been paid by the credit institution. Notice sent to either (i) the address printed or written on the check, draft, or order or (ii) the address given in writing to the recipient at the time the check, draft, or order was issued or delivered constitutes notice that the check, draft, or order has not been paid by the credit institution.

Chapter 5. Forgery and Other Deceptions.

Sec. 1. Definitions. As used in this chapter :

“Coin machine” means a coin box, vending machine, or other mechanical or electronic device or receptacle designed (i) to receive a coin, bill, or token made for that purpose and (ii) in return for the insertion or deposit thereof, automatically to offer, provide, or assist in providing or to permit the acquisition of some property.

“Credit card” means an instrument or device, whether known as a credit card, charge plate, or by any other name, issued by an issuer for the use by or on behalf of the credit card holder in obtaining property.

“Credit card holder” means the person to whom or for whose benefit the credit card is issued by an issuer.

“Entrusted property” means property held in a fiduciary capacity or property placed in charge of a person engaged in the business of transporting, storing, lending on, or otherwise holding property of others.

“Makes” means to draw, prepare, complete, or alter any writing in whole or in part.

“Public relief or assistance” means any payment made, service rendered, hospitalization provided, or other benefit extended to a person by a governmental entity from public funds, including poor relief, direct relief, unemployment compensation, and any other form of support or aid.

“Slug” means an article or object that is capable of being deposited in a coin machine as an improper substitute for a genuine coin, bill, or token.

“With intent to defraud” means with intent to cause, by some form of deception, another person to assume, create, confer, transfer, lose, or terminate a right, obligation, or power with respect to any person or property.

“Writing” means a paper, document, or other instrument containing written matter, money, coins, tokens, stamps, seals, credit cards, badges, trade marks, medals, or other objects or symbols of value, right, privilege, or identification.

Sec. 2. Forgery. A person who, with intent to defraud, makes or utters a writing in such a manner that the writing purports to have been made:

- (1) by another person;
- (2) at another time;
- (3) with different provisions; or
- (4) by authority of one who did not give authority;

commits a Class C felony.

Sec. 3. Deception. (a) A person who:

- (1) with intent to defraud another person, damages property; or
- (2) with intent to defraud his creditor or purchaser, conceals, encumbers, or transfers property;

commits a Class D felony.

(b) A person who:

- (1) being an officer, manager, or other person participating in the direction of a credit institution, knowingly or intentionally receives or permits the receipt of a deposit or other investment, knowing that the institution is insolvent;
- (2) knowingly or intentionally issues or delivers a check, draft, or other order on a credit institution or person for the payment of money or other property, knowing that it will not be paid or honored by the drawee;
- (3) knowingly or intentionally makes a false or misleading written statement with intent to obtain property; or knowingly or intentionally fails to report a material change in his financial condition or ability to pay after having properly obtained any public relief or assistance;
- (4) misapplies entrusted property, property of a governmental entity, or property of a credit institution, under circumstances not amounting to theft, in a manner that he knows is unlawful or that he knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted;
- (5) knowingly or intentionally, in the regular course of business:
 - (i) uses or possesses for use a false weight or measure or other device for falsely determining or recording the quality or quantity of any commodity; or
 - (ii) sells, offers, or displays for sale or delivers less than the represented quality or quantity of any commodity;
- (6) with intent to defraud another person furnishing electricity, gas, water, telecommunication or cable TV service, or any other utility service, avoids a lawful charge for that

service by scheme or device or by tampering with facilities or equipment of the person furnishing the service;

(7) with intent to defraud, misrepresents the identity of himself or another person or the identity or quality of property;

(8) with intent to defraud an owner of a coin machine, deposits a slug in that machine; or with intent to enable himself or another person to deposit a slug in a coin machine, makes, possesses, or disposes of a slug; or

(9) knowingly or intentionally disseminates an advertisement that he knows is false, misleading, or deceptive to the public, with intent to promote the purchase or sale of property or services or the acceptance of employment;

commits a Class A misdemeanor.

(c) With respect to clause (b) (2) of this section, evidence that a person has insufficient funds in or no account with a drawee credit institution constitutes prima facie evidence that he knew that the check, draft, or order would not be paid or honored. However, if the person has an account in a drawee credit institution but does not have sufficient funds in that account, he does not commit a crime if he pays the credit institution the amount due, together with protest fees, within ten (10) days after receiving notice that the check, draft, or order has not been paid by the credit institution. Notice sent to either (i) the address printed or written on the check, draft, or order or (ii) the address given in writing to the recipient at the time the check, draft, or order was issued or delivered constitutes notice that the check, draft, or order has not been paid by the credit institution.

(d) In determining whether an advertisement is false, misleading, or deceptive under clause (b) (9) of this section, there shall be considered, among other things, not only representations contained or suggested in the advertisement, by whatever means, including device or sound, but also the extent to which the advertisement fails to reveal material facts in the light of the representations.

Sec. 4. Credit Card Deception. A person who:

(1) with intent to defraud, obtains property by:

- (i) using a credit card, knowing that the credit card was unlawfully obtained or retained;
- (ii) using a credit card, knowing that the credit card is forged, revoked, or expired;
- (iii) using, without consent, a credit card that was issued to another person; or representing, without the consent of the credit card holder, that he is the authorized holder of the credit card; or
- (iv) representing that he is the authorized holder of a credit card when the card has not in fact been issued;
- (2) being authorized by an issuer to furnish property upon presentation of a credit card, fails to furnish the property and, with intent to defraud the issuer or the credit card holder, represents in writing to the issuer that he has furnished the property;
- (3) being authorized by an issuer to furnish property upon presentation of a credit card, furnishes, with intent to defraud the issuer or the credit card holder, property upon presentation of a credit card, knowing that the credit card was unlawfully obtained or retained or that the credit card is forged, revoked, or expired;
- (4) not being the issuer, knowingly or intentionally sells a credit card;
- (5) not being the issuer, receives a credit card, knowing that the credit card was unlawfully obtained or retained or that the credit card is forged, revoked, or expired;
- (6) with intent to defraud, receives a credit card as security for debt; or
- (7) receives property, knowing that the property was obtained in violation of clause (1) of this section;

commits a Class D felony.

SECTION 4. IC Title 35 is amended by adding a new article 44 to read as follows:

ARTICLE 44. OFFENSES AGAINST PUBLIC ADMINISTRATION

Chapter 1. Bribery; Official Misconduct.

Sec. 1. Bribery. (a) A person who:

(1) confers, offers, or agrees to confer on a public servant, either before or after the public servant becomes appointed, elected, or qualified, any property except property the public servant is authorized by law to accept, with intent to control the performance of an act related to the employment or function of the public servant;

(2) being a public servant, solicits, accepts, or agrees to accept, either before or after he becomes appointed, elected, or qualified, any property, except property he is authorized by law to accept, with intent to control the performance of an act related to his employment or function as a public servant;

(3) confers, offers, or agrees to confer on a person any property, except property the person is authorized by law to accept, with intent to cause that person to control the performance of an act related to the employment or function of a public servant;

(4) solicits, accepts, or agrees to accept any property, except property he is authorized by law to accept, with intent to control the performance of an act related to the employment or function of a public servant;

(5) confers, offers, or agrees to confer any property on a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, with intent that the person shall fail to use his best efforts in connection with that contest, event, or exhibition;

(6) being a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, solicits, accepts, or agrees to accept any property with intent that he shall fail to use his best efforts in connection with that contest, event, or exhibition;

(7) being a witness or informant in an official proceeding or investigation, solicits, accepts, or agrees to accept any property, with intent to:

(i) withhold any testimony, information, document, or thing;

(ii) avoid legal process summoning him to testify or supply evidence; or

(iii) absent himself from the proceeding or investigation to which he has been legally summoned; or

(8) confers, offers, or agrees to confer any property on a witness or informant in an official proceeding or investigation, with intent that the witness or informant:

(i) withhold any testimony, information, document, or thing;

(ii) avoid legal process summoning the witness or informant to testify or supply evidence; or

(iii) absent himself from any proceeding or investigation to which the witness or informant has been legally summoned;

commits a Class C felony.

(b) It is not a defense that the person whom the accused person sought to control was not qualified to act in the desired way.

Sec. 2. Official Misconduct. A public servant who:

(1) knowingly or intentionally performs an act that he is forbidden by law to perform;

(2) performs an act in excess of his lawful authority, with intent to obtain any property for himself;

(3) knowingly or intentionally solicits, accepts, or agrees to accept from his appointee or employee any property other than what he is authorized by law to accept as a condition of continued employment; or

(4) knowingly or intentionally speculates, wagers, acquires, or divests himself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so, based on information obtained by virtue of his office that official action that has not been made public is contemplated;

commits a Class A misdemeanor.

Chapter 2. Perjury and Other Falsifications.

Sec. 1. Perjury. A person who makes a false, material statement under oath or affirmation, before a person authorized by law to administer oath, knowing the statement to be false or not believing it to be true, commits a Class D felony.

Sec. 2. False Reporting. (a) A person who reports, by telephone, telegraph, mail, or other written or oral communication, that he or another person has placed or intends to place an explosive or other destructive substance in a building or transportation facility, knowing the report to be false, commits a Class D felony.

(b) A person who:

(1) gives a false report of the commission of a crime or gives false information in the official investigation of the commission of a crime, knowing the report or information to be false; or

(2) gives a false alarm of fire to the fire department of a governmental entity, knowing the alarm to be false;

commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if it substantially hinders any law enforcement process or if it results in harm to an innocent person.

Sec. 3. Impersonation of a Public Servant. A person who falsely represents himself as a public servant, with intent to mislead and induce another person to submit to false official authority or otherwise to act to his detriment in reliance on the false representation, commits a Class A misdemeanor.

Chapter 3. Interference with Governmental Operations.

Sec. 1. Definition. As used in this chapter, "lawful detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of a crime or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition or deportation, or custody for purposes incident to the foregoing including transportation, medical diagnosis or treatment, court appearances, work and recreation, or any other detention for law enforcement purposes;

but it does not include supervision of a person on probation or parole or constraint incidental to release with or without bail.

Sec. 2. Assisting a Criminal. A person not standing in the relation of parent, child, or spouse to another person who has committed a crime or is a fugitive from justice who, with intent to hinder the apprehension or punishment of the other person, harbors, conceals, or otherwise assists the person commits a Class A misdemeanor. However, the offense is a Class D felony if the person assisted has committed a felony.

Sec. 3. Resisting Law Enforcement. A person who:

(1) knowingly or intentionally, and forcibly, resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of his duties as an officer;

(2) knowingly or intentionally, and forcibly, resists, obstructs, or interferes with the authorized service or execution of a civil or criminal process or order of a court; or

(3) knowingly or intentionally flees from a law enforcement officer after the officer has, by visible or audible means, identified himself and ordered the person to stop;

commits a Class A misdemeanor. However, the offense is a Class D felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

Sec. 4. Tampering. (a) A person who knowingly or intentionally induces, by threat, coercion, or false statement, a witness or informant in an official proceeding or investigation to:

(1) withhold any testimony, information, document, or thing;

(2) avoid legal process summoning him to testify or supply evidence; or

(3) absent himself from a proceeding or investigation to which he has been legally summoned;

commits a Class D felony.

(b) A person who:

(1) alters, destroys, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation;

(2) makes, presents, or uses a false record, document, or thing with intent that the record, document, or thing, material to the point in question, appear in evidence in an official proceeding or investigation to mislead a public servant; or

(3) communicates, directly or indirectly, with a juror otherwise than as authorized by law, with intent to influence the juror regarding any matter that is or may be brought before the juror;

commits a Class A misdemeanor.

Sec. 5. Escape. A person who intentionally flees from lawful detention or intentionally fails to return to lawful detention following temporary leave granted for a specified purpose or limited period commits a Class D felony. However, the offense is a Class C felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

Sec. 6. Failure to Appear. (a) A person who, having been released from lawful detention on condition that he appear at a specified time and place in connection with a felony charge, intentionally fails to appear at that time and place commits a Class D felony even if he is not convicted of the felony with which he was originally charged.

(b) A person who, having been released from lawful detention on condition that he appear at a specified time and place in connection with a misdemeanor charge, intentionally fails to appear at that time and place commits a Class A misdemeanor even if he is not convicted of the misdemeanor with which he was originally charged.

(c) This section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole.

Sec. 7. Refusal to Aid an Officer. A person who, when ordered by a law enforcement officer to assist the officer in the execution of the officer's duties, knowingly or intentionally, and without a reasonable cause, refuses to assist commits a Class B misdemeanor.

Sec. 8. Obstructing a Firefighter. A person who knowingly or intentionally impedes or interferes with a firefighter performing or attempting to perform his emergency functions or duties as a firefighter commits a Class A misdemeanor.

Sec. 9. Trafficking with an Inmate. A person who, without the prior authorization of the person in charge of a penal facility, knowingly or intentionally:

- (1) delivers, or carries into the penal facility with intent to deliver, an article to an inmate of the facility; or
- (2) carries, or receives with intent to carry out of the penal facility, an article from an inmate of the facility;

commits a Class A misdemeanor. However, the offense is a Class D felony if the article is a controlled substance as defined in IC 35-48 or a deadly weapon.

SECTION 5. IC Title 35 is amended by adding a new article 45 to read as follows:

ARTICLE 45. OFFENSES AGAINST PUBLIC HEALTH, ORDER, AND DECENCY

Chapter 1. Offenses Against Public Order.

Sec. 1. Definitions. As used in this chapter:

"Tumultuous and violent conduct" means conduct that results in, or is likely to result in, serious bodily injury to a person or substantial damage to property.

"Unlawful assembly" means an assembly of five (5) or more persons whose common object is to commit an unlawful act, or a lawful act by unlawful means. Prior concert is not necessary to form an unlawful assembly.

Sec. 2. Rioting. A person who, being a member of an unlawful assembly, recklessly, knowingly, or intentionally engages in tumultuous and violent conduct commits a Class A

misdemeanor. However, the offense is a Class D felony if committed while armed with a deadly weapon.

Sec. 3. Disorderly Conduct. A person who recklessly, knowingly, or intentionally:

- (1) engages in fighting or in tumultuous and violent conduct;
- (2) makes unreasonable noise and continues to do so after being asked to stop;
- (3) disrupts a lawful assembly of persons; or
- (4) obstructs vehicular or pedestrian traffic;

commits a Class B misdemeanor.

Chapter 2. Offenses Relating to Communications.

Sec. 1. Intimidation. (a) A person who communicates a threat to another person, with the intent that the other person engage in conduct against his will, commits a Class A misdemeanor. However, the offense is a Class D felony if the threat is to commit a forcible felony.

(b) "Threat" means an expression of intention to:

- (1) unlawfully injure the person threatened or another person or damage property;
- (2) unlawfully subject a person to physical confinement or restraint;
- (3) commit a crime;
- (4) unlawfully withhold official action, or cause such withholding;
- (5) unlawfully withhold testimony or information with respect to another person's legal claim or defense, except for a reasonable claim for witness fees or expenses;
- (6) falsely expose the person threatened to hatred, contempt, disgrace, or ridicule; or
- (7) falsely harm the credit or business reputation of the person threatened.

Sec. 2. Harassing Communications. A person who, with intent to harass, annoy, or alarm another person:

(1) makes a telephone call, whether or not a conversation ensues, with no intention of legitimate communication; or

(2) communicates with a person, anonymously or otherwise, by telegraph, mail, or other form of written communication, with no intention of legitimate communication;

commits a Class B misdemeanor.

Sec. 3. Unlawful Use of a Party Line. (a) A person who knowingly or intentionally:

- (1) refuses to yield a party line upon request by another person who states that he wishes to place an emergency call from a telephone on that party line; or
- (2) obtains the use of a party line by falsely stating that he wishes to place an emergency call;

commits a Class B misdemeanor.

(b) "Party line" means a common telephone line for two (2) or more subscribers.

(c) "Emergency call" means a call in which the caller reasonably believes that a human being or property is in jeopardy and that prompt summoning of aid is essential.

Chapter 3. Poisoning Public Water; Littering.

Sec. 1. Poisoning Public Water. A person who recklessly, knowingly, or intentionally poisons a public water supply commits a Class D felony.

Sec. 2. Littering. (a) A person who recklessly, knowingly, or intentionally places or leaves refuse on property of another person, except in the containers provided for refuse, commits a Class B misdemeanor.

(b) "Refuse" means all solid and semi-solid wastes and includes dead animals and offal.

(c) Evidence that littering was committed from a moving vehicle other than a public conveyance is prima facie evidence that it was committed by the operator of that vehicle.

Chapter 4. Public Indecency; Prostitution.

Sec. 1. Public Indecency. (a) A person who knowingly or intentionally and in a public place:

- (1) engages in sexual intercourse ;
- (2) engages in deviate sexual conduct ;
- (3) appears in a state of nudity ; or
- (4) fondles the genitals of himself or another person ;

commits a Class A misdemeanor.

(b) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any portion of the nipple, or the showing of covered male genitals in a discernibly turgid state.

Sec. 2. Prostitution. A person who knowingly or intentionally performs, or offers or agrees to perform, sexual intercourse or deviate sexual conduct for money or other property commits a Class A misdemeanor.

Sec. 3. Patronizing a Prostitute. A person who knowingly or intentionally pays, or offers or agrees to pay, money or other property to another person for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or deviate sexual conduct with the person or with any other person commits a Class A misdemeanor.

Sec. 4. Promoting Prostitution. A person who:

- (1) knowingly or intentionally entices or compels another person to become a prostitute ;
- (2) knowingly or intentionally procures, or offers or agrees to procure, a person for another person for the purpose of prostitution ;
- (3) having control over the use of a place, knowingly or intentionally permits another person to use the place for prostitution ;
- (4) receives money or other property from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution ; or
- (5) knowingly or intentionally conducts or directs another person to a place for the purpose of prostitution ;

commits a Class C felony.

Chapter 5. Gambling.

Sec. 1. Definitions. As used in this chapter:

“Gain” means the direct realization of winnings.

“Gambling” means risking money or other property for gain, contingent in whole or in part upon lot, chance, or the operation of a gambling device, but does not include participating in bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries or in bona fide business transactions that are valid under the law of contracts.

“Gambling device” means (i) a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance, (ii) a mechanism that, when operated for a consideration, does not return the same value or property for the same consideration upon each operation, (iii) a mechanism, furniture, fixture, construction, or installation designed primarily for use in connection with professional gambling, (iv) a policy ticket or wheel and a subassembly or essential part designed or intended for use in connection with such a device, mechanism, furniture, fixture, construction, or installation. In the application of this definition, an immediate and unrecorded right to replay mechanically conferred on players of pinball machines and similar amusement devices is presumed to be without value.

“Gambling information” means (i) a communication with respect to a wager made in the course of professional gambling or (ii) information intended to be used for professional gambling.

“Profit” means a realized or unrealized benefit (other than direct realization of winnings) including benefits from proprietorship or management and unequal advantage in a series of transactions.

Sec. 2. Unlawful Gambling. A person who knowingly or intentionally engages in gambling commits a Class B misdemeanor.

Sec. 3. Professional Gambling. (a) A person who knowingly or intentionally accepts or offers to accept for profit money or other property risked in gambling or engages in:

- (1) pool-selling;
- (2) bookmaking;
- (3) maintaining, in a place accessible to the public, slot machines, one-ball machines or variants thereof, pinball machines that award anything other than an immediate and unrecorded right of replay, roulette wheels, dice tables, or money or merchandise pushcards, punchboards, jars, or spindles;
- (4) conducting lotteries, gift enterprises, or policy or numbers games, or selling chances therein; or
- (5) conducting any banking or percentage games played with cards, dice, or counters, or accepting any fixed share of the stakes therein;

commits a Class A misdemeanor, except as provided in subsection (b).

(b) A person having a prior conviction of professional gambling or promoting professional gambling who violates this section commits a Class D felony.

Sec. 4. Promoting Professional Gambling. (a) A person who:

- (1) knowingly or intentionally owns, manufactures, possesses, buys, sells, rents, leases, repairs, or transports a gambling device, or offers or solicits an interest in a gambling device; or
- (2) before a race, game, contest, or event on which gambling may be conducted, knowingly or intentionally transmits or receives gambling information by any means, or knowingly or intentionally installs or maintains equipment for the transmission or receipt of gambling information;

commits a Class A misdemeanor, except as provided in subsection (c).

(b) A person who, having control over the use of a place, knowingly or intentionally permits another person to use the

place for professional gambling commits a Class B misdemeanor, except as provided in subsection (c).

(c) A person having a prior conviction of professional gambling or promoting professional gambling who violates this section commits a Class D felony.

(d) When a public utility is notified by a law enforcement agency acting within its jurisdiction that any service, facility, or equipment furnished by it is being used or will be used to violate this section, it shall discontinue or refuse to furnish that service, facility, or equipment, and no damages, penalty, or forfeiture, civil or criminal, shall be found against a public utility for an act done in compliance with such a notice. This subsection does not prejudice the right of a person affected by it to secure an appropriate determination, as otherwise provided by law, that the service, facility, or equipment should not be discontinued or refused, or should be restored.

SECTION 6. IC Title 35 is amended by adding a new article 46 to read as follows:

ARTICLE 46. MISCELLANEOUS OFFENSES

Chapter 1. Offenses Against the Family.

Sec. 1. Definitions. As used in this chapter:

“Dependent” means an unemancipated person who has not reached the age of eighteen (18) years or who is mentally or physically disabled.

“Support” means food, clothing, shelter, or medical care.

Sec. 2. Bigamy. (a) A person who, being married and knowing that his spouse is alive, marries again commits a Class D felony.

(b) It is a defense that the accused person reasonably believed that he was eligible to remarry.

Sec. 3. Incest. (a) A person eighteen (18) years old or older who engages in sexual intercourse or deviate sexual conduct with another person who he knows is his parent, step-parent, child, stepchild, grandparent, grandchild, sibling, aunt or uncle, or niece or nephew commits a Class D felony.

(b) It is a defense that the accused person's otherwise incestuous relation with another person is based on their marriage that was valid where entered into.

Sec. 4. Neglect of a Dependent. A person having the care, custody, or control of a dependent who knowingly or intentionally:

- (1) places the dependent in a situation that may endanger his life or health;
- (2) abandons or cruelly confines the dependent;
- (3) deprives the dependent of necessary support; or
- (4) deprives the dependent of education as required by law;

commits a Class D felony.

Sec. 5. Nonsupport of a Dependent Child. (a) A person who, being able, intentionally fails to provide support to his dependent child commits a Class D felony. However, a child shall not be considered a neglected child or a child lacking proper support because a parent or guardian, in the legitimate practice of his religious belief, provides treatment by spiritual means through prayer in lieu of the specified medical treatment.

(b) It is a defense that the child had abandoned the home of his family without the consent of his parent or on order of a court.

Sec. 6. Nonsupport of a Spouse. A person who, being able, intentionally fails to provide support to his spouse who needs support commits a Class D felony.

Sec. 7. Nonsupport of a Parent. (a) A person who, being financially able, intentionally fails to provide support to his parent who is unable to support himself commits a Class A misdemeanor.

(b) It is a defense that the accused person had not been supported by the parent during the time he was a dependent child under eighteen (18) years of age, unless the parent was unable to provide support.

Sec. 8. Contributing to the Delinquency of a Minor. A person eighteen (18) years old or older who knowingly or intentionally causes a person under the age of eighteen (18) years to commit an act of delinquency as defined by IC 31-5-7-4.1 commits a Class A misdemeanor.

Chapter 2. Offenses Relating to Civil Rights.

Sec. 1. Violation of Civil Rights. (a) A person who knowingly or intentionally denies to another person the full and equal employment or use of the services, facilities, or goods in a place of public accommodation, resort, or amusement by reason of sex, race, religion, color, creed, handicap, or national origin commits a Class B misdemeanor.

(b) "Place of public accommodation, resort, or amusement" means either an establishment that caters or offers its services, facilities, or goods to the general public or a public or government housing project.

Chapter 3. Offenses Relating to Animals.

Sec. 1. Harboring a Non-immunized Dog. A person who knowingly or intentionally harbors a dog that is over the age of six (6) months and not immunized against rabies commits a Class A infraction. However, the offense is a Class B misdemeanor if the dog causes bodily injury by biting a person.

SECTION 7. IC Title 35 is amended by adding a new article 48 to read as follows:

ARTICLE 48. CONTROLLED SUBSTANCES

Chapter 1. Definitions.

Sec. 1. Definitions. As used in this article:

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (1) a practitioner or by his authorized agent; or
- (2) the patient or research subject at the direction and in the presence of the practitioner.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser

but does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

“Board” means the Indiana state board of pharmacy.

“Controlled substance” means a drug, substance, or immediate precursor in schedules I through V of IC 35-48-2.

“Counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trade mark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

“Delivery” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

“Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

“Dispenser” means a practitioner who dispenses.

“Distribute” means to deliver other than by administering or dispensing a controlled substance.

“Distributor” means a person who distributes.

“Drug” means (i) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (ii) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (iii) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (iv) substances intended for use as a component of any article specified in clause (i), (ii), (iii) of this definition. It does not include devices or their components, parts, or accessories.

“Immediate precursor” means a substance which the board has found to be and by rule designates as being the principal

compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

“Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

- (1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
- (2) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

“Marijuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant, e.g., hashish; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

“Narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) of this definition, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extraction of coca leaves which do not contain cocaine or ecgonine.

“Opiate” means a substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under chapter 2, section 1 of this article, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

“Opium poppy” means the plant of the species *Papaver somniferum* L., except its seeds.

“Poppy straw” means all parts, except the seeds, of the opium poppy, after mowing.

“Practitioner” means:

(1) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state; or

(2) a pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

“Production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

“Ultimate user” means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

Chapter 2. Classification of Drugs.

Sec. 1. Authority to Control. (a) The Indiana state board of pharmacy shall administer this article and may recommend to the general assembly the addition, deletion, or re-scheduling of all substances listed in the schedules in sections 4, 6, 8, 10, and 12 of this chapter by submitting a report of such recommendations to the legislative council. In making a determination regarding a substance, the board shall consider the following:

- (1) the actual or relative potential for abuse;
- (2) the scientific evidence of its pharmacological effect, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of abuse;
- (5) the scope, duration, and significance of abuse;
- (6) the risk to public health;
- (7) the potential of the substance to produce psychic or physiological dependence liability; and
- (8) whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a) of this section the board shall make findings with respect thereto and make recommendations concerning the control of the substance if it finds the substance has a potential for abuse.

(c) If the board finds that a substance is an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the board, the board shall recommend similar control of the substance under this article in the board's report to the general assembly, unless the board objects to inclusion, rescheduling, or deletion. In that case, the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall publish its findings.

(e) There is established a fourteen (14) member controlled substances advisory committee (hereinafter referred to as "advisory committee") to serve as a consultative and advising body to the board in all matters relating to the classification, reclassification, addition to or deletion from, of all substances presently classified as controlled substances in schedules I to IV, or substances not presently controlled or yet to come into being. In addition, the advisory committee shall conduct hearings and make recommendations to the board regarding revocations, suspensions and restrictions of registrations as provided in IC 35-48-3-4. All hearings shall be conducted in accordance with IC 4-22-1. The advisory committee shall be made up of two (2) physicians from the state board of medical registration; two (2) pharmacists from the state board of pharmacy; two (2) dentists from the state board of dental examiners; the state toxicologist; two (2) veterinarians from the state board of veterinary medical examiners; one (1) podiatrist from the state board of podiatry examiners and the superintendent of the state police or his designee. In addition, the governor, upon the recommendation of the state drug abuse advisory committee, shall appoint a pharmacologist, a chemist, and a research psychopharmacologist to the advisory committee. All appointments shall be for four (4) year terms. The board shall acquire the recommendations of the advisory committee pursuant to administration over the controlled substances to be or not to be included in schedules I to V, especially in the implementation of scheduled substances changes as provided in subsection (d).

(f) Authority to control under this section does not extend to distilled spirits, wine, or malt beverages, as those terms are defined or used in IC Title 7.1, or to tobacco.

(g) The board shall exclude any non-narcotic substance from a schedule if that substance may, under the Federal Food, Drug, and Cosmetic Act or state law, be sold over the counter without a prescription.

Sec. 2. Nomenclature. The controlled substances listed in the schedules in sections 4, 6, 8, 10 and 12 of this chapter are included by whatever official, common, usual, chemical, or trade name designated.

Sec. 3. Schedule I Tests. The board shall recommend placement of a substance in schedule I if it finds that the substance:

- (1) has high potential for abuse; and
- (2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

Sec. 4. Schedule I. (a) The controlled substance listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetylmethadol.
- (2) Allylprodine.
- (3) Alphacetylmethadol.
- (4) Alphameprodine.
- (5) Alphamethadol.
- (6) Benzethidine.
- (7) Betacetylmethadol.
- (8) Betameprodine.
- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.

- (12) Dextromoramide.
- (13) Dextrorphan.
- (14) Diampromide.
- (15) Diethylthiambutene.
- (16) Difenoxin.
- (17) Dimenoxadol.
- (18) Dimepheptanol.
- (19) Dimethylthiambutene.
- (20) Dioxaphetyl butyrate.
- (21) Dipipanone.
- (22) Ethylmethylthiambutene.
- (23) Etonitazene.
- (24) Etoxeridine.
- (25) Furethidine.
- (26) Hydroxypethidine.
- (27) Ketobemidone.
- (28) Levomoramide.
- (29) Levophenacylmorphan.
- (30) Mecloqualene.
- (31) Morpheridine.
- (32) Noracymethadol.
- (33) Norlevorphanol.
- (34) Normethadone.
- (35) Norpipanone.
- (36) Phenadoxone.
- (37) Phenampromide.
- (38) Phenomorphan.
- (39) Phenoperidine.

- (40) Piritramide.
- (41) Proheptazine.
- (42) Properidine.
- (43) Propiram.
- (44) Racemoramide.
- (45) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine.
- (2) Acetyldihydrocodeine.
- (3) Benzylmorphine.
- (4) Codeine methylbromide.
- (5) Codeine-N-Oxide.
- (6) Cyprenorphine.
- (7) Desomorphine.
- (8) Dihydromorphine.
- (9) Drotebanol.
- (10) Etrophine (except hydrochloride salt).
- (11) Heroin.
- (12) Hydromorphenol.
- (13) Methyldesorphine.
- (14) Methyldihydromorphine.
- (15) Morphine methylbromide.
- (16) Morphine methylsulfonate.
- (17) Morphine-N-Oxide.
- (18) Myrophine.
- (19) Nicocodeine.

- (20) Nicomorphine.
- (21) Normorphine.
- (22) Pholcodine.
- (23) Thebacon.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic, psychedelic or psychogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation :

- (1) 3, 4-methylenedioxy amphetamine, MDA.
- (2) 5-methoxy-3, 4-methylenedioxy amphetamine, MDMA.
- (3) 3, 4, 5-trimethoxy amphetamine, TMA.
- (4) Bufotenine. Some trade or other names :
3-(beta-dimethylaminoethyl)-5-hydroxindole ;
3-(2-dimethylaminoethyl)-5-indolol ;
N, N-dimethyl-serotonin ;
5-hydroxy-N-dimethyltryptamine ; mappine.
- (5) Diethyltryptamine. Some trade or other names :
N, N-diethyltryptamine ; DET.
- (6) Dimethyltryptamine. Some trade or other names :
DET.
- (7) 4-methyl-2, 5-dimethoxyamphetamine. Some trade or other names :
4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine ;
DOM ; and STP.
- (8) Ibogaine. Some trade or other names : 7-ethyl-6, 6 alpha, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido (1', 2' : 1, 2, azepino 4, 5-b) indole ; tabernanthe iboga.
- (9) Lysergic acid diethylamide, LSD.
- (10) Marijuana.
- (11) Mescaline.
- (12) Peyote.

- (13) N-ethyl-3-piperidyl benzilate, DMZ.
- (14) N-methyl-3-piperidyl benzilate, LBJ.
- (15) Psilocybin.
- (16) Psilocyn.
- (17) Tetrahydrocannabinols, THC, including synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
 - (i) Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers.
 - (ii) Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers.
 - (iii) $\Delta^{3,4}$ cis or trans tetrahydrocannabinol and their optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered.)

- (18) 2, 5-Dimethoxyamphetamine (Some trade or other names: 2, 5-Dimethoxy-alpha-methylphenethylamine; 2, 5-DMA).
- (19) 4-Bromo-2, 5-Dimethoxyamphetamine (Some trade or other names: 4-Bromo-2, 5-Dimethoxy-alpha-methylphenethylamine; 4-Bromo-2, 5-DMA).
- (20) 4-Methoxyamphetamine (Some trade or other names: 4-Methoxy-alpha-methylphenethylamine; Paramethoxyamphetamine; PMA).
- (21) Thiophene Analog of Phencyclidine (Some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine); 2-Thienyl Analog of Phencyclidine; TPCP).

Sec. 5. Schedule II Tests. The board shall recommend placement of a substance in schedule II if it finds that:

- (1) the substance has high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) the abuse of the substance may lead to severe psychic or physical dependence.

Sec. 6. Schedule II. (a) The controlled substances listed in this section are included in schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate; excluding naloxone hydrochloride and its salts but including:

- (i) raw opium;
- (ii) opium extracts;
- (iii) opium fluid extracts;
- (iv) powdered opium;
- (v) granulated opium;
- (vi) tincture of opium;
- (vii) apomorphine;
- (viii) codeine;
- (ix) ethylmorphine;
- (x) etorphine hydrochloride;
- (xi) hydrocodone;
- (xii) hydromorphone;
- (xiii) metopon;
- (xiv) morphine;
- (xv) oxycodone;
- (xvi) oxymorphone; and
- (xvii) thebaine.

(2) Any sale, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (b) (1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves, and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy).

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation :

- (1) Alphaprodine.
- (2) Anileridine.
- (3) Bezitramide.
- (4) Dihydrocodeine.
- (5) Diphenoxylate.
- (6) Fentanyl.
- (7) Isomethadone.
- (8) Levomethorphan.
- (9) Levorphanol.
- (10) Metazocine.
- (11) Methadone.
- (12) Methadone - Intermediate, 4 - cyano - 2 - dimethyl - amino - 4, 4 - diphenyl butane.
- (13) Moramide - Intermediate, 2 - methyl - 3 - morpholino - 1, 1-diphenylpropane-carboxylic acid.

- (14) Pethidine.
- (15) Pethidine - Intermediate - A, 4 - cyano - 1 - methyl - 4 - phenylpiperidine.
- (16) Pethidine - Intermediate - B, ethyl - 4 - phenylpiperidine - 4 - carboxylate.
- (17) Pethidine - Intermediate - C, 1 - methyl - 4 - phenylpiperidine - 4 - carboxylic acid.
- (18) Phenazocine.
- (19) Piminodine.
- (20) Racemethorphan.
- (21) Racemorphan.

(d) Any material compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
- (2) Methamphetamine, including its salts, isomers, and salts of its isomers.
- (3) Phenmetrazine and its salts.
- (4) Methylphenidate.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Methaqualone.
- (2) Amobarbital.
- (3) Secobarbital.
- (4) Pentobarbital.

Sec. 7. Schedule III Tests. The board shall recommend placement of a substance in schedule III if it finds that:

- (1) the substance has a potential for abuse less than the substances listed in schedule I and II;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

Sec. 8. Schedule III. (a) The controlled substances listed in this section are included in schedule III.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures or preparations were listed on August 25, 1971, as excepted compounds under U.S.C. 21 CFR 308.32, and any other drug of the quantitative composition shown in that list for those drugs or that is the same except that it contains a lesser quantity of controlled substances.
- (2) Benzphetamine.
- (3) Chlorphentermine.
- (4) Clortermine.
- (5) Mazindol.
- (6) Phendimetrazine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one (1) or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt thereof.

(4) Chlorhexadol.

(5) Glutethimide.

(6) Lysergic acid.

(7) Lysergic acid amide.

(8) Methyprylon.

(9) Phencyclidine.

(10) Sulfondiethylmethane.

(11) Sulfonethylmethane.

(12) Sulfonmethane.

(d) Nalorphine (a narcotic drug).

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, non-narcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone, per 100 milliliters or not more than 15 milligrams per dos-

age unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active non-narcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, non-narcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active, non-narcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one (1) or more active, non-narcotic ingredients recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine, per 100 milliliters or per 100 grams with one (1) or more active non-narcotic ingredients in recognized therapeutic amounts.

(f) The board shall except any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b), (c), and (d) from the application of any part of this article if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

Sec. 9. Schedule IV Tests. The board shall recommend placement of a substance in schedule IV if it finds that:

(1) the substance has a low potential for abuse relative to substances in schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III.

Sec. 10. Schedule IV. (a) The controlled substance listed in this section are included in schedule IV.

(b) Unless specifically excepted or rules listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Barbitol.
- (2) Chloral betaine; Somilan; Beta-Chlur.
- (3) Chloral hydrate; Noctec.
- (4) Chlordiazepoxide; Llorium.
- (5) Clonazepam; Clonopin.
- (6) Clorazepate; Tranxene.
- (7) Diazepam; Valium.
- (8) Ethchlorvynol; Placidyl.
- (9) Ethinamate; Valamin; Valmid.
- (10) Flurazepam; Dalmane.
- (11) Mebutamate.
- (12) Meprobamate; Miltown or Equinal.
- (13) Methohexital; Brevital.
- (14) Methylphenobarbital; Mebaral; Mephobarbital.
- (15) Oxazepam; Serax.
- (16) Paraldehyde; Paral.
- (17) Petrichloral.
- (18) Phenobarbital.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances,

including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

(1) Fenfluramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation :

(1) Diethylpropion.

(2) Phentermine.

(3) Pemoline (including organometallic and chelates thereof).

(e) The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b), (c), or (d) of this section from the application of any part of this article if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substance which have a depressant effect on the central nervous system.

Sec. 11. Schedule V Tests. The board shall recommend placement of a substance in schedule V if it finds that :

(1) the substance has low potential for abuse relative to the controlled substances listed in schedule IV ;

(2) the substance has currently accepted medical use in treatment in the United States ; and

(3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

Sec. 12. Schedule V. (a) The controlled substances listed in this section are included in schedule V.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams.
- (3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams.
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

Sec. 13. Republishing of Schedules. The board shall publish the schedules at least annually or more often if deemed necessary by the board.

Chapter 3. Registration and Control.

Sec. 1. Rules. The board may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

Sec. 2. Humane Societies. (a) Any humane society is entitled to receive a limited permit only for the purpose of buying, possessing, and using sodium pentobarbital to euthanize injured, sick, homeless, or unwanted domestic pets and animals if it:

- (1) makes appropriate application to the board according to rules established by the board; and
- (2) pays to the board annually a fee for the limited permit.

(b) All fees collected by the board under this section shall be credited to the state board of pharmacy account.

(c) Storage, handling, and use of sodium pentobarbital obtained according to this section is subject to rules and regulations of the board.

Sec. 3. Registration Requirements. (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the board in accordance with its rules.

(b) Persons registered by the board under this article to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this chapter.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment.

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.

(3) An ultimate user or a person in possession of any controlled substance under a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) The board may waive by rule the requirement for registration of certain manufactures, distributors, or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, dispenses or possesses controlled substances.

(f) The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's rules.

Sec. 4. Registration. (a) The board shall register an applicant to manufacture or distribute controlled substances unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider :

- (1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;
- (2) compliance with applicable state and local law;
- (3) any convictions of the applicant under any federal and state laws relating to any controlled substance;
- (4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;
- (5) furnishing by the applicant of false or fraudulent material in any application filed under this article;
- (6) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and
- (7) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in schedules I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this chapter for practitioners engaging in research with non-narcotic controlled substances in schedules II through V where the registrant is already registered under this chapter in another capacity. Practitioners registered under federal

law to conduct research with schedule I substances may conduct research with schedule I substances within this state upon furnishing the board evidence of that federal registration.

(d) Compliance by manufactures and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article.

Sec. 5. Denial, Revocation, and Suspension of Registration.

(a) An application for registration or re-registration submitted pursuant to and a registration issued under section 3 of this chapter to manufacture, distribute, or dispense a controlled substance may be denied, suspended or revoked by the board upon a finding by the advisory committee that the applicant or registrant:

(1) has furnished false or fraudulent material information in any application filed under this article;

(2) has violated any state or federal law relating to any controlled substance;

(3) has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances; or

(4) has failed to maintain reasonable controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels.

(b) The board may limit revocation or suspension of a registration or the denial of an application for registration or re-registration to the particular controlled substance with respect to which grounds for revocation, suspension or denial exist.

(c) If the board suspends or revokes a registration or denies an application for re-registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation or denial order may be placed under seal. The board may require the removal of such substances from the premises. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders

the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation or denial order becoming final, all controlled substances may be forfeited to the state.

(d) The board shall promptly notify the bureau of all orders suspending or revoking registration, all orders denying any application for registration or re-registration, and all forfeitures of controlled substances.

Sec. 6. Order to Show Cause. (a) Before recommending a denial, suspension or revocation of a registration, or before refusing a renewal of registration, the advisory committee shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be denied. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the advisory committee at a time and place not less than thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. These proceedings shall be conducted in accordance with IC 4-22-1 without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) The advisory committee may recommend suspension, and the board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 4 of this chapter, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

(c) If an applicant for re-registration (who is doing business under a registration previously granted and not revoked nor suspended) has applied for re-registration at least forty-five (45) days before the date on which the existing registra-

tion is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the board so issues its order. The board may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for re-registration at least forty-five (45) days before expiration of the existing registration, with or without request by the registrant, if the board finds that such extension is not inconsistent with the public health and safety.

Sec. 7. Records of Registrants. Persons registered to manufacture, distribute, or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the board issues.

Sec. 8. Order Forms. Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms is deemed compliance with this section.

Sec. 9. Prescriptions. (a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 7 of this chapter. No prescription for a schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under IC 16-6-8, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(d) A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

Chapter 4. Offenses Relating to Controlled Substances.

Sec. 1. Dealing in a Narcotic Drug. A person who :

- (1) knowingly or intentionally manufactures or delivers a narcotic drug, pure or adulterated, classified in schedule I or II; or
- (2) possesses, with intent to manufacture or deliver, a narcotic drug, pure or adulterated, classified in schedule I or II;

commits a Class B felony. However, the offense is a Class A felony if the amount of the drug involved has an aggregate weight of ten (10) grams or more.

Sec. 2. Dealing in a Schedule I, II, or III Controlled Substance. A person who :

- (1) knowingly or intentionally manufactures or delivers a controlled substance, pure or adulterated, classified in schedule I, II, or III, except marijuana or hashish; or
- (2) possesses, with intent to manufacture or deliver, a controlled substance, pure or adulterated, classified in schedule I, II, or III, except marijuana or hashish;

commits a Class C felony.

Sec. 3. Dealing in a Schedule IV Controlled Substance. A person who :

- (1) knowingly or intentionally manufacturers or delivers a controlled substance, pure or adulterated, classified in schedule IV; or
- (2) possesses, with intent to manufacture or deliver, a controlled substance, pure or adulterated, classified in schedule IV;

commits a Class D felony.

Sec. 4. Dealing in a Schedule V Controlled Substance. A person who ;

(1) knowingly or intentionally manufactures or delivers a controlled substance, pure or adulterated, classified in schedule V; or

(2) possesses, with intent to manufacture or deliver, a controlled substance, pure or adulterated, classified in schedule IV;

commits a Class D felony.

Sec. 5. Dealing in a Counterfeit substance. A person who:

(1) knowingly or intentionally creates or delivers a counterfeit substance; or

(2) possesses, with intent to deliver, a counterfeit substance;

commits a Class D felony.

Sec. 6. Possession of a Narcotic Drug. A person who, without a valid prescription or order of a practitioner acting in the course of his professional practice, knowingly or intentionally possesses a narcotic drug classified in schedule I or II commits a Class D felony. However, the offense is a Class C felony if the amount of the drug involved has an aggregate weight of ten (10) grams or more.

Sec. 7. Possession of a Controlled Substance. A person who, without a valid prescription or order of a practitioner acting in the course of his professional practice, knowingly or intentionally possesses a controlled substance classified in schedule I, II, III, IV, or V, except marijuana or hashish, commits a Class D felony.

Sec. 8. Possession of Paraphernalia. (a) A person who possesses, with intent to violate this article, an instrument designed for smoking or injecting a controlled substance commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior conviction of an offense involving paraphernalia.

Sec. 9. Dealing in Paraphernalia. (a) A person who:

(1) knowingly or intentionally manufacturers or delivers paraphernalia; or

(2) possesses, with intent to manufacture or deliver, paraphernalia;

commits a Class D felony.

(b) As used in this section, "paraphernalia" means an instrument used, designed for use, or intended for use in ingesting, smoking, administering, or preparing marijuana, hashish, hashish oil, or cocaine, and includes:

- (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic marijuana or hashish pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) water pipes designed for use or intended for use with marijuana, hashish, hashish oil, or cocaine;
- (3) carburetion tubes and devices;
- (4) smoking and carburetion masks;
- (5) roach clips;
- (6) separation gins designed for use or intended for use in cleaning marijuana;
- (7) cocaine spoons and vials;
- (8) chamber pipes;
- (9) carburetor pipes;
- (10) electric pipes;
- (11) air driven pipes;
- (12) chilams;
- (13) bongs; and
- (14) ice pipes or chillers.

Sec. 10. Dealing in Marijuana or Hashish. A person who:

- (1) knowingly or intentionally manufactures or delivers marijuana or dry hashish, pure or adulterated; or
- (2) possesses, with intent to manufacture or deliver, marijuana or hashish, pure or adulterated;

commits a Class A misdemeanor. However, the offense is a Class D felony (i) if the recipient or intended recipient is

under eighteen (18) years of age, (ii) if the amount involved is more than thirty (30) grams of marijuana or two (2) grams of hashish, or (iii) if the person has a prior conviction of an offense involving marijuana or hashish.

Sec. 11. Possession of Marijuana or Hashish. A person who:

- (1) knowingly or intentionally possesses marijuana or hashish; or
- (2) knowingly or intentionally grows or cultivates marijuana or hashish; or
- (3) knowing that marijuana is growing on his premises, fails to destroy the marijuana plants;

commits a Class A misdemeanor. However, the offense is a Class D felony if the amount involved is more than thirty (30) grams of marijuana or two (2) grams of hashish or if the person has a prior conviction of an offense involving marijuana or hashish.

Sec. 12. Conditional Discharge for Possession as First Offense. If a person who has no prior conviction of an offense under this article or under a law of another jurisdiction relating to controlled substances pleads guilty to possession of marijuana or hashish in an amount of less than thirty (30) grams of marijuana or two (2) grams of hashish, the court, without entering a judgment of conviction and with the consent of the person, may defer further proceedings and place him in the custody of the court under such conditions as the court determines. Upon violation of a condition of the custody, the court may enter a judgment of conviction. However, if the person fulfills the conditions of the custody, the court shall dismiss the charges against him. There may be only one (1) dismissal under this section with respect to a person.

Sec. 13. Common Nuisance. (a) A person who knowingly or intentionally visits or maintains a building, structure, vehicle, or other place that is used by any person to unlawfully use a controlled substance commits a Class B misdemeanor.

(b) A person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used:

- (1) by persons to unlawfully use controlled substances; or

(2) for unlawfully keeping or selling controlled substances;

commits a Class D felony.

Sec. 14. Offenses Relating to Registration. (a) A person who:

(1) is subject to IC 35-48-3 and who recklessly, knowingly, or intentionally distributes or dispenses a controlled substance in violation of IC 35-48-3;

(2) is a registrant and who recklessly, knowingly, or intentionally manufactures a controlled substance not authorized by his registration or distributes or dispenses a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) recklessly, knowingly, or intentionally fails to make, keep, or furnish a record, notification, order form, statement, invoice, or information required under this article; or

(4) recklessly, knowingly, or intentionally refuses entry into any premises for an inspection authorized by this article;

commits a Class D felony.

(b) A person who knowingly or intentionally:

(1) distributes as a registrant a controlled substance classified in schedules I or II, except under an order form as required by IC 35-48-3;

(2) uses in the course of the manufacture or distribution of a controlled substance a federal or state registration number that is fictitious, revoked, suspended, or issued to another person;

(3) furnishes false or fraudulent material information in, or omits any material information from, an application, report, or other document required to be kept or filed under this article; or

(4) makes, distributes, or possesses a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or a likeness of any of the

foregoing on a drug or container or labeling thereof so as to render the drug a counterfeit substance;

commits a Class D felony.

(c) A person who knowingly or intentionally acquires possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior conviction of an offense under this subsection.

SECTION 8. IC Title 35 is amended by adding a new article 50 to read as follows:

ARTICLE 50. SENTENCES

Chapter 1. General Provisions.

Sec. 1. Authority to Sentence. The court shall sentence a person convicted of an offense.

Sec. 2. Consecutive and Concurrent Terms. (a) Except as provided in subsections (b) and (c) of this section, a term of imprisonment begins the date the sentence is imposed.

(b) A person who commits a crime while he is released from lawful detention pending trial on another charge does not begin serving a term of imprisonment imposed for that crime until he completes any term imposed for a conviction arising out of the other charge.

(c) A term of imprisonment imposed on a person for:

- (1) escape (IC 35-44-3-6);
- (2) a crime committed while he is an escapee from lawful detention;
- (3) failure to appear (IC 35-44-3-7); or
- (4) a crime committed while he is imprisoned in a penal facility;

begins upon his completing the term of imprisonment under which he was imprisoned at the time of his escape, or upon his completing any term of imprisonment imposed for com-

mission of the crime in connection with which he failed to appear.

Sec. 3. Costs. (a) A person who is convicted of an offense is liable for costs, unless the court finds otherwise.

(b) If a person is acquitted or an indictment or information is dismissed by order of the court, he is not liable for costs.

Sec. 4. Disfranchisement. A person imprisoned for a crime shall be disfranchised during his imprisonment.

Chapter 2. Sentences for Felonies.

Sec. 1. Definition. As used in this chapter, "felony conviction" means a conviction, in any jurisdiction, with respect to which the person could have been imprisoned for more than one (1) year, but does not include a conviction with respect to which the person has been pardoned.

Sec. 2. Suspension; Probation. (a) The court may suspend any part of a sentence for a felony unless:

- (1) the person has a prior unrelated felony conviction; or
- (2) the felony committed was murder (IC 35-42-1-1); battery (IC 35-42-2-1) with a deadly weapon; kidnapping (IC 35-42-3-2); confinement (IC 35-42-3-3) with a deadly weapon; rape (IC 35-42-4-1) by force creating a substantial risk of serious bodily injury; unlawful deviate conduct (IC 35-42-4-2) by force creating a substantial risk of serious bodily injury; child molesting (IC 35-42-4-3) as a Class A or Class B felony; arson (IC 35-43-1-1) for hire or arson resulting in serious bodily injury; burglary (IC 35-43-2-1) resulting in serious bodily injury or burglary with a deadly weapon; robbery (IC 35-43-3-1) resulting in serious bodily injury or robbery with a deadly weapon; resisting law enforcement (IC 35-44-3-3) with a deadly weapon; escape (IC 35-44-3-5) with a deadly weapon; rioting (IC 35-45-1-2) with a deadly weapon; or dealing in a narcotic drug (IC 35-48-4-1) as a Class A felony.

(b) When the court suspends a sentence for a felony, it shall place the person on probation under IC 35-7 for a fixed

period to end not later than the date the suspended sentence expires.

Sec. 3. Capital Felony. A person who commits a capital felony shall be put to death.

Sec. 4. Class A Felony. A person who commits a Class A felony shall be imprisoned for a fixed term of not less than twenty (20) years nor more than fifty (50) years. However, if he has a prior unrelated conviction of a Class A felony, he shall be imprisoned for life, or if he has two (2) or more prior unrelated felony convictions, he shall be imprisoned for a fixed term of not less than twenty (20) years nor more than eighty (80) years.

Sec. 5. Class B Felony. A person who commits a Class B felony shall be imprisoned for a fixed term of ten (10) years, with not more than ten (10) years added for aggravating circumstances or not more than four (4) years subtracted for mitigating circumstances; in addition, he may be fined not more than ten thousand dollars (\$10,000). However, if he has two (2) or more prior unrelated felony convictions, he shall be imprisoned for a fixed term of not less than ten (10) years nor more than fifty (50) years.

Sec. 6. Class C Felony. A person who commits a Class C felony shall be imprisoned for a fixed term of five (5) years, with not more than three (3) years added for aggravating circumstances or not more than three (3) years subtracted for mitigating circumstances; in addition, he may be fined not more than ten thousand dollars (\$10,000). However, if he has two (2) or more prior unrelated felony convictions, he shall be imprisoned for a fixed term of not less than five (5) years nor more than thirty-eight (38) years.

Sec. 7. Class D Felony. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of two (2) years, with not more than two (2) years added for aggravating circumstances; in addition, he may be fined not more than ten thousand dollars (\$10,000). However, if he has two (2) or more prior unrelated felony convictions, he shall be imprisoned for a fixed term of not less than two (2) years nor more than thirty-four (34) years.

(b) Notwithstanding subsection (a) of this section, if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and impose sentence accordingly. The court shall enter in the record, in detail, the reason for its action when it exercises the power granted in this subsection.

Sec. 8. Doubling of Term Authorized. If a person eighteen (18) years old or older violates sections 1, 2, 3, or 4 of IC 35-48-4 by distributing a controlled substance to a person under eighteen (18) years of age and at least three (3) years of age his junior, he may be imprisoned for a fixed term of up to twice that otherwise authorized by this chapter.

Chapter 3. Sentences for Misdemeanors.

Sec. 1. Suspension; Probation. (a) The court may suspend any part of a sentence for a misdemeanor.

(b) When the court suspends a sentence for a misdemeanor, it may place the person on probation under IC 35-7 for a fixed period of not more than one (1) year.

Sec. 2. Class A Misdemeanor. A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars (\$5,000).

Sec. 3. Class B Misdemeanor. A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars (\$1,000).

Chapter 4. Sentences for Infractions.

Sec. 1. Suspension. The court may suspend the fine and costs for an infraction and release the person on the condition that he not repeat the offense for a fixed period of not more than one (1) year from the date of sentencing.

Sec. 2. Class A Infraction. A person who commits a Class A infraction shall be fined not more than five hundred dollars (\$500).

Chapter 5. Miscellaneous Penalties.

Sec. 1. Penalty for Bribery or Official Misconduct. When a public servant is convicted of bribery under IC 35-44-1-1 or

official misconduct under IC 35-44-1-2, the court may include in the sentence an order rendering the public servant incapable of holding a public office of trust or profit for a determinate period of not more than ten (10) years.

Sec. 2. Alternative Fine. In the alternative to the provisions concerning fines in chapters 2 and 3 of this article, a person may be fined a sum equal to twice his pecuniary gain, or twice the pecuniary loss sustained by victims of the crime he committed.

Chapter 6. Release from Imprisonment; Good Time.

Sec. 1. Parole. (a) A person imprisoned for a felony shall be released on parole upon completing his sentence of imprisonment, less good time he has earned.

(b) A person is on parole from the date of his release until his sentence expires, unless he is discharged earlier by the Indiana Parole Board. However, if his parole is not revoked, he shall be discharged not more than one (1) year after the date of his release.

(c) A person whose parole is revoked shall be imprisoned for the remainder of his sentence. However, he shall again be released upon completing that remainder, less good time he has earned since the revocation of parole. Notwithstanding the above, the Indiana Parole Board may reinstate a person on parole at any time subsequent to said revocation.

Sec. 2. Release from Imprisonment for a Misdemeanor. A person imprisoned for a misdemeanor shall be released upon completing his sentence of imprisonment, less good time he has earned.

Sec. 3. Good Time Classes. (a) A person assigned to Class I earns one (1) day of good time for each day of imprisonment.

(b) A person assigned to Class II earns one (1) day of good time for every two (2) days of imprisonment.

(c) A person assigned to Class III earns no good time.

Sec. 4. Good Time Assignments. (a) A person who is imprisoned shall initially be assigned to Class I.

(b) A person may be reassigned to Class II or Class III if he violates a rule or regulation of the department of correction. However, he must be granted a hearing before a hearing committee appointed by the director of the division of classification and treatment of the department of correction, and the committee must find that reassignment is an appropriate disciplinary action for the violation.

(c) In connection with the hearing granted under subsection (b) of this section, the person is entitled:

- (1) to receive written notice of the fact that reassignment is contemplated;
- (2) to appear and speak in his behalf at the hearing;
- (3) to request to have witnesses testify in his behalf; and
- (4) to confront and cross-examine witnesses supporting the reassignment unless the hearing committee specifically finds good cause for not allowing confrontation or cross-examination of a particular witness.

(d) The commissioner of correction, or, subject to the commissioner's approval, the person in charge of the penal facility or program or the director of the division of classification and treatment, may reassign a person from Class III to Class I or II or from Class II to Class I.

Sec. 5. Deprivation of Good Time. (a) A person may be deprived of any portion of the good time he has earned if he violates a rule or regulation of the department of correction. However, he must be granted a hearing before a hearing committee appointed by the director of the division of classification and treatment of the department of correction, and the committee must find that deprivation of good time is the only appropriate disciplinary action for the violation. When a person is deprived of good time, he shall also be reassigned to Class III.

(b) In connection with the hearing granted under subsection (a) of this section, the person has the four (4) rights listed in section 4(c) of this chapter and also is entitled to:

- (1) the assistance of a lay advocate of his choice (institutional staff member or another inmate presently confined in the same facility, who is not then in segregation);

- (2) a written statement of the committee's findings; and
- (3) an administrative review of the committee's decision by the commissioner of correction.

(c) The commissioner of correction, or, subject to the commissioner's approval, the person in charge of the penal facility or program or the director of the division of classification and treatment, may restore any portion of good time that is taken away under this section.

Sec. 6. Degree of Security Not a Factor. A person imprisoned for a crime earns good time irrespective of the degree of security to which he is assigned by the department of correction.

SECTION 9. IC 16-6 is amended by adding a new chapter 8.5 to read as follows:

Chapter 8.5. Enforcement of Pharmacy Regulations.

Sec. 1. Powers of Enforcement Officers. (a) Each member of the state board of pharmacy and its designated employees and all law enforcement officers of Indiana are primarily responsible for the enforcement of all laws and regulations of Indiana relating to controlled substances, except that the board is primarily responsible for making accountability audits of the supply and inventory of controlled substances.

(b) Any officer or employee of the state board of pharmacy designated by the board may:

- (1) carry firearms in the performance of his official duties;
- (2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state;
- (3) make arrests without warrant for any offense relating to controlled substances committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a felony relating to controlled substances;
- (4) make seizures of property under this chapter; or

(5) perform other law enforcement duties as the board designates.

Sec. 2. Administrative Inspections and Warrants. (a) Issuance and execution of administrative inspection warrants must be as follows:

(1) A judge of any court of record within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter, sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.

(2) A warrant shall be issued only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge, and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection and if appropriate, the type of property to be inspected. The warrant must:

(i) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(ii) be directed to a person authorized by section 1 of this chapter to execute it;

(iii) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(iv) identify the item or types of property to be seized, if any; and

(v) direct that it may be served during normal business hours and designate the judge to whom it shall be returned.

(3) A warrant issued under this section must be executed and returned within ten (10) days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized under a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the circuit or superior court for the judicial circuit in which the inspection was made.

(b) The board may make administrative inspections of controlled premises in accordance with the following provisions:

(1) As used in this section, "controlled premises" means:

(i) places where persons registered or exempted from registration requirements under IC 35-48-3 are required to keep records; and

(ii) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under IC 35-48-3 are permitted to possess, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (a) of this section an

officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(i) inspect and copy records required by IC 35-48-3 to be kept;

(ii) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in paragraph (5) of this subsection, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of laws relating to controlled substances; and

(iii) inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records under an administrative subpoena issued in accordance with IC 4-22-1, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(i) if the owner, operator, or agent in charge of the controlled premises consents;

(ii) in situations presenting imminent danger to health or safety;

(iii) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(iv) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(v) in all other situations in which a warrant is not constitutionally required.

(5) An inspection authorized by this section may not extend to financial data, sales data (other than shipment

data), or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

Sec. 3. Injunctions. Any court of record has jurisdiction to restrain or enjoin violations of laws relating to controlled substances.

Sec. 4. Cooperative Arrangements and Confidentiality.

(a) The state board of pharmacy shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

- (1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;
- (2) coordinate and cooperate in training programs concerning controlled substance law enforcement at local, state, and federal levels;
- (3) cooperate with the United States Drug Enforcement Administration by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes (It may not furnish the name or identity of a patient or research subject whose identity cannot be obtained under subsection (c) of this section.); and
- (4) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the Drug Enforcement Administration relating to the regulatory functions of this chapter, including results of inspections conducted by it, may be relied and acted upon by the board in the exercise of its regulatory functions.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the board, nor may he be compelled in any state or local civil, criminal, administrative,

legislative, or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

Sec. 5. Forfeitures. (a) The following are subject to forfeiture:

(1) All controlled substances that are or have been unlawfully manufactured, distributed, dispensed, acquired, or possessed, or with respect to which there has been any act by any person in violation of laws relating to controlled substances.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in unlawfully manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance.

(3) All property that is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection.

(4) All conveyances, including vehicles, that are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale, receipt, possession, or concealment of property described in paragraph (1) or (2) of this subsection, but:

(i) a conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of a law relating to controlled substances;

(ii) a conveyance is not subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(iii) a conveyance is not subject to forfeiture for a violation of sections 4, 6, 7, 8, 10, or 14 of IC 35-48-4; and

(iv) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he had no knowledge of the act or omission.

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of a law relating to controlled substances.

(b) Property subject to forfeiture under this chapter may be seized by any enforcement officer upon process issued by any state court of record having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure is incident to an arrest, to a search under a search warrant, or to an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;

(3) the state board of pharmacy has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the board has probable cause to believe that the property was used or is intended to be used in violation of a law relating to controlled substances.

(c) In the event of a seizure under subsection (b) of this section, proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section is not subject to replevin, but is deemed to be in the custody of the board subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the board may:

(1) place the property under seal;

(2) remove the property to a place designated by it; or

(3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

All property seized under this chapter shall be retained by the board until all proceedings in which the property may be involved have concluded.

(e) When property is forfeited under this chapter, the board shall:

(1) sell any property which by law is not required to be destroyed, which has a monetary value, and which is not harmful to the public (The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, and advertising and court costs. All proceeds in excess of expenses shall be paid into the common school fund of the state.);

(2) take custody of any property which has no monetary value or which cannot lawfully be sold and remove it for disposition in accordance with administrative rule; or

(3) forward it to the Drug Enforcement Administration for disposition.

(f) Controlled substances listed in schedule I that are unlawfully possessed, transferred, sold, or offered for sale are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in schedules I and II may be derived which have been unlawfully planted or cultivated, of which the owners or cultivators are unknown, or which are wild growths may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the board or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

Sec. 6. Burden of Proof; Liabilities. (a) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under

this chapter. The burden of proof of any exemption or exception is on the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under IC 35-48-3, he is presumed not to be the holder of the registration or form.

Sec. 7. Judicial Review. All final determinations, findings, and conclusions of the board of pharmacy under this chapter are conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the circuit or superior court in the county in which such person resides. Findings of fact by the board, if supported by substantial evidence, are conclusive.

Sec. 8. Education and Research. (a) The drug abuse division of the state department of mental health shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

- (1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;
- (2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;
- (3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;
- (4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;
- (5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and
- (6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The drug abuse division of the state department of mental health shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of laws relating to controlled substances, it may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of laws relating to controlled substances;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The drug abuse division of the state department of mental health may enter into contracts for educational and research activities without performance bonds.

(d) The state board of pharmacy may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subject of the research. Persons who obtain this authorization may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state

prosecution for possession and distribution of controlled substances to the extent of the authorization.

SECTION 10. IC 33-12-2-3 is amended to read as follows: Sec. 3. (a) The juvenile courts created by the ~~aet~~ chapter shall have original exclusive jurisdiction, except after jurisdiction of the child is waived, in all cases in which a child is alleged to be delinquent, dependent or neglected, including the alleged delinquency, dependency or neglect of a child of divorced parents. The juvenile court shall also have exclusive original jurisdiction to determine the paternity of any child born out of wedlock, and to provide for the support and disposition of such a child ~~and in all other cases that may hereafter be conferred by law.~~

(b) The juvenile courts created by this chapter shall have original concurrent jurisdiction in cases in which a person is charged with contributing to the delinquency of a minor (IC 35-46-1-8).

SECTION 11. IC 35-1-32.5-1 is amended to read as follows: Sec. 1. In a prosecution for ~~the a~~ sex crime as defined in IC 35-42-4 of rape (IC 1971, 35-13-4-3), sodomy (IC 1971, 35-1-89-1), assault or ~~assault and battery with intent to commit a felony~~ (IC 1971, 35-1-54-3, where the felony involved is rape, sodomy, or incest), incest (IC 1971, 35-1-82-1), or assault and battery (IC 1971, 35-1-54-4, where the offense involves removing, tearing, unbuttoning or attempting to remove, tear, unbutton or unfasten any clothing of any child who has not attained his or her seventeenth birthday, or fondling or carressing the body or any part thereof of such child with the intent to gratify the sexual desires or appetites of the offending person or, under circumstances which frighten, excite, or tend to frighten or excite such child), evidence of the victim's past sexual conduct, opinion evidence of the victim's past sexual conduct, and reputation evidence of the victim's past sexual conduct may not be admitted, nor may reference be made thereto in the presence of the jury, except as provided in this chapter.

SECTION 12. IC 35-1-44-8 is amended to read as follows: Sec. 8. ~~When the defendant is adjudged to pay any fine and costs, the court shall order him to be committed~~

to the jail of the county until the same are paid or replevied. Such judgment shall be without relief from valuation or appraisement laws. (a) When the court imposes a fine or costs, it shall direct:

(1) that the person pay the entire amount at the time sentence is pronounced;

(2) that the person pay the entire amount at some later date; or

(3) that the person pay specified portions at designated intervals.

(b) Upon any default in the payment of a fine or costs or any installment thereof, execution may be levied and such other measures may be taken for the collection of the fine, costs, or the unpaid balance as are authorized for the collection of an unpaid civil judgment entered against the person in an action on a debt brought by the county attorney.

SECTION 13. IC 35-3 is amended by adding a new chapter 2.1 to read as follows:

Chapter 2.1. Shoplifting Detention.

Sec. 1. Definitions. As used in this chapter:

“Adult employee” means an employee who is eighteen (18) years old or older.

“Store” means a place of business where property, or service with respect to property, is displayed, rented, sold, or offered for sale.

“Security agent” means a person who has been employed by a store to prevent the loss of property due to theft.

Sec. 2. An owner, operator, manager, adult employee, or security agent of a store who has probable cause to believe that a theft has occurred or is occurring on or about the store and who has probable cause to believe that a specific person has committed or is committing the theft may detain that person to require the person to identify himself, to verify the identification, to determine whether the person has in his possession unpurchased merchandise taken from the store, to inform the appropriate law enforcement officers, and to in-

form the parents or other persons interested in the welfare of the person detained. Such a detention must be reasonable and may last only for a reasonable time, not to extend beyond the arrival of a law enforcement officer or one (1) hour, whichever first occurs.

Sec. 3. An owner, operator, manager, adult employee, or security agent of a store who informs a law enforcement officer of the circumstantial basis for detention and any additional relevant facts shall be presumed to be placing information before the law enforcement officer. It shall be presumed that such placing of information does not constitute a charge of crime.

Sec. 4. A civil or criminal action against an owner, operator, manager, adult employee, or security agent of a store or a law enforcement officer may not be based on a detention lawful under section 2 of this chapter. However, the defendant in such an action has the burden of proof that he acted with probable cause under section 2 of this chapter.

Sec. 5. An owner, operator, manager, adult employee, or security agent of a store may act in the manner permitted by section 2 of this chapter on information received from any employee of the store, if that employee has probable cause to believe that a theft has occurred or is occurring on or about the store and has probable cause to believe that a specific person has committed or is committing the theft.

Sec. 6. This chapter does not limit any right of detention or arrest of any person that is otherwise lawful.

SECTION 14. IC 35-4.1-4 is amended by adding a new section 3 to read as follows: Sec. 3. Sentencing Hearing. Before sentencing a person for a felony the court must conduct a hearing to consider the facts and circumstances relevant to sentencing. The person is entitled to subpoena and call witnesses and otherwise to present information in his own behalf. The court shall make a record of the hearing, including:

- (1) a transcript of the hearing;
- (2) a copy of the presentence report; and
- (3) a statement of the court's reasons for selecting the sentence that it imposes.

SECTION 15. IC 35-4.1-4 is amended by adding a new section 7 to read as follows: Sec. 7. Criteria for Sentencing

(a) In determining what sentence to impose for a crime, the court shall consider the risk that the person will commit another crime, the nature and circumstances of the crime committed, and the prior criminal record, character, and condition of the person.

(b) The court may consider these factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or he has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short-term imprisonment.

(8) The character and attitudes of the person indicate that he is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of his crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to himself or his dependents.

(c) The court may consider these factors as aggravating circumstances:

(1) The person has recently violated the conditions of any probation, parole, or pardon granted him.

(2) The person has a history of criminal activity.

(3) The person is in need of correctional or rehabilitative treatment that can best be provided by his commitment to a penal facility.

(4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.

(d) The criteria listed in subsection (b) and (c) of this section do not limit the matter that the court may consider in determining the sentence.

SECTION 16. IC 35-4.1-4 is amended by adding a new section 18 to read as follows: Sec. 18. Modification of Sentence. The court, within one hundred eighty (180) days after it imposes a sentence, and after a hearing at which the convicted person is present and of which the prosecuting attorney has been notified, may reduce the sentence, incorporating its reasons in the record.

SECTION 17. IC 35-4.1-5-1 is amended to read as follows: Sec. 1. ~~Copy of judgment to the sheriff.~~ (a) When a convicted person is sentenced to imprisonment, ~~other than a sentence to be served in the county jail,~~ the court shall, without delay, certify under the seal of the court, copies of the judgement of conviction and sentence to the sheriff and to the department of ~~corrections~~ correction.

(b) The judgment shall include, but not necessarily be limited to, the following information: the crime for which the convicted person is adjudged guilty; the period for which the person is to be disfranchised ~~and/or~~ or rendered incapable of holding any office or trust or profit; if any fines ~~and/or~~ or costs are assessed, the amount of the fines or costs, whether or not the convicted person is indigent, and the method by which the fines or costs are to be satisfied; the amount of credit, including good time earned, for time spent in confinement prior to sentencing; and the amount to be credited toward payment of the fines ~~and/or~~ or costs for time spent in confinement pending sentencing. The judgment may specify the degree of security recommended by the court.

SECTION 18. 35-4.1-5-2 is amended to read as follows: Sec. 2. Sheriff to deliver the convicted person. The sheriff shall, within five (5) days of the day of sentencing, unless otherwise ordered by the court, convey the convicted person to a place of incarceration penal facility or program designated by the Department of Corrections department and deliver him to the custodian thereof, and with a copy of the judgment of conviction and sentence, and take from such custodian a receipt for the convicted person.

The Department of Corrections may, notwithstanding any other law, designate the place of incarceration without regard to whether the convicted person is convicted of or sentenced for a felony or misdemeanor, the age of the convicted person, or previous felony convictions. The designation shall, instead, be based on the offender's needs and the department's resources.

SECTION 19. IC 35-4.1-5 is amended by adding a new section 3 to read as follows: Sec. 3. (a) In order to provide maximum flexibility in institutional use and treatment of convicted persons consistent with public safety, the department after diagnosis and classification shall determine the degree of security, maximum, medium, or minimum, to which a convicted person will be assigned, and shall notify the trial court and prosecuting attorney if the degree of security assigned differs from the court's recommendations.

(b) The department may change the degree of security to which the person is assigned. However, if the person is changed to a lesser degree security during the first two (2) years of the commitment, the department shall notify the trial court and the prosecuting attorney not less than thirty (30) days before the effective date of the changed security assignment.

SECTION 20. IC 35-4.1-5 is amended by adding a new section 4 to read as follows: Sec. 4. (a) The department shall classify all Indiana penal facilities and programs to which those convicted of crimes may be assigned for supervision or custodial care according to maximum, medium, or minimum security, function, and treatment program available and shall furnish the classifications to all Indiana judges with general criminal jurisdiction.

(b) (1) A maximum security assignment constitutes an assignment of a convicted person to a penal facility and correctional program that are designed to insure that the person remains within a walled or fenced facility where entry and exit of any person occurs only through department supervised gates and where periodic inmate population accounting and supervision by the department occurs each day.

(2) A medium security assignment constitutes an assignment of a convicted person to a penal facility and correctional program that are designed to insure that if the person is permitted outside the supervised gates of a walled or fenced facility, the department will provide continuous staff supervision and the person will be accounted for throughout the day.

(3) A minimum security assignment constitutes an assignment of a convicted person to a work release center or program, to intermittent service of a sentence, or to a program involving only periodic reporting to a designated official. Assignment to minimum security need not involve a penal facility.

SECTION 21. IC 35-7-1-1 is amended to read as follows: Sec. 1. The several circuit and criminal courts and the city and municipal courts in the cities of the first and second class of this state, shall have power, in any case where any person shall have been convicted of a felony or misdemeanor, or shall have entered his plea of guilty to a charge of a felony or misdemeanor, upon the entry of judgment of conviction of such person, to suspend such sentence and parole such person, by an order of such court, duly entered of record as a part of the judgment of the court in such case, except the crimes of murder, arson, first degree burglary, rape, treason, kidnapping, and a second conviction for robbery, whenever such court, in the exercise of its judgment and discretion, shall find and determine that such person has committed the offense for which he or she has been convicted under such circumstances as that, in the judgment of such court, such person should not suffer the penalty imposed by the law for such offense if he or she shall thereafter behave well, or whenever

such court shall find and determine that by reason of the character of such person, or the facts and circumstances of such case, the interest of society does not demand or require that such person shall suffer the penalty imposed by law if he or she shall thereafter behave well. Provided, that on its own motion the court may, in open court and after notice to the prosecuting attorney and after review of the diagnostic report by the Department of Corrections, suspend the further execution of the sentence at anytime within six (6) months after the defendant shall have commenced to serve his sentence of imprisonment. In case the court shall impose a fine, with a concurrent sentence of imprisonment the court may suspend the execution of the sentence of imprisonment and may place the defendant on probation and may require that said fine be paid in one (1) or several sums while on probation; or the court may impose a fine and may suspend the imposition of the sentence of imprisonment and may place the defendant on probation for such period as the court may prescribe: Provided, That in all counties of this state wherein there is established a separate criminal court the judge thereof shall have the power to appoint a probation clerk at a salary not to exceed twenty-one hundred dollars (\$2,100) per annum, which salary shall be fixed by such judge and shall be paid out of the county treasury; that such clerk, when so appointed, shall execute a bond payable to the state of Indiana in the penal sum of one thousand dollars (\$1,000), with good and sufficient security, to be approved by the court, and filed with the clerk of the court, conditioned for the faithful discharge of the duties of such office. The duties of such clerk shall be to keep an accurate record of cases where the judgment is suspended or where the court withholds judgment in separate dockets designated as "suspended sentence docket," and "judgment withheld docket"; to receive and keep a record of reports to the court of all probation officers and of all persons required to report the court under the provisions of this law; to receive and disburse all sums of money ordered paid into the court, either as restitution, or where fines or costs are paid in installments under the order of the judge of such court; that all accounts shall be kept on records to be approved by the state board of accounts; and to perform

any and all other services necessary to carry out the provisions of this chapter. In all counties in which there is not established a separate criminal court, the duly elected clerk of the circuit court of that county shall keep such records and perform such duties as have heretofore been defined for the probation clerk in counties wherein there is established a separate criminal court. **Placing on Probation.** When a person is placed on probation, the court shall specify in the record the conditions of the probation. The court may modify the conditions or terminate the probation at any time. If the person commits an additional crime, the court shall revoke the probation.

SECTION 22. IC 35-7-2-1 is amended to read as follows: Sec. 1. The court placing a defendant on probation shall impose such conditions as it may deem best. The court may subsequently revoke or modify any condition of probation or may change the period of probation. While on probation the defendant may be required to pay in one or several sums, a fine or costs imposed at the time of being placed on probation, or may be required to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which conviction was had, or may be required to provide for the support of any person or persons for whose support he is legally responsible. **Conditions of Probation.** (a) When imposing probation, the court may require that the person:

- (1) work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment;
- (2) undergo available medical or psychiatric treatment and remain in specified institution if required for that purpose;
- (3) attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
- (4) support his dependents and meet other family responsibilities;
- (5) make restitution or reparation to the victim of his crime for the damage or injury that was sustained (When a restitution or reparation is a condition of the sentence,

the court shall fix the amount thereof, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.);

- (6) pay a fine authorized by IC 35-50;
- (7) refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court or his probation officer;
- (8) report to a probation officer at reasonable times as directed by the court or the probation officer;
- (9) permit his probation officer to visit him at reasonable times at his home or elsewhere;
- (10) remain within the jurisdiction of the court, unless granted permission to leave by the court or by his probation officer;
- (11) answer all reasonable inquiries by the court or his probation officer and promptly notify the court or probation officer of any change in address or employment; and
- (12) satisfy any other conditions reasonably related to his rehabilitation.

(b) When a person is placed on probation he shall be given a written statement of the conditions of his probation.

(c) When imposing probation, the court may also require that the person submit to a period of imprisonment in an appropriate facility at whatever time or intervals (consecutive or intermittent) within the period of probation the court determines. Intermittent service of sentence of imprisonment is service on certain days or during certain periods of days specified by the court as part of the sentence. Intermittent service may be ordered only for a term of not more than sixty (60) days and must be served in the county or local penal facility. The term of the sentence shall be calculated on the basis of the actual days spent in confinement and shall be completed within one (1) year. When the court orders intermittent service of a sentence of imprisonment, it shall state:

- (1) the term of the sentence;
- (2) the days or parts of days during which the person is to be confined; and

(3) the conditions.

(d) Supervision of the person may be transferred from the court that imposed the probation to a court of another jurisdiction, with the concurrence of both courts. Retransfers of supervision may occur in the same manner. This subsection does not apply to transfers under the provisions of an Interstate Compact on Probation made under IC 35-8-6 or IC 35-8-6.1.

SECTION 23. IC 35-7-2-2 is amended to read as follows: Sec. 2. At the close of the probation period, or whenever directed to do so, by the court, the probation officer shall report to the court, with a statement of the conduct of the probationer while on probation. The court may thereafter discharge the probationer from probation, or may extend the probation period, as shall seem advisable. At any time within the probation period, the probation officer may arrest the probationer only upon warrant issued by the sentencing court. Thereupon, the probationer shall forthwith be taken before the court for hearing, where probationer may be represented by counsel of his choice. At any time within the maximum period for which the defendant might originally have been committed, but in no case to exceed five (5) years, the court may issue a warrant and cause the defendant to be arrested and brought before the court. If it shall appear that the defendant has violated the terms of his probation or has been found guilty of having committed another offense, the court may revoke the probation or the suspension of sentence and may impose any sentence which might originally have been imposed.

Violation of Conditions of Probation. (a) When a petition is filed charging a violation of a condition of probation, the court may:

**(1) order a summons to be issued to the person to appear;
or**

(2) order a warrant for the person's arrest where there is danger of his fleeing the jurisdiction or causing harm to others.

(b) The issuance of a summons or warrant tolls the period of probation until the final determination of the charge.

(c) The court shall conduct a hearing of the alleged violation. The court may admit the person to bail pending the hearing.

(d) The state has the burden of proving the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person has the right of confrontation, cross-examination, and representation by counsel.

(e) Probation shall not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally refused to pay.

(f) If the court finds that the person has violated a condition at any time before termination of the period, it may continue him on the existing sentence, with or without modifying or enlarging the conditions, or may impose any other sentence that could have been imposed at the time of initial sentencing.

(g) A judgment revoking probation is a final appealable order.

SECTION 24. The following laws and parts of laws, as amended, are repealed:

IC 11-5-4-7	IC 11-7-2	IC 11-7-3-1
IC 11-7-3-2	IC 11-7-5	IC 11-7-6.1
IC 31-5-4	IC 35-1-1	IC 35-1-2
IC 35-1-3	IC 35-1-14	IC 35-1-19-3
IC 35-1-19-5	IC 35-1-29	IC 35-1-32-1
IC 35-1-32-2	IC 35-1-32-3	IC 35-1-32-5
IC 35-1-32-7	IC 35-1-36	IC 35-1-39
IC 35-1-40	IC 35-1-41	IC 35-1-45
IC 35-1-48	IC 35-1-50	IC 35-1-51
IC 35-1-53	IC 35-1-54	IC 35-1-55
IC 35-1-56	IC 35-1-57	IC 35-1-59
IC 35-1-60	IC 35-1-61	IC 35-1-62
IC 35-1-63	IC 35-1-64	IC 35-1-66
IC 35-1-68	IC 35-1-69	IC 35-1-70
IC 35-1-71	IC 35-1-72	IC 35-1-73
IC 35-1-74	IC 35-1-75	IC 35-1-76
IC 35-1-77	IC 35-1-78	IC 35-1-79
IC 35-1-80	IC 35-1-81	IC 35-1-82

IC 35-1-83	IC 35-1-85	IC 35-1-87
IC 35-1-88	IC 35-1-89	IC 35-1-90
IC 35-1-91	IC 35-1-92	IC 35-1-93
IC 35-1-94	IC 35-1-95	IC 35-1-96
IC 35-1-97	IC 35-1-99	IC 35-1-101-8
IC 35-1-101-9	IC 35-1-104	IC 35-1-106
		IC 35-1-110
IC 35-1-111	IC 35-1-115	IC 35-1-116
IC 35-1-117	IC 35-1-118	IC 35-1-119
IC 35-1-124	IC 35-1-126	IC 35-1-127
IC 35-3-2	IC 35-4-7	IC 35-4.1-4-8
IC 35-8-2	IC 35-8-3-1	IC 35-8-4
IC 35-8-7.5	IC 35-8-8	IC 35-12
IC 35-13	IC 35-14	IC 35-15-2-1
IC 35-16	IC 35-17	IC 35-18-1
IC 35-18-2	IC 35-18-3	IC 35-18-4
IC 35-18-5	IC 35-18-6	IC 35-18-8
IC 35-18-14	IC 35-18-11	IC 35-18-12
IC 35-18-16	IC 35-18-15	IC 35-18-15.1
IC 35-19	IC 35-18-17	IC 35-18-18
IC 35-21-3	IC 35-20	IC 35-21-2
IC 35-21-6	IC 35-21-4	IC 35-21-5
IC 35-21-9	IC 35-21-7	IC 35-21-8
IC 35-21-12	IC 35-21-10	IC 35-21-11
IC 35-24	IC 35-21-13	IC 35-22
IC 35-25-4	IC 35-24.1	IC 35-25-1
IC 35-27-3	IC 35-27-1	IC 35-27-2
IC 35-27-8	IC 35-27-4	IC 35-27-5
IC 35-28-6	IC 35-28-1	IC 35-28-2
IC 35-28-10	IC 35-28-8	IC 35-28-9
IC 35-29-4	IC 35-28-12	IC 35-29-2.5
IC 35-30-2	IC 35-29-7	IC 35-30-1
IC 35-30-5	IC 35-30-3	IC 35-30-4
IC 35-30-9	IC 35-30-6	IC 35-30-7

SECTION 25. (a) A person imprisoned for a felony and assigned to time earning class one (1) or two (2) under IC 11-7-6.1 on June 30, 1977, shall be assigned to good time Class I under IC 35-50-6 on July 1, 1977.

(b) A person imprisoned for a felony and assigned to time earning class three (3) under IC 11-7-6.1 on June 30,

1977, shall be assigned to good time Class II under IC 35-50-6 on July 1, 1977.

(c) A person imprisoned for a felony and assigned to time earning class four (4) under IC 11-7-6.1 on June 30, 1977, shall be assigned to good time Class III under IC 35-50-6 on July 1, 1977.

(d) A person imprisoned for a misdemeanor or confined pending trial on June 30, 1977, shall be assigned to good time Class I under IC 35-50-6 on July 1, 1977.

(e) This act does not affect the amount of good time a person has earned under diminution of sentence statutes in effect before July 1, 1977.

SECTION 26. A conviction for a felony committed before the effective date of this act constitutes a felony conviction under IC 35-50-2-1.

SECTION 27. (a) The repeal by this act of a law or part of a law does not affect any:

- (1) rights or liabilities accrued;
- (2) penalties incurred; or
- (3) proceedings begun;

before July 1, 1977. The rights, liabilities, and proceedings are continued, and punishments, penalties, or forfeitures shall be imposed and enforced under the repealed laws as if this act had not been enacted.

(b) All offenses committed before July 1, 1977 under laws repealed by this act shall be prosecuted and remain punishable under the repealed laws as if this act had not been enacted.

(c) Notwithstanding subsections (a) and (b) of this SECTION, a defense available under this act is available to any defendant tried or retried after June 30, 1977.

SECTION 28. This act takes effect July 1, 1977.