

## HOUSE BILL No. 1312

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 1-1-2-2.5; IC 33-40; IC 35-36-9; IC 35-50-2-9.5.

**Synopsis:** Penalties for certain sex offenses. Defines "aggravated child molesting". Provides that the state may seek either a death sentence or a sentence of life imprisonment without parole for a person convicted of aggravated child molesting. Provides requirements for a jury or court to impose either a death sentence or a sentence of life imprisonment without parole. Makes conforming changes.

**Effective:** July 1, 2026.

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January 6, 2026, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

Second Regular Session of the 124th General Assembly (2026)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2025 Regular Session of the General Assembly.

## HOUSE BILL No. 1312

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

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

1 SECTION 1. IC 1-1-2-2.5, AS ADDED BY P.L.142-2020,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2026]: Sec. 2.5. (a) This section applies to every crime in  
4 which proof that a person has a prior conviction or judgment for an  
5 infraction increases:

6 (1) the class or level of the crime;  
7 (2) the penalty for the crime from a misdemeanor to a felony; or  
8 (3) the penalty for an infraction to a misdemeanor or felony.

9 (b) This section does not apply to a sentencing provision that  
10 increases the penalty that may be imposed for an infraction or crime  
11 but does not increase:

12 (1) the class or level of the crime;  
13 (2) the penalty for the crime from a misdemeanor to a felony; or  
14 (3) the penalty for an infraction to a misdemeanor or felony;  
15 including IC 35-50-2-8 (habitual offenders), IC 35-50-2-9 **and**  
16 **IC 35-50-2-9.5** (death penalty sentencing), IC 9-30-15.5 (habitual  
17 vehicular substance offender), and IC 35-50-2-14 (repeat sexual



1       offender).

2       (c) This section does not apply to a crime that contains a specific  
3       lookback period for a prior conviction or judgment for an infraction.

4       (d) Subject to subsection (e), and except as provided in subsection  
5       (f), a prior conviction or a prior judgment for an infraction increases the  
6       class or level of the crime, the penalty for the crime from a  
7       misdemeanor to a felony, or the penalty for an infraction to a  
8       misdemeanor or felony only if the current crime was committed not  
9       later than twelve (12) years from the date the defendant was:

10       (1) convicted of the prior crime, if the defendant was not  
11       sentenced to a term of incarceration or probation;

12       (2) adjudicated to have committed the infraction; or

13       (3) released from a term of incarceration, probation, or parole  
14       (whichever occurs later) imposed for the prior conviction;

15       whichever occurred last.

16       (e) If a crime described in subsection (a) requires proof of more than  
17       one (1) criminal conviction or judgment for an infraction, the increased  
18       penalty applies only if the current crime was committed not later than  
19       twelve (12) years from the date the defendant was:

20       (1) convicted of one (1) of the prior crimes, if the person was not  
21       sentenced to a term of incarceration or probation;

22       (2) adjudicated to have committed one (1) of the infractions; or

23       (3) released from a term of incarceration, probation, or parole  
24       (whichever occurs later) imposed for one (1) of the prior  
25       convictions;

26       whichever occurred last.

27       (f) This section does not apply if the crime described in subsection  
28       (a) is one (1) or more of the following:

29       (1) A crime of violence (as defined by IC 35-50-1-2).

30       (2) A crime that results in bodily injury or death to a victim.

31       (3) A sex offense (as defined by IC 11-8-8-5.2).

32       (4) Domestic battery (IC 35-42-2-1.3).

33       (5) Strangulation (IC 35-42-2-9).

34       (6) Operating while intoxicated with a prior conviction for  
35       operating while intoxicated that resulted in death, serious bodily  
36       injury, or catastrophic injury (IC 9-30-5-3(b)).

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

38       (8) Dealing in methamphetamine (IC 35-48-4-1.1).

39       (9) Manufacturing methamphetamine (IC 35-48-4-1.2).

40       (10) Dealing in a schedule I, II, or III controlled substance (IC  
41       35-48-4-2).

42       (g) If there is a conflict between a provision in this section and



1 another provision of the Indiana Code, this section controls.  
2 SECTION 2. IC 33-40-5-4, AS AMENDED BY P.L.161-2025,  
3 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2026]: Sec. 4. (a) The commission shall do the following:  
5 (1) Make recommendations to the supreme court concerning  
6 standards for indigent defense services provided for defendants  
7 against whom the state has sought the death sentence under  
8 IC 35-50-2-9 **or IC 35-50-2-9.5**, including the following:  
9 (A) Determining indigency and eligibility for legal  
10 representation.  
11 (B) Selection and qualifications of attorneys to represent  
12 indigent defendants at public expense.  
13 (C) Determining conflicts of interest.  
14 (D) Investigative, clerical, and other support services  
15 necessary to provide adequate legal representation.  
16 (2) Adopt guidelines and standards for indigent defense services  
17 under which the counties will be eligible for reimbursement under  
18 IC 33-40-6, including the following:  
19 (A) Determining indigency and the eligibility for legal  
20 representation.  
21 (B) The issuance and enforcement of orders requiring the  
22 defendant to pay for the costs of court appointed legal  
23 representation under IC 33-40-3.  
24 (C) The use and expenditure of funds in the county  
25 supplemental public defender services fund established under  
26 IC 33-40-3-1.  
27 (D) Qualifications of attorneys to represent indigent  
28 defendants at public expense.  
29 (E) Compensation rates for salaried, contractual, and assigned  
30 counsel.  
31 (F) Minimum and maximum caseloads of public defender  
32 offices and contract attorneys.  
33 (G) Requirements concerning the creation and operation of a  
34 multicounty public defender's office created under an  
35 interlocal agreement as described in IC 33-40-7-3.5.  
36 (3) Make recommendations concerning the delivery of indigent  
37 defense services in Indiana, including the funding and delivery of  
38 indigent defense services for juveniles.  
39 (4) Make an annual report to the governor, the general assembly,  
40 and the supreme court on the operation of the public defense fund.  
41 (5) Make a report not later than December 1, 2029, to the  
42 legislative council and the budget committee concerning the up



1 to forty percent (40%) reimbursement from the public defense  
 2 fund for indigent defense services for misdemeanor cases under  
 3 IC 33-40-6-4(d), IC 33-40-6-5(c), and IC 33-40-7-11(d).

4 (6) On or before July 1, 2031, and July 1 biennially thereafter, the  
 5 commission shall submit a report to the executive director of the  
 6 legislative services agency, in an electronic format under  
 7 IC 5-14-6, for review by the interim committee on government in  
 8 accordance with IC 1-1-15.5-4 and IC 2-5-1.3-13(g). The report  
 9 shall describe:

10 (A) official action taken; and

11 (B) actionable items considered;

12 by the commission during the preceding two (2) years.

13 (b) The commission must provide data and statistics concerning  
 14 how the reimbursement has impacted attorney appointment rates, jail  
 15 population, trial rates, and case outcomes in the report under subsection  
 16 (a)(5).

17 (c) The report to the general assembly under subsection (a)(4) and  
 18 to the legislative council under subsection (a)(5) must be in an  
 19 electronic format under IC 5-14-6.

20 (d) The commission shall not:

21 (1) receive any additional appropriations from the general  
 22 assembly for misdemeanor reimbursement; or

23 (2) reimburse a county other than a county described in  
 24 IC 33-40-6-4(d) for misdemeanor reimbursement;

25 before July 1, 2029

26 SECTION 3. IC 33-40-6-4, AS AMENDED BY P.L.111-2024,  
 27 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2026]: Sec. 4. (a) For purposes of this section, the term  
 29 "county auditor" includes a person who:

30 (1) is the auditor of a county that is a member of a multicity  
 31 public defender's office; and

32 (2) is responsible for the receipt, disbursement, and accounting of  
 33 all monies distributed to the multicity public defender's office.

34 (b) A county auditor may submit on a quarterly basis a certified  
 35 request to the Indiana commission on court appointed attorneys for  
 36 reimbursement from the public defense fund for an amount equal to  
 37 fifty percent (50%) of the county's expenditures for indigent defense  
 38 services provided to a defendant against whom the death sentence is  
 39 sought under IC 35-50-2-9 **or IC 35-50-2-9.5.**

40 (c) Except as provided in subsection (d), a county auditor may  
 41 submit on a quarterly basis a certified request to the Indiana  
 42 commission on court appointed attorneys for reimbursement from the



1       public defense fund for an amount equal to forty percent (40%) of the  
2       county's or multicounty public defender's office's expenditures for  
3       indigent defense services provided in all noncapital cases except  
4       misdemeanors.

5       (d) This subsection applies to a county that is one (1) of up to twelve  
6       (12) counties that shall be selected by the Indiana commission on court  
7       appointed attorneys based on population and geographic diversity. A  
8       county auditor may submit on a quarterly basis a certified request to the  
9       Indiana commission on court appointed attorneys for reimbursement  
10      from the public defense fund for an amount that is up to forty percent  
11      (40%) of the county's or multicounty public defender's office's  
12      expenditures for indigent defense services provided in misdemeanor  
13      cases. This subsection expires June 30, 2029.

14      (e) The Indiana commission on court appointed attorneys may  
15      substitute a county described in subsection (d) with a county with  
16      similar population and geographic characteristics if the county  
17      described in subsection (d) declines to participate in the misdemeanor  
18      reimbursement. If a county is substituted under this subsection, the  
19      Indiana commission on court appointed attorneys shall publish on its  
20      website the replacement county.

21      (f) A request under this section from a county described in  
22      IC 33-40-7-1(5) may be limited to expenditures for indigent defense  
23      services provided by a particular division of a court.

24      (g) A county auditor shall submit quarterly to the Indiana  
25      commission on court appointed attorneys information to be included in  
26      the report under IC 33-40-5-4(a)(5) regarding reimbursements  
27      requested and received from the public defense fund for the county's  
28      expenditures for indigent defense services provided under subsections  
29      (b), (c), and (d).

30      SECTION 4. IC 33-40-6-5, AS AMENDED BY P.L.1-2025,  
31      SECTION 225, IS AMENDED TO READ AS FOLLOWS  
32      [EFFECTIVE JULY 1, 2026]: Sec. 5. (a) As used in this section,  
33      "commission" means the Indiana commission on court appointed  
34      attorneys established by IC 33-40-5-2.

35      (b) Except as provided under section 6 of this chapter, upon  
36      certification by a county auditor and a determination by the  
37      commission that the request is in compliance with the guidelines and  
38      standards set by the commission, the commission shall quarterly  
39      authorize an amount of reimbursement due the county or multicounty  
40      public defender's office:

41      (1) that is equal to fifty percent (50%) of the county's or  
42      multicounty public defender's office's certified expenditures for



1                   indigent defense services provided for a defendant against whom  
 2                   the death sentence is sought under IC 35-50-2-9 **or**  
 3                   **IC 35-50-2-9.5**; and

4                   (2) except as provided in subsection (c), that is equal to forty  
 5                   percent (40%) of the county's or multicounty public defender's  
 6                   office's certified expenditures for defense services provided in  
 7                   noncapital cases except misdemeanors.

8                   The commission shall then certify to the state comptroller the amount  
 9                   of reimbursement owed to a county or multicounty public defender's  
 10                  office under this chapter.

11                  (c) This subsection applies to a county that is one (1) of up to twelve  
 12                  (12) counties that shall be selected by the commission based on  
 13                  population and geographic diversity. Upon certification by a county  
 14                  auditor and a determination by the commission that the request is in  
 15                  compliance with the guidelines and standards set by the commission,  
 16                  the commission may quarterly authorize an amount of reimbursement  
 17                  due the county or multicounty public defender's office that is up to forty  
 18                  percent (40%) of the county's or multicounty public defender's office's  
 19                  certified expenditures for defense services provided in misdemeanor  
 20                  cases. This subsection expires June 30, 2029.

21                  (d) The commission may substitute a county described in subsection  
 22                  (c) with a county with similar population and geographic  
 23                  characteristics if the county described in subsection (c) declines to  
 24                  participate in the misdemeanor reimbursement. If a county is  
 25                  substituted under this subsection, the commission shall publish on its  
 26                  website the replacement county.

27                  (e) Upon receiving certification from the commission, the state  
 28                  comptroller shall issue a warrant to the treasurer of state for  
 29                  disbursement to the county or multicounty public defender's office of  
 30                  the amount certified.

31                  (f) The commission shall include in its report under  
 32                  IC 33-40-5-4(a)(5) information regarding requested reimbursements  
 33                  and amounts certified for reimbursements to each county or  
 34                  multicounty public defender's office under subsections (b) and (c).

35                  SECTION 5. IC 35-36-9-1 IS AMENDED TO READ AS  
 36                  FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 1. This chapter applies  
 37                  when a defendant is charged with:

38                   **(1)** a murder for which the state seeks a death sentence under  
 39                   IC 35-50-2-9; **or**

40                   **(2) aggravated child molesting for which the state seeks a**  
 41                   **death sentence under IC 35-50-2-9.5.**

42                  SECTION 6. IC 35-36-9-6, AS AMENDED BY P.L.117-2015,



1 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2026]: Sec. 6. If the court determines that the defendant is an  
3 individual with an intellectual disability under section 5 of this chapter,  
4 the part of the state's charging instrument filed under IC 35-50-2-9(a)  
5 **or IC 35-50-2-9.5(b)** that seeks a death sentence against the defendant  
6 shall be dismissed.

7 SECTION 7. IC 35-50-2-9.5 IS ADDED TO THE INDIANA CODE  
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
9 1, 2026]: Sec. 9.5. (a) **As used in this section, "aggravated child**  
10 **molesting" means child molesting involving sexual intercourse or**  
11 **other sexual conduct (as defined in IC 35-31.5-2-221.5), if:**

12 (1) **the offense is committed by a person at least twenty-one**  
13 **(21) years of age; and**  
14 **(2) the victim is less than twelve (12) years of age.**

15 (b) **The state may seek either a death sentence or a sentence of**  
16 **life imprisonment without parole for a person convicted of**  
17 **aggravated child molesting. However, the state may not proceed**  
18 **against a defendant under this section if a court determines at a**  
19 **pretrial hearing under IC 35-36-9 that the defendant is an**  
20 **individual with an intellectual disability.**

21 (c) **If the defendant was convicted of aggravated child molesting**  
22 **in a jury trial, the jury shall reconvene for the sentencing hearing.**  
23 **If the trial was to the court, or the judgment was entered on a**  
24 **guilty plea, the court alone shall conduct the sentencing hearing.**  
25 **The jury or the court may consider all the evidence introduced at**  
26 **the trial stage of the proceedings, together with new evidence**  
27 **presented at the sentencing hearing. The court shall instruct the**  
28 **jury concerning the statutory penalties for and any other offenses**  
29 **for which the defendant was convicted, the potential for**  
30 **consecutive or concurrent sentencing, and the availability of**  
31 **educational credit, good time credit, and clemency. The court shall**  
32 **instruct the jury that, in order for the jury to recommend to the**  
33 **court that the death penalty or life imprisonment without parole**  
34 **should be imposed, the jury must find that the death penalty or life**  
35 **imprisonment without parole is appropriate considering the nature**  
36 **of the offense and the character of the defendant. The defendant**  
37 **may present any additional evidence relevant to the nature of the**  
38 **offense and the character of the defendant.**

39 (d) **Except as provided by IC 35-36-9, if the hearing is by jury,**  
40 **the jury shall recommend to the court whether the death penalty**  
41 **or life imprisonment without parole, or neither, should be imposed.**  
42 **The jury may recommend:**



(1) the death penalty; or  
(2) life imprisonment without parole;

only if it makes the findings described in subsection (k). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(e) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(f) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or  
(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (k).

(g) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(h) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(i) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules



1       **adopted by the supreme court, shall be given priority over all other**  
2       **cases. The supreme court's review must take into consideration all**  
3       **claims that the:**

4       (1) **conviction or sentence was in violation of the:**  
5           (A) **Constitution of the State of Indiana; or**  
6           (B) **Constitution of the United States;**  
7       (2) **sentencing court was without jurisdiction to impose a**  
8       **sentence; and**  
9       (3) **sentence:**  
10           (A) **exceeds the maximum sentence authorized by law; or**  
11           (B) **is otherwise erroneous.**

12       If the supreme court cannot complete its review by the date set by  
13       the sentencing court for the defendant's execution under subsection  
14       (g), the supreme court shall stay the execution of the death sentence  
15       and set a new date to carry out the defendant's execution.

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

31       (k) Before a sentence may be imposed under this section, the  
32       jury, in a proceeding under subsection (d), or the court, in a  
33       proceeding under subsection (f), must find that any mitigating  
34       circumstances that exist are outweighed by the nature of the  
35       offense and the character of the defendant.

