

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 141

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

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

SECTION 1. IC 5-2-10.1-2, AS AMENDED BY P.L.220-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) The Indiana safe schools fund is established to do the following:

- (1) Promote school safety through the:
  - (A) use of dogs trained to detect drugs and illegal substances; and
  - (B) purchase of other equipment and materials used to enhance the safety of schools.
- (2) Combat truancy.
- (3) Provide matching grants to schools for school safe haven programs.
- (4) Provide grants for school safety and safety plans.
- (5) Provide educational outreach and training to school personnel concerning:
  - (A) the identification of;
  - (B) the prevention of; and
  - (C) intervention in;bullying.
- (6) Provide educational outreach to school personnel and training to school safety specialists and school resource officers

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concerning:

- (A) the identification of;
- (B) the prevention of; and
- (C) intervention in;

criminal **gang organization** activities.

(7) Provide grants for school wide programs to improve school climate and professional development and training for school personnel concerning:

- (A) alternatives to suspension and expulsion; and
- (B) evidence based practices that contribute to a positive school environment, including classroom management skills, positive behavioral intervention and support, restorative practices, and social emotional learning.

(b) The fund consists of amounts deposited:

- (1) under IC 33-37-9-4; and
- (2) from any other public or private source.

(c) The institute shall determine grant recipients from the fund with a priority on awarding grants in the following order:

- (1) A grant for a safety plan.
- (2) A safe haven grant requested under section 10 of this chapter.
- (3) A safe haven grant requested under section 7 of this chapter.

(d) Upon recommendation of the council, the institute shall establish a method for determining the maximum amount a grant recipient may receive under this section.

SECTION 2. IC 5-2-10.1-11, AS AMENDED BY P.L.190-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11. (a) The school safety specialist training and certification program is established.

(b) The school safety specialist training program shall provide:

- (1) annual training sessions, which may be conducted through distance learning or at regional centers; and
- (2) information concerning best practices and available resources;

for school safety specialists and county school safety commissions.

(c) The department of education shall do the following:

- (1) Assemble an advisory group of school safety specialists from around the state to make recommendations concerning the curriculum and standards for school safety specialist training.
- (2) Develop an appropriate curriculum and the standards for the school safety specialist training and certification program. The department of education may consult with national school safety experts in developing the curriculum and standards. The curriculum developed under this subdivision must include



training in:

- (A) identifying, preventing, and intervening in bullying; and
  - (B) identifying, preventing, and intervening in criminal **gang organization** activity.
- (3) Administer the school safety specialist training program and notify the institute of candidates for certification who have successfully completed the training program.
- (d) The institute shall do the following:
- (1) Establish a school safety specialist certificate.
  - (2) Review the qualifications of each candidate for certification named by the department of education.
  - (3) Present a certificate to each school safety specialist that the institute determines to be eligible for certification.

SECTION 3. IC 5-2-10.1-12, AS AMENDED BY P.L.233-2015, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 12. (a) Each school corporation shall establish a safe school committee. The committee may be a subcommittee of the committee that develops the strategic and continuous school improvement and achievement plan under IC 20-31-5. Each committee may include at least one (1) member who is a member of the support staff of the school or school corporation career and technical education school.

(b) The department of education, the school corporation's school safety specialist, and, upon request, a school resource officer (as described in IC 20-26-18.2-1) shall provide materials and guidelines to assist a safe school committee in developing a plan and policy for the school that addresses the following issues:

- (1) Unsafe conditions, crime prevention, school violence, bullying, criminal **gang organization** activity, and other issues that prevent the maintenance of a safe school.
- (2) Professional development needs for faculty and staff to implement methods that decrease problems identified under subdivision (1).
- (3) Methods to encourage:
  - (A) involvement by the community and students;
  - (B) development of relationships between students and school faculty and staff; and
  - (C) use of problem solving teams.

(c) As a part of the plan developed under subsection (b), each safe school committee shall provide a copy of the floor plans for each building located on the school's property that clearly indicates each exit, the interior rooms and hallways, and the location of any hazardous



materials located in the building to the law enforcement agency and the fire department that have jurisdiction over the school.

(d) The guidelines developed under subsection (b) must include age appropriate, research based information that assists school corporations and safe school committees in:

- (1) developing and implementing bullying prevention programs;
- (2) establishing investigation and reporting procedures related to bullying; and
- (3) adopting discipline rules that comply with IC 20-33-8-13.5.

(e) In addition to developing guidelines under subsection (b), the department of education shall establish categories of types of bullying incidents to allow school corporations to use the categories in making reports under IC 20-20-8-8 and IC 20-34-6-1.

SECTION 4. IC 20-18-2-2.8, AS ADDED BY P.L.190-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2.8. "Criminal **gang**" **organization**" has the meaning set forth in IC 35-45-9-1.

SECTION 5. IC 20-19-3-12, AS AMENDED BY P.L.233-2015, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 12. (a) The department, in collaboration with the Indiana criminal justice institute, the department of child services, the center for evaluation and education policy at Indiana University, the state police department, and any organization that has expertise in providing criminal **gang organization** education, prevention, or intervention that the department determines to be appropriate, shall:

- (1) identify or develop evidence based model educational materials on criminal **gang organization** activity; and
- (2) develop and maintain a model policy to address criminal **gangs organizations** and criminal **gang organization** activity in schools.

(b) Not later than July 1, 2015, the department shall make the model policy developed under subsection (a)(2) available to assist schools in the development and implementation of a criminal **gang organization** policy.

(c) The model educational materials on criminal **gang organization** activity identified or developed under subsection (a)(1) must include information:

- (1) to educate students and parents on the extent to which criminal **gang organization** activity exists;
- (2) regarding the negative societal impact that criminal **gangs organizations** have on the community;
- (3) on methods to discourage participation in criminal **gangs**



**organizations; and**

(4) on methods of providing intervention to a child suspected of participating in criminal **gang organization** activity.

(d) The model criminal **gang organization** policy developed under subsection (a)(2) must include:

(1) a statement prohibiting criminal **gang organization** activity in schools;

(2) a statement prohibiting reprisal or retaliation against an individual who reports suspected criminal **gang organization** activity;

(3) definitions of "criminal **gang**" **organization**" as set forth in IC 35-45-9-1 and "criminal **gang organization** activity";

(4) model procedures for:

(A) reporting suspected criminal **gang organization** activity; and

(B) the prompt investigation of suspected criminal **gang organization** activity;

(5) information about the types of support services, including family support services, available for a student suspected of participating in criminal **gang organization** activity; and

(6) recommendations concerning criminal **gang organization** prevention and intervention services and programs for students that maximize community participation and the use of federal funding.

SECTION 6. IC 20-26-18-2, AS ADDED BY P.L.190-2013, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) Not later than June 1, 2016, the governing body of each school corporation shall establish a written policy to address criminal **gangs organizations** and criminal **gang organization** activity in schools. The governing body of a school corporation shall develop the policy in consultation with:

(1) parents;

(2) school employees;

(3) local law enforcement officials;

(4) the county prosecuting attorney;

(5) the county public defender;

(6) organizations that have expertise in criminal **gang organization** education, prevention, or intervention;

(7) a juvenile court judge;

(8) a school behavioral health or community mental health professional; and

(9) any other person or entity the governing body of the school

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corporation determines to be appropriate.

(b) The policy must meet all the requirements for the department's model criminal **gang organization** policy set forth in IC 20-19-3-12(d).

(c) Not later than September 1, 2016, each school corporation shall submit a copy of its criminal **gang organization** policy to the department.

SECTION 7. IC 20-26-18-3, AS ADDED BY P.L.190-2013, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. A school corporation shall put a copy of the school corporation's criminal **gang organization** policy established under section 2 of this chapter:

- (1) on its Internet web site;
- (2) in school student handbooks; and
- (3) in any location the school corporation determines to be appropriate.

SECTION 8. IC 20-26-18-4, AS ADDED BY P.L.190-2013, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. A school corporation shall establish the following educational programs in its efforts to address criminal **gang organization** activity:

- (1) An evidence based educational criminal **gang organization** awareness program for students, school employees, and parents.
- (2) A school employee development program to provide training to school employees in the implementation of the criminal **gang organization** policy established under section 2 of this chapter.

SECTION 9. IC 20-26-18-5, AS ADDED BY P.L.190-2013, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. To foster the continuing coordination of **criminal gang organization** prevention, intervention, and suppression efforts, the governing body of a school corporation may establish a program to provide criminal **gang organization** intervention services to students. If a school corporation chooses to develop a program under this section, the governing body shall establish an advisory committee that includes the following members:

- (1) Parents.
- (2) School employees.
- (3) Local law enforcement officials.
- (4) The county prosecuting attorney.
- (5) The county public defender.
- (6) A juvenile court judge.
- (7) A school behavioral health or community mental health professional.



(8) Representatives of organizations that have expertise in criminal **gang organization** education, prevention, or intervention.

(9) Any other person or entity the governing body determines is appropriate.

SECTION 10. IC 20-26-18-6, AS ADDED BY P.L.190-2013, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) Not later than June 1, 2017, and before June 2 of each year thereafter, each school corporation shall submit to the department a written report, on forms developed by the department, outlining the activities undertaken as part of the school corporation's compliance with this chapter. The report must include school based data to monitor for disproportionality, with each school reporting the number of investigations disposed of internally and the number of cases referred to local law enforcement, disaggregated by race, ethnicity, age, and gender.

(b) Not later than November 1, 2017, and before November 2 of each year thereafter, the department shall submit a comprehensive report concerning criminal **gang organization** activity in schools to the governor and the general assembly. A report submitted to the general assembly under this subsection must be in an electronic format under IC 5-14-6. The report must include the following:

(1) A summary of the activities reported to the department under subsection (a).

(2) Any recommendations or conclusions made by the department to assist in the prevention of, education about, and intervention in criminal **gang organization** activity in schools.

SECTION 11. IC 20-33-9-10.5, AS ADDED BY P.L.190-2013, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 10.5. (a) This section does not apply to a charter school or an accredited nonpublic school.

(b) A school employee shall report any incidence of suspected criminal **gang organization** activity, criminal **gang organization** intimidation, or criminal **gang organization** recruitment to the principal and the school safety specialist.

(c) The principal and the school safety specialist may take appropriate action to maintain a safe and secure school environment, including providing appropriate intervention services.

SECTION 12. IC 31-37-4-3, AS AMENDED BY P.L.168-2014, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) This section applies if a child is arrested or taken into custody for allegedly committing an act that would be any of



the following crimes if committed by an adult:

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Voluntary manslaughter (IC 35-42-1-3).
- (4) Involuntary manslaughter (IC 35-42-1-4).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Aggravated battery (IC 35-42-2-1.5).
- (7) Battery (IC 35-42-2-1).
- (8) Kidnapping (IC 35-42-3-2).
- (9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8.
- (10) Sexual misconduct with a minor (IC 35-42-4-9).
- (11) Incest (IC 35-46-1-3).
- (12) Robbery as a Level 2 felony or a Level 3 felony (IC 35-42-5-1).
- (13) Burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony (IC 35-43-2-1).
- (14) Assisting a criminal as a Level 5 felony (IC 35-44.1-2-5).
- (15) Escape (IC 35-44.1-3-4) as a Level 4 felony or Level 5 felony.
- (16) Trafficking with an inmate as a Level 5 felony (IC 35-44.1-3-5).
- (17) Causing death when operating a vehicle (IC 9-30-5-5).
- (18) Criminal confinement (IC 35-42-3-3) as a Level 2 or Level 3 felony.
- (19) Arson (IC 35-43-1-1) as a Level 2 felony, Level 3 felony, or Level 4 felony.
- (20) Possession, use, or manufacture of a weapon of mass destruction (IC 35-47-12-1).
- (21) Terroristic mischief (IC 35-47-12-3) as a Level 2 or Level 3 felony.
- (22) Hijacking or disrupting an aircraft (IC 35-47-6-1.6).
- (23) A violation of IC 35-47.5 (controlled explosives) as a Level 2 felony, Level 3 felony, or Level 4 felony.
- (24) A controlled substances offense under IC 35-48.
- (25) A criminal **gang organization** offense under IC 35-45-9.

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





which the child is enrolled:

- (1) that the child was taken into custody; and
- (2) of the reason why the child was taken into custody.

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

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

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

SECTION 13. IC 32-21-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. As used in this chapter, "psychologically affected property" includes real estate or a dwelling that is for sale, rent, or lease and to which one (1) or more of the following facts or a reasonable suspicion of facts apply:

- (1) That an occupant of the property was afflicted with or died from a disease related to the human immunodeficiency virus (HIV).
- (2) That an individual died on the property.
- (3) That the property was the site of:
  - (A) a felony under IC 35;
  - (B) criminal **gang organization** (as defined in IC 35-45-9-1) activity;
  - (C) the discharge of a firearm involving a law enforcement officer while engaged in the officer's official duties; or
  - (D) the illegal manufacture or distribution of a controlled substance.

SECTION 14. IC 34-6-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. "Aggrieved person", for purposes of IC 34-24-2, means any of the following:

- (1) A person who has an interest in property or in an enterprise that:
  - (A) is the object of corrupt business influence (IC 35-45-6-2);
  - or
  - (B) has suffered damages or harm as a result of corrupt business influence (IC 35-45-6-2).
- (2) An individual whose personal safety is threatened by criminal **gang organization** (as defined in section 32 of this chapter) activity.
- (3) An individual or a business whose property value or business activity is negatively affected due to criminal **gang organization**



(as defined in section 32 of this chapter) activity.

(4) A political subdivision in which criminal ~~gang~~ **organization** (as defined in section 32 of this chapter) activity negatively affects the property values or business activity of the political subdivision or the personal safety of the political subdivision's residents.

(5) The state.

SECTION 15. IC 34-6-2-32 IS AMENDED TO READ AS FOLLOWS: Sec. 32. "Criminal ~~gang~~, **organization**", for purposes of section 6 of this chapter, has the meaning set forth in IC 35-45-9-1.

SECTION 16. IC 34-31-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. A parent of a child who is a member of a criminal ~~gang~~ **organization** (as defined in IC 35-45-9-1), who actively encourages or knowingly benefits from the child's involvement in the criminal ~~gang~~, **organization**, is liable for actual damages arising from harm to a person or property intentionally caused by the child while participating in a criminal ~~gang~~ **organization** activity if:

- (1) the parent has custody of the child;
- (2) the child is living with the parent or guardian; and
- (3) the parent failed to use reasonable efforts to prevent the child's involvement in the criminal ~~gang~~, **organization**.

SECTION 17. IC 35-31.5-2-27.4, AS ADDED BY P.L.158-2013, SECTION 352, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 27.4. "Benefit, promote, or further the interests of a criminal ~~gang~~ **organization**", for purposes of IC 35-45-9-3, has the meaning set forth in IC 35-45-9-3(a).

SECTION 18. IC 35-31.5-2-74, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 74. (a) "Criminal ~~gang~~ **organization**", for purposes of IC 35-44.1-2-5, IC 35-45-9, and IC 35-50-2-1.4, has the meaning set forth in IC 35-45-9-1.

(b) "Criminal ~~gang~~", for purposes of IC 35-50-2-15, has the meaning set forth in IC 35-50-2-1.4.

SECTION 19. IC 35-31.5-2-264.5, AS ADDED BY P.L.158-2013, SECTION 382, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 264.5. "Purpose of increasing a person's own standing or position within a criminal ~~gang~~ **organization**", for purposes of IC 35-45-9-3, has the meaning set forth in IC 35-45-9-3(b).

SECTION 20. IC 35-44.1-2-5, AS AMENDED BY P.L.158-2013, SECTION 504, IS AMENDED TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2016]: Sec. 5. (a) 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 assisting a criminal, a Class A misdemeanor. However, the offense is:

(1) a Level 6 felony, if:

(A) the person assisted has committed a Class B, Class C, or Class D felony before July 1, 2014, or a Level 3, Level 4, Level 5, or Level 6 felony after June 30, 2014; **or**

(B) **the person or the person assisted is a member of a criminal organization;** and

(2) a Level 5 felony, if the person assisted has committed murder or has committed a Class A felony before July 1, 2014, or a Level 1 or Level 2 felony after June 30, 2014, or if the assistance was providing a deadly weapon.

(b) It is not a defense to a prosecution under this section that the person assisted:

(1) has not been prosecuted for the offense;

(2) has not been convicted of the offense; or

(3) has been acquitted of the offense by reason of insanity.

However, the acquittal of the person assisted for other reasons may be a defense.

SECTION 21. IC 35-45-9-1, AS AMENDED BY P.L.192-2007, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. As used in this chapter, "criminal ~~gang~~" **organization**" means a **formal or informal** group with at least three (3) members that specifically:

(1) either:

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

(B) participates in; **or**

(C) **has as one (1) of its goals;** or

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

the commission of a felony, ~~or~~ an act that would be a felony if committed by an adult, or the offense of battery (IC 35-42-2-1).

SECTION 22. IC 35-45-9-3, AS AMENDED BY P.L.158-2013, SECTION 538, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) As used in this section, "benefit, promote, or further the interests of a criminal ~~gang~~" **organization**" means to commit a felony or misdemeanor that would cause a reasonable person to believe results in:

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- (1) a benefit to a criminal ~~gang~~; **organization or a member of a criminal organization;**
- (2) the promotion of a criminal ~~gang~~; **organization;** or
- (3) furthering the interests of a criminal ~~gang~~; **organization.**

(b) As used in this section, "purpose of increasing a person's own standing or position within a criminal ~~gang~~" **organization"** means committing a felony or misdemeanor that would cause a reasonable person to believe results in increasing the person's standing or position within a criminal ~~gang~~; **organization.**

(c) A person who knowingly or intentionally commits an act: **offense:**

- (1) with the intent to benefit, promote, or further the interests of a criminal ~~gang~~; **organization;** or
- (2) for the purpose of increasing the person's own standing or position within a criminal ~~gang~~; **organization;**

commits criminal ~~gang~~ **organization** activity, a Level 6 felony. **However, the offense is a Level 5 felony if the offense involves, directly or indirectly, the unlawful use of a firearm (including assisting a criminal (IC 35-44.1-2-5) if the offense committed by the person assisted involves the unlawful use of a firearm).**

(d) In determining whether a person committed an offense under this section, the trier of fact may consider a person's association with a criminal ~~gang~~; **organization**, including: ~~but not limited to:~~

- (1) an admission of criminal ~~gang~~ **organization** membership by the person;
- (2) a statement by:
  - (A) a member of the person's family;
  - (B) the person's guardian; or
  - (C) a reliable member of the criminal ~~gang~~; **organization;**
 stating the person is a member of a criminal ~~gang~~; **organization;**
- (3) the person having tattoos identifying the person as a member of a criminal ~~gang~~; **organization;**
- (4) the person having a style of dress that is particular to members of a criminal ~~gang~~; **organization;**
- (5) the person associating with one (1) or more members of a criminal ~~gang~~; **organization;**
- (6) physical evidence indicating the person is a member of a criminal ~~gang~~; **organization;**
- (7) an observation of the person in the company of a known criminal ~~gang~~ **organization** member on ~~multiple~~ **at least three**
- (3) occasions; ~~and~~
- (8) communications authored by the person indicating criminal



**gang organization membership, promotion of the membership in a criminal organization, or responsibility for an offense committed by a criminal organization;**

**(9) the person's use of the hand signs of a criminal organization; and**

**(10) the person's involvement in recruiting criminal organization members.**

SECTION 23. IC 35-45-9-4, AS AMENDED BY P.L.158-2013, SECTION 539, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. A person who **knowingly or intentionally** threatens another person because the other person:

(1) refuses to join a criminal ~~gang~~; **organization;**

(2) has withdrawn from a criminal ~~gang~~; **organization;** or

(3) wishes to withdraw from a criminal ~~gang~~; **organization;**

commits criminal ~~gang organization~~ intimidation, a Level 5 felony.

SECTION 24. IC 35-45-9-5, AS AMENDED BY P.L.158-2013, SECTION 540, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) Except as provided in subsection (b), an individual who knowingly or intentionally solicits, recruits, entices, or intimidates another individual to join a criminal ~~gang organization~~ or remain in a criminal ~~gang organization~~ commits criminal ~~gang organization~~ recruitment, a Level 6 felony.

(b) The offense under subsection (a) is a Level 5 felony if:

(1) the solicitation, recruitment, enticement, or intimidation occurs within one thousand (1,000) feet of school property; or

(2) the individual who is solicited, recruited, enticed, or intimidated is less than eighteen (18) years of age.

SECTION 25. IC 35-45-9-6, AS ADDED BY P.L.192-2007, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. In addition to any sentence or fine imposed on a criminal ~~gang organization~~ member for committing a felony or misdemeanor, the court shall order a criminal ~~gang organization~~ member convicted of a felony or misdemeanor to make restitution to the victim of the crime under IC 35-50-5-3.

SECTION 26. IC 35-47-4-5, AS AMENDED BY P.L.168-2014, SECTION 88, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) As used in this section, "serious violent felon" means a person who has been convicted of:

(1) committing a serious violent felony in:

(A) Indiana; or

(B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar



to the elements of a serious violent felony; or  
 (2) attempting to commit or conspiring to commit a serious violent felony in:

- (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2;  
or
- (B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of attempting to commit or conspiring to commit a serious violent felony.

(b) As used in this section, "serious violent felony" means:

- (1) murder (IC 35-42-1-1);
- (2) voluntary manslaughter (IC 35-42-1-3);
- (3) reckless homicide not committed by means of a vehicle (IC 35-42-1-5);
- (4) battery (IC 35-42-2-1) as a:
  - (A) Class A felony, Class B felony, or Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 2 felony, Level 3 felony, Level 4 felony, or Level 5 felony, for a crime committed after June 30, 2014;
- (5) aggravated battery (IC 35-42-2-1.5);
- (6) kidnapping (IC 35-42-3-2);
- (7) criminal confinement (IC 35-42-3-3);
- (8) rape (IC 35-42-4-1);
- (9) criminal deviate conduct (IC 35-42-4-2) (before its repeal);
- (10) child molesting (IC 35-42-4-3);
- (11) sexual battery (IC 35-42-4-8) as a:
  - (A) Class C felony, for a crime committed before July 1, 2014;  
or
  - (B) Level 5 felony, for a crime committed after June 30, 2014;
- (12) robbery (IC 35-42-5-1);
- (13) carjacking (IC 35-42-5-2) (before its repeal);
- (14) arson (IC 35-43-1-1(a)) as a:
  - (A) Class A felony or Class B felony, for a crime committed before July 1, 2014; or
  - (B) Level 2 felony, Level 3 felony, or Level 4 felony, for a crime committed after June 30, 2014;
- (15) burglary (IC 35-43-2-1) as a:
  - (A) Class A felony or Class B felony, for a crime committed before July 1, 2014; or
  - (B) Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony, for a crime committed after June 30, 2014;
- (16) assisting a criminal (IC 35-44.1-2-5) as a:



- (A) Class C felony, for a crime committed before July 1, 2014;  
or
  - (B) Level 5 felony, for a crime committed after June 30, 2014;
  - (17) resisting law enforcement (IC 35-44.1-3-1) as a:
    - (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or
    - (B) Level 2 felony, Level 3 felony, or Level 5 felony, for a crime committed after June 30, 2014;
  - (18) escape (IC 35-44.1-3-4) as a:
    - (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or
    - (B) Level 4 felony or Level 5 felony, for a crime committed after June 30, 2014;
  - (19) trafficking with an inmate (IC 35-44.1-3-5) as a:
    - (A) Class C felony, for a crime committed before July 1, 2014;  
or
    - (B) Level 5 felony, for a crime committed after June 30, 2014;
  - (20) criminal **gang organization** intimidation (IC 35-45-9-4);
  - (21) stalking (IC 35-45-10-5) as a:
    - (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or
    - (B) Level 4 felony or Level 5 felony, for a crime committed after June 30, 2014;
  - (22) incest (IC 35-46-1-3);
  - (23) dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1);
  - (24) dealing in methamphetamine (IC 35-48-4-1.1);
  - (25) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
  - (26) dealing in a schedule IV controlled substance (IC 35-48-4-3);  
or
  - (27) dealing in a schedule V controlled substance (IC 35-48-4-4).
- (c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Level 4 felony.

SECTION 27. IC 35-50-2-1.4, AS AMENDED BY P.L.192-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1.4. For purposes of section 15 of this chapter, "criminal **gang**" **organization**" means a group with at least three (3) members that specifically:

(+) either:

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



(B) participates in; or  
 (2) requires as a condition of membership or continued membership;  
 the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1); **has the meaning set forth in IC 35-45-9-1.**

SECTION 28. IC 35-50-2-9, AS AMENDED BY P.L.187-2015, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with an intellectual disability.

(b) The aggravating circumstances are as follows:

- (1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:
  - (A) Arson (IC 35-43-1-1).
  - (B) Burglary (IC 35-43-2-1).
  - (C) Child molesting (IC 35-42-4-3).
  - (D) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
  - (E) Kidnapping (IC 35-42-3-2).
  - (F) Rape (IC 35-42-4-1).
  - (G) Robbery (IC 35-42-5-1).
  - (H) Carjacking (IC 35-42-5-2) (before its repeal).
  - (I) Criminal **gang organization** activity (IC 35-45-9-3).
  - (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
  - (K) Criminal confinement (IC 35-42-3-3).
- (2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure a person or damage property.
- (3) The defendant committed the murder by lying in wait.
- (4) The defendant who committed the murder was hired to kill.
- (5) The defendant committed the murder by hiring another person to kill.
- (6) The victim of the murder was a corrections employee,





probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:

- (A) the victim was acting in the course of duty; or
  - (B) the murder was motivated by an act the victim performed while acting in the course of duty.
- (7) The defendant has been convicted of another murder.
- (8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.
- (9) The defendant was:
- (A) under the custody of the department of correction;
  - (B) under the custody of a county sheriff;
  - (C) on probation after receiving a sentence for the commission of a felony; or
  - (D) on parole;
- at the time the murder was committed.
- (10) The defendant dismembered the victim.
- (11) The defendant:
- (A) burned, mutilated, or tortured the victim; or
  - (B) decapitated or attempted to decapitate the victim;
- while the victim was alive.
- (12) The victim of the murder was less than twelve (12) years of age.
- (13) The victim was a victim of any of the following offenses for which the defendant was convicted:
- (A) Battery committed before July 1, 2014, as a Class D felony or as a Class C felony under IC 35-42-2-1 or battery committed after June 30, 2014, as a Level 6 felony, a Level 5 felony, a Level 4 felony, or a Level 3 felony.
  - (B) Kidnapping (IC 35-42-3-2).
  - (C) Criminal confinement (IC 35-42-3-3).
  - (D) A sex crime under IC 35-42-4.
- (14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.
- (15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):
- (A) into an inhabited dwelling; or
  - (B) from a vehicle.
- (16) The victim of the murder was pregnant and the murder



resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(17) The defendant knowingly or intentionally:

(A) committed the murder:

- (i) in a building primarily used for an educational purpose;
- (ii) on school property; and
- (iii) when students are present; or

(B) committed the murder:

- (i) in a building or other structure owned or rented by a state educational institution or any other public or private postsecondary educational institution and primarily used for an educational purpose; and
- (ii) at a time when classes are in session.

(18) The murder is committed:

(A) in a building that is primarily used for religious worship; and

(B) at a time when persons are present for religious worship or education.

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all



the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of educational credit, good time credit, and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (l) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

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

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

(f) 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.

(g) 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 (l).

(h) 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.

(i) 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.

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

- (1) conviction or sentence was in violation of the:
  - (A) Constitution of the State of Indiana; or
  - (B) Constitution of the United States;
- (2) sentencing court was without jurisdiction to impose a sentence; and
- (3) sentence:
  - (A) exceeds the maximum sentence authorized by law; or
  - (B) is otherwise erroneous.

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

(k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for



an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

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

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

(2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

SECTION 29. IC 35-50-2-15, AS AMENDED BY P.L.158-2013, SECTION 666, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 15. (a) This section does not apply to an individual who is convicted of a felony offense under ~~IC 35-45-9-3~~. **IC 35-45-9.**

(b) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed a felony offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person:

(1) knowingly or intentionally was a member of a criminal ~~gang~~ **organization** while committing the offense; and

(2) committed the felony offense:

(A) at the direction of or in affiliation with a criminal ~~gang~~ **organization**; or

(B) with the intent to benefit, promote, or further the interests of a criminal ~~gang~~ **organization**, or for the purposes of increasing the person's own standing or position with a criminal ~~gang~~ **organization**.

(c) If the person is convicted of the felony offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(d) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally was a member of a criminal ~~gang~~ **organization** while committing the felony offense and committed the felony offense at the direction of or in affiliation with a criminal ~~gang~~ **organization** as described in



subsection (b), the court shall:

- (1) sentence the person to an additional fixed term of imprisonment equal to the sentence imposed for the underlying felony, if the person is sentenced for only one (1) felony; or
- (2) sentence the person to an additional fixed term of imprisonment equal to the longest sentence imposed for the underlying felonies, if the person is being sentenced for more than one (1) felony.

(e) A sentence imposed under this section shall run consecutively to the underlying sentence.

(f) A term of imprisonment imposed under this section may not be suspended.

(g) For purposes of subsection (c), evidence that a person was a member of a criminal **gang organization** or committed a felony at the direction of or in affiliation with a criminal **gang organization** may include the following:

- (1) An admission of criminal **gang organization** membership by the person.
- (2) A statement by:
  - (A) a member of the person's family;
  - (B) the person's guardian; or
  - (C) a reliable member of the criminal **gang organization**; stating the person is a member of a criminal **gang organization**.
- (3) The person having tattoos identifying the person as a member of a criminal **gang organization**.
- (4) The person having a style of dress that is particular to members of a criminal **gang organization**.
- (5) The person associating with one (1) or more members of a criminal **gang organization**.
- (6) Physical evidence indicating the person is a member of a criminal **gang organization**.
- (7) An observation of the person in the company of a known criminal **gang organization** member on ~~multiple~~ **at least three (3)** occasions.
- (8) Communications authored by the person indicating criminal **gang organization** membership, **promotion of the membership in a criminal organization, or responsibility for an offense committed by a criminal organization**.
- (9) **The person's use of the hand signs of a criminal organization.**
- (10) **The person's involvement in recruiting criminal organization members.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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