

## **IC 35-41-4**

### **Chapter 4. Standard of Proof and Bars to Prosecution**

#### **IC 35-41-4-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 2 of this chapter by P.L.309-1985 do not apply to violations occurring before April 9, 1985.

(2) The amendments made to section 2 of this chapter by P.L.48-2001 apply to all crimes regardless of whether the crime was committed before, on, or after July 1, 2001.

(3) The amendments made to section 2(f) of this chapter by P.L.97-2004 do not apply to offenses committed under IC 35-42-4-3(c) and IC 35-42-4-3(d) as those provisions existed before the amendment of IC 35-42-4-3 by P.L.79-1994.

*As added by P.L.220-2011, SEC.591. Amended by P.L.63-2012, SEC.45.*

#### **IC 35-41-4-1**

##### **Standard of proof; insanity defense**

Sec. 1. (a) A person may be convicted of an offense only if his guilt is proved beyond a reasonable doubt.

(b) Notwithstanding subsection (a), the burden of proof is on the defendant to establish the defense of insanity (IC 35-41-3-6) by a preponderance of the evidence.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.16; Acts 1978, P.L.145, SEC.9.*

#### **IC 35-41-4-2**

##### **Periods of limitation**

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

(1) within five (5) years after the commission of the offense, in the case of a Class B, Class C, or Class D felony (for a crime committed before July 1, 2014) or a Level 3, Level 4, Level 5, or Level 6 felony (for a crime committed after June 30, 2014);  
or

(2) within two (2) years after the commission of the offense, in the case of a misdemeanor.

(b) A prosecution for a Class B or Class C felony (for a crime committed before July 1, 2014) or a Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014) that would otherwise be barred under this section may be commenced within one (1) year after the earlier of the date on which the state:

(1) first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis;

or

(2) could have discovered evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis by the exercise of due diligence.

(c) A prosecution for a Class A felony (for a crime committed before July 1, 2014) or a Level 1 felony or Level 2 felony (for a crime committed after June 30, 2014) may be commenced at any time.

(d) A prosecution for murder may be commenced:

(1) at any time; and

(2) regardless of the amount of time that passes between:

(A) the date a person allegedly commits the elements of murder; and

(B) the date the alleged victim of the murder dies.

(e) A prosecution for the following offenses is barred unless commenced before the date that the alleged victim of the offense reaches thirty-one (31) years of age:

(1) IC 35-42-4-3(a) (Child molesting).

(2) IC 35-42-4-5 (Vicarious sexual gratification).

(3) IC 35-42-4-6 (Child solicitation).

(4) IC 35-42-4-7 (Child seduction).

(5) IC 35-46-1-3 (Incest).

(f) 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.

(g) 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.

(h) 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 or herself that process cannot be served;

(2) the accused person conceals evidence of the offense, and evidence sufficient to charge the person 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 or bribery while in public office.

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

(1) The date of filing of an indictment, information, or complaint before a court having 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 has authority to make the arrest.

(j) 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.

(k) The following apply to the specified offenses:

(1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-9).

(2) A prosecution for an offense under IC 30-2-10-9(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-10).

(3) A prosecution for an offense under IC 30-2-13-38(f) (misuse of funeral trust or escrow account funds) is barred unless commenced within five (5) years after the date of death of the purchaser (as defined in IC 30-2-13-9).

(l) A prosecution for an offense under IC 23-14-48-9 is barred unless commenced within five (5) years after the earlier of the date on which the state:

(1) first discovers evidence sufficient to charge the offender with the offense; or

(2) could have discovered evidence sufficient to charge the offender with the offense by the exercise of due diligence.

(m) A prosecution for a sex offense listed in IC 11-8-8-4.5 that is committed against a child and that is not:

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

(2) listed in subsection (e);

is barred unless commenced within ten (10) years after the commission of the offense, or within four (4) years after the person ceases to be a dependent of the person alleged to have committed the offense, whichever occurs later.

(n) A prosecution for rape (IC 35-42-4-1) as a Class B felony (for a crime committed before July 1, 2014) or as a Level 3 felony (for a crime committed after June 30, 2014) that would otherwise be barred under this section may be commenced not later than five (5) years after the earlier of the date on which:

(1) the state first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis;

(2) the state first becomes aware of the existence of a recording (as defined in IC 35-31.5-2-273) that provides evidence sufficient to charge the offender with the offense; or

(3) a person confesses to the offense.

(o) A prosecution for criminal deviate conduct (IC 35-42-4-2) (repealed) as a Class B felony for a crime committed before July 1, 2014, that would otherwise be barred under this section may be commenced not later than five (5) years after the earliest of the date on which:

- (1) the state first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis;
- (2) the state first becomes aware of the existence of a recording (as defined in IC 35-31.5-2-273) that provides evidence sufficient to charge the offender with the offense; or
- (3) a person confesses to the offense.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.17; P.L.309-1985, SEC.2; P.L.232-1993, SEC.3; P.L.9-2000, SEC.1; P.L.48-2001, SEC.1; P.L.1-2002, SEC.149; P.L.97-2004, SEC.124; P.L.6-2006, SEC.7; P.L.140-2006, SEC.30; P.L.173-2006, SEC.30; P.L.143-2009, SEC.47; P.L.44-2013, SEC.2; P.L.158-2013, SEC.407; P.L.168-2014, SEC.63; P.L.72-2015, SEC.1; P.L.70-2016, SEC.4.*

### **IC 35-41-4-3**

#### **When prosecution barred for same offense**

Sec. 3. (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 constitutes 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 that 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, (v) the jury was unable to agree on a verdict, or (vi) false statements of a juror on voir dire prevented a fair trial.

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

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.18.*

#### **IC 35-41-4-4**

##### **When prosecution barred for different offense**

Sec. 4. (a) A prosecution is barred if all of the following exist:

- (1) There was a former prosecution of the defendant for a different offense or for the same offense based on different facts.
- (2) The former prosecution resulted in an acquittal or a conviction of the defendant or in an improper termination under section 3 of this chapter.
- (3) 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.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.19.*

#### **IC 35-41-4-5**

##### **Former prosecution in another jurisdiction a bar**

Sec. 5. In a case in which the alleged 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.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.20.*

#### **IC 35-41-4-6**

##### **Invalid or fraudulently procured prosecution not a bar**

Sec. 6. A former prosecution is not a bar under section 3, 4, or 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 intent to avoid a more severe sentence that might otherwise have been 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.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.21.*