

RECENT DEVELOPMENTS IN INDIANA CRIMINAL LAW AND PROCEDURE

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INTRODUCTION

This survey of criminal cases decided between October 1, 2024, and September 30, 2025, includes all Indiana Supreme Court opinions¹ while also addressing some of the scores of published opinions of the Indiana Court of Appeals that provide significant direction in criminal cases from beginning (such as speedy trial requests and discovery) to end (sentencing, post-conviction relief).

I. SPEEDY TRIAL

Defendants pursuing a speedy trial may ground their claim in either Indiana Criminal Rule 4 or the federal and state constitutions.² As summarized below, the court of appeals grappled with a variety of Rule 4 claims.

A. Competency Evaluation Tolls Rule 4 Clock

Criminal Rule 4(B) requires the discharge of an incarcerated defendant who requested a speedy trial if the defendant is held beyond seventy days from the date of the motion and moves for dismissal.³ Time is excluded, however, when “an act of the defendant delays the trial.”⁴

In *Bradley v. State*, the Indiana Supreme Court rejected the State’s argument that a trial court’s sua sponte order for a competency evaluation *extinguishes* the Rule 4(B) period.⁵ “So long as the defendant maintains a position reasonably consistent with his speedy-trial request, delays attributable to competency evaluations—whether requested by a party or ordered by the court on its own motion—simply *toll* the applicable deadline.”⁶ The opinion was grounded in the

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1. Juvenile delinquency cases sometimes address issues of broad applicability to criminal cases—after all, any criminal offense is also illegal for a juvenile to commit—but other juvenile delinquency appeals do not apply in the adult criminal realm. For example, *D.W. v. State*, 263 N.E.3d 151 (Ind. 2025), involved inadequate advisements at juvenile initial hearings, and *State v. B.H.*, 260 N.E.3d 953 (Ind. 2025), addressed whether the State could appeal from the trial court’s order denying approval of a delinquency petition. Those cases will not be summarized in this Article.

2. Constitutional speedy trial claims usually involve the Sixth Amendment and sometimes its Indiana constitutional analog of Article 1, Section 12. *See, e.g., Watson v. State*, 155 N.E.3d 608, 614 n.2 (Ind. 2020).

3. IND. CRIM. R. 4(B).

4. IND. CRIM. R. 4(B)(3).

5. 248 N.E.3d 563 (Ind. 2024).

6. *Id.* at 568 (emphasis added).

plain language of Rule 4(B), precedent, and the text of the competency statute.⁷ Although only eight days remained to try Bradley when he was deemed competent, the State had other options under Rule 4 to extend the deadline but pursued none of them.⁸

Nevertheless, reversal was not warranted. “If, before the applicable [Rule 4] deadline expires, a court sets the trial date beyond that deadline, the defendant—when he or she ‘is or should be aware’ of the scheduling error—must object ‘at the earliest opportunity’ so the court can cure its error by rescheduling trial ‘within the proper period.’”⁹ Relying on court of appeals’ precedent, the supreme court added the requirement that defendants must state the specific nature of their Rule 4 objection.¹⁰ By failing to demand a trial within the eight days left on the clock, “Bradley failed to put the trial court on notice of the specific error it was committing, namely restarting the seventy-day clock instead of tolling it.”¹¹

B. Trial Court Policies Contribute to Rule 4(C) Violation

Indiana Criminal Rule 4(C) sets a strict one-year deadline for the State to bring a defendant to trial.¹² This deadline may be extended only under limited circumstances, including when “[d]elays [are] caused by a defendant.”¹³ “Although Criminal Rule 4(C) imposes on the State the burden of bringing defendants to trial without creating any reciprocal duty by defendants to act to ensure their own timely trial, these roles were effectively reversed in” *Heitz v. State*.¹⁴

There, the State “struggled for 10 months to first collect and then share documents essential” to its identity theft prosecution, and the defendant “repeatedly declined to request a trial date.”¹⁵ Nor did the State request a trial date, which led the trial court, “in accordance with its own policy, to refrain from setting the case for trial.”¹⁶ A trial date was eventually scheduled fifteen months after charges were filed upon Heitz’s request.¹⁷ Although the trial court determined that Heitz was responsible for the delay and refused to discharge her, the court of appeals reversed, reasoning that “Heitz’s act of not seeking a trial date, which the State also did not request, did not extend the one-year deadline for her trial.”¹⁸ After all, the failure to request a trial date does “not

7. *Id.* at 568–70.

8. *Id.* at 572.

9. *Id.* at 573 (quoting *Little v. State*, 415 N.E.2d 44, 46 (Ind. 1981)).

10. *Id.* (citing *Todisco v. State*, 965 N.E.2d 753, 756 (Ind. Ct. App. 2012)).

11. *Id.* at 574.

12. IND. CRIM. R. 4(C).

13. *Id.*

14. 263 N.E.3d 181, 186 (Ind. Ct. App. 2025).

15. *Id.* at 186–87.

16. *Id.* at 187.

17. *Id.*

18. *Id.*

constitute ‘delays caused by a defendant’ within the meaning of Criminal Rule 4(C).”¹⁹ The remedy for a violation of Rule 4(C) is remand with instructions to grant the defendant’s motion to dismiss.²⁰

Although Judge Felix agreed with the majority’s “disapproval of the trial court’s policy of putting the onus on the defendant to request a trial date,” he nevertheless dissented because in his view one of Heitz’s requests was tantamount to asking for a delay in the proceedings.²¹ Thus, the motion for discharge on February 14 was premature and properly denied.²²

C. Emergency Surgery Justified Rule 4(D) Continuance

As noted above, Rule 4(C) generally requires a trial within one year.²³ But Rule 4(D) allows the State to request ninety additional days under limited circumstances after a defendant moves for dismissal under this rule.²⁴ Under Rule 4(D) the State must show:

- (1) there is evidence the state would be entitled to present at trial;
- (2) the evidence is presently unavailable;
- (3) a reasonable and diligent effort was made to procure the evidence in a timely manner prior to moving for an extension of time; and
- (4) the evidence can be obtained within ninety days.²⁵

The court of appeals has previously explained “when the unavailable evidence is a particular witness, the ‘reasonable effort’ requirement of [Rule 4(D)] is satisfied where the State is not at fault for the absence of the witness.”²⁶

The defendant in *Moore v. State* was charged with child neglect and battery, and the State planned to call a pediatrician to testify at trial.²⁷ But after being advised the witness had undergone emergency surgery and was “very unlikely” to be able to travel from Indianapolis to Evansville to testify, the State sought a continuance relying on Rule 4(D).²⁸ The trial court granted the continuance, and at a hearing several weeks later defense counsel sought to show noncompliance with Rule 4(D).²⁹ The trial court ultimately denied the motion for discharge, which was certified for interlocutory appeal.³⁰

19. *Id.*

20. *Id.*

21. *Id.* at 196, 198 (Felix, J., dissenting).

22. *Id.* at 198.

23. *See supra* Part I.B.

24. IND. CRIM. R. 4(D).

25. *Id.*

26. *Griffin v. State*, 695 N.E.2d 1010, 1013 (Ind. Ct. App. 1998).

27. 264 N.E.3d 94, 96 (Ind. Ct. App.), *trans. denied*, 267 N.E.3d 983 (Ind. 2025).

28. *Id.*

29. *Id.* at 96–97.

30. *Id.* at 97.

Although the pediatrician testified that she had worked a half day on the July 1 trial date, the court of appeals nevertheless upheld the trial court's ruling, explaining as follows:

First, there is no direct evidence as to whether she was or was not able to make the 6 hour round trip to Evansville to testify on July 1. Despite the Witness testifying at the discharge hearing, neither party asked her whether she deemed herself able to testify in the days leading up to July 1. Moreover, there was also no evidence presented as to when the Witness decided to return to work on July 1. Her testimony did establish that her vertigo resolved on July 1, but the Witness still could not drive, her brother had to drive her to work, and she only worked for half a day.³¹

D. Premature Motion for Discharge

Finally, in *Perry v. State*, defense counsel filed a Rule 4(C) motion for discharge after 317 days had passed, which was premature because the State still had 48 days to bring him to trial.³² Counsel had not miscalculated the days but rather had alerted the trial court that he had not received discovery the State had served on predecessor counsel and still needed to depose certain witnesses.³³ The resulting two-month delay, which was charged to the defense, rendered the motion to discharge he filed on day 373 premature.³⁴

A motion for discharge stops the Rule 4(C) clock, and defense counsel did not renew the motion.³⁵ Regardless, the entire delay after the motion for discharge was either attributable to Perry or court congestion.³⁶

II. DISCOVERY OF POLICE REPORTS

Prosecutors in most Indiana counties provide liberal discovery in criminal cases, but recent cases have addressed and invalidated some notable exceptions. In *Minges v. State*, a case from Dearborn County, the Indiana Supreme Court invalidated the prosecutor's blanket assertion of the work product privilege to police reports.³⁷ It concluded that Trial Rule 26(B)(3) provided "adequate guidance for the trial court to determine—on a case-by-case basis—whether a police report is protectible work product."³⁸

A July opinion from the court of appeals involved a different county and

31. *Id.* at 98.

32. 267 N.E.3d 20, 31 (Ind. Ct. App.), *trans. denied*, 271 N.E.3d 1099 (Ind. 2025).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. 192 N.E.3d 893, 897 (Ind. 2022).

38. *Id.* at 902.

practice—the Elkhart County Prosecutor’s Office’s policy of withholding from discovery police reports, under the Access to Public Records Act (APRA), unless counsel executes a Discovery Agreement.³⁹

In *Sanchez v. State*, the court of appeals held that APRA was not applicable in a criminal discovery matter.⁴⁰ It relied on Criminal Rule 2.5, which became effective in 2024.⁴¹ Although it “does not expressly list police reports among the mandatory disclosure items found in subsections (B)(2) through (B)(4), the rule’s clear intent is to facilitate liberal discovery and provide a criminal defendant with the maximum amount of relevant, unprivileged information within the State’s possession.”⁴² The appellate court reiterated that under “*Minges*, the State may not withhold police reports from a defendant in a criminal case as a matter of course; it must establish that the particular police reports at issue are privileged.”⁴³ Likewise, because the State had not “established any other applicable privilege, the trial court abused its discretion by denying Sanchez’s motion to compel disclosure of the police reports.”⁴⁴

III. JURY TRIAL ISSUES AND INSTRUCTIONS

Three cases from the court of appeals addressed issues related to jury trials: voir dire, jury instructions, and ex parte communication.

A. Additional Time for Voir Dire Warranted

Trial Rule 47(D) allows the court to “impose an advance time limitation” on the questioning of jurors by counsel.⁴⁵ But when time expires, “the court shall liberally grant additional reasonable time upon a showing of good cause related to the nature of the case, the quantity of prospective jurors examined and juror vacancies remaining, and the manner and content of the inquiries and responses given by the prospective jurors.”⁴⁶

In *Anderson v. State*, defense counsel asked whether any jurors “would want to hear from somebody arrested? Do you want them to take the stand and hear their version? Raise your hand?”⁴⁷ Several prospective jurors raised their hands, but the trial court called “[t]ime” while they were responding to the question.⁴⁸ Defense counsel requested additional time, which was denied.⁴⁹

39. *Sanchez v. State*, 264 N.E.3d 1223 (Ind. Ct. App. 2025).

40. *Id.* at 1230.

41. *Id.* at 1229–30.

42. *Id.*

43. *Id.* at 1230.

44. *Id.* at 1231.

45. IND. T.R. 47(D).

46. *Id.*

47. 251 N.E.3d 1066, 1083 (Ind. Ct. App. 2024), *trans. denied*, 255 N.E.3d 443 (Ind. 2025).

48. *Id.* at 1084.

49. *Id.*

Finding it “troubling that any prospective jurors revealed—at least preliminarily—they would look unfavorably on a defendant who did not testify,” the court of appeals concluded that Anderson had shown “good cause for the ‘liberal[] grant [of] additional reasonable time’ to question the panel further about their views.”⁵⁰ But counsel did not “ask to make a more specific record of which prospective jurors had raised their hands and which had elaborated on their views for purposes of appeal.”⁵¹

The convictions were affirmed because Anderson did not make for-cause challenges to the allegedly biased jurors or exhaust his peremptory challenges.⁵²

B. Trial Court Erred in Refusing to Give Residential Entry Instruction

In *Collins v. State*, the defendant returned to a man’s apartment demanding to see a woman who had been there at an earlier gathering.⁵³ The woman was not there, and the defendant grabbed a chain from the occupant’s neck, brandished a knife, demanded \$50, and then demanded to use the occupant’s phone.⁵⁴ The defendant was charged with burglary and other offenses.⁵⁵

A person commits burglary when the person “breaks and enters the building or structure of another person, with intent to commit a felony or theft in it[.]”⁵⁶ A person commits residential entry when the person “knowingly or intentionally breaks and enters the dwelling of another person[.]”⁵⁷ Decisional law has long established that “residential entry is a lesser-included offense of residential burglary, with the only difference in this scenario being whether the defendant intended to commit a felony or theft when entering the residence.”⁵⁸

The defendant tendered a residential entry instruction, which was refused.⁵⁹ A trial court must give a lesser-included offense instruction if there is a serious evidentiary dispute such that a jury could reasonably find the defendant committed the lesser offense but not the greater.⁶⁰ In refusing the defendant’s tendered residential entry instruction, the trial court found no substantial evidentiary dispute based on its misapprehension that the required intent “can form after you enter the premises.”⁶¹

However, “[a] criminal conviction for burglary requires proof beyond a reasonable doubt of a specific criminal intent which coincides in time with the

50. *Id.* (alteration in original).

51. *Id.*

52. *Id.* at 1085.

53. 252 N.E.3d 971, 974 (Ind. Ct. App. 2025).

54. *Id.*

55. *Id.* at 973.

56. IND. CODE § 35-43-2-1 (2025).

57. IND. CODE § 35-43-2-1.5 (2025).

58. *Collins*, 252 N.E.3d at 976.

59. *Id.* at 975.

60. *Id.* at 977.

61. *Id.* at 978.

acts constituting the breaking and entering[.]”⁶² Put another way, “a person who breaks and enters without any intent to commit an underlying [crime] is not guilty of burglary.”⁶³ The defendant entered with the intent to locate the woman and formed the criminal intent to forcibly rob the occupant of cash and steal his phone only after failing to find her.⁶⁴

Based on the instructional error, the burglary conviction was reversed and remanded for a new trial.⁶⁵

C. Ex Parte Communication with Jurors

In *Minor v. State*, the court of appeals rejected both common law and constitutional challenges to two separate ex parte communications during a jury trial.⁶⁶ First, the bailiff told jurors, “no,” when they asked “if they could have” the bodycam recording; second, the trial court answered a written question without the defendant or counsel present.⁶⁷

Although it found no reversible error, the opinion noted the Indiana Supreme Court’s heightened interest in ex parte communications “by regulating trial courts’ involvement with juries.”⁶⁸ The bailiff and trial court should have done things differently, but only the supreme court could “overturn longstanding precedent” under which the panel held reversal was not warranted.⁶⁹

IV. DEFENSE EVIDENCE ADMISSIBLE⁷⁰ REGARDING CIRCUMSTANCES OF POLYGRAPH

In *Graff v. State*, a defendant charged with child sex offenses agreed to a polygraph examination and made incriminating statements after being told he had failed it.⁷¹ The State filed a motion in limine to exclude evidence related to the polygraph examination and any expert testimony regarding the accuracy of polygraph examinations, which the trial court granted.⁷² The court of appeals

62. *Id.* at 977.

63. *Id.*

64. *Id.* at 977–78

65. *Id.* at 979.

66. 252 N.E.3d 979, 984 (Ind. Ct. App. 2025).

67. *Id.*

68. *Id.* at 988.

69. *Id.*

70. Other cases discussed the admissibility of evidence but mostly under the Rules of Evidence; thus, they are more appropriately included in that survey article. *State v. Brooks-Brown*, 246 N.E.3d 312 (Ind. Ct. App. 2024), *trans. denied*, 250 N.E.3d 1057 (Ind. 2025), generated three separate opinions in addressing the admissibility of expert testimony regarding human trafficking. The supreme court denied transfer by a 3-2 vote with Chief Justice Rush and Justice Molter dissenting, suggesting the issue(s) may arise in a future case.

71. 250 N.E.3d 497, 500 (Ind. Ct. App. 2025).

72. *Id.*

reversed that ruling on interlocutory appeal.⁷³

Decades earlier in *Crane v. Kentucky*,⁷⁴ the Supreme Court explained that

the physical and psychological environment that yielded [a] confession can also be of substantial relevance to the ultimate factual issue of the defendant's guilt or innocence. Confessions, even those that have been found to be voluntary, are not conclusive of guilt. . . . Indeed, stripped of the power to describe to the jury the circumstances that prompted his confession, the defendant is effectively disabled from answering the one question every rational juror needs answered: If the defendant is innocent, why did he previously admit his guilt? Accordingly, regardless of whether the defendant marshaled the same evidence earlier in support of an unsuccessful motion to suppress, and entirely independent of any question of voluntariness, a defendant's case may stand or fall on his ability to convince the jury that the manner in which the confession was obtained casts doubt on its credibility.⁷⁵

The court of appeals agreed with Graff that *Crane* and similar cases give a defendant the right to present at least some evidence about his polygraph examination in support of his attempt to undermine the incriminatory value of his statement to police.⁷⁶ It reasoned that evidence "that the polygraph examination directly preceded the confession, occurred in the exact same room, and involved the same officer to which the confession was given, easily qualifies" as confession-related evidence admissible under *Crane*.⁷⁷ Preventing any evidence regarding the polygraph examination would deny Graff the chance to show that the circumstances surrounding the polygraph cast doubt on the credibility of his confession.⁷⁸

The holding was bolstered by Indiana Rule of Evidence 106, which allows an adverse party to require the introduction of a remaining part of a writing or recorded statement "that in fairness ought to be considered at the same time."⁷⁹ The polygraph examination, including its preliminary questioning, and the subsequent police interview "are all part of one recorded statement, and fairness dictates that neither party should be able to decide that the jury will hear only the parts of the statement it deems favorable to its case."⁸⁰

73. *Id.*

74. 476 U.S. 683 (1986).

75. *Id.* at 689.

76. *Graff*, 250 N.E.3d at 506.

77. *Id.* at 507.

78. *Id.*

79. *Id.*

80. *Id.*

V. PARTIAL GUILTY PLEAS NOT (CURRENTLY) ALLOWED

The Indiana Supreme Court adopted a comprehensive set of Criminal Rules, effective January 1, 2024.⁸¹ Following the progression of a criminal case from start to finish, they address several important topics that the previous rules did not.⁸² Rule 3.3(C)(1) states that a “defendant may plead guilty to all charged offenses without a plea agreement or to at least one of the charged offenses pursuant to a plea agreement negotiated with the state.”⁸³

In *Helvie v. State*, the defendant was charged with domestic battery and a variety of non-violent offenses: Level 6 felony methamphetamine possession, Level 6 felony maintaining a common nuisance, Class A misdemeanor interference with the reporting of a crime, and Class C misdemeanor paraphernalia possession.⁸⁴ He sought to plead guilty without a plea agreement to domestic battery and proceed to trial on the remaining charges.⁸⁵ The trial court refused, accepting the State’s argument that Rule 3.3(C)(1) prevents a defendant from pleading guilty to fewer than all of the charges against him in the absence of a plea agreement.⁸⁶ The trial court certified the issue for interlocutory appeal, and the court of appeals affirmed, concluding that the new rule’s “failure to mention the scenario presented by this case means that it is excluded, not permitted.”⁸⁷

Helvie sought transfer, arguing that partial or “subset pleas” (1) have been allowed for forty years under established practice, (2) are a useful tool for trial courts, and (3) Rule 3.3 does not abrogate forty years of common law.⁸⁸ “If a rule was intended to abrogate decades of substantive law, the rule should do so explicitly.”⁸⁹

Although the “established practice” point is debatable,⁹⁰ surely allowing a

81. *Order Amending the Rules of Criminal Procedure*, IND. SUPREME COURT (June 23, 2023), <https://www.in.gov/courts/files/order-rules-2023-0623-crim-proc.pdf> [<https://perma.cc/CR8W-5U8S>].

82. *Id.*

83. IND. CRIM. R. 3.3(C)(1).

84. 248 N.E.3d 615, 616 (Ind. Ct. App. 2024), *trans. denied*, 255 N.E.3d 443 (Ind. 2025).

85. *Id.*

86. *Id.* at 617.

87. *Id.*

88. Petition to Transfer, *Helvie*, 255 N.E.3d 443 (No. 24A-CR-01441).

89. *Id.* at 15.

90. Helvie’s petition cites *State v. Boze*, 482 N.E.2d 276 (Ind. Ct. App. 1985), but that case is more nuanced. There, the defendant was charged with attempted murder and battery and sought to plead guilty to battery. *Id.* at 277. The trial court accepted his guilty plea, and the defendant then moved to dismiss the attempted murder charge on double jeopardy grounds under the successive-prosecution statute (after promising he would not). *Id.* The court of appeals reversed the trial court’s dismissal of the attempted murder charge and wrote about the “tactic” as follows:

Today’s decision should make it clear the State has the power to charge more than one count and pursue all counts in a single trial. If a defendant wishes to dispose of one of the charges by pleading guilty, he may do so, but he cannot use his plea over the State’s

partial or subset plea could promote judicial economy. Much of Rule 3.3 appears to address established plea practice, unlike the earlier set of rules that said very little about plea practice.⁹¹ But allowing partial pleas without an agreement appears to have been an open question dealt with differently among the state's prosecutors and trial judges.

The Indiana Supreme Court's 3-2 vote denying transfer, with Justices Goff and Molter dissenting,⁹² suggests the issue is likely to resurface.

VI. CRIME OR NOT A CRIME?

Indiana's appellate courts decided several cases regarding challenges to the sufficiency of claims for a variety of charges, including intimidation, resisting law enforcement, reckless homicide, and child neglect.⁹³

A. Intimidation Conviction Reversed for Lack of Communication of True Threat

In *Lester v. State*, the defendant sent a Snapchat direct message to a group of about twenty others with whom he exchanged "dark humor" messages.⁹⁴ The message was a selfie with a bathroom shower behind him and included the caption: "Now that I've showered and washed my sins away I can go and shoot up a preschool."⁹⁵ Snapchat flagged the message and notified the FBI, which contacted local police.⁹⁶ Lester was later charged with and convicted of intimidation.⁹⁷

Intimidation requires the State to prove that the defendant communicated a

objection to divest the State of the power to fully prosecute or to determine which charges will, or will not, be pursued.

Id. at 279.

91. Criminal Rule 10 simply addressed the type of record that needed to be made. IND. CRIM. R. 10 (repealed 2024), <https://www.in.gov/courts/files/criminal-2021-0101.pdf> [<https://perma.cc/AD9L-M9MS>].

92. *Helvie*, 255 N.E.3d 443.

93. The cases discussed in this section are appellate challenges to the sufficiency of evidence brought after trial. Securing a pretrial dismissal of criminal charges is difficult and uncommon. In *State v. Dickens*, 261 N.E.3d 778 (Ind. Ct. App.), *reh'g denied* (June 27, 2025), *trans. denied*, 272 N.E.3d 952 (Ind. 2025), the court of appeals reversed a trial court's dismissal of two counts of possession with intent to deliver a controlled substance, Tetrahydrocannabinols ("THC"). The appellate court agreed with the State that dismissal was improper because the charging information, taken as true, alleged a valid criminal offense; it declined to look beyond the charging information itself and consider the probable cause affidavit. *Id.* at 783. Other panels have held otherwise when reviewing a motion to dismiss, noting they would "consider both the charging [i]nformation and the probable cause affidavit to determine whether the alleged facts constitute an offense." *J.R.B. v. State*, 244 N.E.3d 439, 443 (Ind. Ct. App. 2024) (alteration in original) (quoting *State v. Sturman*, 56 N.E.3d 1187, 1198 (Ind. Ct. App. 2016)).

94. 268 N.E.3d 1224, 1226 (Ind. Ct. App. 2025).

95. *Id.*

96. *Id.*

97. *Id.* at 1227.

threat, among other things.⁹⁸ The statute further defines “threat” as an expression by words or action of an intention to unlawfully injure the person threatened or another person.⁹⁹ Whether a statement is a threat is an objective question for the trier of fact.¹⁰⁰

In *Lester*, the appellate court focused primarily on communication, which requires that the statement was “transmitted in such a way that the defendant knows or has good reason to believe the statement will reach the victim.”¹⁰¹ Lester sent the message to a private Snapchat group of about twenty individuals, but there “was no evidence that anyone in that Snapchat group had a connection to any preschool.”¹⁰² Although law enforcement considered the message a “credible threat,” no one from any preschool “was in fact placed in fear by the message.”¹⁰³

Finally, the court rejected the State’s reliance on the reach of the online message in a public forum because “Lester did not post the message to a public forum and, rather, sent it directly to a private Snapchat group.”¹⁰⁴ Thus, although the message was “inappropriate and disturbing,” the State presented insufficient evidence to support an intimidation conviction.¹⁰⁵

B. Resisting Law Enforcement Conviction Reversed

Indiana courts have long held that a person “forcibly resists” law enforcement only “when strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.”¹⁰⁶ In *K.B. v. State*, the court of appeals reiterated that an “officer’s use of force in response to passive, or even some active, resistance is not evidence of forcible resistance.”¹⁰⁷ Although K.B. refused to turn around when directed by the officer, the officer was the one who used force to get K.B. to comply.¹⁰⁸ Without evidence of forcible resistance by K.B., his adjudication was vacated.¹⁰⁹

C. Resisting Law Enforcement Conviction Upheld

A person commits resisting law enforcement when he knowingly or intentionally “forcibly resists, obstructs, or interferes with a law enforcement

98. IND. CODE § 35-45-2-1 (2025).

99. § 35-45-2-1(c)(1).

100. *Lester*, 268 N.E.3d at 1227.

101. *Id.* at 1228.

102. *Id.*

103. *Id.*

104. *Id.* at 1229.

105. *Id.*

106. *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993).

107. 261 N.E.3d 290, 293 (Ind. Ct. App. 2025).

108. *Id.*

109. *Id.*

officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties."¹¹⁰ In *Manuel v. State*, the defendant "reached for and grabbed a firearm after being instructed not to," and later ignored an officer's "instruction to drop the firearm."¹¹¹ The court of appeals affirmed the conviction, finding the act of reaching for and "attempting to pull" a loaded firearm¹¹² is undoubtedly more serious than advancing on officers with one's fists clenched as in *Walker v. State*,¹¹³ or displaying and refusing to drop a box cutter, which was sufficient in *Pogue v. State*.¹¹⁴

D. Reckless Homicide Convictions Affirmed

In *Rakhimov v. State*, the court of appeals affirmed two reckless homicide convictions against a truck driver who violated the federal safety regulations for commercial drivers.¹¹⁵ He drove his truck in a fatigued and distracted state, as evidenced by driving data and his slow reaction time in applying his brakes as he looked at his GPS while approaching a busy intersection at over fifty miles per hour.¹¹⁶

In *Weaver v. State*, the court of appeals affirmed a conviction against a driver who had been "whipping" his vehicle between lanes and approached the red light where the victim's vehicle was stopped at speeds of at least twenty miles over the speed limit, which was a "substantial departure from acceptable standards of conduct."¹¹⁷

E. Neglect Conviction Upheld Based on Child's Suicide

In *Dirig v. State*, the defendant was convicted of Level 1 felony neglect of a dependent for the suicide death of his girlfriend's son.¹¹⁸ The offense requires proof that he knowingly or intentionally placed the boy in a situation that endangered the boy's life or health, resulting in his death.¹¹⁹

The State made the requisite showing of "a subjective awareness of a high probability that he had placed [the boy] in a dangerous situation" when the defendant locked the boy in his room for more than an hour without supervision.¹²⁰ The defendant knew that the boy's emotionally reactive episodes presented suicide risks, including that the boy "had made repeated references to

110. IND. CODE § 35-44.1-3-1(a)(1) (2025).

111. 248 N.E.3d 624, 629 (Ind. Ct. App. 2024).

112. *Id.*

113. 998 N.E.2d 724, 726 (Ind. 2013).

114. 937 N.E.2d 1253, 1258 (Ind. Ct. App. 2010).

115. 260 N.E.3d 263, 264–66 (Ind. Ct. App. 2025).

116. *Id.* at 269.

117. 258 N.E.3d 1048, 1060 (Ind. Ct. App. 2025).

118. 268 N.E.3d 1239, 1243–45 (Ind. Ct. App. 2025).

119. IND. CODE § 35-46-1-4(a)(1), (b)(3) (2025).

120. *Dirig*, 268 N.E.3d at 1246.

and had engaged in repeated behaviors relating to suicide-by-strangulation.”¹²¹ The defendant knew that he and the boy’s mother needed to make the house safe from strangulation risks.¹²² The boy “was not to be left alone in his room for more than a few minutes and was to be monitored during that time.”¹²³ Nevertheless, he left the boy with “implements” in the room with which the boy “could strangle himself.”¹²⁴ Although suicide may be unpredictable in some instances and “suicide by children under ten is statistically rare in the United States,” the court concluded “the risk here was evident, and Dirig knowingly disregarded it.”¹²⁵

The appellate court also rejected Dirig’s argument that his actions or inactions were neither the cause-in-fact of the boy, T.C.’s, death nor the proximate cause of his death.¹²⁶ Rather, it found “for Dirig locking an emotionally reactive T.C. in a room by himself with strangulation implements and without any supervision, T.C. would not have died. And, given T.C.’s medical and behavioral histories and Dirig’s awareness of those histories, T.C.’s death was imminently foreseeable.”¹²⁷

F. Sufficient Evidence to Reject Defense of Property Claim

In *Norton v. State*, the defendant co-owned a home with his fiancée, whose college-aged daughter sometimes returned home.¹²⁸ One evening, Norton ordered the daughter’s boyfriend to leave the home and used force when he refused.¹²⁹

The court of appeals found sufficient evidence to rebut Norton’s claim of defense of habitation.¹³⁰ Although Norton claimed the boyfriend was a trespasser, his fiancée had given him permission to be in the home, which meant the boyfriend had a “‘fair and reasonable foundation for believing he ha[d] a right to be present’ and was not trespassing.”¹³¹ Moreover, Norton did not give the boyfriend reasonable time to leave the home and his use of force—grabbing the boyfriend by his arm and pushing him into a staircase banister, and attempting to push him down the stairs—“was not reasonable in light of the urgency of the situation, as [the boyfriend] was peacefully standing at the top of the stairs.”¹³²

121. *Id.*

122. *Id.* at 1247.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. 261 N.E.3d 794, 797 (Ind. Ct. App.), *trans. denied*, 265 N.E.3d 989 (Ind. 2025).

129. *Id.* at 798.

130. *Id.* at 801.

131. *Id.* (alteration in original) (quoting *Blair v. State*, 62 N.E.3d 424, 428 (Ind. Ct. App. 2016)).

132. *Id.*

VII. TWO UNUSUAL BUT SIGNIFICANT SELF-DEFENSE CASES

When amending Indiana's self-defense statute in 2012 in response to a highly publicized and poorly received Indiana Supreme Court decision, the General Assembly took the unusual step of including a purpose statement, which included the following:

By reaffirming the long standing right of a citizen to protect his or her home against unlawful intrusion, however, the general assembly does not intend to diminish in any way the other robust self defense rights that citizens of this state have always enjoyed. Accordingly, the general assembly also finds and declares that it is the policy of this state that people have a right to defend themselves and third parties from physical harm and crime.¹³³

In a pair of decisions during the survey period, Indiana's appellate courts tackled two unusual aspects of self-defense but in ways that continue to highlight Indiana's robust self-defense protections.

A. Hindsight May Justify Even Unreasonable Force

Indiana's self-defense statute has long been thought to focus on a defendant's understanding of the circumstances at the time force is used. The often-quoted language provides:

A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:

- (1) is justified in using deadly force; and
- (2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony.¹³⁴

Indiana courts have long explained that this language

establishes both a subjective and an objective standard to evaluate the reasonableness of a defendant's belief that force was necessary to protect against the imminent use of unlawful force. Subjectively, the defendant must actually believe force is necessary, and objectively, that belief must be one that a reasonable person would form given the

133. Joel M. Schumm, *Recent Developments in Indiana Criminal Law and Procedure*, 46 IND. L. REV. 1033, 1034 (2013) (quoting IND. CODE § 35-41-3-2(a) (2013)).

134. IND. CODE § 35-41-3-2(c) (2025).

circumstances.¹³⁵

That all remains true, but the Indiana Supreme Court's opinion in *Turner v. State* focused instead on a different part of the statute—and created what some view as a new path to claiming self-defense in Indiana: “No person, employer, or estate of a person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.”¹³⁶ As a matter of first impression in Indiana, the court held that defendants retain “the *benefit* of hindsight when it reveals their conduct was necessary in self-defense, even though that necessity wasn't fully apparent in the moment[.]”¹³⁷

From its opening section, the opinion paints a compelling picture of a sympathetic defendant:

Antonio Turner was one of three students studying organic chemistry at a classmate's home, tucked away in a quiet neighborhood just outside of Indianapolis. While they were studying, the classmate's jealous love interest, Dequan Briscoe, repeatedly called her. And when he learned Turner was at her home, Briscoe twice threatened to “pull up” on Turner—to attack him—which Turner heard over the speakerphone. Shortly after hearing the threat, Turner walked outside to his car, and moments later, he sensed that the unfamiliar car screeching towards him down the sleepy street was an ambush. Since he didn't have time to reach the house and had nowhere to hide, he turned while running and fired four shots into the car, wounding Briscoe. Turner fired based on his intuition—he didn't recognize the car, couldn't see through its darkly tinted windows, and wouldn't have recognized Briscoe if he saw him. But that intuition proved prescient. It turns out Briscoe was aiming a handgun to shoot Turner just before Turner began firing.¹³⁸

Turner was charged with battery by a deadly weapon, a Level 5 felony.¹³⁹ Convicted at a bench trial, the trial court “agreed with Turner that, in hindsight, it was necessary for Turner to fire at Briscoe to avoid being shot. But the judge rejected Turner's self-defense justification because, without the benefit of hindsight, it was objectively unreasonable for Turner to fire at a car into which he couldn't see.”¹⁴⁰

Many, if not most, self-defense cases are tried to a jury, which simply accepts or rejects the defense by its guilty or not guilty verdict; juries do not

135. *Turner v. State*, 253 N.E.3d 526, 535 (Ind. 2025) (citation omitted).

136. *Id.* at 530 (quoting § 35-41-3-2).

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

make any sort of findings regarding self-defense. Even when tried to the bench, judges are not required to, and often do not, explain the basis of their verdict. Here, though, the trial court specifically found that “Turner was telling the truth, and his conduct was necessary to protect himself.”¹⁴¹ As the supreme court put it, “Turner’s choices, in the judge’s view, were either to shoot or be shot, because Briscoe was lying when he testified, and he had drawn his gun to shoot Turner just before Turner shot him first.”¹⁴² Relying on the trial court’s factual determinations, the supreme court concluded that

Turner’s shooting was justified under Indiana law because (1) he was protecting himself from a threat of serious bodily harm; (2) the threat was imminent; (3) the threat required force for protection; and (4) the force Turner used was proportional to the threat—he shot at Briscoe to avoid being shot and then stopped shooting when Briscoe drove off. Turner’s use of force was justified not because his belief that he was about to be shot was *reasonable* but because that belief was *correct*, and force really was necessary to protect himself.¹⁴³

But how will *Turner* be applied in future cases, when trial courts are asked to give jury instructions or rule on the propriety of closing arguments? And how will defendants who are convicted at trial fare on appeal when asserting this theory without the benefit of favorable findings from the trial court? Distilled to a few sentences, the takeaway is as follows:

Under Indiana’s self-defense statute, justification for using force based on a *mistaken* belief about necessity depends on the reasonableness of the belief given the circumstances. But using defensive force based on an *accurate* belief is justified regardless of the belief’s reasonableness. In other words, using force for protection based on a belief that is both unreasonable and turns out to be wrong isn’t justified, but acting on a belief that is unreasonable, yet right, is justified.¹⁴⁴

The majority opinion goes to considerable lengths to suggest its decision comes from an “unusual fact pattern” and “is not a revision or expansion of Indiana’s self-defense law.”¹⁴⁵ It reiterates “several other important limits on the self-defense justification” left unchanged by the opinion, including:

- the defendant must be “in a place where he had a right to be” and have “acted without fault”;
- “a self-defense justification cannot be based on a mere verbal threat

141. *Id.* at 539.

142. *Id.*

143. *Id.*

144. *Id.* at 534.

145. *Id.* at 540.

because ‘oftentimes combatants make threats of violence which are never carried out’”;

- “[w]hen a defendant arms himself or herself with a weapon before an imminent threat exists in a premeditated strategy to retaliate for past violence (rather than to protect against the imminent use of unlawful force),’ self-defense does not justify using force”; and
- “[w]here a person has used more force than necessary to repel an attack the right to self-defense is extinguished, and the ultimate result is that the victim then becomes the perpetrator.”¹⁴⁶

Justice Goff concurred only in the judgment, expressing concern that the court’s new approach would create legal uncertainty and was unnecessary to give Turner relief.¹⁴⁷ Applying the traditional standard, he opined that the circumstances justified Turner’s actions because Turner

knew that Briscoe owned a gun; he overheard Briscoe make angry, profanity-laced remarks to Nyah (his study partner) over the phone; Briscoe threatened to “pull up on” Turner, which Turner understood to mean that he’d be “coming to harm” him; and, not long after that tense exchange, a vehicle sped up to Turner—its engine revving and tires squealing—just as Turner had walked away from his own car parked in the cul-de-sac of a suburban, residential neighborhood.¹⁴⁸

B. Burden Shifting in Self-Defense Bench Trial

Under Indiana’s self-defense statute, “[a] person is justified in using reasonable force against any other person to protect [himself] . . . from what [he] reasonably believes to be the imminent use of unlawful force.”¹⁴⁹

Indiana courts have long held that “a defendant claiming self-defense must first satisfy a threshold evidentiary requirement to place self-defense at issue.”¹⁵⁰ In cases that do not involve deadly force, “a defendant claiming self-defense must only show that he was protecting himself from what he ‘reasonably believe[d] to be the imminent use of unlawful force.’”¹⁵¹ Once the defendant has satisfied this initial requirement, the State then bears the burden of negating at least one of the elements beyond a reasonable doubt, which it may do so “by rebutting the defense directly, by affirmatively showing the defendant did not

146. *Id.* at 541–42 (alterations in original) (first quoting *Larkin v. State*, 173 N.E.3d 662, 670 (Ind. 2021); then quoting *Henson v. State*, 786 N.E.2d 274, 278 (Ind. 2003); and then quoting *Weedman v. State*, 21 N.E.3d 873, 892 (Ind. Ct. App. 2014)).

147. *Id.* at 545–48 (Goff, J., concurring in the judgment).

148. *Id.* at 548.

149. IND. CODE § 35-41-3-2(c) (2025).

150. *Cutler v. State*, 249 N.E.3d 1123, 1127 (Ind. Ct. App.) (citing *Larkin*, 173 N.E.3d at 670), *trans. denied*, 259 N.E.3d 998 (Ind. 2025).

151. *Id.* (alteration in original) (quoting *Dixson v. State*, 22 N.E.3d 836, 839 (Ind. Ct. App. 2014)).

act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.”¹⁵²

In *Cutler v. State*, defense counsel referred to his initial burden of production, stating: “Once [Cutler] raises self-defense, the burden shifts back to [the State].”¹⁵³ The trial court then remarked: “Uh-huh. If you’ve proven it.”¹⁵⁴ Cutler then said: “Well, that’s his testimony.”¹⁵⁵ The trial court acknowledged Cutler’s point before turning to the State for rebuttal.¹⁵⁶

“Cutler focuse[d] on the trial court’s use of the word ‘proven,’ arguing that the trial court’s remark suggests that the court was requiring Cutler to satisfy the higher burden of ‘proof’ rather than the threshold burden of ‘production.’”¹⁵⁷ He relied on *Justice v. State*, where the court of appeals found reversal was warranted when the trial court issued a ruling stating that “[t]he State had met its burden of proof, and [the court] do[es] not find that the Defendant met the burden to -- for self-defense.”¹⁵⁸ The panel in *Justice* noted that the comments were made in connection with the trial court’s judgment and concluded that “the trial court unequivocally placed on [the defendant] the burden of proving self-defense[.]”¹⁵⁹

But in *Cutler* the court of appeals characterized the trial court’s remark as “imprecise” and distinguished *Justice* because the “remark was made well ahead of its legal ruling, there were intervening arguments directed toward the application of the accurate legal standard, and nothing about the ruling suggested a misapprehension or misapplication of the law.”¹⁶⁰ In upholding the bench verdict, the appellate court concluded that the record was not “clear or certain enough to disclose an unjustifiable risk that the trial court did not follow the law.”¹⁶¹

The defendant sought transfer in *Cutler*, arguing that decision conflicts with *Justice* because defense counsel’s remarks were similar and the verdict in *Cutler* was announced within a page of the trial court’s problematic remark.¹⁶² He urged the supreme court not to allow a “new exception” to the rule in *Justice*.¹⁶³ The Indiana Supreme Court denied transfer by a 3-2 vote with Chief Justice Rush and Justice Molter voting to grant transfer.¹⁶⁴

152. *Id.* (quoting *Larkin*, 173 N.E.3d at 670).

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. 237 N.E.3d 1154, 1159 (Ind. Ct. App. 2024).

159. *Id.*

160. *Cutler*, 249 N.E.3d at 1128.

161. *Id.*

162. Petition to Transfer at 6–7, *Cutler v. State*, 259 N.E.3d 998 (Ind. 2025) (24A-CR-01458).

163. *Id.* at 7.

164. *Cutler*, 259 N.E.3d 998.

VIII. PROSECUTORIAL MISCONDUCT PRESERVATION CLARIFIED,
BUT EGGSHELL VICTIM DOCTRINE APPLIES

In *Konkle v. State*, the Indiana Supreme Court provided a detailed history of precedent regarding preservation of claims of prosecutorial misconduct, their purpose, and the modern views of other states.¹⁶⁵ It announced a new rule going forward:

where a defendant timely objects to alleged misconduct by the prosecutor and the trial court *overrules* the objection, nothing further is required to preserve the issue for appeal. However, while our decision here simplifies the requirements regarding overruled objections, we continue to hold that where a defendant objects and the trial court *sustains* the objection, our appellate preservation standard shall remain. That is to say, to preserve the issue for appeal following a *sustained* objection, the defendant must request an admonishment of the jury, and if further relief is required, move for a mistrial.¹⁶⁶

In *Konkle*, the supreme court found the claim of prosecutorial misconduct was preserved when defense counsel promptly objected to the State's closing argument that the eggshell skull doctrine applied.¹⁶⁷ The trial court immediately overruled this objection, and *Konkle* made no further requests.¹⁶⁸ "Given that *Konkle* made a timely objection to the prosecutor's statement, which was subsequently overruled, we find that he did all that was required of him."¹⁶⁹

Although the claim was preserved, it was unsuccessful. After an exhaustive review of the doctrine and other courts' consideration of it, the supreme court concluded that "the eggshell skull doctrine has traditionally dwelled within an analysis of causation—whether in tort or criminal law—our ruling today clarifies that this is where it should dwell hereafter."¹⁷⁰

The opinion further cautioned parties who invoke the doctrine in murder and voluntary manslaughter cases "to understand when and where the doctrine applies. To do otherwise is to do so at their own peril."¹⁷¹ The doctrine is irrelevant to proving the requisite mental state and does not alleviate that burden.¹⁷² "Should the doctrine be raised, it is strongly recommended that the doctrine be accompanied by a jury instruction adequately explaining the doctrine's scope and applicability."¹⁷³

165. 253 N.E.3d 1068, 1078–82 (Ind. 2025).

166. *Id.* at 1082 (footnote omitted).

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.* at 1087.

171. *Id.*

172. *Id.*

173. *Id.*

Justice Goff concurred in part and dissented in part.¹⁷⁴ Although he agreed with the majority's "well-reasoned holding on the appellate-preservation rule," he disagreed with its resolution of "the merits of Konkle's claim."¹⁷⁵ In his view, the majority "unnecessarily expands the eggshell-skull doctrine to homicide cases requiring proof of a knowing or intentional *mens rea*, and—unnecessary expansion aside—it misapplies that doctrine to Konkle."¹⁷⁶

IX. SENTENCING

The notable sentencing developments this survey period were not from the traditional source of majority opinions. Rather, as summarized below, a dissent from the denial of transfer highlights the increased unlikelihood of a transfer grant to address a sentencing issue. Moreover, recent legislation offers an important reminder that, although trial courts generally have broad sentencing discretion, the General Assembly can change or limit it. Finally, an opinion from the court of appeals addresses and reiterates limitations on probation conditions.

A. Sentences for Youthful Defendants

The justices denied transfer 3-2 in *Lee v. State*,¹⁷⁷ a case involving a fourteen-year-old tried as an adult for murder and sentenced to the advisory term of fifty-five years.¹⁷⁸ Justice Molter, joined by Chief Justice Rush, dissented.¹⁷⁹ Justice Molter reiterated that appellate review of sentences under Rule 7(B) is intended, in part, to "identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes."¹⁸⁰

In the dissent's view, the case offered an opportunity to identify guiding principles for sentencing those convicted of committing murder in their youth, a topic on which current precedent sends "two conflicting messages": (1) "sentencing adults who commit murder and sentencing youths who commit murder both begin at the same starting point: the fifty-five-year statutory advisory sentence"; and (2) "[s]entencing considerations for youthful offenders . . . are not coextensive with those for adults,' so 'both at initial sentencing and on appellate review it is necessary to consider an offender's youth and its attendant characteristics.'"¹⁸¹ As to the second point, "children lack maturity and have an underdeveloped sense of responsibility;" "they are more vulnerable to negative influences and pressures;" and "their character is less developed than

174. *Id.* at 1094 (Goff, J., concurring in part and dissenting in part).

175. *Id.* at 1094–95.

176. *Id.* at 1095.

177. 265 N.E.3d 522, 523 (Ind. 2025).

178. *Id.* (Molter, J., dissenting).

179. *Id.*

180. *Id.* (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)).

181. *Id.* at 523–24 (quoting *Brown v. State*, 10 N.E.3d 1, 6–7 (Ind. 2014)).

that of adults.”¹⁸²

The dissent concludes by proposing the following guiding principle: “While the advisory sentence is the starting point, youth status presumptively warrants a sentence lower in the statutory range, although aggravating circumstances may overcome the presumption.”¹⁸³

B. The General Assembly Limits Consecutive Sentences for Multiple Misdemeanors, Adds New Aggravators and Mitigators

As summarized in last year’s survey, both appellate courts addressed the imposition of lengthy sentences imposed for multiple misdemeanor convictions.¹⁸⁴

First, in *Lane v. State*, a 3-2 majority of the Indiana Supreme Court upheld an aggregate sentence of more than eight years for ten misdemeanor convictions of invasion of privacy based on the defendant “sending letters from prison to his former partner, while serving time after a domestic battery and in violation of a no-contact order.”¹⁸⁵

The majority’s affirmance was narrow and reiterated that trial courts should “use the full range of rehabilitation options when sentencing defendants for misdemeanors and low-level felonies.”¹⁸⁶ In rare cases like *Lane*, “a lengthy sentence of incarceration for such offenses is necessary to protect victims and the community from an offender with a history of violence.”¹⁸⁷

Justice Molter, joined by Justice Massa, dissented.¹⁸⁸ Largely agreeing with the helpful “guideposts for misdemeanor sentencing” in the majority opinion, the dissenting justices nevertheless concluded that the sentence was “an extreme outlier” considering the nature of the offense—sending “nonthreatening letters”—especially when compared to shorter sentences imposed for violent or “more egregious conduct.”¹⁸⁹ They would have revised the sentence to no more than the “two-and-a-half-year maximum sentence for battery resulting in moderate bodily injury.”¹⁹⁰

Months later in *Crum v. State*, the court of appeals summarized and applied *Lane* in a case involving a twelve-year sentence (with four suspended) for twenty-four counts of Class A misdemeanor neglect of a vertebrate animal.¹⁹¹ The opinion reiterated that *Lane* had emphasized the importance of

182. *Id.* at 524 (quoting *Taylor v. State*, 86 N.E.3d 157, 166 (Ind. 2017)).

183. *Id.*

184. Joel M. Schumm, *Recent Developments in Indiana Criminal Law and Procedure*, 58 IND. L. REV. 813, 829–31 (2025).

185. 232 N.E.3d 119, 120 (Ind. 2024).

186. *Id.*

187. *Id.* at 121.

188. *Id.* at 130 (Molter, J., dissenting).

189. *Id.* at 130–31.

190. *Id.* at 131.

191. 239 N.E.3d 858, 860 (Ind. Ct. App. 2024).

distinguishing “between offenders the community is ‘mad at’ and those the community is ‘afraid of’ when considering sentencing options,” and it “deferred to the trial court’s assessment that Lane was too dangerous to receive anything but a lengthy executed sentence.”¹⁹²

Each count related to one of the defendant’s two-dozen malnourished dogs.¹⁹³ Unlike the defendant in *Lane*, “Crum did not perpetuate his offenses against the same victim, let alone repeatedly over a span of one and one-half years.”¹⁹⁴ The panel noted that if Crum had instead been charged with multiple Level 6 felony offenses for mistreating his dogs, Indiana Code section 35-50-1-2(d)(1) would have limited the total of his consecutive terms of imprisonment to four years because his convictions were part of the same episode of criminal conduct.¹⁹⁵ Concluding that his twelve-year sentence was an outlier warranting revision under Appellate Rule 7(B), the court of appeals reduced his sentence to four years with one year suspended to probation.¹⁹⁶

These opinions surely spurred the General Assembly to impose limitations on consecutive misdemeanor sentences the following year during the 2025 session. Specifically, House Enrolled Act 1014 expanded the reach of Indiana Code section 35-50-1-2 to provide that the total of the consecutive terms of imprisonment to which the defendant is sentenced for convictions arising out of an episode of criminal conduct may not exceed the following:

- (1) If the most serious crime for which the defendant is sentenced is a Class C misdemeanor, the total of the consecutive terms of imprisonment may not exceed one (1) year.
- (2) If the most serious crime for which the defendant is sentenced is a Class B misdemeanor, the total of the consecutive terms of imprisonment may not exceed two (2) years.
- (3) If the most serious crime for which the defendant is sentenced is a Class A misdemeanor, the total of the consecutive terms of imprisonment may not exceed three (3) years.¹⁹⁷

The legislation also made other changes to Indiana’s sentencing statutes, including the addition of two new aggravating circumstances that trial courts can consider in imposing sentences:

- (13) The person is or has been an alien (as defined by 8 U.S.C.

192. *Id.* at 862 (quoting *Lane*, 232 N.E.3d at 125).

193. *Id.* at 860.

194. *Id.* at 863.

195. *Id.*

196. As explained in a footnote, “suspending one year of Crum’s four-year sentence to probation resembles approximately the composition of Crum’s sentence imposed by the trial court. In this respect, we defer to the judgment of the trial court.” *Id.* at 863 n.6.

197. Act of May 6, 2025, Pub. L. No. 218-2025, § 23, 2025 Ind. Acts 3527, 3559 (H.E.A. 1014) (codified as amended at IND. CODE § 35-50-1-2(d) (2025)).

1101(a)) unlawfully present in the United States. A determination by the United States Department of Homeland Security that an alien has come to, entered, or remained in the United States in violation of law is evidence that the alien is or has been unlawfully present in the United States.

- (14) The offense involved dealing in a controlled substance under IC 35–48–4 and the person distributed the controlled substance to at least three (3) different individuals in a one hundred eighty (180) day period.¹⁹⁸

Finally, the legislation added a new mitigating circumstance to recognize and reward efforts toward substance abuse treatment:

- (15) The offense involved a controlled substance under IC 35–48–4 and the person:
- (A) sought treatment:
 - (i) in the three hundred sixty-five (365) day period preceding the date of the commission of the offense; or
 - (ii) on or after the date on which the person committed the offense, but before sentencing; and
 - (B) successfully completed treatment:
 - (i) in the three hundred sixty-five (365) day period preceding the date of the commission of the offense; or
 - (ii) on or after the date on which the person committed the offense, but before sentencing.¹⁹⁹

C. Probation Conditions

In *Delgado v. State*, a defendant convicted of battery and other offenses challenged three separate probation conditions: (1) to avoid “individuals of bad reputation” and to “not associate with anyone who is likely to influence me to commit any crime”; (2) to avoid “[f]ormer inmates of Penal Institutions”; and (3) to “always consult with my Probation Officer and obtain his/her written permission before obtaining a Driver’s License.”²⁰⁰

The court of appeals reversed all three.²⁰¹ The first condition did not “adequately define a person of bad reputation” or those who might “influence” the defendant to engage in criminal activity, thus suffering “from the same

198. *Id.* § 16, 2025 Ind. Acts at 3543 (codified as amended at IND. CODE § 35-38-1-7.1(a) (2025)).

199. *Id.* § 16, 2025 Ind. Acts at 3544–45 (codified as amended at IND. CODE § 35-38-1-7.1(b)(15) (2025)).

200. 246 N.E.3d 1276, 1290–91 (Ind. Ct. App. 2024), *trans. denied*, 253 N.E.3d 526 (Ind. 2025).

201. *Id.* at 1293.

subjectivity and lack of definition” that doomed conditions in earlier cases.²⁰² The second condition prohibiting him from associating with former inmates was struck because it could “hinder his rehabilitation by limiting his exposure to people who no longer engage in criminal activity and actively help others to do the same. As written, without any exceptions for incidental contact, the Inmate Condition is overly broad and thus not reasonably related to the goals of probation.”²⁰³ Finally, without a history of driving-related offenses, the court of appeals agreed with Delgado that “the opportunity to earn his driver’s license will be important as he reintegrates into society,” and limiting that opportunity was not reasonably related to his rehabilitation.²⁰⁴

The opinion also noted a split in panels regarding the need for defendants to object at sentencing to preserve challenges to probation conditions on appeal.²⁰⁵ The panel sided with what appears to be the majority view that failure to object to probation conditions or choosing to waive formal reading of the conditions does not forfeit appellate review.²⁰⁶ It found additional support from a recent decision from the Indiana Supreme Court that held that “[n]o objection was required to preserve a challenge to [the defendant’s] fine, because a fine, like restitution, is part of the sentence.”²⁰⁷ The court reasoned that the “same logic” should apply when probation conditions were part of Delgado’s sentence.²⁰⁸

X. POST-CONVICTION RELIEF

In *Kelly v. State*, the Indiana Supreme Court resolved a split in court of appeals opinions regarding whether trial courts, not the court of appeals, authorize amendments to post-conviction relief petitions.²⁰⁹ Sixteen years old at the time of the offenses, McKinley Kelly was sentenced to 110 years for two counts of murder committed in 1996.²¹⁰ After denial of his direct appeal, petition for post-conviction relief, and habeas petition, he filed a pro se successive petition for post-conviction relief in 2019 arguing that his sentence was

202. *Id.* at 1292.

203. *Id.*

204. *Id.* at 1293.

205. *Id.* at 1290.

206. *Id.* See also *Meunier-Short v. State*, 52 N.E.3d 927, 936 (Ind. Ct. App. 2016) (holding that the defendant did not waive appellate review by failing to object to a probation condition at sentencing); *Bratcher v. State*, 999 N.E.2d 864, 874 (Ind. Ct. App. 2013) (rejecting the State’s argument that failing to object to probation conditions at sentencing constitutes waiver of appellate review); *but see Patton v. State*, 990 N.E.2d 511, 514 (Ind. Ct. App. 2013) (holding that the defendant waived appellate review by failing to object to a condition of probation at his sentencing hearing).

207. *Spells v. State*, 225 N.E.3d 767, 771 n.5 (Ind. 2024) (citing *Bell v. State*, 59 N.E.3d 959, 962 (Ind. 2016)).

208. *Delgado*, 246 N.E.3d at 1290.

209. 257 N.E.3d 782, 796 (Ind. 2025).

210. *Id.* at 791.

unconstitutional under provisions related to sentencing juvenile offenders.²¹¹ The court of appeals authorized the successive petition, which was later amended by lawyers from the State Public Defender and ultimately denied by the trial court.²¹²

The Indiana Supreme Court resolved the panel split in concluding that post-conviction trial courts may permit amendments to successive petitions; the petitioner does not need to secure permission from the court of appeals to amend his or her claims.²¹³ It relied on the plain language of the post-conviction relief rule and efficiency concerns, noting that a post-conviction court will be more familiar with the matter.²¹⁴

The justices rejected Kelly's state and federal constitutional challenges and the claim that his sentence was inappropriate based on the nature of his offenses and his character.²¹⁵ Nevertheless, it pointed to a recent amendment to the sentence modification statute that permits "juvenile offenders like Kelly a right to have their sentences reexamined after twenty years," at which point the trial court will have evidence of his "rehabilitative successes or failures."²¹⁶

XI. LIFE WITHOUT PAROLE DIRECT APPEALS

Although the life without parole (LWOP) sanction is noteworthy, the issues raised on appeal often are not. The Indiana Constitution gives the Indiana Supreme Court exclusive jurisdiction over all death penalty cases,²¹⁷ and most LWOP cases go directly to the Indiana Supreme Court by court rule.²¹⁸ "As suggested in recent surveys, the fairly routine nature of LWOP direct appeals may lead some to wonder if the cases are better suited for resolution in the court of appeals."²¹⁹

The relatively unremarkable nature of the latest direct appeal arguably offers support for such re-routing. During the survey period, the justices unanimously rejected two challenges to the convictions in *Crossland v. State*, a case involving no challenge to the sentence imposed.²²⁰

The court first considered Crossland's claim of a partial jury, rejecting her

211. *Id.* at 791–92.

212. *Id.* at 792.

213. *Id.* at 794.

214. *Id.* at 795.

215. *Id.* at 804, 806.

216. *Id.* at 790 (citing IND. CODE § 35-38-1-17(n) (2025)).

217. IND. CONST. art. 7, § 4.

218. IND. APP. R. 4(A)(1). Life without parole is usually imposed through the same statutory procedure used in capital cases. *See* IND. CODE § 35-50-2-9 (2025). A seldom-used statute that was repealed in 2014 allowed imposition of LWOP for a third, especially serious felony. *See* IND. CODE § 35-50-2-8.5 (repealed 2013), *repealed by* Act of May 6, 2013, Pub. L. No. 158-2013, § 662, 2013 Ind. Acts. 1155, 1605–06.

219. *See, e.g.,* Joel M. Schumm, *Recent Developments in Criminal Law and Procedure*, 57 IND. L. REV. 891, 911–14 (2024).

220. 256 N.E.3d 517, 524, 529 (Ind. 2025).

argument for a change of venue based on negative pretrial publicity because there was no evidence the jury was unable to render an impartial verdict.²²¹ Next, it found the defendant was not denied an impartial jury by the trial court's denial of several challenges for cause.²²² Each of the "prospective jurors who initially expressed reservations were rehabilitated through additional questioning."²²³ Therefore, the trial court did not "force" Crossland to use her peremptory challenges at the expense of removing a juror she found objectionable.²²⁴

Second, the court found no reversible error in the trial court's limitations on her ability to impeach a witness called by the defense.²²⁵ Although defendants have a constitutional right to present a complete defense, the right is limited by the rules of evidence.²²⁶ The hearsay nature of the evidence justified its exclusion, and any error in excluding the evidence was harmless based on the "overwhelming" evidence guilt.²²⁷

XII. DEATH PENALTY

After fifteen years without an execution, Indiana's death row inmate count shrunk from eight to five when three individuals were executed between December 2024 and October 2025.²²⁸ As summarized below, each of their final attempts for relief was different but unsuccessful, with at least one justice dissenting in each case.

A. Corcoran & Competency

The first execution occurred in December of 2024 with the lethal injection of Joseph Corcoran.²²⁹ Days before the execution, a divided Indiana Supreme Court denied two separate successive petitions for post-conviction relief and two accompanying stay motions filed by the State Public Defender.²³⁰

Although Corcoran personally wrote to the court stating he did not wish to

221. *Id.* at 525.

222. *Id.* at 526.

223. *Id.*

224. *Id.*

225. *Id.* at 528.

226. *Id.*

227. *Id.* at 528–29.

228. Casey Smith, *Indiana's death row dwindles to five — and future executions remain uncertain*, IND. CAP. CHRON. (Oct. 20, 2025, at 7:00 ET), <https://indianacapitalchronicle.com/2025/10/20/indianas-death-row-dwindles-to-five-and-future-executions-remain-uncertain/> [<https://perma.cc/4S8D-L2BV>].

229. See, e.g., Sophia Tareen & Rick Callahan, *Indiana completes first execution in 15 years as man convicted of quadruple homicide is put to death*, PBS NEWS (Dec. 18, 2024, at 11:15 EDT), <https://www.pbs.org/newshour/nation/indiana-completes-first-execution-in-15-years-as-man-convicted-of-quadruple-homicide-is-put-to-death> [<https://perma.cc/UCF2-XFZ5>].

230. *Corcoran v. State*, 246 N.E.3d 782, 785 (Ind. 2024).

pursue further litigation while acknowledging he would be executed, his attorneys argued that Corcoran's mental illness precludes his execution.²³¹ The majority concluded it could

only disregard Corcoran's decision to waive post-conviction remedies if he isn't competent to make that decision, and our Court previously concluded that he is. The State Public Defender again questions Corcoran's competency to waive post-conviction remedies, but she relies on the same evidence we considered the last time, and the minimal new evidence she identifies is offered only to confirm that Corcoran's condition is unchanged. Since Corcoran does not authorize the successive petitions on his behalf, we cannot authorize them either.²³²

In addition, the majority found no reasonable possibility that Corcoran was entitled to relief.²³³ Beyond concerns with standing and procedural default in the first petition, the second petition argued that Corcoran was not competent to be executed because he lacked a rational understanding of why the State was going to execute him.²³⁴ "But [the court] previously concluded he does; ample evidence, including his recent affidavit, further illustrates that; and the State Public Defender has not made the threshold substantial showing that anything has changed."²³⁵

Justice Goff, joined by Chief Justice Rush, dissented.²³⁶ They believed the Court should stay the execution to allow counsel to seek successive post-conviction relief or, at a minimum, stay the execution and order a psychiatric examination.²³⁷ "The evidence submitted by Corcoran's attorneys reveals a documented history of severe mental illness, an inability to cooperate with counsel, and a desire to be executed to escape prison—all of which raise substantial questions about his current mental capacity."²³⁸

B. Ritchie & Revisiting the Baum Standard

Next, Benjamin Ritchie was executed in May of 2025.²³⁹ Weeks earlier, by a 2-2 vote with Justice Massa not participating, the Indiana Supreme Court denied his request to file a successive petition for post-conviction relief.²⁴⁰

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.* at 800 (Goff, J., dissenting).

237. *Id.* at 801.

238. *Id.*

239. Smith, *supra* note 228.

240. *Ritchie v. State*, 254 N.E.3d 1064 (Ind.), *reh'g denied*, 256 N.E.3d 539 (Ind. 2025), and *cert. denied*, 145 S. Ct. 2729 (2025).

Ritchie sought to raise several claims, asserting:

(1) his trial and post-conviction counsel provided ineffective assistance by (a) failing to investigate Fetal Alcohol Spectrum Disorders and (b) failing to analyze the effect of Ritchie's childhood exposure to excessive amounts of lead; (2) Ritchie was only twenty years old at the time of the crime and recent developments in the law require this Court to consider his age at sentencing; (3) the State engaged in prosecutorial misconduct throughout Ritchie's jury trial; and (4) developments in the law make *Baum v. State*, 533 N.E.2d 1200 (Ind. 1989), inadequate in meeting the heightened standard required for capital litigation due to insufficient review of post-conviction counsel's competency.²⁴¹

Justice Goff, joined by Chief Justice Rush, dissented in part, acknowledging significant changes in the due process landscape

in the fifteen years that have lapsed between the latest execution (2024) and the one before (2009). In 2019, we concluded that the *Baum* standard, which basically asks only whether the attorney was present, "provides too low a benchmark for measuring counsel's performance" in certain juvenile proceedings.²⁴²

C. Ward & Public Records

Finally, Roy Ward was executed on October 10.²⁴³ Weeks earlier, the Indiana Supreme Court denied his request to file a successive petition for post-conviction relief that raised claims including that

(1) the State's failure to answer Ward's public records requests about its lethal injection protocol and the drugs it intends to use to carry out his execution obstructs his ability to challenge the constitutionality of his execution; (2) the State's failure to respond to Ward's public records requests violates his procedural and substantive due process rights under the Fourteenth Amendment to the United States Constitution and Article 1, Section 12 of the Indiana Constitution; [and] (3) problems during Benjamin Ritchie's execution in May 2025 present a substantial risk that Ward will suffer severe pain during his execution in violation of the Eighth Amendment and Article 1, Section 16 of the Indiana

241. *Id.* at 1065.

242. *Id.* at 1069 (Goff, J., dissenting in part and concurring in the result) (quoting *A.M. v. State*, 134 N.E.3d 361, 365 (Ind. 2019)).

243. Casey Smith, *Indiana executes Roy Lee Ward for 2001 murder of teenager Stacy Payne*, IND. CAP. CHRON. (Oct. 10, 2025, at 2:39 ET), <https://indianacapitalchronicle.com/2025/10/10/indiana-executes-roy-lee-ward-for-2001-murder-of-teenager-stacy-payne/> [https://perma.cc/4JNY-7PA2].

Constitution. . . .²⁴⁴

Justice Goff dissented.²⁴⁵ Quoting from a 2018 report of the Death Penalty Information Center, he wrote that “[t]o effectively ‘challenge experimental or demonstrably inappropriate drug protocols or other dangerous execution practices, prisoners need all relevant information about their executions.’ Lack of full transparency ‘frustrates the judicial process by unfairly limiting prisoners’ ability to prevent potentially unconstitutional executions.’”²⁴⁶

CONCLUSION

Beyond death penalty and LWOP direct appeal cases that must be heard by the Indiana Supreme Court,²⁴⁷ the justices have been increasingly less likely to grant transfer to exercise their discretionary ability to decide criminal cases.²⁴⁸ The supreme court took at least two dozen cases a decade ago, but the number of criminal transfers has dwindled to single digits in recent years.²⁴⁹ The survey period includes supreme court opinions addressing fairly narrow claims regarding the effect of competency evaluations on speedy trials (*Bradley*), and a previously uninterpreted sentence in the self-defense statute (*Turner*), while others address broader rules about amending post-conviction petitions (*Kelly*) and preserving claims of prosecutorial misconduct (*Konkle*).

But most criminal law in Indiana continues to come from the court of appeals, with 98% of its opinions denied transfer.²⁵⁰ Looking to 3-2 votes denying transfer provides some insight into issues likely to resurface, which include partial guilty pleas (*Helvie*), burden shifting in self-defense cases (*Cutler*), and sentence reductions for juvenile offenders (*Lee*). And, beyond supreme court opinions, advocates for criminal law reform may find success in the General Assembly, which recently limited consecutive misdemeanor sentences,²⁵¹ or through the supreme court’s rulemaking process, which regularly amends rules and sometimes adopts large-scale revisions.²⁵²

244. *Ward v. State*, 264 N.E.3d 637, 638 (Ind.), *reh’g denied*, 265 N.E.3d 527 (Ind. 2025).

245. *Id.* at 639 (Goff, J., concurring in part and dissenting in part).

246. *Id.* at 641 (citation omitted) (quoting ROBIN KONRAD, DEATH PENALTY INFO. CTR., BEHIND THE CURTAIN: SECRECY AND THE DEATH PENALTY IN THE UNITED STATES 7 (2018)).

247. IND. APP. R. 4.

248. Joel Schumm, *September Cases Address Intimidation, Neglect, Credit Time*, 69 RES GESTAE 30, 31 (2025).

249. *Id.*

250. *Id.*

251. *See supra* Part VII.B.

252. *See supra* notes 81–82 and accompanying text.