

Criminal Statutes of Limitations Indiana

Last Updated: March 2020

Promotion of human sexual trafficking; promotion of child sexual trafficking; promotion of sexual trafficking of a younger child; child sexual traffic; human trafficking

Question	Answer
<p>What is the statute of limitations for this crime?</p>	<ol style="list-style-type: none"> 1. <u>Promotion of human sexual trafficking</u>: Level Four (4) felony if the offender knowingly or intentionally uses force, threat of force, coercion, or fraud to recruit, entice, harbor, or transport an individual with the intent of causing the individual to (i) marry another person; (ii) engage in prostitution; or (iii) participate in sexual conduct; 2. <u>Promotion of child sexual trafficking</u>: Level (3) felony if the offender, knowingly or intentionally recruits, entices, harbors, or transports a child less than eighteen (18) years of age with the intent of causing the child to engage in: (i) prostitution or juvenile prostitution; or (ii) a performance or incident that includes sexual conduct in violation of IC 35-42-4-4(b) or IC 35-42-4-4(c) (child exploitation) 3. <u>Promotion of sexual trafficking of a younger child</u>: Level Three (3) felony if the offender knowingly or intentionally recruits, entices, harbors, or transports a child less than sixteen (16) years of age with the intent of inducing or causing the child to participate in sexual conduct. 4. <u>Human trafficking</u>: Level Five (5) felony if the offender knowingly or intentionally pays to, offers to pay to, agrees to pay money or other property to, or benefits in some other manner another person for a human trafficking victim or an act performed by a human trafficking victim. <p>The statute of limitations for this crime depends upon the crime's classification, detailed above.</p> <ol style="list-style-type: none"> 1. For a Level Three (3), four (4), or five (5) felony: <ul style="list-style-type: none"> • If the victim was an adult at the time of the commission of the offense, a prosecution for an offense is barred unless it is commenced within five (5) years after the commission of the offense. • If the victim was a child at the time of the offense, prosecution 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. • In either case, if such a felony would otherwise be barred under the foregoing guidelines, a prosecution may be commenced within one (1) year after the earlier of the date on which the state: (a) first discovers evidence sufficient to charge the offender with the offense through DNA analysis; or (b) could have discovered evidence sufficient to charge the offender with the offense through DNA analysis through the exercise of due diligence.

Statutory citation(s):	<p>1. Citation for the crime:</p> <ul style="list-style-type: none"> • Promotion of Human Sexual Trafficking: Ind. Code § 35-42-3.5-1.1; • Promotion of Child Sexual Trafficking; promotion of sexual trafficking on a younger child: Ind. Code § 35-42-3.5-1.2; • Child sexual trafficking: Ind. Code § 35-42-3.5-1.3; • Human trafficking: Ind. Code Ann § 35-42-3.5-1.4. <p>2. Citation for the statute of limitations: Ind. Code § 35-41-4-2</p>
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Rape

Question	Answer
What is the statute of limitations for this crime?	<p>Rape is a:</p> <ul style="list-style-type: none"> • Level Three (3) felony if the offender knowingly or intentionally has sexual intercourse with another person or knowingly or intentionally causes another person to perform or submit to other sexual conduct when victim is compelled by force or imminent threat of force, victim is unaware that sexual intercourse is occurring, or victim is so mentally disabled or deficient that consent to sexual intercourse cannot be given; or • Level One (1) felony if, in addition to the circumstances described above: <ul style="list-style-type: none"> • The rape is committed by using or threatening the use of deadly force or while armed with a deadly weapon; • The rape results in serious bodily injury to someone other than perpetrator; or • Commission of the rape is facilitated by furnishing the victim, without victim's knowledge, with a drug or controlled substance, or knowing that victim was furnished with a drug or controlled substance without victim's knowledge. <p>The statute of limitations for this crime depends upon the crime's classification, detailed above.</p> <p>1. For a Level Three (3) felony:</p> <ul style="list-style-type: none"> • If the victim is under the age of eighteen (18): A prosecution must be brought within ten (10) years after commission of the offense or within four (4) years after the person ceases to be dependent of the person alleged to have committed the offense, whichever occurs later. • If the victim is eighteen (18) or older: A prosecution must be brought within five (5) years after commission of the offense.

	<ul style="list-style-type: none"> • Provided, however, if the claim would be barred under the foregoing sections (a) or (b), a prosecution may be commenced not later than five (5) years after the earlier of the date on which: (i) the state first discovers evidence sufficient to charge the offender with the offense through DNA analysis; (ii) the state first becomes aware of the existence of a recording that provides evidence sufficient to charge the offender with the offense; or (iii) a person confesses to the offense. <p>2. For a Level One (1) felony: A prosecution may be commenced at any time.</p>
Statutory citation(s):	<p>1. Citation for the crime: Ind. Code § 35-42-4-1.</p> <p>2. Citation for the statute of limitations: Ind. Code § 35-41-4-2.</p>

Child molesting

Question	Answer
What is the statute of limitations for this crime?	<p>Child molesting is a:</p> <p>Level Three (3) felony, if a person who, with a child under fourteen (14) years of age, knowingly or intentionally performs or submits to sexual intercourse or other sexual conduct. However, the offense is a Level One (1) felony if:</p> <ul style="list-style-type: none"> • It is committed by a person at least twenty-one (21) years of age; • It is committed by using or threatening the use of deadly force or while armed with a deadly weapon; • It results in serious bodily injury; • The commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug or controlled substance, or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; or • It results in the transmission of a dangerous sexually transmitted disease and the person knew that the person was infected with the disease. <p>Level Four (4) felony, if a person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person. However, the offense is a Level Two (2) felony if:</p> <ul style="list-style-type: none"> • It is committed by using or threatening the use of deadly force; • It is committed while armed with a deadly weapon; or • The commission of the offence is facilitated by furnishing the victim, without the victim's knowledge,

	<p>with a drug or a controlled substance, or knowing that the victim was furnished the drug or controlled substance without the victim's knowledge.</p> <p>The statute of limitations for this crime depends upon the crime's classification, detailed above.</p> <ol style="list-style-type: none"> 1. For Level Three (3) or Four (4) felony: Prosecution must commence within five (5) years after commission of the offense. If such a felony would otherwise be barred under the foregoing guidelines, a prosecution may be commenced within one (1) year after the earlier of the date on which the state: (a) first discovers evidence sufficient to charge the offender with the offense through DNA analysis; or (b) could have discovered evidence sufficient to charge the offender with the offense through DNA analysis through the exercise of due diligence. 2. For Level One (1) or Two (2) felony: A prosecution may be commenced at any time; but the prosecution must be commenced before victim reaches thirty-one (31) years of age
Statutory citation(s):	<ol style="list-style-type: none"> 1. Citation for the crime: Ind. Code § 35-42-4-3. 2. Citation for the statute of limitations: Ind. Code § 35-41-4-2

Child Exploitation/Possession of Child Pornography

Question	Answer
What is the statute of limitations for this crime?	<p>Child exploitation is a:</p> <ul style="list-style-type: none"> • Level Five (5) felony for a person who: <ul style="list-style-type: none"> • Knowingly or intentionally manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age; or • Knowingly or intentionally disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or • Knowingly or intentionally makes a computer available to another person that contains matter that depicts or describes sexual conduct by a child less than eighteen (18); or • With the intent to satisfy or arouse the sexual desires of any person, knowingly or intentionally managing, producing, sponsoring, exhibiting, presenting disseminating, or offering to disseminate or exhibit any photographs, films, videotapes; or creates a digitalized image of, any performances or incident that includes the uncovered genitals of a child less than eighteen (18), or exhibiting the female breast with less than a fully opaque covering of any part of the nipple of a child less than eighteen (18); or making available to another person a computer, knowing that the computer contains the above described matter.

- Level Four (4) felony:
 - However the offense described above is a Level Four felony if the sexual conduct, matter, performance, or incident depicts or describes a child less than eighteen (18) years engaging in bestiality; is mentally disabled or deficient; participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force; physically or verbally resists participating in the sexual conduct, matter, performance, or incident; receives a bodily injury while participating in the sexual conduct, matter, performance, or incident; or is less than twelve (12) years of age; or the child less than eighteen (18) years of age: engages in bestiality; is mentally disabled or deficient; participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force; physically or verbally resists participating in the sexual conduct, matter, performance, or incident; receives a bodily injury while participating in the sexual conduct, matter, performance, or incident; or is less than twelve (12) years of age.

Possession of Child Pornography is a:

- Level Six (6) felony:
 - If a person knowingly or intentionally possesses or accesses with intent to view a picture, drawing, photograph, negative image, undeveloped film, motion picture, videotape; digitalized image, or any pictorial representation, that depict or describe sexual conduct by a child under `eighteen (18) or looks to be less than eighteen (18), and that lacks serious literary, artistic, political, or scientific value.
- Level Five (5) felony:
 - However, the offense described above constitute a Level Five felony if a picture, drawing, photograph, negative image, undeveloped film, motion picture, videotape, digitized image, or any pictorial representation depicts or describes sexual conduct by a child who the person knows is less than eighteen (18) years of age, or who appears to be less than eighteen (18) years of age; engages in bestiality; is mentally disabled or deficient; participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force; physically or verbally resists participating in the sexual conduct, matter, performance, or incident; or is less than twelve (12) years of age: or the child whose sexual conduct is depicted or described in any the items listed before engages in bestiality; is mentally disabled or deficient; participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force; physically or verbally resists participating in the sexual conduct, matter, performance, or incident; or is less than twelve (12) years of age.

The statute of limitations for this crime depends upon the crime's classification, detailed above.

1. For a Level Five (5) or Six (6) felony: Prosecution must be commenced within ten (10) years after the commission of the offense, or within four (4) years after the victim ceases to be a dependent of the person alleged to have committed the offense, whichever occurs later.
2. For Level Five (5) felony only: If such a felony would otherwise be barred under the above limitation, a prosecution may be commenced within one (1) year after the earlier of the date on which the state: (a) first

	discovers evidence sufficient to charge the offender with the offense through DNA analysis; or (b) could have discovered evidence sufficient to charge the offender with the offense through DNA analysis through the exercise of due diligence.
Statutory citation(s):	1. Citation for the crime: Ind. Code § 35-42-4-4. 2. Citation for the statute of limitations: Ind. Code § 35-41-4-2(b),(m).

Vicarious sexual gratification; fondling in the presence of a minor.

Question	Answer
What is the statute of limitations for this crime?	<p>Vicarious sexual gratification is a:</p> <ul style="list-style-type: none"> • Level Three (3) felony if any child involved in the offense is less than fourteen (14) years of age, and it is a Level Two (2) felony if the offense is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug or a controlled substance or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; • Level Three (3) felony if the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon; or the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug or a controlled substance or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge or if it results in serious bodily injury; • Level Four (4) felony if a child involved in the offense is under the age of fourteen (14); • Level Four (4) felony if a person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age sixteen (16) to: <ul style="list-style-type: none"> • Engage in sexual intercourse with another child under sixteen (16) years of age; • Engage in sexual conduct with an animal other than a human being; or • Engage in other sexual conduct with another person; all with intent to arouse or satisfy the sexual desires of a child or the older person. • Level Five (5) felony for an offender eighteen (18) or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to touch or fondle himself or another child under the age of sixteen (16) with intent to arouse or satisfy the sexual desires of a child or the older person; • Level (6) felony if a person eighteen (18) years of age or older who knowingly or intentionally: <ul style="list-style-type: none"> • Engages in sexual intercourse;

	<ul style="list-style-type: none"> • Engages in other sexual conduct; or • Touches or fondles the person's own body in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older persons commits performing sexual conduct in the presence of a minor. <p>The statute of limitations for this crime depends upon the crime's classification, detailed above.</p> <p>1. For Level Two (2), Three (3), Four (4), Five (5), or Six (6) felony: A prosecution must be commenced before the victim reaches thirty-one (31) years of age; provided, however, that for a Level Three (3), Four (4), or Five (5) felony, if such a felony would otherwise be barred under the foregoing limitation, a prosecution may be commenced within one (1) year after the earlier of the date on which the state: (a) first discovers evidence sufficient to charge the offender with the offense through DNA analysis; or (b) could have discovered evidence sufficient to charge the offender with the offense</p>
Statutory citation(s):	<p>1. Citation for the crime: Ind. Code § 35-42-4-5</p> <p>2. Citation for the statute of limitations: Ind. Code § 35-41-4-2</p>

Child solicitation

Question	Answer
What is the statute of limitations for this crime?	<p>Child solicitation is a:</p> <ul style="list-style-type: none"> • Level Five (5) felony if a person age eighteen (18) or older knowingly or intentionally commands, authorizes, urges, incites, requests or advises an individual under the age of fourteen (14) to perform (1) sexual intercourse, (2) other sexual conduct, or (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person. • Level Four (4) felony if the above crime is committed by using a computer network (as defined in § 35-43-2-3) and the offender travels to meet the child, or the offender has a previous unrelated conviction for an offense under this section. • Level Five (5) felony if a person age twenty-one (21) or older knowingly or intentionally commands, authorizes, urges, incites, requests or advises an individual at least fourteen (14) years old but less than sixteen (16) years old (or a person the offender believes to be between fourteen (14) years old and sixteen (16) years old) to perform (1) sexual intercourse, (2) other sexual conduct, or (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person. • Level Four (4) felony if the above crime is committed by using a computer network (as defined in § 35-43-2-3) and the offender travels to meet the child, or the offender has a previous unrelated conviction for an offense under this section.

	<p>The statute of limitations for this crime depends upon the crime's classification, detailed above.</p> <ol style="list-style-type: none"> 1. The prosecution must be commenced before the victim reaches thirty-one (31) years of age, but if a claim would otherwise be barred under the foregoing limitation, a prosecution may be commenced within one (1) year after the earlier of the date on which the state: (a) first discovers evidence sufficient to charge the offender with the offense through DNA analysis; or (b) could have discovered evidence sufficient to charge the offender with the offense through DNA analysis through the exercise of due diligence.
Statutory citation(s):	<ol style="list-style-type: none"> 1. Citation for the crime: Ind. Code § 35-42-4-6. 2. Citation for the statute of limitations: Ind. Code § 35-41-4-2(b), (e).

Child seduction

Question	Answer
What is the statute of limitations for this crime?	<p>Child seduction is a:</p> <ul style="list-style-type: none"> • Level Five (5) felony if the child is at least sixteen (16) years of age but less than eighteen (18) years of age and the person or law enforcement officer engaged in sexual intercourse or other sexual conduct with the child; • Level Five (5) felony if the child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person or law enforcement officer engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of: (A) the child; or (B) the person or law enforcement officer; • Level Four (4) felony if the child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person or law enforcement officer engaged in sexual intercourse or other sexual conduct with the child; • Level Three (3) felony if the child is thirteen (13) years of age or under and the person or law enforcement officer engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of: (A) the child; or (B) the person or law enforcement officer; and • Level Two (2) felony if the child is thirteen (13) years of age or under and the person or law enforcement officer engaged in sexual intercourse or other sexual conduct with the child. <p>The statute of limitations for this crime depends upon the crime's classification, detailed above.</p> <ol style="list-style-type: none"> 1. Prosecution must be commenced before the victim reaches thirty-one (31) years of age. 2. Only for Level Five (5) felony: If such a felony would otherwise be barred under the above limitation, a prosecution may be commenced within one (1) year after the earlier of the date on which the state: (a) first discovers evidence sufficient to charge the offender with the offense through DNA analysis; or (b)

	could have discovered evidence sufficient to charge the offender with the offense through DNA analysis through the exercise of due diligence.
Statutory citation(s):	1. Citation for the crime: Ind. Code § 35-42-4-7. 2. Citation for the statute of limitations: Ind. Code § 35-41-4-2.

Sexual battery

Question	Answer
What is the statute of limitations for this crime?	<p>Sexual battery is a:</p> <ul style="list-style-type: none"> • Level Six (6) felony if the perpetrator, with the intent to arouse or satisfy perpetrator's own sexual desires or the sexual desires of another: <ul style="list-style-type: none"> • Touches victim when victim is compelled to submit to the touching by force or the imminent threat of force or so mentally disabled or deficient that consent to the touching cannot be given; or • Touches another person's genitals, pubic area, buttocks, or female breast when that person is unaware that the touching is occurring. • Level Four (4) felony if, along with description above, offense is committed the by using or threatening the use of deadly force or while armed with a deadly weapon, or if commission of the offense is facilitated by furnishing the victim, without victim's knowledge, with a drug or controlled substance, or knowing that victim was furnished with a drug or controlled substance without victim's knowledge <p>The statute of limitations for this crime depends upon the crime's classification, detailed above.</p> <ol style="list-style-type: none"> 1. For Level Four (4) or Six (6) felony: If the victim is an adult, prosecution must commence within five (5) years after commission of the offense. If the victim is a child, prosecution must commence within ten (10) years after the commission of the offense, or within four (4) years after the victim ceases to be a dependent of the person alleged to have committed the offense, whichever occurs later. 2. Only for Level Four (4) felony: If such a felony would otherwise be barred under the above limitation, a prosecution may be commenced within one (1) year after the earlier of the date on which the state: (a) first discovers evidence sufficient to charge the offender with the offense through DNA analysis; or (b) could have discovered evidence sufficient to charge the offender with the offense through DNA analysis through the exercise of due diligence.
Statutory citation(s):	1. Citation for the crime: Ind. Code § 35-42-4-8. 2. Citation for the statute of limitations: Ind. Code § 35-41-4-2.

Sexual misconduct with a minor

Question	Answer
<p>What is the statute of limitations for this crime?</p>	<p>Sexual misconduct with a minor is a:</p> <ul style="list-style-type: none"> • Level Five (5) felony if a person at least eighteen (18) performs or submits to sexual intercourse or other sexual conduct with a child at least fourteen (14) but less than sixteen (16), but: <ul style="list-style-type: none"> • Level Four (4) felony if perpetrator is at least twenty-one (21); or • Level One (1) felony if offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon, if it results in serious bodily injury or if commission of the offense is facilitated by furnishing the victim, without victim’s knowledge, with a drug or controlled substance, or knowing that victim was furnished with a drug or controlled substance without victim’s knowledge • Level Six (6) felony if a person at least eighteen (18) performs or submits to any fondling or touching with intent to arouse or satisfy the sexual desires of either the child or the older person, with a child at least fourteen (14) but less than sixteen (16), but: <ul style="list-style-type: none"> • Level Five (5) felony if perpetrator is at least twenty-one (21); or • Level Two (2) felony if offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon, or if commission of the offense is facilitated by furnishing the victim, without victim’s knowledge, with a drug or controlled substance, or knowing that victim was furnished with a drug or controlled substance without victim’s knowledge. <p>The statute of limitations for this crime depends upon the crime’s classification, detailed above.</p> <ol style="list-style-type: none"> 1. For a Level Four (4), Level Five (5), or Level Six (6) felony, the prosecution must be commenced before the victim reaches thirty-one (31) years of age, but if a claim for a level Four (4) or a Level Five (5) would otherwise be barred under the foregoing limitation, a prosecution may be commenced within one (1) year after the earlier of the date on which the state: (a) first discovers evidence sufficient to charge the offender with the offense through DNA analysis; or (b) could have discovered evidence sufficient to charge the offender with the offense through DNA analysis through the exercise of due diligence. 2. For a Level One (1) or Level Two (2) felony: Prosecution may be commenced at any time.
<p>Statutory citation(s):</p>	<ol style="list-style-type: none"> 1. Citation for the crime: Ind. Code § 35-42-4-9. 2. Citation for the statute of limitations: Ind. Code § 35-41-4-2.

Incest (Applies to offenders age 18 or older)

Question	Answer
What is the statute of limitations for this crime?	<p>Incest is a:</p> <ul style="list-style-type: none"> • Level Five (5) felony if offender engages in sexual intercourse or other sexual conduct with another person, when the person knows that the other person is related to the person biologically as a parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew and the victim is over the age of sixteen (16). • Level Four (4) felony if the victim is under the age of sixteen (16). <p>The prosecution must be commenced before victim reaches thirty-one (31) years of age. If such a felony would otherwise be barred under the foregoing guideline, a prosecution may be commenced within one (1) year after the earlier of the date on which the state: (a) first discovers evidence sufficient to charge the offender with the offense through DNA analysis; or (b) could have discovered evidence sufficient to charge the offender with the offense through DNA analysis through the exercise of due diligence.</p>
Statutory citation(s):	<ol style="list-style-type: none"> 1. Citation for the crime: Ind. Code § 35-46-1-3. 2. Citation for the statute of limitations: Ind. Code § 35-41-4-2.

Failure of carriers of dangerous communicable diseases to warn persons at risk

Question	Answer
What is the statute of limitations for this crime?	This statute has been repealed.
Statutory citation(s):	This statute has been repealed.

Are there any exceptions to the statute of limitations laws?

Question	Answer
Exceptions	<ul style="list-style-type: none"> • A prosecution for a Class B or C felony (for a crime committed before July 1, 2014) or a Level Three (3), Four (4), or Five (5) felony (for a crime committed after June 30, 2014) that would otherwise be barred may be commenced within one (1) year after the earlier of the date on which the state first discovers evidence sufficient to charge the offender with the offense through DNA analysis, or the date on which the state could have discovered evidence sufficient to charge the offender with the offense through DNA analysis by the exercise of due diligence. Ind. Code § 35-41-4-2.

Anything else I should know?

Question	Answer
Anything else I should know?	<ul style="list-style-type: none"> • Pursuant to Ind. Code § 35-41-4-2(h), the period within which a prosecution must be commenced does not include any period in which: <ul style="list-style-type: none"> • The accused person is not usually and publicly resident in the state or so conceals himself or herself that process cannot be served; • 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; • 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; or (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. Ind. Code § 35-41-4-2(h). • A prosecution is considered timely commenced for any offense to which the defendant enters a plea of guilty, notwithstanding that the statute of limitations has expired. Ind. Code § 35-41-4-2(j). • 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. Ind. Code § 35-41-4-2(g).