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Indiana Supreme Court
Court of Appeals
and Tax Court

IN THE

Court of Appeals of Indiana

Nicholas G. Alexander,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff

September 30, 2026

Court of Appeals Case No.
25A-CR-2705

Appeal from the Crawford Circuit Court

The Honorable Justin B. Mills, Judge

Trial Court Cause No.
13C01-2207-F3-2

Opinion by Judge Bailey
Judge Brown concurs.
Judge Weissmann dissents with separate opinion.

Bailey, Judge.

Case Summary

[1] Nicholas G. Alexander appeals his convictions and sentence for three counts of contributing to delinquency, as Class A misdemeanors. He raises the following three restated issues on appeal:

1. Whether the State presented sufficient evidence to support his convictions for contributing to delinquency, as Class A misdemeanors.

2. Whether the trial court abused its discretion in sentencing.

3. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] On Friday, July 8, 2022, minors E.B., R., and E.H. had a sleepover at E.H.'s residence, where they set up a tent in the loft of a barn by E.H.'s house. The next day, R. left, and S.C., whom E.B. had met on Snapchat, came over to continue the sleepover on Saturday night. E.B., E.H., and S.C. were all sixteen years old at the time. S.C. contacted Alexander, who was nineteen years old at the time, and requested that he bring alcohol to her and the other two girls. Alexander brought them "a lot" of alcohol—specifically, a bottle of vodka and several small, shot-sized bottles of Fireball whiskey. Tr. v. 5 at 82. After dropping off the alcohol, Alexander left.

[4] The three girls drank "a lot[,]" *id.*, and E.B. in particular drank until she "got really drunk[,]" Tr. v. 4 at 75. E.B. started "passing out and waking back up[,]" and she vomited on herself. *Id.* E.B. testified that E.H. and S.C. removed her clothing and did not give it back to her. After the girls had been "drinking for about an hour[,]" Tr. v. 5 at 85, S.C. contacted Alexander again and asked if he would come back so that they could "have sex[,]" *id.* at 91. Alexander agreed and had sex with all three girls when he returned to the barn. About two hours later, Alexander left, and the three girls continued their sleepover.

[5] E.B. subsequently reported the events of the night to the Crawford County Sheriff's Department ("CCSD"). Chief Deputy William Breeding of the CCSD began an investigation and conducted a recorded interview with Alexander on or around July 12. Alexander stated in that interview that he had never heard of E.B. or E.H. and that he had not talked to S.C. in a "long time[.]" Tr. v. 4 at 156. Alexander also stated that he was not in Crawford County at all on the night of July 9th but that he was in Harrison County, Floyd County, and New Albany. He stated that he did not have a Snapchat account and that the account "N_Alexander1422" was not his. *Id.* at 158. Chief Deputy Breeding informed Alexander that he had a warrant for the N_Alexander1422 Snapchat account and took a photograph of Alexander to use in a lineup.

[6] On July 24, Alexander called Chief Deputy Breeding multiple times and requested to talk to him again. That same day, Chief Deputy Breeding conducted another recorded interview with Alexander. At the beginning of the interview, Alexander stated, "I gotta get all the sh** off my chest, dude. I feel

guilty as f**k for lying – lying to you about that social media[] and sh**." *Id*. at 192. Alexander then stated that he gave alcohol to S.C. and "two other girls [he did] not know" at around 10:00 p.m. on the night of Saturday, July 9. *Id*. at 195.

[7] On July 26, the State charged Alexander with rape, false informing, three counts of contributing to delinquency, and sexual battery. Following a five-day jury trial that took place between August 25 and September 2, 2025, the jury found Alexander guilty of false informing[1] and all three counts of contributing to delinquency but not guilty of rape or sexual battery. At his October 2 sentencing hearing, Alexander's counsel argued that the court should find it mitigating that there was no serious harm to a person or property, that the victims induced the offenses, and that Alexander had a limited prior criminal history. The trial court rejected these proposed mitigators, finding that there was harm to the community, that the victims did not induce the offenses because they were minors, and that Alexander received new criminal charges between his conviction and the sentencing hearing. The trial court found no mitigating circumstances.

[8] As aggravating factors, the trial court found that Alexander posed a threat to the safety of the community, that he lacked remorse as evidenced in part by his quickness to reoffend, and that he shows a propensity to reoffend. The court

[1] Alexander does not appeal that conviction or the sentence for it.

sentenced Alexander to one year on each count, to run consecutively for a total sentence of four years in the Crawford County Jail. This appeal ensued.

Discussion and Decision

Sufficiency of the Evidence

[9] Alexander challenges the sufficiency of the evidence to support his three convictions for contributing to delinquency, as Class A misdemeanors. When reviewing the sufficiency of the evidence needed to support a criminal conviction,

> we neither reweigh the evidence nor judge the credibility of witnesses. We only consider the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence. A conviction will be affirmed if there is substantial evidence of probative value supporting each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. It is the job of the fact-finder to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the [fact-finder's] ruling.

Willis v. State, 27 N.E.3d 1065, 1066-67 (Ind. 2015) (citation modified).

[10] To support Alexander's convictions of contributing to delinquency, as Class A misdemeanors, the State was required to prove that (1) he was at least eighteen years of age and (2) knowingly or intentionally (3) encouraged, aided, induced, or caused (4) S.C., E.B., and E.H. (5) who were "child[ren]" (6) to commit an act of delinquency. Ind. Code § 35-46-1-8(a); *see also* I.C. § 31-37-2-6 ("A child

commits a delinquent act if, before becoming eighteen (18) years of age, the child violates IC 7.1-5-7 concerning minors and alcoholic beverages."); I.C. § 7.1-5-7-7 (making it a Class C misdemeanor for a minor to possess or consume alcohol). Alexander admits that, when he was at least eighteen years of age, he knowingly gave alcohol to S.C., E.B., and E.H. He also admits that the girls were under eighteen years of age at the time, i.e., that they were "child[ren.]" I.C. § 31-37-2-6; *see also* I.C. § 31-37-1-1 (defining "delinquent child" as a child "under eighteen (18) years of age" who commits a delinquent act).

[11] However, Alexander contends there was no evidence that *he knew* the three girls were under age eighteen when he gave them alcohol, and he maintains that such knowledge was required to convict him of the Class A misdemeanors. We disagree and conclude that knowledge of a child's age is not required to prove *a Class A misdemeanor*. *See* I.C. § 35-46-1-8(a).

[12] "A statute that is clear and unambiguous must be read to mean what it plainly expresses, and its plain and obvious meaning may not be enlarged or restricted." *McNeil v. Anon. Hosp.*, 219 N.E.3d 789, 802 (Ind. Ct. App. 2023) (citation modified), *trans. denied.* And "we must assume that the legislature means what it says and that the legislature chose the language it did for a reason." *Id.* (citation modified); *see also, e.g.*, *D.W. v. State*, 263 N.E.3d 151, 157 (Ind. 2025) (citation modified) ("[W]e consider both what the statute does—and does not—say, because we cannot add words or restrictions.").

[13] Furthermore, we must consider "the structure of the statute in its entirety to promulgate a harmonious reading." *D.W.*, 263 N.E.3d at 157. That is, each section of a statute must be construed with reference to all other sections, and, "[i]f possible, every word must be given effect and meaning, and no part should be held to be meaningless if it can be reconciled with the rest of the [statute]." *Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825, 828 (Ind. 2011). Indiana courts have adopted a "surplusage canon" under which we "give effect to every word and eschew those interpretations that treat some words as duplicative or meaningless." *Ind. Off. of Util. Consumer Couns. v. Duke Energy Ind., LLC*, 248 N.E.3d 1205, 1213 (Ind. 2024) (citation modified).

[14] Subsection (a) of Indiana Code Section 35-46-1-8, which is the subsection applicable to Class A misdemeanors, states in full:

> A person at least eighteen (18) years of age who knowingly or intentionally encourages, aids, induces, or causes a child to commit an act of delinquency (as defined by IC 31-37-1 or IC 31-37-2) commits contributing to delinquency, a Class A misdemeanor, except as provided in subsections (b) through (e).

The defendant's knowledge of the minor's age under this subsection is not required, and we may not add words to the statute. *See, e.g.*, *D.W.*, 263 N.E.3d at 157. Rather, the statute requires a defendant's knowledge or intent to engage in the *prohibited conduct* of encouraging, aiding, inducing, or causing a child to commit the delinquent act of possessing or consuming alcohol. Of course, the State also must prove that the "child" to which the statute refers was under age eighteen, as that *is* an element of the offense, just not an element requiring a

defendant's knowledge.[2] I.C. § 35-46-1-8; *see also* I.C. § 31-37-1-1 (defining delinquent child). Alexander admits the evidence showed the three girls were under age eighteen at the time he provided them with alcohol; he only claims he had no knowledge of that fact.

[15] In contrast, subsection (c) of the statute, which applies to Level 5 felonies, *does* clearly require the defendant's knowledge of the child's age:

> (c) The offense described in subsection (a) is a Level 5 felony if:
>
> (1) the person committing the offense is at least twenty-one (21) years of age and knowingly or intentionally furnishes:
>
> (A) an alcoholic beverage to a child in violation of IC 7.1-5-7-8 *when the person committing the offense knew or reasonably should have known that the person furnished the alcoholic beverage was a child*[…] and
>
> (2) the consumption, ingestion, or use of the alcoholic beverage … is the proximate cause of the death of any person.

I.C. § 35-46-1-8(c) (emphasis added).

[16] If subsection (a), which is subsumed within subsection (c),[3] required knowledge of the child's age, there would be no need to repeat that specification in

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[2] Thus, the dissent's contention that "[o]ne cannot knowingly induce a 'child' to do anything without some awareness that the person induced is a child" is simply inaccurate. Dissent, Op. at 24.

[3] As is common in criminal statutes, the first subsection—(a)—is the prohibited criminal conduct and the following subsections discuss elements that are aggravating circumstances that increase the penalty for the

subsection (c)(1)(A); that is, the specific mens rea language in subsection (c)(1)(A) would be superfluous.[4] But we may not presume the legislature intended to create duplicative and superfluous language in a statute. *See Duke Energy*, 248 N.E.3d at 1213. Moreover, subsection (c) makes it clear that the legislature knows how to specify that knowledge of age is required when that is what it intends.

[17] Construing subsections (a) and (c) harmoniously, as we must, it is clear that the legislature intended that contributing to delinquency as a Class A misdemeanor does not require the defendant's knowledge of the child's age, but the greater offense of contributing to delinquency as a Level 5 felony does require such knowledge.[5] That is, the statute requires proof of the defendant's knowledge of

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base crime. *See D.H. v. State*, 932 N.E.2d 236, 238 (Ind. Ct. App. 2010) (citation omitted) ("We have held that 'prohibited conduct' and 'element' are not synonymous; thus, the culpability requirement applies only to the conduct of the statute…. In contrast, aggravating circumstances that increase the penalty for the crime must be proved beyond a reasonable doubt but do not require proof of culpability.").

[4] The dissent attempts to skirt the obvious surplusage issue only by ignoring the words "knew or" in subsection (c) of the statute. That is, the dissent asserts that subsection (c) is not duplicative of an alleged knowledge of age requirement in subsection (a) because it involves "an easier-to-prove constructive knowledge standard for the felony offense." Dissent, Op. at 29. But that is not a complete reading; subsection (c) plainly requires a showing that the defendant "**knew or**" should have known the child's age. I.C. § 35-46-1-8(c) (emphasis added). And if subsection (a) contained a knowledge of age requirement, the word "knew" in subsection (c) would be mere surplusage. To avoid such surplusage, instead of using the words "knew or[,]" subsection (c) would have to say, "when the person committing the offense *did not know but* reasonably should have known that the person furnished the alcoholic beverage was a child…." We may not read such additional language into a statute. *See D.W.*, 263 N.E.3d at 157.

[5] *Cf. Davidson v. State*, 233 N.E.2d 173, 175 (Ind. 1968), and *Cornes v. State*, 467 N.E.2d 425, 427 (Ind. Ct. App. 1984), each of which involved much older and significantly different versions of the contributing to delinquency statute. Specifically, the statute did not create the Level 5 felony as currently stated in subsection (c) until July 1, 2004. *See* P.L.46-2004, § 2. That is, until 2004, the statutory language specifically requiring knowledge of a child's age as an element of a greater offense did not exist, so the Court in *Davidson* and *Cornes* was not confronted with the obvious surplusage issue with which we are confronted today. Thus, neither of those cases is "precedent" that interpreted "identical operative language" to the current version of the contributing to delinquency statute, as the dissent argues. Dissent, Op. at 27.

the child's age only when the charge of contributing to delinquency is brought as a Level 5 felony. I.C. § 35-46-1-8(c)(1)(A).

[18] The mens rea requirement of Indiana Code Section 35-41-2-2(d) (or, "the Culpability Statute"), cited by Alexander and the dissent, is inapposite. That subsection states: "Unless the statute defining the offense provides otherwise, if a kind of culpability is required for commission of an offense, it is required with respect to every material element of the prohibited conduct." *Id*. Our Supreme Court has held "[t]here is nothing in Ind. Code § 35-41-2-2(d) … to suggest that the Legislature intended that if a kind of culpability is required for one (but only one) material element of the prohibited conduct, it is required for commission of the offense and every material element of it." *Louallen v. State*, 778 N.E.2d 794, 798 (Ind. 2002). Rather, our Supreme Court has stated, "'prohibited conduct' and 'element' within Ind. Code § 35-41-2-2(d) are not synonymous and if the legislature had intended culpability to apply to every material element, the phrase 'of the prohibited conduct' would be superfluous." *Leonard v. State*, 73 N.E.3d 155, 162 (Ind. 2017) (citation modified) (holding, "under the plain language of subsection (d) the State is required to prove culpability … with respect to every material element of the prohibited conduct[, and] though

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Moreover, contrary to the dissent's assertion, while each of those cases concluded that the State had provided evidence that the defendant knew the child was under age eighteen, neither case addressed whether the State was *required* to prove that knowledge, only whether knowledge had been charged and proved. The specific question of whether knowledge of the child's age is statutorily required to prove the misdemeanor crime was not before the Court in those cases.

the victims' identities were material elements of the offense, the identities are not part of the prohibited conduct"); *see also D.H.*, 932 N.E.2d at 238.

[19] Thus, the Indiana Supreme Court has squarely rejected the dissent's reading of the statute in the past. *See Louallen*, 778 N.E.2d at 798. As we are, of course, bound by that precedent, today we decline to embrace the interpretation advanced by Alexander and the dissent; namely, that Indiana Code Section 35-41-2-2(d) means that, if a statute provides for culpability regarding one element, it must be read as applying that same culpability to every other element.[6] *Id*.

[20] Furthermore, this Court has recognized that the statutory language "unless the statute defining the offense provides otherwise," I.C. § 35-41-2-2(d), evinces a legislative intent to create some strict liability crimes "in which the State need not prove a mental element," *McCaffrey v. State*, 523 N.E.2d 435, 436 n.4 (Ind. Ct. App. 1988), and some crimes where "a kind of culpability is required for one (but only one) material element of the prohibited conduct[,]" *McKinley v. State*, 45 N.E.3d 25, 29 (Ind. Ct. App. 2015) (quoting *Louallen,* 778 N.E.2d at 798), *trans. denied*. In this case, Indiana Code Section 35-46-1-8 "provides otherwise" by explicitly and specifically requiring a defendant's knowledge of the child's age only when a Level 5 felony is charged.

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[6] We note that the dissent does not address this principle for which we cite *Louallen* but merely tries to distinguish that case as involving a different kind of statute. Dissent, Op. at 25. We do not cite *Louallen* as an example of a similar criminal statute but for its interpretation of the Culpability Statute, I.C. § 35-41-2-2(d).

[21] Factors that show a legislative intent to impose strict liability include "the severity of punishment (greater penalties favor culpable mental state requirement);… the danger to the public of prohibited conduct (greater danger disfavors need for culpable mental state requirement);… [and] the defendant's opportunity to ascertain the operative facts and avoid the prohibited conduct." *State v. Shelton*, 692 N.E.2d 947, 949 (Ind. Ct. App. 1998). Here, the culpable mental state is required only for the greater penalty of a Level 5 felony, which addresses the greater danger of the child's alcohol use proximately causing death.

[22] We are not stating anything new today about culpability requirements in criminal law; this Court has consistently distinguished between elements of a criminal offense that are prohibited conduct, for which culpability is generally required, and elements of a criminal offense that are aggravating circumstances that increase the penalty for the crime but do not require a showing of culpability. *See, e.g.*, *D.H.*, 932 N.E.2d at 238-39 (noting that the element of a battery victim being a school employee is an aggravating circumstance that increased the penalty for battery to a Class C felony but did not have a separate culpability requirement); *see also Maldonado-Morales v. State*, 985 N.E.2d 25, 28 (Ind. Ct. App. 2013) (noting the mens rea requirement applied to the domestic battery element of touching a household member in a rude, insolent, or angry manner, but not to the multiple additional elements listed in subsequent subsections, which were aggravating circumstances that could increase the penalties for domestic battery from a misdemeanor to a felony). Here, the

"knew or reasonably should have known" element of subsection (c) is an aggravating circumstance[7] that, when combined with the additional elements under subsection (c), increases the penalty for contributing to the delinquency of a minor to a Level 5 felony.

[23] In short, the statute as a whole shows a legislative intent to impose strict liability on those who provide alcohol to minors (i.e., subsection (a)) and to impose an even greater penalty on those who are aware of the age of the minor (subsection (c)), furnish the alcohol anyway, and the minor's alcohol use proximately causes the death of any person. That is, taken together, subsections (a) and (c) of the statute evince a legislative determination that providing alcohol to minors is a harm so great that it must be punished regardless of the defendant's knowledge of the minor's age and that providing alcohol to one who the defendant knows is a minor is an even greater harm that should be punished even more severely when it results in someone's death.

[24] The crime of contributing to delinquency as a Class A misdemeanor does not require a defendant's knowledge of the victim's age. The State presented

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[7] Subsection (c) contains other aggravating circumstances as well, i.e., the defendant was at least age twenty-one and the minor's use of the alcohol was the proximate cause of the death of any person. I.C. § 35-46-1-8(c)(1), (2). We note that all the aggravating circumstances of subsection (c) must be met for a Level 5 felony conviction; thus, even a person over twenty-one years of age who knew the person to whom he provided alcohol was a minor cannot be convicted of a Level 5 felony unless the provision of the alcohol was the proximate cause of someone's death.

sufficient evidence to support Alexander's three challenged Class A misdemeanor convictions.

Sentencing

[25] Sentencing decisions, including the imposition of consecutive sentences, lie within the sound discretion of the trial court. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008); *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014) (citation omitted), *trans. denied*. An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Gross*, 22 N.E.3d at 869 (citation omitted). A trial court abuses its discretion in sentencing if it does any of the following:

> (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law."

Id. (quoting *Anglemyer v. State*, 868 N.E.2d 482, 490-491 (Ind.), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)).

[26] So long as a sentence is within the statutory range,[8] the trial court may impose it without regard to the existence of aggravating or mitigating factors. *Anglemyer*, 868 N.E.2d at 489. If the trial court does find the existence of aggravating or mitigating factors, it must give a statement of its reasons for selecting the sentence it imposes. *Id*. at 490. However, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. *Gross*, 22 N.E.3d at 869.

[27] Moreover, we note that "a trial court is required to state its reasons for imposing consecutive sentences," and "must find at least one aggravating circumstance" to do so. *McBride v. State*, 992 N.E.2d 912, 919 (Ind. Ct. App. 2013), *trans. denied*. "[A] trial court may rely on the same reasons to impose a maximum sentence and also [to] impose consecutive sentences." *Gilliam v. State*, 901 N.E.2d 72, 74 (Ind. Ct. App. 2009). The existence of even one valid aggravating factor is enough to support the imposition of consecutive sentences. *See, e.g.*, *Walden v. State*, 216 N.E.3d 1165, 1177-78 (Ind. Ct. App. 2023), *trans. denied*.[9]

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[8] There is no advisory sentence for misdemeanors. The term of imprisonment for a Class A misdemeanor is "not more than one (1) year"—that is, the statutory range is up to one year. I.C. § 35-50-3-2. Here, the trial court chose to impose the maximum sentence for each of the three challenged Class A misdemeanor convictions. Alexander does not challenge the sentence for the false informing conviction.

[9] We further note "[i]t is a well-established principle that the existence of multiple crimes or victims constitutes a valid aggravating circumstance that a trial court may consider in imposing consecutive sentences." *McBride*, 992 N.E.2d 919-20. Here, there were multiple victims.

[28] Here, the trial court imposed the maximum sentence (i.e., one year) for each of the three contributing to delinquency convictions and ordered the sentences to run consecutively. In so doing, the trial court considered specific aggravating factors. Alexander first contends that the trial court abused its discretion by finding the existence of an aggravator for which there is no support in the record. Specifically, Alexander contends that there is no record evidence to support the aggravator of a lack of remorse. He is incorrect. The trial court noted that Alexander had not shown remorse for his crimes, and lack of remorse is a permissible aggravator. *See, e.g.*, *Veal v. State*, 784 N.E.2d 490, 494 (Ind. 2003). As evidence of Alexander's lack of remorse, the trial court pointed to the fact that Alexander had been charged with additional criminal charges "just a short time after" the trial in this case. Tr. v. 5 at 201. A pending criminal charge is also a proper consideration as an aggravator in sentencing. *See, e.g.*, *Hape v. State*, 903 N.E.2d 977, 1001 (Ind. Ct. App. 2009), *trans. denied*.

[29] Alexander further contends that the trial court abused its discretion by relying upon an aggravator that is allegedly improper as a matter of law. However, we need not address that contention because, "[w]hen we can identify sufficient aggravating circumstances to persuade us that the trial court would have entered the same sentence even without the impermissible factor, we will affirm the trial court's decision." *Carter v. State*, 271 N.E.3d 566, 570 (Ind. Ct. App. 2025) (citation modified), *trans. denied*; *accord Anglemyer*, 868 N.E.2d at 491. Such is the case here; Alexander's lack of remorse, alone, supports maximum and consecutive sentences, not to mention his pending criminal charges. *See*

Gross, 22 N.E.3d at 869. Therefore, we are confident that the trial court would have imposed the same sentence regardless of any allegedly improper aggravator. *See Carter*, 271 N.E.3d at 570. The trial court did not abuse its discretion when it imposed maximum and consecutive sentences.

Appellate Rule 7(B) Review

[30] Alexander also asks that we revise his sentence because it is allegedly inappropriate. Article 7, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." *Anglemyer*, 868 N.E.2d at 491. This appellate authority is implemented through Indiana Appellate Rule 7(B).[10] *Id*. As our Supreme Court recently explained,

> Appellate Rule 7(B) serves "to leaven the outliers, rather than to achieve a perceived 'correct' sentence," *McCallister v. State*, 91 N.E.3d 554, 566 (Ind. 2018), allowing revision of a sentence if the court finds the trial court's decision to be inappropriate in consideration of the nature of the offense and the offender's character, *Inman v. State*, 4 N.E.3d 190, 203 (Ind. 2014) (quoting App. R. 7(B)). "Ultimately, our constitutional authority to review and revise sentences boils down to our collective sense of what is appropriate," *Taylor v. State*, 86 N.E.3d 157, 165 (Ind. 2017) (cleaned up), an act that is reserved for "exceptional" cases, *Gibson v. State*, 43 N.E.3d 231, 241 (Ind. 2015). It is up to the defendant to "persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review."

[10] Appellate Rule 7(B) provides, in full: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

> *Childress* [*v. State*], 848 N.E.2d [1073,] 1080 [(Ind. 2006)]. The trial court's sentence is afforded considerable deference and will stand unless [overcome by] "compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

Cramer v. State, 240 N.E.3d 693, 698 (Ind. 2024).

[31] The evidence discloses that Alexander did not just buy some alcohol for minors but bought "a lot" of alcohol for the three minor girls: specifically, an entire bottle of vodka and multiple shot-sized bottles of Fireball whiskey. Tr. v. 5 at 82. That is evidence of an act that "clearly exceeds the elements necessary" to prove the offense of contributing to delinquency. *Anderson v. State*, 989 N.E.2d 823, 827 (Ind. Ct. App. 2013), *trans. denied*. Alexander has not pointed to any evidence that his sentence is inappropriate in light of the nature of his offenses.

[32] Nor does Alexander's character warrant a revision of his sentence. "Our analysis of the character of the offender involves a broad consideration of a defendant's qualities, including: the defendant's age, criminal history, background, past rehabilitative efforts, and remorse." *Wilson v. State*, 221 N.E.3d 667, 680 (Ind. Ct. App. 2023) (citing *Harris v. State*, 165 N.E.3d 91, 100 (Ind. 2021); *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020)). Here, there is no evidence of remorse on Alexander's part; in fact, there is evidence that he bragged about his offenses after committing them. Furthermore, it is appropriate for us to consider evidence of other pending criminal charges

against Alexander, as that casts "a poor reflection on the defendant's character, because it may reveal that he or she has not been deterred after having been subjected to the police authority of the State." *Konkle v. State,* 253 N.E.3d 1068, 1094 (Ind. 2025) (citation modified).

[33] In short, Alexander has failed to demonstrate that his sentence is inappropriate in light of the offenses and his character.

Conclusion

[34] There was sufficient evidence to support Alexander's convictions, and the trial court did not abuse its discretion in sentencing him. In addition, Alexander has failed to show that his sentence is inappropriate in light of his offenses and his character. Therefore, we affirm his convictions and sentence.

[35] Affirmed.

Brown, J., concurs.
Weissmann, J., dissents with separate opinion.

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Weissmann, Judge, dissenting.

[36] Alexander gave alcohol to three teenage girls—S.C., E.B., and E.H.—all of whom were, in fact, under 18. The State proved that much, and on that point I agree with the majority. But the State never proved the one fact that actually makes this a crime: that Alexander knew the girls were minors. Because that proof is lacking, I would reverse his three convictions for contributing to the delinquency of a minor (CDM).

[37] Indiana law already answers whether that knowledge was required. Ind. Code § 35-41-2-2(d) (Culpability Statute) specifies that "[u]nless the statute **defining** the offense provides otherwise, if a kind of culpability is required for commission of an offense, it is required with respect to every material element of the prohibited conduct" (emphasis added). This rule requires proof that Alexander acted knowingly or intentionally as to every material element of contributing to the delinquency of a child because nothing in the statute defining the offense "provides otherwise." Ind. Code § 35-46-1-8(a) (2022) (CDM Statute); Ind. Code § 35-41-2-2(d).

[38] The majority does not dispute that subsection (a) of the CDM Statute requires Alexander to have acted "knowingly or intentionally" in encouraging, aiding, inducing, or causing the prohibited conduct. The majority simply carves the word "child" out of that requirement, reasoning that a child's status is an "aggravating circumstance" outside the "prohibited conduct" to which the mens rea attaches. But the majority relies on cases that do not support that

conclusion. Those cases involve different types of statutes: ones that contain no express mens rea, ones that attach a mental state only to a discrete element, or ones that add an aggravating circumstance to an already complete crime. The logic underlying those statutes—that ignorance of a fact can be excused when that fact is not what makes the conduct a crime—does not apply to the CDM statute, where the child's age is what makes the defendant's act a crime. And these differences mean that the CDM Statute falls within the Culpability Statute's default rule, but the statutes in the cases on which the majority builds its opinion do not.

[39] In essence, the majority is placing a square peg in a round hole and pronouncing that it fits. I would reverse Alexander's convictions because the State failed in its burden of proving that he knew the child was a minor, leaving insufficient evidence for conviction.

I. Knowledge of the Child's Age Is an Essential Element of CDM

[40] The CDM Statute provides in relevant part:

> (a) A person at least eighteen (18) years of age who knowingly or intentionally encourages, aids, induces, or causes a child to commit an act of delinquency (as defined by IC 31-37-1 or IC 31-37-2) commits contributing to delinquency, a Class A misdemeanor, except as provided in subsections (b) through (e).
>
> (b) If the delinquent act described in subsection (a) would be a felony if committed by an adult, the offense described in

subsection (a) is a felony of the same level as the delinquent act would be if committed by an adult.

(c) The offense described in subsection (a) is a Level 5 felony if:

(1) the person committing the offense is at least twenty-one (21) years of age and knowingly or intentionally furnishes:

(A) an alcoholic beverage to a child in violation of IC 7.1-5-7-8 when the person committing the offense knew or reasonably should have known that the person furnished the alcoholic beverage was a child; or

(B) a controlled substance (as defined in IC 35-48-1-9) or a drug (as defined in IC 9-13-2-49.1) in violation of Indiana law; and

(2) the consumption, ingestion, or use of the alcoholic beverage, controlled substance, or drug is the proximate cause of the death of any person.

Ind. Code § 35-46-1-8 (2022).

A. The Statute's Placement of "Knowingly or Intentionally" Before Every Element Triggers, Rather Than Displaces, the Default Culpability Rule

[41] The Culpability Statute essentially divides criminal statutes into two categories: (1) those in which the Legislature placed the mens rea at the outset of the offense description and (2) those that "provide[] otherwise." Ind. Code § 35-41-

2-2(d). This first group falls within the Culpability Statute's default rule, which applies the culpability required for commission of the offense to every material element of the prohibited conduct. *Id.* The second group of criminal statutes falls within the Culpability Statute's express exception because these statutes "provide[] otherwise" and therefore require a different mens rea application than the default rule supplies.

[42] The CDM Statute falls within the first category of statutes: those governed by the Culpability Statute's default rule. Subsection (a) of the CDM Statute opens with "knowingly or intentionally." Ind. Code § 35-46-1-8(a) (2022). That phrase sits before every element that follows in the single sentence in subsection (a), including the element requiring that the target of the encouragement be "a child." *Id.*

[43] Where "knowingly or intentionally" is placed ahead of the prohibited act in a statute, the Culpability Statute's default rule requires that the mens rea be applied to each and every element of the offense that follows it. *See*, *e.g.*, *Chappell v. State*, 966 N.E.2d 124, 130 (Ind. Ct. App. 2012) (noting that to convict the defendant of Class A felony burglary under a theory of accomplice liability, the State was required to prove the defendant's awareness of a high probability both that he was engaging in the *actus reus* of the crime—namely, aiding, inducing, or causing burglary—and that his behavior would facilitate the commission of a breaking and entering with the intent to commit one of the specifically named felonies).

[44] The majority agrees, at least implicitly, that "knowingly or intentionally" governs the verbs "encourage[s], aid[s], induc[es], or caus[es]" in the CDM Statute. Op. at ¶ 14. The majority's position is that this mens rea requirement silently stops short of the object of those verbs—"a child"—although nothing in the sentence marks that boundary. *See* Ind. Code § 35-46-1-8(a) (2022).

[45] But "knowingly or intentionally encourages, aids, induces, or causes a child to commit an act of delinquency" is a single verb phrase with a single direct object. *Id.* One cannot knowingly induce "a child" to do anything without some awareness that the person induced is a child. The object of the verb therefore is part of the conduct that must be done knowingly. The Legislature's placement of "knowingly or intentionally" at the very outset of that CDM clause is exactly what triggers the Culpability Statute's default rule and not its exception. Ind. Code § 35-46-1-8(a) (2022).

B. The Majority's Authority Falls Within the Culpability Statute's Exception

[46] In concluding that the mens rea requirement does not extend to knowledge that the person is a child, the majority draws support from precedent involving statutes falling within the Culpability Statute's exception, not its default rule. These statutes, unlike the CDM Statute, do not have one express mens rea stated before "every material element of the prohibited conduct," as is required for application of the Culpability Statute's default rule. Ind. Code § 35-41-2-2(d).

[47] For instance, some of these statutes—those in *State v. Shelton*, 692 N.E.2d 947 (Ind. Ct. App. 1998) and *McCaffrey v. State*, 523 N.E.2d 435 (Ind. Ct. App. 1988)—contain no mens rea requirement. At least two other statutes within the majority's precedent involve a mens rea that is expressly limited to a single, isolated element. *Louallen v. State*, 778 N.E.2d 794, 796-98 (Ind. 2002) (given the Legislature's position of intent language in the midst of the child molesting statute, "intentional" mental state is required as to only one element of child molesting); *McKinley v. State*, 45 N.E.3d 25, 29-30 (Ind. Ct. App. 2015) (specific intent applies to only one element of drug dealing offense listed in midst of governing statute).

[48] The remainder of the statutes within the majority's precedent supply a mental state for a base offense but do not require the same mental state with respect to proof of a separate, additional fact establishing a different felony class or charge. *Leonard v. State*, 73 N.E.3d 155 (Ind. 2017) (identity of murder victim); *McKinley*, 45 N.E.3d at 29 (weight-based felony enhancement)[11]; *Maldonado-Morales v. State*, 985 N.E.2d 25 (Ind. Ct. App. 2013) (enhancement based on proof of domestic relationship with victim or presence of child); *D.H. v. State*, 932 N.E.2d 236 (Ind. Ct. App. 2010) (enhancement based on victim's school employment).

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[11] *McKinley* is cited twice in this section because it involved two different culpability issues: one arising from the challenged statute's statement of a mens rea limited to a single element of the base offense and another involving the statute's felony enhancement based on proof of drug weight. 45 N.E.3d 25, 29-30 (Ind. Ct. App. 2015).

[49] Each of the majority's cited decisions reached its result because of a specific textual feature—an absent mens rea, a limited mens rea, or an already-complete crime. As a result, each of these decisions involves statutes falling within the Culpability Statute's exception because the statutes provide a path different than the Culpability Statute's default rule dictates. *See* Ind. Code § 35-41-2-2(d) ("[u]nless the statute defining the offense provides otherwise, if a kind of culpability is required for commission of an offense, it is required with respect to every material element of the prohibited conduct"). Although the Culpability Statute's exception authorizes inconsistent application of a mens rea requirement to material elements within a statute, as the majority's precedent establishes, the Culpability Statute's default rule does not. *See id.*

[50] The majority's precedent involving statutes falling within the Culpability Statute's exception does not govern a case involving subsection (a) of the CDM Statute, which falls squarely within the Culpability Statute's default rule.[12]

C. Our Own Precedent Already Treats Knowledge of Age as an Element of This Offense

[51] Long before today, our Supreme Court rejected the identical argument the majority now accepts: that an offense charged under subsection (a) of the CDM

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[12] The majority also cites *Leonard v. State*, 73 N.E.3d 155, 162 (Ind. 2017), for the proposition that "prohibited conduct" and "element" are not synonymous under Ind. Code § 35-41-2-2(d) and that culpability therefore need not reach every element simply because it governs one. That principle may be true in the abstract, but it does not resolve this case. It only restates the question of whether "child" is part of the "prohibited conduct" in subsection (a). That question turns on the statute's own structure, addressed above, not on a general rule borrowed from a different statute construing a different crime.

Statute imposes strict liability as to the child's age. *Davidson v. State*, 233 N.E.2d 173, 174-75 (Ind. 1968). The Court held that whether the defendant "knew or ought to have known that the girl in question was under age" is a question of fact for the jury and that this follows directly from the word "knowingly" in the statute. *Id.* at 175.

[52] This Court has said the same thing. In *Cornes v. State*, 467 N.E.2d 425, 427 (Ind. Ct. App. 1984), this Court treated the defendant's knowledge that the victim was under 18 as one of the elements of proof that the State was required to establish for a CDM conviction.

[53] The majority discounts these decisions on two grounds: that they predate the 2004 amendment creating the Level 5 felony in subsection (c) of the CDM Statute and that neither *Davidson* nor *Cornes* squarely held that knowledge was required, as opposed to merely charged and proved. Op. at n.4. Neither ground withstands scrutiny.

[54] As to the first, the 2004 amendment added a new felony tier to the CDM Statute; it did not touch the mens rea structure of subsection (a), which has required a defendant to act "knowingly" since long before *Davidson* was decided. *Davidson*, 233 N.E.2d at 175 (construing predecessor statute's requirement that a person act "knowingly" to encourage a child's delinquency). A holding interpreting identical operative language does not lose its force merely because the Legislature later adds an unrelated felony provision elsewhere in the same statute. In fact, under some such circumstances, the

Legislature may be deemed to have acquiesced and agreed to that judicial interpretation by its failure to change the statutory language. *See generally Fraley v. Minger*, 829 N.E.2d 476, 479 (Ind. 2005) ("[I]t is well established that a judicial interpretation of a statute . . . accompanied by substantial legislative inaction for a considerable time, may be understood to signify the General Assembly's acquiescence and agreement with the judicial interpretation").

[55] Moreover, the majority's second reason for rejecting *Davidson and Cornes*—that they did not hold that knowledge is required, Op. at n.5—fares no better. The *Davidson* Court expressly ruled that the defendant's knowledge of age "is a question of fact for the jury" precisely because the statute required the defendant to act "knowingly." 233 N.E.2d at 175. That is a holding about the State's burden of proof, not a passing observation about the State's actual proof.

[56] *Cornes* is equally direct. Faced with the defendant's claim that the State failed to prove his knowledge of the child's age, this Court did not say such proof was unnecessary. It instead affirmed the conviction because the jury viewed the child and heard testimony about her apparent age. The Court, in essence, treated the defendant's knowledge as an element the State was required to, and did, prove. *Cornes*, 467 N.E.2d at 427.

D. The Surplusage Argument Does Not Hold Up

[57] The majority's textual argument reduces to this: if subsection (a) of the CDM Statute already required knowledge of age, subsection (c)(1)(A)'s "knew or reasonably should have known" language would be redundant. Op. at ¶¶ 13-18.

"Under our surplusage canon, courts should give effect to every word and 'eschew those [interpretations] that treat some words as duplicative or meaningless.'" *Cutchin v. Beard*, 171 N.E.3d 991, 997 (Ind. 2021) (quoting *Estabrook v. Mazak Corp.*, 140 N.E.3d 830, 836 (Ind. 2020)). The majority's finding of surplusage does not survive examination for three reasons.

[58] First, subsection (c) of the CDM Statute is not simply subsection (a) plus a knowledge requirement. Rather, subsection (c) applies only to offenders 21 or older, requires proximate causation of a death, and uses a "knew or reasonably should have known" standard rather than just the actual-knowledge standard that "knowingly" ordinarily requires. Ind. Code § 35-46-1-8(a), (c) (2022); *see also* Ind. Code § 35-41-2-2(b) (defining "knowingly" as awareness of a "high probability"). "Reasonably should have known" is an objective, constructive-knowledge standard nowhere else recognized as a culpability level in Indiana's criminal code. *See* Ind. Code § 35-41-2-2(a)-(c) (defining only intentionally, knowingly, and recklessly). In addition, "reasonably should have known" is a lower bar than actual knowledge.

[59] The Legislature did not repeat subsection (a)'s knowledge requirement in subsection (c). Instead, it included only in subsection (c) an easier-to-prove constructive-knowledge standard for the felony offense. The State need not prove under subsection (c) that the defendant was actually, subjectively aware of the child's age so long as the defendant reasonably should have known it.

[60] That substitution is not surplusage. It tells courts what showing suffices for the felony (constructive knowledge, plus proof the alcohol proximately caused a death) as distinguished from what the default rule already requires for the misdemeanor (actual knowledge, without more). Far from being redundant of subsection (a), subsection (c)(1)(A)'s language does independent work: it lowers, not repeats, the mental-state bar for the more serious offense involving death.

[61] Second, the majority's own reasoning proves too much. The majority holds that the phrase "[u]nless the statute defining the offense provides otherwise" in Indiana Code § 35-41-2-2(d) is satisfied whenever a later subsection in a criminal statute separately specifies a mental state. If that is the case, logic dictates that the drug-furnishing clause of subsection (c) of the CDM Statute itself should be a strict liability offense as to age, given that subsection (c) contains no age-knowledge language of any kind. Ind. Code § 35-46-1-8(c)(1)(B) (2022). Yet no party suggests, and the majority does not hold, that a defendant may be convicted of furnishing drugs to a minor under subsection (c) without any showing that he knew or should have known the recipient was a minor. The omission of "knew or reasonably should have known" from one clause is not, by itself, proof of a deliberate choice to eliminate a knowledge requirement from another. If it were, the drug-furnishing clause could not survive the majority's own logic.

[62] Third, even less persuasive is the majority's suggestion that subsection (a) is simply "subsumed" within subsection (c) so that any knowledge language in (c)

necessarily duplicates (a). Op. at ¶ 16, n.3. That framing assumes the very point in dispute. If subsection (a) already requires knowledge of the child's age by default under Indiana Code § 35-41-2-2(d), as I believe it does, subsection (c)(1)(A)'s language does not duplicate subsection (a). It recalibrates the standard of proof for that same fact when the State seeks the far greater felony penalty, exactly as explained above. The surplusage canon has no work to do here because there is no genuine redundancy to eliminate—only two different standards of proof for two different levels of an offense.

E. Indiana Law Presumes a Culpable Mental State, and the Cases the Majority Invokes to Overcome That Presumption Confirm Rather Than Rebut It

[63] Our Supreme Court has held that Indiana "strictly construes penal statutes against the state," and ambiguity is resolved in favor of "the presumption that a culpable mental state is an intended element in criminal offenses for which the culpability is not specified by statute." *State v. Keihn*, 542 N.E.2d 963, 965, 967 (Ind. 1989). Overcoming that presumption takes "'far more than the simple omission of the appropriate phrase from the statutory definition.'" *Id.* at 966 (quoting *United States v. United States Gypsum Co.*, 438 U.S. 422, 437-38 (1978)).

[64] Subsection (a) does not even omit the culpability phrase. It expressly specifies "knowingly or intentionally" as the mens rea. Ind. Code § 35-46-1-8(a) (2022). A statute that supplies a mens rea for the offense it defines cannot, without more, be read to impose strict liability as to the object that mens rea modifies. *See Tracy v. Morell*, 948 N.E.2d 855, 862 (Ind. Ct. App. 2011) (citing Ind. Code §

35-41-2-2 when ruling that Class A misdemeanor dealing in altered property "is not a strict liability statute, and proof of mens rea, or culpability, is required").

[65] The majority separately invokes several factors that the *Shelton* Court considered when determining whether the Legislature intended to impose strict liability through a statute barring sale of guns to minors. Op. at ¶ 21 (citing *Shelton*, 692 N.E.2d at 949). But as explained above, that statute lacked any mens rea language at all. That is why the *Shelton* Court had to resort to a multi-factor balancing test in the first place to determine legislative intent. *Shelton*, 692 N.E.2d at 949. Subsection (a) of the CDM Statute already answers the culpability question by its own text, which specifies a mens rea as to all elements. Therefore, the balancing in *Shelton* is unnecessary here.

[66] In any event, applying *Shelton*'s considerations to subsection (a) of the CDM Statute does not support the majority's reading. Of the seven factors, *Shelton* found that the severity of punishment and the low expected number of prosecutions favored a mens rea requirement even for a handgun sale carrying a minimum two-year felony sentence. *Id.* at 950-51. *Shelton* determined the remaining five factors—chiefly, the great public danger of handguns and the ease with which a seller can verify a buyer's age through the statutory transfer procedures set out in Indiana Code §§ 35-47-2-8 through -12—overcame that presumption. *Id*.

[67] No comparable verification procedure exists for a private citizen who provides alcohol to acquaintances. Unlike *Shelton*'s licensed handgun transfer, there is no

statutory mechanism by which Alexander was required, or even able, to confirm the ages of S.C., E.B., and E.H. before bringing them alcohol. And the Class A misdemeanor at issue here still exposes a defendant to a full year in jail on each count.

[68] Both factors that *Shelton* itself identified as weighing against strict liability—the severity of the punishment and the difficulty of finding a large volume of prosecutions to justify dispensing with a mens rea—are present here. In addition, none of the offsetting considerations that carried the day in *Shelton*—an established age-verification process, or the exceptional public danger from the immediate or uncontrollable use of a lethal weapon—is present here. The presumption *Shelton* establishes remains unrebutted.

II. Conclusion

[69] The child's age is not a footnote to this offense; it is the reason the offense exists. Giving vodka to an adult is not a crime. Giving that same vodka to a child *is* a crime. The only thing separating innocent conduct from a crime is what the defendant knew about who was accepting the alcohol. A statute that says "knowingly or intentionally" at the start means knowingly or intentionally as to all material elements of the prohibited conduct. Our own precedent has said so for nearly 60 years, and nothing in the felony subsection of the CDM Statute suggests otherwise. For these reasons, I respectfully dissent and would reverse Alexander's convictions for contributing to the delinquency of a minor.