

February 18, 1998

**ENGROSSED
SENATE BILL No. 374**

DIGEST OF SB 374 (Updated February 17, 1998 12:15 pm - DI 51)

Citations Affected: IC 35-38; IC 35-42.

Synopsis: Child seduction and HIV testing. Expands the categories of persons who can be convicted of child seduction to include: (1) a child care worker who provides care or supervision of a child in a school or shelter care facility; and (2) a custodian who resides with a child and is responsible for the child's welfare. Allows a court to order HIV testing of a person charged with a sex crime, upon written request of the victim, after a finding of probable cause by the court that an exposure has occurred. Makes the results of the testing confidential until conviction. (Current law requires HIV testing only after conviction of a sex crime.)

Effective: July 1, 1998.

Miller, Kenley

(HOUSE SPONSORS — DVORAK, KEELER, GULLING)

January 12, 1998, read first time and referred to Committee on Judiciary.
January 29, 1998, reported favorably — Do Pass.
February 2, 1998, read second time, ordered engrossed. Engrossed.
February 3, 1998, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 10, 1998, read first time and referred to Committee on Courts and Criminal Code.
February 17, 1998, amended, reported — Do Pass.

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February 18, 1998

Second Regular Session 110th General Assembly (1998)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

ENGROSSED SENATE BILL No. 374

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

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

1 SECTION 1. IC 35-38-1-10.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10.5. (a) The court:
3 (1) shall order that a person undergo a screening test for the
4 human immunodeficiency virus (HIV) if the person is:
5 (⊕) (A) convicted of a sex crime listed in section 7.1(e) of
6 this chapter and the crime created an epidemiologically
7 demonstrated risk of transmission of the human
8 immunodeficiency virus (HIV) as described in section
9 7.1(b)(8) of this chapter; or
10 (⊖) (B) convicted of an offense related to controlled
11 substances listed in section 7.1(f) of this chapter and the
12 offense involved the conditions described in section
13 7.1(b)(9)(A) of this chapter; **and**
14 (2) may order that a person undergo a screening test for the
15 human immunodeficiency virus (HIV) if the court has made
16 a finding of probable cause after a hearing under section 10.7

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1 **of this chapter.**

2 (b) If the screening test required by this section indicates the
3 presence of antibodies to HIV, the court shall order the person to
4 undergo a confirmatory test.

5 (c) If the confirmatory test confirms the presence of the HIV
6 antibodies, the court shall report the results to the state department of
7 health and require a probation officer to conduct a presence
8 investigation to:

9 (1) obtain the medical record of the convicted person from the
10 state department of health under IC 16-41-8-1(a)(3); and

11 (2) determine whether the convicted person had received risk
12 counseling that included information on the behavior that
13 facilitates the transmission of HIV.

14 (d) A person who, in good faith:

15 (1) makes a report required to be made under this section; or

16 (2) testifies in a judicial proceeding on matters arising from the
17 report;

18 is immune from both civil and criminal liability due to the offering of
19 that report or testimony.

20 (e) The privileged communication between a husband and wife or
21 between a health care provider and the health care provider's patient is
22 not a ground for excluding information required under this section.

23 (f) A mental health service provider (as defined in IC 34-4-12.4-1)
24 who discloses information that must be disclosed to comply with this
25 section is immune from civil and criminal liability under Indiana
26 statutes that protect patient privacy and confidentiality.

27 SECTION 2. IC 35-38-1-10.6 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10.6. (a) The state
29 department of health shall notify victims of the crimes listed in section
30 7.1(e) and 7.1(f) of this chapter if tests conducted under section 10.5
31 **or section 10.7** of this chapter confirm **that** the person ~~who committed~~
32 ~~the crime tested~~ had antibodies for the human immunodeficiency virus
33 (HIV).

34 (b) The state department of health shall provide counseling to
35 persons notified under this section.

36 SECTION 3. IC 35-38-1-10.7 IS ADDED TO THE INDIANA
37 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
38 [EFFECTIVE JULY 1, 1998]: **Sec. 10.7. (a) Upon:**

39 (1) **written request made to a prosecuting attorney by an**
40 **alleged victim of a sex offense listed in section 7.1(e) of this**
41 **chapter; and**

42 (2) **after a hearing held under this section, a court entering**

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1 a finding that there is probable cause to believe the alleged
2 victim is a victim of a sex offense listed in section 7.1(e) of
3 this chapter that was committed by the defendant;
4 the court may order an individual named as defendant in the
5 prosecution of the offense to undergo a screening test for human
6 immunodeficiency virus (HIV).

7 (b) Before issuing an order for testing under subsection (a), the
8 court shall conduct a hearing at which both the alleged victim and
9 the defendant have the right to be present. Both the alleged victim
10 and the defendant must be notified of:

- 11 (1) the date, time, and location of the hearing; and
12 (2) their right to be present at the hearing.

13 (c) During the hearing only affidavits, counteraffidavits, and
14 medical records that relate to the material facts of the case used to
15 support or rebut a finding of probable cause to believe the alleged
16 victim was exposed to human immunodeficiency virus (HIV) as a
17 result of the alleged sex offense may be admissible.

18 (d) The written request of the alleged victim made under
19 subsection (a) must be filed by the prosecuting attorney with the
20 court and sealed by a court.

21 (e) The requirements of section 10.5 of this chapter apply to
22 testing ordered by a court under this section.

23 (f) If the defendant has not been convicted, the results of a test
24 conducted under this section shall be kept confidential. The results
25 may not be made available to any person or public or private
26 agency other than the following:

- 27 (1) The defendant and the defendant's counsel.
28 (2) The prosecuting attorney.
29 (3) The department of correction.
30 (4) The victim and the victim's counsel.

31 (g) A victim may disclose the results of a test to an individual
32 or organization to protect the health and safety of or to seek
33 compensation for:

- 34 (1) the victim;
35 (2) the victim's sexual partner; or
36 (3) the victim's family.

37 (h) A person that knowingly or intentionally:

- 38 (1) receives notification or disclosure of the results of a test
39 under this section; and
40 (2) discloses the results of the test in violation of this section;
41 commits a Class B misdemeanor.

42 SECTION 4. IC 35-42-4-7, AS AMENDED BY P.L.1-1997,



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1 SECTION 148, IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) As used in this section,
 3 "adoptive parent" has the meaning set forth in IC 31-9-2-6.

4 (b) As used in this section, "adoptive grandparent" means the
 5 parent of an adoptive parent.

6 (c) **As used in this section, "child care worker" means a person
 7 who provides care or supervision of a child within the scope of the
 8 person's employment in a public or private school or shelter care
 9 facility.**

10 ~~(c)~~ (d) As used in this section, "custodian" ~~includes~~ **means** any
 11 person **who resides with a child and is** responsible for a ~~the~~ child's
 12 welfare. ~~who is employed by a public or private residential school or
 13 foster care facility.~~

14 ~~(d)~~ (e) As used in this section, "stepparent" means an individual
 15 who is married to a child's custodial or noncustodial parent and is not
 16 the child's adoptive parent.

17 ~~(e)~~ (f) If a person who is:

18 (1) at least eighteen (18) years of age; and

19 (2) the:

20 (A) guardian, adoptive parent, adoptive grandparent,
 21 custodian, or stepparent of; **or**

22 (B) **child care worker for;**

23 a child at least sixteen (16) years of age but less than eighteen
 24 (18) years of age;

25 engages in sexual intercourse or deviate sexual conduct with the child,
 26 the person commits child seduction, a Class D felony.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill 374, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 374 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 374, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-38-1-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10.5. (a) The court:

(1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(~~1~~) (A) convicted of a sex crime listed in section 7.1(e) of this chapter and the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) as described in section 7.1(b)(8) of this chapter; or

(~~2~~) (B) convicted of an offense related to controlled substances listed in section 7.1(f) of this chapter and the offense involved the conditions described in section 7.1(b)(9)(A) of this chapter; **and**

(2) may order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the court has made a finding of probable cause after a hearing under section 10.7 of this chapter.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

(1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and

(2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

(1) makes a report required to be made under this section; or

(2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of that report or testimony.

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(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-4-12.4-1) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

SECTION 2. IC 35-38-1-10.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10.6. (a) The state department of health shall notify victims of the crimes listed in section 7.1(e) and 7.1(f) of this chapter if tests conducted under section 10.5 **or section 10.7** of this chapter confirm **that** the person ~~who committed the crime tested~~ had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

SECTION 3. IC 35-38-1-10.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 1998]: **Sec. 10.7. (a) Upon:**

(1) written request made to a prosecuting attorney by an alleged victim of a sex offense listed in section 7.1(e) of this chapter; and

(2) after a hearing held under this section, a court entering a finding that there is probable cause to believe the alleged victim is a victim of a sex offense listed in section 7.1(e) of this chapter that was committed by the defendant;

the court may order an individual named as defendant in the prosecution of the offense to undergo a screening test for human immunodeficiency virus (HIV).

(b) Before issuing an order for testing under subsection (a), the court shall conduct a hearing at which both the alleged victim and the defendant have the right to be present. Both the alleged victim and the defendant must be notified of:

(1) the date, time, and location of the hearing; and

(2) their right to be present at the hearing.

(c) During the hearing only affidavits, counteraffidavits, and medical records that relate to the material facts of the case used to support or rebut a finding of probable cause to believe the alleged victim was exposed to human immunodeficiency virus (HIV) as a result of the alleged sex offense may be admissible.

(d) The written request of the alleged victim made under subsection (a) must be filed by the prosecuting attorney with the

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court and sealed by a court.

(e) The requirements of section 10.5 of this chapter apply to testing ordered by a court under this section.

(f) If the defendant has not been convicted, the results of a test conducted under this section shall be kept confidential. The results may not be made available to any person or public or private agency other than the following:

- (1) The defendant and the defendant's counsel.
- (2) The prosecuting attorney.
- (3) The department of correction.
- (4) The victim and the victim's counsel.

(g) A victim may disclose the results of a test to an individual or organization to protect the health and safety of or to seek compensation for:

- (1) the victim;
- (2) the victim's sexual partner; or
- (3) the victim's family.

(h) A person that knowingly or intentionally:

- (1) receives notification or disclosure of the results of a test under this section; and
- (2) discloses the results of the test in violation of this section; commits a Class B misdemeanor."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to Senate Bill 374 as printed January 30, 1998.)

DVORAK, Chair

Committee Vote: yeas 9, nays 0.

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