

HOUSE BILL No. 1049

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-14-4-4; IC 31-19-9-8; IC 35-42-4-10; IC 35-50-5-3.

Synopsis: Statutory rape. Establishes the offense of statutory rape as a Class D felony. Provides that a person at least 21 years of age who engages in sexual intercourse or sexual deviate conduct with an unemancipated child who is at least 16 years of age but less than 18 years of age commits statutory rape. Requires a court to order a person convicted of statutory rape resulting in a pregnancy to pay restitution to the victim for any and all reasonable and necessary expenses relating to the pregnancy and childbirth. Specifies that the lack of a prosecution or conviction for statutory rape does not bar a person from initiating a paternity action and seeking child support and payment for expenses relating to the pregnancy and childbirth and a child support order. Provides that consent to an adoption is not required from a biological father of a child born out of wedlock who: (1) was conceived as the result of the statutory rape; and (2) is the subject of an adoption.

Effective: July 1, 1998.

Budak, Crosby, Becker

January 6, 1998, read first time and referred to Committee on Courts and Criminal Code.



Introduced

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.

HOUSE BILL No. 1049

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 31-14-4-4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1998]: **Sec. 4. The lack of a prosecution or conviction for an**
4 **alleged statutory rape under IC 35-42-4-10 does not bar a person**
5 **from:**

6 (1) **initiating a paternity action under this article; and**

7 (2) **seeking:**

8 (A) **child support; and**

9 (B) **payment for expenses;**

10 **relating to a pregnancy and childbirth resulting from the alleged**
11 **statutory rape.**

12 SECTION 2. IC 31-19-9-8, AS ADDED BY P.L.197-1997,
13 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 1998]: Sec. 8. (a) Consent to adoption is not required from any
15 of the following:

16 (1) A parent or parents if the child is adjudged to have been

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1 abandoned or deserted for at least six (6) months immediately
2 preceding the date of the filing of the petition for adoption.

3 (2) A parent of a child in the custody of another person if for a
4 period of at least one (1) year the parent:

5 (A) fails without justifiable cause to communicate significantly
6 with the child when able to do so; or

7 (B) knowingly fails to provide for the care and support of the
8 child when able to do so as required by law or judicial decree.

9 (3) The biological father of a child born out of wedlock whose
10 paternity has not been established:

11 (A) by a court proceeding other than the adoption proceeding; or

12 (B) by executing a paternity affidavit under IC 16-37-2-2.1.

13 (4) The biological father of a child born out of wedlock who was
14 conceived as a result of:

15 (A) a rape for which the father was convicted under
16 IC 35-42-4-1;

17 (B) child molesting (IC 35-42-4-3);

18 (C) sexual misconduct with a minor (IC 35-42-4-9); ~~or~~

19 **(D) statutory rape (IC 35-42-4-10); or**

20 ~~(E)~~ **(E) incest (IC 35-46-1-3).**

21 (5) The putative father of a child born out of wedlock if the putative
22 father's consent to adoption is irrevocably implied under section 15
23 of this chapter.

24 (6) The biological father of a child born out of wedlock if the:

25 (A) father's paternity is established after the filing of a petition
26 for adoption in a court proceeding or by executing a paternity
27 affidavit under IC 16-37-2-2.1; and

28 (B) father is required to but does not register with the putative
29 father registry established by IC 31-19-5 within the period
30 required by IC 31-19-5-12.

31 (7) A parent who has relinquished the parent's right to consent to
32 adoption as provided in this chapter.

33 (8) A parent after the parent-child relationship has been terminated
34 under IC 31-35 (or IC 31-6-5 before its repeal).

35 (9) A parent judicially declared incompetent or mentally defective
36 if the court dispenses with the parent's consent to adoption.

37 (10) A legal guardian or lawful custodian of the person to be
38 adopted who has failed to consent to the adoption for reasons found
39 by the court not to be in the best interests of the child.

40 (b) If a parent has made only token efforts to support or to
41 communicate with the child, the court may declare the child abandoned by
42 the parent.



1 SECTION 3. IC 35-42-4-10 IS ADDED TO THE INDIANA CODE
 2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 1998]: **Sec. 10. A person at least twenty-one (21) years of age who,**
 4 **with an unemancipated child who is at least sixteen (16) years of age**
 5 **but less than eighteen (18) years of age, performs or submits to**
 6 **sexual intercourse or deviate sexual conduct commits statutory rape,**
 7 **a Class D felony.**

8 SECTION 4. IC 35-50-5-3, AS AMENDED BY P.L.300-1995,
 9 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 1998]: Sec. 3. (a) Except as provided in ~~subsection (i)~~;
 11 **subsections (i) and (j)**, in addition to any sentence imposed under this
 12 article for a felony or misdemeanor, the court may, as a condition of
 13 probation or without placing the person on probation, order the person to
 14 make restitution to the victim of the crime, the victim's estate, or the
 15 family of a victim who is deceased. The court shall base its restitution
 16 order upon a consideration of:

- 17 (1) property damages of the victim incurred as a result of the crime,
 18 based on the actual cost of repair (or replacement if repair is
 19 inappropriate);
- 20 (2) medical and hospital costs incurred by the victim (before the date
 21 of sentencing) as a result of the crime;
- 22 (3) earnings lost by the victim (before the date of sentencing) as a
 23 result of the crime including earnings lost while the victim was
 24 hospitalized or participating in the investigation or trial of the crime;
 25 and
- 26 (4) funeral, burial, or cremation costs incurred by the family or
 27 estate of a homicide victim as a result of the crime.

28 (b) A restitution order under subsection (a), ~~or (i)~~, **or (j)** is a judgment
 29 lien that:

- 30 (1) attaches to the property of the person subject to the order;
- 31 (2) may be perfected;
- 32 (3) may be enforced to satisfy any payment that is delinquent under
 33 the restitution order by the person in whose favor the order is issued
 34 or the person's assignee; and
- 35 (4) expires;

36 in the same manner as a judgment lien created in a civil proceeding.

37 (c) When a restitution order is issued under subsection (a), the issuing
 38 court may order the person to pay the restitution, or part of the restitution,
 39 directly to the victim services division of the Indiana criminal justice
 40 institute in an amount not exceeding:

- 41 (1) the amount of the award, if any, paid to the victim under
 42 IC 5-2-6.1; and



1 (2) the cost of the reimbursements, if any, for emergency services
 2 provided to the victim under IC 16-10-1.5 (before its repeal) or
 3 IC 16-21-8.

4 The victim services division of the Indiana criminal justice institute shall
 5 deposit the restitution received under this subsection in the violent crime
 6 victims compensation fund established by IC 5-2-6.1-40.

7 (d) When a restitution order is issued under subsection (a), ~~or~~ (i), **or**
 8 **(j)** the issuing court shall send a certified copy of the order to the clerk of
 9 the circuit court in the county where the felony or misdemeanor charge
 10 was filed. The restitution order must include the following information:

11 (1) The name and address of the person that is to receive the
 12 restitution.

13 (2) The amount of restitution the person is to receive.

14 Upon receiving the order, the clerk shall enter and index the order in the
 15 circuit court judgment docket in the manner prescribed by IC 33-17-2-3.
 16 The clerk shall also notify the ~~Indiana~~ department of insurance of an order
 17 of restitution under subsection (i).

18 (e) An order of restitution under subsection (a) or (i) does not bar a
 19 civil action for:

20 (1) damages that the court did not require the person to pay to the
 21 victim under the restitution order but arise from an injury or property
 22 damage that is the basis of restitution ordered by the court; and

23 (2) other damages suffered by the victim.

24 (f) Regardless of whether restitution is required under subsection (a)
 25 as a condition of probation or other sentence, the restitution order is not
 26 discharged by the completion of any probationary period or other sentence
 27 imposed for a felony or misdemeanor.

28 (g) A restitution order under subsection (a), ~~or~~ (i), **or (j)** is not
 29 discharged by the liquidation of a person's estate by a receiver under
 30 IC 34-1-12 and IC 34-2-7.

31 (h) The attorney general may pursue restitution ordered by the court
 32 under subsections (a) and (c) on behalf of the victim services division of
 33 the Indiana criminal justice institute established under IC 5-2-6-8.

34 (i) The court may order the person convicted of an offense under
 35 IC 35-43-9 to make restitution to the victim of the crime. The court shall
 36 base its restitution order upon a consideration of the amount of money that
 37 the convicted person converted, misappropriated, or received, or for which
 38 the convicted person conspired. The restitution order issued for a violation
 39 of IC 35-43-9 must comply with subsections (b), (d), (e), and (g) and is
 40 not discharged by the completion of any probationary period or other
 41 sentence imposed for a violation of IC 35-43-9.

42 **(j) This subsection applies whenever a person is convicted of a**



1 statutory rape under IC 35-42-4-10 that results in a pregnancy. In
2 addition to any other penalty imposed for a conviction under
3 IC 35-42-4-10, the court shall order the convicted person to make
4 restitution to the victim of the offense for:

5 (1) reasonable and necessary expenses of the victim's
6 pregnancy and childbirth, including the cost of prenatal care,
7 delivery, hospitalization, and postnatal care; and

8 (2) child support dating from the date of birth of the child born
9 of the pregnancy.

10 If the expenses under subdivision (1) have been paid through
11 Medicaid, the court shall order the convicted person to reimburse
12 the state for the expenses. Reimbursement for expenses paid through
13 Medicaid under this subsection must be made to the office of
14 Medicaid policy and planning for deposit in the state general fund.
15 The restitution order issued for a conviction under IC 35-42-4-10
16 must comply with subsections (b), (d), (e), and (g) and is not
17 discharged by the completion of any probationary period or other
18 sentence imposed for a conviction under IC 35-42-4-10.

