

HOUSE BILL No. 1098

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-1-7.1.

Synopsis: Sex crimes. Adds sexual misconduct with a minor to the list of offenses that are considered sex crimes for purposes of criminal law sentencing procedures, including the procedure requiring HIV testing of a person convicted of a sex crime.

Effective: July 1, 1998.

Dickinson, Steele

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. 1098

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 35-38-1-7.1, AS AMENDED BY P.L.210-1997,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 7.1. (a) In determining what sentence to impose
4 for a crime, the court shall consider:
5 (1) the risk that the person will commit another crime;
6 (2) the nature and circumstances of the crime committed;
7 (3) the person's:
8 (A) prior criminal record;
9 (B) character; and
10 (C) condition;
11 (4) whether the victim of the crime was less than twelve (12)
12 years of age or at least sixty-five (65) years of age;
13 (5) whether the person violated a protective order issued against
14 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its
15 repeal) or IC 34-4-5.1; and
16 (6) any oral or written statement made by a victim of the crime.
17 (b) The court may consider the following factors as aggravating



1 circumstances or as favoring imposing consecutive terms of
2 imprisonment:

3 (1) The person has recently violated the conditions of any
4 probation, parole, or pardon granted to the person.

5 (2) The person has a history of criminal or delinquent activity.

6 (3) The person is in need of correctional or rehabilitative
7 treatment that can best be provided by commitment of the person
8 to a penal facility.

9 (4) Imposition of a reduced sentence or suspension of the
10 sentence and imposition of probation would depreciate the
11 seriousness of the crime.

12 (5) The victim of the crime was less than twelve (12) years of age
13 or at least sixty-five (65) years of age.

14 (6) The victim of the crime was mentally or physically infirm.

15 (7) The person committed a forcible felony while wearing a
16 garment designed to resist the penetration of a bullet.

17 (8) The person committed a sex crime listed in subsection (e) and:

18 (A) the crime created an epidemiologically demonstrated risk
19 of transmission of the human immunodeficiency virus (HIV)
20 and involved the sex organ of one (1) person and the mouth,
21 anus, or sex organ of another person;

22 (B) the person had knowledge that the person was a carrier of
23 HIV; and

24 (C) the person had received risk counseling as described in
25 subsection (g).

26 (9) The person committed an offense related to controlled
27 substances listed in subsection (f) if:

28 (A) the offense involved:

29 (i) the delivery by any person to another person; or

30 (ii) the use by any person on another person;

31 of a contaminated sharp (as defined in IC 16-41-16-2) or other
32 paraphernalia that creates an epidemiologically demonstrated
33 risk of transmission of HIV by involving percutaneous contact;

34 (B) the person had knowledge that the person was a carrier of
35 the human immunodeficiency virus (HIV); and

36 (C) the person had received risk counseling as described in
37 subsection (g).

38 (10) The person committed the offense in an area of a
39 consolidated or second class city that is designated as a public
40 safety improvement area by the Indiana criminal justice institute
41 under IC 36-8-19.5.

42 (c) The court may consider the following factors as mitigating



1 circumstances or as favoring suspending the sentence and imposing
2 probation:

3 (1) The crime neither caused nor threatened serious harm to
4 persons or property, or the person did not contemplate that it
5 would do so.

6 (2) The crime was the result of circumstances unlikely to recur.

7 (3) The victim of the crime induced or facilitated the offense.

8 (4) There are substantial grounds tending to excuse or justify the
9 crime, though failing to establish a defense.

10 (5) The person acted under strong provocation.

11 (6) The person has no history of delinquency or criminal activity,
12 or the person has led a law-abiding life for a substantial period
13 before commission of the crime.

14 (7) The person is likely to respond affirmatively to probation or
15 short term imprisonment.

16 (8) The character and attitudes of the person indicate that the
17 person is unlikely to commit another crime.

18 (9) The person has made or will make restitution to the victim of
19 the crime for the injury, damage, or loss sustained.

20 (10) Imprisonment of the person will result in undue hardship to
21 the person or the dependents of the person.

22 (11) The person was convicted of a crime involving the use of
23 force against a person who had repeatedly inflicted physical or
24 sexual abuse upon the convicted person and evidence shows that
25 the convicted person suffered from the effects of battery as a
26 result of the past course of conduct of the individual who is the
27 victim of the crime for which the person was convicted.

28 (d) The criteria listed in subsections (b) and (c) do not limit the
29 matters that the court may consider in determining the sentence.

30 (e) For the purposes of this article, the following crimes are
31 considered sex crimes:

32 (1) Rape (IC 35-42-4-1).

33 (2) Criminal deviate conduct (IC 35-42-4-2).

34 (3) Child molesting (IC 35-42-4-3).

35 (4) Child seduction (IC 35-42-4-7).

36 (5) Prostitution (IC 35-45-4-2).

37 (6) Patronizing a prostitute (IC 35-45-4-3).

38 (7) Incest (IC 35-46-1-3).

39 **(8) Sexual misconduct with a minor (IC 35-42-4-9).**

40 (f) For the purposes of this article, the following crimes are
41 considered offenses related to controlled substances:

42 (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).



- 1 (2) Dealing in a schedule I, II, or III controlled substance
- 2 (IC 35-48-4-2).
- 3 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- 4 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 5 (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- 6 (6) Possession of a controlled substance (IC 35-48-4-7).
- 7 (7) Dealing in paraphernalia (IC 35-48-4-8.5).
- 8 (8) Possession of paraphernalia (IC 35-48-4-8.3).
- 9 (9) Offenses relating to registration (IC 35-48-4-14).
- 10 (g) For the purposes of this section, a person received risk
- 11 counseling if the person had been:
- 12 (1) notified in person or in writing that tests have confirmed the
- 13 presence of antibodies to the human immunodeficiency virus
- 14 (HIV) in the person's blood; and
- 15 (2) warned of the behavior that can transmit HIV.

