
**ENGROSSED
SENATE BILL No. 374**

DIGEST OF SB 374 (Updated February 20, 1998 4:37 pm - DI 69)

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

Synopsis: Aggravating circumstances, child seduction, and HIV testing. Provides that sexual misconduct with a minor: (1) involving a person at least 18 years of age who, with a child at least 14 years of age but less than 16 years of age, performs or submits to sexual intercourse or deviate sexual conduct; and (2) that creates a risk of transmission of HIV, is a sex crime that a court may consider as an aggravating
(Continued next page)

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.
February 20, 1998, read second time, amended, ordered engrossed.

SE 374—LS 7233/DI 69+



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circumstance when imposing a sentence on the person who committed the sex crime. 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.)

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SEA 374—Concur+



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.

SENATE ENROLLED ACT No. 374

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

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

SECTION 1. IC 35-38-1-7.1, AS AMENDED BY HEA 1011-1998, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court shall consider:

- (1) the risk that the person will commit another crime;
- (2) the nature and circumstances of the crime committed;
- (3) the person's:
 - (A) prior criminal record;
 - (B) character; and
 - (C) condition;
- (4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;
- (5) whether the person violated a protective order issued against the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and
- (6) any oral or written statement made by a victim of the crime.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

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- (1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.
 - (2) The person has a history of criminal or delinquent activity.
 - (3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.
 - (4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.
 - (5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.
 - (6) The victim of the crime was mentally or physically infirm.
 - (7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.
 - (8) The person committed a sex crime listed in subsection (e) and:
 - (A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;
 - (B) the person had knowledge that the person was a carrier of HIV; and
 - (C) the person had received risk counseling as described in subsection (g).
 - (9) The person committed an offense related to controlled substances listed in subsection (f) if:
 - (A) the offense involved:
 - (i) the delivery by any person to another person; or
 - (ii) the use by any person on another person;
 of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact;
 - (B) the person had knowledge that the person was a carrier of the human immunodeficiency virus (HIV); and
 - (C) the person had received risk counseling as described in subsection (g).
 - (10) The person committed the offense in an area of a consolidated or second class city that is designated as a public safety improvement area by the Indiana criminal justice institute under IC 36-8-19.5.
- (c) The court may consider the following factors as mitigating

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circumstances or as favoring suspending the sentence and imposing probation:

- (1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.
- (2) The crime was the result of circumstances unlikely to recur.
- (3) The victim of the crime induced or facilitated the offense.
- (4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.
- (5) The person acted under strong provocation.
- (6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.
- (7) The person is likely to respond affirmatively to probation or short term imprisonment.
- (8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.
- (9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.
- (10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.
- (11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

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

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

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child seduction (IC 35-42-4-7).
- (5) Prostitution (IC 35-45-4-2).
- (6) Patronizing a prostitute (IC 35-45-4-3).
- (7) Incest (IC 35-46-1-3).

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

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

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

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(2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(4) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(6) Possession of a controlled substance (IC 35-48-4-7).

(7) Dealing in paraphernalia (IC 35-48-4-8.5).

(8) Possession of paraphernalia (IC 35-48-4-8.3).

(9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and

(2) warned of the behavior that can transmit HIV.

SECTION 2. IC 35-38-1-10.5, AS AMENDED BY HEA 1011-1998, 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

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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.

(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 34-6-2-80) 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 3. 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 4. 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



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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 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.

SECTION 5. IC 35-42-4-7, AS AMENDED BY P.L.1-1997, SECTION 148, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) As used in this section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

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

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



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

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

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

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

(2) the:

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

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

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

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

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