



February 28, 2001

HOUSE BILL No. 1942

DIGEST OF HB 1942 (Updated February 27, 2001 1:08 PM - DI 105)

Citations Affected: IC 4-13; IC 5-2; IC 12-24; IC 20-6.1; IC 35-42; IC 35-50.

Synopsis: Sexual misconduct with a minor. Defines sexual misconduct with a minor as a Class A felony as a crime of violence. Provides that a person employed in a state agency who works with or around children shall be dismissed if the person has a conviction for sexual misconduct with a minor. Expands the definition of child care worker to include a teacher for purposes of the sexual misconduct with a minor statute.

Effective: July 1, 2001.

Budak, Becker

January 17, 2001, read first time and referred to Committee on Courts and Criminal Code.
February 27, 2001, amended, reported — Do Pass.

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HB 1942—LS 7681/DI 106+



February 28, 2001

First Regular Session 112th General Assembly (2001)

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 2000 General Assembly.

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HOUSE BILL No. 1942

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 4-13-2-14.7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14.7. A person
3 employed, appointed, or under contract with a state agency, who works
4 with or around children, shall be dismissed (after the appropriate
5 pre-deprivation procedure has occurred) if that person is, or has ever
6 been, convicted of any of the following:
7 (1) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)
8 years of age.
9 (2) Criminal deviate conduct (IC 35-42-4-2), if the victim is less
10 than eighteen (18) years of age.
11 (3) Child molesting (IC 35-42-4-3).
12 (4) Child exploitation (IC 35-42-4-4(b)).
13 (5) Vicarious sexual gratification (IC 35-42-4-5).
14 (6) Child solicitation (IC 35-42-4-6).
15 (7) Child seduction (IC 35-42-4-7).
16 (8) **Sexual misconduct with a minor (IC 35-42-4-9).**
17 (9) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)

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1 years of age.

2 SECTION 2. IC 5-2-5-5, AS AMENDED BY P.L.10-1999,
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2001]: Sec. 5. (a) Except as provided in subsection (b), on
5 request, law enforcement agencies shall release or allow inspection of
6 a limited criminal history to noncriminal justice organizations or
7 individuals only if the subject of the request:

- 8 (1) has applied for employment with a noncriminal justice
9 organization or individual;
10 (2) has applied for a license and criminal history data as required
11 by law to be provided in connection with the license;
12 (3) is a candidate for public office or a public official;
13 (4) is in the process of being apprehended by a law enforcement
14 agency;
15 (5) is placed under arrest for the alleged commission of a crime;
16 (6) has charged that his rights have been abused repeatedly by
17 criminal justice agencies;
18 (7) is the subject of judicial decision or determination with
19 respect to the setting of bond, plea bargaining, sentencing, or
20 probation;
21 (8) has volunteered services that involve contact with, care of, or
22 supervision over a child who is being placed, matched, or
23 monitored by a social services agency or a nonprofit corporation;
24 (9) has volunteered services at a public school (as defined in
25 IC 20-10.1-1-2) or non-public school (as defined in
26 IC 20-10.1-1-3) that involve contact with, care of, or supervision
27 over a student enrolled in the school;
28 (10) is being investigated for welfare fraud by an investigator of
29 the division of family and children or a county office of family
30 and children;
31 (11) is being sought by the parent locator service of the child
32 support bureau of the division of family and children; or
33 (12) has been convicted of any of the following:
34 (A) Rape (IC 35-42-4-1), if the victim is less than eighteen
35 (18) years of age.
36 (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is
37 less than eighteen (18) years of age.
38 (C) Child molesting (IC 35-42-4-3).
39 (D) Child exploitation (IC 35-42-4-4(b)).
40 (E) Possession of child pornography (IC 35-42-4-4(c)).
41 (F) Vicarious sexual gratification (IC 35-42-4-5).
42 (G) Child solicitation (IC 35-42-4-6).

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

2 (I) **Sexual misconduct with a minor (IC 35-42-4-9).**

3 (J) Incest (IC 35-46-1-3), if the victim is less than eighteen
4 (18) years of age.

5 However, limited criminal history information obtained from the
6 National Crime Information Center may not be released under this
7 section except to the extent permitted by the Attorney General of the
8 United States.

9 (b) A law enforcement agency shall allow inspection of a limited
10 criminal history by and release a limited criminal history to the
11 following noncriminal justice organizations:

12 (1) Federally chartered or insured banking institutions.

13 (2) Officials of state and local government for the purpose of
14 employment and licensing.

15 (3) Segments of the securities industry identified under 15 U.S.C.
16 78q(f)(2).

17 (c) Any person who uses limited criminal history for any purpose
18 not specified under this section commits a Class A misdemeanor.

19 SECTION 3. IC 12-24-3-2 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. To provide greater
21 security for patients, visitors, and employees, the division may not
22 employ in a state institution an individual who has been convicted of
23 any of the following offenses:

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

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

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

27 (4) Child exploitation (IC 35-42-4-4).

28 (5) **Sexual misconduct with a minor (IC 35-42-4-9).**

29 SECTION 4. IC 20-6.1-4-10 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. ~~Cancellation of~~
31 ~~Indefinite Contract by School Corporation Grounds:~~ (a) An indefinite
32 contract with a permanent teacher may be canceled in the manner
33 specified in section 11 of this chapter for only the following grounds:

34 (1) immorality;

35 (2) insubordination, which means a willful refusal to obey the
36 state school laws or reasonable rules prescribed for the
37 government of the school corporation;

38 (3) neglect of duty;

39 (4) incompetency;

40 (5) justifiable decrease in the number of teaching positions;

41 (6) a conviction for:

42 (A) rape (IC 35-42-4-1), if the victim is less than eighteen (18)

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- 1 years of age;
 2 (B) criminal deviate conduct (IC 35-42-4-2), if the victim is
 3 less than eighteen (18) years of age;
 4 (C) child molesting (IC 35-42-4-3);
 5 (D) child exploitation (IC 35-42-4-4(b));
 6 (E) vicarious sexual gratification (IC 35-42-4-5);
 7 (F) child solicitation (IC 35-42-4-6);
 8 (G) child seduction (IC 35-42-4-7); ~~or~~
 9 (H) **sexual misconduct with a minor (IC 35-42-4-9); or**
 10 (I) incest (IC 35-46-1-3), if the victim is less than eighteen
 11 (18) years of age; or
 12 (7) other good and just cause.

13 When the cause of cancellation is ground (1), (2), or (6), the
 14 cancellation is effective immediately. When the cause of cancellation
 15 is ground (3), (4), (5), or (7), the cancellation is effective at the end of
 16 the school term following the cancellation.

17 (b) An indefinite contract may not be canceled for political or
 18 personal reasons.

19 SECTION 5. IC 35-42-4-7 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) As used in this
 21 section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

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

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

28 (d) As used in this section, "custodian" means any person who
 29 resides with a child and is responsible for the child's welfare.

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

33 (f) If a person who is:

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

35 (2) the:

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

38 (B) child care worker for;

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

41 engages in sexual intercourse or deviate sexual conduct (**as defined in**
 42 **IC 35-41-1-9**) with the child, the person commits child seduction, a

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- 1 Class D felony.
- 2 SECTION 6. IC 35-50-1-2 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) As used in this
- 4 section, "crime of violence" means:
- 5 (1) murder (IC 35-42-1-1);
- 6 (2) voluntary manslaughter (IC 35-42-1-3);
- 7 (3) involuntary manslaughter (IC 35-42-1-4);
- 8 (4) reckless homicide (IC 35-42-1-5);
- 9 (5) aggravated battery (IC 35-42-2-1.5);
- 10 (6) kidnapping (IC 35-42-3-2);
- 11 (7) rape (IC 35-42-4-1);
- 12 (8) criminal deviate conduct (IC 35-42-4-2);
- 13 (9) child molesting (IC 35-42-4-3);
- 14 (10) **sexual misconduct with a minor as a Class A felony**
- 15 **(IC 35-42-4-9);**
- 16 (11) robbery as a Class A felony or a Class B felony
- 17 (IC 35-42-5-1);
- 18 ~~(11)~~ (12) burglary as a Class A felony or a Class B felony
- 19 (IC 35-43-2-1); or
- 20 ~~(12)~~ (13) causing death when operating a motor vehicle
- 21 (IC 9-30-5-5).
- 22 (b) As used in this section, "episode of criminal conduct" means
- 23 offenses or a connected series of offenses that are closely related in
- 24 time, place, and circumstance.
- 25 (c) Except as provided in subsection (d) or (e), the court shall
- 26 determine whether terms of imprisonment shall be served concurrently
- 27 or consecutively. The court may consider the aggravating and
- 28 mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c)
- 29 in making a determination under this subsection. The court may order
- 30 terms of imprisonment to be served consecutively even if the sentences
- 31 are not imposed at the same time. However, except for crimes of
- 32 violence, the total of the consecutive terms of imprisonment, exclusive
- 33 of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to
- 34 which the defendant is sentenced for felony convictions arising out of
- 35 an episode of criminal conduct shall not exceed the presumptive
- 36 sentence for a felony which is one (1) class of felony higher than the
- 37 most serious of the felonies for which the person has been convicted.
- 38 (d) If, after being arrested for one (1) crime, a person commits
- 39 another crime:
- 40 (1) before the date the person is discharged from probation,
- 41 parole, or a term of imprisonment imposed for the first crime; or
- 42 (2) while the person is released:

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1 (A) upon the person's own recognizance; or
2 (B) on bond;
3 the terms of imprisonment for the crimes shall be served consecutively,
4 regardless of the order in which the crimes are tried and sentences are
5 imposed.
6 (e) If a court determines under IC 35-50-2-11 that a person used a
7 firearm in the commission of the offense for which the person was
8 convicted, the term of imprisonment for the underlying offense and the
9 additional term of imprisonment imposed under IC 35-50-2-11 must be
10 served consecutively.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1942, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1942 as introduced.)

DVORAK, Chair

Committee Vote: yeas 11, nays 0.

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