
HOUSE BILL No. 1942

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-14-4-4; IC 31-19-9-8; IC 35-42-4; IC 35-50-1-2; IC 35-50-5-3.

Synopsis: Child seduction and sexual misconduct with a minor. Specifies that teachers who engage in sexual relations with students commit child seduction. Raises the age of consent for sexual misconduct with a minor. Eliminates lack of knowledge of a minor's age as a defense. Eliminates the victim's marital status as defense to sexual misconduct with a minor when the crime involves violence. Defines sexual misconduct with a minor as a Class A or Class B felony as a crime of violence. Requires a court to order a person convicted of child seduction or sexual misconduct with a minor resulting in a pregnancy to pay restitution to the victim for expenses relating to the pregnancy and childbirth, even if these expenses are incurred after the date of sentencing. Provides that lack of prosecution or conviction for child seduction or sexual misconduct with a minor does not bar an action for paternity, child support, and payment for expenses relating to the pregnancy and childbirth. Provides that consent to an adoption is not required from a biological father of a child born out of wedlock who was conceived as the result of a child seduction or sexual misconduct with a minor.

Effective: July 1, 2001.

Budak, Becker

January 17, 2001, read first time and referred to Committee on Courts and Criminal Code.

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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 *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 31-14-4-4 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2001]: **Sec. 4. The lack of a prosecution or conviction for child**
- 4 **seduction (IC 35-42-4-7) or sexual misconduct with a minor**
- 5 **(IC 35-42-4-9) does not bar a person 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 **child seduction (IC 35-42-4-7) or sexual misconduct with a minor**
- 12 **(IC 35-42-4-9).**
- 13 SECTION 2. IC 31-19-9-8 IS AMENDED TO READ AS
- 14 FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 8. (a) Consent to**
- 15 **adoption is not required from any of the following:**
- 16 **(1) A parent or parents if the child is adjudged to have been**
- 17 **abandoned or deserted for at least six (6) months immediately**



1 preceding the date of the filing of the petition for adoption.

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

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

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

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

10 (A) by a court proceeding other than the adoption proceeding;
11 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) **child seduction (IC 35-42-4-7);**

19 (D) sexual misconduct with a minor (IC 35-42-4-9); or

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

21 (5) The putative father of a child born out of wedlock if the
22 putative father's consent to adoption is irrevocably implied under
23 section 15 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
34 terminated 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
39 found 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
42 by the parent.

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1 SECTION 3. IC 35-42-4-7 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) As used in this
 3 section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

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

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

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

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

15 (f) If a person who is:

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

17 (2) the:

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

20 (B) child care worker for;

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

23 engages in sexual intercourse or deviate sexual conduct **(as defined in**
 24 **IC 35-41-1-9)** with the child, the person commits child seduction. a
 25 ~~Class D felony~~:

26 **(g) Child seduction is:**

27 **(1) a Class B felony if the child is sixteen (16) years of age at**
 28 **the time the person commits the offense; and**

29 **(2) a Class D felony if the child is seventeen (17) years of age**
 30 **at the time the person commits the offense.**

31 **(h) It is not a defense that the accused person reasonably**
 32 **believed that the child was at least eighteen (18) years of age at the**
 33 **time of the conduct.**

34 SECTION 4. IC 35-42-4-9 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) A person at least
 36 eighteen (18) years of age who, with a child at least fourteen (14) years
 37 of age but less than ~~sixteen (16)~~ **seventeen (17)** years of age, performs
 38 or submits to sexual intercourse or deviate sexual conduct **(as defined**
 39 **in IC 35-41-1-9)** commits sexual misconduct with a minor, a Class C
 40 felony. However, the offense is:

41 (1) a Class B felony if it is committed by a person at least
 42 twenty-one (21) years of age; and

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1 (2) a Class A felony if it is committed by using or threatening the
 2 use of deadly force, if it is committed while armed with a deadly
 3 weapon, if it results in serious bodily injury, or if the commission
 4 of the offense is facilitated by furnishing the victim, without the
 5 victim's knowledge, with a drug (as defined in IC 16-42-19-2(1))
 6 or a controlled substance (as defined in IC 35-48-1-9) or knowing
 7 that the victim was furnished with the drug or controlled
 8 substance without the victim's knowledge.

9 (b) A person at least eighteen (18) years of age who, with a child at
 10 least fourteen (14) years of age but less than ~~sixteen (16)~~ **seventeen**
 11 **(17)** years of age, performs or submits to any fondling or touching, of
 12 either the child or the older person, with intent to arouse or to satisfy
 13 the sexual desires of either the child or the older person, commits
 14 sexual misconduct with a minor, a Class D felony. However, the
 15 offense is:

16 (1) a Class C felony if it is committed by a person at least
 17 twenty-one (21) years of age; and

18 (2) a Class B felony if it is committed by using or threatening the
 19 use of deadly force, while armed with a deadly weapon, or if the
 20 commission of the offense is facilitated by furnishing the victim,
 21 without the victim's knowledge, with a drug (as defined in
 22 IC 16-42-19-2(1)) or a controlled substance (as defined in
 23 IC 35-48-1-9) or knowing that the victim was furnished with the
 24 drug or controlled substance without the victim's knowledge.

25 (c) It is **not** a defense that the accused person reasonably believed
 26 that the child was at least ~~sixteen (16)~~ **seventeen (17)** years of age at
 27 the time of the conduct.

28 (d) It is a defense that the child is or has ever been married, **unless**
 29 **the crime is committed by using or threatening the use of deadly**
 30 **force, if it is committed while armed with a deadly weapon, if it**
 31 **results in serious bodily injury, or if the commission of the offense**
 32 **is facilitated by furnishing the victim, without the victim's**
 33 **knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a**
 34 **controlled substance (as defined in IC 35-48-1-9) or knowing that**
 35 **the victim was furnished with the drug or controlled substance**
 36 **without the victim's knowledge.**

37 SECTION 5. IC 35-50-1-2 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) As used in this
 39 section, "crime of violence" means:

40 (1) murder (IC 35-42-1-1);

41 (2) voluntary manslaughter (IC 35-42-1-3);

42 (3) involuntary manslaughter (IC 35-42-1-4);

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- 1 (4) reckless homicide (IC 35-42-1-5);
 2 (5) aggravated battery (IC 35-42-2-1.5);
 3 (6) kidnapping (IC 35-42-3-2);
 4 (7) rape (IC 35-42-4-1);
 5 (8) criminal deviate conduct (IC 35-42-4-2);
 6 (9) child molesting (IC 35-42-4-3);
 7 **(10) sexual misconduct with a minor as a Class A felony or a**
 8 **Class B felony (IC 35-42-4-9);**
 9 ~~(10)~~ **(11)** robbery as a Class A felony or a Class B felony
 10 (IC 35-42-5-1);
 11 ~~(11)~~ **(12)** burglary as a Class A felony or a Class B felony
 12 (IC 35-43-2-1); or
 13 ~~(12)~~ **(13)** causing death when operating a motor vehicle
 14 (IC 9-30-5-5).

15 (b) As used in this section, "episode of criminal conduct" means
 16 offenses or a connected series of offenses that are closely related in
 17 time, place, and circumstance.

18 (c) Except as provided in subsection (d) or (e), the court shall
 19 determine whether terms of imprisonment shall be served concurrently
 20 or consecutively. The court may consider the aggravating and
 21 mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c)
 22 in making a determination under this subsection. The court may order
 23 terms of imprisonment to be served consecutively even if the sentences
 24 are not imposed at the same time. However, except for crimes of
 25 violence, the total of the consecutive terms of imprisonment, exclusive
 26 of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to
 27 which the defendant is sentenced for felony convictions arising out of
 28 an episode of criminal conduct shall not exceed the presumptive
 29 sentence for a felony which is one (1) class of felony higher than the
 30 most serious of the felonies for which the person has been convicted.

31 (d) If, after being arrested for one (1) crime, a person commits
 32 another crime:

- 33 (1) before the date the person is discharged from probation,
 34 parole, or a term of imprisonment imposed for the first crime; or
 35 (2) while the person is released:
 36 (A) upon the person's own recognizance; or
 37 (B) on bond;

38 the terms of imprisonment for the crimes shall be served consecutively,
 39 regardless of the order in which the crimes are tried and sentences are
 40 imposed.

41 (e) If a court determines under IC 35-50-2-11 that a person used a
 42 firearm in the commission of the offense for which the person was

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1 convicted, the term of imprisonment for the underlying offense and the
 2 additional term of imprisonment imposed under IC 35-50-2-11 must be
 3 served consecutively.

4 SECTION 6. IC 35-50-5-3 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) Except as
 6 provided in ~~subsection~~ **subsections (i) and (j)**, in addition to any
 7 sentence imposed under this article for a felony or misdemeanor, the
 8 court may, as a condition of probation or without placing the person on
 9 probation, order the person to make restitution to the victim of the
 10 crime, the victim's estate, or the family of a victim who is deceased.
 11 The court shall base its restitution order upon a consideration of:

12 (1) property damages of the victim incurred as a result of the
 13 crime, based on the actual cost of repair (or replacement if repair
 14 is inappropriate);

15 (2) medical and hospital costs incurred by the victim (before the
 16 date of sentencing) as a result of the crime;

17 (3) earnings lost by the victim (before the date of sentencing) as
 18 a result of the crime including earnings lost while the victim was
 19 hospitalized or participating in the investigation or trial of the
 20 crime; ~~and~~

21 (4) funeral, burial, or cremation costs incurred by the family or
 22 estate of a homicide victim as a result of the crime; ~~and~~

23 **(5) expenses relating to the victim's pregnancy and childbirth**
 24 **resulting from the crime, including the cost of prenatal care,**
 25 **delivery, hospitalization, postnatal care, and child support,**
 26 **even if these expenses are incurred after the date of**
 27 **sentencing.**

28 (b) A restitution order under subsection (a), ~~or~~ (i), ~~or~~ (j) is a
 29 judgment 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
 33 under the restitution order by the person in whose favor the order
 34 is issued 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
 38 issuing court may order the person to pay the restitution, or part of the
 39 restitution, directly to the victim services division of the Indiana
 40 criminal justice 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

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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
 5 shall deposit the restitution received under this subsection in the
 6 violent crime 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
 9 of the circuit court in the county where the felony or misdemeanor
 10 charge was filed. The restitution order must include the following
 11 information:

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

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

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

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

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

25 (2) other damages suffered by the victim.

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

30 (g) A restitution order under subsection (a), ~~or (i), or (j)~~ is not
 31 discharged by the liquidation of a person's estate by a receiver under
 32 IC 34-48-1, IC 34-48-4, IC 34-48-5, and IC 34-48-6 (or IC 34-1-12 and
 33 IC 34-2-7 before their repeal).

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

37 (i) The court may order the person convicted of an offense under
 38 IC 35-43-9 to make restitution to the victim of the crime. The court
 39 shall base its restitution order upon a consideration of the amount of
 40 money that the convicted person converted, misappropriated, or
 41 received, or for which the convicted person conspired. The restitution
 42 order issued for a violation of IC 35-43-9 must comply with

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1 subsections (b), (d), (e), and (g) and is not discharged by the
 2 completion of any probationary period or other sentence imposed for
 3 a violation of IC 35-43-9.

4 **(j) This subsection applies if a person is convicted of child**
 5 **seduction (IC 35-42-4-7) or sexual misconduct with a minor**
 6 **(IC 35-42-4-9) that results in a pregnancy. In addition to any other**
 7 **penalty imposed for a conviction under child seduction**
 8 **(IC 35-42-4-7) or sexual misconduct with a minor (IC 35-42-4-9),**
 9 **the court shall order the convicted person to make restitution to**
 10 **the victim of the offense for any:**

11 **(1) reasonable and necessary expenses relating to the victim's**
 12 **pregnancy and childbirth, including the cost of prenatal care,**
 13 **delivery, hospitalization, and postnatal care; and**

14 **(2) child support dating from the date of birth of the child**
 15 **born of the pregnancy.**

16 **If the expenses under subdivision (1) have been paid through**
 17 **Medicaid, the court shall order the convicted person to reimburse**
 18 **the state for the expenses. Reimbursement for expenses paid**
 19 **through Medicaid under this subsection must be made to the office**
 20 **of Medicaid policy and planning for deposit in the state general**
 21 **fund. The restitution order issued for a conviction under child**
 22 **seduction (IC 35-42-4-7) or sexual misconduct with a minor**
 23 **(IC 35-42-4-9) is subject to subsections (b), (d), (e), and (g) and is**
 24 **not discharged by the completion of any probationary period or**
 25 **other sentence imposed for a conviction.**

26 SECTION 7. [EFFECTIVE JULY 1, 2001] IC 31-14-4-4, as added
 27 by this act, and IC 31-19-9-8, IC 35-42-4-7, IC 35-42-4-9,
 28 IC 35-50-1-2, and IC 35-50-5-3, all as amended by this act, apply
 29 only to crimes committed after June 30, 2001.

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