CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 144

Citations Affected: IC 35-42-4-9; IC 35-50-1-2.

Synopsis: Sexual misconduct with a minor. Conference committee report for ESB 144. Removes certain defenses related to sexual misconduct with a minor. Makes the offense of sexual misconduct with a minor that involves deadly force, a deadly weapon, or a drug or controlled substance a "crime of violence" for purposes of the law concerning consecutive and concurrent sentencing where the defendant is at least 18 years of age and the victim is 14 or 15 years of age. **(This conference committee report removes a provision that: (1) provides a child is a child in need of services if the child lives in the same household with another child who is the victim of a sex crime; (2) creates a rebuttable presumption that a child is a child in need of services if the child lives in the same household with another child who is the victim of a sex crime and the person who committed the sex crime resides in the house with the child presumed to be a child in need of services; (3) provides a defense to a charge of trafficking with an inmate; and (4) provides that certain penal facility employees are entitled to a review of an adverse employment determination based upon trafficking with an inmate.)**

Effective: July 1, 2003.

Adopted	Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 144 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert:

SECTION 1. IC 35-42-4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits sexual misconduct with a minor, a Class C felony. However, the offense is:

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

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

(b) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to any fondling or touching, of either the child or

the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Class D felony. However, the offense is:

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

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

(c) It is a defense that the accused person reasonably believed that the child was at least sixteen (16) years of age at the time of the conduct. **However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).**

(d) It is a defense that the child is or has ever been married. **However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).**

SECTION 2. IC 35-50-1-2, AS AMENDED BY P.L.228-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) As used in this section, "crime of violence" means:

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

(2) attempted murder (IC 35-41-5-1);

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

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

(5) reckless homicide (IC 35-42-1-5);

(6) aggravated battery (IC 35-42-2-1.5);

(7) kidnapping (IC 35-42-3-2);

(8) rape (IC 35-42-4-1);

(9) criminal deviate conduct (IC 35-42-4-2);

(10) child molesting (IC 35-42-4-3);

(11) sexual misconduct with a minor as a Class A felony ~~(IC 35-42-4-9);~~ **under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2);**

(12) robbery as a Class A felony or a Class B felony (IC 35-42-5-1);

(13) burglary as a Class A felony or a Class B felony (IC 35-43-2-1); or

(14) causing death when operating a motor vehicle (IC 9-30-5-5).

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

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the aggravating and mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c) in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of

violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the presumptive sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

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

(1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; or

(2) while the person is released:

(A) upon the person's own recognizance; or

(B) on bond;

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

(e) If a court determines under IC 35-50-2-11 that a person used a firearm in the commission of the offense for which the person was convicted, the term of imprisonment for the underlying offense and the additional term of imprisonment imposed under IC 35-50-2-11 must be served consecutively.

SECTION 3. [EFFECTIVE JULY 1, 2003] **This act applies only to crimes committed after June 30, 2003.**

(Reference is to ESB 144 as reprinted April 11, 2003.)

Conference Committee Report
on
Engrossed Senate Bill 144

Signed by:

Senator Long Chairperson	Representative Lawson L
Senator Bowser	Representative Foley
Senate Conferees	**House Conferees**