

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 181**

Citations Affected: IC 16-41-8; IC 34-30-2-81.3; IC 35-38-1; IC 35-42-4-7; IC 35-50-2-14.

Synopsis: Sex crimes. Conference committee report for ESB 181. Expands the range of possible offenders for the crime of child seduction by adding persons employed by a charter school or special education cooperative and persons otherwise affiliated with a school corporation, charter school, nonpublic school, or special education cooperative if the person affiliated with the school or cooperative: (1) has a position of trust with respect to a child who attends the school or cooperative; (2) is engaged in the provision of care to or supervision of a child who attends the school or cooperative; and (3) is at least four years older than the child. Provides that a military recruiter whose primary job is recruiting individuals to enlist with the armed forces commits child seduction if the military recruiter is attempting to enlist a child at least 16 years of age but less than 18 years of age and: (1) engages in sexual intercourse with the child; (2) engages in deviate sexual conduct with the child; or (3) fondles the child. Provides that an attempted sex offense may be used to establish that a person is a repeat sex offender. Establishes a procedure for the release of medical information relevant to the prosecution or defense of a person who has been charged with a potentially disease transmitting offense. Allows a prosecuting attorney to petition a court to order a defendant charged with the commission of: (1) a potentially disease transmitting offense; or (2) an offense involving the transmission of a bodily fluid; to submit to a screening test to determine whether the defendant is infected with a dangerous disease. Makes conforming amendments. Repeals a similar provision in current law that applies only to screening tests for HIV. **(This conference committee report: Establishes a procedure for the release of medical information relevant to the prosecution or defense of a person who has been charged with a potentially disease transmitting offense. Allows a prosecuting attorney to petition a court to order a defendant charged with the commission of: (1) a potentially disease transmitting offense; or (2) an offense involving the transmission of a bodily fluid; to submit to a screening test to determine whether the defendant is infected with a dangerous disease. Makes conforming amendments. Repeals a similar provision in current law that applies only to screening tests for HIV.)**

Effective: July 1, 2009.

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. 181 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:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 16-41-8-1, AS AMENDED BY P.L.135-2005,
3 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2009]: Sec. 1. **(a) As used in this chapter, "potentially
5 disease transmitting offense" means any of the following:**
6 **(1) Battery by body waste (IC 35-42-2-6).**
7 **(2) An offense relating to a criminal sexual act (as defined in
8 IC 35-41-1-19.3), if sexual intercourse or deviate sexual
9 conduct occurred.**
10 **The term includes an attempt to commit an offense, if sexual
11 intercourse or deviate sexual conduct occurred, and a delinquent
12 act that would be a crime if committed by an adult.**
13 **(a) (b) Except as provided in subsections (d) and (e), this chapter,**
14 **a person may not disclose or be compelled to disclose medical or
15 epidemiological information involving a communicable disease or
16 other disease that is a danger to health (as defined under rules adopted
17 under IC 16-41-2-1). This information may not be released or made
18 public upon subpoena or otherwise, except under the following
19 circumstances:**
20 **(1) Release may be made of medical or epidemiologic information
21 for statistical purposes if done in a manner that does not identify
22 an individual.**

- 1 (2) Release may be made of medical or epidemiologic information
 2 with the written consent of all individuals identified in the
 3 information released.
- 4 (3) Release may be made of medical or epidemiologic information
 5 to the extent necessary to enforce public health laws, laws
 6 described in IC 31-37-19-4 through IC 31-37-19-6, IC 31-37-19-9
 7 through IC 31-37-19-10, IC 31-37-19-12 through IC 31-37-19-23,
 8 IC 35-38-1-7.1, and IC 35-42-1-7, or to protect the health or life
 9 of a named party.
- 10 **(4) Release may be made of the medical information of a**
 11 **person in accordance with this chapter.**
- 12 ~~(b)~~ **(c)** Except as provided in ~~subsection (a)~~, **this chapter**, a person
 13 responsible for recording, reporting, or maintaining information
 14 required to be reported under IC 16-41-2 who recklessly, knowingly,
 15 or intentionally discloses or fails to protect medical or epidemiologic
 16 information classified as confidential under this section commits a
 17 Class A misdemeanor.
- 18 ~~(e)~~ **(d)** In addition to subsection ~~(b)~~, **(c)**, a public employee who
 19 violates this section is subject to discharge or other disciplinary action
 20 under the personnel rules of the agency that employs the employee.
- 21 ~~(d)~~ **(e)** Release shall be made of the medical records concerning an
 22 individual to:
- 23 (1) the individual;
 24 (2) a person authorized in writing by the individual to receive the
 25 medical records; or
 26 (3) a coroner under IC 36-2-14-21.
- 27 ~~(e)~~ **(f)** An individual may voluntarily disclose information about the
 28 individual's communicable disease.
- 29 ~~(f)~~ **(g)** The provisions of this section regarding confidentiality apply
 30 to information obtained under IC 16-41-1 through IC 16-41-16.
- 31 SECTION 2. IC 16-41-8-4 IS ADDED TO THE INDIANA CODE
 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 33 1, 2009]: **Sec. 4. (a) This section applies to the release of medical**
 34 **information that may be relevant to the prosecution or defense of**
 35 **a person who has been charged with a potentially disease**
 36 **transmitting offense.**
- 37 **(b) A:**
- 38 **(1) prosecuting attorney may seek to obtain access to a**
 39 **defendant's medical information if the defendant has been**
 40 **charged with a potentially disease causing offense; and**
 41 **(2) defendant who has been charged with a potentially disease**
 42 **causing offense may seek access to the medical information of**
 43 **another person if the medical information would be relevant**
 44 **to the defendant's defense;**
- 45 **by filing a verified petition for the release of medical information**
 46 **with the court.**
- 47 **(c) The prosecuting attorney or defendant who files a petition**
 48 **under subsection (b) shall serve a copy of the petition on:**
- 49 **(1) the person whose medical information is sought;**
 50 **(2) the guardian, guardian ad litem, or court appointed**
 51 **special advocate appointed for a minor, parent, or custodian**

1 of a person who is incompetent, if applicable; and
 2 (3) the provider that maintains the record, or the attorney
 3 general if the provider is a state agency;
 4 at the time of filing in accordance with Indiana Trial Rule 4.

5 (d) The court shall set the matter for hearing not later than
 6 twenty (20) days after the date of filing.

7 (e) If, following a hearing for release of a person's medical
 8 information, the court finds probable cause to believe that the
 9 medical information may be relevant to the prosecution or defense
 10 of a person who has been charged with a potentially disease
 11 transmitting offense, the court shall order the person having
 12 custody of the person's medical information to release the medical
 13 information to the court.

14 (f) The court shall examine the person's medical information in
 15 camera. If, after examining the medical information in camera and
 16 considering the evidence presented at the hearing, the court finds
 17 probable cause to believe that the medical information is relevant
 18 to the prosecution or defense of a person who has been charged
 19 with a potentially disease transmitting offense, the court may order
 20 the release of a person's medical information to the petitioner.

21 (g) In an order issued under subsection (f), the court shall:

22 (1) permit the disclosure of only those parts of the person's
 23 medical information that are essential to fulfill the objective
 24 of the order;

25 (2) restrict access to the medical information to those persons
 26 whose need for the information is the basis of the order; and

27 (3) include in its order any other appropriate measures to
 28 limit disclosure of the medical information to protect the right
 29 to privacy of the person who is the subject of the medical
 30 information.

31 (h) A hearing for the release of a person's medical information
 32 may be closed to the public. The transcript of the hearing, the
 33 court's order, and all documents filed in connection with the
 34 hearing are confidential. In addition, if a person's medical
 35 information is disclosed in a legal proceeding, the court shall order
 36 the record or transcript of the testimony to be preserved as a
 37 confidential court record.

38 (i) This section does not prohibit the application to medical
 39 information of any law concerning medical information that is not
 40 addressed by this section.

41 SECTION 4. IC 16-41-8-5 IS ADDED TO THE INDIANA CODE
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 43 1, 2009]: **Sec. 5. (a) The following definitions apply throughout this
 44 section:**

45 (1) "Bodily fluid" means blood, human waste, or any other
 46 bodily fluid.

47 (2) "Dangerous disease" means any of the following:

48 (A) Chancroid.

49 (B) Chlamydia.

50 (C) Gonorrhea.

51 (D) Hepatitis.

1 (E) Human immunodeficiency virus (HIV).

2 (F) Lymphogranuloma venereum.

3 (G) Syphilis.

4 (H) Tuberculosis.

5 (3) "Offense involving the transmission of a bodily fluid"
6 means any offense (including a delinquent act that would be
7 a crime if committed by an adult) in which a bodily fluid is
8 transmitted from the defendant to the victim in connection
9 with the commission of the offense.

10 (b) This subsection applies only to a defendant who has been
11 charged with a potentially disease transmitting offense. At the
12 request of an alleged victim of the offense, the parent, guardian, or
13 custodian of an alleged victim who is less than eighteen (18) years
14 of age, or the parent, guardian, or custodian of an alleged victim
15 who is an endangered adult (as defined in IC 12-10-3-2), the
16 prosecuting attorney shall petition a court to order a defendant
17 charged with the commission of a potentially disease transmitting
18 offense to submit to a screening test to determine whether the
19 defendant is infected with a dangerous disease. In the petition, the
20 prosecuting attorney must set forth information demonstrating
21 that the defendant has committed a potentially disease transmitting
22 offense. The court shall set the matter for hearing not later than
23 forty-eight (48) hours after the prosecuting attorney files a petition
24 under this subsection. The alleged victim, the parent, guardian, or
25 custodian of an alleged victim who is less than eighteen (18) years
26 of age, and the parent, guardian, or custodian of an alleged victim
27 who is an endangered adult (as defined in IC 12-10-3-2) are entitled
28 to receive notice of the hearing and are entitled to attend the
29 hearing. The defendant and the defendant's counsel are entitled to
30 receive notice of the hearing and are entitled to attend the hearing.
31 If, following the hearing, the court finds probable cause to believe
32 that the defendant has committed a potentially disease transmitting
33 offense, the court may order the defendant to submit to a screening
34 test for one (1) or more dangerous diseases. If the defendant is
35 charged with committing battery by body waste (IC 35-42-2-6), the
36 court may limit testing under this subsection to a test only for
37 human immunodeficiency virus (HIV). However, the court may
38 order additional testing for human immunodeficiency virus (HIV)
39 as may be medically appropriate. The court shall take actions to
40 ensure the confidentiality of evidence introduced at the hearing.

41 (c) This subsection applies only to a defendant who has been
42 charged with an offense involving the transmission of a bodily
43 fluid. At the request of an alleged victim of the offense, the parent,
44 guardian, or custodian of an alleged victim who is less than
45 eighteen (18) years of age, or the parent, guardian, or custodian of
46 an alleged victim who is an endangered adult (as defined in
47 IC 12-10-3-2), the prosecuting attorney shall petition a court to
48 order a defendant charged with the commission of an offense
49 involving the transmission of a bodily fluid to submit to a screening
50 test to determine whether the defendant is infected with a
51 dangerous disease. In the petition, the prosecuting attorney must

1 set forth information demonstrating that:

- 2 (1) the defendant has committed an offense; and
3 (2) a bodily fluid was transmitted from the defendant to the
4 victim in connection with the commission of the offense.

5 The court shall set the matter for hearing not later than forty-eight
6 (48) hours after the prosecuting attorney files a petition under this
7 subsection. The alleged victim of the offense, the parent, guardian,
8 or custodian of an alleged victim who is less than eighteen (18)
9 years of age, and the parent, guardian, or custodian of an alleged
10 victim who is an endangered adult (as defined in IC 12-10-3-2) are
11 entitled to receive notice of the hearing and are entitled to attend
12 the hearing. The defendant and the defendant's counsel are entitled
13 to receive notice of the hearing and are entitled to attend the
14 hearing. If, following the hearing, the court finds probable cause to
15 believe that the defendant has committed an offense and that a
16 bodily fluid was transmitted from the defendant to the alleged
17 victim in connection with the commission of the offense, the court
18 may order the defendant to submit to a screening test for one (1)
19 or more dangerous diseases. If the defendant is charged with
20 committing battery by body waste (IC 35-42-2-6), the court may
21 limit testing under this subsection to a test only for human
22 immunodeficiency virus (HIV). However, the court may order
23 additional testing for human immunodeficiency virus (HIV) as may
24 be medically appropriate. The court shall take actions to ensure the
25 confidentiality of evidence introduced at the hearing.

26 (d) The testimonial privileges applying to communication
27 between a husband and wife and between a health care provider
28 and the health care provider's patient are not sufficient grounds
29 for not testifying or providing other information at a hearing
30 conducted in accordance with this section.

31 (e) A health care provider (as defined in IC 16-18-2-163) who
32 discloses information that must be disclosed to comply with this
33 section is immune from civil and criminal liability under Indiana
34 statutes that protect patient privacy and confidentiality.

35 (f) The results of a screening test conducted under this section
36 shall be kept confidential if the defendant ordered to submit to the
37 screening test under this section has not been convicted of the
38 potentially disease transmitting offense or offense involving the
39 transmission of a bodily fluid with which the defendant is charged.
40 The results may not be made available to any person or public or
41 private agency other than the following:

- 42 (1) The defendant and the defendant's counsel.
43 (2) The prosecuting attorney.
44 (3) The department of correction or the penal facility, juvenile
45 detention facility, or secure private facility where the
46 defendant is housed.
47 (4) The alleged victim or the parent, guardian, or custodian of
48 an alleged victim who is less than eighteen (18) years of age,
49 or the parent, guardian, or custodian of an alleged victim who
50 is an endangered adult (as defined in IC 12-10-3-2), and the
51 alleged victim's counsel.

1 **The results of a screening test conducted under this section may**
 2 **not be admitted against a defendant in a criminal proceeding or**
 3 **against a child in a juvenile delinquency proceeding.**

4 **(g) As soon as practicable after a screening test ordered under**
 5 **this section has been conducted, the alleged victim or the parent,**
 6 **guardian, or custodian of an alleged victim who is less than**
 7 **eighteen (18) years of age, or the parent, guardian, or custodian of**
 8 **an alleged victim who is an endangered adult (as defined in**
 9 **IC 12-10-3-2), and the victim's counsel shall be notified of the**
 10 **results of the test.**

11 **(h) An alleged victim may disclose the results of a screening test**
 12 **to which a defendant is ordered to submit under this section to an**
 13 **individual or organization to protect the health and safety of or to**
 14 **seek compensation for:**

- 15 **(1) the alleged victim;**
- 16 **(2) the alleged victim's sexual partner; or**
- 17 **(3) the alleged victim's family.**

18 **(i) The court shall order a petition filed and any order entered**
 19 **under this section sealed.**

20 **(j) A person that knowingly or intentionally:**

- 21 **(1) receives notification or disclosure of the results of a**
 22 **screening test under this section; and**
- 23 **(2) discloses the results of the screening test in violation of this**
 24 **section;**

25 **commits a Class B misdemeanor.**

26 SECTION 6. IC 34-30-2-81.3 IS ADDED TO THE INDIANA
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2009]: **Sec. 81.3. IC 16-41-8-6 (Concerning**
 29 **a health care provider who discloses information in compliance**
 30 **with IC 16-41-8-5).**

31 SECTION 7. IC 35-38-1-10.5, AS AMENDED BY P.L.125-2007,
 32 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2009]: Sec. 10.5. (a) The court:

34 (1) shall order that a person undergo a screening test for the
 35 human immunodeficiency virus (HIV) if the person is:

- 36 (A) convicted of an offense relating to a criminal sexual act
 37 and the offense created an epidemiologically demonstrated
 38 risk of transmission of the human immunodeficiency virus
 39 (HIV); or
- 40 (B) convicted of an offense relating to controlled substances
 41 and the offense involved:

- 42 (i) the delivery by any person to another person; or
- 43 (ii) the use by any person on another person;

44 of a contaminated sharp (as defined in IC 16-41-16-2) or other
 45 paraphernalia that creates an epidemiologically demonstrated
 46 risk of transmission of HIV by involving percutaneous contact;
 47 and

48 (2) may order that a person undergo a screening test for ~~the~~
 49 ~~human immunodeficiency virus (HIV)~~ if the court has made a
 50 ~~finding of probable cause after a hearing under section 10.7 of~~
 51 ~~this chapter: a dangerous disease (as defined in IC 16-41-8-5)~~

1 **in accordance with IC 16-41-8-5.**

2 (b) If the screening test required by this section indicates the
3 presence of antibodies to HIV, the court shall order the person to
4 undergo a confirmatory test.

5 (c) If the confirmatory test confirms the presence of the HIV
6 antibodies, the court shall report the results to the state department of
7 health and require a probation officer to conduct a presentence
8 investigation to:

9 (1) obtain the medical record of the convicted person from the
10 state department of health under IC 16-41-8-1(a)(3); and

11 (2) determine whether the convicted person had received risk
12 counseling that included information on the behavior that
13 facilitates the transmission of HIV.

14 (d) A person who, in good faith:

15 (1) makes a report required to be made under this section; or

16 (2) testifies in a judicial proceeding on matters arising from the
17 report;

18 is immune from both civil and criminal liability due to the offering of
19 that report or testimony.

20 (e) The privileged communication between a husband and wife or
21 between a health care provider and the health care provider's patient is
22 not a ground for excluding information required under this section.

23 (f) A mental health service provider (as defined in IC 34-6-2-80)
24 who discloses information that must be disclosed to comply with this
25 section is immune from civil and criminal liability under Indiana
26 statutes that protect patient privacy and confidentiality.

27 SECTION 8. IC 35-38-1-10.6, AS AMENDED BY P.L.125-2007,
28 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 JULY 1, 2009]: Sec. 10.6. (a) The state department of health shall
30 notify victims of an offense relating to a criminal sexual act or an
31 offense relating to controlled substances if tests conducted under
32 section 10.5 ~~or 10.7~~ of this chapter **or IC 16-41-8-5** confirm that the
33 person tested had antibodies for the human immunodeficiency virus
34 (HIV).

35 (b) The state department of health shall provide counseling to
36 persons notified under this section.

37 SECTION 9. IC 35-42-4-7, AS AMENDED BY P.L.1-2005,
38 SECTION 228, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As used in this section,
39 "adoptive parent" has the meaning set forth in IC 31-9-2-6.

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

42 (c) **As used in this section, "charter school" has the meaning set
43 forth in IC 20-18-2-2.5.**

44 ~~(c)~~ (d) As used in this section, "child care worker" means a person
45 who:

46 (1) provides care, supervision, or instruction to a child within the
47 scope of the person's employment in a shelter care facility; ~~or~~

48 (2) is employed by a:

49 (A) school corporation; ~~or~~

50 (B) **charter school;**

- 1 ~~(B)~~ (C) nonpublic school; or
- 2 **(D) special education cooperative;**
- 3 attended by a child who is the victim of a crime under this
- 4 chapter; or
- 5 **(3) is:**
- 6 **(A) affiliated with a:**
- 7 **(i) school corporation;**
- 8 **(ii) charter school;**
- 9 **(iii) nonpublic school; or**
- 10 **(iv) special education cooperative;**
- 11 **attended by a child who is the victim of a crime under this**
- 12 **chapter, regardless of how or whether the person is**
- 13 **compensated;**
- 14 **(B) in a position of trust in relation to a child who attends**
- 15 **the school or cooperative;**
- 16 **(C) engaged in the provision of care or supervision to a**
- 17 **child who attends the school or cooperative; and**
- 18 **(D) at least four (4) years older than the child who is the**
- 19 **victim of a crime under this chapter.**

20 **The term does not include a student who attends the school or**
 21 **cooperative.**

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

24 **(f) As used in this section, "military recruiter" means a member**
 25 **of the armed forces of the United States (as defined in**
 26 **IC 20-33-10-2) or the Indiana National Guard whose primary job**
 27 **function, classification, or specialty is recruiting individuals to**
 28 **enlist with the armed forces of the United States or the Indiana**
 29 **National Guard.**

30 ~~(e)~~ **(g)** As used in this section, "nonpublic school" has the meaning
 31 set forth in IC 20-18-2-12.

32 ~~(f)~~ **(h)** As used in this section, "school corporation" has the meaning
 33 set forth in IC 20-18-2-16.

34 **(i) As used in this section, "special education cooperative" has**
 35 **the meaning set forth in IC 20-35-5-1.**

36 ~~(g)~~ **(j)** As used in this section, "stepparent" means an individual who
 37 is married to a child's custodial or noncustodial parent and is not the
 38 child's adoptive parent.

- 39 ~~(h)~~ **(k)** If a person who: ~~is:~~
- 40 (1) **is** at least eighteen (18) years of age; and
- 41 (2) **is:**
- 42 **(A) the:**
- 43 ~~(A)~~ **(i)** guardian, adoptive parent, adoptive grandparent,
- 44 custodian, or stepparent of; or
- 45 ~~(B)~~ **(ii)** child care worker for; or
- 46 **(B) a military recruiter who is attempting to enlist;**
- 47 a child at least sixteen (16) years of age but less than eighteen
- 48 (18) years of age;
- 49 engages with the child in sexual intercourse, deviate sexual conduct (as
- 50 defined in IC 35-41-1-9), or any fondling or touching with the intent to
- 51 arouse or satisfy the sexual desires of either the child or the adult, the

1 person commits child seduction, a Class D felony.

2 SECTION 10. IC 35-50-2-14, AS AMENDED BY P.L.173-2006,
3 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2009]: Sec. 14. **(a) As used in this section, "sex offense"**
5 **means a felony conviction:**

6 **(1) under IC 35-42-4-1 through IC 35-42-4-9 or under**
7 **IC 35-46-1-3;**

8 **(2) for an attempt or conspiracy to commit an offense**
9 **described in subdivision (1); or**

10 **(3) for an offense under the laws of another jurisdiction,**
11 **including a military court, that is substantially similar to an**
12 **offense described in subdivision (1).**

13 ~~(a)~~ **(b)** The state may seek to have a person sentenced as a repeat
14 sexual offender for a sex offense ~~under IC 35-42-4-1 through~~
15 ~~IC 35-42-4-9 or IC 35-46-1-3~~; or for an offense committed in another
16 jurisdiction that is substantially similar to a sex offense under
17 ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; **described in**
18 **subsection (a)(1) or (a)(2)** by alleging, on a page separate from the rest
19 of the charging instrument, that the person has accumulated one (1)
20 prior unrelated felony conviction for a sex offense ~~under IC 35-42-4-1~~
21 ~~through IC 35-42-4-9 or IC 35-46-1-3~~; or for an offense committed in
22 another jurisdiction that is substantially similar to a sex offense under
23 ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~. **described in**
24 **subsection (a).**

25 ~~(b)~~ **(c)** After a person has been convicted and sentenced for a felony
26 committed **described in subsection (a)(1) or (a)(2)** after sentencing
27 **having been sentenced** for a prior unrelated felony conviction under
28 ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; or for an offense
29 committed in another jurisdiction that is substantially similar to a sex
30 offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; **sex**
31 **offense described in subsection (a)**, the person has accumulated one
32 (1) prior unrelated felony **sex offense** conviction. However, a
33 conviction does not count for purposes of this subsection, if:

34 (1) it has been set aside; or

35 (2) it is ~~one~~ **a conviction** for which the person has been pardoned.

36 ~~(c)~~ **(d)** If the person was convicted of the **sex** offense in a jury trial,
37 the jury shall reconvene to hear evidence in the enhancement hearing.
38 If the trial was to the court, or the judgment was entered on a guilty
39 plea, the court alone shall hear evidence in the enhancement hearing.

40 ~~(d)~~ **(e)** A person is a repeat sexual offender if the jury (if the hearing
41 is by jury) or the court (if the hearing is to the court alone) finds that
42 the state has proved beyond a reasonable doubt that the person had
43 accumulated one (1) prior unrelated felony **sex offense** conviction.
44 ~~under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; or had
45 accumulated one ~~(1)~~ prior unrelated conviction for an offense
46 committed in another jurisdiction that is substantially similar to a sex
47 offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~.

48 ~~(e)~~ **(f)** The court may sentence a person found to be a repeat sexual
49 offender to an additional fixed term that is the advisory sentence for the
50 underlying offense. However, the additional sentence may not exceed
51 ten (10) years.

1 SECTION 11. IC 35-38-1-10.7 IS REPEALED [EFFECTIVE JULY
2 1, 2009].

3 SECTION 12. [EFFECTIVE JULY 1, 2009] **IC 35-42-4-7 and**
4 **IC 35-50-2-14, both as amended by this act, apply only to crimes**
5 **committed after June 30, 2009.**

(Reference is to ESB 181 as reprinted March 31, 2009.)

Conference Committee Report
on
Engrossed Senate Bill 181

Signed by:

Senator Lubbers
Chairperson

Representative Pierce

Senator Broden

Representative Koch

Senate Conferees

House Conferees