March 22, 2013

ENGROSSED
SENATE BILL No. 53

DIGEST OF SB 53 (Updated March 20, 2013 3:46 pm - DI 69)

Citations Affected: IC 35-31.5; IC 35-42.

Synopsis: Child seduction. Defines "professional relationship" and provides that a person who: (1) has a professional relationship with a child; (2) may exert undue influence on the child because of the professional relationship; and (3) uses the person's professional relationship to engage in sexual conduct with a child at least 16 years of age but less than 18 years of age; commits child seduction, a Class D felony.

Effective: July 1, 2013.

Boots, Young R Michael, Randolph
(HOUSE SPONSORS — BROWN T, THOMPSON, MORRISON)

January 7, 2013, read first time and referred to Committee on Corrections & Criminal Law.
January 15, 2013, amended, reported favorably — Do Pass.
January 22, 2013, read second time, ordered engrossed. Engrossed.
January 24, 2013, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

February 26, 2013, read first time and referred to Committee on Courts and Criminal Code.
March 21, 2013, amended, reported — Do Pass.

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March 22, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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ENGROSSED
SENATE BILL No. 53

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:

SECTION 1. IC 35-31.5-2-197.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 197.5. "Mental health professional", for purposes of IC 35-42-4-7, has the meaning set forth in IC 35-42-4-7(f).**

SECTION 2. IC 35-31.5-2-200, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 200. "Military recruiter", for purposes of IC 35-42-4-7, has the meaning set forth in ~~IC 35-42-4-7(f).~~ **IC 35-42-4-7(g).**

SECTION 3. IC 35-31.5-2-211, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 211. "Nonpublic school", for purposes of IC 35-42-4-7, has the meaning set forth in ~~IC 35-42-4-7(g).~~ **IC 35-42-4-7(h).**

SECTION 4. IC 35-31.5-2-248.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2013]: **Sec. 248.5. "Professional relationship", for purposes of IC 35-42-4-7, has the meaning set forth in IC 35-42-4-7(i).**

SECTION 5. IC 35-31.5-2-284, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 284. "School corporation", for purposes of IC 35-42-4-7, has the meaning set forth in ~~IC 35-42-4-7(h).~~ **IC 35-42-4-7(j).**

SECTION 6. IC 35-31.5-2-309, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 309. "Special education cooperative", for purposes of IC 35-42-4-7, has the meaning set forth in ~~IC 35-42-4-7(i).~~ **IC 35-42-4-7(k).**

SECTION 7. IC 35-31.5-2-313, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 313. "Stepparent", for purposes of IC 35-42-4-7, has the meaning set forth in ~~IC 35-42-4-7(j).~~ **IC 35-42-4-7(l).**

SECTION 8. IC 35-42-4-7, AS AMENDED BY P.L.114-2012, SECTION 138, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: 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, "charter school" has the meaning set forth in IC 20-18-2-2.5.

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

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

(2) is employed by a:

(A) school corporation;

(B) charter school;

(C) nonpublic school; or

(D) special education cooperative;

attended by a child who is the victim of a crime under this chapter; or

(3) is:

(A) affiliated with a:

(i) school corporation;

(ii) charter school;

(iii) nonpublic school; or

(iv) special education cooperative;

attended by a child who is the victim of a crime under this

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chapter, regardless of how or whether the person is compensated;

(B) in a position of trust in relation to a child who attends the school or cooperative;

(C) engaged in the provision of care or supervision to a child who attends the school or cooperative; and

(D) at least four (4) years older than the child who is the victim of a crime under this chapter.

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

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

(f) As used in this section, "mental health professional" means:

(1) a mental health counselor licensed under IC 25-23.6-8.5;

(2) a psychologist; or

(3) a psychiatrist.

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

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

(i) For purposes of this section, a person has a "professional relationship" with a child if:

(1) the person:

(A) has a license issued by the state or a political subdivision on the basis of the person's training and experience that authorizes the person to carry out a particular occupation; or

(B) is employed in a position in which counseling, supervising, instructing, or recruiting children forms a significant part of the employment; and

(2) the person has a relationship with a child that is based on the person's employment or licensed status as described in subdivision (1).

The term includes a relationship between a child and a mental health professional or military recruiter. The term does not include a coworker relationship between a child and a person described in subdivision (1)(B).

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

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

~~(j)~~ **(l)** 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.

~~(k)~~ **(m)** If a person who:

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

~~(2) is:~~

~~(A) the:~~

~~(i) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or~~

(2) is the:

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

(B) child care worker for;

~~(ii) child care worker for; or~~

~~(B) a military recruiter who is attempting to enlist;~~

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

engages with the child in sexual intercourse, deviate sexual conduct (as defined in IC 35-31.5-2-94), or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult, the person commits child seduction, a Class D felony.

(n) A person who:

(1) has or had a professional relationship with a child at least sixteen (16) but less than eighteen (18) years of age whom the person knows to be at least sixteen (16) but less than eighteen (18) years of age;

(2) may exert undue influence on the child because of the person's current or previous professional relationship with the child; and

(3) uses or exerts the person's professional relationship to engage in sexual intercourse, deviate sexual conduct, or any fondling or touching with a child at least sixteen (16) but less than eighteen (18) years of age with the intent to arouse or satisfy the sexual desires of the child or the adult;

commits child seduction, a Class D felony.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 53, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 4. IC 35-31.5-2-248.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 248.5. "Professional relationship", for purposes of IC 35-42-4-7, has the meaning set forth in IC 35-42-4-7.**".

Page 3, between lines 18 and 19, begin a new paragraph and insert:

"**(i) For purposes of this section, a person has a "professional relationship" with a child if:**

(1) the person:

(A) has a license issued by the state or a political subdivision on the basis of the person's training and experience that authorizes the person to carry out a particular occupation; or

(B) is employed in a position in which counseling, supervising, instructing, or recruiting children forms a significant part of the employment; and

(2) the person has a relationship with a child that is based on the person's employment or licensed status as described in subdivision (1).

The term includes a relationship between a child and a mental health professional or military recruiter. The term does not include a coworker relationship between a child and a person described in subdivision (1)(B).".

Page 3, line 19, delete "(i)" and insert "**(j)**".

Page 3, line 21, delete "(j)" and insert "**(k)**".

Page 3, line 23, delete "(k)" and insert "**(l)**".

Page 3, line 26, delete "(l)" and insert "**(m)**".

Page 3, strike lines 28 through 31, begin a new line block indented and insert:

"**(2) is the:**

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

(B) child care worker for;".

Page 3, line 32, strike "(ii) child care worker for;".

Page 3, line 33, strike "(B) a military recruiter who is attempting to

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enlist;".

Page 3, line 33, delete "or".

Page 3, delete line 34.

Page 3, line 40, delete ",".

Page 3, line 40, strike "a Class D felony.".

Page 3, after line 40, begin a new paragraph and insert:

"**(n) A person who:**

(1) has or had a professional relationship with a child at least sixteen (16) but less than eighteen (18) years of age whom the person knows to be at least sixteen (16) but less than eighteen (18) years of age;

(2) may exert undue influence on the child because of the person's current or previous professional relationship with the child; and

(3) uses or exerts the person's professional relationship to engage in sexual intercourse, deviate sexual conduct, or any fondling or touching with a child at least sixteen (16) but less than eighteen (18) years of age with the intent to arouse or satisfy the sexual desires of the child or the adult;

commits child seduction.

(o) In determining whether a person used or exerted the person's professional relationship with the child to engage in sexual intercourse, deviate sexual conduct, or any fondling or touching with the intent to arouse or satisfy the sexual desires of the child or the adult under subsection (n), the trier of fact may consider one (1) or more of the following:

(1) The age difference between the person and the child.

(2) Whether the person was in a position of trust with respect to the child.

(3) Whether the person's conduct with the child violated any ethical obligations of the person's profession or occupation.

(4) The authority that the person had over the child.

(5) Whether the person exploited any particular vulnerability of the child.

(6) Any other evidence relevant to the person's ability to exert undue influence of the child.

(p) Child seduction under this section is:

(1) a Class D felony if the person engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of the child or the adult; and

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(2) a Class C felony if the person engaged in sexual intercourse or deviate sexual conduct with the child.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 53 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 53, 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:

Page 2, line 3, delete "IC 35-42-4-7." and insert "**IC 35-42-4-7(i).**".

Page 2, line 8, delete "IC 35-42-4-7(i)." and insert "**IC 35-42-4-7(j).**".

Page 2, line 13, delete "IC 35-42-4-7(j)." and insert "**IC 35-42-4-7(k).**".

Page 2, line 17, delete "IC 35-42-4-7(k)." and insert "**IC 35-42-4-7(l).**".

Page 4, line 23, delete "seduction." and insert "seduction,".

Page 4, line 23, reset in roman "a Class D felony.".

Page 4, line 37, delete "seduction." and insert "**seduction, a Class D felony.**".

Page 4, delete lines 38 through 42.

Delete page 5.

and when so amended that said bill do pass.

(Reference is to SB 53 as printed January 16, 2013.)

MCMILLIN, Chair

Committee Vote: yeas 10, nays 0.

C o p y