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# SENATE BILL No. 430

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-42-4-9.5.

**Synopsis:** Improper sexual conduct. Provides that a person at least 21 years of age who fondles a child who is at least 16 years of age but less than 18 years of age commits improper sexual activity, a Class A misdemeanor. Increases the penalty to a Class D felony if the person engages in sexual intercourse with the child, and provides additional enhancements if the person is at least 25 years of age or the activity is forcible or not consensual. Provides for defenses under certain circumstances.

**Effective:** July 1, 2013.

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### Mrvan

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January 10, 2013, read first time and referred to Committee on Corrections & Criminal Law.

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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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# SENATE BILL No. 430



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 35-42-4-9.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2013]: **Sec. 9.5. (a) A person at least twenty-one (21) years of age**  
4 **who performs or submits to sexual intercourse or deviate sexual**  
5 **conduct with a child at least sixteen (16) years of age but less than**  
6 **eighteen (18) years of age commits improper sexual activity, a**  
7 **Class D felony. However, the offense is:**  
8 (1) a Class C felony if the offense is committed by a person at  
9 least twenty-five (25) years of age; and  
10 (2) a Class A felony if:  
11 (A) the offense is committed by using or threatening the  
12 use of deadly force;  
13 (B) the offense is committed while the person is armed with  
14 a deadly weapon;  
15 (C) the offense results in serious bodily injury; or  
16 (D) the commission of the offense is facilitated by  
17 furnishing the victim, without the victim's knowledge, with



1 a drug (as defined in IC 16-42-19-2(1)) or a controlled  
 2 substance (as defined in IC 35-48-1-9) or knowing that the  
 3 victim was furnished with the drug or controlled substance  
 4 without the victim's knowledge.

5 (b) A person at least twenty-one (21) years of age who, with a  
 6 child at least sixteen (16) years of age but less than eighteen (18)  
 7 years of age, performs or submits to any fondling or touching of  
 8 either the child or the older person, with intent to arouse or to  
 9 satisfy the sexual desires of either the child or the older person,  
 10 commits improper sexual activity, a Class A misdemeanor.  
 11 However, the offense is:

12 (1) a Class D felony if the offense is committed by a person at  
 13 least twenty-five (25) years of age; and

14 (2) a Class B felony if:

15 (A) the offense is committed by using or threatening the  
 16 use of deadly force;

17 (B) the offense is committed while the person is armed with  
 18 a deadly weapon; or

19 (C) the commission of the offense is facilitated by  
 20 furnishing the victim, without the victim's knowledge, with  
 21 a drug (as defined in IC 16-42-19-2(1)) or a controlled  
 22 substance (as defined in IC 35-48-1-9) or knowing that the  
 23 victim was furnished with the drug or controlled substance  
 24 without the victim's knowledge.

25 (c) It is a defense to a prosecution under this section that the  
 26 accused reasonably believed that the child was at least eighteen  
 27 (18) years of age at the time of the conduct giving rise to the  
 28 prosecution. However, this subsection does not apply to an offense  
 29 described in subsection (a)(2) or (b)(2).

30 (d) It is a defense to a prosecution under this section that the  
 31 child was married to the accused at the time of, or at any time  
 32 before, the conduct giving rise to the prosecution. However, this  
 33 subsection does not apply to an offense described in subsection  
 34 (a)(2) or (b)(2).

35 (e) It is a defense to a prosecution under this section if all the  
 36 following apply:

37 (1) The accused is not more than five (5) years older than the  
 38 victim.

39 (2) The relationship between the accused and the victim was  
 40 a dating relationship or an ongoing personal relationship. The  
 41 term "ongoing personal relationship" does not include a  
 42 family relationship.

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- (3) The crime:**
  - (A) was not committed by a person who is at least twenty-five (25) years of age;**
  - (B) was not committed by using or threatening the use of deadly force;**
  - (C) was not committed by a person armed with a deadly weapon;**
  - (D) did not result in serious bodily injury;**
  - (E) was not 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; and**
  - (F) was not committed by a person having a position of authority or substantial influence over the victim.**
- (4) The accused has not committed another sex offense (as defined in IC 11-8-8-5.2), including a delinquent act that would be a sex offense if committed by an adult, against any other person.**

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