

## SENATE BILL No. 170

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 11-8-8; IC 35-44.1-3-10.

**Synopsis:** Sexual misconduct by a service provider. Makes it sexual misconduct, a Level 5 felony, for a service provider to knowingly or intentionally engage in sexual intercourse or other sexual conduct with a person who is subject to lawful supervision by: (1) the department of correction; (2) a court; (3) a probation department; or (4) a community corrections program, a community transition program, or another similar program. Makes it sexual misconduct, a Level 4 felony, for a service provider who is at least 18 years of age to knowingly or intentionally engage in sexual intercourse or other sexual conduct with a person who is: (1) less than 18 years of age; and (2) subject to lawful supervision by the department of correction, a court, a probation department, or a community corrections program, a community transition program, or another similar program. Makes conforming amendments.

**Effective:** July 1, 2014.

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## Young R Michael

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January 8, 2014, read first time and referred to Committee on Corrections & Criminal Law.

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Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

# SENATE BILL No. 170

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 11-8-8-4.5, AS AMENDED BY P.L.214-2013,  
2 SECTION 4, AND AS AMENDED BY P.L.158-2013, SECTION 171,  
3 IS CORRECTED AND AMENDED TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 2014]: Sec. 4.5. (a) Except as provided in  
5 section 22 of this chapter, as used in this chapter, "sex offender" means  
6 a person convicted of any of the following offenses:  
7 (1) Rape (IC 35-42-4-1).  
8 (2) Criminal deviate conduct (IC 35-42-4-2) ~~(repealed (before its~~  
9 ~~repeal). (before its repeal on July 1, 2014).~~  
10 (3) Child molesting (IC 35-42-4-3).  
11 (4) Child exploitation (IC 35-42-4-4(b)).  
12 (5) Vicarious sexual gratification (including performing sexual  
13 conduct in the presence of a minor) (IC 35-42-4-5).  
14 (6) Child solicitation (IC 35-42-4-6).  
15 (7) Child seduction (IC 35-42-4-7).  
16 (8) Sexual misconduct with a minor (**IC 35-42-4-9**) as a Class A,



1 Class B, or Class C *felony* (for a crime committed before July 1,  
 2 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a crime  
 3 committed after June 30, 2014), (~~IC 35-42-4-9~~); unless:

4 (A) the person is convicted of sexual misconduct with a minor  
 5 as a Class C *felony* (for a crime committed before July 1,  
 6 2014) or a Level 5 felony (for a crime committed after June  
 7 30, 2014);

8 (B) the person is not more than:

9 (i) four (4) years older than the victim if the offense was  
 10 committed after June 30, 2007; or

11 (ii) five (5) years older than the victim if the offense was  
 12 committed before July 1, 2007; and

13 (C) the sentencing court finds that the person should not be  
 14 required to register as a sex offender.

15 (9) Incest (IC 35-46-1-3).

16 (10) Sexual battery (IC 35-42-4-8).

17 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen  
 18 (18) years of age, and the person who kidnapped the victim is not  
 19 the victim's parent or guardian.

20 (12) Criminal confinement (IC 35-42-3-3), if the victim is less  
 21 than eighteen (18) years of age, and the person who confined or  
 22 removed the victim is not the victim's parent or guardian.

23 (13) Possession of child pornography (IC 35-42-4-4(c)).

24 (14) Promoting prostitution (IC 35-45-4-4) as a Class B *felony*  
 25 (for a crime committed before July 1, 2014) or a Level 4 felony  
 26 (for a crime committed after June 30, 2014).

27 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the  
 28 victim is less than eighteen (18) years of age.

29 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(c)).

30 (17) Human trafficking (IC 35-42-3.5-1(d)(3)) if the victim is less  
 31 than eighteen (18) years of age.

32 (18) Sexual misconduct by a service provider with a detained **or**  
 33 **supervised** child (IC 35-44.1-3-10(c)).

34 (19) An attempt or conspiracy to commit a crime listed in  
 35 subdivisions (1) through (18).

36 (20) A crime under the laws of another jurisdiction, including a  
 37 military court, that is substantially equivalent to any of the  
 38 offenses listed in subdivisions (1) through (19).

39 (b) The term includes:

40 (1) a person who is required to register as a sex offender in any  
 41 jurisdiction; and

42 (2) a child who has committed a delinquent act and who:



- 1 (A) is at least fourteen (14) years of age;  
 2 (B) is on probation, is on parole, is discharged from a facility  
 3 by the department of correction, is discharged from a secure  
 4 private facility (as defined in IC 31-9-2-115), or is discharged  
 5 from a juvenile detention facility as a result of an adjudication  
 6 as a delinquent child for an act that would be an offense  
 7 described in subsection (a) if committed by an adult; and  
 8 (C) is found by a court by clear and convincing evidence to be  
 9 likely to repeat an act that would be an offense described in  
 10 subsection (a) if committed by an adult.

11 (c) In making a determination under subsection (b)(2)(C), the court  
 12 shall consider expert testimony concerning whether a child is likely to  
 13 repeat an act that would be an offense described in subsection (a) if  
 14 committed by an adult.

15 SECTION 2. IC 11-8-8-5, AS AMENDED BY P.L.13-2013,  
 16 SECTION 42, AS AMENDED BY P.L.214-2013, SECTION 5, AND  
 17 AS AMENDED BY P.L.158-2013, SECTION 172, IS CORRECTED  
 18 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 19 2014]: Sec. 5. (a) Except as provided in section 22 of this chapter, as  
 20 used in this chapter, "sex or violent offender" means a person convicted  
 21 of any of the following offenses:

- 22 (1) Rape (IC 35-42-4-1).  
 23 (2) Criminal deviate conduct (IC 35-42-4-2) *(before its repeal)*.  
 24 ~~on July 1, 2014 (repealed)~~.  
 25 (3) Child molesting (IC 35-42-4-3).  
 26 (4) Child exploitation (IC 35-42-4-4(b)).  
 27 (5) Vicarious sexual gratification (including performing sexual  
 28 conduct in the presence of a minor) (IC 35-42-4-5).  
 29 (6) Child solicitation (IC 35-42-4-6).  
 30 (7) Child seduction (IC 35-42-4-7).  
 31 (8) Sexual misconduct with a minor (**IC 35-42-4-9**) as a Class A,  
 32 Class B, or Class C *felony (for a crime committed before July 1,*  
 33 *2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a crime*  
 34 *committed after June 30, 2014), (~~IC 35-42-4-9~~); unless:*  
 35 (A) the person is convicted of sexual misconduct with a minor  
 36 as a Class C felony *(for a crime committed before July 1,*  
 37 *2014) or a Level 5 felony (for a crime committed after June*  
 38 *30, 2014);*  
 39 (B) the person is not more than:  
 40 (i) four (4) years older than the victim if the offense was  
 41 committed after June 30, 2007; or  
 42 (ii) five (5) years older than the victim if the offense was



- 1 committed before July 1, 2007; and  
 2 (C) the sentencing court finds that the person should not be  
 3 required to register as a sex offender.  
 4 (9) Incest (IC 35-46-1-3).  
 5 (10) Sexual battery (IC 35-42-4-8).  
 6 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen  
 7 (18) years of age, and the person who kidnapped the victim is not  
 8 the victim's parent or guardian.  
 9 (12) Criminal confinement (IC 35-42-3-3), if the victim is less  
 10 than eighteen (18) years of age, and the person who confined or  
 11 removed the victim is not the victim's parent or guardian.  
 12 (13) Possession of child pornography (IC 35-42-4-4(c)).  
 13 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony  
 14 *(for a crime committed before July 1, 2014) or a Level 4 felony*  
 15 *(for a crime committed after June 30, 2014).*  
 16 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the  
 17 victim is less than eighteen (18) years of age.  
 18 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(c)).  
 19 (17) Human trafficking (IC 35-42-3.5-1(d)(3)) if the victim is less  
 20 than eighteen (18) years of age.  
 21 (18) Murder (IC 35-42-1-1).  
 22 (19) Voluntary manslaughter (IC 35-42-1-3).  
 23 (20) Sexual misconduct by a service provider with a detained **or**  
 24 **supervised** child (IC 35-44.1-3-10(c)).  
 25 (21) An attempt or conspiracy to commit a crime listed in  
 26 subdivisions (1) through (20).  
 27 (22) A crime under the laws of another jurisdiction, including a  
 28 military court, that is substantially equivalent to any of the  
 29 offenses listed in subdivisions (1) through (21).  
 30 (b) The term includes:  
 31 (1) a person who is required to register as a sex or violent  
 32 offender in any jurisdiction; and  
 33 (2) a child who has committed a delinquent act and who:  
 34 (A) is at least fourteen (14) years of age;  
 35 (B) is on probation, is on parole, is discharged from a facility  
 36 by the department of correction, is discharged from a secure  
 37 private facility (as defined in IC 31-9-2-115), or is discharged  
 38 from a juvenile detention facility as a result of an adjudication  
 39 as a delinquent child for an act that would be an offense  
 40 described in subsection (a) if committed by an adult; and  
 41 (C) is found by a court by clear and convincing evidence to be  
 42 likely to repeat an act that would be an offense described in



1 subsection (a) if committed by an adult.

2 (c) In making a determination under subsection (b)(2)(C), the court  
3 shall consider expert testimony concerning whether a child is likely to  
4 repeat an act that would be an offense described in subsection (a) if  
5 committed by an adult.

6 SECTION 3. IC 35-44.1-3-10, AS AMENDED BY P.L.158-2013,  
7 SECTION 516, IS AMENDED TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) As used in this section,  
9 "service provider" means a public servant or other person employed by  
10 a governmental entity or another person who provides goods or  
11 services to a person who is subject to lawful detention **or supervision.**

12 (b) A service provider who knowingly or intentionally engages in  
13 sexual intercourse or other sexual conduct (as defined in  
14 IC 35-31.5-2-221.5) with a person who is subject to lawful:

15 (1) detention; **or**

16 (2) **supervision by:**

17 (A) **the department of correction;**

18 (B) **a court;**

19 (C) **a probation department; or**

20 (D) **a community corrections program, a community**  
21 **transition program, or another similar program;**

22 commits sexual misconduct, a Level 5 felony.

23 (c) A service provider at least eighteen (18) years of age who  
24 knowingly or intentionally engages in sexual intercourse or other  
25 sexual conduct (as defined in IC 35-31.5-2-221.5) with a person who  
26 is:

27 (1) less than eighteen (18) years of age; and

28 (2) subject to lawful:

29 (A) detention; **or**

30 (B) **supervision by:**

31 (i) **the department of correction;**

32 (ii) **a court;**

33 (iii) **a probation department; or**

34 (iv) **a community corrections program, a community**  
35 **transition program, or another similar program;**

36 commits sexual misconduct, a Level 4 felony.

37 (d) It is not a defense that an act described in subsection (b) or (c)  
38 was consensual.

39 (e) This section does not apply to sexual intercourse or other sexual  
40 conduct (as defined in IC 35-31.5-2-221.5) between spouses.

