



January 31, 2014

SENATE BILL No. 170

DIGEST OF SB 170 (Updated January 28, 2014 2:42 pm - DI 106)

Citations Affected: IC 11-8.

Synopsis: Sexual misconduct by a service provider. Defines "service provider" and "lawful supervision," and 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. 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. Makes conforming amendments.

Effective: July 1, 2014.

Young R Michael, Randolph

January 8, 2014, read first time and referred to Committee on Corrections & Criminal Law.
January 30, 2014, amended, reported favorably — Do Pass.

SB 170—LS 6717/DI 69



January 31, 2014

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,

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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 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 35-31.5-2-186.2 IS ADDED TO THE INDIANA
7 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2014]: **Sec. 186.2. "Lawful supervision", for**
9 **purposes of IC 35-44.1-3-10, has the meaning set forth in**
10 **IC 35-44.1-3-10.**

11 SECTION 4. IC 35-44.1-3-10, AS AMENDED BY P.L.158-2013,
12 SECTION 516, IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) ~~As used in this section,~~ **The**
14 **following definitions apply throughout this section:**

15 (1) **"Lawful supervision" means supervision by:**
16 (A) **the department of correction;**
17 (B) **a court;**
18 (C) **a probation department;**
19 (D) **a community corrections program, a community**
20 **transition program, or another similar program; or**
21 (E) **parole.**

22 (2) **"Service provider" means:**
23 (A) **with respect to a person subject to lawful detention:**
24 (i) **a public servant; or other**
25 (ii) **a person employed by a governmental entity; or another**
26 (iii) **a person who provides goods or services to a person**
27 **who is subject to lawful detention; and**
28 (B) **with respect to a person subject to lawful supervision:**
29 (i) **a public servant whose official duties include the**
30 **supervision of the person subject to lawful supervision;**
31 (ii) **a person employed by a governmental entity to**
32 **provide supervision for the person subject to lawful**
33 **supervision; or**
34 (iii) **a person who is employed by or contracts with a**
35 **governmental entity to provide treatment or other**
36 **services to the person subject to lawful supervision as a**
37 **condition of the person's lawful supervision.**

38 (b) A service provider who knowingly or intentionally engages in
39 sexual intercourse or other sexual conduct (as defined in
40 IC 35-31.5-2-221.5) with a person who is subject to lawful detention
41 **or lawful supervision** commits sexual misconduct, a Level 5 felony.

42 (c) A service provider at least eighteen (18) years of age who



1 knowingly or intentionally engages in sexual intercourse or other
 2 sexual conduct (as defined in IC 35-31.5-2-221.5) with a person who
 3 is:

- 4 (1) less than eighteen (18) years of age; and
 5 (2) subject to lawful detention **or lawful supervision;**
 6 commits sexual misconduct, a Level 4 felony.

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

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

11 "SECTION 3. IC 35-31.5-2-186.2 IS ADDED TO THE INDIANA
 12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2014]: **Sec. 186.2. "Lawful supervision", for**
 14 **purposes of IC 35-44.1-3-10, has the meaning set forth in**
 15 **IC 35-44.1-3-10.**

16 SECTION 4. IC 35-44.1-3-10, AS AMENDED BY P.L.158-2013,
 17 SECTION 516, IS AMENDED TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) ~~As used in this section,~~ **The**
 19 **following definitions apply throughout this section:**

20 (1) **"Lawful supervision" means supervision by:**

- 21 (A) **the department of correction;**
 22 (B) **a court;**
 23 (C) **a probation department;**
 24 (D) **a community corrections program, a community**
 25 **transition program, or another similar program; or**
 26 (E) **parole.**

27 (2) **"Service provider" means:**

28 (A) **with respect to a person subject to lawful detention:**

- 29 (i) ~~a public servant; or other~~
 30 (ii) ~~a person employed by a governmental entity; or another~~
 31 (iii) **a person who provides goods or services to a person**
 32 **who is subject to lawful detention; and**

33 (B) **with respect to a person subject to lawful supervision:**

- 34 (i) **a public servant whose official duties include the**
 35 **supervision of the person subject to lawful supervision;**
 36 (ii) **a person employed by a governmental entity to**
 37 **provide supervision for the person subject to lawful**
 38 **supervision; or**
 39 (iii) **a person who is employed by or contracts with a**
 40 **governmental entity to provide treatment or other**
 41 **services to the person subject to lawful supervision as a**
 42 **condition of the person's lawful supervision.**



- 1 (b) A service provider who knowingly or intentionally engages in
2 sexual intercourse or other sexual conduct (as defined in
3 IC 35-31.5-2-221.5) with a person who is subject to lawful detention
4 **or lawful supervision** commits sexual misconduct, a Level 5 felony.
- 5 (c) A service provider at least eighteen (18) years of age who
6 knowingly or intentionally engages in sexual intercourse or other
7 sexual conduct (as defined in IC 35-31.5-2-221.5) with a person who
8 is:
- 9 (1) less than eighteen (18) years of age; and
10 (2) subject to lawful detention **or lawful supervision;**
11 commits sexual misconduct, a Level 4 felony.
- 12 (d) It is not a defense that an act described in subsection (b) or (c)
13 was consensual.
- 14 (e) This section does not apply to sexual intercourse or other sexual
15 conduct (as defined in IC 35-31.5-2-221.5) between spouses.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 170, 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 5, delete lines 6 through 40, begin a new paragraph, and insert:

"SECTION 3. IC 35-31.5-2-186.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 186.2. "Lawful supervision", for purposes of IC 35-44.1-3-10, has the meaning set forth in IC 35-44.1-3-10.**

SECTION 4. IC 35-44.1-3-10, AS AMENDED BY P.L.158-2013, SECTION 516, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) ~~As used in this section;~~ **The following definitions apply throughout this section:**

(1) "Lawful supervision" means supervision by:

(A) the department of correction;

(B) a court;

(C) a probation department;

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

(E) parole.

(2) "Service provider" means:

(A) with respect to a person subject to lawful detention:

(i) a public servant; ~~or other~~

(ii) a person employed by a governmental entity; ~~or another~~

(iii) a person who provides goods or services to a person who is subject to lawful detention; ~~and~~

(B) with respect to a person subject to lawful supervision:

(i) a public servant whose official duties include the supervision of the person subject to lawful supervision;

(ii) a person employed by a governmental entity to provide supervision for the person subject to lawful supervision; or

(iii) a person who is employed by or contracts with a governmental entity to provide treatment or other services to the person subject to lawful supervision as a

condition of the person's lawful supervision.

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



or lawful supervision commits sexual misconduct, a Level 5 felony.

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

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

(2) subject to lawful detention **or lawful supervision;**

commits sexual misconduct, a Level 4 felony.

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

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

and when so amended that said bill do pass.

(Reference is to SB 170 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 9, Nays 0.

