



February 6, 2015

SENATE BILL No. 363

DIGEST OF SB 363 (Updated February 3, 2015 12:35 pm - DI 106)

Citations Affected: IC 29-3; IC 35-31.5; IC 35-42.

Synopsis: Child molesting. Defines "dangerous sexually transmitted disease" and increases the penalty for child molesting from a Level 3 felony to a Level 2 felony if the offense results in the transmission of a dangerous sexually transmitted disease. Makes a technical correction.

Effective: July 1, 2015.

Broden, Young R Michael

January 8, 2015, read first time and referred to Committee on Corrections & Criminal Law.
February 5, 2015, amended, reported favorably — Do Pass.

SB 363—LS 6274/DI 106



February 6, 2015

First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 363

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 29-3-7-7, AS AMENDED BY P.L.168-2014,
2 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 7. A court may not appoint a person to serve as
4 the guardian or permit a person to continue to serve as a guardian if the
5 person:
6 (1) is a sexually violent predator (as described in IC 35-38-1-7.5);
7 (2) was at least eighteen (18) years of age at the time of the
8 offense and was convicted of child molesting (IC 35-42-4-3) or
9 sexual misconduct with a minor (IC 35-42-4-9) against a child
10 less than sixteen (16) years of age:
11 (A) by using or threatening the use of deadly force;
12 (B) while armed with a deadly weapon; or
13 (C) that resulted in serious bodily injury; or
14 (3) was less than eighteen (18) years of age at the time of the
15 offense and was convicted as an adult of:
16 (A) an offense described in:

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- 1 (i) IC 35-42-4-1;
 2 (ii) IC 35-42-4-2 (before its repeal);
 3 (iii) IC 35-42-4-3 as a Class A or Class B felony (for crimes
 4 committed before July 1, 2014) or as a **Level 1**, Level 2,
 5 **Level 3**, or Level 4 felony (for crimes committed after June
 6 30, 2014);
 7 (iv) IC 35-42-4-5(a)(1);
 8 (v) IC 35-42-4-5(a)(2);
 9 (vi) IC 35-42-4-5(a)(3);
 10 (vii) IC 35-42-4-5(b)(1) as a Class A or Class B felony (for
 11 crimes committed before July 1, 2014) or as a Level 2, Level
 12 3, or Level 4 felony (for crimes committed after June 30,
 13 2014);
 14 (viii) IC 35-42-4-5(b)(2); or
 15 (ix) IC 35-42-4-5(b)(3) as a Class A or Class B felony (for
 16 crimes committed before July 1, 2014) or as a Level 2, Level
 17 3, or Level 4 felony (for crimes committed after June 30,
 18 2014);
 19 (B) an attempt or conspiracy to commit a crime listed in clause
 20 (A); or
 21 (C) a crime under the laws of another jurisdiction, including a
 22 military court, that is substantially equivalent to any of the
 23 offenses listed in clauses (A) and (B).

24 SECTION 2. IC 35-31.5-2-83.3 IS ADDED TO THE INDIANA
 25 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2015]: **Sec. 83.3. "Dangerous sexually**
 27 **transmitted disease" means:**

- 28 (1) **the human immunodeficiency virus (HIV);**
 29 (2) **herpes;**
 30 (3) **gonorrhea;**
 31 (4) **syphilis;**
 32 (5) **chlamydia; or**
 33 (6) **hepatitis.**

34 SECTION 3. IC 35-42-4-3, AS AMENDED BY P.L.168-2014,
 35 SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2015]: Sec. 3. (a) A person who, with a child under fourteen
 37 (14) years of age, knowingly or intentionally performs or submits to
 38 sexual intercourse or other sexual conduct (as defined in
 39 IC 35-31.5-2-221.5) commits child molesting, a Level 3 felony.
 40 However, the offense is a **Level 2 felony if it results in the**
 41 **transmission of a dangerous sexually transmitted disease, and a**
 42 Level 1 felony if:



- 1 (1) it is committed by a person at least twenty-one (21) years of
2 age;
- 3 (2) it is committed by using or threatening the use of deadly force
4 or while armed with a deadly weapon;
- 5 (3) it results in serious bodily injury; or
- 6 (4) the commission of the offense is facilitated by furnishing the
7 victim, without the victim's knowledge, with a drug (as defined in
8 IC 16-42-19-2(1)) or a controlled substance (as defined in
9 IC 35-48-1-9) or knowing that the victim was furnished with the
10 drug or controlled substance without the victim's knowledge.
- 11 (b) A person who, with a child under fourteen (14) years of age,
12 performs or submits to any fondling or touching, of either the child or
13 the older person, with intent to arouse or to satisfy the sexual desires of
14 either the child or the older person, commits child molesting, a Level
15 4 felony. However, the offense is a Level 2 felony if:
- 16 (1) it is committed by using or threatening the use of deadly force;
- 17 (2) it is committed while armed with a deadly weapon; or
- 18 (3) the commission of the offense is facilitated by furnishing the
19 victim, without the victim's knowledge, with a drug (as defined in
20 IC 16-42-19-2(1)) or a controlled substance (as defined in
21 IC 35-48-1-9) or knowing that the victim was furnished with the
22 drug or controlled substance without the victim's knowledge.
- 23 (c) A person may be convicted of attempted child molesting of an
24 individual at least fourteen (14) years of age if the person believed the
25 individual to be a child under fourteen (14) years of age at the time the
26 person attempted to commit the offense.
- 27 (d) It is a defense to a prosecution under this section that the
28 accused person reasonably believed that the child was sixteen (16)
29 years of age or older at the time of the conduct, unless:
- 30 (1) the offense is committed by using or threatening the use of
31 deadly force or while armed with a deadly weapon;
- 32 (2) the offense results in serious bodily injury; or
- 33 (3) the commission of the offense is facilitated by furnishing the
34 victim, without the victim's knowledge, with a drug (as defined in
35 IC 16-42-19-2(1)) or a controlled substance (as defined in
36 IC 35-48-1-9) or knowing that the victim was furnished with the
37 drug or controlled substance without the victim's knowledge.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 363, 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 the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 29-3-7-7, AS AMENDED BY P.L.168-2014, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. A court may not appoint a person to serve as the guardian or permit a person to continue to serve as a guardian if the person:

- (1) is a sexually violent predator (as described in IC 35-38-1-7.5);
- (2) was at least eighteen (18) years of age at the time of the offense and was convicted of child molesting (IC 35-42-4-3) or sexual misconduct with a minor (IC 35-42-4-9) against a child less than sixteen (16) years of age:
 - (A) by using or threatening the use of deadly force;
 - (B) while armed with a deadly weapon; or
 - (C) that resulted in serious bodily injury; or
- (3) was less than eighteen (18) years of age at the time of the offense and was convicted as an adult of:
 - (A) an offense described in:
 - (i) IC 35-42-4-1;
 - (ii) IC 35-42-4-2 (before its repeal);
 - (iii) IC 35-42-4-3 as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a **Level 1**, **Level 2**, **Level 3**, or Level 4 felony (for crimes committed after June 30, 2014);
 - (iv) IC 35-42-4-5(a)(1);
 - (v) IC 35-42-4-5(a)(2);
 - (vi) IC 35-42-4-5(a)(3);
 - (vii) IC 35-42-4-5(b)(1) as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2, Level 3, or Level 4 felony (for crimes committed after June 30, 2014);
 - (viii) IC 35-42-4-5(b)(2); or
 - (ix) IC 35-42-4-5(b)(3) as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2, Level 3, or Level 4 felony (for crimes committed after June 30,



- 2014);
- (B) an attempt or conspiracy to commit a crime listed in clause (A); or
- (C) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) and (B)."

Page 2, line 1, after "a" insert "**Level 2 felony if it results in the transmission of a dangerous sexually transmitted disease, and a**".

Page 2, line 6, delete "in:" and insert "in".

Page 2, line 7, delete "(A)".

Page 2, run in lines 6 through 7.

Page 2, delete lines 8 through 9.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 363 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 10, Nays 0.

