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# SENATE BILL No. 207

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-2-5-15; IC 20-5-2-7; IC 20-6.1; IC 31-33-5; IC 34-30-2-84.5; IC 35-42-4-7.

**Synopsis:** School employees and children. Enables school corporations to obtain limited and national criminal history checks for all employees rather than only for new employees. Makes conforming changes in the policies that schools may adopt concerning criminal history checks. Enables the professional standards board to suspend a teacher's license for certain noncriminal behaviors. Requires certain officials to report when a teacher is arrested for or convicted of a crime or is dismissed or resigns because of certain behaviors. Provides civil immunity for making these reports. Provides uniformity in the grounds for which licenses may be revoked and the contracts of permanent and semipermanent teachers may be canceled concerning sexual misconduct with a minor. Enables teachers charged with certain crimes to be suspended without salary. Requires certain persons to report to authorities when they believe that a child is the victim of certain crimes. Changes the law concerning seduction of a child at least 16 years of age to add behaviors that constitute the offense and to expand coverage to all employees of a child's school.

**Effective:** July 1, 2002.

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## Clark, Lubbers

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January 7, 2002, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

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# SENATE BILL No. 207



A BILL FOR AN ACT to amend the Indiana Code concerning education.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-2-5-15, AS ADDED BY P.L.272-2001,  
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2002]: Sec. 15. (a) The department is designated as the  
4 authorized agency to receive requests for, process, and disseminate the  
5 results of national criminal history background checks that comply with  
6 this section and 42 U.S.C. 5119a.

7 (b) A qualified entity may contact the department to request a  
8 national criminal history background check on any of the following  
9 persons:

10 (1) A person who seeks to be or is employed with the qualified  
11 entity. **Unless the qualified entity is a school corporation**  
12 **making a request under IC 20-5-2-7**, a request under this  
13 subdivision must be made not later than three (3) months after the  
14 person is initially employed by the qualified entity.

15 (2) A person who seeks to volunteer or is a volunteer with the  
16 qualified entity. A request under this subdivision must be made  
17 not later than three (3) months after the person initially volunteers



1 with the qualified entity.

2 (c) A qualified entity must submit a request under subsection (b) in  
3 the form required by the department and provide a set of the person's  
4 fingerprints and any required fees with the request.

5 (d) If a qualified entity makes a request in conformity with  
6 subsection (b), the department shall submit the set of fingerprints  
7 provided with the request to the Federal Bureau of Investigation for a  
8 national criminal history background check for convictions described  
9 in IC 20-5-2-8. The department shall respond to the request in  
10 conformity with:

- 11 (1) the requirements of 42 U.S.C. 5119a; and  
12 (2) the regulations prescribed by the United States attorney  
13 general under 42 U.S.C. 5119a.

14 (e) This subsection applies to a qualified entity that:

- 15 (1) is not a school corporation or a special education cooperative;  
16 or  
17 (2) is a school corporation or a special education cooperative and  
18 seeks a national criminal history background check for a  
19 volunteer.

20 After receiving the results of a national criminal history background  
21 check from the Federal Bureau of Investigation, the department shall  
22 make a determination whether the applicant has been convicted of an  
23 offense described in IC 20-5-2-8 and convey the determination to the  
24 requesting qualified entity.

25 (f) This subsection applies to a qualified entity that:

- 26 (1) is a school corporation or a special education cooperative; and  
27 (2) seeks a national criminal history background check for the  
28 purposes determining whether to employ or continue the  
29 employment of a certificated employee or a noncertificated  
30 employee of a school corporation or an equivalent position with  
31 a special education cooperative.

32 After receiving the results of a national criminal history background  
33 check from the Federal Bureau of Investigation, the department may  
34 exchange identification records concerning convictions for offenses  
35 described in IC 20-5-2-8 with the school corporation or special  
36 education cooperative solely for purposes of making an employment  
37 determination. The exchange may be made only for the official use of  
38 the officials with authority to make the employment determination. The  
39 exchange is subject to the restrictions on dissemination imposed under  
40 P.L.92-544, (86 Stat. 1115) (1972).

41 SECTION 2. IC 20-5-2-7, AS AMENDED BY P.L.272-2001,  
42 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2002]: Sec. 7. (a) A school corporation, including a school  
 2 township, shall adopt a policy concerning criminal history information for  
 3 individuals who:

4 (1) ~~apply~~ **are noncertificated or certificated employees of the**  
 5 **school corporation;**

6 (2) **are applicants** for:

7 (A) **noncertificated or certificated** employment with the  
 8 school corporation; or

9 (B) employment with an entity with which the school  
 10 corporation contracts for services;

11 ~~(2)~~ (3) seek to enter into a contract to provide services to the  
 12 school corporation; or

13 ~~(3)~~ (4) are employed by an entity that seeks to enter into a  
 14 contract to provide services to the school corporation;

15 if the individuals are likely to have direct, ongoing contact with  
 16 children within the scope of the individuals' employment.

17 (b) A school corporation, including a school township, shall  
 18 administer a policy adopted under this section uniformly for all  
 19 individuals to whom the policy applies. A policy adopted under this  
 20 section may require any of the following:

21 (1) The school corporation, including a school township, may  
 22 request limited criminal history information concerning each  
 23 applicant **or individual who is hired** for noncertificated  
 24 employment or certificated employment from a local or state law  
 25 enforcement agency. ~~before or not later than three (3) months~~  
 26 ~~after the applicant's employment by the school corporation:~~

27 (2) Each individual hired for noncertificated employment or  
 28 certificated employment may be required to provide a written  
 29 consent for the school corporation to request under IC 5-2-5:

30 (A) limited criminal history information; or

31 (B) a national criminal history background check;

32 concerning the individual. ~~before or not later than three (3)~~  
 33 ~~months after the individual's employment by the school~~  
 34 ~~corporation:~~ The school corporation may require the individual to  
 35 provide a set of fingerprints and pay any fees required for a  
 36 national criminal history background check.

37 (3) Each individual hired for noncertificated employment may be  
 38 required ~~at the time the individual is hired~~ to submit a certified  
 39 copy of the individual's limited criminal history (as defined in  
 40 IC 5-2-5-1(1)) to the school corporation.

41 (4) Each individual hired for noncertificated employment may be  
 42 required ~~at the time the individual is hired~~ to:

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- 1 (A) submit a request to the Indiana central repository for  
 2 limited criminal history information under IC 5-2-5;  
 3 (B) obtain a copy of the individual's limited criminal history;  
 4 and  
 5 (C) submit to the school corporation the individual's limited  
 6 criminal history and a document verifying a disposition (as  
 7 defined in IC 5-2-5-1(6)) that does not appear on the limited  
 8 criminal history.
- 9 (5) Each applicant **or individual who is hired** for noncertificated  
 10 employment or certificated employment may be required ~~at the~~  
 11 ~~time the individual applies~~ to answer questions concerning the  
 12 individual's limited criminal history. The failure **of an employee**  
 13 to answer honestly questions asked under this subdivision is  
 14 grounds for termination of the employee's employment.
- 15 (6) Each individual that:  
 16 (A) seeks to enter into a contract to provide services to a  
 17 school corporation; or  
 18 (B) is employed by an entity that seeks to enter into a contract  
 19 with a school corporation;  
 20 may be required at the time the contract is formed to comply with  
 21 the procedures described in subdivision (4)(A) and (4)(B). The  
 22 school corporation either may require that the individual or the  
 23 contractor comply with the procedures described in subdivision  
 24 (4)(C) or (5). Failure to comply with subdivisions (4) and (5), as  
 25 required by the school corporation, is grounds for termination of  
 26 the contract.
- 27 (c) If an individual is required to obtain a limited criminal history  
 28 under this section, the individual is responsible for all costs associated  
 29 with obtaining the limited criminal history.
- 30 (d) Information obtained under this section must be used in  
 31 accordance with IC 5-2-5-6 **or IC 5-2-5-15**.
- 32 SECTION 3. IC 20-6.1-3-7, AS AMENDED BY P.L.37-2000,  
 33 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2002]: Sec. 7. (a) On the written recommendation of the state  
 35 superintendent, the board may revoke **or suspend** a license for:  
 36 (1) immorality;  
 37 (2) misconduct in office;  
 38 (3) incompetency; or  
 39 (4) willful neglect of duty.
- 40 However, for each revocation **or suspension**, the board shall comply  
 41 with IC 4-21.5-3.
- 42 (b) **This subsection applies when a law enforcement agency**

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1 knows that a licensed employee of a school corporation or an  
 2 accredited nonpublic school has been arrested for a felony or a  
 3 misdemeanor. The chief executive officer or equivalent authority  
 4 of the law enforcement agency shall immediately give notice of the  
 5 arrest to the superintendent of the school corporation or equivalent  
 6 authority for the accredited nonpublic school that employs the  
 7 person who was arrested.

8 (c) This subsection applies when a prosecuting attorney knows  
 9 that a licensed employee of a school corporation or an accredited  
 10 nonpublic school has been convicted of a felony or a misdemeanor.  
 11 The prosecuting attorney shall immediately give notice of the  
 12 conviction to the superintendent of the school corporation or  
 13 equivalent authority for the accredited nonpublic school that  
 14 employs the person who was convicted.

15 (d) The superintendent of a school corporation or equivalent  
 16 authority for an accredited nonpublic school shall immediately notify  
 17 the state superintendent when the person knows that a current or former  
 18 licensed employee of the school corporation or accredited nonpublic  
 19 school has:

- 20 (1) been arrested or convicted of an offense listed in subsection
- 21 ~~(c)~~ a felony or a misdemeanor;
- 22 (2) been discharged from employment for any of the reasons
- 23 listed in subsection (a); or
- 24 (3) resigned to avoid discharge from employment for any of
- 25 the reasons listed in subsection (a).

26 ~~(c)~~ (e) The board, after holding a hearing on the matter, shall  
 27 permanently revoke the license of a person who is known by the board  
 28 to have been convicted of any of the following offenses:

- 29 (1) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)
- 30 years of age.
- 31 (2) Criminal deviate conduct (IC 35-42-4-2), if the victim is less
- 32 than eighteen (18) years of age.
- 33 (3) Child molesting (IC 35-42-4-3).
- 34 (4) Child exploitation (IC 35-42-4-4(b)).
- 35 (5) Vicarious sexual gratification (IC 35-42-4-5).
- 36 (6) Child solicitation (IC 35-42-4-6).
- 37 (7) Child seduction (IC 35-42-4-7).
- 38 (8) Sexual misconduct with a minor (IC 35-42-4-9).
- 39 (9) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)
- 40 years of age.

41 ~~(d)~~ (f) A license may be suspended by the state superintendent as  
 42 specified in IC 20-6.1-4-13.

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1           **(g) A person who makes a report required under this section is**  
 2 **immune from civil liability for the report and the consequences**  
 3 **proximately caused by the report, unless it is proven by a**  
 4 **preponderance of the evidence that the information reported was**  
 5 **known by the reporter to be false at the time the report was made.**

6           SECTION 4. IC 20-6.1-4-10, AS AMENDED BY P.L.228-2001,  
 7 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2002]: Sec. 10. (a) An indefinite contract with a permanent  
 9 teacher may be canceled in the manner specified in section 11 of this  
 10 chapter **for only for one (1) of** the following grounds:

- 11           (1) Immorality.  
 12           (2) Insubordination, which means a willful refusal to obey the  
 13           state school laws or reasonable rules prescribed for the  
 14           government of the school corporation.  
 15           (3) Neglect of duty.  
 16           (4) Incompetency.  
 17           (5) Justifiable decrease in the number of teaching positions.  
 18           (6) A conviction for **one (1) of the following:**  
 19           (A) Rape (IC 35-42-4-1), if the victim is less than eighteen  
 20           (18) years of age.  
 21           (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is  
 22           less than eighteen (18) years of age.  
 23           (C) Child molesting (IC 35-42-4-3).  
 24           (D) Child exploitation (IC 35-42-4-4(b)).  
 25           (E) Vicarious sexual gratification (IC 35-42-4-5).  
 26           (F) Child solicitation (IC 35-42-4-6).  
 27           (G) Child seduction (IC 35-42-4-7).  
 28           (H) Sexual misconduct with a minor **as a Class A or B felony**  
 29           **(IC 35-42-4-9). or**  
 30           (I) Incest (IC 35-46-1-3), if the victim is less than eighteen  
 31           (18) years of age. **or**  
 32           (7) Other good and just cause.

33           When the cause of cancellation is ground (1), (2), or (6), the  
 34           cancellation is effective immediately. When the cause of cancellation  
 35           is ground (3), (4), (5), or (7), the cancellation is effective at the end of  
 36           the school term following the cancellation.

37           (b) An indefinite contract may not be canceled for political or  
 38           personal reasons.

39           SECTION 5. IC 20-6.1-4-10.5 IS AMENDED TO READ AS  
 40           FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10.5. (a) An indefinite  
 41           contract with a semipermanent teacher may be canceled in the manner  
 42           specified in section 11 of this chapter only for **one (1) of** the following

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- 1 grounds:
- 2 (1) Immorality.
- 3 (2) Insubordination, which means a willful refusal to obey the
- 4 state school laws or reasonable rules prescribed for the
- 5 government of the school corporation.
- 6 (3) Neglect of duty.
- 7 (4) Substantial inability to perform teaching duties.
- 8 (5) Justifiable decrease in the number of teaching positions.
- 9 (6) Good and just cause.
- 10 (7) The cancellation is in the best interest of the school
- 11 corporation.
- 12 (8) A conviction for **one (1) of the following:**
- 13 (A) Rape (IC 35-42-4-1), if the victim is less than eighteen
- 14 (18) years of age.
- 15 (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is
- 16 less than eighteen (18) years of age.
- 17 (C) Child molesting (IC 35-42-4-3).
- 18 (D) Child exploitation (IC 35-42-4-4(b)).
- 19 (E) Vicarious sexual gratification (IC 35-42-4-5).
- 20 (F) Child solicitation (IC 35-42-4-6).
- 21 (G) Child seduction (IC 35-42-4-7). **or**
- 22 (H) **Sexual misconduct with a minor (IC 35-42-4-9).**
- 23 (I) Incest (IC 35-46-1-3), if the victim is less than eighteen
- 24 (18) years of age.
- 25 (b) An indefinite contract with a semipermanent teacher may not be
- 26 canceled for political or personal reasons.
- 27 (c) Before the cancellation of a semipermanent teacher's indefinite
- 28 contract, the principal of the school at which the teacher teaches shall
- 29 provide the teacher with a written evaluation of the teacher's
- 30 performance before January 1 of each year. Upon the request of a
- 31 semipermanent teacher, delivered in writing to the principal within
- 32 thirty (30) days after the teacher receives the evaluation required by
- 33 this section, the principal shall provide the teacher with an additional
- 34 written evaluation.
- 35 SECTION 6. IC 20-6.1-4-11 IS AMENDED TO READ AS
- 36 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. (a) An indefinite
- 37 contract with a permanent or semi-permanent teacher may be canceled
- 38 only in the following manner:
- 39 (1) The teacher shall be notified in writing of the date, time, and
- 40 place for the consideration by the school corporation of the
- 41 cancellation of the contract; this notification must occur not more
- 42 than forty (40) days nor less than thirty (30) days before the

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- 1 consideration.
- 2 (2) The teacher shall be furnished, within five (5) days after a  
3 written request, a written statement of the reasons for the  
4 consideration.
- 5 (3) The teacher may file a written request for a hearing within  
6 fifteen (15) days after receipt of the notice of this consideration.
- 7 (4) When the request for a hearing is filed, the teacher shall be  
8 given a hearing before the governing body on a day no earlier  
9 than five (5) days after filing;
- 10 (5) The teacher shall be given not less than five (5) days notice of  
11 the time and place of the hearing.
- 12 (6) At the hearing, the teacher is entitled:
- 13 (A) to a full statement of the reasons for the proposed  
14 cancellation of the contract; and
- 15 (B) to be heard, to present the testimony of witnesses and other  
16 evidence bearing on the reasons for the proposed cancellation  
17 of the contract.
- 18 (7) A contract may not be canceled until:
- 19 (A) the date set for consideration of the cancellation of the  
20 contract;
- 21 (B) after a hearing is held, if a hearing is requested by the  
22 teacher; and
- 23 (C) the superintendent has given ~~his~~ **the superintendent's**  
24 recommendations on the contract; on five (5) days written  
25 notice to ~~him~~ **the superintendent** by the **governing body of**  
26 **the school corporation**, the superintendent shall present ~~his~~ **the**  
27 **superintendent's** recommendation on each contract, except on  
28 a superintendent's contract.
- 29 (8) Pending a decision on the cancellation of a teacher's contract,  
30 the teacher may be suspended from duty. ~~and~~
- 31 (9) After complying with section 10 of this chapter in the case of  
32 permanent teachers, or section 10.5 of this chapter in the case of  
33 semi-permanent teachers, and this section, the governing body of  
34 the school corporation may cancel an indefinite contract with a  
35 teacher by a majority vote evidenced by a signed statement in the  
36 minutes of the board; the decision of the governing board is final.  
37 The vote to cancel a contract described in subdivision (9) must be  
38 taken by the governing body on the date and at the time and place  
39 specified in subdivision (1).
- 40 (b) If a permanent or semi-permanent teacher is suspended under  
41 subsection (a)(8) and except as provided in IC 20-6.1-5-11, the  
42 governing body may not (while the teacher is suspended) withhold

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1 from the teacher salary payments or other employment related benefits  
2 that before the suspension the teacher was entitled to receive.

3 (c) **Notwithstanding subsection (b), a permanent or**  
4 **semipermanent teacher may be suspended under subsection (a)(8)**  
5 **without salary payments if the teacher is charged with an offense**  
6 **listed in section 10(6) or 10.5(8) of this chapter. If a teacher who is**  
7 **suspended without salary payments returns to work, the governing**  
8 **body shall restore to the teacher all salary that was withheld**  
9 **during the period of suspension.**

10 (d) The governing body may appoint an agent (who is not an  
11 employee of the school corporation, but who may be a member of the  
12 governing body or an attorney retained to administer the hearing  
13 proceedings under this section) for the purpose of issuing subpoenas  
14 for the attendance of witnesses for either party at the hearing. A  
15 subpoena issued under this section shall be:

- 16 (1) served by the party who seeks to compel the attendance of a  
17 witness; and  
18 (2) upon application to the court by the party, enforced in the  
19 manner provided by law for the service and enforcement of  
20 subpoenas in a civil action.

21 SECTION 7. IC 31-33-5-1 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. In addition to any  
23 other duty to report arising under this article, an individual who has  
24 reason to believe that a child is a victim of ~~child abuse or neglect~~ **any**  
25 **of the following** shall make a report as required by this article:

- 26 (1) **Child abuse or neglect.**  
27 (2) **Rape (IC 35-42-4-1).**  
28 (3) **Criminal deviate conduct (IC 35-42-4-2).**  
29 (4) **Child molesting (IC 35-42-4-3).**  
30 (5) **Child exploitation (IC 35-42-4-4(b)).**  
31 (6) **Child pornography (IC 35-42-4-4(c)).**  
32 (7) **Child seduction (IC 35-42-4-7).**  
33 (8) **Sexual misconduct with a minor (IC 35-42-4-9).**  
34 (9) **Public indecency (IC 35-45-4-1).**  
35 (10) **Prostitution (IC 35-45-4-2).**  
36 (11) **Incest (IC 35-46-1-3).**

37 SECTION 8. IC 31-33-5-4 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. A person who has a  
39 duty under this chapter to ~~make a report that a child may be a victim~~  
40 ~~of child abuse or neglect for a matter listed in section 1 of this~~  
41 **chapter** shall immediately make an oral report to:

- 42 (1) the local child protection service; or

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(2) the local law enforcement agency.

SECTION 9. IC 34-30-2-84.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 84.5. IC 20-6.1-3-7 (Concerning a person who makes a report concerning a teacher).**

SECTION 10. IC 35-42-4-7, AS AMENDED BY P.L.228-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: 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, "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 ~~public or private school or~~ shelter care facility; **or**
- (2) **is employed by a:**
  - (A) **school corporation; or**
  - (B) **nonpublic school;**

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

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

(e) **As used in this section, "nonpublic school" has the meaning set forth in IC 20-10.1-1-3.**

(f) **As used in this section, "school corporation" has the meaning set forth in IC 20-10.1-1-1.**

(g) 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.

(h) If a person who is:

- (1) at least eighteen (18) years of age; and
- (2) the:
  - (A) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or
  - (B) child care worker for;

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

engages **with the child** in sexual intercourse, ~~or~~ deviate sexual conduct (as defined in IC 35-41-1-9), ~~with the child;~~ **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.

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