

**CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1080**

Citations Affected: IC 11-8-8; IC 35-42.

Synopsis: Sex offenders. Conference committee report for EHB 1080. Provides that a person is a sex offender if the person commits sexual misconduct by a service provider with a child who is subject to lawful detention. Creates a defense to the offense of recruiting, harboring, or transporting a child less than sixteen years of age with the intent of inducing the child to participate in sexual conduct if: (1) the child is 14 or 15 years old and the person is less than 18 years old; or (2) the person is within four years of the child's age, the person was in a dating relationship with the child, and certain other conditions apply. Makes it sexual battery, a Class D felony, for a person to, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person, touch another person's genitals, pubic area, buttocks, or female breast when that person is unaware that the touching is occurring. **(This conference committee report: Provides that a person is a sex offender if the person commits sexual misconduct by a service provider with a detained child. Removes a provision urging the legislative council to study the topic of sexual battery during the 2012 legislative interim.)**

Effective: July 1, 2012.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1080 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 11-8-8-4.5, AS AMENDED BY SEA 4-2012,
- 3 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2012]: Sec. 4.5. (a) Except as provided in section 22 of this
- 5 chapter, as used in this chapter, "sex offender" means a person
- 6 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).
 - 9 (3) Child molesting (IC 35-42-4-3).
 - 10 (4) Child exploitation (IC 35-42-4-4(b)).
 - 11 (5) Vicarious sexual gratification (including performing sexual
 - 12 conduct in the presence of a minor) (IC 35-42-4-5).
 - 13 (6) Child solicitation (IC 35-42-4-6).
 - 14 (7) Child seduction (IC 35-42-4-7).
 - 15 (8) Sexual misconduct with a minor as a Class A, Class B, or
 - 16 Class C felony (IC 35-42-4-9), unless:
 - 17 (A) the person is convicted of sexual misconduct with a minor
 - 18 as a Class C felony;
 - 19 (B) the person is not more than:
 - 20 (i) four (4) years older than the victim if the offense was
 - 21 committed after June 30, 2007; or
 - 22 (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 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the
 15 victim is less than eighteen (18) years of age.
 16 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(c)).
 17 (17) Human trafficking (IC 35-42-3.5-1(d)(3)) if the victim is less
 18 than eighteen (18) years of age.
 19 **(18) Sexual misconduct by a service provider with a detained**
 20 **child (IC 35-44-1-5(c)).**
 21 ~~(18)~~ **(19)** An attempt or conspiracy to commit a crime listed in
 22 subdivisions (1) through ~~(17)~~: **(18)**.
 23 ~~(19)~~ **(20)** A crime under the laws of another jurisdiction,
 24 including a military court, that is substantially equivalent to any
 25 of the offenses listed in subdivisions (1) through ~~(18)~~: **(19)**.
- 26 (b) The term includes:
 27 (1) a person who is required to register as a sex offender in any
 28 jurisdiction; and
 29 (2) a child who has committed a delinquent act and who:
 30 (A) is at least fourteen (14) years of age;
 31 (B) is on probation, is on parole, is discharged from a facility
 32 by the department of correction, is discharged from a secure
 33 private facility (as defined in IC 31-9-2-115), or is discharged
 34 from a juvenile detention facility as a result of an adjudication
 35 as a delinquent child for an act that would be an offense
 36 described in subsection (a) if committed by an adult; and
 37 (C) is found by a court by clear and convincing evidence to be
 38 likely to repeat an act that would be an offense described in
 39 subsection (a) if committed by an adult.
- 40 (c) In making a determination under subsection (b)(2)(C), the court
 41 shall consider expert testimony concerning whether a child is likely to
 42 repeat an act that would be an offense described in subsection (a) if
 43 committed by an adult.
- 44 SECTION 2. IC 11-8-8-5, AS AMENDED BY P.L.216-2007,
 45 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 46 JULY 1, 2012]: Sec. 5. (a) Except as provided in section 22 of this
 47 chapter, as used in this chapter, "sex or violent offender" means a
 48 person convicted of any of the following offenses:
 49 (1) Rape (IC 35-42-4-1).
 50 (2) Criminal deviate conduct (IC 35-42-4-2).

- 1 (3) Child molesting (IC 35-42-4-3).
 2 (4) Child exploitation (IC 35-42-4-4(b)).
 3 (5) Vicarious sexual gratification (including performing sexual
 4 conduct in the presence of a minor) (IC 35-42-4-5).
 5 (6) Child solicitation (IC 35-42-4-6).
 6 (7) Child seduction (IC 35-42-4-7).
 7 (8) Sexual misconduct with a minor as a Class A, Class B, or
 8 Class C felony (IC 35-42-4-9), unless:
 9 (A) the person is convicted of sexual misconduct with a minor
 10 as a Class C felony;
 11 (B) the person is not more than:
 12 (i) four (4) years older than the victim if the offense was
 13 committed after June 30, 2007; or
 14 (ii) five (5) years older than the victim if the offense was
 15 committed before July 1, 2007; and
 16 (C) the sentencing court finds that the person should not be
 17 required to register as a sex offender.
 18 (9) Incest (IC 35-46-1-3).
 19 (10) Sexual battery (IC 35-42-4-8).
 20 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
 21 (18) years of age, and the person who kidnapped the victim is not
 22 the victim's parent or guardian.
 23 (12) Criminal confinement (IC 35-42-3-3), if the victim is less
 24 than eighteen (18) years of age, and the person who confined or
 25 removed the victim is not the victim's parent or guardian.
 26 (13) Possession of child pornography (IC 35-42-4-4(c)).
 27 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony.
 28 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the
 29 victim is less than eighteen (18) years of age.
 30 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(b)).
 31 (17) Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less
 32 than eighteen (18) years of age.
 33 (18) Murder (IC 35-42-1-1).
 34 (19) Voluntary manslaughter (IC 35-42-1-3).
 35 **(20) Sexual misconduct by a service provider with a detained**
 36 **child (IC 35-44-1-5(c)).**
 37 ~~(20)~~ **(21)** An attempt or conspiracy to commit a crime listed in
 38 subdivisions (1) through ~~(19)~~: **(20)**.
 39 ~~(21)~~ **(22)** A crime under the laws of another jurisdiction,
 40 including a military court, that is substantially equivalent to any
 41 of the offenses listed in subdivisions (1) through ~~(20)~~: **(21)**.
 42 (b) The term includes:
 43 (1) a person who is required to register as a sex or violent
 44 offender in any jurisdiction; and
 45 (2) a child who has committed a delinquent act and who:
 46 (A) is at least fourteen (14) years of age;
 47 (B) is on probation, is on parole, is discharged from a facility
 48 by the department of correction, is discharged from a secure
 49 private facility (as defined in IC 31-9-2-115), or is discharged
 50 from a juvenile detention facility as a result of an adjudication

1 as a delinquent child for an act that would be an offense
 2 described in subsection (a) if committed by an adult; and
 3 (C) is found by a court by clear and convincing evidence to be
 4 likely to repeat an act that would be an offense described in
 5 subsection (a) if committed by an adult.

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

10 SECTION 3. IC 35-42-3.5-1, AS AMENDED BY SEA 4-2012,
 11 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2012]: Sec. 1. (a) A person who, by force, threat of force, or
 13 fraud, knowingly or intentionally recruits, harbors, or transports
 14 another person:

- 15 (1) to engage the other person in:
 16 (A) forced labor; or
 17 (B) involuntary servitude; or
 18 (2) to force the other person into:
 19 (A) marriage;
 20 (B) prostitution; or
 21 (C) participating in sexual conduct (as defined by
 22 IC 35-42-4-4);

23 commits promotion of human trafficking, a Class B felony.

24 (b) A person who knowingly or intentionally recruits, harbors, or
 25 transports a child less than sixteen (16) years of age with the intent of:

- 26 (1) engaging the child in:
 27 (A) forced labor; or
 28 (B) involuntary servitude; or
 29 (2) inducing or causing the child to:
 30 (A) engage in prostitution; or
 31 (B) participate in sexual conduct (as defined by IC 35-42-4-4);

32 commits promotion of human trafficking of a minor, a Class B felony.

33 **Except as provided in subsection (e),** it is not a defense to a
 34 prosecution under this subsection that the child consented to engage in
 35 prostitution or to participate in sexual conduct.

36 (c) A person who is at least eighteen (18) years of age who
 37 knowingly or intentionally sells or transfers custody of a child less than
 38 sixteen (16) years of age for the purpose of prostitution or participating
 39 in sexual conduct (as defined by IC 35-42-4-4) commits sexual
 40 trafficking of a minor, a Class A felony.

41 (d) A person who knowingly or intentionally pays, offers to pay, or
 42 agrees to pay money or other property to another person for an
 43 individual who the person knows has been forced into:

- 44 (1) forced labor;
 45 (2) involuntary servitude; or
 46 (3) prostitution;

47 commits human trafficking, a Class C felony.

48 **(e) It is a defense to a prosecution under subsection (b)(2)(B) if:**
 49 **(1) the child is at least fourteen (14) years of age but less than**
 50 **sixteen (16) years of age and the person is less than eighteen**
 51 **(18) years of age; or**

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- (2) all the following apply:**
 - (A) The person is not more than four (4) years older than the victim.**
 - (B) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.**
 - (C) The crime:**
 - (i) was not committed by a person who is at least twenty-one (21) years of age;**
 - (ii) was not committed by using or threatening the use of deadly force;**
 - (iii) was not committed while armed with a deadly weapon;**
 - (iv) did not result in serious bodily injury;**
 - (v) 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**
 - (vi) was not committed by a person having a position of authority or substantial influence over the victim.**
 - (D) The person 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.**

SECTION 4. IC 35-42-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. (a) A person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person:

- (1) touches another person when that person is:**
 - ~~(A)~~ **(A) compelled to submit to the touching by force or the imminent threat of force; or**
 - ~~(B)~~ **(B) so mentally disabled or deficient that consent to the touching cannot be given; or**
 - (2) touches another person's genitals, pubic area, buttocks, or female breast when that person is unaware that the touching is occurring;**
- commits sexual battery, a Class D felony.
- (b) An offense described in subsection (a) is a Class C felony if:
 - (1) it is committed by using or threatening the use of deadly force;
 - (2) it is committed while armed with a deadly weapon; or
 - (3) the commission of the offense is 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.
- (Reference is to EHB 1080 as reprinted February 28, 2012.)

Conference Committee Report
on
Engrossed House Bill 1080

Signed by:

Representative Frye R
Chairperson

Senator Eckerty

Representative Pierce

Senator Hume

House Conferees

Senate Conferees