

HOUSE BILL No. 1489

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2-57.7; IC 35-42-4.

Synopsis: Rape and sexual battery. Defines "consent". Provides that a person commits rape if the person engages in sexual activity without the consent of the victim, and that a person commits sexual battery if the person, with intent to arouse sexual desires, touches another person without the consent of the person.

Effective: July 1, 2019.

Errington, Campbell

January 16, 2019, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1489

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 35-31.5-2-57.7 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: **Sec. 57.7. "Consent" means a free,**
4 **voluntary, knowing, and mutual agreement to engage in a specific**
5 **sexual act or contact, including positive and affirmative**
6 **cooperation in words, act, or attitude pursuant to the exercise of**
7 **free will. Consent may be withdrawn at any time, and any**
8 **expression of lack of consent, by words, act, or attitude, means that**
9 **consent does not exist or has been withdrawn. The:**

10 (1) **existence of a current or previous dating, social, sexual, or**
11 **marital relationship by itself; or**

12 (2) **manner of a person's dress;**
13 **does not constitute consent. Submission under the influence of fear,**
14 **deception, coercion, or surprise does not constitute consent.**

15 SECTION 2. IC 35-42-4-1, AS AMENDED BY P.L.168-2014,
16 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2019]: Sec. 1. (a) Except as provided in subsection (b), a



1 person who knowingly or intentionally has sexual intercourse with
 2 another person or knowingly or intentionally causes another person to
 3 perform or submit to other sexual conduct (as defined in
 4 IC 35-31.5-2-221.5) when:

5 **(1) the other person has not given consent;**

6 ~~(1)~~ **(2)** the other person is compelled by force or imminent threat
 7 of force;

8 ~~(2)~~ **(3)** the other person is unaware that the sexual intercourse or
 9 other sexual conduct (as defined in IC 35-31.5-2-221.5) is
 10 occurring; or

11 ~~(3)~~ **(4)** the other person is so mentally disabled or deficient that
 12 consent to sexual intercourse or other sexual conduct (as defined
 13 in IC 35-31.5-2-221.5) cannot be given;

14 commits rape, a Level 3 felony.

15 (b) An offense described in subsection (a) is a Level 1 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;

18 (3) it results in serious bodily injury to a person other than a
 19 defendant; or

20 (4) the commission of the offense is facilitated by furnishing the
 21 victim, without the victim's knowledge, with a drug (as defined in
 22 IC 16-42-19-2(1)) or a controlled substance (as defined in
 23 IC 35-48-1-9) or knowing that the victim was furnished with the
 24 drug or controlled substance without the victim's knowledge.

25 **(c) In determining whether consent exists, the trier of fact shall**
 26 **consider whether a reasonable person would understand the**
 27 **words, acts, or attitudes to constitute consent under all of the**
 28 **circumstances.**

29 SECTION 3. IC 35-42-4-8, AS AMENDED BY P.L.158-2013,
 30 SECTION 444, IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2019]: Sec. 8. (a) A person who, with intent to
 32 arouse or satisfy the person's own sexual desires or the sexual desires
 33 of another person:

34 (1) touches another person when that person: ~~is:~~

35 **(A) has not given consent;**

36 ~~(A)~~ **(B)** is compelled to submit to the touching by force or the
 37 imminent threat of force; or

38 ~~(B)~~ **(C)** is so mentally disabled or deficient that consent to the
 39 touching cannot be given; or

40 (2) touches another person's genitals, pubic area, buttocks, or
 41 female breast when that person is unaware that the touching is
 42 occurring;



- 1 commits sexual battery, a Level 6 felony.
- 2 (b) An offense described in subsection (a) is a Level 4 felony if:
- 3 (1) it is committed by using or threatening the use of deadly force;
- 4 (2) it is committed while armed with a deadly weapon; or
- 5 (3) the commission of the offense is facilitated by furnishing the
- 6 victim, without the victim's knowledge, with a drug (as defined in
- 7 IC 16-42-19-2(1)) or a controlled substance (as defined in
- 8 IC 35-48-1-9) or knowing that the victim was furnished with the
- 9 drug or controlled substance without the victim's knowledge.
- 10 **(c) In determining whether consent exists, the trier of fact shall**
- 11 **consider whether a reasonable person would understand the**
- 12 **words, acts, or attitudes to constitute consent under all of the**
- 13 **circumstances.**

