

HOUSE BILL No. 1507

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-7-2; IC 12-17.2; IC 35-31.5-2; IC 35-42-4-11.

Synopsis: Residency restrictions for sex offenders. Prohibits an applicant who applies for a child care center license, a child care home license, or a child care ministry registration to operate the child care center, child care home, or child care ministry within 1,000 feet from where an offender against children resides. Provides that an offender against children who knowingly or intentionally resides within 1,000 feet of a child care center, a child care home, or a child care ministry commits a sex offender residency offense, a Level 6 felony.

Effective: July 1, 2019.

Smith V, Jackson

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. 1507

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 12-7-2-134.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: **Sec. 134.5. "Offender against**
4 **children", for purposes of IC 12-17.2-4, IC 12-17.2-5, and**
5 **IC 12-17.2-6, has the meaning set forth in IC 35-42-4-11(a).**

6 SECTION 2. IC 12-7-2-168.5 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2019]: **Sec. 168.5. "Reside", for purposes of**
9 **IC 12-17.2-4, IC 12-17.2-5, and IC 12-17.2-6, has the meaning set**
10 **forth in IC 35-42-4-11(b).**

11 SECTION 3. IC 12-17.2-4-3, AS AMENDED BY P.L.25-2018,
12 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2019]: Sec. 3. (a) An applicant must apply for a child care
14 center license on forms provided by the division.

15 (b) An applicant must submit the required information as part of the
16 application, including the following:

17 (1) If the county, city, or town in which the child care center is



1 located requires a business permit or license to operate a child
2 care center in the county, city, or town, proof that the applicant
3 has a valid business permit or license.

4 (2) If the county, city, or town in which the child care center is
5 located does not require a business permit or license described in
6 subdivision (1), a statement from the county, city, or town that a
7 business permit or license is not required.

8 (c) The applicant must submit with the application a statement
9 attesting that the applicant:

10 (1) has not been convicted of:

11 (A) a felony:

12 (i) related to the health or safety of a child;

13 (ii) that is a sex offense (as defined in IC 11-8-8-5.2);

14 (iii) that is a dangerous felony; or

15 (iv) that is not a felony otherwise described in items (i)
16 through (iii), and less than ten (10) years have elapsed from
17 the date the person was discharged from probation,
18 imprisonment, or parole, whichever discharge date is latest;

19 (B) a misdemeanor relating to the health or safety of children;

20 (C) a misdemeanor for operating a child care center without a
21 license under section 35 of this chapter, or of a substantially
22 similar offense committed in another jurisdiction if the offense
23 is directly or indirectly related to jeopardizing the health or
24 safety of a child; or

25 (D) a misdemeanor for operating a child care home without a
26 license under IC 12-17.2-5-35, or of a substantially similar
27 offense committed in another jurisdiction if the offense is
28 directly or indirectly related to jeopardizing the health or
29 safety of a child; **and**

30 (2) has not been charged with:

31 (A) a felony;

32 (B) a misdemeanor relating to the health or safety of children;

33 (C) a misdemeanor for operating a child care center without a
34 license under section 35 of this chapter, or with a substantially
35 similar offense in another jurisdiction if the offense is directly
36 or indirectly related to jeopardizing the health or safety of a
37 child; or

38 (D) a misdemeanor for operating a child care home without a
39 license under IC 12-17.2-5-35, or with a substantially similar
40 offense in another jurisdiction if the offense is directly or
41 indirectly related to jeopardizing the health or safety of a child;

42 during the pendency of the application; **and**



- 1 **(3) has verified that an offender against children does not**
 2 **reside within one thousand (1,000) feet of the child care**
 3 **center.**
- 4 (d) An applicant shall, at no expense to the state, submit:
 5 (1) the necessary information, forms, or consents; and
 6 (2) the applicant's fingerprints;
 7 for a national criminal history background check by the Federal Bureau
 8 of Investigation.
- 9 (e) Subject to section 3.3 of this chapter, the applicant must, at no
 10 expense to the state, do the following:
- 11 (1) Require an employee or volunteer of the applicant who has
 12 direct contact with a child who is receiving child care from the
 13 applicant to submit fingerprints for a national criminal history
 14 background check by the Federal Bureau of Investigation.
- 15 (2) Report to the division any:
 16 (A) police investigations;
 17 (B) arrests; and
 18 (C) criminal convictions;
 19 of which the applicant is aware regarding the applicant or an
 20 employee or volunteer described in subdivision (1).
- 21 An applicant shall require an individual described in subdivision (1) to
 22 apply for a national criminal history background check before the
 23 individual is employed or allowed to volunteer and every three (3)
 24 years thereafter that the individual is continuously employed or allowed
 25 to volunteer.
- 26 SECTION 4. IC 12-17.2-4-5, AS AMENDED BY P.L.287-2013,
 27 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2019]: Sec. 5. (a) The following constitute sufficient grounds
 29 for a denial of a license application:
- 30 (1) A determination by the department of child services
 31 established by IC 31-25-1-1 of child abuse or neglect (as defined
 32 in IC 31-9-2-14) by:
 33 (A) the applicant;
 34 (B) an employee of the applicant who has direct contact, on a
 35 regular and continuous basis, with children who are under the
 36 direct supervision of the applicant; or
 37 (C) a volunteer of the applicant who has direct contact, on a
 38 regular and continuous basis, with children who are under the
 39 direct supervision of the applicant.
- 40 (2) A criminal conviction of the applicant, an employee of the
 41 applicant who has direct contact with children who are receiving
 42 child care from the applicant, or a volunteer of the applicant who



1 has direct contact with children who are receiving child care from
 2 the applicant, of any of the following:

3 (A) A felony:

- 4 (i) related to the health or safety of a child;
 5 (ii) that is a sex offense (as defined in IC 11-8-8-5.2);
 6 (iii) that is a dangerous felony; or
 7 (iv) that is not a felony otherwise described in items (i)
 8 through (iii), and less than ten (10) years have elapsed from
 9 the date the person was discharged from probation,
 10 imprisonment, or parole, whichever discharge date is latest.

11 (B) A misdemeanor related to the health or safety of a child.

12 (C) A misdemeanor for operating a child care center without
 13 a license under section 35 of this chapter, or a substantially
 14 similar offense in another jurisdiction if the offense is directly
 15 or indirectly related to jeopardizing the health or safety of a
 16 child.

17 (D) A misdemeanor for operating a child care home without a
 18 license under IC 12-17.2-5-35, or a substantially similar
 19 offense in another jurisdiction if the offense is directly or
 20 indirectly related to jeopardizing the health or safety of a child.

21 (3) A determination by the division that the applicant made false
 22 statements in the applicant's application for licensure.

23 (4) A determination by the division that the applicant made false
 24 statements in the records required by the division.

25 (5) A determination by the division that the applicant previously
 26 operated a:

- 27 (A) child care center without a license under this chapter; or
 28 (B) child care home without a license under IC 12-17.2-5.

29 **(6) A determination by the division that an offender against**
 30 **children resides within one thousand (1,000) feet of the child**
 31 **care center.**

32 (b) Notwithstanding subsection (a)(2), if:

- 33 (1) a license application is denied due to a criminal conviction of
 34 an employee or a volunteer of the applicant; and
 35 (2) the division determines that the employee or volunteer has
 36 been dismissed by the applicant;

37 the criminal conviction of the former employee or former volunteer
 38 does not require denial of a license application.

39 SECTION 5. IC 12-17.2-5-3, AS AMENDED BY P.L.25-2018,
 40 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2019]: Sec. 3. (a) An applicant must apply for a child care
 42 home license on forms provided by the division.



1 (b) An applicant must submit the required information as part of the
2 application, including the following:

3 (1) If the county, city, or town in which the child care home is
4 located requires a business permit or license to operate a child
5 care home in the county, city, or town, proof that the applicant has
6 a valid business permit or license.

7 (2) If the county, city, or town in which the child care home is
8 located does not require a business permit or license described in
9 subdivision (1), a statement from the county, city, or town that a
10 business permit or license is not required.

11 (c) An applicant must submit with the application a statement
12 attesting that the applicant has not been:

13 (1) convicted of:

14 (A) a felony:

15 (i) related to the health or safety of a child;

16 (ii) that is a sex offense (as defined in IC 11-8-8-5.2);

17 (iii) that is a dangerous felony; or

18 (iv) that is not a felony otherwise described in items (i)
19 through (iii), and less than ten (10) years have elapsed from
20 the date the person was discharged from probation,
21 imprisonment, or parole, whichever discharge date is latest;

22 (B) a misdemeanor relating to the health or safety of children;

23 (C) a misdemeanor for operating a child care center without a
24 license under IC 12-17.2-4-35, or of a substantially similar
25 offense committed in another jurisdiction if the offense is
26 directly or indirectly related to jeopardizing the health or
27 safety of a child; or

28 (D) a misdemeanor for operating a child care home without a
29 license under section 35 of this chapter, or of a substantially
30 similar offense committed in another jurisdiction if the offense
31 is directly or indirectly related to jeopardizing the health or
32 safety of a child; and

33 (2) charged with:

34 (A) a felony;

35 (B) a misdemeanor relating to the health or safety of children;

36 (C) a misdemeanor for operating a child care center without a
37 license under IC 12-17.2-4-35, or with a substantially similar
38 offense in another jurisdiction if the offense is directly or
39 indirectly related to jeopardizing the health or safety of a child;
40 or

41 (D) a misdemeanor for operating a child care home without a
42 license under section 35 of this chapter, or with a substantially



1 similar offense in another jurisdiction if the offense is directly
 2 or indirectly related to jeopardizing the health or safety of a
 3 child;

4 during the pendency of the application.

5 (d) An applicant must submit:

6 (1) the necessary information, forms, or consents; and
 7 (2) the fingerprints of the applicant and the applicant's spouse;
 8 for a national criminal history background check by the Federal Bureau
 9 of Investigation.

10 (e) Subject to section 3.3 of this chapter, an applicant shall require:

11 (1) an employee or a volunteer of the applicant who has direct
 12 contact with a child who is receiving child care from the
 13 applicant; and

14 (2) the applicant's household members who are:

15 (A) at least eighteen (18) years of age; or

16 (B) less than eighteen (18) years of age but have previously
 17 been waived from juvenile court to adult court;

18 to submit fingerprints for a national criminal history background check
 19 by the Federal Bureau of Investigation. An applicant shall require an
 20 individual described in subdivision (1) to apply for a national criminal
 21 history background check before the individual is employed or allowed
 22 to volunteer and every three (3) years thereafter that the individual is
 23 continuously employed or allowed to volunteer.

24 (f) In addition to the requirements under subsections (d) and (e), an
 25 applicant must report to the division any:

26 (A) police investigations;

27 (B) arrests; and

28 (C) criminal convictions;

29 of which the applicant is aware regarding the applicant, the applicant's
 30 spouse, or a person described in subsection (e).

31 **(g) An applicant must submit with the application a statement**
 32 **attesting that the applicant has verified that an offender against**
 33 **children does not reside within one thousand (1,000) feet of the**
 34 **child care home.**

35 SECTION 6. IC 12-17.2-5-4, AS AMENDED BY P.L.287-2013,
 36 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2019]: Sec. 4. (a) The following constitute sufficient grounds
 38 for a denial of a license application:

39 (1) A determination by the department of child services
 40 established by IC 31-25-1-1 of child abuse or neglect (as defined
 41 in IC 31-9-2-14) by:

42 (A) the applicant;



- 1 (B) a member of the applicant's household;
 2 (C) an employee of the applicant who has direct contact, on a
 3 regular and continuous basis, with children who are under the
 4 direct supervision of the applicant; or
 5 (D) a volunteer of the applicant who has direct contact, on a
 6 regular and continuous basis, with children who are direct
 7 supervision of the applicant.
- 8 (2) A criminal conviction of the applicant, an employee of the
 9 applicant who has direct contact with children who are receiving
 10 child care from the applicant, a volunteer of the applicant who has
 11 direct contact with children who are receiving child care from the
 12 applicant, or a member of the applicant's household, of any of the
 13 following:
- 14 (A) A felony:
 15 (i) related to the health or safety of a child;
 16 (ii) that is a sex offense (as defined in IC 11-8-8-5.2);
 17 (iii) that is a dangerous felony; or
 18 (iv) that is not a felony otherwise described in items (i)
 19 through (iii), and less than ten (10) years have elapsed from
 20 the date the person was discharged from probation,
 21 imprisonment, or parole, whichever discharge date is latest.
- 22 (B) A misdemeanor related to the health or safety of a child.
 23 (C) A misdemeanor for operating a child care center without
 24 a license under IC 12-17.2-4-35, or a substantially similar
 25 offense committed in another jurisdiction if the offense is
 26 directly or indirectly related to jeopardizing the health or
 27 safety of a child.
 28 (D) A misdemeanor for operating a child care home without a
 29 license under section 35 of this chapter, or a substantially
 30 similar offense committed in another jurisdiction if the offense
 31 is directly or indirectly related to jeopardizing the health or
 32 safety of a child.
- 33 (3) A determination by the division that the applicant made false
 34 statements in the applicant's application for licensure.
 35 (4) A determination by the division that the applicant made false
 36 statements in the records required by the division.
 37 (5) A determination by the division that the applicant previously
 38 operated a:
 39 (A) child care center without a license under IC 12-17.2-4; or
 40 (B) child care home without a license under this chapter.
- 41 **(6) A determination by the division that an offender against**
 42 **children resides within one thousand (1,000) feet of the child**



- 1 **care home.**
- 2 (b) Notwithstanding subsection (a)(2), if:
- 3 (1) a license application is denied due to a criminal conviction of:
- 4 (A) an employee or a volunteer of the applicant; or
- 5 (B) a member of the applicant's household; and
- 6 (2) the division determines that the:
- 7 (A) employee or volunteer has been dismissed by the
- 8 applicant; or
- 9 (B) member of the applicant's household is no longer a
- 10 member of the applicant's household;
- 11 the criminal conviction of the former employee, former volunteer, or
- 12 former member does not require denial of a license application.
- 13 SECTION 7. IC 12-17.2-6-16, AS ADDED BY P.L.53-2018,
- 14 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 15 JULY 1, 2019]: Sec. 16. (a) The following constitute sufficient grounds
- 16 for denial of an application for registration under this chapter:
- 17 (1) A determination by the department of child services of child
- 18 abuse or neglect (as defined in IC 31-9-2-14) by:
- 19 (A) the applicant;
- 20 (B) an employee of the applicant who has direct contact, on a
- 21 regular and continuous basis, with children who are under the
- 22 direct supervision of the applicant; or
- 23 (C) a volunteer of the applicant who has direct contact, on a
- 24 regular and continuous basis, with children who are under the
- 25 direct supervision of the applicant.
- 26 (2) A criminal conviction of the applicant, an employee of the
- 27 applicant who has direct contact with children who are receiving
- 28 child care from the applicant, or a volunteer of the applicant who
- 29 has direct contact with children who are receiving child care from
- 30 the applicant, of any of the following:
- 31 (A) A felony:
- 32 (i) related to the health or safety of a child;
- 33 (ii) that is a sex offense (as defined in IC 11-8-8-5.2);
- 34 (iii) that is a dangerous felony; or
- 35 (iv) that is not a felony otherwise described in items (i)
- 36 through (iii), and less than ten (10) years have elapsed from
- 37 the date the person was discharged from probation,
- 38 imprisonment, or parole, whichever discharge date is latest.
- 39 (B) A misdemeanor related to the health or safety of a child.
- 40 (C) A misdemeanor for operating a child care ministry without
- 41 a registration under this chapter, or a substantially similar
- 42 offense in another jurisdiction if the offense is directly or



- 1 indirectly related to jeopardizing the health or safety of a child.
 2 (D) A misdemeanor for operating a child care center without
 3 a license under IC 12-17.2-4-35, or a substantially similar
 4 offense in another jurisdiction if the offense is directly or
 5 indirectly related to jeopardizing the health or safety of a child.
 6 (E) A misdemeanor for operating a child care home without a
 7 license under IC 12-17.2-5-35, or a substantially similar
 8 offense in another jurisdiction if the offense is directly or
 9 indirectly related to jeopardizing the health or safety of a child.
 10 (3) A determination by the division that the applicant made false
 11 statements in the applicant's application for registration.
 12 (4) A determination by the division that the applicant made false
 13 statements in the records required by the division.
 14 (5) A determination by the division that the applicant previously
 15 operated a:
 16 (A) child care ministry without a registration under this
 17 chapter;
 18 (B) child care center without a license under IC 12-17.2-4; or
 19 (C) child care home without a license under IC 12-17.2-5.
 20 **(6) A determination by the division that an offender against**
 21 **children resides within one thousand (1,000) feet of the child**
 22 **care ministry.**
 23 (b) Notwithstanding subsection (a)(2), if:
 24 (1) a registration application is denied due to a criminal
 25 conviction of an employee or a volunteer of the applicant; and
 26 (2) the division determines that the employee or volunteer has
 27 been dismissed by the applicant;
 28 the criminal conviction of the former employee or former volunteer
 29 does not require denial of the registration application.
 30 SECTION 8. IC 35-31.5-2-38.5 IS ADDED TO THE INDIANA
 31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2019]: **Sec. 38.5. "Child care center", for**
 33 **purposes of IC 35-42-4-11(c), has the meaning set forth in**
 34 **IC 12-7-2-28.4.**
 35 SECTION 9. IC 35-31.5-2-38.6 IS ADDED TO THE INDIANA
 36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2019]: **Sec. 38.6. "Child care home", for**
 38 **purposes of IC 35-42-4-11(c), has the meaning set forth in**
 39 **IC 12-7-2-28.6.**
 40 SECTION 10. IC 35-31.5-2-38.7 IS ADDED TO THE INDIANA
 41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2019]: **Sec. 38.7. "Child care ministry", for**



1 **purposes of IC 35-42-4-11(c), has the meaning set forth in**
 2 **IC 12-7-2-28.8.**

3 SECTION 11. IC 35-42-4-11, AS AMENDED BY P.L.13-2016,
 4 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2019]: Sec. 11. (a) As used in this section, and except as
 6 provided in subsection (d), "offender against children" means a person
 7 required to register as a sex or violent offender under IC 11-8-8 who
 8 has been:

9 (1) found to be a sexually violent predator under IC 35-38-1-7.5;

10 or

11 (2) convicted of one (1) or more of the following offenses:

12 (A) Child molesting (IC 35-42-4-3).

13 (B) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).

14 (C) Child solicitation (IC 35-42-4-6).

15 (D) Child seduction (IC 35-42-4-7).

16 (E) Kidnapping (IC 35-42-3-2), if the victim is less than
 17 eighteen (18) years of age, and the person is not the child's
 18 parent or guardian.

19 (F) Attempt to commit or conspiracy to commit an offense
 20 listed in clauses (A) through (E).

21 (G) An offense in another jurisdiction that is substantially
 22 similar to an offense described in clauses (A) through (F).

23 A person is an offender against children by operation of law if the
 24 person meets the conditions described in subdivision (1) or (2) at any
 25 time.

26 (b) As used in this section, "reside" means to spend more than three
 27 (3) nights in:

28 (1) a residence; or

29 (2) if the person does not reside in a residence, a particular
 30 location;

31 in any thirty (30) day period.

32 (c) An offender against children who knowingly or intentionally:

33 (1) resides within one thousand (1,000) feet of:

34 (A) school property, not including property of an institution
 35 providing post-secondary education;

36 (B) a youth program center; ~~or~~

37 (C) a public park; ~~or~~

38 **(D) a child care center;**

39 **(E) a child care home; or**

40 **(F) a child care ministry; or**

41 (2) establishes a residence within one (1) mile of the residence of
 42 the victim of the offender's sex offense;



1 commits a sex offender residency offense, a Level 6 felony.

2 (d) This subsection does not apply to an offender against children
3 who has two (2) or more unrelated convictions for an offense described
4 in subsection (a). A person who is an offender against children may
5 petition the court to consider whether the person should no longer be
6 considered an offender against children. The person may file a petition
7 under this subsection not earlier than ten (10) years after the person is
8 released from incarceration or parole, whichever occurs last (or, if the
9 person is not incarcerated, not earlier than ten (10) years after the
10 person is released from probation). A person may file a petition under
11 this subsection not more than one (1) time per year. A court may
12 dismiss a petition filed under this subsection or conduct a hearing to
13 determine if the person should no longer be considered an offender
14 against children. If the court conducts a hearing, the court shall appoint
15 two (2) psychologists or psychiatrists who have expertise in criminal
16 behavioral disorders to evaluate the person and testify at the hearing.
17 After conducting the hearing and considering the testimony of the two
18 (2) psychologists or psychiatrists, the court shall determine whether the
19 person should no longer be considered an offender against children. If
20 a court finds that the person should no longer be considered an offender
21 against children, the court shall send notice to the department of
22 correction that the person is no longer considered an offender against
23 children.

