



Printer's Error
February 2, 2018

SENATE BILL No. 12

DIGEST OF SB 12 (Updated January 30, 2018 11:47 am - DI 106)

Citations Affected: IC 35-38; IC 35-42.

Synopsis: Unlawful encroachment by a sex offender. Provides that, unless a court has granted a waiver, a sex offender who establishes a residence: (1) with the intent to reside at the residence; (2) within a one mile radius of the residence of the victim of the offender's sex offense; and (3) knowing the location of the victim's residence; commits unlawful encroachment by a sex offender, a Level 6 felony.

Effective: July 1, 2018.

Bohacek, Houchin, Eckerty, Crane

January 3, 2018, read first time and referred to Committee on Corrections and Criminal Law.
February 1, 2018, amended, reported favorably — Do Pass.

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Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 12

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 35-38-1-33 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2018]: **Sec. 33. (a) As used in this section, "offender" means an**
4 **individual convicted of a sex offense.**
5 **(b) As used in this section, "sex offense" has the meaning set**
6 **forth in IC 11-8-8-5.2.**
7 **(c) An offender may petition for waiver of the residency**
8 **restriction described in IC 35-42-4-11.5(e). The court may waive**
9 **the residency restriction if the court, at a hearing at which the**
10 **offender is present and of which the prosecuting attorney has been**
11 **notified, determines that:**
12 **(1) the offender has successfully completed a sex offender**
13 **treatment program; and**
14 **(2) good cause exists to allow the offender to reside within one**
15 **(1) mile of the residence of the victim of the offender's sex**
16 **offense.**
17 **However, the court may not grant a waiver under this subsection**

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1 if the offender is a sexually violent predator under IC 35-38-1-7.5
 2 or if the offender is an offender against children under
 3 IC 35-42-4-11.

4 (d) If the court grants a waiver under this section, the court
 5 shall determine the duration of the waiver. The offender may
 6 petition the court for an extension of the waiver not later than sixty
 7 (60) days before its expiration. However, if the court denies an
 8 offender's petition for waiver under this section, then the offender
 9 is subject to prosecution for the offense described in
 10 IC 35-42-4-11.5(e).

11 (e) If the court grants a waiver under this section, the court shall
 12 state in writing the reasons for granting the waiver. The court's
 13 written statement of its reasons shall be incorporated into the
 14 record.

15 (f) The address of the victim of the offender's sex offense is
 16 confidential even if the court grants a waiver under this section.

17 SECTION 2. IC 35-42-4-11.5 IS ADDED TO THE INDIANA
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2018]: Sec. 11.5. (a) The victim of the sex
 20 offender's sex offense may not be prosecuted under this section if
 21 the victim's liability is based on aiding, inducing, or causing the
 22 offender to commit the offense described in subsection (e).

23 (b) This section does not apply to a sex offender who has
 24 obtained a waiver of residency under IC 35-38-2-2.5 or
 25 IC 35-38-1-33.

26 (c) As used in this section, "reside" has the meaning set forth in
 27 section 11 of this chapter.

28 (d) As used in this section, "sex offender" has the meaning set
 29 forth in IC 11-8-8-4.5.

30 (e) A sex offender who:

31 (1) establishes a new residence within a one (1) mile radius of
 32 the residence of the victim of the offender's sex offense;

33 (2) intends to reside at the residence; and

34 (3) at the time the sex offender established the residence, knew
 35 or reasonably should have known that the residence was
 36 located within a one (1) mile radius of the residence of the
 37 victim of the offender's sex offense;

38 commits unlawful encroachment by a sex offender, a Level 6
 39 felony.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 12, 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, delete lines 1 through 17.

Delete pages 2 through 5.

Page 6, delete lines 1 through 20.

Page 6, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 1. IC 35-38-1-33 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 33. (a) As used in this section, "offender" means an individual convicted of a sex offense.**

(b) As used in this section, "sex offense" has the meaning set forth in IC 11-8-8-5.2.

(c) An offender may petition for waiver of the residency restriction described in IC 35-42-4-11.5(e). The court may waive the residency restriction if the court, at a hearing at which the offender is present and of which the prosecuting attorney has been notified, determines that:

(1) the offender has successfully completed a sex offender treatment program; and

(2) good cause exists to allow the offender to reside within one

(1) mile of the residence of the victim of the offender's sex offense.

However, the court may not grant a waiver under this subsection if the offender is a sexually violent predator under IC 35-38-1-7.5 or if the offender is an offender against children under IC 35-42-4-11.

(d) If the court grants a waiver under this section, the court shall determine the duration of the waiver. The offender may petition the court for an extension of the waiver not later than sixty (60) days before its expiration. However, if the court denies an offender's petition for waiver under this section, then the offender is subject to prosecution for the offense described in IC 35-42-4-11.5(e).

(e) If the court grants a waiver under this section, the court shall state in writing the reasons for granting the waiver. The court's written statement of its reasons shall be incorporated into the record.

(f) The address of the victim of the offender's sex offense is

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confidential even if the court grants a waiver under this section."

Page 6, line 23, after "(a)" insert "**The victim of the sex offender's sex offense may not be prosecuted under this section if the victim's liability is based on aiding, inducing, or causing the offender to commit the offense described in subsection (e).**

(b) This section does not apply to a sex offender who has obtained a waiver of residency under IC 35-38-2-2.5 or IC 35-38-1-33.

(c)".

Page 6, line 25, delete "(b)" and insert "**(d)".**

Page 6, line 27, delete "(c)" and insert "**(e)".**

Page 6, line 27, delete "who knowingly or intentionally establishes a" and insert "**who:**

- (1) establishes a new residence within a one (1) mile radius of the residence of the victim of the offender's sex offense;**
- (2) intends to reside at the residence; and**
- (3) at the time the sex offender established the residence, knew or reasonably should have known that the residence was located within a one (1) mile radius of the residence of the victim of the offender's sex offense;"**

Page 6, delete lines 28 through 31.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 12 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 9, Nays 0.

