



February 23, 2018

ENGROSSED SENATE BILL No. 12

DIGEST OF SB 12 (Updated February 21, 2018 5:46 pm - DI 131)

Citations Affected: IC 35-38; IC 35-42; IC 35-46.

Synopsis: Sex offenders. 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 invasion of privacy. Prohibits a sex offender from attending a house of worship located on school property while classes, extracurricular activities, or other school activities are being held.

Effective: July 1, 2018.

**Bohacek, Houchin, Eckerty, Crane,
Randolph Lonnie M, Alting, Crider**
(HOUSE SPONSORS — NEGELE, PRESSEL)

January 3, 2018, read first time and referred to Committee on Corrections and Criminal Law.
February 1, 2018, amended, reported favorably — Do Pass.
February 5, 2018, read second time, ordered engrossed. Engrossed.
February 6, 2018, read third time, passed. Yeas 46, nays 0.

HOUSE ACTION

February 12, 2018, read first time and referred to Committee on Courts and Criminal Code.
February 22, 2018, amended, reported — Do Pass.

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February 23, 2018

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.

ENGROSSED 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 35-46-1-15.1(c). 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 35-46-1-15.1(c).**

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 35-42-4-14, AS AMENDED BY P.L.13-2016,
 18 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2018]: Sec. 14. (a) As used in this section, "serious sex
 20 offender" means a person required to register as a sex offender under
 21 IC 11-8-8 who is:

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

23 or

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

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

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

27 (C) Possession of child pornography (IC 35-42-4-4(d) or
 28 IC 35-42-4-4(e)).

29 (D) Vicarious sexual gratification (IC 35-42-4-5(a) and
 30 IC 35-42-4-5(b)).

31 (E) Performing sexual conduct in the presence of a minor (IC
 32 35-42-4-5(c)).

33 (F) Child solicitation (IC 35-42-4-6).

34 (G) Child seduction (IC 35-42-4-7).

35 (H) Sexual misconduct with a minor (IC 35-42-4-9).

36 (I) A conspiracy or an attempt to commit an offense described
 37 in clauses (A) through (H).

38 (J) An offense in another jurisdiction that is substantially
 39 similar to an offense described in clauses (A) through (I).

40 (b) A serious sex offender who knowingly or intentionally enters
 41 school property commits unlawful entry by a serious sex offender, a
 42 Level 6 felony.



- 1 **(c) It is a defense to a prosecution under subsection (b) that:**
 2 **(1) a religious institution or house of worship is located on the**
 3 **school property; and**
 4 **(2) the person:**
 5 **(A) enters the school property or other entity described in**
 6 **IC 35-31.5-2-285(1)(A) through IC 35-31.5-2-285(1)(D)**
 7 **when classes, extracurricular activities, or any other school**
 8 **activities are not being held:**
 9 **(i) for the sole purpose of attending worship services or**
 10 **receiving religious instruction; and**
 11 **(ii) not earlier than thirty (30) minutes before the**
 12 **beginning of the worship services or religious**
 13 **instruction; and**
 14 **(B) leaves the school property not later than thirty (30)**
 15 **minutes after the conclusion of the worship services or**
 16 **religious instruction.**

17 SECTION 3. IC 35-46-1-15.1, AS AMENDED BY P.L.107-2017,
 18 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2018]: Sec. 15.1. (a) A person who knowingly or intentionally
 20 violates:

- 21 (1) a protective order to prevent domestic or family violence
 22 issued under IC 34-26-5 (or, if the order involved a family or
 23 household member, under IC 34-26-2 or IC 34-4-5.1-5 before
 24 their repeal);
 25 (2) an ex parte protective order issued under IC 34-26-5 (or, if the
 26 order involved a family or household member, an emergency
 27 order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
 28 (3) a workplace violence restraining order issued under
 29 IC 34-26-6;
 30 (4) a no contact order in a dispositional decree issued under
 31 IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4
 32 or IC 31-6-4-15.9 before their repeal) or an order issued under
 33 IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the
 34 person to refrain from direct or indirect contact with a child in
 35 need of services or a delinquent child;
 36 (5) a no contact order issued as a condition of pretrial release,
 37 including release on bail or personal recognizance, or pretrial
 38 diversion, and including a no contact order issued under
 39 IC 35-33-8-3.6;
 40 (6) a no contact order issued as a condition of probation;
 41 (7) a protective order to prevent domestic or family violence
 42 issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before



- 1 their repeal);
- 2 (8) a protective order to prevent domestic or family violence
- 3 issued under IC 31-14-16-1 in a paternity action;
- 4 (9) an order issued in another state that is substantially similar to
- 5 an order described in subdivisions (1) through (8);
- 6 (10) an order that is substantially similar to an order described in
- 7 subdivisions (1) through (8) and is issued by an Indian:
- 8 (A) tribe;
- 9 (B) band;
- 10 (C) pueblo;
- 11 (D) nation; or
- 12 (E) organized group or community, including an Alaska
- 13 Native village or regional or village corporation as defined in
- 14 or established under the Alaska Native Claims Settlement Act
- 15 (43 U.S.C. 1601 et seq.);
- 16 that is recognized as eligible for the special programs and services
- 17 provided by the United States to Indians because of their special
- 18 status as Indians;
- 19 (11) an order issued under IC 35-33-8-3.2; or
- 20 (12) an order issued under IC 35-38-1-30;
- 21 commits invasion of privacy, a Class A misdemeanor. However, the
- 22 offense is a Level 6 felony. if the person has a prior unrelated
- 23 conviction for an offense under this ~~section~~ **subsection**.
- 24 (b) It is not a defense to a prosecution under ~~this section~~ **subsection**
- 25 **(a)** that the accused person used or operated an unmanned aerial
- 26 vehicle in committing the violation.
- 27 **(c) A sex offender under IC 11-8-8-4.5 who:**
- 28 **(1) establishes a new residence within a one (1) mile radius of**
- 29 **the residence of the victim of the offender's sex offense;**
- 30 **(2) intends to reside (as defined in IC 35-42-4-11(b)) at the**
- 31 **residence; and**
- 32 **(3) at the time the sex offender established the residence, knew**
- 33 **or reasonably should have known that the residence was**
- 34 **located within a one (1) mile radius of the residence of the**
- 35 **victim of the offender's sex offense;**
- 36 **commits invasion of privacy, a Class A misdemeanor. However, the**
- 37 **offense is a Level 6 felony if the sex offender has a prior unrelated**
- 38 **conviction under this subsection.**
- 39 **(d) The victim of the sex offender's sex offense may not be**
- 40 **prosecuted under subsection (c) if the victim's liability is based on**
- 41 **aiding, inducing, or causing the offender to commit the offense**
- 42 **described in subsection (c).**



1 (e) Subsection (c) does not apply to a sex offender who has
2 obtained a waiver of residency under IC 35-38-2-2.5 or
3 IC 35-38-1-33.



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.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 12, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 8, delete "IC 35-42-4-11.5(e)." and insert "**IC 35-46-1-15.1(c)**".

Page 2, line 10, delete "IC 35-42-4-11.5(e)." and insert "**IC 35-46-1-15.1(c)**".

Page 2, delete lines 17 through 39, begin a new paragraph and

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insert:

"SECTION 2. IC 35-42-4-14, AS AMENDED BY P.L.13-2016, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 14. (a) As used in this section, "serious sex offender" means a person required to register as a sex offender under IC 11-8-8 who is:

- (1) found to be a sexually violent predator under IC 35-38-1-7.5; or
- (2) convicted of one (1) or more of the following offenses:
 - (A) Child molesting (IC 35-42-4-3).
 - (B) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).
 - (C) Possession of child pornography (IC 35-42-4-4(d) or IC 35-42-4-4(e)).
 - (D) Vicarious sexual gratification (IC 35-42-4-5(a) and IC 35-42-4-5(b)).
 - (E) Performing sexual conduct in the presence of a minor (IC 35-42-4-5(c)).
 - (F) Child solicitation (IC 35-42-4-6).
 - (G) Child seduction (IC 35-42-4-7).
 - (H) Sexual misconduct with a minor (IC 35-42-4-9).
 - (I) A conspiracy or an attempt to commit an offense described in clauses (A) through (H).
 - (J) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (I).

(b) A serious sex offender who knowingly or intentionally enters school property commits unlawful entry by a serious sex offender, a Level 6 felony.

(c) It is a defense to a prosecution under subsection (b) that:

(1) a religious institution or house of worship is located on the school property; and

(2) the person:

(A) enters the school property or other entity described in IC 35-31.5-2-285(1)(A) through IC 35-31.5-2-285(1)(D) when classes, extracurricular activities, or any other school activities are not being held:

(i) for the sole purpose of attending worship services or receiving religious instruction; and

(ii) not earlier than thirty (30) minutes before the beginning of the worship services or religious instruction; and

(B) leaves the school property not later than thirty (30) minutes after the conclusion of the worship services or



religious instruction.

SECTION 3. IC 35-46-1-15.1, AS AMENDED BY P.L.107-2017, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 15.1. (a) A person who knowingly or intentionally violates:

- (1) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
- (2) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
- (3) a workplace violence restraining order issued under IC 34-26-6;
- (4) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
- (5) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
- (6) a no contact order issued as a condition of probation;
- (7) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
- (8) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
- (9) an order issued in another state that is substantially similar to an order described in subdivisions (1) through (8);
- (10) an order that is substantially similar to an order described in subdivisions (1) through (8) and is issued by an Indian:
 - (A) tribe;
 - (B) band;
 - (C) pueblo;
 - (D) nation; or
 - (E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);



that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

(11) an order issued under IC 35-33-8-3.2; or

(12) an order issued under IC 35-38-1-30;

commits invasion of privacy, a Class A misdemeanor. However, the offense is a Level 6 felony. if the person has a prior unrelated conviction for an offense under this ~~section~~ **subsection**.

(b) It is not a defense to a prosecution under ~~this section~~ **subsection (a)** that the accused person used or operated an unmanned aerial vehicle in committing the violation.

(c) A sex offender under IC 11-8-8-4.5 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 (as defined in IC 35-42-4-11(b)) 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;

commits invasion of privacy, a Class A misdemeanor. However, the offense is a Level 6 felony if the sex offender has a prior unrelated conviction under this subsection.

(d) The victim of the sex offender's sex offense may not be prosecuted under subsection (c) if the victim's liability is based on aiding, inducing, or causing the offender to commit the offense described in subsection (c).

(e) Subsection (c) 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."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 12 Printer's Error as printed February 2, 2018.)

WASHBURN

Committee Vote: yeas 11, nays 0.

