
ENGROSSED
SENATE BILL No. 429

DIGEST OF SB0429 (Updated February 17, 1998 12:05 pm - DI 51)

Citations Affected: IC 5-2; IC 35-38.

Synopsis: Sex and violent offender registry. Expands the sex offender registry to include offenders who have been convicted of kidnapping or criminal confinement of a victim less than 18 years of age. Requires a local law enforcement agency to immediately notify the Indiana criminal justice institute whenever an offender registers with the local law enforcement authority. Provides that not more than three days after an offender who is required to register is released from a correctional facility, an official of the correctional facility shall send to the Indiana
(Continued next page)

Effective: July 1, 1998.

Bray, Alexa, Randolph, Zakas,
Wyss, Bowser

(HOUSE SPONSORS — CROSBY, AYRES, DVORAK)

January 13, 1998, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

January 29, 1998, amended, reported favorably — Do Pass.

February 2, 1998, read second time, ordered engrossed. Engrossed.

February 3, 1998, read third time, passed. Yeas 48, nays 1.

HOUSE ACTION

February 10, 1998, read first time and referred to Committee on Courts and Criminal Code.

February 17, 1998, reported — Do Pass.

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state police certain information. Requires a law enforcement agency to conduct a mailing in order to verify the address of an offender who is required to register. Provides that whenever an offender is sentenced for committing certain sex offenses, the sentencing court shall determine whether the person is a sexually violent predator. Requires a person who is adjudicated a sexually violent predator to register for an indefinite period unless a court, at least ten years after the person is sentenced, finds that the person is no longer a sexually violent predator. Allows a person who is a sexually violent predator to petition a court, not earlier than ten years after the person is sentenced, to consider whether the person continues to be a sexually violent predator. Requires a court to consult with two psychologists or psychiatrists who have expertise in criminal behavioral disorders whenever the court considers whether a person is a sexually violent predator. Requires a court to send notice to the Indiana criminal justice institute whenever a person is found no longer to be a sexually violent predator. Classifies a nongovernmental entity that performs a governmental function for a criminal justice agency as a criminal justice agency for the purposes of the law governing the collection and release of criminal history information. Allows the distribution of a limited criminal history upon a request related to a child care volunteer or sex offender even if the offender petitions to have access limited. Provides that an offender who is required to register with the sex and violent offender registry may not petition a court for a change of name. Provides that if an offender who is required to register with the sex and violent offender registry changes the offender's name due to marriage, the offender must notify the Indiana criminal justice institute not more than 30 days after the name change. Makes conforming amendments.

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Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

SENATE ENROLLED ACT No. 429

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-2-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. As used in this chapter, unless the context otherwise requires:

(a) "Criminal history information" means information collected by criminal justice agencies or individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.

(b) "Criminal intelligence information" means information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity. "Criminal intelligence information" does not include criminal investigative information which is information on identifiable individuals compiled in the course of the investigation of specific criminal acts.

(c) "Criminal justice agency" means any agency or department of any level of government which performs as its principal function the apprehension, prosecution, adjudication, incarceration, rehabilitation of criminal offenders, or location of parents with child support

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obligations under 42 U.S.C. 653. **The term includes a nongovernmental entity that performs as its principal function the:**

- (1) apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders; or**
- (2) location of parents with child support obligations under 42 U.S.C. 653;**

under a contract with an agency or department of any level of government.

SECTION 2. IC 5-2-5-1, AS AMENDED BY P.L.32-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. The following definitions apply throughout this chapter:

- (1) "Limited criminal history" means information with respect to any arrest, indictment, information, or other formal criminal charge, which must include a disposition. However, information about any arrest, indictment, information, or other formal criminal charge which occurred less than one (1) year before the date of a request shall be considered a limited criminal history even if no disposition has been entered.
- (2) "Council" means the security and privacy council created under section 11 of this chapter.
- (3) "Criminal history data" means information collected by criminal justice agencies, the United States Department of Justice for the department's information system, or individuals. The term consists of the following:
 - (A) Identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges.
 - (B) Information regarding an offender (as defined in IC 5-2-12-4) obtained through sex offender registration under IC 5-2-12.
 - (C) Any disposition, including sentencing, and correctional system intake, transfer, and release.
- (4) "Criminal justice agency" means any agency or department of any level of government whose principal function is the apprehension, prosecution, adjudication, incarceration, probation, rehabilitation, or representation of criminal offenders, the location of parents with child support obligations under 42 U.S.C. 653, the licensing and regulating of riverboat gambling operations, or the licensing and regulating of pari-mutuel horse racing operations. The term includes the Medicaid fraud control unit for the purpose of investigating offenses involving Medicaid. **The term includes a nongovernmental entity that performs as its principal**

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function the:

- (A) apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders;**
- (B) location of parents with child support obligations under 42 U.S.C. 653;**
- (C) licensing and regulating of riverboat gambling operations; or**
- (D) licensing and regulating of pari-mutuel horse racing operations;**

under a contract with an agency or department of any level of government.

- (5) "Department" means the state police department.
- (6) "Disposition" means information disclosing that criminal proceedings have been concluded or indefinitely postponed.
- (7) "Inspection" means visual perusal and includes the right to make memoranda abstracts of the information.
- (8) "Institute" means the Indiana criminal justice institute established under IC 5-2-6.
- (9) "Law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders.
- (10) "Protective order" has the meaning set forth in IC 5-2-9-2.1.
- (11) "Release" means the furnishing of a copy, or an edited copy, of criminal history data.
- (12) "Reportable offenses" means all felonies and those Class A misdemeanors which the superintendent may designate.
- (13) "Request" means the asking for release or inspection of a limited criminal history by noncriminal justice organizations or individuals in a manner which:

- (A) reasonably ensures the identification of the subject of the inquiry; and
- (B) contains a statement of the purpose for which the information is requested.

- (14) "Unidentified person" means a deceased or mentally incapacitated person whose identity is unknown.

SECTION 3. IC 5-2-5-7, AS AMENDED BY P.L.11-1994, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) Except as provided in subsection (c), on request for release or inspection of a limited criminal history, law enforcement agencies may and the department shall do the following:

- (1) Require a form, provided by them, to be completed. This form shall be maintained for a period of two (2) years and shall be

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available to the record subject upon request.

(2) Collect a three dollar (\$3) fee to defray the cost of processing a request for inspection.

(3) Collect a seven dollar (\$7) fee to defray the cost of processing a request for release. However, law enforcement agencies and the department may not charge the fee for requests received from the parent locator service of the child support bureau of the division of family and children.

(b) Law enforcement agencies and the department shall edit information so that the only information released or inspected is information which:

- (1) has been requested; and
- (2) is limited criminal history information.

(c) The fee required under subsection (a) shall be waived if the request is from the institute for conviction information that will be used to establish or update the sex **and violent** offender registry under IC 5-2-12.

SECTION 4. IC 5-2-6-3, AS AMENDED BY P.L.36-1997, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) The institute is established to do the following:

- (1) Evaluate state and local programs associated with:
 - (A) the prevention, detection, and solution of criminal offenses;
 - (B) law enforcement; and
 - (C) the administration of criminal and juvenile justice.
- (2) Improve and coordinate all aspects of law enforcement, juvenile justice, and criminal justice in this state.
- (3) Stimulate criminal and juvenile justice research.
- (4) Develop new methods for the prevention and reduction of crime.
- (5) Prepare applications for funds under the Omnibus Act and the Juvenile Justice Act.
- (6) Administer victim and witness assistance funds.
- (7) Administer the traffic safety functions assigned to the institute under IC 9-27-2.
- (8) Compile and analyze information and disseminate the information to persons who make criminal justice decisions in this state.
- (9) Serve as the criminal justice statistical analysis center for this state.
- (10) Establish and maintain, in cooperation with the office of the

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secretary of family and social services, a sex **and violent** offender registry.

(11) Administer the application and approval process for designating an area of a consolidated or second class city as a public safety improvement area under IC 36-8-19.5.

(b) The registry established under subsection (a)(10) must include the names of all persons who:

(1) have been convicted in Indiana **before or after June 30, 1998**, of:

- (A) rape (IC 35-42-4-1);
- (B) criminal deviate conduct (IC 35-42-4-2);
- (C) child molesting (IC 35-42-4-3);
- (D) child exploitation (IC 35-42-4-4(b));
- (E) vicarious sexual gratification (IC 35-42-4-5);
- (F) child solicitation (IC 35-42-4-6);
- (G) child seduction (IC 35-42-4-7);
- (H) sexual misconduct with a minor as a Class A or Class B felony (IC 35-42-4-9);
- (I) incest (IC 35-46-1-3); or
- (J) sexual battery (IC 35-42-4-8); or

(2) have been convicted in Indiana after June 30, 1998, of:

- (A) kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age; or**
- (B) criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age; or**

~~(2)~~ **(3) are residing in Indiana and have been convicted in another state of a sex an offense that is substantially equivalent to any of the sex offenses listed specified in subdivision (1) or violent offenses specified in subdivision (2).**

SECTION 5. IC 5-2-6-14, AS AMENDED BY P.L.11-1994, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 14. (a) The victim and witness assistance fund is established. The institute shall administer the fund. Except as provided in subsection (e), expenditures from the fund may be made only in accordance with appropriations made by the general assembly.

(b) The source of the victim and witness assistance fund is the family violence and victim assistance fund established by IC 12-18-5-2.

(c) The institute may use money from the victim and witness assistance fund when awarding a grant or entering into a contract under this chapter, if the money is used for the support of a program in the office of a prosecuting attorney or in a state or local law enforcement agency designed to:

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- (1) help evaluate the physical, emotional, and personal needs of a victim resulting from a crime, and counsel or refer the victim to those agencies or persons in the community that can provide the services needed;
 - (2) provide transportation for victims and witnesses of crime to attend proceedings in the case when necessary; or
 - (3) provide other services to victims or witnesses of crime when necessary to enable them to participate in criminal proceedings without undue hardship or trauma.
- (d) Money in the victim and witness assistance fund at the end of a particular fiscal year does not revert to the general fund.
- (e) The institute may use money in the fund to:
- (1) pay the costs of administering the fund, including expenditures for personnel and data;
 - (2) establish and maintain the sex **and violent** offender registry under IC 5-2-12; and
 - (3) provide training for persons to assist victims.

SECTION 6. IC 5-2-12-4, AS AMENDED BY P.L.36-1997, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. As used in this chapter, "offender" refers to:

- (1) a person convicted in Indiana after June 30, 1994, of:
 - (A) rape (IC 35-42-4-1);
 - (B) criminal deviate conduct (IC 35-42-4-2);
 - (C) child molesting (IC 35-42-4-3);
 - (D) child exploitation (IC 35-42-4-4(b));
 - (E) vicarious sexual gratification (IC 35-42-4-5);
 - (F) child solicitation (IC 35-42-4-6);
 - (G) child seduction (IC 35-42-4-7);
 - (H) sexual misconduct with a minor as a Class A or Class B felony (IC 35-42-4-9);
 - (I) incest (IC 35-46-1-3); ~~or~~
 - (J) sexual battery (IC 35-42-4-8);
- (2) **a person convicted in Indiana after June 30, 1998, of:**
 - (A) **kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age; or**
 - (B) **criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age;**
- ~~(2)~~ (3) a child who:
 - (A) is at least fourteen (14) years of age;
 - (B) is on probation, is on parole, or is discharged from a facility by the department of correction as a result of an adjudication as a delinquent child for an act that would be an

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offense described in subdivision (1) **or** (2) if committed by an adult; and

(C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subdivision (1) **or** (2) if committed by an adult; or

⊕ (4) a person residing in Indiana who was convicted after:

(A) June 30, 1994, in another state of a ~~sex~~ **an** offense that is substantially equivalent to any of the **sex** offenses listed in subdivision (1); or

(B) June 30, 1998, in another state of an offense that is substantially equivalent to any of the violent offenses listed in subdivision (2).

SECTION 7. IC 5-2-12-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 1998]: **Sec. 4.5. As used in this chapter, "sexually violent predator" means an individual who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in any of the offenses described in section 4 of this chapter.**

SECTION 8. IC 5-2-12-5, AS AMENDED BY P.L.33-1996, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) An offender shall register with each local law enforcement authority having jurisdiction in the area where the offender resides or intends to reside for more than seven (7) days. The offender shall register not more than seven (7) days after the offender arrives at the place where the offender resides or intends to reside.

(b) **An offender's duty to register expires ten (10) years after the date the offender is released from prison or any other facility operated by the department of correction; placed on parole; or placed on probation; whichever occurs last. Whenever an offender registers with a local law enforcement authority under subsection (a), the local law enforcement agency shall immediately notify the institute of the offender's registration.**

SECTION 9. IC 5-2-12-7, AS ADDED BY P.L.11-1994, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) At least thirty (30) days but not more than ninety (90) days before an offender who is required to register under this chapter is scheduled to be released from a correctional facility, an official of the correctional facility shall do the following:

(1) Inform the offender of the offender's duty to register under this chapter and require the offender to sign a written statement that the offender was informed or, if the offender refuses to sign the



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statement, certify that the offender was informed of the duty to register.

(2) Obtain the address where the offender expects to reside after the offender's release.

(3) Inform the applicable local law enforcement authority having jurisdiction in the area where the offender expects to reside of the offender's name, release date, new address, and the offense committed by the offender.

(b) Notwithstanding any other law, not more than three (3) days after an offender who is required to register under this chapter is released from a correctional facility, an official of the correctional facility shall send to the state police the following:

(1) The offender's fingerprints, photograph, and identification factors.

(2) The address where the offender expects to reside after the offender's release.

(3) The complete criminal history data (as defined in IC 5-2-5-1) of the offender.

(4) Information regarding the offender's past treatment for mental disorders.

(5) Information as to whether the offender has been determined to be a sexually violent predator.

SECTION 10. IC 5-2-12-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 7.5. Notwithstanding any other law, upon receiving an offender's fingerprints from a correctional facility, the state police shall immediately send the fingerprints to the Federal Bureau of Investigation.**

SECTION 11. IC 5-2-12-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 8.5. (a) To verify an offender's current residence, the local law enforcement agency shall do the following:**

(1) Mail each offender a verification form to the offender's listed address at least one (1) time per year, beginning one (1) year after the date the offender is:

(A) released from a correctional facility operated by the department of correction;

(B) placed on parole; or

(C) placed on probation;

whichever occurs last.

(2) Mail a verification form to each offender who is designated a sexually violent predator under IC 35-38-1-7.5 at least once

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every ninety (90) days beginning ninety (90) days after the date the offender is:

- (A) released from a correctional facility operated by the department of correction;
- (B) placed on parole; or
- (C) placed on probation;

whichever occurs last.

(b) If an offender fails to return a signed verification form either by mail or in person, the local law enforcement agency shall immediately notify the institute.

SECTION 12. IC 5-2-12-8.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 8.6. (a) An offender who is required to register under this chapter may not petition for a change of name under IC 34-4-6.**

(b) If an offender who is required to register under this chapter changes the offender's name due to marriage, the offender must notify the criminal justice institute not more than thirty (30) days after the name change.

SECTION 13. IC 5-2-12-10, AS ADDED BY P.L.11-1994, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 10.** The institute shall update the sex **and violent** offender registry at least one (1) time every six (6) months.

SECTION 14. IC 5-2-12-11, AS ADDED BY P.L.11-1994, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 11.** The institute shall make the sex **and violent** offender registry available on a computer disk. Each time the registry is updated under section 10 of this chapter, the institute shall send one (1) paper copy of the sex **and violent** offender registry to:

- (1) all school corporations (as defined in IC 20-1-6-1);
- (2) all nonpublic schools (as defined in IC 20-10.1-1-3);
- (3) a state agency that licenses individuals who work with children;
- (4) the state personnel department to screen individuals who may be hired to work with children;
- (5) all child care facilities licensed by or registered in the state of Indiana; and
- (6) other entities that:
 - (A) provide services to children; and
 - (B) request the registry.

A copy of the sex **and violent** offender registry provided to an entity under subdivision (5) or (6) may not include the home address of an

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offender whose name appears in the registry.

SECTION 15. IC 5-2-12-12, AS AMENDED BY P.L.33-1996, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 12. When the institute sends a copy of the sex **and violent** offender registry to an entity under section 11 of this chapter, the institute shall include a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense **or a violent offense** against a child or has been adjudicated a delinquent child for an act involving another child that would be a sex **or violent** offense if committed by an adult. Continuing to employ a person whose name appears on this registry may result in civil liability for the employer."

SECTION 16. IC 5-2-12-13, AS AMENDED BY P.L.33-1996, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 13. (a) **Except as provided in subsection (b)**, an offender's duty to register expires ten (10) years after the date the offender is released from prison or any other facility operated by the department of correction, placed on parole, or placed on probation, whichever occurs last.

(b) An offender who is found to be a sexually violent predator by a court under IC 35-38-1-7.5(b) is required to register for an indefinite period unless a court, assisted by a board of experts, finds that the offender is no longer a sexually violent predator under IC 35-38-1-7.5(c).

SECTION 17. IC 35-38-1-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7.5. (a) **As used in this section, "sexually violent predator" has the meaning set forth in IC 5-2-12-4.5.**

(b) This section applies whenever a court sentences a person for a sex offense listed in IC 5-2-12-4(1)(A) through IC 5-2-12-4(1)(J) for which the person is required to register with local law enforcement agency under IC 5-2-12-5.

(c) At the sentencing hearing, the court shall determine whether the person is a sexually violent predator. Before making a determination under this section, the court shall consult with a board of experts consisting of two (2) board certified psychologists or psychiatrists who have expertise in criminal behavioral disorders.

(d) If the court finds that a person is a sexually violent predator:

(1) the person is required to register with local law enforcement agency as provided in IC 5-2-12-13(b); and



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(2) the court shall send notice of its finding under this subsection to the criminal justice institute.

(e) A person who is found by a court to be a sexually violent predator under subsection (c) may petition the court to consider whether the person is no longer a sexually violent predator. The person may file a petition under this subsection not earlier than ten (10) years after the sentencing court makes its finding under subsection (c). A person may file a petition under this subsection not more than one (1) time per year. If a court finds that the person is no longer a sexually violent predator, the court shall send notice to the Indiana criminal justice institute that the person is no longer considered a sexually violent predator.

SECTION 18. IC 35-38-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) **This section does not apply to a request to a law enforcement agency for the release or inspection of a limited criminal history to a noncriminal justice organization or individual whenever the subject of the request is described in IC 5-2-5-5(a)(8) or IC 5-2-5-5(a)(11).**

(b) A person may petition the state police department to limit access to his limited criminal history to criminal justice agencies if more than fifteen (15) years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime.

~~(b)~~ (c) When a petition is filed under subsection ~~(a)~~; (b), the state police department shall not release limited criminal history to noncriminal justice agencies under IC 5-2-5-5.

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