



January 25, 2008

# HOUSE BILL No. 1134

DIGEST OF HB 1134 (Updated January 22, 2008 6:05 pm - DI 107)

**Citations Affected:** IC 11-8; IC 35-38; IC 35-42; noncode.

**Synopsis:** Sex offenders. Requires a sex or violent offender to report the offender's electronic mail address and certain Internet usernames. Requires a sex or violent offender to sign a consent form authorizing businesses or organizations that offer certain computer and Internet services to provide the department of correction or the state police information concerning the offender's Internet usage. Specifies the court in which a petition must be filed to remove the designation as a sexually violent predator or an offender against children, and provides that the petitioner has the burden of proving that the designation should be removed. Increases the penalty for child molesting to a Class B felony if the child is compelled to submit to the fondling or touching by force or the threat of force. Provides that, as a condition of probation, a sex offender who is an offender against children and is convicted of certain crimes (sex offender) shall be prohibited from being on the property of a primary or secondary school. Provides, however, that: (1) if the sex offender attends a primary or secondary school, the sex offender shall be prohibited from being on the property of a primary or secondary school other than the school that the sex offender attends; and (2) if the sex offender is a parent or guardian of a child who attends a primary or secondary school, the sex offender shall be required to notify the school (and if the school is a public school, the school

(Continued next page)

**Effective:** July 1, 2008.

**VanDenburgh, Lawson L**

January 8, 2008, read first time and referred to Committee on Judiciary.  
January 24, 2008, amended, reported — Do Pass.

HB 1134—LS 6866/DI 107+



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corporation) in writing that the sex offender is an offender against children and shall be prohibited from being on the property of the school that the child attends unless the sex offender is attending a meeting with a teacher or school administrator and is escorted by an employee of the school or school district while on school property. Makes it a Class D felony for a sex offender to use a social networking Internet web site or an instant messaging or chat room program that the offender knows is frequented by children and if the offender contacts a child or a person the offender believes is a child through the website or program.

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HB 1134—LS 6866/DI 107+



January 25, 2008

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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## HOUSE BILL No. 1134

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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 11-8-8-1.2 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2008]: **Sec. 1.2. As used in this chapter, "electronic chat room**  
4 **username" means an identifier that allows a person to**  
5 **communicate over the Internet in real time using typed text.**

6 SECTION 2. IC 11-8-8-1.4 IS ADDED TO THE INDIANA CODE  
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2008]: **Sec. 1.4. As used in this chapter, "electronic mail address"**  
9 **means a destination, commonly expressed as a string of characters,**  
10 **to which electronic mail may be sent or delivered.**

11 SECTION 3. IC 11-8-8-1.6 IS ADDED TO THE INDIANA CODE  
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
13 1, 2008]: **Sec. 1.6. As used in this chapter, "instant messaging**  
14 **username" means an identifier that allows a person to**  
15 **communicate over the Internet in real time using typed text.**

16 SECTION 4. IC 11-8-8-1.8 IS ADDED TO THE INDIANA CODE  
17 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1 1, 2008]: **Sec. 1.8. As used in this chapter, "social networking web**  
2 **site username" means an identifier or profile that allows a person**  
3 **to create, use, or modify a social networking web site, as defined in**  
4 **IC 34-42-4-12.**

5 SECTION 5. IC 11-8-8-7, AS AMENDED BY P.L.216-2007,  
6 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
7 JULY 1, 2008]: Sec. 7. (a) Subject to section 19 of this chapter, the  
8 following persons must register under this chapter:

9 (1) A sex or violent offender who resides in Indiana. A sex or  
10 violent offender resides in Indiana if either of the following  
11 applies:

12 (A) The sex or violent offender spends or intends to spend at  
13 least seven (7) days (including part of a day) in Indiana during  
14 a one hundred eighty (180) day period.

15 (B) The sex or violent offender owns real property in Indiana  
16 and returns to Indiana at any time.

17 (2) A sex or violent offender who works or carries on a vocation  
18 or intends to work or carry on a vocation full-time or part-time for  
19 a period:

20 (A) exceeding seven (7) consecutive days; or

21 (B) for a total period exceeding fourteen (14) days;  
22 during any calendar year in Indiana regardless of whether the sex  
23 or violent offender is financially compensated, volunteered, or is  
24 acting for the purpose of government or educational benefit.

25 (3) A sex or violent offender who is enrolled or intends to be  
26 enrolled on a full-time or part-time basis in any public or private  
27 educational institution, including any secondary school, trade, or  
28 professional institution, or postsecondary educational institution.

29 (b) Except as provided in subsection (e), a sex or violent offender  
30 who resides in Indiana shall register with the local law enforcement  
31 authority in the county where the sex or violent offender resides. If a  
32 sex or violent offender resides in more than one (1) county, the sex or  
33 violent offender shall register with the local law enforcement authority  
34 in each county in which the sex or violent offender resides. If the sex  
35 or violent offender is also required to register under subsection (a)(2)  
36 or (a)(3), the sex or violent offender shall also register with the local  
37 law enforcement authority in the county in which the offender is  
38 required to register under subsection (c) or (d).

39 (c) A sex or violent offender described in subsection (a)(2) shall  
40 register with the local law enforcement authority in the county where  
41 the sex or violent offender is or intends to be employed or carry on a  
42 vocation. If a sex or violent offender is or intends to be employed or

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1 carry on a vocation in more than one (1) county, the sex or violent  
2 offender shall register with the local law enforcement authority in each  
3 county. If the sex or violent offender is also required to register under  
4 subsection (a)(1) or (a)(3), the sex or violent offender shall also register  
5 with the local law enforcement authority in the county in which the  
6 offender is required to register under subsection (b) or (d).

7 (d) A sex or violent offender described in subsection (a)(3) shall  
8 register with the local law enforcement authority in the county where  
9 the sex or violent offender is enrolled or intends to be enrolled as a  
10 student. If the sex or violent offender is also required to register under  
11 subsection (a)(1) or (a)(2), the sex or violent offender shall also register  
12 with the local law enforcement authority in the county in which the  
13 offender is required to register under subsection (b) or (c).

14 (e) A sex or violent offender described in subsection (a)(1)(B) shall  
15 register with the local law enforcement authority in the county in which  
16 the real property is located. If the sex or violent offender is also  
17 required to register under subsection (a)(1)(A), (a)(2), or (a)(3), the sex  
18 or violent offender shall also register with the local law enforcement  
19 authority in the county in which the offender is required to register  
20 under subsection (b), (c), or (d).

21 (f) A sex or violent offender committed to the department shall  
22 register with the department before the sex or violent offender is  
23 released from incarceration. The department shall forward the sex or  
24 violent offender's registration information to the local law enforcement  
25 authority of every county in which the sex or violent offender is  
26 required to register.

27 (g) This subsection does not apply to a sex or violent offender who  
28 is a sexually violent predator. A sex or violent offender not committed  
29 to the department shall register not more than seven (7) days after the  
30 sex or violent offender:

- 31 (1) is released from a penal facility (as defined in IC 35-41-1-21);
- 32 (2) is released from a secure private facility (as defined in  
33 IC 31-9-2-115);
- 34 (3) is released from a juvenile detention facility;
- 35 (4) is transferred to a community transition program;
- 36 (5) is placed on parole;
- 37 (6) is placed on probation;
- 38 (7) is placed on home detention; or
- 39 (8) arrives at the place where the sex or violent offender is  
40 required to register under subsection (b), (c), or (d);

41 whichever occurs first. A sex or violent offender required to register in  
42 more than one (1) county under subsection (b), (c), (d), or (e) shall

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1 register in each appropriate county not more than seventy-two (72)  
2 hours after the sex or violent offender's arrival in that county or  
3 acquisition of real estate in that county.

4 (h) This subsection applies to a sex or violent offender who is a  
5 sexually violent predator. A sex or violent offender who is a sexually  
6 violent predator shall register not more than seventy-two (72) hours  
7 after the sex or violent offender:

- 8 (1) is released from a penal facility (as defined in IC 35-41-1-21);
- 9 (2) is released from a secure private facility (as defined in  
10 IC 31-9-2-115);
- 11 (3) is released from a juvenile detention facility;
- 12 (4) is transferred to a community transition program;
- 13 (5) is placed on parole;
- 14 (6) is placed on probation;
- 15 (7) is placed on home detention; or
- 16 (8) arrives at the place where the sexually violent predator is  
17 required to register under subsection (b), (c), or (d);

18 whichever occurs first. A sex or violent offender who is a sexually  
19 violent predator required to register in more than one (1) county under  
20 subsection (b), (c), (d), or (e) shall register in each appropriate county  
21 not more than seventy-two (72) hours after the offender's arrival in that  
22 county or acquisition of real estate in that county.

23 (i) The local law enforcement authority with whom a sex or violent  
24 offender registers under this section shall make and publish a  
25 photograph of the sex or violent offender on the Indiana sex and violent  
26 offender registry web site established under IC 36-2-13-5.5. The local  
27 law enforcement authority shall make a photograph of the sex or  
28 violent offender that complies with the requirements of IC 36-2-13-5.5  
29 at least once per year. The sheriff of a county containing a consolidated  
30 city shall provide the police chief of the consolidated city with all  
31 photographic and computer equipment necessary to enable the police  
32 chief of the consolidated city to transmit sex or violent offender  
33 photographs (and other identifying information required by  
34 IC 36-2-13-5.5) to the Indiana sex and violent offender registry web  
35 site established under IC 36-2-13-5.5. In addition, the sheriff of a  
36 county containing a consolidated city shall provide all funding for the  
37 county's financial obligation for the establishment and maintenance of  
38 the Indiana sex and violent offender registry web site established under  
39 IC 36-2-13-5.5.

40 (j) When a sex or violent offender registers, the local law  
41 enforcement authority shall:

- 42 (1) immediately update the Indiana sex and violent offender

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- 1 registry web site established under IC 36-2-13-5.5;
- 2 (2) notify every law enforcement agency having jurisdiction in the
- 3 county where the sex or violent offender resides; and
- 4 (3) update the National Crime Information Center National Sex
- 5 Offender Registry data base via the Indiana data and
- 6 communications system (IDACS).

7 When a sex or violent offender from a jurisdiction outside Indiana  
 8 registers a change of address, **electronic mail address, instant**  
 9 **messaging username, electronic chat room username, social**  
 10 **networking web site username**, employment, vocation, or enrollment  
 11 in Indiana, the local law enforcement authority shall provide the  
 12 department with the information provided by the sex or violent  
 13 offender during registration.

14 SECTION 6. IC 11-8-8-8, AS AMENDED BY P.L.216-2007,  
 15 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2008]: Sec. 8. (a) The registration required under this chapter  
 17 must include the following information:

- 18 (1) The sex or violent offender's full name, alias, any name by
- 19 which the sex or violent offender was previously known, date of
- 20 birth, sex, race, height, weight, hair color, eye color, any scars,
- 21 marks, or tattoos, Social Security number, driver's license number
- 22 or state identification card number, vehicle description and
- 23 vehicle plate number for any vehicle the sex or violent offender
- 24 owns or operates on a regular basis, principal residence address,
- 25 other address where the sex or violent offender spends more than
- 26 seven (7) nights in a fourteen (14) day period, and mailing
- 27 address, if different from the sex or violent offender's principal
- 28 residence address.
- 29 (2) A description of the offense for which the sex or violent
- 30 offender was convicted, the date of conviction, the county of the
- 31 conviction, the cause number of the conviction, and the sentence
- 32 imposed, if applicable.
- 33 (3) If the person is required to register under section 7(a)(2) or
- 34 7(a)(3) of this chapter, the name and address of each of the sex or
- 35 violent offender's employers in Indiana, the name and address of
- 36 each campus or location where the sex or violent offender is
- 37 enrolled in school in Indiana, and the address where the sex or
- 38 violent offender stays or intends to stay while in Indiana.
- 39 (4) A recent photograph of the sex or violent offender.
- 40 (5) If the sex or violent offender is a sexually violent predator,
- 41 that the sex or violent offender is a sexually violent predator.
- 42 (6) If the sex or violent offender is required to register for life,

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that the sex or violent offender is required to register for life.  
**(7) Any electronic mail address, instant messaging username, electronic chat room username, or social networking web site username that the sex or violent offender uses or intends to use.**

~~(7)~~ **(8)** Any other information required by the department.

**(b) If the sex or violent offender registers any information under subsection (a)(7), the offender shall sign a consent form authorizing any business or organization that offers electronic communications, Internet access, or remote computer services to provide the department and the state police department all information concerning the sex or violent offender that the business or organization is aware of, including the sex or violent offender's Internet usage.**

SECTION 7. IC 11-8-8-11, AS AMENDED BY P.L.216-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) If a sex or violent offender who is required to register under this chapter changes:

- (1) principal residence address; or
- (2) if section 7(a)(2) or 7(a)(3) of this chapter applies, the place where the sex or violent offender stays in Indiana;

the sex or violent offender shall report in person to the local law enforcement authority having jurisdiction over the sex or violent offender's current principal address or location and, if the offender moves to a new county in Indiana, to the local law enforcement authority having jurisdiction over the sex or violent offender's new principal address or location not more than seventy-two (72) hours after the address change.

(b) If a sex or violent offender moves to a new county in Indiana, the local law enforcement authority where the sex or violent offender's current principal residence address is located shall inform the local law enforcement authority in the new county in Indiana of the sex or violent offender's residence and forward all relevant registration information concerning the sex or violent offender to the local law enforcement authority in the new county. The local law enforcement authority receiving notice under this subsection shall verify the address of the sex or violent offender under section 13 of this chapter not more than seven (7) days after receiving the notice.

(c) If a sex or violent offender who is required to register under section 7(a)(2) or 7(a)(3) of this chapter changes the sex or violent offender's principal place of employment, principal place of vocation, or campus or location where the sex or violent offender is enrolled in

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- 1 school, the sex or violent offender shall report in person:
- 2 (1) to the local law enforcement authority having jurisdiction over
- 3 the sex or violent offender's current principal place of
- 4 employment, principal place of vocation, or campus or location
- 5 where the sex or violent offender is enrolled in school; and
- 6 (2) if the sex or violent offender changes the sex or violent
- 7 offender's place of employment, vocation, or enrollment to a new
- 8 county in Indiana, to the local law enforcement authority having
- 9 jurisdiction over the sex or violent offender's new principal place
- 10 of employment, principal place of vocation, or campus or location
- 11 where the sex or violent offender is enrolled in school;
- 12 not more than seventy-two (72) hours after the change.
- 13 (d) If a sex or violent offender moves the sex or violent offender's
- 14 place of employment, vocation, or enrollment to a new county in
- 15 Indiana, the local law enforcement authority having jurisdiction over
- 16 the sex or violent offender's current principal place of employment,
- 17 principal place of vocation, or campus or location where the sex or
- 18 violent offender is enrolled in school shall inform the local law
- 19 enforcement authority in the new county of the sex or violent offender's
- 20 new principal place of employment, vocation, or enrollment by
- 21 forwarding relevant registration information to the local law
- 22 enforcement authority in the new county.
- 23 (e) If a sex or violent offender moves the sex or violent offender's
- 24 residence, place of employment, vocation, or enrollment to a new state,
- 25 the local law enforcement authority shall inform the state police in the
- 26 new state of the sex or violent offender's new place of residence,
- 27 employment, vocation, or enrollment.
- 28 **(f) If a sex or violent offender who is required to register under**
- 29 **this chapter changes or obtains a new:**
- 30 **(1) electronic mail address;**
- 31 **(2) instant messaging username;**
- 32 **(3) electronic chat room username; or**
- 33 **(4) social networking web site username;**
- 34 **the sex or violent offender shall report in person to the local law**
- 35 **enforcement authority having jurisdiction over the sex or violent**
- 36 **offender's current principal address or location and shall provide**
- 37 **the local law enforcement authority with the new address or**
- 38 **username not more than seventy-two (72) hours after the change**
- 39 **or creation of the address or username.**
- 40 (f) (g) A local law enforcement authority shall make registration
- 41 information, including information concerning the duty to register and
- 42 the penalty for failing to register, available to a sex or violent offender.

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1           ~~(g)~~ **(h)** A local law enforcement authority who is notified of a  
2 change under subsection (a), ~~or~~ (c), **or** (f) shall:

3           (1) immediately update the Indiana sex and violent offender  
4 registry web site established under IC 36-2-13-5.5;

5           (2) update the National Crime Information Center National Sex  
6 Offender Registry data base via the Indiana data and  
7 communications system (IDACS); and

8           (3) notify the department.

9           ~~(h)~~ **(i)** If a sex or violent offender who is registered with a local law  
10 enforcement authority becomes incarcerated, the local law enforcement  
11 authority shall transmit a copy of the information provided by the sex  
12 or violent offender during registration to the department.

13           ~~(i)~~ **(j)** If a sex or violent offender is no longer required to register  
14 due to the expiration of the registration period, the local law  
15 enforcement authority shall transmit a copy of the information provided  
16 by the sex or violent offender during registration to the department.

17           SECTION 8. IC 35-38-1-7.5, AS AMENDED BY P.L.216-2007,  
18 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
19 JULY 1, 2008]: Sec. 7.5. (a) As used in this section, "sexually violent  
20 predator" means a person who suffers from a mental abnormality or  
21 personality disorder that makes the individual likely to repeatedly  
22 commit a sex offense (as defined in IC 11-8-8-5.2). The term includes  
23 a person convicted in another jurisdiction who is identified as a  
24 sexually violent predator under IC 11-8-8-20. The term does not  
25 include a person no longer considered a sexually violent predator under  
26 subsection (g).

27           (b) A person who:

28           (1) being at least eighteen (18) years of age, commits an offense  
29 described in:

30           (A) IC 35-42-4-1;

31           (B) IC 35-42-4-2;

32           (C) IC 35-42-4-3 as a Class A or Class B felony;

33           (D) IC 35-42-4-5(a)(1);

34           (E) IC 35-42-4-5(a)(2);

35           (F) IC 35-42-4-5(a)(3);

36           (G) IC 35-42-4-5(b)(1) as a Class A or Class B felony;

37           (H) IC 35-42-4-5(b)(2);

38           (I) IC 35-42-4-5(b)(3) as a Class A or Class B felony;

39           (J) an attempt or conspiracy to commit a crime listed in  
40 clauses (A) through (I); or

41           (K) a crime under the laws of another jurisdiction, including  
42 a military court, that is substantially equivalent to any of the

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1 offenses listed in clauses (A) through (J);  
 2 (2) commits a sex offense (as defined in IC 11-8-8-5.2) while  
 3 having a previous unrelated conviction for a sex offense for which  
 4 the person is required to register as a sex or violent offender under  
 5 IC 11-8-8;  
 6 (3) commits a sex offense (as defined in IC 11-8-8-5.2) while  
 7 having had a previous unrelated adjudication as a delinquent child  
 8 for an act that would be a sex offense if committed by an adult, if,  
 9 after considering expert testimony, a court finds by clear and  
 10 convincing evidence that the person is likely to commit an  
 11 additional sex offense; or  
 12 (4) commits a sex offense (as defined in IC 11-8-8-5.2) while  
 13 having had a previous unrelated adjudication as a delinquent child  
 14 for an act that would be a sex offense if committed by an adult, if  
 15 the person was required to register as a sex or violent offender  
 16 under IC 11-8-8-5(b)(2);  
 17 is a sexually violent predator. Except as provided in subsection (g) or  
 18 (h), a person is a sexually violent predator by operation of law if an  
 19 offense committed by the person satisfies the conditions set forth in  
 20 subdivision (1) or (2) and the person was released from incarceration,  
 21 secure detention, or probation for the offense after June 30, 1994.  
 22 (c) This section applies whenever a court sentences a person or a  
 23 juvenile court issues a dispositional decree for a sex offense (as defined  
 24 in IC 11-8-8-5.2) for which the person is required to register with the  
 25 local law enforcement authority under IC 11-8-8.  
 26 (d) At the sentencing hearing, the court shall indicate on the record  
 27 whether the person has been convicted of an offense that makes the  
 28 person a sexually violent predator under subsection (b).  
 29 (e) If a person is not a sexually violent predator under subsection  
 30 (b), the prosecuting attorney may request the court to conduct a hearing  
 31 to determine whether the person (including a child adjudicated to be a  
 32 delinquent child) is a sexually violent predator under subsection (a). If  
 33 the court grants the motion, the court shall appoint two (2)  
 34 psychologists or psychiatrists who have expertise in criminal  
 35 behavioral disorders to evaluate the person and testify at the hearing.  
 36 After conducting the hearing and considering the testimony of the two  
 37 (2) psychologists or psychiatrists, the court shall determine whether the  
 38 person is a sexually violent predator under subsection (a). A hearing  
 39 conducted under this subsection may be combined with the person's  
 40 sentencing hearing.  
 41 (f) If a person is a sexually violent predator:  
 42 (1) the person is required to register with the local law

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1 enforcement authority as provided in IC 11-8-8; and  
 2 (2) the court shall send notice to the department of correction.  
 3 (g) This subsection does not apply to a person who has two (2) or  
 4 more unrelated convictions for an offense described in IC 11-8-8-4.5  
 5 for which the person is required to register under IC 11-8-8. A person  
 6 who is a sexually violent predator may petition the **sentencing court or**  
 7 **the juvenile court (if the person was convicted or adjudicated in**  
 8 **Indiana), or the circuit or superior court in the county in which the**  
 9 **person resides (if the person was not convicted or adjudicated in**  
 10 **Indiana),** to consider whether the person should no longer be  
 11 considered a sexually violent predator. The person may file a petition  
 12 under this subsection not earlier than ten (10) years after:  
 13 (1) the sentencing court or juvenile court makes its determination  
 14 under subsection (e); or  
 15 (2) the person is released from incarceration or secure detention.  
 16 A person may file a petition under this subsection not more than one  
 17 (1) time per year. A court may dismiss a petition filed under this  
 18 subsection or conduct a hearing to determine if the person should no  
 19 longer be considered a sexually violent predator. If the court conducts  
 20 a hearing, the court shall appoint two (2) psychologists or psychiatrists  
 21 who have expertise in criminal behavioral disorders to evaluate the  
 22 person and testify at the hearing. After conducting the hearing and  
 23 considering the testimony of the two (2) psychologists or psychiatrists,  
 24 the court shall determine whether the person **has proved by a**  
 25 **preponderance of the evidence (if the person has been found to be**  
 26 **a sexually violent predator under subsection (e)), or by clear and**  
 27 **convincing evidence (if the person is a sexually violent predator**  
 28 **under subsection (b)), that the person** should no longer be considered  
 29 a sexually violent predator under subsection (a). If a court finds that the  
 30 person should no longer be considered a sexually violent predator, the  
 31 court shall send notice to the department of correction that the person  
 32 is no longer considered a sexually violent predator. Notwithstanding  
 33 any other law, a condition imposed on a person due to the person's  
 34 status as a sexually violent predator, including lifetime parole or GPS  
 35 monitoring, does not apply to a person no longer considered a sexually  
 36 violent predator.  
 37 (h) A person is not a sexually violent predator by operation of law  
 38 under subsection (b)(1) if all of the following conditions are met:  
 39 (1) The victim was not less than twelve (12) years of age at the  
 40 time the offense was committed.  
 41 (2) The person is not more than four (4) years older than the  
 42 victim.

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1 (3) The relationship between the person and the victim was a  
2 dating relationship or an ongoing personal relationship. The term  
3 "ongoing personal relationship" does not include a family  
4 relationship.

5 (4) The offense committed by the person was not any of the  
6 following:

- 7 (A) Rape (IC 35-42-4-1).
- 8 (B) Criminal deviate conduct (IC 35-42-4-2).
- 9 (C) An offense committed by using or threatening the use of  
10 deadly force or while armed with a deadly weapon.
- 11 (D) An offense that results in serious bodily injury.
- 12 (E) An offense that is facilitated by furnishing the victim,  
13 without the victim's knowledge, with a drug (as defined in  
14 IC 16-42-19-2(1)) or a controlled substance (as defined in  
15 IC 35-48-1-9) or knowing that the victim was furnished with  
16 the drug or controlled substance without the victim's  
17 knowledge.

18 (5) The person has not committed another sex offense (as defined  
19 in IC 11-8-8-5.2) (including a delinquent act that would be a sex  
20 offense if committed by an adult) against any other person.

21 (6) The person did not have a position of authority or substantial  
22 influence over the victim.

23 (7) The court finds that the person should not be considered a  
24 sexually violent predator.

25 SECTION 9. IC 35-38-2-2.2, AS AMENDED BY P.L.216-2007,  
26 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2008]: Sec. 2.2. (a) As a condition of probation for a sex  
28 offender (as defined in IC 11-8-8-4.5), the court shall:

- 29 (1) require the sex offender to register with the local law  
30 enforcement authority under IC 11-8-8; and
- 31 (2) prohibit the sex offender from residing within one thousand  
32 (1,000) feet of school property (as defined in IC 35-41-1-24.7) for  
33 the period of probation, unless the sex offender obtains written  
34 approval from the court.

35 If the court allows the sex offender to reside within one thousand  
36 (1,000) feet of school property under subdivision (2), the court shall  
37 notify each school within one thousand (1,000) feet of the sex  
38 offender's residence of the order. However, a court may not allow a sex  
39 offender who is a sexually violent predator (as defined in  
40 IC 35-38-1-7.5) or an offender against children under IC 35-42-4-11 to  
41 reside within one thousand (1,000) feet of school property.

42 (b) Except as provided in subsections (c) and (d), as a condition

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1 of probation for an offender against children under IC 35-42-4-11  
2 who is convicted of an offense listed in IC 35-42-4-11(a)(2), the  
3 court shall prohibit the sex offender from being on the property of  
4 a primary or secondary school.

5 (c) If a sex offender who is an offender against children under  
6 IC 35-42-4-11 and is convicted of an offense listed in  
7 IC 35-42-4-11(a)(2) attends a primary or secondary school, the  
8 court, as a condition of probation, shall prohibit the sex offender  
9 from being on the property of a primary or secondary school other  
10 than the primary or secondary school that the sex offender attends.

11 (d) As a condition of probation for an offender against children  
12 under IC 35-42-4-11 who is convicted of an offense listed in  
13 IC 35-42-4-11(a)(2) and is a parent or guardian of a child who  
14 attends a primary or secondary school, the court shall:

15 (1) require the sex offender to provide written notification  
16 that the sex offender is an offender against children to:

- 17 (A) the school; and
- 18 (B) the school corporation, if the school is a public school;
- 19 and

20 (2) prohibit the sex offender from being on the school  
21 property of the primary or secondary school that the sex  
22 offender's child attends unless the sex offender is:

- 23 (A) attending a meeting with a teacher or school  
24 administrator; and
- 25 (B) escorted by an employee of the school or school district  
26 while on school property.

27 SECTION 10. IC 35-42-4-3, AS AMENDED BY P.L.216-2007,  
28 SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
29 JULY 1, 2008]: Sec. 3. (a) A person who, with a child under fourteen  
30 (14) years of age, performs or submits to sexual intercourse or deviate  
31 sexual conduct commits child molesting, a Class B felony. However,  
32 the offense is a Class A felony if:

- 33 (1) it is committed by a person at least twenty-one (21) years of  
34 age;
- 35 (2) it is committed by using or threatening the use of deadly force  
36 or while armed with a deadly weapon;
- 37 (3) it results in serious bodily injury; or
- 38 (4) the commission of the offense is facilitated by furnishing the  
39 victim, without the victim's knowledge, with a drug (as defined in  
40 IC 16-42-19-2(1)) or a controlled substance (as defined in  
41 IC 35-48-1-9) or knowing that the victim was furnished with the  
42 drug or controlled substance without the victim's knowledge.

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1 (b) A person who, with a child under fourteen (14) years of age,  
2 performs or submits to any fondling or touching, of either the child or  
3 the older person, with intent to arouse or to satisfy the sexual desires of  
4 either the child or the older person, commits child molesting, a Class  
5 C felony. However, the offense:

6 (1) is a Class B felony if the person compels the child to  
7 submit to the fondling or touching by using or threatening to  
8 use force; and

9 (2) is a Class A felony if:

10 (1) (A) it is committed by using or threatening the use of  
11 deadly force;

12 (2) (B) it is committed while armed with a deadly weapon; or

13 (3) (C) the commission of the offense is facilitated by  
14 furnishing the victim, without the victim's knowledge, with a  
15 drug (as defined in IC 16-42-19-2(1)) or a controlled substance  
16 (as defined in IC 35-48-1-9) or knowing that the victim was  
17 furnished with the drug or controlled substance without the  
18 victim's knowledge.

19 (c) It is a defense that the accused person reasonably believed that  
20 the child was sixteen (16) years of age or older at the time of the  
21 conduct, unless:

22 (1) the offense is committed by using or threatening the use of  
23 deadly force or while armed with a deadly weapon;

24 (2) the offense results in serious bodily injury; or

25 (3) the commission of the offense is facilitated by furnishing the  
26 victim, without the victim's knowledge, with a drug (as defined in  
27 IC 16-42-19-2(1)) or a controlled substance (as defined in  
28 IC 35-48-1-9) or knowing that the victim was furnished with the  
29 drug or controlled substance without the victim's knowledge.

30 SECTION 11. IC 35-42-4-11, AS AMENDED BY P.L.216-2007,  
31 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
32 JULY 1, 2008]: Sec. 11. (a) As used in this section, and except as  
33 provided in subsection (d), "offender against children" means a person  
34 required to register as a sex or violent offender under IC 11-8-8 who  
35 has been:

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

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

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

40 (B) Child exploitation (IC 35-42-4-4(b)).

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

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

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1 (E) Kidnapping (IC 35-42-3-2), if the victim is less than  
 2 eighteen (18) years of age and the person is not the child's  
 3 parent or guardian.  
 4 (F) Attempt to commit or conspiracy to commit an offense  
 5 listed in clauses (A) through (E).  
 6 (G) An offense in another jurisdiction that is substantially  
 7 similar to an offense described in clauses (A) through (F).  
 8 A person is an offender against children by operation of law if the  
 9 person meets the conditions described in subdivision (1) or (2) at any  
 10 time.  
 11 (b) As used in this section, "reside" means to spend more than three  
 12 (3) nights in:  
 13 (1) a residence; or  
 14 (2) if the person does not reside in a residence, a particular  
 15 location;  
 16 in any thirty (30) day period.  
 17 (c) An offender against children who knowingly or intentionally:  
 18 (1) resides within one thousand (1,000) feet of:  
 19 (A) school property, not including property of an institution  
 20 providing post-secondary education;  
 21 (B) a youth program center; or  
 22 (C) a public park; or  
 23 (2) establishes a residence within one (1) mile of the residence of  
 24 the victim of the offender's sex offense;  
 25 commits a sex offender residency offense, a Class D felony.  
 26 (d) This subsection does not apply to an offender against children  
 27 who has two (2) or more unrelated convictions for an offense described  
 28 in subsection (a). A person who is an offender against children may  
 29 petition the **sentencing court or the juvenile court (if the person was**  
 30 **convicted or adjudicated in Indiana), or the circuit or superior**  
 31 **court in the county in which the person resides (if the person was**  
 32 **not convicted or adjudicated in Indiana),** to consider whether the  
 33 person should no longer be considered an offender against children.  
 34 The person may file a petition under this subsection not earlier than ten  
 35 (10) years after the person is released from incarceration, probation, or  
 36 parole, whichever occurs last. A person may file a petition under this  
 37 subsection not more than one (1) time per year. A court may dismiss a  
 38 petition filed under this subsection or conduct a hearing to determine  
 39 if the person should no longer be considered an offender against  
 40 children. If the court conducts a hearing, the court shall appoint two (2)  
 41 psychologists or psychiatrists who have expertise in criminal  
 42 behavioral disorders to evaluate the person and testify at the hearing.

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1 After conducting the hearing and considering the testimony of the two  
2 (2) psychologists or psychiatrists, the court shall determine whether the  
3 person **has proved by clear and convincing evidence that the person**  
4 should no longer be considered an offender against children. If a court  
5 finds that the person should no longer be considered an offender  
6 against children, the court shall send notice to the department of  
7 correction that the person is no longer considered an offender against  
8 children.

9 SECTION 12. IC 35-42-4-12 IS ADDED TO THE INDIANA  
10 CODE AS A NEW SECTION TO READ AS FOLLOWS  
11 [EFFECTIVE JULY 1, 2008]: **Sec. 12. (a) As used in this section,**  
12 **"instant messaging or chat room program" means a software**  
13 **program that allows two (2) or more persons to communicate over**  
14 **the Internet in real time using typed text.**

15 **(b) As used in this section, "social networking web site" means**  
16 **an Internet web site that:**

- 17 (1) facilitates the social introduction between two (2) or more
- 18 persons;
- 19 (2) allows a person to create a web page or a personal profile;
- 20 and
- 21 (3) provides a person who visits the web site the opportunity
- 22 to communicate with another person.

23 **(c) A sex offender (as defined in IC 11-8-8-4.5) who knowingly**  
24 **or intentionally:**

- 25 (1) uses:
  - 26 (A) a social networking web site; or
  - 27 (B) an instant messaging or chat room program;
- 28 that the offender knows allows a person who is less than
- 29 eighteen (18) years of age to access or use the web site or
- 30 program; and
- 31 (2) contacts a child or a person the offender believes is a child
- 32 through the social networking web site or instant messaging
- 33 or chat room program;
- 34 commits a sex offender Internet offense, a Class D felony.

35 SECTION 13. [EFFECTIVE JULY 1, 2008] IC 35-42-4-12, as  
36 added by this act, and IC 35-42-4-3, as amended by this act, apply  
37 only to crimes committed after June 30, 2008.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1134, 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, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 11-8-8-1.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2008]: **Sec. 1.2. As used in this chapter, "electronic chat room username" means an identifier that allows a person to communicate over the Internet in real time using typed text.**

SECTION 2. IC 11-8-8-1.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2008]: **Sec. 1.4. As used in this chapter, "electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.**

SECTION 3. IC 11-8-8-1.6 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2008]: **Sec. 1.6. As used in this chapter, "instant messaging username" means an identifier that allows a person to communicate over the Internet in real time using typed text.**

SECTION 4. IC 11-8-8-1.8 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2008]: **Sec. 1.8. As used in this chapter, "social networking web site username" means an identifier or profile that allows a person to create, use, or modify a social networking web site, as defined in IC 34-42-4-12.**

SECTION 5. IC 11-8-8-7, AS AMENDED BY P.L.216-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 7. (a) Subject to section 19 of this chapter, the following persons must register under this chapter:**

(1) A sex or violent offender who resides in Indiana. A sex or violent offender resides in Indiana if either of the following applies:

(A) The sex or violent offender spends or intends to spend at least seven (7) days (including part of a day) in Indiana during a one hundred eighty (180) day period.

(B) The sex or violent offender owns real property in Indiana and returns to Indiana at any time.

(2) A sex or violent offender who works or carries on a vocation or intends to work or carry on a vocation full-time or part-time for

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a period:

(A) exceeding seven (7) consecutive days; or

(B) for a total period exceeding fourteen (14) days;

during any calendar year in Indiana regardless of whether the sex or violent offender is financially compensated, volunteered, or is acting for the purpose of government or educational benefit.

(3) A sex or violent offender who is enrolled or intends to be enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade, or professional institution, or postsecondary educational institution.

(b) Except as provided in subsection (e), a sex or violent offender who resides in Indiana shall register with the local law enforcement authority in the county where the sex or violent offender resides. If a sex or violent offender resides in more than one (1) county, the sex or violent offender shall register with the local law enforcement authority in each county in which the sex or violent offender resides. If the sex or violent offender is also required to register under subsection (a)(2) or (a)(3), the sex or violent offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (c) or (d).

(c) A sex or violent offender described in subsection (a)(2) shall register with the local law enforcement authority in the county where the sex or violent offender is or intends to be employed or carry on a vocation. If a sex or violent offender is or intends to be employed or carry on a vocation in more than one (1) county, the sex or violent offender shall register with the local law enforcement authority in each county. If the sex or violent offender is also required to register under subsection (a)(1) or (a)(3), the sex or violent offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (b) or (d).

(d) A sex or violent offender described in subsection (a)(3) shall register with the local law enforcement authority in the county where the sex or violent offender is enrolled or intends to be enrolled as a student. If the sex or violent offender is also required to register under subsection (a)(1) or (a)(2), the sex or violent offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (b) or (c).

(e) A sex or violent offender described in subsection (a)(1)(B) shall register with the local law enforcement authority in the county in which the real property is located. If the sex or violent offender is also required to register under subsection (a)(1)(A), (a)(2), or (a)(3), the sex or violent offender shall also register with the local law enforcement

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authority in the county in which the offender is required to register under subsection (b), (c), or (d).

(f) A sex or violent offender committed to the department shall register with the department before the sex or violent offender is released from incarceration. The department shall forward the sex or violent offender's registration information to the local law enforcement authority of every county in which the sex or violent offender is required to register.

(g) This subsection does not apply to a sex or violent offender who is a sexually violent predator. A sex or violent offender not committed to the department shall register not more than seven (7) days after the sex or violent offender:

- (1) is released from a penal facility (as defined in IC 35-41-1-21);
- (2) is released from a secure private facility (as defined in IC 31-9-2-115);
- (3) is released from a juvenile detention facility;
- (4) is transferred to a community transition program;
- (5) is placed on parole;
- (6) is placed on probation;
- (7) is placed on home detention; or
- (8) arrives at the place where the sex or violent offender is required to register under subsection (b), (c), or (d);

whichever occurs first. A sex or violent offender required to register in more than one (1) county under subsection (b), (c), (d), or (e) shall register in each appropriate county not more than seventy-two (72) hours after the sex or violent offender's arrival in that county or acquisition of real estate in that county.

(h) This subsection applies to a sex or violent offender who is a sexually violent predator. A sex or violent offender who is a sexually violent predator shall register not more than seventy-two (72) hours after the sex or violent offender:

- (1) is released from a penal facility (as defined in IC 35-41-1-21);
- (2) is released from a secure private facility (as defined in IC 31-9-2-115);
- (3) is released from a juvenile detention facility;
- (4) is transferred to a community transition program;
- (5) is placed on parole;
- (6) is placed on probation;
- (7) is placed on home detention; or
- (8) arrives at the place where the sexually violent predator is required to register under subsection (b), (c), or (d);

whichever occurs first. A sex or violent offender who is a sexually

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violent predator required to register in more than one (1) county under subsection (b), (c), (d), or (e) shall register in each appropriate county not more than seventy-two (72) hours after the offender's arrival in that county or acquisition of real estate in that county.

(i) The local law enforcement authority with whom a sex or violent offender registers under this section shall make and publish a photograph of the sex or violent offender on the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5. The local law enforcement authority shall make a photograph of the sex or violent offender that complies with the requirements of IC 36-2-13-5.5 at least once per year. The sheriff of a county containing a consolidated city shall provide the police chief of the consolidated city with all photographic and computer equipment necessary to enable the police chief of the consolidated city to transmit sex or violent offender photographs (and other identifying information required by IC 36-2-13-5.5) to the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5. In addition, the sheriff of a county containing a consolidated city shall provide all funding for the county's financial obligation for the establishment and maintenance of the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5.

(j) When a sex or violent offender registers, the local law enforcement authority shall:

- (1) immediately update the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5;
- (2) notify every law enforcement agency having jurisdiction in the county where the sex or violent offender resides; and
- (3) update the National Crime Information Center National Sex Offender Registry data base via the Indiana data and communications system (IDACS).

When a sex or violent offender from a jurisdiction outside Indiana registers a change of address, **electronic mail address, instant messaging username, electronic chat room username, social networking web site username**, employment, vocation, or enrollment in Indiana, the local law enforcement authority shall provide the department with the information provided by the sex or violent offender during registration.

SECTION 6. IC 11-8-8-8, AS AMENDED BY P.L.216-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) The registration required under this chapter must include the following information:

- (1) The sex or violent offender's full name, alias, any name by

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which the sex or violent offender was previously known, date of birth, sex, race, height, weight, hair color, eye color, any scars, marks, or tattoos, Social Security number, driver's license number or state identification card number, vehicle description and vehicle plate number for any vehicle the sex or violent offender owns or operates on a regular basis, principal residence address, other address where the sex or violent offender spends more than seven (7) nights in a fourteen (14) day period, and mailing address, if different from the sex or violent offender's principal residence address.

(2) A description of the offense for which the sex or violent offender was convicted, the date of conviction, the county of the conviction, the cause number of the conviction, and the sentence imposed, if applicable.

(3) If the person is required to register under section 7(a)(2) or 7(a)(3) of this chapter, the name and address of each of the sex or violent offender's employers in Indiana, the name and address of each campus or location where the sex or violent offender is enrolled in school in Indiana, and the address where the sex or violent offender stays or intends to stay while in Indiana.

(4) A recent photograph of the sex or violent offender.

(5) If the sex or violent offender is a sexually violent predator, that the sex or violent offender is a sexually violent predator.

(6) If the sex or violent offender is required to register for life, that the sex or violent offender is required to register for life.

**(7) Any electronic mail address, instant messaging username, electronic chat room username, or social networking web site username that the sex or violent offender uses or intends to use.**

~~(7)~~ (8) Any other information required by the department.

**(b) If the sex or violent offender registers any information under subsection (a)(7), the offender shall sign a consent form authorizing any business or organization that offers electronic communications, Internet access, or remote computer services to provide the department and the state police department all information concerning the sex or violent offender that the business or organization is aware of, including the sex or violent offender's Internet usage.**

SECTION 7. IC 11-8-8-11, AS AMENDED BY P.L.216-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) If a sex or violent offender who is required to register under this chapter changes:

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- (1) principal residence address; or
- (2) if section 7(a)(2) or 7(a)(3) of this chapter applies, the place where the sex or violent offender stays in Indiana;

the sex or violent offender shall report in person to the local law enforcement authority having jurisdiction over the sex or violent offender's current principal address or location and, if the offender moves to a new county in Indiana, to the local law enforcement authority having jurisdiction over the sex or violent offender's new principal address or location not more than seventy-two (72) hours after the address change.

(b) If a sex or violent offender moves to a new county in Indiana, the local law enforcement authority where the sex or violent offender's current principal residence address is located shall inform the local law enforcement authority in the new county in Indiana of the sex or violent offender's residence and forward all relevant registration information concerning the sex or violent offender to the local law enforcement authority in the new county. The local law enforcement authority receiving notice under this subsection shall verify the address of the sex or violent offender under section 13 of this chapter not more than seven (7) days after receiving the notice.

(c) If a sex or violent offender who is required to register under section 7(a)(2) or 7(a)(3) of this chapter changes the sex or violent offender's principal place of employment, principal place of vocation, or campus or location where the sex or violent offender is enrolled in school, the sex or violent offender shall report in person:

- (1) to the local law enforcement authority having jurisdiction over the sex or violent offender's current principal place of employment, principal place of vocation, or campus or location where the sex or violent offender is enrolled in school; and
- (2) if the sex or violent offender changes the sex or violent offender's place of employment, vocation, or enrollment to a new county in Indiana, to the local law enforcement authority having jurisdiction over the sex or violent offender's new principal place of employment, principal place of vocation, or campus or location where the sex or violent offender is enrolled in school;

not more than seventy-two (72) hours after the change.

(d) If a sex or violent offender moves the sex or violent offender's place of employment, vocation, or enrollment to a new county in Indiana, the local law enforcement authority having jurisdiction over the sex or violent offender's current principal place of employment, principal place of vocation, or campus or location where the sex or violent offender is enrolled in school shall inform the local law

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enforcement authority in the new county of the sex or violent offender's new principal place of employment, vocation, or enrollment by forwarding relevant registration information to the local law enforcement authority in the new county.

(e) If a sex or violent offender moves the sex or violent offender's residence, place of employment, vocation, or enrollment to a new state, the local law enforcement authority shall inform the state police in the new state of the sex or violent offender's new place of residence, employment, vocation, or enrollment.

**(f) If a sex or violent offender who is required to register under this chapter changes or obtains a new:**

- (1) electronic mail address;**
- (2) instant messaging username;**
- (3) electronic chat room username; or**
- (4) social networking web site username;**

**the sex or violent offender shall report in person to the local law enforcement authority having jurisdiction over the sex or violent offender's current principal address or location and shall provide the local law enforcement authority with the new address or username not more than seventy-two (72) hours after the change or creation of the address or username.**

~~(f)~~ **(g)** A local law enforcement authority shall make registration information, including information concerning the duty to register and the penalty for failing to register, available to a sex or violent offender.

~~(g)~~ **(h)** A local law enforcement authority who is notified of a change under subsection (a), ~~or~~ (c), **or (f)** shall:

- (1) immediately update the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5;
- (2) update the National Crime Information Center National Sex Offender Registry data base via the Indiana data and communications system (IDACS); and
- (3) notify the department.

~~(h)~~ **(i)** If a sex or violent offender who is registered with a local law enforcement authority becomes incarcerated, the local law enforcement authority shall transmit a copy of the information provided by the sex or violent offender during registration to the department.

~~(i)~~ **(j)** If a sex or violent offender is no longer required to register due to the expiration of the registration period, the local law enforcement authority shall transmit a copy of the information provided by the sex or violent offender during registration to the department.

SECTION 8. IC 35-38-1-7.5, AS AMENDED BY P.L.216-2007, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2008]: Sec. 7.5. (a) As used in this section, "sexually violent predator" means a person who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense (as defined in IC 11-8-8-5.2). The term includes a person convicted in another jurisdiction who is identified as a sexually violent predator under IC 11-8-8-20. The term does not include a person no longer considered a sexually violent predator under subsection (g).

(b) A person who:

(1) being at least eighteen (18) years of age, commits an offense described in:

(A) IC 35-42-4-1;

(B) IC 35-42-4-2;

(C) IC 35-42-4-3 as a Class A or Class B felony;

(D) IC 35-42-4-5(a)(1);

(E) IC 35-42-4-5(a)(2);

(F) IC 35-42-4-5(a)(3);

(G) IC 35-42-4-5(b)(1) as a Class A or Class B felony;

(H) IC 35-42-4-5(b)(2);

(I) IC 35-42-4-5(b)(3) as a Class A or Class B felony;

(J) an attempt or conspiracy to commit a crime listed in clauses (A) through (I); or

(K) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (J);

(2) commits a sex offense (as defined in IC 11-8-8-5.2) while having a previous unrelated conviction for a sex offense for which the person is required to register as a sex or violent offender under IC 11-8-8;

(3) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a previous unrelated adjudication as a delinquent child for an act that would be a sex offense if committed by an adult, if, after considering expert testimony, a court finds by clear and convincing evidence that the person is likely to commit an additional sex offense; or

(4) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a previous unrelated adjudication as a delinquent child for an act that would be a sex offense if committed by an adult, if the person was required to register as a sex or violent offender under IC 11-8-8-5(b)(2);

is a sexually violent predator. Except as provided in subsection (g) or (h), a person is a sexually violent predator by operation of law if an

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offense committed by the person satisfies the conditions set forth in subdivision (1) or (2) and the person was released from incarceration, secure detention, or probation for the offense after June 30, 1994.

(c) This section applies whenever a court sentences a person or a juvenile court issues a dispositional decree for a sex offense (as defined in IC 11-8-8-5.2) for which the person is required to register with the local law enforcement authority under IC 11-8-8.

(d) At the sentencing hearing, the court shall indicate on the record whether the person has been convicted of an offense that makes the person a sexually violent predator under subsection (b).

(e) If a person is not a sexually violent predator under subsection (b), the prosecuting attorney may request the court to conduct a hearing to determine whether the person (including a child adjudicated to be a delinquent child) is a sexually violent predator under subsection (a). If the court grants the motion, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person is a sexually violent predator under subsection (a). A hearing conducted under this subsection may be combined with the person's sentencing hearing.

(f) If a person is a sexually violent predator:

- (1) the person is required to register with the local law enforcement authority as provided in IC 11-8-8; and
- (2) the court shall send notice to the department of correction.

(g) This subsection does not apply to a person who has two (2) or more unrelated convictions for an offense described in IC 11-8-8-4.5 for which the person is required to register under IC 11-8-8. A person who is a sexually violent predator may petition the **sentencing court or the juvenile court (if the person was convicted or adjudicated in Indiana), or the circuit or superior court in the county in which the person resides (if the person was not convicted or adjudicated in Indiana)**, to consider whether the person should no longer be considered a sexually violent predator. The person may file a petition under this subsection not earlier than ten (10) years after:

- (1) the sentencing court or juvenile court makes its determination under subsection (e); or
- (2) the person is released from incarceration or secure detention.

A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no

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longer be considered a sexually violent predator. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person **has proved by a preponderance of the evidence (if the person has been found to be a sexually violent predator under subsection (e)), or by clear and convincing evidence (if the person is a sexually violent predator under subsection (b)), that the person** should no longer be considered a sexually violent predator under subsection (a). If a court finds that the person should no longer be considered a sexually violent predator, the court shall send notice to the department of correction that the person is no longer considered a sexually violent predator. Notwithstanding any other law, a condition imposed on a person due to the person's status as a sexually violent predator, including lifetime parole or GPS monitoring, does not apply to a person no longer considered a sexually violent predator.

(h) A person is not a sexually violent predator by operation of law under subsection (b)(1) if all of the following conditions are met:

- (1) The victim was not less than twelve (12) years of age at the time the offense was committed.
- (2) The person is not more than four (4) years older than the victim.
- (3) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.
- (4) The offense committed by the person was not any of the following:
  - (A) Rape (IC 35-42-4-1).
  - (B) Criminal deviate conduct (IC 35-42-4-2).
  - (C) An offense committed by using or threatening the use of deadly force or while armed with a deadly weapon.
  - (D) An offense that results in serious bodily injury.
  - (E) An offense that is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.
- (5) The person has not committed another sex offense (as defined

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in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

(6) The person did not have a position of authority or substantial influence over the victim.

(7) The court finds that the person should not be considered a sexually violent predator.

SECTION 9. IC 35-38-2-2.2, AS AMENDED BY P.L.216-2007, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2.2. **(a)** As a condition of probation for a sex offender (as defined in IC 11-8-8-4.5), the court shall:

(1) require the sex offender to register with the local law enforcement authority under IC 11-8-8; and

(2) prohibit the sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of probation, unless the sex offender obtains written approval from the court.

If the court allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2), the court shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order. However, a court may not allow a sex offender who is a sexually violent predator (as defined in IC 35-38-1-7.5) or an offender against children under IC 35-42-4-11 to reside within one thousand (1,000) feet of school property.

**(b) Except as provided in subsections (c) and (d), as a condition of probation for an offender against children under IC 35-42-4-11 who is convicted of an offense listed in IC 35-42-4-11(a)(2), the court shall prohibit the sex offender from being on the property of a primary or secondary school.**

**(c) If a sex offender who is an offender against children under IC 35-42-4-11 and is convicted of an offense listed in IC 35-42-4-11(a)(2) attends a primary or secondary school, the court, as a condition of probation, shall prohibit the sex offender from being on the property of a primary or secondary school other than the primary or secondary school that the sex offender attends.**

**(d) As a condition of probation for an offender against children under IC 35-42-4-11 who is convicted of an offense listed in IC 35-42-4-11(a)(2) and is a parent or guardian of a child who attends a primary or secondary school, the court shall:**

**(1) require the sex offender to provide written notification that the sex offender is an offender against children to:**

**(A) the school; and**

**(B) the school corporation, if the school is a public school;**

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and

**(2) prohibit the sex offender from being on the school property of the primary or secondary school that the sex offender's child attends unless the sex offender is:**

**(A) attending a meeting with a teacher or school administrator; and**

**(B) escorted by an employee of the school or school district while on school property.**

SECTION 10. IC 35-42-4-3, AS AMENDED BY P.L.216-2007, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) A person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class B felony. However, the offense is a Class A felony if:

- (1) it is committed by a person at least twenty-one (21) years of age;
- (2) it is committed by using or threatening the use of deadly force or while armed with a deadly weapon;
- (3) it results in serious bodily injury; or
- (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony. However, the offense:

**(1) is a Class B felony if the person compels the child to submit to the fondling or touching by using or threatening to use force; and**

**(2) is a Class A felony if:**

- ~~(1)~~ **(A)** it is committed by using or threatening the use of deadly force;
- ~~(2)~~ **(B)** it is committed while armed with a deadly weapon; or
- ~~(3)~~ **(C)** the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

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(c) It is a defense that the accused person reasonably believed that the child was sixteen (16) years of age or older at the time of the conduct, unless:

- (1) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon;
- (2) the offense results in serious bodily injury; or
- (3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

SECTION 11. IC 35-42-4-11, AS AMENDED BY P.L.216-2007, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) As used in this section, and except as provided in subsection (d), "offender against children" means a person required to register as a sex or violent offender under IC 11-8-8 who has been:

- (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)).
  - (C) Child solicitation (IC 35-42-4-6).
  - (D) Child seduction (IC 35-42-4-7).
  - (E) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age and the person is not the child's parent or guardian.
  - (F) Attempt to commit or conspiracy to commit an offense listed in clauses (A) through (E).
  - (G) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (F).

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

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

- (1) a residence; or
- (2) if the person does not reside in a residence, a particular location;

in any thirty (30) day period.

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

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

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(A) school property, not including property of an institution providing post-secondary education;  
 (B) a youth program center; or  
 (C) a public park; or  
 (2) establishes a residence within one (1) mile of the residence of the victim of the offender's sex offense;  
 commits a sex offender residency offense, a Class D felony.

(d) This subsection does not apply to an offender against children who has two (2) or more unrelated convictions for an offense described in subsection (a). A person who is an offender against children may petition the **sentencing court or the juvenile court (if the person was convicted or adjudicated in Indiana), or the circuit or superior court in the county in which the person resides (if the person was not convicted or adjudicated in Indiana)**, to consider whether the person should no longer be considered an offender against children. The person may file a petition under this subsection not earlier than ten (10) years after the person is released from incarceration, probation, or parole, whichever occurs last. A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered an offender against children. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person **has proved by clear and convincing evidence that the person** should no longer be considered an offender against children. If a court finds that the person should no longer be considered an offender against children, the court shall send notice to the department of correction that the person is no longer considered an offender against children."

Page 1, line 17, delete "uses a social networking website; or" and insert "uses:

- (A) **a social networking web site; or**  
 (B) **an instant messaging or chat room program;**  
**that the offender knows allows a person who is less than eighteen (18) years of age to access or use the web site or program; and**  
 (2) **contacts a child or a person the offender believes is a child through the social networking web site or instant messaging or chat room program;**



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**commits a sex offender Internet offense, a Class D felony."**

Page 2, delete lines 1 through 10.

Page 2, line 12, delete "applies" and insert "**and IC 35-42-4-3, as amended by this act, apply**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1134 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 7, nays 0.

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