



February 24, 2012

**ENGROSSED
HOUSE BILL No. 1080**

DIGEST OF HB 1080 (Updated February 23, 2012 4:24 pm - DI 84)

Citations Affected: IC 11-8; noncode.

Synopsis: Provides that a person is considered to be a sex offender who must register as a sex or violent offender with the appropriate law enforcement agency if the person is: (1) a public servant or other person employed by a governmental entity or another person who provides goods or services to a person who is subject to lawful detention; and (2) convicted of engaging in sexual intercourse or deviate sexual conduct with another person who is subject to lawful detention. Urges the legislative council to study the topic of sexual battery during the 2012 interim.

Effective: July 1, 2012.

Frye R, Eberhart
(SENATE SPONSOR — ECKERTY)

January 9, 2012, read first time and referred to Committee on Courts and Criminal Code.
January 23, 2012, reported — Do Pass.
January 26, 2012, read second time, ordered engrossed. Engrossed.
January 27, 2012, read third time, passed. Yeas 92, nays 0.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 23, 2012, amended, reported favorably — Do Pass.

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EH 1080—LS 6041/DI 69+



February 24, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1080

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 11-8-8-4.5, AS ADDED BY P.L.216-2007,
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 4.5. (a) Except as provided in section 22 of this
4 chapter, as used in this chapter, "sex offender" means a person
5 convicted of any of the following offenses:
6 (1) Rape (IC 35-42-4-1).
7 (2) Criminal deviate conduct (IC 35-42-4-2).
8 (3) Child molesting (IC 35-42-4-3).
9 (4) Child exploitation (IC 35-42-4-4(b)).
10 (5) Vicarious sexual gratification (including performing sexual
11 conduct in the presence of a minor) (IC 35-42-4-5).
12 (6) Child solicitation (IC 35-42-4-6).
13 (7) Child seduction (IC 35-42-4-7).
14 (8) Sexual misconduct with a minor as a Class A, Class B, or
15 Class C felony (IC 35-42-4-9), unless:
16 (A) the person is convicted of sexual misconduct with a minor
17 as a Class C felony;

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- 1 (B) the person is not more than:
 2 (i) four (4) years older than the victim if the offense was
 3 committed after June 30, 2007; or
 4 (ii) five (5) years older than the victim if the offense was
 5 committed before July 1, 2007; and
 6 (C) the sentencing court finds that the person should not be
 7 required to register as a sex offender.
 8 (9) Incest (IC 35-46-1-3).
 9 (10) Sexual battery (IC 35-42-4-8).
 10 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
 11 (18) years of age, and the person who kidnapped the victim is not
 12 the victim's parent or guardian.
 13 (12) Criminal confinement (IC 35-42-3-3), if the victim is less
 14 than eighteen (18) years of age, and the person who confined or
 15 removed the victim is not the victim's parent or guardian.
 16 (13) Possession of child pornography (IC 35-42-4-4(c)).
 17 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony.
 18 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the
 19 victim is less than eighteen (18) years of age.
 20 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(b)).
 21 (17) Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less
 22 than eighteen (18) years of age.
 23 **(18) Sexual misconduct by a service provider (IC 35-44-1-5).**
 24 ~~(18)~~ **(19)** An attempt or conspiracy to commit a crime listed in
 25 subdivisions (1) through ~~(17)~~: **(18)**.
 26 ~~(19)~~ **(20)** A crime under the laws of another jurisdiction,
 27 including a military court, that is substantially equivalent to any
 28 of the offenses listed in subdivisions (1) through ~~(18)~~: **(19)**.
 29 (b) The term includes:
 30 (1) a person who is required to register as a sex offender in any
 31 jurisdiction; and
 32 (2) a child who has committed a delinquent act and who:
 33 (A) is at least fourteen (14) years of age;
 34 (B) is on probation, is on parole, is discharged from a facility
 35 by the department of correction, is discharged from a secure
 36 private facility (as defined in IC 31-9-2-115), or is discharged
 37 from a juvenile detention facility as a result of an adjudication
 38 as a delinquent child for an act that would be an offense
 39 described in subsection (a) if committed by an adult; and
 40 (C) is found by a court by clear and convincing evidence to be
 41 likely to repeat an act that would be an offense described in
 42 subsection (a) if committed by an adult.

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1 (c) In making a determination under subsection (b)(2)(C), the court
 2 shall consider expert testimony concerning whether a child is likely to
 3 repeat an act that would be an offense described in subsection (a) if
 4 committed by an adult.

5 SECTION 2. IC 11-8-8-5, AS AMENDED BY P.L.216-2007,
 6 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2012]: Sec. 5. (a) Except as provided in section 22 of this
 8 chapter, as used in this chapter, "sex or violent offender" means a
 9 person convicted of any of the following offenses:

- 10 (1) Rape (IC 35-42-4-1).
 11 (2) Criminal deviate conduct (IC 35-42-4-2).
 12 (3) Child molesting (IC 35-42-4-3).
 13 (4) Child exploitation (IC 35-42-4-4(b)).
 14 (5) Vicarious sexual gratification (including performing sexual
 15 conduct in the presence of a minor) (IC 35-42-4-5).
 16 (6) Child solicitation (IC 35-42-4-6).
 17 (7) Child seduction (IC 35-42-4-7).
 18 (8) Sexual misconduct with a minor as a Class A, Class B, or
 19 Class C felony (IC 35-42-4-9), unless:
 20 (A) the person is convicted of sexual misconduct with a minor
 21 as a Class C felony;
 22 (B) the person is not more than:
 23 (i) four (4) years older than the victim if the offense was
 24 committed after June 30, 2007; or
 25 (ii) five (5) years older than the victim if the offense was
 26 committed before July 1, 2007; and
 27 (C) the sentencing court finds that the person should not be
 28 required to register as a sex offender.
 29 (9) Incest (IC 35-46-1-3).
 30 (10) Sexual battery (IC 35-42-4-8).
 31 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
 32 (18) years of age, and the person who kidnapped the victim is not
 33 the victim's parent or guardian.
 34 (12) Criminal confinement (IC 35-42-3-3), if the victim is less
 35 than eighteen (18) years of age, and the person who confined or
 36 removed the victim is not the victim's parent or guardian.
 37 (13) Possession of child pornography (IC 35-42-4-4(c)).
 38 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony.
 39 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the
 40 victim is less than eighteen (18) years of age.
 41 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(b)).
 42 (17) Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less

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1 than eighteen (18) years of age.

2 (18) Murder (IC 35-42-1-1).

3 (19) Voluntary manslaughter (IC 35-42-1-3).

4 **(20) Sexual misconduct by a service provider (IC 35-44-1-5).**

5 ~~(20)~~ **(21)** An attempt or conspiracy to commit a crime listed in
6 subdivisions (1) through ~~(19)~~: **(20)**.

7 ~~(21)~~ **(22)** A crime under the laws of another jurisdiction,
8 including a military court, that is substantially equivalent to any
9 of the offenses listed in subdivisions (1) through ~~(20)~~: **(21)**.

10 (b) The term includes:

11 (1) a person who is required to register as a sex or violent
12 offender in any jurisdiction; and

13 (2) a child who has committed a delinquent act and who:

14 (A) is at least fourteen (14) years of age;

15 (B) is on probation, is on parole, is discharged from a facility
16 by the department of correction, is discharged from a secure
17 private facility (as defined in IC 31-9-2-115), or is discharged
18 from a juvenile detention facility as a result of an adjudication
19 as a delinquent child for an act that would be an offense
20 described in subsection (a) if committed by an adult; and

21 (C) is found by a court by clear and convincing evidence to be
22 likely to repeat an act that would be an offense described in
23 subsection (a) if committed by an adult.

24 (c) In making a determination under subsection (b)(2)(C), the court
25 shall consider expert testimony concerning whether a child is likely to
26 repeat an act that would be an offense described in subsection (a) if
27 committed by an adult.

28 **SECTION 3. [EFFECTIVE JULY 1, 2012] (a) The general**
29 **assembly urges the legislative council to study, during the 2012**
30 **legislative interim, the topic of sexual battery.**

31 **(b) If the topic of sexual battery is studied under subsection (a),**
32 **the study committee to which the topic is assigned shall consider**
33 **whether the touching of a person who is unaware that the touching**
34 **is occurring should be classified as sexual battery, and, if so, under**
35 **which circumstances.**

36 **(c) If the topic of sexual battery is studied under subsection (a),**
37 **the study committee to which the topic is assigned shall issue a final**
38 **report to the legislative council containing the study committee's**
39 **findings and recommendations, including any recommended**
40 **legislation concerning the topic, not later than November 1, 2012.**

41 **(d) This SECTION expires December 31, 2012.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1080, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STEUERWALD, Chair

Committee Vote: yeas 8, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1080, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1080 as printed January 23, 2012.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 0.

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