



January 29, 2013

SENATE BILL No. 220

DIGEST OF SB 220 (Updated January 25, 2013 1:17 pm - DI ck)

Citations Affected: IC 35-31.5; IC 35-42.

Synopsis: Sex offenders and social media. Provides that a person who has been convicted of: (1) child molesting as a Class A felony; or (2) child solicitation; commits a sex offender Internet offense if the person knowingly or intentionally uses a social networking web site or an instant messaging or chat room program and knows that persons less than 18 years of age are allowed to access or use the social networking web site or instant messaging or chat room program. Specifies that an offender against children who knowingly or intentionally uses a social networking web site or an instant messaging or chat room program to communicate with a child less than 16 years of age without the permission of the child's parent or guardian commits a sex offender Internet offense. Provides that a sex offender Internet offense is a Class A misdemeanor or, if the person has a prior unrelated conviction of a sex offender Internet offense, a Class D felony. Establishes certain defenses.

Effective: July 1, 2013.

Merritt

January 7, 2013, read first time and referred to Committee on Rules and Legislative Procedure.
January 28, 2013, amended; reassigned to Committee on Corrections & Criminal Law.

SB 220—LS 6208/DI 13+



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January 29, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

SENATE BILL No. 220

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

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

1 SECTION 1. IC 35-31.5-2-173, AS ADDED BY P.L.114-2012,
2 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 173. "Instant messaging or chat room program",
4 for purposes of IC 35-42-4-12, has the meaning set forth in
5 ~~IC 35-42-4-12(c)~~. **IC 35-42-4-12.**

6 SECTION 2. IC 35-31.5-2-307, AS ADDED BY P.L.114-2012,
7 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2013]: Sec. 307. "Social networking web site" for purposes of
9 IC 35-42-4-12, has the meaning set forth in ~~IC 35-42-4-12(d)~~.
10 **IC 35-42-4-12.**

11 SECTION 3. IC 35-42-4-12, AS ADDED BY P.L.119-2008,
12 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2013]: Sec. 12. (a) This section does not apply to a person to
14 whom all of the following apply:

15 (1) The person is not more than:
16 (A) four (4) years older than the victim if the offense was
17 committed after June 30, 2007; or

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- 1 (B) five (5) years older than the victim if the offense was
 2 committed before July 1, 2007.
- 3 (2) The relationship between the person and the victim was a
 4 dating relationship or an ongoing personal relationship. The term
 5 "ongoing personal relationship" does not include a family
 6 relationship.
- 7 (3) The crime:
- 8 (A) was not committed by a person who is at least twenty-one
 9 (21) years of age;
- 10 (B) was not committed by using or threatening the use of
 11 deadly force;
- 12 (C) was not committed while armed with a deadly weapon;
- 13 (D) did not result in serious bodily injury;
- 14 (E) was not facilitated by furnishing the victim, without the
 15 victim's knowledge, with a drug (as defined in
 16 IC 16-42-19-2(1)) or a controlled substance (as defined in
 17 IC 35-48-1-9) or knowing that the victim was furnished with
 18 the drug or controlled substance without the victim's
 19 knowledge; and
- 20 (F) was not committed by a person having a position of
 21 authority or substantial influence over the victim.
- 22 (b) This section applies only to a person required to register as a sex
 23 or violent offender under IC 11-8-8 who has been:
- 24 (1) found to be a sexually violent predator under IC 35-38-1-7.5;
 25 or
- 26 (2) convicted of one (1) or more of the following offenses:
- 27 (A) Child molesting (IC 35-42-4-3);
- 28 (B) Child exploitation (IC 35-42-4-4(b));
- 29 (C) Possession of child pornography (IC 35-42-4-4(c));
- 30 (D) Vicarious sexual gratification (IC 35-42-4-5(a) or
 31 IC 35-42-4-5(b));
- 32 (E) Sexual conduct in the presence of a minor
 33 (IC 35-42-4-5(c));
- 34 (F) Child solicitation (IC 35-42-4-6);
- 35 (G) Child seduction (IC 35-42-4-7);
- 36 (H) Kidnapping (IC 35-42-3-2), if the victim is less than
 37 eighteen (18) years of age and the person is not the child's
 38 parent or guardian.
- 39 (I) Attempt to commit or conspiracy to commit an offense
 40 listed in clauses (A) through (H);
- 41 (J) An offense in another jurisdiction that is substantially
 42 similar to an offense described in clauses (A) through (H);

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1 (e) (b) As used in this section, "instant messaging or chat room
2 program" means a software program that requires a person to register
3 or create an account, a username, or a password to become a member
4 or registered user of the program and allows two (2) or more members
5 or authorized users to communicate over the Internet in real time using
6 typed text. The term does not include an electronic mail program or
7 message board program.

8 (d) (c) As used in this section, "social networking web site" means
9 an Internet web site that:

- 10 (1) facilitates the social introduction between two (2) or more
11 persons;
- 12 (2) requires a person to register or create an account, a username,
13 or a password to become a member of the web site and to
14 communicate with other members;
- 15 (3) allows a member to create a web page or a personal profile;
16 and
- 17 (4) provides a member with the opportunity to communicate with
18 another person.

19 The term does not include an electronic mail program or message
20 board program.

21 (e) A person described in subsection (b) who knowingly or
22 intentionally uses:

- 23 (1) a social networking web site; or
- 24 (2) an instant messaging or chat room program;

25 that the offender knows allows a person who is less than eighteen (18)
26 years of age to access or use the web site or program commits a sex
27 offender Internet offense, a Class A misdemeanor. However, the
28 offense is a Class D felony if the person has a prior unrelated
29 conviction under this section:

30 (d) This subsection applies only to a person convicted of:

- 31 (1) child molesting as a Class A felony (IC 35-42-4-3);
- 32 (2) child solicitation (IC 35-42-4-6);
- 33 (3) an attempt or conspiracy to commit an offense listed in
34 subdivision (1) or (2); or
- 35 (4) an offense in another jurisdiction that is substantially
36 similar to an offense described in subdivisions (1) through (3).

37 A person to whom this subsection applies who knowingly or
38 intentionally uses a social networking web site or an instant
39 messaging or chat room program and who knows that persons less
40 than eighteen (18) years of age are allowed to access or use use the
41 social networking web site or instant messaging or chat room
42 program commits a sex offender Internet offense, a Class A



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1 **misdemeanor. However, the offense is a Class D felony if the**
 2 **person has a prior unrelated conviction under this section.**
 3 **(e) This subsection applies only to an offender against children**
 4 **(as defined in IC 35-42-4-11). A person to whom this subsection**
 5 **applies who knowingly or intentionally uses:**
 6 **(1) a social networking web site; or**
 7 **(2) an instant messaging or chat room program;**
 8 **to communicate with a child less than sixteen (16) years of age**
 9 **without the permission of the child's parent or guardian commits**
 10 **a sex offender Internet offense, a Class A misdemeanor. However,**
 11 **the offense is a Class D felony if the person has a prior unrelated**
 12 **conviction under this section.**
 13 **(f) It is a defense to a prosecution under ~~this section~~ subsection (d)**
 14 **that the person:**
 15 **(1) did not know that the web site or program allowed a person**
 16 **who is less than eighteen (18) years of age to access or use the**
 17 **web site or program; and**
 18 **(2) upon discovering that the web site or program allows a person**
 19 **who is less than eighteen (18) years of age to access or use the**
 20 **web site or program, immediately ceased further use or access of**
 21 **the web site or program.**
 22 **(g) It is a defense to a prosecution under subsection (e) that the**
 23 **person reasonably believed that the child was at least sixteen (16)**
 24 **years of age at the time the communication occurred.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 220, 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 the title and insert the following:

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

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Corrections & Criminal Law.

(Reference is to SB 220 as introduced.)

LONG, Chairperson

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