February 8, 2013

SENATE BILL No. 347

DIGEST OF SB 347 (Updated February 5, 2013 12:51 pm - DI 106)

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

Synopsis: Child solicitation. Increases the penalty for child solicitation to a Class B felony if a person solicits the child to engage in sexual intercourse or deviate sexual conduct and the person: (1) has a previous conviction; or (2) travels to meet the child after using a computer network to solicit the child. Prohibits persons convicted of: (1) child molesting; (2) child exploitation; (3) child solicitation; or (4) child seduction; from using a social networking site to communicate with a child less than 16 years of age, unless the person is a parent, guardian, or relative of the child. Provides a defense if the person reasonably believed that the child was at least 16 years of age.

Effective: July 1, 2013; July 1, 2014.

Head, Young R Michael, Merritt, Randolph, Zakas

January 8, 2013, read first time and referred to Committee on Corrections & Criminal Law.
February 7, 2013, amended, reported favorably — Do Pass.

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February 8, 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.

C o p y

SENATE BILL No. 347

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:

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

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

SECTION 3. IC 35-42-4-6, AS AMENDED BY P.L.216-2007, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual

~~(1) in person;~~

~~(2) by telephone;~~

~~(3) in writing;~~

~~(4) by using a computer network (as defined in IC 35-43-2-3(a));~~
~~(5) by advertisement of any kind; or~~
~~(6) by any other means;~~

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in

~~(1)~~ sexual intercourse,
~~(2)~~ deviate sexual conduct, or
~~(3)~~ any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)), and a Class B felony if the person **solicits the child to engage in sexual intercourse or deviate sexual conduct and:**

(1) commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and **travels to meet the child or individual the person believes to be a child; or**
(2) has a previous unrelated conviction for committing ~~the~~ **an** offense ~~by using a computer network (as defined in IC 35-43-2-3(a)).~~ **under this section.**

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in

~~(1)~~ sexual intercourse,
~~(2)~~ deviate sexual conduct, or
~~(3)~~ any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person

commits child solicitation, a Class D felony. However, the offense is a Class C felony if ~~it is committed~~ **the person solicits the child to engage in sexual intercourse or deviate sexual conduct and makes the solicitation** by using a computer network (as defined in IC 35-43-2-3(a)), and a Class B felony if the person **solicits the child to engage in sexual intercourse or deviate sexual conduct and:**

(1) commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and **travels to meet the child or individual the person believes to be a child; or**
(2) has a previous unrelated conviction for committing ~~the~~ **an**

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offense ~~by using a computer network (as defined in IC 35-43-2-3(a)).~~ **under this section.**

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

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

(1) The person is not more than:

(A) four (4) years older than the victim if the offense was committed after June 30, 2007; or

(B) five (5) years older than the victim if the offense was committed before July 1, 2007.

(2) 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.

(3) The crime:

(A) was not committed by a person who is at least twenty-one (21) years of age;

(B) was not committed by using or threatening the use of deadly force;

(C) was not committed while armed with a deadly weapon;

(D) did not result in serious bodily injury;

(E) was not 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; and

(F) was not committed by a person having a position of authority or substantial influence over the victim.

~~(b) This section applies only to 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) Possession of child pornography (IC 35-42-4-4(c)).~~

C o p y

~~(D) Vicarious sexual gratification (IC 35-42-4-5(a) or IC 35-42-4-5(b)).~~

~~(E) Sexual conduct in the presence of a minor (IC 35-42-4-5(c)).~~

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

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

~~(H) 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.~~

~~(I) Attempt to commit or conspiracy to commit an offense listed in clauses (A) through (H).~~

~~(J) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (H).~~

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

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

(1) facilitates the social introduction between two (2) or more persons;

(2) requires a person to register or create an account, a username, or a password to become a member of the web site and to communicate with other members;

(3) allows a member to create a web page or a personal profile; and

(4) provides a member with the opportunity to communicate with another person.

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

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

~~(1) a social networking web site; or~~

~~(2) 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 commits a sex offender Internet offense, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.~~

C o p y

(d) Unless prohibited by a court order from having contact with the child, subsection (e) does not apply to the following persons who use a social networking web site or an instant messaging or chat room program to communicate with a child less than sixteen (16) years of age:

(1) A parent or guardian of the child.

(2) Another person related (as defined in IC 31-9-2-106.5) to the child.

(e) This subsection applies only to a person who has been convicted of (1) or more of the following offenses:

(1) Child molesting (IC 35-42-4-3).

(2) Child exploitation (IC 35-42-4-4(b)).

(3) Child solicitation (IC 35-42-4-6).

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

(5) Attempt to commit or conspiracy to commit an offense listed in subdivisions (1) through (4).

(6) An offense in another jurisdiction that is substantially similar to an offense described in subdivisions (1) through (5).

A person to whom this subsection applies who knowingly or intentionally uses a social networking web site or an instant messaging or chat room program to communicate, directly or through an intermediary, with a child less than sixteen (16) years of age commits a sex offender Internet offense, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

~~(f) It is a defense to a prosecution under this section that the person:~~

~~(1) did not know that the web site or program allowed a person who is less than eighteen (18) years of age to access or use the web site or program; and~~

~~(2) upon discovering that the web site or program allows a person who is less than eighteen (18) years of age to access or use the web site or program, immediately ceased further use or access of the web site or program.~~

(f) It is a defense to a prosecution under subsection (e) that the person reasonably believed that the child was at least sixteen (16) years of age.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 347, 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:

Replace the effective date in SECTION 1 with "[EFFECTIVE JULY 1, 2014]".

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

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

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

Page 2, line 5, delete ":" and insert "**solicits the child to engage in sexual intercourse or deviate sexual conduct and:**".

Page 2, line 22, strike "it is committed" and insert "**the person solicits the child to engage in sexual intercourse or deviate sexual conduct and makes the solicitation**".

Page 2, line 23, delete ":" and insert "**solicits the child to engage in sexual intercourse or deviate sexual conduct and:**".

Page 2, after line 33, begin a new paragraph and insert:

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

(1) The person is not more than:

(A) four (4) years older than the victim if the offense was committed after June 30, 2007; or

(B) five (5) years older than the victim if the offense was committed before July 1, 2007.

(2) 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.

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(3) The crime:

(A) was not committed by a person who is at least twenty-one (21) years of age;

(B) was not committed by using or threatening the use of deadly force;

(C) was not committed while armed with a deadly weapon;

(D) did not result in serious bodily injury;

(E) was not 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; and

(F) was not committed by a person having a position of authority or substantial influence over the victim.

~~(b) This section applies only to 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) Possession of child pornography (IC 35-42-4-4(c)).~~

~~(D) Vicarious sexual gratification (IC 35-42-4-5(a) or IC 35-42-4-5(b)).~~

~~(E) Sexual conduct in the presence of a minor (IC 35-42-4-5(c)).~~

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

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

~~(H) 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.~~

~~(I) Attempt to commit or conspiracy to commit an offense listed in clauses (A) through (H).~~

~~(J) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (H).~~

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

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message board program.

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

(1) facilitates the social introduction between two (2) or more persons;

(2) requires a person to register or create an account, a username, or a password to become a member of the web site and to communicate with other members;

(3) allows a member to create a web page or a personal profile; and

(4) provides a member with the opportunity to communicate with another person.

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

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

~~(1) a social networking web site; or~~

~~(2) 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 commits a sex offender Internet offense, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.~~

(d) Unless prohibited by a court order from having contact with the child, subsection (e) does not apply to the following persons who use a social networking web site or an instant messaging or chat room program to communicate with a child less than sixteen (16) years of age:

(1) A parent or guardian of the child.

(2) Another person related (as defined in IC 31-9-2-106.5) to the child.

(e) This subsection applies only to a person who has been convicted of (1) or more of the following offenses:

(1) Child molesting (IC 35-42-4-3).

(2) Child exploitation (IC 35-42-4-4(b)).

(3) Child solicitation (IC 35-42-4-6).

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

(5) Attempt to commit or conspiracy to commit an offense listed in subdivisions (1) through (4).

(6) An offense in another jurisdiction that is substantially similar to an offense described in subdivisions (1) through (5).

A person to whom this subsection applies who knowingly or

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intentionally uses a social networking web site or an instant messaging or chat room program to communicate, directly or through an intermediary, with a child less than sixteen (16) years of age commits a sex offender Internet offense, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

~~(f) It is a defense to a prosecution under this section that the person:~~

~~(1) did not know that the web site or program allowed a person who is less than eighteen (18) years of age to access or use the web site or program; and~~

~~(2) upon discovering that the web site or program allows a person who is less than eighteen (18) years of age to access or use the web site or program, immediately ceased further use or access of the web site or program.~~

(f) It is a defense to a prosecution under subsection (e) that the person reasonably believed that the child was at least sixteen (16) years of age.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 347 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 10, Nays 0.

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