CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 347

Citations Affected: IC 11-10-11.5-11; IC 35-31.5-2; IC 35-38-2-2.7; IC 35-41-5-1; IC 35-42-4.

Synopsis: Child solicitation and attempt. Conference committee report for Engrossed Senate Bill 347. Raises the offense of 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. As a condition of the sex offender's probation, parole, or participation in a community transition program, prohibits a sex offender from using social media to contact a child less than 16 years of age; makes it a sex offender Internet offense, a Class A misdemeanor, if the sex offender knowingly or intentionally violates this condition; and makes the sex offender Internet offense a Class D felony if the sex offender has a prior unrelated conviction for a sex offender Internet offense. Provides a defense to a prosecution for a sex offender Internet offense if the sex offender reasonably believed that the child was at least 16 years of age. Provides that a person may be convicted of attempted child molesting if the person believed the intended victim was a child under 14 years of age at the time the person attempted to commit the offense. Expands the definition of "social networking web site" and "instant messaging or chat room program". Provides that a person performs a "substantial step" for purposes of an attempt crime if the person, with intent to commit a sex crime against a child, communicates with the child concerning the sex crime and travels to another location to meet the child. Specifies that a person at least 18 years of age can commit the offense of inappropriate communication with a child. (Under current law, the offense can be committed only by a person at least 21 years of age.) Raises inappropriate communication with a child to a Class D felony if the person has a prior unrelated conviction for a sex offense. Urges the legislative council to assign to the criminal law and sentencing policy study committee or another existing study committee the topic of the collection of crime and delinquency data. **(This conference committee report: (1) makes technical corrections; (2) expands the definition of "social networking web site" and "instant messaging or chat room program"; (3) provides that a person performs a "substantial step" for purposes of the attempt statute if the person, with intent to commit a sex crime against a child, communicates with the child concerning the sex crime and travels to another location to meet the child; and (4) provides that a person may be convicted of attempted child molesting if the person believed the intended victim was a**

child under 14 years of age at the time the person attempted to commit the offense.)

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

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 347 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 11-10-11.5-11, AS AMENDED BY P.L.3-2008, SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. **(a)** While assigned to a community transition program, a person must comply with:

(1) the rules concerning the conduct of persons in the community transition program, including rules related to payments described in section 12 of this chapter, that are adopted by the community corrections advisory board establishing the program or, in counties that are not served by a community corrections program, that are jointly adopted by the courts in the county with felony jurisdiction; and

(2) any conditions established by the sentencing court for the person.

(b) As a rule of the community transition program, a person convicted of a sex offense (as defined in IC 11-8-8-5.2) may not use a social networking web site (as defined in IC 35-31.5-2-307) or an instant messaging or chat room program (as defined in IC 35-31.5-2-173) to communicate, directly or through an intermediary, with a child less than sixteen (16) years of age. However, the rules of the community transition program may permit the offender to communicate using a social networking web

site or an instant messaging or chat room program with:

(1) the offender's own child, stepchild, or sibling; or

(2) another relative of the offender specifically named in the rules applicable to that person.

SECTION 2. 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).~~ **means a software program or application that:**

(1) 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

(2) allows two (2) or more members or authorized users to communicate over the Internet in real time.

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

SECTION 3. 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).~~ **means an Internet web site, an application, a computer program, or software 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.

SECTION 4. IC 35-38-2-2.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.7. As a condition of probation or parole after conviction for a sex offense (as defined in IC 11-8-8-5.2), the court shall prohibit the convicted person from using 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. However, the court may permit the offender to communicate using a social networking web site or an instant messaging or chat room program with:**

(1) the offender's own child, stepchild, or sibling; or

(2) another relative of the offender specifically named in the court's order.

SECTION 5. IC 35-41-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) A person attempts to commit a crime when, acting with the culpability required for commission of the crime, ~~he~~ **the person** engages in conduct that constitutes a substantial step toward commission of the crime. An

attempt to commit a crime is a felony or misdemeanor of the same class as the crime attempted. However, an attempt to commit murder is a Class A felony.

(b) It is no defense that, because of a misapprehension of the circumstances, **including the age of the intended victim in a prosecution for attempted child molesting (IC 35-42-4-3),** it would have been impossible for the accused person to commit the crime attempted.

(c) **For purposes of subsection (a), a person engages in conduct that constitutes a substantial step if the person, with the intent to commit a sex crime against a child or an individual the person believes to be a child:**

(1) communicates with the child or individual the person believes to be a child concerning the sex crime; and

(2) travels to another location to meet the child or individual the person believes to be a child.

SECTION 6. IC 35-42-4-3, AS AMENDED BY P.L.216-2007, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: 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 is a Class A felony if:

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

(2) it is committed while armed with a deadly weapon; 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.

(c) **A person may be convicted of attempted child molesting of an individual at least fourteen (14) years of age if the person believed the individual to be a child under fourteen (14) years of age at the time the person attempted to commit the offense.**

(d) It is a defense **to a prosecution under this section** 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 7. 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:

(1) a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)); and
(2) a Class B felony if the person **solicits the child or individual the person believes to be a child under fourteen (14) years of age to engage in sexual intercourse or deviate sexual conduct and:**
(A) 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**
(B) 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:

(1) a Class C felony if ~~it is committed~~ **the person solicits the child or individual the person believes to be a child at least fourteen (14) but less than sixteen (16) years of age 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

(2) a Class B felony if the person **solicits the child or individual the person believes to be a child at least fourteen (14) but less than sixteen (16) years of age to engage in sexual intercourse or deviate sexual conduct and:**

(A) 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**

(B) 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.**

(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 8. 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~~ **applies only to a sex offender (as defined in IC 11-8-8-4.5).** ~~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) A sex offender who knowingly or intentionally violates a:

(1) condition of probation;
(2) condition of parole; or
(3) rule of a community transition program;
that prohibits the offender from using 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.

~~(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) 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) 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.~~

~~(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.~~

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

SECTION 9. IC 35-42-4-13, AS ADDED BY P.L.119-2008, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 13. (a) This section does not apply to the following:

(1) A parent, guardian, or custodian of a child.

(2) A person who acts with the permission of a child's parent, guardian, or custodian.

(3) A person to whom a child makes a report of abuse or neglect.

(4) A person to whom a child reports medical symptoms that relate to or may relate to sexual activity.

(b) As used in this section, "sexual activity" means sexual intercourse, deviate sexual conduct, or the fondling or touching of the buttocks, genitals, or female breasts.

(c) A person at least ~~twenty-one (21)~~ **eighteen (18)** years of age who knowingly or intentionally communicates with an individual whom the person believes to be a child less than fourteen (14) years of age concerning sexual activity with the intent to gratify the sexual desires of the person or the individual commits inappropriate communication with a child, a Class B misdemeanor. However, the offense is:

(1) a Class A misdemeanor if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)); **and**

(2) a Class D felony if the person has a prior unrelated conviction for a sex offense (as defined in IC 11-8-8-5.2).

SECTION 10. [EFFECTIVE JULY 1, 2013] **(a) The general assembly urges the legislative council to assign to the criminal law and sentencing policy study committee established by IC 2-5-33.4-2 or another existing study committee, for study during the 2013 legislative interim, the topic of the collection of crime and delinquency data.**

(b) If the topic set forth in subsection (a) is assigned to a study committee, the committee shall consider:

(1) the extent to which certain crimes, including sex crimes

and crimes of domestic violence, are underreported to law enforcement; and

(2) evidence showing that children who are the victims of sex crimes or crimes of domestic violence are particularly reluctant to report these crimes to law enforcement.

(c) This SECTION expires November 1, 2013.

SECTION 11. **An emergency is declared for this act.**

(Reference is to ESB 347 as reprinted April 3, 2013.)

Conference Committee Report
on
Engrossed Senate Bill 347

Signed by:

Senator Head Chairperson	Representative McMillin
Senator Stoops	Representative Hale
Senate Conferees	**House Conferees**