

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:

- 1 Delete the title and insert the following:
2 A BILL FOR AN ACT to amend the Indiana Code concerning
3 criminal law and procedure.
4 Delete everything after the enacting clause and insert the
5 following:
6 SECTION 1. IC 35-31.5-2-173, AS ADDED BY P.L.114-2012,
7 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2013]: Sec. 173. "Instant messaging or chat room program",
9 for purposes of IC 35-42-4-12, has the meaning set forth in
10 ~~IC 35-42-4-12(e)~~. **IC 35-42-4-12.**
11 SECTION 2. IC 35-31.5-2-307, AS ADDED BY P.L.114-2012,
12 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2013]: Sec. 307. "Social networking web site" for purposes of
14 IC 35-42-4-12, has the meaning set forth in ~~IC 35-42-4-12(d)~~.
15 **IC 35-42-4-12.**
16 SECTION 3. IC 35-42-4-12, AS ADDED BY P.L.119-2008,
17 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2013]: Sec. 12. (a) This section does not apply to a person to
19 whom all of the following apply:
20 (1) The person is not more than:
21 (A) four (4) years older than the victim if the offense was
22 committed after June 30, 2007; or
23 (B) five (5) years older than the victim if the offense was
24 committed before July 1, 2007.
25 (2) The relationship between the person and the victim was a
26 dating relationship or an ongoing personal relationship. The term

1 "ongoing personal relationship" does not include a family
2 relationship.

3 (3) The crime:

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

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

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

9 (D) did not result in serious bodily injury;

10 (E) was not facilitated by furnishing the victim, without the
11 victim's knowledge, with a drug (as defined in
12 IC 16-42-19-2(1)) or a controlled substance (as defined in
13 IC 35-48-1-9) or knowing that the victim was furnished
14 with the drug or controlled substance without the victim's
15 knowledge; and

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

18 ~~(b)~~ This section applies only to a person required to register as a
19 sex or violent offender under IC 11-8-8 who has been:

20 ~~(1)~~ found to be a sexually violent predator under IC 35-38-1-7.5;

21 or

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

23 ~~(A)~~ Child molesting (IC 35-42-4-3);

24 ~~(B)~~ Child exploitation (IC 35-42-4-4(b));

25 ~~(C)~~ Possession of child pornography (IC 35-42-4-4(c));

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

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

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

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

32 ~~(H)~~ Kidnapping (IC 35-42-3-2), if the victim is less than
33 eighteen (18) years of age and the person is not the child's
34 parent or guardian;

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

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

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

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

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

50 (2) requires a person to register or create an account, a username,

- 1 or a password to become a member of the web site and to
 2 communicate with other members;
 3 (3) allows a member to create a web page or a personal profile;
 4 and
 5 (4) provides a member with the opportunity to communicate
 6 with another person.

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

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

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

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

- 18 (d) This subsection applies only to a person convicted of:
 19 (1) child molesting as a Class A felony (IC 35-42-4-3);
 20 (2) child solicitation (IC 35-42-4-6);
 21 (3) an attempt or conspiracy to commit an offense listed in
 22 subdivision (1) or (2); or
 23 (4) an offense in another jurisdiction that is substantially
 24 similar to an offense described in subdivisions (1) through
 25 (3).

26 A person to whom this subsection applies who knowingly or
 27 intentionally uses a social networking web site or an instant
 28 messaging or chat room program and who knows that persons less
 29 than eighteen (18) years of age are allowed to access or use use the
 30 social networking web site or instant messaging or chat room
 31 program commits a sex offender Internet offense, a Class A
 32 misdemeanor. However, the offense is a Class D felony if the
 33 person has a prior unrelated conviction under this section.

34 (e) This subsection applies only to an offender against children
 35 (as defined in IC 35-42-4-11). A person to whom this subsection
 36 applies who knowingly or intentionally uses:

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

39 to communicate with a child less than sixteen (16) years of age
 40 without the permission of the child's parent or guardian commits
 41 a sex offender Internet offense, a Class A misdemeanor. However,
 42 the offense is a Class D felony if the person has a prior unrelated
 43 conviction under this section.

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

- 46 (1) did not know that the web site or program allowed a person
 47 who is less than eighteen (18) years of age to access or use the
 48 web site or program; and
 49 (2) upon discovering that the web site or program allows a
 50 person who is less than eighteen (18) years of age to access or

1 use the web site or program, immediately ceased further use or
2 access of the web site or program.

3 **(g) It is a defense to a prosecution under subsection (e) that the**
4 **person reasonably believed that the child was at least sixteen (16)**
5 **years of age at the time the communication occurred.**

(Reference is to SB 220 as introduced.)

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

LONG, Chairperson