

HOUSE BILL No. 1035

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-8-8.

Synopsis: Disseminating material harmful to minors. Requires a person convicted of disseminating material harmful to minors to register as a sex offender if the person is a child care worker and distributes the material to a child who is under the person's care or supervision or who attends a school at which the person is employed.

Effective: July 1, 2019.

Pryor

January 3, 2019, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1035

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

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

1 SECTION 1. IC 11-8-8-4.5, AS AMENDED BY P.L.144-2018,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: 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) (before its repeal).
8 (3) Child molesting (IC 35-42-4-3).
9 (4) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).
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 (IC 35-42-4-9) as a Class A,
15 Class B, or Class C felony (for a crime committed before July 1,
16 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a
17 crime committed after June 30, 2014), unless:



- 1 (A) the person is convicted of sexual misconduct with a minor
 2 as a Class C felony (for a crime committed before July 1,
 3 2014) or a Level 5 felony (for a crime committed after June
 4 30, 2014);
 5 (B) the person is not more than:
 6 (i) four (4) years older than the victim if the offense was
 7 committed after June 30, 2007; or
 8 (ii) five (5) years older than the victim if the offense was
 9 committed before July 1, 2007; and
 10 (C) the sentencing court finds that the person should not be
 11 required to register as a sex offender.
 12 (9) Incest (IC 35-46-1-3).
 13 (10) Sexual battery (IC 35-42-4-8).
 14 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
 15 (18) years of age, and the person who kidnapped the victim is not
 16 the victim's parent or guardian.
 17 (12) Criminal confinement (IC 35-42-3-3), if the victim is less
 18 than eighteen (18) years of age, and the person who confined or
 19 removed the victim is not the victim's parent or guardian.
 20 (13) Possession of child pornography (IC 35-42-4-4(d) or
 21 IC 35-42-4-4(e)).
 22 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony
 23 (for a crime committed before July 1, 2014) or a Level 4 felony
 24 (for a crime committed after June 30, 2014).
 25 (15) Promotion of human sexual trafficking under
 26 IC 35-42-3.5-1.1.
 27 (16) Promotion of child sexual trafficking under
 28 IC 35-42-3.5-1.2(a).
 29 (17) Promotion of sexual trafficking of a younger child
 30 (IC 35-42-3.5-1.2(c)).
 31 (18) Child sexual trafficking (IC 35-42-3.5-1.3).
 32 (19) Human trafficking under IC 35-42-3.5-1.4 if the victim is
 33 less than eighteen (18) years of age.
 34 (20) Sexual misconduct by a service provider with a detained or
 35 supervised child (IC 35-44.1-3-10(c)).
 36 **(21) Disseminating matter harmful to minors**
 37 **(IC 35-49-3-3(a)(1)), if the person is a child care worker (as**
 38 **defined in IC 35-42-4-7) and the victim of the offense is a child**
 39 **who:**
 40 **(A) receives care, supervision, or instruction from the**
 41 **person within the scope of the person's duties as a child**
 42 **care worker at a shelter care facility, as described in**



- 1 **IC 35-42-4-7(d)(1);**
 2 **(B) attends the school corporation, charter school,**
 3 **nonpublic school, or special education cooperative that**
 4 **employs the person as a child care worker, as described in**
 5 **IC 35-42-4-7(d)(2); or**
 6 **(C) attends a school corporation, charter school, nonpublic**
 7 **school, or special education cooperative with which the**
 8 **person is affiliated as a child care worker, if the person:**
 9 **(i) is in a position of trust with respect to the child;**
 10 **(ii) is engaged in the provision of care or supervision to**
 11 **the child;**
 12 **(iii) is at least four (4) years older than the child; and**
 13 **(iv) is not a student at the school or cooperative;**
 14 **as described in IC 35-42-4-7(d)(3).**
 15 ~~(21)~~ **(22)** An attempt or conspiracy to commit a crime listed in
 16 this subsection.
 17 ~~(22)~~ **(23)** A crime under the laws of another jurisdiction,
 18 including a military court, that is substantially equivalent to any
 19 of the offenses listed in this subsection.
 20 (b) The term includes:
 21 (1) a person who is required to register as a sex offender in any
 22 jurisdiction; and
 23 (2) a child who has committed a delinquent act and who:
 24 (A) is at least fourteen (14) years of age;
 25 (B) is on probation, is on parole, is discharged from a facility
 26 by the department of correction, is discharged from a secure
 27 private facility (as defined in IC 31-9-2-115), or is discharged
 28 from a juvenile detention facility as a result of an adjudication
 29 as a delinquent child for an act that would be an offense
 30 described in subsection (a) if committed by an adult; and
 31 (C) is found by a court by clear and convincing evidence to be
 32 likely to repeat an act that would be an offense described in
 33 subsection (a) if committed by an adult.
 34 (c) In making a determination under subsection (b)(2)(C), the court
 35 shall consider expert testimony concerning whether a child is likely to
 36 repeat an act that would be an offense described in subsection (a) if
 37 committed by an adult.
 38 SECTION 2. IC 11-8-8-5, AS AMENDED BY P.L.144-2018,
 39 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2019]: Sec. 5. (a) Except as provided in section 22 of this
 41 chapter, as used in this chapter, "sex or violent offender" means a
 42 person convicted of any of the following offenses:



- 1 (1) Rape (IC 35-42-4-1).
- 2 (2) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- 3 (3) Child molesting (IC 35-42-4-3).
- 4 (4) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).
- 5 (5) Vicarious sexual gratification (including performing sexual
- 6 conduct in the presence of a minor) (IC 35-42-4-5).
- 7 (6) Child solicitation (IC 35-42-4-6).
- 8 (7) Child seduction (IC 35-42-4-7).
- 9 (8) Sexual misconduct with a minor (IC 35-42-4-9) as a Class A,
- 10 Class B, or Class C felony (for a crime committed before July 1,
- 11 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a
- 12 crime committed after June 30, 2014), unless:
 - 13 (A) the person is convicted of sexual misconduct with a minor
 - 14 as a Class C felony (for a crime committed before July 1,
 - 15 2014) or a Level 5 felony (for a crime committed after June
 - 16 30, 2014);
 - 17 (B) the person is not more than:
 - 18 (i) four (4) years older than the victim if the offense was
 - 19 committed after June 30, 2007; or
 - 20 (ii) five (5) years older than the victim if the offense was
 - 21 committed before July 1, 2007; and
 - 22 (C) the sentencing court finds that the person should not be
 - 23 required to register as a sex offender.
- 24 (9) Incest (IC 35-46-1-3).
- 25 (10) Sexual battery (IC 35-42-4-8).
- 26 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
- 27 (18) years of age, and the person who kidnapped the victim is not
- 28 the victim's parent or guardian.
- 29 (12) Criminal confinement (IC 35-42-3-3), if the victim is less
- 30 than eighteen (18) years of age, and the person who confined or
- 31 removed the victim is not the victim's parent or guardian.
- 32 (13) Possession of child pornography (IC 35-42-4-4(d) or
- 33 IC 35-42-4-4(e)).
- 34 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony
- 35 (for a crime committed before July 1, 2014) or a Level 4 felony
- 36 (for a crime committed after June 30, 2014).
- 37 (15) Promotion of human sexual trafficking under
- 38 IC 35-42-3.5-1.1.
- 39 (16) Promotion of child sexual trafficking under
- 40 IC 35-42-3.5-1.2(a).
- 41 (17) Promotion of sexual trafficking of a younger child
- 42 (IC 35-42-3.5-1.2(c)).



- 1 (18) Child sexual trafficking (IC 35-42-3.5-1.3).
 2 (19) Human trafficking under IC 35-42-3.5-1.4 if the victim is
 3 less than eighteen (18) years of age.
 4 (20) Murder (IC 35-42-1-1).
 5 (21) Voluntary manslaughter (IC 35-42-1-3).
 6 (22) Sexual misconduct by a service provider with a detained or
 7 supervised child (IC 35-44.1-3-10(c)).
 8 **(23) Disseminating matter harmful to minors**
 9 **(IC 35-49-3-3(a)(1)), if the person is a child care worker (as**
 10 **defined in IC 35-42-4-7) and the victim of the offense is a child**
 11 **who:**
 12 **(A) receives care, supervision, or instruction from the**
 13 **person within the scope of the person's duties as a child**
 14 **care worker at a shelter care facility, as described in**
 15 **IC 35-42-4-7(d)(1);**
 16 **(B) attends the school corporation, charter school,**
 17 **nonpublic school, or special education cooperative that**
 18 **employs the person as a child care worker, as described in**
 19 **IC 35-42-4-7(d)(2); or**
 20 **(C) attends a school corporation, charter school, nonpublic**
 21 **school, or special education cooperative with which the**
 22 **person is affiliated as a child care worker, if the person:**
 23 **(i) is in a position of trust with respect to the child;**
 24 **(ii) is engaged in the provision of care or supervision to**
 25 **the child;**
 26 **(iii) is at least four (4) years older than the child; and**
 27 **(iv) is not a student at the school or cooperative;**
 28 **as described in IC 35-42-4-7(d)(3).**
 29 ~~(23)~~ **(24)** An attempt or conspiracy to commit a crime listed in
 30 this subsection.
 31 ~~(24)~~ **(25)** A crime under the laws of another jurisdiction,
 32 including a military court, that is substantially equivalent to any
 33 of the offenses listed in this subsection.
 34 (b) The term includes:
 35 (1) a person who is required to register as a sex or violent
 36 offender in any jurisdiction; and
 37 (2) a child who has committed a delinquent act and who:
 38 (A) is at least fourteen (14) years of age;
 39 (B) is on probation, is on parole, is discharged from a facility
 40 by the department of correction, is discharged from a secure
 41 private facility (as defined in IC 31-9-2-115), or is discharged
 42 from a juvenile detention facility as a result of an adjudication



1 as a delinquent child for an act that would be an offense
2 described in subsection (a) if committed by an adult; and
3 (C) is found by a court by clear and convincing evidence to be
4 likely to repeat an act that would be an offense described in
5 subsection (a) if committed by an adult.

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

