



March 19, 2019

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## ENGROSSED SENATE BILL No. 258

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DIGEST OF SB 258 (Updated March 19, 2019 9:33 am - DI 119)

**Citations Affected:** IC 35-42.

**Synopsis:** Sex offender employment and residence. Prohibits a sexually violent predator or an offender against children from working: (1) as or for a child care provider; (2) as a babysitter; (3) as a provider of respite care services and other support services for primary or family caregivers; or (4) as a provider of adult day care services. Prohibits an offender against children from residing in a residence where a person provides child care or babysitting services.

**Effective:** July 1, 2019.

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**Mrvan, Head, Young M, Ford J.D.,  
Randolph Lonnie M, Merritt,  
Bohacek, Lanane, Crane**  
(HOUSE SPONSORS — MANNING, SCHAIBLEY)

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January 3, 2019, read first time and referred to Committee on Family and Children Services.

January 14, 2019, reported favorably — Do Pass.

January 22, 2019, read second time, amended, ordered engrossed.

January 23, 2019, engrossed.

February 12, 2019, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 26, 2019, read first time and referred to Committee on Family, Children and Human Affairs.

March 19, 2019, amended, reported — Do Pass.

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ES 258—LS 6678/DI 106





March 19, 2019

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.

## ENGROSSED SENATE BILL No. 258

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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 35-42-4-10, AS AMENDED BY P.L.158-2013,  
2 SECTION 446, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) As used in this section,  
4 "offender against children" means a person who is an offender against  
5 children under IC 35-42-4-11.  
6 (b) As used in this section, "sexually violent predator" means a  
7 person who is a sexually violent predator under IC 35-38-1-7.5.  
8 (c) A sexually violent predator or an offender against children who  
9 knowingly or intentionally works for compensation or as a volunteer:  
10 (1) on school property;  
11 (2) at a youth program center; or  
12 (3) at a public park;  
13 (4) as a child care provider (as defined by IC 31-33-26-1);  
14 (5) for a child care provider (as defined by IC 31-33-26-1);  
15 (6) as a babysitter; or  
16 (7) as a provider of:  
17 (A) respite care services and other support services for

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- 1                   **primary or family caregivers; or**  
 2                   **(B) adult day care services;**  
 3 commits unlawful employment ~~near children~~ by a sexual predator, a  
 4 Level 6 felony. However, the offense is a Level 5 felony if the person  
 5 has a prior unrelated conviction based on the person's failure to comply  
 6 with any requirement imposed on an offender under IC 11-8-8.
- 7           SECTION 2. IC 35-42-4-11, AS AMENDED BY P.L.13-2016,  
 8 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2019]: Sec. 11. (a) As used in this section, and except as  
 10 provided in subsection (d), "offender against children" means a person  
 11 required to register as a sex or violent offender under IC 11-8-8 who  
 12 has been:
- 13           (1) found to be a sexually violent predator under IC 35-38-1-7.5;  
 14           or  
 15           (2) convicted of one (1) or more of the following offenses:  
 16           (A) Child molesting (IC 35-42-4-3).  
 17           (B) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).  
 18           (C) Child solicitation (IC 35-42-4-6).  
 19           (D) Child seduction (IC 35-42-4-7).  
 20           (E) Kidnapping (IC 35-42-3-2), if the victim is less than  
 21           eighteen (18) years of age, and the person is not the child's  
 22           parent or guardian.  
 23           (F) Attempt to commit or conspiracy to commit an offense  
 24           listed in clauses (A) through (E).  
 25           (G) An offense in another jurisdiction that is substantially  
 26           similar to an offense described in clauses (A) through (F).
- 27 A person is an offender against children by operation of law if the  
 28 person meets the conditions described in subdivision (1) or (2) at any  
 29 time.
- 30           (b) As used in this section, "reside" means to spend more than three  
 31 (3) nights in:  
 32           (1) a residence; or  
 33           (2) if the person does not reside in a residence, a particular  
 34           location;  
 35           in any thirty (30) day period.
- 36           (c) An offender against children who knowingly or intentionally:  
 37           (1) resides within one thousand (1,000) feet of:  
 38           (A) school property, not including property of an institution  
 39           providing post-secondary education;  
 40           (B) a youth program center; or  
 41           (C) a public park; ~~or~~  
 42           (2) establishes a residence within one (1) mile of the residence of



1 the victim of the offender's sex offense; **or**

2 **(3) resides in a residence where a:**

3 **(A) child care provider (as defined by IC 31-33-26-1)**  
4 **provides child care services; or**

5 **(B) babysitter provides babysitting services;**

6 commits a sex offender residency offense, a Level 6 felony.

7 (d) This subsection does not apply to an offender against children  
8 who has two (2) or more unrelated convictions for an offense described  
9 in subsection (a). A person who is an offender against children may  
10 petition the court to consider whether the person should no longer be  
11 considered an offender against children. The person may file a petition  
12 under this subsection not earlier than ten (10) years after the person is  
13 released from incarceration or parole, whichever occurs last (or, if the  
14 person is not incarcerated, not earlier than ten (10) years after the  
15 person is released from probation). A person may file a petition under  
16 this subsection not more than one (1) time per year. A court may  
17 dismiss a petition filed under this subsection or conduct a hearing to  
18 determine if the person should no longer be considered an offender  
19 against children. If the court conducts a hearing, the court shall appoint  
20 two (2) psychologists or psychiatrists who have expertise in criminal  
21 behavioral disorders to evaluate the person and testify at the hearing.  
22 After conducting the hearing and considering the testimony of the two  
23 (2) psychologists or psychiatrists, the court shall determine whether the  
24 person should no longer be considered an offender against children.  
25 If a court finds that the person should no longer be considered an  
26 offender against children, the court shall send notice to the department  
27 of correction that the person is no longer considered an offender  
28 against children.



## COMMITTEE REPORT

Madam President: The Senate Committee on Family and Children Services, to which was referred Senate Bill No. 258, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 258 as introduced.)

GROOMS, Chairperson

Committee Vote: Yeas 9, Nays 0

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 SENATE MOTION

Madam President: I move that Senate Bill 258 be amended to read as follows:

Page 1, line 13, delete "or".

Page 1, between lines 13 and 14, begin a new line block indented and insert:

**"(5) for a child care provider (as defined by IC 31-33-26-1); or"**.

Page 1, line 14, delete "(5)" and insert "(6)".

Page 2, after line 1, begin a new paragraph and insert:

"SECTION 2. IC 35-42-4-11, AS AMENDED BY P.L.13-2016, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 11. (a) As used in this section, and except as provided in subsection (d), "offender against children" means 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) or IC 35-42-4-4(c)).
  - (C) Child solicitation (IC 35-42-4-6).
  - (D) Child seduction (IC 35-42-4-7).
  - (E) 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.
  - (F) Attempt to commit or conspiracy to commit an offense listed in clauses (A) through (E).

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(G) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (F).

A person is an offender against children by operation of law if the person meets the conditions described in subdivision (1) or (2) at any time.

(b) As used in this section, "reside" means to spend more than three (3) nights in:

- (1) a residence; or
- (2) if the person does not reside in a residence, a PARTICULAR location;

in any thirty (30) day period.

(c) An offender against children who knowingly or intentionally:

- (1) resides within one thousand (1,000) feet of:
  - (A) school property, not including property of an institution providing post-secondary education;
  - (B) a youth program center; or
  - (C) a public park; or

(2) establishes a residence within one (1) mile of the residence of the victim of the offender's sex offense; or

**(3) resides in a residence where a:**

**(A) child care provider (as defined by IC 31-33-26-1) provides child care services; or**

**(B) babysitter provides babysitting services;**

commits a sex offender residency offense, a Level 6 felony.

(d) This subsection does not apply to an offender against children who has two (2) or more unrelated convictions for an offense described in subsection (a). A person who is an offender against children may petition the court to consider whether the person should no longer be considered an offender against children. The person may file a petition under this subsection not earlier than ten (10) years after the person is released from incarceration or parole, whichever occurs last (or, if the person is not incarcerated, not earlier than ten (10) years after the person is released from probation). A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered an offender against children. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person should no longer be considered an offender against children.



If a court finds that the person should no longer be considered an offender against children, the court shall send notice to the department of correction that the person is no longer considered an offender against children."

Renumber all SECTIONS consecutively.

(Reference is to SB 258 as printed January 15, 2019.)

YOUNG M

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred Senate Bill 258, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 14, delete "or".

Page 1, line 15, after "babysitter;" insert "**or**

**(7) as a provider of:**

**(A) respite care services and other support services for primary or family caregivers; or**

**(B) adult day care services;"**

Page 1, line 16, strike "near children".

and when so amended that said bill do pass.

(Reference is to SB 258 as reprinted January 23, 2019.)

FRIZZELL

Committee Vote: yeas 12, nays 0.

