

## SENATE BILL No. 2

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-2-12; IC 11-13-3-4; IC 35-38-2; IC 35-49-3-3.

**Synopsis:** Sex offenders and obscenity. Permits a sheriff or the Indianapolis police chief to visit the listed residence of a sex offender to determine if the sex offender resides at the residence. Prohibits a sex offender who is required to register for life with the sex offender registry after June 30, 2006, from residing within 1,000 feet of school property or from establishing a new residence within one mile of the residence of the victim. Makes it a Class D felony to rent matter that is harmful to a minor within 500 feet of a school or church.

**Effective:** July 1, 2006.

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January 9, 2006, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

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## SENATE BILL No. 2



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 5-2-12-8.5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8.5. (a) To verify an  
3 offender's current residence, the sheriff (or the police chief of a  
4 consolidated city) shall do the following:

5 (1) Mail each offender a registration form to the offender's listed  
6 address at least one (1) time per year, beginning seven (7) days  
7 after the sheriff (or the police chief of a consolidated city)  
8 receives a notice under section 14 of this chapter or the date the  
9 offender is:

10 (A) released from a penal facility (as defined in  
11 IC 35-41-1-21), a secure private facility (as defined in  
12 IC 31-9-2-115), or a juvenile detention facility;

13 (B) placed in a community transition program;

14 (C) placed in a community corrections program;

15 (D) placed on parole; or

16 (E) placed on probation;

17 whichever occurs first.



1 (2) Mail a registration form to each offender who is designated a  
2 sexually violent predator under IC 35-38-1-7.5 at least once every  
3 ninety (90) days, beginning seven (7) days after the sheriff (or the  
4 police chief of a consolidated city) receives a notice under section  
5 14 of this chapter or the date the offender is:

- 6 (A) released from a penal facility (as defined in
- 7 IC 35-41-1-21), a secure private facility (as defined in
- 8 IC 31-9-2-115), or a juvenile detention facility;
- 9 (B) placed in a community transition program;
- 10 (C) placed in a community corrections program;
- 11 (D) placed on parole; or
- 12 (E) placed on probation;

13 whichever occurs first.

14 (b) If an offender fails to return a signed registration form either by  
15 mail or in person, the sheriff (or the police chief of a consolidated city)  
16 shall immediately notify the institute and the prosecuting attorney.

17 **(c) A sheriff (or the police chief of a consolidated city) may visit**  
18 **an offender's listed residence to determine if the offender resides**  
19 **at the address.**

20 SECTION 2. IC 5-2-12-9 IS AMENDED TO READ AS FOLLOWS  
21 [EFFECTIVE JULY 1, 2006]: Sec. 9. An offender who knowingly or  
22 intentionally:

- 23 (1) fails to register under this chapter; ~~or~~
- 24 (2) fails to complete and submit a new registration form as  
25 required under section 8(a) of this chapter; ~~or~~
- 26 **(3) violates section 13.5 of this chapter;**

27 commits a Class D felony. However, the offense is a Class C felony if  
28 the offender has a prior unrelated offense under this section.

29 SECTION 3. IC 5-2-12-13.5 IS ADDED TO THE INDIANA CODE  
30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
31 1, 2006]: **Sec. 13.5. A person who is required to register for life**  
32 **under section 13 of this chapter after June 30, 2006, may not:**

- 33 **(1) reside within one thousand (1,000) feet of school property**  
34 **(as defined in IC 35-41-1-24.7); or**
- 35 **(2) establish a new residence within one (1) mile of the**  
36 **residence of the victim of the person's sex offense.**

37 SECTION 4. IC 11-13-3-4 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) A condition to  
39 remaining on parole is that the parolee not commit a crime during the  
40 period of parole.

41 (b) The parole board may also adopt, under IC 4-22-2, additional  
42 conditions to remaining on parole and require a parolee to satisfy one

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1 (1) or more of these conditions. These conditions must be reasonably  
2 related to the parolee's successful reintegration into the community and  
3 not unduly restrictive of a fundamental right.

4 (c) If a person is released on parole, the parolee shall be given a  
5 written statement of the conditions of parole. Signed copies of this  
6 statement shall be:

- 7 (1) retained by the parolee;
- 8 (2) forwarded to any person charged with the parolee's  
9 supervision; and
- 10 (3) placed in the parolee's master file.

11 (d) The parole board may modify parole conditions if the parolee  
12 receives notice of that action and had ten (10) days after receipt of the  
13 notice to express the parolee's views on the proposed modification.  
14 This subsection does not apply to modification of parole conditions  
15 after a revocation proceeding under section 10 of this chapter.

16 (e) As a condition of parole, the parole board may require the  
17 parolee to reside in a particular parole area. In determining a parolee's  
18 residence requirement, the parole board shall:

- 19 (1) consider:
  - 20 (A) the residence of the parolee prior to the parolee's  
21 incarceration; and
  - 22 (B) the parolee's place of employment; and
- 23 (2) assign the parolee to reside in the county where the parolee  
24 resided prior to the parolee's incarceration unless assignment on  
25 this basis would be detrimental to the parolee's successful  
26 reintegration into the community.

27 (f) As a condition of parole, the parole board may require the  
28 parolee to:

- 29 (1) periodically undergo a laboratory chemical test (as defined in  
30 IC 14-15-8-1) or series of tests to detect and confirm the presence  
31 of a controlled substance (as defined in IC 35-48-1-9); and
- 32 (2) have the results of any test under this subsection reported to  
33 the parole board by the laboratory.

34 The parolee is responsible for any charges resulting from a test  
35 required under this subsection. However, a person's parole may not be  
36 revoked on the basis of the person's inability to pay for a test under this  
37 subsection.

38 (g) As a condition of parole, the parole board:

- 39 (1) may require a parolee who is a sex and violent offender (as  
40 defined in IC 5-2-12-4) to:
  - 41 (A) participate in a treatment program for sex offenders  
42 approved by the parole board; and

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- 1 (B) avoid contact with any person who is less than sixteen (16)
- 2 years of age unless the parolee:
- 3 (i) receives the parole board's approval; or
- 4 (ii) successfully completes the treatment program referred to
- 5 in clause (A); and
- 6 (2) shall:
- 7 (A) require a parolee who is an offender (as defined in
- 8 IC 5-2-12-4) to register with a sheriff (or the police chief of a
- 9 consolidated city) under IC 5-2-12-5;
- 10 (B) **except as provided in IC 5-2-12-13.5**, prohibit the
- 11 offender from residing within one thousand (1,000) feet of
- 12 school property (as defined in IC 35-41-1-24.7) for the period
- 13 of parole, unless the offender obtains written approval from
- 14 the parole board; and
- 15 (C) **except as provided in IC 5-2-12-13.5**, prohibit a parolee
- 16 who is an offender convicted of a sex offense (as defined in
- 17 IC 35-38-2-2.5) from residing within one (1) mile of the victim
- 18 of the offender's sex offense unless the offender obtains a
- 19 waiver under IC 35-38-2-2.5.

20 If the parole board allows the offender to reside within one thousand  
 21 (1,000) feet of school property under subdivision (2)(B), the parole  
 22 board shall notify each school within one thousand (1,000) feet of the  
 23 offender's residence of the order.

24 (h) The address of the victim of a parolee who is an offender  
 25 convicted of a sex offense (as defined in IC 35-38-2-2.5) is  
 26 confidential, even if the offender obtains a waiver under  
 27 IC 35-38-2-2.5.

28 SECTION 5. IC 35-38-2-2.2 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2.2. As a condition of  
 30 probation for an offender (as defined in IC 5-2-12-4), the court shall:

- 31 (1) require the offender to register with the sheriff (or the police
- 32 chief of a consolidated city) under IC 5-2-12-5; and
- 33 (2) **except as provided in IC 5-2-12-13.5**, prohibit the offender
- 34 from residing within one thousand (1,000) feet of school property
- 35 (as defined in IC 35-41-1-24.7) for the period of probation unless
- 36 the offender obtains written approval from the court.

37 If the court allows the offender to reside within one thousand (1,000)  
 38 feet of school property under subdivision (2), the court shall notify each  
 39 school within one thousand (1,000) feet of the offender's residence of  
 40 the order.

41 SECTION 6. IC 35-38-2-2.5 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2.5. (a) As used in this

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1 section, "offender" means an individual convicted of a sex offense.

2 (b) As used in this section, "sex offense" means any of the  
3 following:

- 4 (1) Rape (IC 35-42-4-1).  
5 (2) Criminal deviate conduct (IC 35-42-4-2).  
6 (3) Child molesting (IC 35-42-4-3).  
7 (4) Child exploitation (IC 35-42-4-4(b)).  
8 (5) Vicarious sexual gratification (IC 35-42-4-5).  
9 (6) Child solicitation (IC 35-42-4-6).  
10 (7) Child seduction (IC 35-42-4-7).  
11 (8) Sexual battery (IC 35-42-4-8).  
12 (9) Sexual misconduct with a minor as a felony (IC 35-42-4-9).  
13 (10) Incest (IC 35-46-1-3).

14 (c) A condition of remaining on probation or parole after conviction  
15 for a sex offense is that the offender not reside within one (1) mile of  
16 the residence of the victim of the offender's sex offense.

17 (d) An offender:

18 (1) who will be placed on probation shall provide the sentencing  
19 court and the probation department with the address where the  
20 offender intends to reside during the period of probation:

21 (A) at the time of sentencing, if the offender will be placed on  
22 probation without first being incarcerated; or

23 (B) before the offender's release from incarceration, if the  
24 offender will be placed on probation after completing a term  
25 of incarceration; or

26 (2) who will be placed on parole shall provide the parole board  
27 with the address where the offender intends to reside during the  
28 period of parole.

29 (e) **Except as provided in IC 5-2-12-13.5**, an offender, while on  
30 probation or parole, may not establish a new residence within one (1)  
31 mile of the residence of the victim of the offender's sex offense unless  
32 the offender first obtains a waiver from the:

33 (1) court, if the offender is placed on probation; or

34 (2) parole board, if the offender is placed on parole;

35 for the change of address under subsection (f).

36 (f) The court or parole board may waive the requirement set forth in  
37 subsection (c) only if the court or parole board, at a hearing at which  
38 the offender is present and of which the prosecuting attorney has been  
39 notified, determines that:

40 (1) the offender has successfully completed a sex offender  
41 treatment program during the period of probation or parole;

42 (2) the offender is in compliance with all terms of the offender's

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1           probation or parole; and  
2           (3) good cause exists to allow the offender to reside within one (1)  
3           mile of the residence of the victim of the offender's sex offense.  
4           (g) If the court or parole board grants a waiver under subsection (f),  
5           the court or parole board shall state in writing the reasons for granting  
6           the waiver. The court's written statement of its reasons shall be  
7           incorporated into the record.  
8           (h) The address of the victim of the offender's sex offense is  
9           confidential even if the court or parole board grants a waiver under  
10          subsection (f).  
11          SECTION 7. IC 35-49-3-3 IS AMENDED TO READ AS  
12          FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) Except as  
13          provided in subsection (b), a person who knowingly or intentionally:  
14               (1) disseminates matter to minors that is harmful to minors;  
15               (2) displays matter that is harmful to minors in an area to which  
16               minors have visual, auditory, or physical access, unless each  
17               minor is accompanied by the minor's parent or guardian;  
18               (3) sells, **rents**, or displays for sale to any person matter that is  
19               harmful to minors within five hundred (500) feet of the nearest  
20               property line of a school or church;  
21               (4) engages in or conducts a performance before minors that is  
22               harmful to minors;  
23               (5) engages in or conducts a performance that is harmful to  
24               minors in an area to which minors have visual, auditory, or  
25               physical access, unless each minor is accompanied by the minor's  
26               parent or guardian;  
27               (6) misrepresents the minor's age for the purpose of obtaining  
28               admission to an area from which minors are restricted because of  
29               the display of matter or a performance that is harmful to minors;  
30               or  
31               (7) misrepresents that the person is a parent or guardian of a  
32               minor for the purpose of obtaining admission of the minor to an  
33               area where minors are being restricted because of display of  
34               matter or performance that is harmful to minors;  
35          commits a Class D felony.  
36          (b) This section does not apply if a person disseminates, displays,  
37          or makes available the matter described in subsection (a) through the  
38          Internet, computer electronic transfer, or a computer network unless:  
39               (1) the matter is obscene under IC 35-49-2-1;  
40               (2) the matter is child pornography under IC 35-42-4-4; or  
41               (3) the person distributes the matter to a child less than eighteen  
42               (18) years of age believing or intending that the recipient is a

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1 child less than eighteen (18) years of age.  
2 SECTION 8. [EFFECTIVE JULY 1, 2006] IC 11-13-3-4,  
3 IC 35-38-2-2.2, and IC 35-38-2-2.5, all as amended by this act,  
4 apply only to persons who are required to:  
5 (1) register under IC 5-2-12-5; or  
6 (2) submit a new registration form under IC 5-2-12-8;  
7 after June 30, 2006.

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