

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 258

AN ACT to amend the Indiana Code concerning criminal law and corrections.

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

SECTION 1. IC 11-8-8-1.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.2. As used in this chapter, "electronic chat room username" means an identifier that allows a person to communicate over the Internet in real time using typed text.**

SECTION 2. IC 11-8-8-1.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.4. As used in this chapter, "electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.**

SECTION 3. IC 11-8-8-1.6 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.6. As used in this chapter, "instant messaging username" means an identifier that allows a person to communicate over the Internet in real time using typed text.**

SECTION 4. IC 11-8-8-1.8 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.8. As used in this chapter, "social networking web site username" means an identifier or profile that allows a person to create, use, or modify a social networking web site, as defined in**

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IC 35-42-4-12.

SECTION 5. IC 11-8-8-7, AS AMENDED BY P.L.216-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) Subject to section 19 of this chapter, the following persons must register under this chapter:

(1) A sex or violent offender who resides in Indiana. A sex or violent offender resides in Indiana if either of the following applies:

(A) The sex or violent offender spends or intends to spend at least seven (7) days (including part of a day) in Indiana during a one hundred eighty (180) day period.

(B) The sex or violent offender owns real property in Indiana and returns to Indiana at any time.

(2) A sex or violent offender who works or carries on a vocation or intends to work or carry on a vocation full-time or part-time for a period:

(A) exceeding seven (7) consecutive days; or

(B) for a total period exceeding fourteen (14) days;

during any calendar year in Indiana regardless of whether the sex or violent offender is financially compensated, volunteered, or is acting for the purpose of government or educational benefit.

(3) A sex or violent offender who is enrolled or intends to be enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade, or professional institution, or postsecondary educational institution.

(b) Except as provided in subsection (e), a sex or violent offender who resides in Indiana shall register with the local law enforcement authority in the county where the sex or violent offender resides. If a sex or violent offender resides in more than one (1) county, the sex or violent offender shall register with the local law enforcement authority in each county in which the sex or violent offender resides. If the sex or violent offender is also required to register under subsection (a)(2) or (a)(3), the sex or violent offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (c) or (d).

(c) A sex or violent offender described in subsection (a)(2) shall register with the local law enforcement authority in the county where the sex or violent offender is or intends to be employed or carry on a vocation. If a sex or violent offender is or intends to be employed or carry on a vocation in more than one (1) county, the sex or violent offender shall register with the local law enforcement authority in each county. If the sex or violent offender is also required to register under

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subsection (a)(1) or (a)(3), the sex or violent offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (b) or (d).

(d) A sex or violent offender described in subsection (a)(3) shall register with the local law enforcement authority in the county where the sex or violent offender is enrolled or intends to be enrolled as a student. If the sex or violent offender is also required to register under subsection (a)(1) or (a)(2), the sex or violent offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (b) or (c).

(e) A sex or violent offender described in subsection (a)(1)(B) shall register with the local law enforcement authority in the county in which the real property is located. If the sex or violent offender is also required to register under subsection (a)(1)(A), (a)(2), or (a)(3), the sex or violent offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (b), (c), or (d).

(f) A sex or violent offender committed to the department shall register with the department before the sex or violent offender is released from incarceration. The department shall forward the sex or violent offender's registration information to the local law enforcement authority of every county in which the sex or violent offender is required to register.

(g) This subsection does not apply to a sex or violent offender who is a sexually violent predator. A sex or violent offender not committed to the department shall register not more than seven (7) days after the sex or violent offender:

- (1) is released from a penal facility (as defined in IC 35-41-1-21);
- (2) is released from a secure private facility (as defined in IC 31-9-2-115);
- (3) is released from a juvenile detention facility;
- (4) is transferred to a community transition program;
- (5) is placed on parole;
- (6) is placed on probation;
- (7) is placed on home detention; or
- (8) arrives at the place where the sex or violent offender is required to register under subsection (b), (c), or (d);

whichever occurs first. A sex or violent offender required to register in more than one (1) county under subsection (b), (c), (d), or (e) shall register in each appropriate county not more than seventy-two (72) hours after the sex or violent offender's arrival in that county or acquisition of real estate in that county.

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(h) This subsection applies to a sex or violent offender who is a sexually violent predator. A sex or violent offender who is a sexually violent predator shall register not more than seventy-two (72) hours after the sex or violent offender:

- (1) is released from a penal facility (as defined in IC 35-41-1-21);
- (2) is released from a secure private facility (as defined in IC 31-9-2-115);
- (3) is released from a juvenile detention facility;
- (4) is transferred to a community transition program;
- (5) is placed on parole;
- (6) is placed on probation;
- (7) is placed on home detention; or
- (8) arrives at the place where the sexually violent predator is required to register under subsection (b), (c), or (d);

whichever occurs first. A sex or violent offender who is a sexually violent predator required to register in more than one (1) county under subsection (b), (c), (d), or (e) shall register in each appropriate county not more than seventy-two (72) hours after the offender's arrival in that county or acquisition of real estate in that county.

(i) The local law enforcement authority with whom a sex or violent offender registers under this section shall make and publish a photograph of the sex or violent offender on the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5. The local law enforcement authority shall make a photograph of the sex or violent offender that complies with the requirements of IC 36-2-13-5.5 at least once per year. The sheriff of a county containing a consolidated city shall provide the police chief of the consolidated city with all photographic and computer equipment necessary to enable the police chief of the consolidated city to transmit sex or violent offender photographs (and other identifying information required by IC 36-2-13-5.5) to the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5. In addition, the sheriff of a county containing a consolidated city shall provide all funding for the county's financial obligation for the establishment and maintenance of the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5.

(j) When a sex or violent offender registers, the local law enforcement authority shall:

- (1) immediately update the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5;
- (2) notify every law enforcement agency having jurisdiction in the county where the sex or violent offender resides; and

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(3) update the National Crime Information Center National Sex Offender Registry data base via the Indiana data and communications system (IDACS).

When a sex or violent offender from a jurisdiction outside Indiana registers a change of address, **electronic mail address, instant messaging username, electronic chat room username, social networking web site username**, employment, vocation, or enrollment in Indiana, the local law enforcement authority shall provide the department with the information provided by the sex or violent offender during registration.

SECTION 6. IC 11-8-8-8, AS AMENDED BY P.L.216-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. **(a)** The registration required under this chapter must include the following information:

(1) The sex or violent offender's full name, alias, any name by which the sex or violent offender was previously known, date of birth, sex, race, height, weight, hair color, eye color, any scars, marks, or tattoos, Social Security number, driver's license number or state identification card number, vehicle description and vehicle plate number for any vehicle the sex or violent offender owns or operates on a regular basis, principal residence address, other address where the sex or violent offender spends more than seven (7) nights in a fourteen (14) day period, and mailing address, if different from the sex or violent offender's principal residence address.

(2) A description of the offense for which the sex or violent offender was convicted, the date of conviction, the county of the conviction, the cause number of the conviction, and the sentence imposed, if applicable.

(3) If the person is required to register under section 7(a)(2) or 7(a)(3) of this chapter, the name and address of each of the sex or violent offender's employers in Indiana, the name and address of each campus or location where the sex or violent offender is enrolled in school in Indiana, and the address where the sex or violent offender stays or intends to stay while in Indiana.

(4) A recent photograph of the sex or violent offender.

(5) If the sex or violent offender is a sexually violent predator, that the sex or violent offender is a sexually violent predator.

(6) If the sex or violent offender is required to register for life, that the sex or violent offender is required to register for life.

(7) Any electronic mail address, instant messaging username, electronic chat room username, or social networking web site

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username that the sex or violent offender uses or intends to use.

~~(7)~~ **(8)** Any other information required by the department.

(b) If the sex or violent offender registers any information under subsection (a)(7), the offender shall sign a consent form authorizing the:

(1) search of the sex or violent offender's personal computer or device with Internet capability, at any time; and

(2) installation on the sex or violent offender's personal computer or device with Internet capability, at the sex or violent offender's expense, of hardware or software to monitor the sex or violent offender's Internet usage.

SECTION 7. IC 11-8-8-11, AS AMENDED BY P.L.216-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) If a sex or violent offender who is required to register under this chapter changes:

(1) principal residence address; or

(2) if section 7(a)(2) or 7(a)(3) of this chapter applies, the place where the sex or violent offender stays in Indiana;

the sex or violent offender shall report in person to the local law enforcement authority having jurisdiction over the sex or violent offender's current principal address or location and, if the offender moves to a new county in Indiana, to the local law enforcement authority having jurisdiction over the sex or violent offender's new principal address or location not more than seventy-two (72) hours after the address change.

(b) If a sex or violent offender moves to a new county in Indiana, the local law enforcement authority where the sex or violent offender's current principal residence address is located shall inform the local law enforcement authority in the new county in Indiana of the sex or violent offender's residence and forward all relevant registration information concerning the sex or violent offender to the local law enforcement authority in the new county. The local law enforcement authority receiving notice under this subsection shall verify the address of the sex or violent offender under section 13 of this chapter not more than seven (7) days after receiving the notice.

(c) If a sex or violent offender who is required to register under section 7(a)(2) or 7(a)(3) of this chapter changes the sex or violent offender's principal place of employment, principal place of vocation, or campus or location where the sex or violent offender is enrolled in school, the sex or violent offender shall report in person:

(1) to the local law enforcement authority having jurisdiction over

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the sex or violent offender's current principal place of employment, principal place of vocation, or campus or location where the sex or violent offender is enrolled in school; and

(2) if the sex or violent offender changes the sex or violent offender's place of employment, vocation, or enrollment to a new county in Indiana, to the local law enforcement authority having jurisdiction over the sex or violent offender's new principal place of employment, principal place of vocation, or campus or location where the sex or violent offender is enrolled in school;

not more than seventy-two (72) hours after the change.

(d) If a sex or violent offender moves the sex or violent offender's place of employment, vocation, or enrollment to a new county in Indiana, the local law enforcement authority having jurisdiction over the sex or violent offender's current principal place of employment, principal place of vocation, or campus or location where the sex or violent offender is enrolled in school shall inform the local law enforcement authority in the new county of the sex or violent offender's new principal place of employment, vocation, or enrollment by forwarding relevant registration information to the local law enforcement authority in the new county.

(e) If a sex or violent offender moves the sex or violent offender's residence, place of employment, vocation, or enrollment to a new state, the local law enforcement authority shall inform the state police in the new state of the sex or violent offender's new place of residence, employment, vocation, or enrollment.

(f) If a sex or violent offender who is required to register under this chapter changes or obtains a new:

- (1) electronic mail address;**
- (2) instant messaging username;**
- (3) electronic chat room username; or**
- (4) social networking web site username;**

the sex or violent offender shall report in person to the local law enforcement authority having jurisdiction over the sex or violent offender's current principal address or location and shall provide the local law enforcement authority with the new address or username not more than seventy-two (72) hours after the change or creation of the address or username.

~~(f)~~ (g) A local law enforcement authority shall make registration information, including information concerning the duty to register and the penalty for failing to register, available to a sex or violent offender.

~~(g)~~ (h) A local law enforcement authority who is notified of a change under subsection (a), ~~(c)~~, or (f) shall:

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- (1) immediately update the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5;
- (2) update the National Crime Information Center National Sex Offender Registry data base via the Indiana data and communications system (IDACS); and
- (3) notify the department.

(i) If a sex or violent offender who is registered with a local law enforcement authority becomes incarcerated, the local law enforcement authority shall transmit a copy of the information provided by the sex or violent offender during registration to the department.

(j) If a sex or violent offender is no longer required to register due to the expiration of the registration period, the local law enforcement authority shall transmit a copy of the information provided by the sex or violent offender during registration to the department.

SECTION 8. IC 11-8-8-19, AS AMENDED BY P.L.216-2007, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. (a) Except as provided in subsections (b) through (e), a sex or violent offender is required to register under this chapter until the expiration of ten (10) years after the date the sex or violent offender:

- (1) is released from a penal facility (as defined in IC 35-41-1-21) or a secure juvenile detention facility of a state or another jurisdiction;
- (2) is placed in a community transition program;
- (3) is placed in a community corrections program;
- (4) is placed on parole; or
- (5) is placed on probation;

for the sex or violent offense requiring registration, whichever occurs last. The registration period is tolled during any period that the sex or violent offender is incarcerated. The registration period does not restart if the offender is convicted of a subsequent offense; however, if the subsequent offense is a sex or violent offense, a new registration period may be imposed in accordance with this chapter. The department shall ensure that an offender who is no longer required to register as a sex or violent offender is notified that the obligation to register has expired.

(b) A sex or violent offender who is a sexually violent predator is required to register for life.

(c) A sex or violent offender who is convicted of at least one (1) offense under section 5(a) of this chapter that the sex or violent offender committed:

- (1) when the person was at least eighteen (18) years of age; and

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(2) against a victim who was less than twelve (12) years of age at the time of the crime;
is required to register for life.

(d) A sex or violent offender who is convicted of at least one (1) offense under section 5(a) of this chapter in which the sex offender:

- (1) proximately caused serious bodily injury or death to the victim;
- (2) used force or the threat of force against the victim or a member of the victim's family, unless the offense is sexual battery as a Class D felony; or
- (3) rendered the victim unconscious or otherwise incapable of giving voluntary consent;

is required to register for life.

(e) A sex or violent offender who is convicted of at least two (2) unrelated offenses under section 5(a) of this chapter is required to register for life.

(f) A person who is required to register as a sex or violent offender in any jurisdiction shall register for the period required by the other jurisdiction or the period described in this section, whichever is longer.

SECTION 9. IC 11-10-12-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 6. (a) The department, during the ninety (90) days before a committed offender is:**

- (1) released on parole;**
- (2) assigned to a community transition program;**
- (3) discharged from the department; or**
- (4) released on probation;**

shall allow the committed offender to have Internet access to use web sites that contain employment information in accordance with rules adopted by the department.

(b) The department shall provide employment counseling and Internet assistance to a committed offender who qualifies for Internet access under subsection (a), by a person trained in employment counseling and the use of Internet employment services.

(c) The department may restrict Internet access for a committed offender under subsection (a) if the committed offender:

- (1) has a warrant or detainer seeking transfer of the person to a county or another jurisdiction;**
- (2) is no longer within ninety (90) days of release due to loss of credit time, or the imposition of an additional criminal sentence;**

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- (3) does not reside in a department facility; or**
- (4) has engaged in misconduct involving use of the Internet.**

SECTION 10. IC 11-13-3-4, AS AMENDED BY P.L.216-2007, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A condition to remaining on parole is that the parolee not commit a crime during the period of parole.

(b) The parole board may also adopt, under IC 4-22-2, additional conditions to remaining on parole and require a parolee to satisfy one (1) or more of these conditions. These conditions must be reasonably related to the parolee's successful reintegration into the community and not unduly restrictive of a fundamental right.

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

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

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

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

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

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

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

The parolee is responsible for any charges resulting from a test

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required under this subsection. However, a person's parole may not be revoked on the basis of the person's inability to pay for a test under this subsection.

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

(1) may require a parolee who is a sex offender (as defined in IC 11-8-8-4.5) to:

(A) participate in a treatment program for sex offenders approved by the parole board; and

(B) avoid contact with any person who is less than sixteen (16) years of age unless the parolee:

(i) receives the parole board's approval; or

(ii) successfully completes the treatment program referred to in clause (A); and

(2) shall:

(A) require a parolee who is a sex or violent offender (as defined in IC 11-8-8-5) to register with a local law enforcement authority under IC 11-8-8;

(B) prohibit a parolee who is a sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of parole, unless the sex offender obtains written approval from the parole board;

(C) prohibit a parolee who is a sex offender convicted of a sex offense (as defined in IC 35-38-2-2.5) from residing within one (1) mile of the victim of the sex offender's sex offense unless the sex offender obtains a waiver under IC 35-38-2-2.5;

~~and~~

(D) prohibit a parolee who is a sex offender from owning, operating, managing, being employed by, or volunteering at any attraction designed to be primarily enjoyed by children less than sixteen (16) years of age;

(E) require a parolee who is a sex offender to consent:

(i) to the search of the sex offender's personal computer at any time; and

(ii) to the installation on the sex offender's personal computer or device with Internet capability, at the sex offender's expense, of one (1) or more hardware or software systems to monitor Internet usage; and

(F) prohibit the sex offender from:

(i) accessing or using certain web sites, chat rooms, or instant messaging programs frequented by children; and

(ii) deleting, erasing, or tampering with information on the sex offender's personal computer with intent to

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conceal an activity prohibited by item (i).

The parole board may not grant a sexually violent predator (as defined in IC 35-38-1-7.5) or a sex offender who is an offender against children under IC 35-42-4-11 a waiver under subdivision (2)(B) or (2)(C). If the parole board allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2)(B), the parole board shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order.

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

(i) As a condition of parole, the parole board may require a parolee to participate in a reentry court program.

(j) As a condition of parole, the parole board:

- (1) shall require a parolee who is a sexually violent predator under IC 35-38-1-7.5; and
- (2) may require a parolee who is a sex or violent offender (as defined in IC 11-8-8-5);

to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location.

(k) As a condition of parole, the parole board may prohibit, in accordance with IC 35-38-2-2.6, a parolee who has been convicted of stalking from residing within one thousand (1,000) feet of the residence of the victim of the stalking for a period that does not exceed five (5) years.

SECTION 11. IC 11-13-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 9. Rehabilitation Based Discharge for Long Term Inmates

Sec. 1. This chapter does not apply to the following:

- (1) An inmate who receives a sentence of death or life without parole under IC 35-50-2.
- (2) An inmate who has committed an offense described in IC 11-8-8-4.5.
- (3) A person convicted of a crime of violence (as defined in IC 35-50-1-2).

Sec. 2. Notwithstanding any other law, as soon as practicable after an inmate has been confined to the custody of the department for twenty-five (25) consecutive years, the department shall:

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- (1) identify the inmate to the parole board; and
- (2) provide the parole board with the inmate's offender progress report.

Sec. 3. Upon receipt of the material described in section 2 of this chapter, the parole board shall set a hearing to determine whether the circumstances warrant the inmate's discharge from the custody of the department.

Sec. 4. The parole board shall consider all relevant factors in determining whether the inmate is to be discharged under this chapter and must consider a community investigation report submitted to the parole board. The parole board shall give special consideration to an inmate who demonstrates each of the following:

- (1) A good conduct history during confinement.
- (2) Proof that the inmate will have suitable living quarters in a community if the inmate is discharged.
- (3) Proof that one (1) or more employers in the area in which the inmate would reside if discharged have offered to employ the inmate for at least thirty (30) hours a week on the same terms as the employer employs other employees.
- (4) Proof that the inmate:
 - (A) is at least a high school graduate; or
 - (B) has obtained:
 - (i) a general equivalency degree; or
 - (ii) a state of Indiana general educational development (GED) diploma.

Sec. 5. (a) If the parole board determines that the inmate:

- (1) has been properly rehabilitated; and
- (2) has suitable plans to carry out if discharged;

the parole board shall discharge the inmate from the custody of the department. An inmate who is released from confinement under this subsection must be placed on parole as described in subsection (b).

(b) An inmate who is discharged from the department under this section shall be placed on parole as follows:

- (1) An inmate who is required to be placed on parole for the remainder of the inmate's life under IC 35-50-6-1(e) shall be placed on parole for the remainder of the inmate's life.
- (2) An inmate who is:
 - (A) not an inmate described in subdivision (1); and
 - (B) not required to serve a period of probation;
 shall be placed on parole for two (2) years.

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Sec. 6. If the parole board denies an inmate's request to be discharged under this chapter, the inmate may petition for a new review not earlier than one (1) year after the parole board denies the request.

Sec. 7. The parole board or the department shall notify a registered crime victim in accordance with IC 11-8-7-2 if an inmate is discharged under this chapter.

Sec. 8. The department shall transmit the materials described in section 2 of this chapter to the legislative council in an electronic format under IC 5-14-6.

Sec. 9. The department shall adopt rules under IC 4-22-2 to implement this chapter.

SECTION 12. IC 20-30-5.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 5.5. Internet Safety

Sec. 1. Each school corporation shall include in the school corporation's curriculum for grades 3 and above instruction concerning safe usage of the Internet by children.

Sec. 2. The:

- (1) department shall develop guidelines; and**
 - (2) state board shall adopt rules under IC 4-22-2;**
- concerning the instruction required under this chapter to assist teachers assigned to teach the material described in this chapter.**

Sec. 3. Guidelines and rules adopted under section 2 of this chapter must cover:

- (1) safe online communication;**
- (2) privacy protection;**
- (3) cyberbullying;**
- (4) viewing inappropriate material;**
- (5) file sharing;**
- (6) the importance of open communication with responsible adults; and**
- (7) any other matters that the department or the state board finds will assist children in using the Internet safely.**

SECTION 13. IC 34-24-1-1, AS AMENDED BY P.L.137-2007, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) The following may be seized:

- (1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:**

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(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

- (i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (ii) Dealing in methamphetamine (IC 35-48-4-1.1).
- (iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (iv) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (v) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (vi) Dealing in a counterfeit substance (IC 35-48-4-5).
- (vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- (viii) Possession of methamphetamine (IC 35-48-4-6.1).
- (ix) Dealing in paraphernalia (IC 35-48-4-8.5).
- (x) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-10-4.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

- (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;
- (B) used to facilitate any violation of a criminal statute; or
- (C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

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- (A) commit, attempt to commit, or conspire to commit;
 - (B) facilitate the commission of; or
 - (C) escape from the commission of;
- murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.
- (5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:
- (A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
 - (B) Dealing in methamphetamine (IC 35-48-4-1.1).
 - (C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
 - (D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
 - (E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- (6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).
- (7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.
- (8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).
- (9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.
- (10) Any equipment, ~~used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.~~ **including computer equipment and cellular telephones, used for or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4.**
- (11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.
- (12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.
- (13) Property used by a person to commit counterfeiting or

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forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a motor vehicle used by a person who operates the motor vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; or

(B) on a highway while the person's driver's license is suspended in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.

If a court orders the seizure of a motor vehicle under this subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a motor vehicle to be registered in the name of the person whose motor vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

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(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

- (1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).
- (2) IC 35-48-4-1.1 (dealing in methamphetamine).
- (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- (5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.
- (6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Class A felony, Class B felony, or Class C felony.
- (7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.
- (8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

- (1) an owner of the motor vehicle; or
- (2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

SECTION 14. IC 35-38-1-7.1, AS AMENDED BY P.L.213-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court may consider the following aggravating circumstances:

- (1) The harm, injury, loss, or damage suffered by the victim of an offense was:
 - (A) significant; and
 - (B) greater than the elements necessary to prove the commission of the offense.
- (2) The person has a history of criminal or delinquent behavior.
- (3) The victim of the offense was less than twelve (12) years of

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age or at least sixty-five (65) years of age at the time the person committed the offense.

(4) The person:

- (A) committed a crime of violence (IC 35-50-1-2); and
- (B) knowingly committed the offense in the presence or within hearing of an individual who:
 - (i) was less than eighteen (18) years of age at the time the person committed the offense; and
 - (ii) is not the victim of the offense.

(5) The person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person.

(6) The person has recently violated the conditions of any probation, parole, pardon, community corrections placement, or pretrial release granted to the person.

(7) The victim of the offense was:

- (A) a person with a disability (as defined in IC 27-7-6-12), and the defendant knew or should have known that the victim was a person with a disability; or**
- (B) mentally or physically infirm.**

(8) The person was in a position having care, custody, or control of the victim of the offense.

(9) The injury to or death of the victim of the offense was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(10) The person threatened to harm the victim of the offense or a witness if the victim or witness told anyone about the offense.

(11) The person:

- (A) committed trafficking with an inmate under IC 35-44-3-9; and
- (B) is an employee of the penal facility.

(b) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

- (1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.
- (2) The crime was the result of circumstances unlikely to recur.
- (3) The victim of the crime induced or facilitated the offense.
- (4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

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- (5) The person acted under strong provocation.
- (6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.
- (7) The person is likely to respond affirmatively to probation or short term imprisonment.
- (8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.
- (9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.
- (10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.
- (11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(c) The criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence.

(d) A court may impose any sentence that is:

- (1) authorized by statute; and
- (2) permissible under the Constitution of the State of Indiana;

regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

SECTION 15. IC 35-38-1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. **(a)** If a convicted person is sentenced to a term of imprisonment, the court shall send a copy of:

- (1) the presentence report;
- (2) any presentence memorandum filed by the convicted person;
- (3) the report of any physical or mental examination made incident to the question of sentence; ~~and~~
- (4) any record made under IC 35-35-2 **or IC 35-35-3;**
- (5) the abstract of judgment;**
- (6) the judgment of conviction; and**
- (7) the sentencing order;**

to the department of correction.

(b) Copies of the information sent to the department of correction under subsection (a) may be sent through any electronic means approved by the department of correction.

SECTION 16. IC 35-38-2-2.2, AS AMENDED BY P.L.216-2007,

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SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2.2. As a condition of probation for a sex offender (as defined in IC 11-8-8-4.5), the court shall:

- (1) require the sex offender to register with the local law enforcement authority under IC 11-8-8; ~~and~~
- (2) prohibit the sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7), **as measured from the property line of the sex offender's residence to the property line of the school property**, for the period of probation, unless the sex offender obtains written approval from the court;
- (3) **require the sex offender to consent:**
 - (A) **to the search of the sex offender's personal computer at any time; and**
 - (B) **to the installation on the sex offender's personal computer or device with Internet capability, at the sex offender's expense, of one (1) or more hardware or software systems to monitor Internet usage; and**
- (4) **prohibit the sex offender from:**
 - (A) **accessing or using certain web sites, chat rooms, or instant messaging programs frequented by children; and**
 - (B) **deleting, erasing, or tampering with information on the sex offender's personal computer with intent to conceal an activity prohibited by clause (A).**

If the court allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2), the court shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order. However, a court may not allow a sex offender who is a sexually violent predator (as defined in IC 35-38-1-7.5) or an offender against children under IC 35-42-4-11 to reside within one thousand (1,000) feet of school property.

SECTION 17. IC 35-38-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) When a convicted person is sentenced to imprisonment, the court shall, without delay, certify, under the seal of the court **or through any electronic means approved by the department of correction**, copies of the judgment of conviction and sentence to the receiving authority.

- (b) The judgment must include:
 - (1) the crime for which the convicted person is adjudged guilty and the classification of the criminal offense;
 - (2) the period, if any, for which the person is rendered incapable of holding any office of trust or profit;



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(3) the amount of the fines or costs assessed, if any, whether or not the convicted person is indigent, and the method by which the fines or costs are to be satisfied;

(4) the amount of credit, including credit time earned, for time spent in confinement before sentencing; and

(5) the amount to be credited toward payment of the fines or costs for time spent in confinement before sentencing.

(c) The judgment may specify the degree of security recommended by the court.

(d) A term of imprisonment begins on the date sentence is imposed, unless execution of the sentence is stayed according to law.

SECTION 18. IC 35-42-4-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 12. (a) This section does not apply to a person to 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) 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

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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;**

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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.

SECTION 19. IC 35-42-4-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: 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) 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 a Class A misdemeanor if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)).

SECTION 20. [EFFECTIVE JULY 1, 2008] (a) Notwithstanding IC 11-13-3-4(j), the parole board is not required to require a parolee who is a sexually violent predator under IC 35-38-1-7.5 to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location unless the parolee was released to

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parole after June 30, 2009.

(b) The parole board may require a parolee described in subsection (a) to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location, even if the parolee was released to parole before July 1, 2009.

(c) This SECTION expires January 1, 2010.

SECTION 21. [EFFECTIVE JULY 1, 2008] IC 35-38-1-7.1, as amended by this act, and IC 35-42-4-12 and IC 35-52-4-13, both as added by this act, apply only to crimes committed after June 30, 2008.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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