



Reprinted  
February 28, 2012

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# ENGROSSED HOUSE BILL No. 1080

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DIGEST OF HB 1080 (Updated February 27, 2012 4:11 pm - DI 106)

**Citations Affected:** IC 11-8; IC 35-42; noncode.

**Synopsis:** Sex offenders. Provides that a person is considered to be a sex offender who must register as a sex or violent offender with the appropriate law enforcement agency if the person is: (1) a public servant or other person employed by a governmental entity or another person who provides goods or services to a person who is subject to lawful detention; and (2) convicted of engaging in sexual intercourse or deviate sexual conduct with another person who is subject to lawful detention. Urges the legislative council to study the topic of sexual battery during the 2012 interim. Creates a defense to the offense of recruiting, harboring, or transporting a child less than sixteen years of age with the intent of inducing the child to participate in sexual conduct if: (1) the child is 14 or 15 years old and the person is less than 18 years old; or (2) the person is within four years of the child's age, the person was in a dating relationship with the child, and certain other conditions apply.

**Effective:** July 1, 2012.

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## Frye R, Eberhart

(SENATE SPONSORS — ECKERTY, RANDOLPH, HUME)

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January 9, 2012, read first time and referred to Committee on Courts and Criminal Code.  
January 23, 2012, reported — Do Pass.  
January 26, 2012, read second time, ordered engrossed. Engrossed.  
January 27, 2012, read third time, passed. Yeas 92, nays 0.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.  
February 23, 2012, amended, reported favorably — Do Pass.  
February 27, 2012, read second time, amended, ordered engrossed.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1080

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 11-8-8-4.5, AS ADDED BY P.L.216-2007,  
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2012]: 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).  
8 (3) Child molesting (IC 35-42-4-3).  
9 (4) Child exploitation (IC 35-42-4-4(b)).  
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 as a Class A, Class B, or  
15 Class C felony (IC 35-42-4-9), unless:  
16 (A) the person is convicted of sexual misconduct with a minor  
17 as a Class C felony;

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- 1 (B) the person is not more than:  
 2 (i) four (4) years older than the victim if the offense was  
 3 committed after June 30, 2007; or  
 4 (ii) five (5) years older than the victim if the offense was  
 5 committed before July 1, 2007; and  
 6 (C) the sentencing court finds that the person should not be  
 7 required to register as a sex offender.  
 8 (9) Incest (IC 35-46-1-3).  
 9 (10) Sexual battery (IC 35-42-4-8).  
 10 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen  
 11 (18) years of age, and the person who kidnapped the victim is not  
 12 the victim's parent or guardian.  
 13 (12) Criminal confinement (IC 35-42-3-3), if the victim is less  
 14 than eighteen (18) years of age, and the person who confined or  
 15 removed the victim is not the victim's parent or guardian.  
 16 (13) Possession of child pornography (IC 35-42-4-4(c)).  
 17 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony.  
 18 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the  
 19 victim is less than eighteen (18) years of age.  
 20 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(b)).  
 21 (17) Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less  
 22 than eighteen (18) years of age.  
 23 **(18) Sexual misconduct by a service provider (IC 35-44-1-5).**  
 24 ~~(18)~~ **(19)** An attempt or conspiracy to commit a crime listed in  
 25 subdivisions (1) through ~~(17)~~: **(18)**.  
 26 ~~(19)~~ **(20)** A crime under the laws of another jurisdiction,  
 27 including a military court, that is substantially equivalent to any  
 28 of the offenses listed in subdivisions (1) through ~~(18)~~: **(19)**.  
 29 (b) The term includes:  
 30 (1) a person who is required to register as a sex offender in any  
 31 jurisdiction; and  
 32 (2) a child who has committed a delinquent act and who:  
 33 (A) is at least fourteen (14) years of age;  
 34 (B) is on probation, is on parole, is discharged from a facility  
 35 by the department of correction, is discharged from a secure  
 36 private facility (as defined in IC 31-9-2-115), or is discharged  
 37 from a juvenile detention facility as a result of an adjudication  
 38 as a delinquent child for an act that would be an offense  
 39 described in subsection (a) if committed by an adult; and  
 40 (C) is found by a court by clear and convincing evidence to be  
 41 likely to repeat an act that would be an offense described in  
 42 subsection (a) if committed by an adult.

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

5 SECTION 2. IC 11-8-8-5, AS AMENDED BY P.L.216-2007,  
 6 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2012]: Sec. 5. (a) Except as provided in section 22 of this  
 8 chapter, as used in this chapter, "sex or violent offender" means a  
 9 person convicted of any of the following offenses:

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

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1 than eighteen (18) years of age.

2 (18) Murder (IC 35-42-1-1).

3 (19) Voluntary manslaughter (IC 35-42-1-3).

4 **(20) Sexual misconduct by a service provider (IC 35-44-1-5).**

5 ~~(20)~~ **(21)** An attempt or conspiracy to commit a crime listed in  
6 subdivisions (1) through ~~(19)~~: **(20)**.

7 ~~(21)~~ **(22)** A crime under the laws of another jurisdiction,  
8 including a military court, that is substantially equivalent to any  
9 of the offenses listed in subdivisions (1) through ~~(20)~~: **(21)**.

10 (b) The term includes:

11 (1) a person who is required to register as a sex or violent  
12 offender in any jurisdiction; and

13 (2) a child who has committed a delinquent act and who:

14 (A) is at least fourteen (14) years of age;

15 (B) is on probation, is on parole, is discharged from a facility  
16 by the department of correction, is discharged from a secure  
17 private facility (as defined in IC 31-9-2-115), or is discharged  
18 from a juvenile detention facility as a result of an adjudication  
19 as a delinquent child for an act that would be an offense  
20 described in subsection (a) if committed by an adult; and

21 (C) is found by a court by clear and convincing evidence to be  
22 likely to repeat an act that would be an offense described in  
23 subsection (a) if committed by an adult.

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

28 SECTION 3. IC 35-42-3.5-1, AS AMENDED BY SEA 4-2012,  
29 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
30 JULY 1, 2012]: Sec. 1. (a) A person who, by force, threat of force, or  
31 fraud, knowingly or intentionally recruits, harbors, or transports  
32 another person:

33 (1) to engage the other person in:

34 (A) forced labor; or

35 (B) involuntary servitude; or

36 (2) to force the other person into:

37 (A) marriage;

38 (B) prostitution; or

39 (C) participating in sexual conduct (as defined by  
40 IC 35-42-4-4);

41 commits promotion of human trafficking, a Class B felony.

42 (b) A person who knowingly or intentionally recruits, harbors, or

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1 transports a child less than sixteen (16) years of age with the intent of:

2 (1) engaging the child in:

3 (A) forced labor; or

4 (B) involuntary servitude; or

5 (2) inducing or causing the child to:

6 (A) engage in prostitution; or

7 (B) participate in sexual conduct (as defined by IC 35-42-4-4);

8 commits promotion of human trafficking of a minor, a Class B felony.

9 **Except as provided in subsection (e), it is not a defense to a**  
 10 **prosecution under this subsection that the child consented to engage in**  
 11 **prostitution or to participate in sexual conduct.**

12 (c) A person who is at least eighteen (18) years of age who  
 13 knowingly or intentionally sells or transfers custody of a child less than  
 14 sixteen (16) years of age for the purpose of prostitution or participating  
 15 in sexual conduct (as defined by IC 35-42-4-4) commits sexual  
 16 trafficking of a minor, a Class A felony.

17 (d) A person who knowingly or intentionally pays, offers to pay, or  
 18 agrees to pay money or other property to another person for an  
 19 individual who the person knows has been forced into:

20 (1) forced labor;

21 (2) involuntary servitude; or

22 (3) prostitution;

23 commits human trafficking, a Class C felony.

24 **(e) It is a defense to a prosecution under subsection (b)(2)(B) if:**

25 **(1) the child is at least fourteen (14) years of age but less than**  
 26 **sixteen (16) years of age and the person is less than eighteen**  
 27 **(18) years of age; or**

28 **(2) all the following apply:**

29 **(A) The person is not more than four (4) years older than**  
 30 **the victim.**

31 **(B) The relationship between the person and the victim was**  
 32 **a dating relationship or an ongoing personal relationship.**  
 33 **The term "ongoing personal relationship" does not include**  
 34 **a family relationship.**

35 **(C) The crime:**

36 **(i) was not committed by a person who is at least**  
 37 **twenty-one (21) years of age;**

38 **(ii) was not committed by using or threatening the use of**  
 39 **deadly force;**

40 **(iii) was not committed while armed with a deadly**  
 41 **weapon;**

42 **(iv) did not result in serious bodily injury;**

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1 (v) was not facilitated by furnishing the victim, without  
 2 the victim's knowledge, with a drug (as defined in  
 3 IC 16-42-19-2(1)) or a controlled substance (as defined in  
 4 IC 35-48-1-9) or knowing that the victim was furnished  
 5 with the drug or controlled substance without the  
 6 victim's knowledge; and  
 7 (vi) was not committed by a person having a position of  
 8 authority or substantial influence over the victim.  
 9 (D) The person has not committed another sex offense (as  
 10 defined in IC 11-8-8-5.2), including a delinquent act that  
 11 would be a sex offense if committed by an adult, against  
 12 any other person.  
 13 SECTION 4. [EFFECTIVE JULY 1, 2012] (a) The general  
 14 assembly urges the legislative council to study, during the 2012  
 15 legislative interim, the topic of sexual battery.  
 16 (b) If the topic of sexual battery is studied under subsection (a),  
 17 the study committee to which the topic is assigned shall consider  
 18 whether the touching of a person who is unaware that the touching  
 19 is occurring should be classified as sexual battery, and, if so, under  
 20 which circumstances.  
 21 (c) If the topic of sexual battery is studied under subsection (a),  
 22 the study committee to which the topic is assigned shall issue a final  
 23 report to the legislative council containing the study committee's  
 24 findings and recommendations, including any recommended  
 25 legislation concerning the topic, not later than November 1, 2012.  
 26 (d) This SECTION expires December 31, 2012.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1080, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STEUERWALD, Chair

Committee Vote: yeas 8, nays 0.

## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1080, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1080 as printed January 23, 2012.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 0.

## SENATE MOTION

Madam President: I move that Engrossed House Bill 1080 be amended to read as follows:

Page 4, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 3. IC 35-42-3.5-1, AS AMENDED BY SEA 4-2012, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) A person who, by force, threat of force, or fraud, knowingly or intentionally recruits, harbors, or transports another person:

(1) to engage the other person in:

(A) forced labor; or

(B) involuntary servitude; or

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(2) to force the other person into:

- (A) marriage;
- (B) prostitution; or
- (C) participating in sexual conduct (as defined by IC 35-42-4-4);

commits promotion of human trafficking, a Class B felony.

(b) A person who knowingly or intentionally recruits, harbors, or transports a child less than sixteen (16) years of age with the intent of:

- (1) engaging the child in:
  - (A) forced labor; or
  - (B) involuntary servitude; or
- (2) inducing or causing the child to:
  - (A) engage in prostitution; or
  - (B) participate in sexual conduct (as defined by IC 35-42-4-4);

commits promotion of human trafficking of a minor, a Class B felony.

**Except as provided in subsection (e), it is not a defense to a prosecution under this subsection that the child consented to engage in prostitution or to participate in sexual conduct.**

(c) A person who is at least eighteen (18) years of age who knowingly or intentionally sells or transfers custody of a child less than sixteen (16) years of age for the purpose of prostitution or participating in sexual conduct (as defined by IC 35-42-4-4) commits sexual trafficking of a minor, a Class A felony.

(d) A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into:

- (1) forced labor;
- (2) involuntary servitude; or
- (3) prostitution;

commits human trafficking, a Class C felony.

**(e) It is a defense to a prosecution under subsection (b)(2)(B) if:**

- (1) the child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person is less than eighteen (18) years of age; or**

**(2) all the following apply:**

- (A) The person is not more than four (4) years older than the victim.**
- (B) 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.**

**(C) The crime:**

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- (i) was not committed by a person who is at least twenty-one (21) years of age;**
- (ii) was not committed by using or threatening the use of deadly force;**
- (iii) was not committed while armed with a deadly weapon;**
- (iv) did not result in serious bodily injury;**
- (v) 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**
- (vi) was not committed by a person having a position of authority or substantial influence over the victim.**

**(D) The person has not committed another sex offense (as defined in IC 11-8-8-5.2), including a delinquent act that would be a sex offense if committed by an adult, against any other person."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1080 as printed February 24, 2012.)

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