



# COMMITTEE REPORT

## MADAM PRESIDENT:

The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1218, 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:

- 1 Page 2, line 17, delete "(6);" and insert "(5);".
- 2 Page 2, line 18, delete "Alternative" and insert "Alternatives".
- 3 Page 6, line 10, strike "and".
- 4 Page 6, line 12, delete "." and insert "; and
- 5 **(6) funding a court appointed forensic advocate program (as**
- 6 **described in IC 35-36-12) for persons who are on probation,**
- 7 **are supervised by a community corrections program, or are**
- 8 **participating in a pretrial diversion program."**
- 9 Page 6, between lines 17 and 18, begin a new paragraph and insert:
- 10 "SECTION 3. IC 31-9-2-133.1, AS ADDED BY P.L.46-2016,
- 11 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 12 JULY 1, 2017]: Sec. 133.1. "Victim of human or sexual trafficking",
- 13 for purposes of IC 31-34-1-3.5, refers to a child who is recruited,
- 14 harbored, transported, or engaged in:
- 15 (1) forced labor;
- 16 (2) involuntary servitude;
- 17 (3) prostitution;
- 18 **(4) juvenile prostitution, as defined in IC 35-31.5-2-178.5;**

- 1           ~~(4)~~ **(5)** child exploitation, as defined in IC 35-42-4-4(b);
- 2           ~~(5)~~ **(6)** marriage, unless authorized by a court under IC 31-11-1-6;
- 3           or
- 4           ~~(6)~~ **(7)** trafficking for the purpose of prostitution, **juvenile**
- 5           **prostitution**, or participation in sexual conduct as defined in
- 6           IC 35-42-4-4(a)(4)."

7           Page 7, line 36, delete "may" and insert "**shall**".

8           Page 8, line 12, delete "may" and insert "**shall**".

9           Page 8, line 19, after "similar" insert "**human trafficking**".

10          Page 8, line 28, delete "that the child was a trafficked" and insert:

- 11          **"that:**
- 12               **(1) the child was a trafficked child at the time the child**
  - 13               **performed the delinquent act that resulted in the**
  - 14               **adjudication;**
  - 15               **(2) the delinquent act did not result in bodily injury to another**
  - 16               **person; and**
  - 17               **(3) at the time the child committed the delinquent act, the**
  - 18               **child was:**
  - 19                       **(A) coerced by; or**
  - 20                       **(B) under the control of;**
  - 21               **another person."**

22          Page 8, delete lines 29 through 31.

23          Page 9, delete lines 2 through 14.

24          Page 10, line 22, delete "(a) Subject to".

25          Page 10, line 23, delete "subsections (b) and (c), the" and insert

26          "The".

27          Page 10, delete lines 26 through 32.

28          Page 10, after line 32, begin a new paragraph and insert:

29          "SECTION 10. IC 35-31.5-2-178.5 IS ADDED TO THE INDIANA

30          CODE AS A **NEW** SECTION TO READ AS FOLLOWS

31          [EFFECTIVE JULY 1, 2017]: **Sec. 178.5. "Juvenile prostitution"**

32          **means an act by a person less than eighteen (18) years of age that**

33          **would be a crime described in IC 35-45-4-2(a) if committed by an**

34          **individual at least eighteen (18) years of age.**

35          SECTION 11. IC 35-38-10 IS ADDED TO THE INDIANA CODE

36          AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE

37          JULY 1, 2017]:

38          **Chapter 10. Convictions of Trafficked Persons**

1           **Sec. 1. As used in this chapter, "trafficked person" means a**  
 2 **person who was the victim of human trafficking (IC 35-42-3.5), or**  
 3 **a substantially similar human trafficking offense committed in**  
 4 **another jurisdiction, regardless of whether the person who**  
 5 **committed the human trafficking offense was charged, tried, or**  
 6 **convicted.**

7           **Sec. 2. A person who committed an offense that did not result in**  
 8 **bodily injury to another person is entitled to have the person's**  
 9 **conviction vacated if the person proves by a preponderance of the**  
 10 **evidence that:**

11           **(1) the person was a trafficked person at the time the person**  
 12 **committed the offense;**

13           **(2) the offense did not result in bodily injury to another**  
 14 **person; and**

15           **(3) at the time the person committed the offense, the person**  
 16 **was:**

17           **(A) coerced; or**

18           **(B) under the control of;**

19           **another person.**

20           **Sec. 3. A person may bring an action to enforce the right**  
 21 **described in section 2 of this chapter in accordance with the**  
 22 **Indiana rules of postconviction relief.**

23           SECTION 12. IC 35-42-3.5-1, AS AMENDED BY P.L.13-2016,  
 24 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25 JULY 1, 2017]: Sec. 1. (a) A person who, by force, threat of force, or  
 26 fraud, knowingly or intentionally recruits, harbors, or transports  
 27 another person:

28           (1) to engage the other person in:

29           (A) forced labor; or

30           (B) involuntary servitude; or

31           (2) to force the other person into:

32           (A) marriage;

33           (B) prostitution; or

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

36 commits promotion of human trafficking, a Level 4 felony.

37           (b) A person who knowingly or intentionally recruits, harbors, or  
 38 transports a child less than:

- 1 (1) eighteen (18) years of age with the intent of:  
 2 (A) engaging the child in:  
 3 (i) forced labor; or  
 4 (ii) involuntary servitude; or  
 5 (B) inducing or causing the child to:  
 6 (i) engage in prostitution **or juvenile prostitution**; or  
 7 (ii) engage in a performance or incident that includes sexual  
 8 conduct in violation of IC 35-42-4-4(b) or IC 35-42-4-4(c)  
 9 (child exploitation); or  
 10 (2) sixteen (16) years of age with the intent of inducing or causing  
 11 the child to participate in sexual conduct (as defined by  
 12 IC 35-42-4-4);  
 13 commits promotion of human trafficking of a minor, a Level 3 felony.  
 14 Except as provided in subsection (e), it is not a defense to a prosecution  
 15 under this subsection that the child consented to engage in prostitution  
 16 **or juvenile prostitution** or to participate in sexual conduct.  
 17 (c) A person who is at least eighteen (18) years of age who  
 18 knowingly or intentionally sells or transfers custody of a child less than  
 19 eighteen (18) years of age for the purpose of prostitution, **juvenile**  
 20 **prostitution**, or participating in sexual conduct (as defined by  
 21 IC 35-42-4-4) commits sexual trafficking of a minor, a Level 2 felony.  
 22 (d) A person who knowingly or intentionally pays, offers to pay, or  
 23 agrees to pay money or other property to another person for an  
 24 individual who the person knows has been forced into:  
 25 (1) forced labor;  
 26 (2) involuntary servitude; or  
 27 (3) prostitution **or juvenile prostitution**;  
 28 commits human trafficking, a Level 5 felony.  
 29 (e) It is a defense to a prosecution under subsection (b)(2) if:  
 30 (1) the child is at least fourteen (14) years of age but less than  
 31 sixteen (16) years of age and the person is less than eighteen (18)  
 32 years of age; or  
 33 (2) all the following apply:  
 34 (A) The person is not more than four (4) years older than the  
 35 victim.  
 36 (B) The relationship between the person and the victim was a  
 37 dating relationship or an ongoing personal relationship. The  
 38 term "ongoing personal relationship" does not include a family

- 1 relationship.
- 2 (C) The crime:
- 3 (i) was not committed by a person who is at least twenty-one
- 4 (21) years of age;
- 5 (ii) was not committed by using or threatening the use of
- 6 deadly force;
- 7 (iii) was not committed while armed with a deadly weapon;
- 8 (iv) did not result in serious bodily injury;
- 9 (v) was not facilitated by furnishing the victim, without the
- 10 victim's knowledge, with a drug (as defined in
- 11 IC 16-42-19-2(1)) or a controlled substance (as defined in
- 12 IC 35-48-1-9) or knowing that the victim was furnished with
- 13 the drug or controlled substance without the victim's
- 14 knowledge; and
- 15 (vi) was not committed by a person having a position of
- 16 authority or substantial influence over the victim.
- 17 (D) The person has not committed another sex offense (as
- 18 defined in IC 11-8-8-5.2), including a delinquent act that
- 19 would be a sex offense if committed by an adult, against any
- 20 other person.
- 21 SECTION 13. IC 35-45-1-5, AS ADDED BY P.L.59-2016,
- 22 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 23 JULY 1, 2017]: Sec. 5. (a) As used in this section, "common nuisance"
- 24 means a building, structure, vehicle, or other place that is used for (1)
- 25 or more of the following purposes:
- 26 (1) To buy an alcoholic beverage in violation of IC 7.1-5-10-5.
- 27 (2) To unlawfully use, keep, or sell a legend drug.
- 28 (3) To unlawfully:
- 29 (A) use;
- 30 (B) manufacture;
- 31 (C) keep;
- 32 (D) offer for sale;
- 33 (E) sell;
- 34 (F) deliver; or
- 35 (G) finance the delivery of;
- 36 a controlled substance or an item of drug paraphernalia (as
- 37 described in IC 35-48-4-8.5).
- 38 (4) To provide a location for a person to pay, offer to pay, or agree

- 1 to pay money or other property to another person for an individual  
 2 whom the person knows has been forced into:
- 3 (A) forced labor;
  - 4 (B) involuntary servitude; or
  - 5 (C) prostitution **or juvenile prostitution.**
- 6 (5) To provide a location for a person to commit a violation of  
 7 IC 35-42-3.5-1(a) through IC 35-42-3.5-1(d) (human trafficking).
- 8 (b) A person who knowingly or intentionally visits a common  
 9 nuisance described in subsections (a)(1) through (a)(4) commits  
 10 visiting a common nuisance. The offense is a:
- 11 (1) Class B misdemeanor if the common nuisance is used for the  
 12 unlawful:
    - 13 (A) sale of an alcoholic beverage as set forth in subsection  
 14 (a)(1); ~~or~~
    - 15 (B) use, keeping, or sale of a legend drug as set forth in  
 16 subsection (a)(2); or
    - 17 (C) use, manufacture, keeping, offer for sale, sale, delivery, or  
 18 financing the delivery of a controlled substance or item of drug  
 19 paraphernalia (as described in IC 35-48-4-8.5), as set forth in  
 20 subsection (a)(3);
  - 21 (2) Class A misdemeanor if:
    - 22 (A) the common nuisance is used as a location for a person to  
 23 pay, offer to pay, or agree to pay for a person who has been  
 24 forced into forced labor, involuntary servitude, ~~or~~ prostitution,  
 25 **or juvenile prostitution** as set forth in subsection (a)(4); or
    - 26 (B) the person knowingly, intentionally, or recklessly takes a  
 27 person less than eighteen (18) years of age or an endangered  
 28 adult (as defined in IC 12-10-3-2) into a common nuisance  
 29 used to unlawfully:
      - 30 (i) use;
      - 31 (ii) manufacture;
      - 32 (iii) keep;
      - 33 (iv) offer for sale;
      - 34 (v) sell;
      - 35 (vi) deliver; or
      - 36 (vii) finance the delivery of;
- 37 a controlled substance or an item of drug paraphernalia, as set  
 38 forth in subsection (a)(3); and

1 (3) Level 6 felony if the person:

2 (A) knowingly, intentionally, or recklessly takes a person less  
3 than eighteen (18) years of age or an endangered adult (as  
4 defined in IC 12-10-3-2) into a common nuisance used to  
5 unlawfully:

6 (i) use;

7 (ii) manufacture;

8 (iii) keep;

9 (iv) offer for sale;

10 (v) sell;

11 (vi) deliver; or

12 (vii) finance the delivery of;

13 a controlled substance or an item of drug paraphernalia, as set  
14 forth in subsection (a)(3); and

15 (B) has a prior unrelated conviction for a violation of this  
16 section involving a controlled substance or drug paraphernalia.

17 (c) A person who knowingly or intentionally maintains a common  
18 nuisance commits maintaining a common nuisance, a Level 6 felony.

19 SECTION 14. IC 35-45-4-2, AS AMENDED BY P.L.23-2015,  
20 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
21 JULY 1, 2017]: Sec. 2. (a) A person **at least eighteen (18) years of**  
22 **age** who knowingly or intentionally:

23 (1) performs, or offers or agrees to perform, sexual intercourse or  
24 other sexual conduct (as defined in IC 35-31.5-2-221.5); or

25 (2) fondles, or offers or agrees to fondle, the genitals of another  
26 person;

27 for money or other property commits prostitution, a Class A  
28 misdemeanor. However, the offense is a Level 6 felony if the person  
29 has two (2) prior convictions under this section.

30 (b) It is a defense to a prosecution under this section that the person  
31 was

32 ~~(1) a child (as defined in IC 35-47-10-3); and~~

33 ~~(2) a victim or an alleged victim of an offense under~~  
34 ~~IC 35-42-3.5-1~~

35 at the time the person engaged in the prohibited conduct.

36 SECTION 15. IC 35-45-4-4, AS AMENDED BY P.L.158-2013,  
37 SECTION 528, IS AMENDED TO READ AS FOLLOWS  
38 [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) **As used in this section,**

- 1       **"juvenile prostitution victim" means a person less than eighteen**  
 2       **(18) years of age who engages in juvenile prostitution.**  
 3       **(b)** A person who:  
 4           (1) knowingly or intentionally entices or compels another person  
 5           to become a prostitute **or juvenile prostitution victim;**  
 6           (2) knowingly or intentionally procures, or offers or agrees to  
 7           procure, a person for another person for the purpose of  
 8           prostitution **or juvenile prostitution;**  
 9           (3) having control over the use of a place, knowingly or  
 10          intentionally permits another person to use the place for  
 11          prostitution **or juvenile prostitution;**  
 12          (4) receives money or other property from a prostitute **or juvenile**  
 13          **prostitution victim**, without lawful consideration, knowing it was  
 14          earned in whole or in part from prostitution **or juvenile**  
 15          **prostitution;** or  
 16          (5) knowingly or intentionally conducts or directs another person  
 17          to a place for the purpose of prostitution **or juvenile prostitution;**  
 18       commits promoting prostitution, a Level 5 felony. However, the offense  
 19       is a Level 4 felony under subdivision (1) if the person enticed or  
 20       compelled is ~~under~~ **less than** eighteen (18) years of age."  
 21       Renumber all SECTIONS consecutively.  
       (Reference is to HB 1218 as printed February 10, 2017.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 8, Nays 0.

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**Young M**

**Chairperson**