

HOUSE BILL No. 1642

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-49-3.

Synopsis: Obscenity and matter harmful to minors. Makes it a Class D felony (or a Class C or a Class B felony under certain circumstances) for a person to knowingly or intentionally send or bring into Indiana or send or take out of Indiana obscene matter for sale or distribution. Makes it a Class A misdemeanor (or a Class D or Class C felony under certain circumstances) for a person to knowingly or intentionally distribute, offer to distribute, send, bring, or exhibit to another person obscene matter for a noncommercial purpose or while acting within the scope of the person's employment with no financial interest in the obscene matter. Makes it a Class D felony (or a Class C or Class B felony under certain circumstances) for a person to knowingly or
(Continued next page)

Effective: July 1, 1999.

Bauer, Kruse

January 21, 1999, read first time and referred to Committee on Courts and Criminal Code.

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Digest Continued

intentionally distribute, offer to distribute, send, bring, or exhibit to another person obscene matter while exercising ownership or managerial control over the obscene matter. Makes it a Class A misdemeanor (or a Class D or Class C felony under certain circumstances) for a person to knowingly or intentionally engage in, participate in, manage, produce, sponsor, present, exhibit, photograph, film, or videotape any obscene performance for a noncommercial purpose or while acting within the scope of the person's employment with no financial interest in the obscene performance. Makes it a Class D felony (or a Class C or Class B felony under certain circumstances) for a person to knowingly or intentionally engage in, participate in, manage, produce, sponsor, present, exhibit, photograph, film, or videotape any obscene performance while exercising ownership or managerial control over the obscene performance. Makes it a Class A misdemeanor for a person to knowingly or intentionally sell or distribute or display for sale or distribution to any person matter that is harmful to minors within 500 feet of the nearest property line of a school, library, licensed day care center, church, or facility used to provide activities for persons less than sixteen (16) years of age after school hours. Lowers the penalty for certain acts of disseminating matter harmful to minors or engaging in certain conduct harmful to minors from a Class D felony to a Class A misdemeanor, except for persons with certain prior convictions. Makes the offense a Class D felony if the person has a prior unrelated conviction.

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Introduced

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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HOUSE BILL No. 1642



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

1 SECTION 1. IC 35-49-3-1 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) A person who
 3 knowingly or intentionally ~~(+)~~ sends or brings into Indiana **or sends or**
 4 **takes out of Indiana** obscene matter for sale or distribution ~~or~~ ~~(2)~~
 5 **commits a Class D felony. However, the offense is:**
 6 (1) a Class C felony if:
 7 (A) the person has a prior unrelated conviction under:
 8 (i) this subsection; or
 9 (ii) the law of any other jurisdiction in which the
 10 elements of the crime for which the conviction was
 11 entered are substantially similar to the elements of the
 12 crime described in this subsection; or
 13 (B) the obscene matter depicts or describes sexual conduct
 14 involving any person who is or appears to be less than
 15 sixteen (16) years of age; and



- 1 **(2) a Class B felony if:**
 2 **(A) the person has a prior unrelated conviction under:**
 3 **(i) this subsection; or**
 4 **(ii) the law of any other jurisdiction in which the**
 5 **elements of the crime for which the conviction was**
 6 **entered are substantially similar to the elements of the**
 7 **crime described in this subsection; and**
 8 **(B) the obscene matter depicts or describes sexual conduct**
 9 **involving any person who is or appears to be less than**
 10 **sixteen (16) years of age.**
- 11 **(b) A person who knowingly or intentionally offers to distribute,**
 12 **distributes, sends or brings, or exhibits to another person obscene**
 13 **matter for a noncommercial purpose or while acting within the**
 14 **scope of the person's employment with no financial interest in the**
 15 **obscene matter commits a Class A misdemeanor. However, the**
 16 **offense is:**
- 17 **(1) a Class D felony if:**
 18 **(A) the person has a prior unrelated conviction under:**
 19 **(i) this subsection; or**
 20 **(ii) the law of any other jurisdiction in which the**
 21 **elements of the crime for which the conviction was**
 22 **entered are substantially similar to the elements of the**
 23 **crime described in this subsection; or**
 24 **(B) the obscene matter depicts or describes sexual conduct**
 25 **involving any person who is or appears to be ~~under~~ less than**
 26 **sixteen (16) years of age; and**
- 27 **(2) a Class C felony if:**
 28 **(A) the person has a prior unrelated conviction under:**
 29 **(i) this subsection; or**
 30 **(ii) the law of any other jurisdiction in which the**
 31 **elements of the crime for which the conviction was**
 32 **entered are substantially similar to the elements of the**
 33 **crime described in this subsection; and**
 34 **(B) the obscene matter depicts or describes sexual conduct**
 35 **involving any person who is or appears to be less than**
 36 **sixteen (16) years of age.**
- 37 **(c) A person who knowingly or intentionally offers to distribute,**
 38 **distributes, sends or brings, or exhibits to another person obscene**
 39 **matter while exercising ownership or managerial control over the**
 40 **obscene matter commits a Class D felony. However, the offense is:**
 41 **(1) a Class C felony if:**
 42 **(A) the person has a prior unrelated conviction under:**



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- 1 (i) this subsection; or
 2 (ii) the law of any other jurisdiction in which the
 3 elements of the crime for which the conviction was
 4 entered are substantially similar to the elements of the
 5 crime described in this subsection; or
 6 (B) the obscene matter depicts or describes sexual conduct
 7 involving any person who is or appears to be less than
 8 sixteen (16) years of age; and
 9 (2) a Class B felony if:
 10 (A) the person has a prior unrelated conviction under:
 11 (i) this subsection; or
 12 (ii) the law of any other jurisdiction in which the
 13 elements of the crime for which the conviction was
 14 entered are substantially similar to the elements of the
 15 crime described in this subsection; and
 16 (B) the obscene matter depicts or describes sexual conduct
 17 involving any person who is or appears to be less than
 18 sixteen (16) years of age.
- 19 SECTION 2. IC 35-49-3-2 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) A person who
 21 knowingly or intentionally engages in, participates in, manages,
 22 produces, sponsors, presents, exhibits, photographs, films, or
 23 videotapes any obscene performance **for a noncommercial purpose**
 24 **or while acting within the scope of the person's employment with**
 25 **no financial interest in the obscene performance** commits a Class A
 26 misdemeanor. However, the offense is:
 27 (1) a Class D felony if:
 28 (A) the person has a prior unrelated conviction under:
 29 (i) this subsection; or
 30 (ii) the law of any other jurisdiction in which the
 31 elements of the crime for which the conviction was
 32 entered are substantially similar to the elements of the
 33 crime described in this subsection; or
 34 (B) the obscene performance depicts or describes sexual
 35 conduct involving any person who is or appears to be less
 36 than sixteen (16) years of age; and
 37 (2) a Class C felony if:
 38 (A) the person has a prior unrelated conviction under:
 39 (i) this subsection; or
 40 (ii) the law of any other jurisdiction in which the
 41 elements of the crime for which the conviction was
 42 entered are substantially similar to the elements of the

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- 1 crime described in this subsection; and
 2 **(B) the obscene performance depicts or describes sexual**
 3 **conduct involving any person who is or appears to be less**
 4 **than sixteen (16) years of age.**
- 5 **(b) A person who knowingly or intentionally engages in,**
 6 **participates in, manages, produces, sponsors, presents, exhibits,**
 7 **photographs, films, or videotapes any obscene performance while**
 8 **exercising ownership or managerial control over the obscene**
 9 **performance commits a Class D felony. However, the offense is:**
- 10 **(1) a Class C felony if:**
- 11 **(A) the person has a prior unrelated conviction under:**
- 12 **(i) this subsection; or**
- 13 **(ii) the law of any other jurisdiction in which the**
 14 **elements of the crime for which the conviction was**
 15 **entered are substantially similar to the elements of the**
 16 **crime described in this subsection; or**
- 17 **(B) the obscene performance depicts or describes sexual**
 18 **conduct involving any person who is or appears to be less**
 19 **than sixteen (16) years of age; and**
- 20 **(2) a Class B felony if:**
- 21 **(A) the person has a prior unrelated conviction under:**
- 22 **(i) this subsection; or**
- 23 **(ii) the law of any other jurisdiction in which the**
 24 **elements of the crime for which the conviction was**
 25 **entered are substantially similar to the elements of the**
 26 **crime described in this subsection; and**
- 27 **(B) the obscene performance depicts or describes sexual**
 28 **conduct involving any person who is or appears to be ~~under~~**
 29 **less than sixteen (16) years of age.**
- 30 SECTION 3. IC 35-49-3-3 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. A person who
 32 knowingly or intentionally:
- 33 (1) disseminates matter to minors that is harmful to minors;
- 34 (2) displays matter that is harmful to minors in an area to which
 35 minors have visual, auditory, or physical access, unless each
 36 minor is accompanied by ~~his~~ **the minor's** parent or guardian;
- 37 (3) sells **or distributes** or displays for sale **or distribution** to any
 38 person matter that is harmful to minors within five hundred (500)
 39 feet of the nearest property line of a:
- 40 **(A) school;**
- 41 **(B) library;**
- 42 **(C) day care center licensed under IC 12-17.2;**

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- 1 **(D) facility used to provide activities for persons less than**
 2 **sixteen (16) years of age after school hours; or**
 3 **(E) church;**
 4 (4) engages in or conducts a performance before minors that is
 5 harmful to minors;
 6 (5) engages in or conducts a performance that is harmful to
 7 minors in an area to which minors have visual, auditory, or
 8 physical access, unless each minor is accompanied by ~~his~~ **the**
 9 **minor's** parent or guardian;
 10 (6) misrepresents ~~his~~ **the person's** age for the purpose of
 11 obtaining admission to an area from which minors are restricted
 12 because of the display of matter or a performance that is harmful
 13 to minors; or
 14 (7) misrepresents that ~~he~~ **the person** is a parent or guardian of a
 15 minor for the purpose of obtaining admission of the minor to an
 16 area where minors are being restricted because of display of
 17 matter or performance that is harmful to minors;
 18 commits a ~~Class D felony~~. **Class A misdemeanor. However, the**
 19 **offense is a Class D felony if the person has a prior unrelated**
 20 **conviction under this section.**

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