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# HOUSE BILL No. 1357

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-49-3.

**Synopsis:** Obscenity and matter harmful to minors. Makes numerous changes to penalty provisions for crimes involving: (1) sending or bringing into Indiana or sending or taking out of Indiana obscene matter for sale or distribution; (2) distributing, offering to distribute, sending or bringing into Indiana, or exhibiting to another person obscene matter; and (3) engaging in, participating in, managing, producing, sponsoring, presenting, exhibiting, photographing, filming, or videotaping an obscene performance. Makes it a Class D felony for a person to knowingly or intentionally sell, 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 16 years of age after school hours. Provides that a person who commits certain acts of disseminating matter harmful to minors or engages in certain conduct harmful to minors commits a Class C felony instead of a Class D felony if the person has a prior unrelated conviction for committing the acts or engaging in the conduct.

**Effective:** July 1, 2000.

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## Kruse, Bauer

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January 11, 2000, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

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# HOUSE BILL No. 1357



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, 2000]: 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
- 16 (2) a Class B felony if:
- 17 (A) the person has a prior unrelated conviction under:



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

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- 1 (ii) the law of any other jurisdiction in which the  
 2 elements of the crime for which the conviction was  
 3 entered are substantially similar to the elements of the  
 4 crime described in this subsection; or  
 5 (B) the obscene matter depicts or describes sexual conduct  
 6 involving any person who is or appears to be less than  
 7 sixteen (16) years of age; and  
 8 (2) a Class B felony if:  
 9 (A) the person has a prior unrelated conviction under:  
 10 (i) this subsection; or  
 11 (ii) the law of any other jurisdiction in which the  
 12 elements of the crime for which the conviction was  
 13 entered are substantially similar to the elements of the  
 14 crime described in this subsection; and  
 15 (B) the obscene matter depicts or describes sexual conduct  
 16 involving any person who is or appears to be less than  
 17 sixteen (16) years of age.
- 18 SECTION 2. IC 35-49-3-2 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) A person who  
 20 knowingly or intentionally engages in, participates in, manages,  
 21 produces, sponsors, presents, exhibits, photographs, films, or  
 22 videotapes any obscene performance **for a noncommercial purpose**  
 23 **or while acting within the scope of the person's employment with**  
 24 **no financial interest in the obscene performance** commits a Class A  
 25 misdemeanor. However, the offense is:  
 26 (1) a Class D felony if:  
 27 (A) the person has a prior unrelated conviction under:  
 28 (i) this subsection; or  
 29 (ii) the law of any other jurisdiction in which the  
 30 elements of the crime for which the conviction was  
 31 entered are substantially similar to the elements of the  
 32 crime described in this subsection; or  
 33 (B) the obscene performance depicts or describes sexual  
 34 conduct involving any person who is or appears to be less  
 35 than sixteen (16) years of age; and  
 36 (2) a Class C felony if:  
 37 (A) the person has a prior unrelated conviction under:  
 38 (i) this subsection; or  
 39 (ii) the law of any other jurisdiction in which the  
 40 elements of the crime for which the conviction was  
 41 entered are substantially similar to the elements of the  
 42 crime described in this subsection; and

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- 1           **(B) the obscene performance depicts or describes sexual**  
 2           **conduct involving any person who is or appears to be less**  
 3           **than sixteen (16) years of age.**
- 4           **(b) A person who knowingly or intentionally engages in,**  
 5           **participates in, manages, produces, sponsors, presents, exhibits,**  
 6           **photographs, films, or videotapes an obscene performance while**  
 7           **exercising ownership or managerial control over the obscene**  
 8           **performance commits a Class D felony. However, the offense is:**
- 9           **(1) a Class C 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; or**
- 16           **(B) the obscene performance depicts or describes sexual**  
 17           **conduct involving any person who is or appears to be less**  
 18           **than sixteen (16) years of age; and**
- 19           **(2) a Class B felony if:**
- 20           **(A) the person has a prior unrelated conviction under:**  
 21           **(i) this subsection; or**  
 22           **(ii) the law of any other jurisdiction in which the**  
 23           **elements of the crime for which the conviction was**  
 24           **entered are substantially similar to the elements of the**  
 25           **crime described in this subsection; and**
- 26           **(B) the obscene performance depicts or describes sexual**  
 27           **conduct involving any person who is or appears to be ~~under~~**  
 28           **less than sixteen (16) years of age.**
- 29           SECTION 3. IC 35-49-3-3 IS AMENDED TO READ AS  
 30           FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. A person who  
 31           knowingly or intentionally:
- 32           (1) disseminates matter to minors that is harmful to minors;  
 33           (2) displays matter that is harmful to minors in an area to which  
 34           minors have visual, auditory, or physical access, unless each  
 35           minor is accompanied by ~~his~~ **the minor's** parent or guardian;  
 36           (3) sells **or distributes** or displays for sale **or distribution** to any  
 37           person matter that is harmful to minors within five hundred (500)  
 38           feet of the nearest property line of a:
- 39           **(A) school;**  
 40           **(B) library;**  
 41           **(C) day care center licensed under IC 12-17.2;**  
 42           **(D) facility used to provide activities for persons less than**

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

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