



January 29, 2010

SENATE BILL No. 224

DIGEST OF SB 224 (Updated January 26, 2010 1:37 pm - DI 106)

Citations Affected: IC 31-37; IC 35-42; IC 35-49.

Synopsis: Electronic dissemination of indecent material. Provides that a child commits a delinquent act if the child creates, transmits, or possesses a photograph, video, or other material that shows a minor engaging in sexual conduct. Creates a defense to child exploitation, possession of child pornography, and dissemination of material harmful to minors if the defendant is a child, the offense constitutes a delinquent act, and: (1) the photograph, video, or other material does not show a child less than thirteen (13) years of age; or (2) the defendant did not knowingly or intentionally transmit or display the photograph, video, or other material to ten or more persons. Requires a child's parent to participate in outpatient treatment or an educational program if a juvenile court orders the child to receive outpatient treatment or to attend an educational program.

Effective: July 1, 2010.

Merritt, Delph, Head, Arnold

January 11, 2010, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 28, 2010, amended, reported favorably — Do Pass.

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SB 224—LS 6896/DI 106+



January 29, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 224

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 31-37-2-8 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2010]: **Sec. 8. A child commits a delinquent act if, before
4 becoming eighteen (18) years of age, the child knowingly,
5 intentionally, or recklessly uses a computer or telecommunications
6 device to create, transmit, or possess a photograph, video, or other
7 material that shows a minor engaging in sexual conduct (as defined
8 in IC 35-49-1-9).**

9 SECTION 2. IC 31-37-19-4.5 IS ADDED TO THE INDIANA
10 CODE AS A NEW SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2010]: **Sec. 4.5. (a) This section applies if a
12 child is a delinquent child under IC 31-37-2 due to the commission
13 of a delinquent act under IC 31-37-2-8.**

14 **(b) If a child has been adjudicated a delinquent child due to the
15 commission of a delinquent act under IC 31-37-2-8, the court may
16 enter one (1) or more of the following dispositional decrees:**

17 **(1) Order the child and the child's parent to receive outpatient**

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1 **treatment.**
2 **(2) Order the child and the child's parent to attend an**
3 **educational program.**
4 SECTION 3. IC 35-42-4-4, AS AMENDED BY P.L.216-2007,
5 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2010]: Sec. 4. (a) As used in this section:
7 "Disseminate" means to transfer possession for free or for a
8 consideration.
9 "Matter" has the same meaning as in IC 35-49-1-3.
10 "Performance" has the same meaning as in IC 35-49-1-7.
11 "Sexual conduct" means sexual intercourse, deviate sexual conduct,
12 exhibition of the uncovered genitals intended to satisfy or arouse the
13 sexual desires of any person, sadomasochistic abuse, sexual intercourse
14 or deviate sexual conduct with an animal, or any fondling or touching
15 of a child by another person or of another person by a child intended to
16 arouse or satisfy the sexual desires of either the child or the other
17 person.
18 (b) A person who knowingly or intentionally:
19 (1) manages, produces, sponsors, presents, exhibits, photographs,
20 films, videotapes, or creates a digitized image of any performance
21 or incident that includes sexual conduct by a child under eighteen
22 (18) years of age;
23 (2) disseminates, exhibits to another person, offers to disseminate
24 or exhibit to another person, or sends or brings into Indiana for
25 dissemination or exhibition matter that depicts or describes sexual
26 conduct by a child under eighteen (18) years of age; or
27 (3) makes available to another person a computer, knowing that
28 the computer's fixed drive or peripheral device contains matter
29 that depicts or describes sexual conduct by a child less than
30 eighteen (18) years of age;
31 commits child exploitation, a Class C felony.
32 (c) A person who knowingly or intentionally possesses:
33 (1) a picture;
34 (2) a drawing;
35 (3) a photograph;
36 (4) a negative image;
37 (5) undeveloped film;
38 (6) a motion picture;
39 (7) a videotape;
40 (8) a digitized image; or
41 (9) any pictorial representation;
42 that depicts or describes sexual conduct by a child who the person

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1 knows is less than sixteen (16) years of age or who appears to be less
2 than sixteen (16) years of age, and that lacks serious literary, artistic,
3 political, or scientific value commits possession of child pornography,
4 a Class D felony.

5 (d) Subsections (b) and (c) do not apply to a bona fide school,
6 museum, or public library that qualifies for certain property tax
7 exemptions under IC 6-1.1-10, or to an employee of such a school,
8 museum, or public library acting within the scope of the employee's
9 employment when the possession of the listed materials is for
10 legitimate scientific or educational purposes.

11 (e) **It is a defense to a prosecution under this section that the**
12 **defendant is a minor and the offense would constitute a delinquent**
13 **act under IC 31-37-2-8. However, it is not a defense to a**
14 **prosecution under this section if:**

15 (1) **the offense involves a photograph, video, or other material**
16 **that shows a minor less than thirteen (13) years of age**
17 **engaging in sexual conduct; or**

18 (2) **the defendant knowingly or intentionally transmits or**
19 **displays the photograph, video, or other material that shows**
20 **a minor engaging in sexual conduct to ten (10) or more other**
21 **persons.**

22 SECTION 4. IC 35-49-3-4 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) It is a defense to
24 a prosecution under section 3 of this chapter for the defendant to show:

25 (1) that the matter was disseminated or that the performance was
26 performed for legitimate scientific or educational purposes;

27 (2) that the matter was disseminated or displayed to or that the
28 performance was performed before the recipient by a bona fide
29 school, museum, or public library that qualifies for certain
30 property tax exemptions under IC 6-1.1-10, or by an employee of
31 such a school, museum, or public library acting within the scope
32 of ~~his~~ **the employee's** employment;

33 (3) that ~~he~~ **the defendant** had reasonable cause to believe that the
34 minor involved was eighteen (18) years old or older and that the
35 minor exhibited to the defendant a draft card, driver's license,
36 birth certificate, or other official or apparently official document
37 purporting to establish that the minor was eighteen (18) years old
38 or older; or

39 (4) that ~~he~~ **the defendant** was a salesclerk, motion picture
40 projectionist, usher, or ticket taker, acting within the scope of ~~his~~
41 **the defendant's** employment and that ~~he~~ **the defendant** had no
42 financial interest in the place where ~~he~~ **the defendant** was so

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1 employed.
2 **(b) It is a defense to a prosecution under section 3 of this**
3 **chapter for the defendant to show that the defendant is a minor**
4 **and the offense would constitute a delinquent act under**
5 **IC 31-37-2-8, unless:**
6 **(1) the offense involves a photograph, video, or other material**
7 **that shows a minor less than thirteen (13) years of age**
8 **engaging in sexual conduct; or**
9 **(2) the defendant knowingly or intentionally transmits or**
10 **displays the photograph, video, or other material that shows**
11 **a minor engaging in sexual conduct to ten (10) or more other**
12 **persons.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 224, 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:

Page 1, line 7, delete "in a state of nudity (as defined in" and insert **"engaging in sexual conduct (as defined in IC 35-49-1-9)."**

Page 1, delete line 8.

Page 1, line 17, after "child" insert **"and the child's parent"**.

Page 2, line 1, after "child" insert **"and the child's parent"**.

Page 2, delete line 8.

Page 3, line 15, delete "age;" and insert **"age engaging in sexual conduct;"**.

Page 3, line 16, after "transmits" insert **"or displays"**.

Page 3, line 17, delete "in a".

Page 3, line 18, delete "state of nudity" and insert **"engaging in sexual conduct"**.

Page 4, line 4, delete "age;" and insert **"age engaging in sexual conduct;"**.

Page 4, line 5, after "transmits" insert **"or displays"**.

Page 4, line 6, delete "in a".

Page 4, line 7, delete "state of nudity" and insert **"engaging in sexual conduct"**.

and when so amended that said bill do pass.

(Reference is to SB 224 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 10, Nays 0.

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