



April 5, 2011

ENGROSSED
SENATE BILL No. 216

DIGEST OF SB 216 (Updated March 31, 2011 5:15 pm - DI 69)

Citations Affected: IC 35-36.

Synopsis: Access to child pornography in criminal discovery. Allows a court to permit a defendant to inspect, view, and examine material that constitutes child pornography at a state or local court or law enforcement facility if the defendant demonstrates that inspecting, viewing, and examining the material is necessary to the defendant's defense. Requires a court to impose certain restrictions on the inspection, viewing, and examination of the material.

Effective: July 1, 2011.

Bray, Broden

(HOUSE SPONSORS — FOLEY, LAWSON L)

January 5, 2011, read first time and referred to Committee on Judiciary.
January 27, 2011, amended, reported favorably — Do Pass.
January 31, 2010, read second time, ordered engrossed.
February 3, 2011, engrossed. Read third time, passed. Yeas 47, nays 1.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Courts and Criminal Code.
April 4, 2011, amended, reported — Do Pass.

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ES 216—LS 7009/DI 106+



April 5, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 216



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 35-36-10 IS ADDED TO THE INDIANA CODE
 2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2011]:
 4 **Chapter 10. Child Pornography and Discovery**
 5 **Sec. 1. This chapter applies only in a criminal proceeding.**
 6 **Sec. 2. As used in this chapter, "child pornography" include:**
 7 **(1) material described in IC 35-42-4-4(c); and**
 8 **(2) material defined in 18 U.S.C. 2256(8).**
 9 **Sec. 3. In any criminal proceeding, material constituting child**
 10 **pornography must remain in the custody of the state or the court.**
 11 **Sec. 4. A court shall deny any request by the defendant in a**
 12 **criminal proceeding to copy, photograph, duplicate, or otherwise**
 13 **reproduce any material that constitutes child pornography if the**
 14 **state provides ample opportunity for inspection, viewing, and**
 15 **examination of the material by:**
 16 **(1) the defendant;**
 17 **(2) the defendant's attorney; and**

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(3) any individual the defendant seeks to qualify as an expert; at a state or local court or law enforcement facility as provided in section 5 of this chapter.

Sec. 5. (a) A court may permit a defendant to inspect, view, and examine material that constitutes child pornography at a state or local court or law enforcement facility if the defendant demonstrates that inspecting, viewing, and examining the material is necessary to the defendant's defense.

(b) If a court permits a defendant to inspect, view, and examine material that constitutes child pornography, the court shall issue a protective order under Indiana Trial Rule 26 with respect to the material. The protective order must:

- (1) specifically describe which persons may have access to the material, and prohibit any person not described in the order from having access to the material;**
- (2) permit only those persons whose access to the material is necessary for the purposes described in subsection (a) to have access to the material;**
- (3) prohibit the further dissemination of the material; and**
- (4) prohibit the defendant from having direct access to the material.**

The protective order may include any other provision to safeguard the material.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 216, 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 5, delete ":".

Page 1, line 6, delete "(1)".

Page 1, line 6, delete "; and" and insert ".".

Page 1, run in lines 5 through 6.

Page 1, delete line 7.

Page 1, line 8, after "pornography" insert **"include:**

(1) material described in IC 35-42-4-4(c); and

(2) material defined in 18 U.S.C. 2256(8)."

Page 1, line 8, delete "has the".

Page 1, delete line 9.

Page 1, line 10, delete "In" and insert **"Except as provided in section 5 of this chapter, in"**.

Page 1, line 12, delete "A" and insert **"Except as provided in section 5 of this chapter, a"**.

Page 2, after line 3, begin a new paragraph and insert:

"Sec. 5. (a) A court may permit a defendant to copy, photograph, duplicate, or otherwise reproduce material that constitutes child pornography if the defendant demonstrates:

(1) that copying, photographing, duplicating, or otherwise reproducing the material, for purposes of a forensic examination or for another proper purpose, is necessary to the defendant's defense; and

(2) the purpose described in subdivision (1) cannot be accomplished:

(A) effectively; or

(B) without imposing an undue burden on the defense; at a state or local facility.

(b) If a court permits a defendant to copy, photograph, duplicate, or otherwise reproduce material that constitutes child pornography, the court shall issue a protective order under Indiana Trial Rule 26 with respect to the material. The protective order must:

(1) specifically describe which persons may have access to the material, and prohibit any person not described in the order from having access to the material;

(2) permit only those persons whose access to the material is necessary for the purposes described in subsection (a)(1) to

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- have access to the material;
- (3) provide for the destruction or return of any copy, photograph, duplicate, or other reproduction of the material when the item is no longer required for the defendant's defense;
- (4) prohibit the further dissemination of the material; and
- (5) prohibit the defendant from having direct access to the material.

The protective order may include any other provision to safeguard the material."

and when so amended that said bill do pass.

(Reference is to SB 216 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 1.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 216, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 9, delete "Except as provided in section 5 of this chapter, in" and insert "In".

Page 1, line 12, delete "Except as provided in section 5 of this chapter, a" and insert "A".

Page 2, line 4, delete "facility." and insert "court or law enforcement facility as provided in section 5 of this chapter."

Page 2, delete lines 5 through 16, begin a new paragraph and insert:

"Sec. 5. (a) A court may permit a defendant to inspect, view, and examine material that constitutes child pornography at a state or local court or law enforcement facility if the defendant demonstrates that inspecting, viewing, and examining the material is necessary to the defendant's defense."

Page 2, line 17, delete "copy, photograph," and insert "inspect, view, and examine".

Page 2, line 18, delete "duplicate, or otherwise reproduce".

Page 2, line 26, delete "(a)(1)" and insert "(a)".

Page 2, delete lines 28 through 31.



Page 2, line 32, delete "(4)" and insert "(3)".

Page 2, line 33, delete "(5)" and insert "(4)".

and when so amended that said bill do pass.

(Reference is to SB 216 as printed January 28, 2011.)

STEUERWALD, Chair

Committee Vote: yeas 10, nays 0.

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