February 18, 2011

HOUSE BILL No. 1042

DIGEST OF HB 1042 (Updated February 16, 2011 4:54 pm - DI 69)

Citations Affected: IC 20-26; IC 20-33; IC 35-42; IC 35-49.

Synopsis: Dissemination of sexual material. Provides defenses to the crimes of disseminating matter that is harmful to minors, child exploitation, and possession of child pornography if a cellular telephone was used and the defendant and recipient of the matter are certain ages and meet other requirements. Provides that a school corporation may offer classes, instruction, or programs regarding the risks and consequences of creating and sharing sexually suggestive or explicit materials. Provides that discipline rules adopted by a school corporation must prohibit bullying through the use of computers, computer systems, or computer networks of a school corporation. (The introduced version of this bill was prepared by the criminal law and sentencing policy study committee.)

Effective: July 1, 2011.

Lawson L, Foley

January 5, 2011, read first time and referred to Committee on Courts and Criminal Code.
February 17, 2011, reported — Do Pass.

C o p y

February 18, 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.

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HOUSE BILL No. 1042

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:

SECTION 1. IC 20-26-5-33 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 33. A school corporation may offer classes, instruction, or programs regarding the potential risks and consequences of creating and sharing sexually suggestive or explicit materials through cellular telephones, social networking web sites, computer networks, and other digital media.**

SECTION 2. IC 20-33-8-13.5, AS ADDED BY P.L.106-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13.5. (a) Discipline rules adopted by the governing body of a school corporation under section 12 of this chapter must:

(1) prohibit bullying; and

(2) include provisions concerning education, parental involvement, reporting, investigation, and intervention.

(b) The discipline rules described in subsection (a) must apply when a student is:

(1) on school grounds immediately before or during school hours, immediately after school hours, or at any other time when the school is being used by a school group;

(2) off school grounds at a school activity, function, or event;

(3) traveling to or from school or a school activity, function, or event; or

(4) using property or equipment provided by the school.

(c) The discipline rules described in subsection (a) must prohibit bullying through the use of data or computer software that is accessed through a:

(1) computer;

(2) computer system; or

(3) computer network;

of a school corporation.

~~(c)~~ **(d)** This section may not be construed to give rise to a cause of action against a person or school corporation based on an allegation of noncompliance with this section. Noncompliance with this section may not be used as evidence against a school corporation in a cause of action.

SECTION 3. IC 35-42-4-4, AS AMENDED BY P.L.216-2007, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) As used in this section:

"Disseminate" means to transfer possession for free or for a consideration.

"Matter" has the same meaning as in IC 35-49-1-3.

"Performance" has the same meaning as in IC 35-49-1-7.

"Sexual conduct" means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who knowingly or intentionally:

(1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or

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(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;

commits child exploitation, a Class C felony.

(c) A person who knowingly or intentionally possesses:

(1) a picture;
(2) a drawing;
(3) a photograph;
(4) a negative image;
(5) undeveloped film;
(6) a motion picture;
(7) a videotape;
(8) a digitized image; or
(9) any pictorial representation;

that depicts or describes sexual conduct by a child who the person knows is less than sixteen (16) years of age or who appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

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

(e) Except as provided in subsection (f), it is a defense to a prosecution under subsections (b)(1), (b)(2) and (c) if all the following apply:

(1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to possess, produce, or disseminate the image.

(2) The defendant is not more than four (4) years older or younger than the person who is depicted in the image or who received the image.

(3) The relationship between the defendant and the person who received the image or who is depicted in the image was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.

(4) The crime was committed by a person less than twenty-two (22) years of age.

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(5) The person receiving the image or who is depicted in the image acquiesced in the defendant's conduct.

(f) The defense to a prosecution described in subsection (e) does not apply if the image is disseminated to a person other than the person:

(1) who sent the image; or

(2) who is depicted in the image.

SECTION 4. IC 35-49-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. **(a)** It is a defense to a prosecution under section 3 of this chapter for the defendant to show:

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

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

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

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

(b) Except as provided in subsection (c), it is a defense to a prosecution under section 3 of this chapter if all the following apply:

(1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to disseminate matter to a minor that is harmful to minors.

(2) The defendant is not more than four (4) years older or younger than the person who received the matter that is harmful to minors.

(3) The relationship between the defendant and the person who received the matter that is harmful to minors was a dating relationship or an ongoing personal relationship. For

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purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.

(4) The crime was committed by a person less than twenty-two (22) years of age.

(5) The person receiving the matter expressly or implicitly acquiesced in the defendant's conduct.

(c) The defense to a prosecution described in subsection (b) does not apply if the image is disseminated to a person other than the person:

(1) who sent the image; or

(2) who is depicted in the image.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1042, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STEUERWALD, Chair

Committee Vote: yeas 8, nays 0.

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