

SENATE BILL No. 389

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-42-4-4.

Synopsis: Child exploitation; possession of child pornography. Provides a defense to child exploitation and possession of child pornography if the acts constituting the offense were performed by a school employee in the course of the person's employment.

Effective: July 1, 2011.

Banks, Kruse

January 11, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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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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SENATE BILL No. 389



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 35-42-4-4, AS AMENDED BY P.L.216-2007,
2 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 4. (a) As used in this section:
4 "Disseminate" means to transfer possession for free or for a
5 consideration.
6 "Matter" has the same meaning as in IC 35-49-1-3.
7 "Performance" has the same meaning as in IC 35-49-1-7.
8 "Sexual conduct" means sexual intercourse, deviate sexual conduct,
9 exhibition of the uncovered genitals intended to satisfy or arouse the
10 sexual desires of any person, sadomasochistic abuse, sexual intercourse
11 or deviate sexual conduct with an animal, or any fondling or touching
12 of a child by another person or of another person by a child intended to
13 arouse or satisfy the sexual desires of either the child or the other
14 person.
15 (b) A person who knowingly or intentionally:
16 (1) manages, produces, sponsors, presents, exhibits, photographs,
17 films, videotapes, or creates a digitized image of any performance



1 or incident that includes sexual conduct by a child under eighteen
 2 (18) years of age;
 3 (2) disseminates, exhibits to another person, offers to disseminate
 4 or exhibit to another person, or sends or brings into Indiana for
 5 dissemination or exhibition matter that depicts or describes sexual
 6 conduct by a child under eighteen (18) years of age; or
 7 (3) makes available to another person a computer, knowing that
 8 the computer's fixed drive or peripheral device contains matter
 9 that depicts or describes sexual conduct by a child less than
 10 eighteen (18) years of age;

11 commits child exploitation, a Class C felony.

12 (c) A person who knowingly or intentionally possesses:

- 13 (1) a picture;
- 14 (2) a drawing;
- 15 (3) a photograph;
- 16 (4) a negative image;
- 17 (5) undeveloped film;
- 18 (6) a motion picture;
- 19 (7) a videotape;
- 20 (8) a digitized image; or
- 21 (9) any pictorial representation;

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

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

33 (e) **It is a defense to a prosecution under this section that:**

- 34 **(1) the person is a school employee; and**
- 35 **(2) the acts constituting the elements of the offense were**
- 36 **performed solely within the scope of the person's employment**
- 37 **as a school employee.**

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