

**CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1083**

Citations Affected: IC 20-26-5-33; IC 20-33-8-13.5; IC 35-42-4-4; IC 35-49-3-4.

Synopsis: Various criminal matters. Conference committee report for EHB 1083. 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. 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. Requires the criminal code evaluation commission to study certain sex crimes against children during the 2011 interim. (This conference committee report: (1) removes language regarding theft, receiving stolen property, and forgery; (2) inserts criminal code evaluation commission language from SB 90; (3) provides that defenses to a prosecution of dissemination of matter that is harmful to minors do not apply if the dissemination of the image violates certain protective orders; and (4) makes technical corrections.)

Effective: July 1, 2011.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1083 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 20-26-5-33 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2011]: **Sec. 33. A school corporation may offer classes,
5 instruction, or programs regarding the potential risks and
6 consequences of creating and sharing sexually suggestive or explicit
7 materials through cellular telephones, social networking web sites,
8 computer networks, and other digital media.**
9 SECTION 2. IC 20-33-8-13.5, AS ADDED BY P.L.106-2005,
10 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2011]: Sec. 13.5. (a) Discipline rules adopted by the
12 governing body of a school corporation under section 12 of this chapter
13 must:
14 (1) prohibit bullying; and
15 (2) include provisions concerning education, parental
16 involvement, reporting, investigation, and intervention.
17 (b) The discipline rules described in subsection (a) must apply when
18 a student is:
19 (1) on school grounds immediately before or during school hours,
20 immediately after school hours, or at any other time when the
21 school is being used by a school group;
22 (2) off school grounds at a school activity, function, or event;

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

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

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

7 **(1) computer;**

8 **(2) computer system; or**

9 **(3) computer network;**

10 **of a school corporation.**

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

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

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

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

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

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

30 (b) A person who knowingly or intentionally:

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

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

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

43 commits child exploitation, a Class C felony.

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

45 (1) a picture;

46 (2) a drawing;

47 (3) a photograph;

48 (4) a negative image;

49 (5) undeveloped film;

50 (6) a motion picture;

51 (7) a videotape;

1 (8) a digitized image; or
 2 (9) any pictorial representation;
 3 that depicts or describes sexual conduct by a child who the person
 4 knows is less than sixteen (16) years of age or who appears to be less
 5 than sixteen (16) years of age, and that lacks serious literary, artistic,
 6 political, or scientific value commits possession of child pornography,
 7 a Class D felony.

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

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

15 **(1) the person is a school employee; and**
 16 **(2) the acts constituting the elements of the offense were**
 17 **performed solely within the scope of the person's employment**
 18 **as a school employee.**

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

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

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

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

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

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

37 **(g) The defense to a prosecution described in subsection (f) does**
 38 **not apply if:**

39 **(1) the person who receives the image disseminates it to a**
 40 **person other than the person:**

41 **(A) who sent the image; or**

42 **(B) who is depicted in the image;**

43 **(2) the image is of a person other than the person who sent the**
 44 **image or received the image; or**

45 **(3) the dissemination of the image violates:**

46 **(A) a protective order to prevent domestic or family**
 47 **violence issued under IC 34-26-5 (or, if the order involved**
 48 **a family or household member, under IC 34-26-2 or**
 49 **IC 34-4-5.1-5 before their repeal);**

50 **(B) an ex parte protective order issued under IC 34-26-5**
 51 **(or, if the order involved a family or household member,**

- 1 **an emergency order issued under IC 34-26-2 or IC 34-4-5.1**
 2 **before their repeal);**
 3 **(C) a workplace violence restraining order issued under**
 4 **IC 34-26-6;**
 5 **(D) a no contact order in a dispositional decree issued**
 6 **under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or**
 7 **IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an**
 8 **order issued under IC 31-32-13 (or IC 31-6-7-14 before its**
 9 **repeal) that orders the person to refrain from direct or**
 10 **indirect contact with a child in need of services or a**
 11 **delinquent child;**
 12 **(E) a no contact order issued as a condition of pretrial**
 13 **release, including release on bail or personal recognizance,**
 14 **or pretrial diversion, and including a no contact order**
 15 **issued under IC 35-33-8-3.6;**
 16 **(F) a no contact order issued as a condition of probation;**
 17 **(G) a protective order to prevent domestic or family**
 18 **violence issued under IC 31-15-5 (or IC 31-16-5 or**
 19 **IC 31-1-11.5-8.2 before their repeal);**
 20 **(H) a protective order to prevent domestic or family**
 21 **violence issued under IC 31-14-16-1 in a paternity action;**
 22 **(I) a no contact order issued under IC 31-34-25 in a child**
 23 **in need of services proceeding or under IC 31-37-25 in a**
 24 **juvenile delinquency proceeding;**
 25 **(J) an order issued in another state that is substantially**
 26 **similar to an order described in clauses (A) through (I);**
 27 **(K) an order that is substantially similar to an order**
 28 **described in clauses (A) through (I) and is issued by an**
 29 **Indian:**
 30 **(i) tribe;**
 31 **(ii) band;**
 32 **(iii) pueblo;**
 33 **(iv) nation; or**
 34 **(v) organized group or community, including an Alaska**
 35 **Native village or regional or village corporation as**
 36 **defined in or established under the Alaska Native Claims**
 37 **Settlement Act (43 U.S.C. 1601 et seq.);**
 38 **that is recognized as eligible for the special programs and**
 39 **services provided by the United States to Indians because**
 40 **of their special status as Indians;**
 41 **(L) an order issued under IC 35-33-8-3.2; or**
 42 **(M) an order issued under IC 35-38-1-30.**

43 SECTION 4. IC 35-49-3-4 IS AMENDED TO READ AS
 44 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) It is a defense to
 45 a prosecution under section 3 of this chapter for the defendant to show:
 46 (1) that the matter was disseminated or that the performance was
 47 performed for legitimate scientific or educational purposes;
 48 (2) that the matter was disseminated or displayed to or that the
 49 performance was performed before the recipient by a bona fide
 50 school, museum, or public library that qualifies for certain
 51 property tax exemptions under IC 6-1.1-10, or by an employee of

1 such a school, museum, or public library acting within the scope
2 of ~~his~~ **the employee's** employment;

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

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

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

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

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

24 **(3) The relationship between the defendant and the person**
25 **who received the matter that is harmful to minors was a**
26 **dating relationship or an ongoing personal relationship. For**
27 **purposes of this subdivision, the term "ongoing personal**
28 **relationship" does not include a family relationship.**

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

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

33 **(c) The defense to a prosecution described in subsection (b) does**
34 **not apply if:**

35 **(1) the image is disseminated to a person other than the**
36 **person:**

37 **(A) who sent the image; or**

38 **(B) who is depicted in the image; or**

39 **(2) the dissemination of the image violates:**

40 **(A) a protective order to prevent domestic or family**
41 **violence issued under IC 34-26-5 (or, if the order involved**
42 **a family or household member, under IC 34-26-2 or**
43 **IC 34-4-5.1-5 before their repeal);**

44 **(B) an ex parte protective order issued under IC 34-26-5**
45 **(or, if the order involved a family or household member,**
46 **an emergency order issued under IC 34-26-2 or IC 34-4-5.1**
47 **before their repeal);**

48 **(C) a workplace violence restraining order issued under**
49 **IC 34-26-6;**

50 **(D) a no contact order in a dispositional decree issued**
51 **under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or**

- 1 **IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an**
 2 **order issued under IC 31-32-13 (or IC 31-6-7-14 before its**
 3 **repeal) that orders the person to refrain from direct or**
 4 **indirect contact with a child in need of services or a**
 5 **delinquent child;**
 6 **(E) a no contact order issued as a condition of pretrial**
 7 **release, including release on bail or personal recognizance,**
 8 **or pretrial diversion, and including a no contact order**
 9 **issued under IC 35-33-8-3.6;**
 10 **(F) a no contact order issued as a condition of probation;**
 11 **(G) a protective order to prevent domestic or family**
 12 **violence issued under IC 31-15-5 (or IC 31-16-5 or**
 13 **IC 31-1-11.5-8.2 before their repeal);**
 14 **(H) a protective order to prevent domestic or family**
 15 **violence issued under IC 31-14-16-1 in a paternity action;**
 16 **(I) a no contact order issued under IC 31-34-25 in a child**
 17 **in need of services proceeding or under IC 31-37-25 in a**
 18 **juvenile delinquency proceeding;**
 19 **(J) an order issued in another state that is substantially**
 20 **similar to an order described in clauses (A) through (I);**
 21 **(K) an order that is substantially similar to an order**
 22 **described in clauses (A) through (I) and is issued by an**
 23 **Indian:**
 24 **(i) tribe;**
 25 **(ii) band;**
 26 **(iii) pueblo;**
 27 **(iv) nation; or**
 28 **(v) organized group or community, including an Alaska**
 29 **Native village or regional or village corporation as**
 30 **defined in or established under the Alaska Native Claims**
 31 **Settlement Act (43 U.S.C. 1601 et seq.);**
 32 **that is recognized as eligible for the special programs and**
 33 **services provided by the United States to Indians because**
 34 **of their special status as Indians;**
 35 **(L) an order issued under IC 35-33-8-3.2; or**
 36 **(M) an order issued under IC 35-38-1-30.**
 37 SECTION 5. P.L.182-2009(ss), SECTION 493, IS AMENDED TO
 38 READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: SECTION 493.
 39 (a) As used in this SECTION, "commission" refers to the criminal code
 40 evaluation commission established by subsection (b).
 41 (b) The criminal code evaluation commission is established to
 42 evaluate the criminal laws of Indiana. If, based on the commission's
 43 evaluation, the commission determines that changes are necessary or
 44 appropriate, the commission shall make recommendations to the
 45 general assembly for the modification of the criminal laws.
 46 (c) The commission may study other topics assigned by the
 47 legislative council or as directed by the commission chair.
 48 (d) The commission may meet during the months of:
 49 ~~(1) July, August, and September of 2009;~~
 50 ~~(2) April, May, June, July, August, and September of 2010; and~~
 51 ~~(3) (1) June, July, August, and September, and October of 2011;~~

1 **and**
 2 **(2) April, May, June, July, August, September, and October**
 3 **of 2012.**

4 (e) The commission consists of seventeen (17) members appointed
 5 as follows:

6 (1) Four (4) members of the senate, not more than two (2) of
 7 whom may be affiliated with the same political party, to be
 8 appointed by the president pro tempore of the senate.

9 (2) Four (4) members of the house of representatives, not more
 10 than two (2) of whom may be affiliated with the same political
 11 party, to be appointed by the speaker of the house of
 12 representatives.

13 (3) The attorney general or the attorney general's designee.

14 (4) The commissioner of the department of correction or the
 15 commissioner's designee.

16 (5) The executive director of the prosecuting attorneys council of
 17 Indiana or the executive director's designee.

18 (6) The executive director of the public defender council of
 19 Indiana or the executive director's designee.

20 (7) The chief justice of the supreme court or the chief justice's
 21 designee.

22 (8) Two (2) judges who exercise criminal jurisdiction, who may
 23 not be affiliated with the same political party, to be appointed by
 24 the governor.

25 (9) Two (2) professors employed by a law school in Indiana
 26 whose expertise includes criminal law, to be appointed by the
 27 governor.

28 (f) The chairman of the legislative council shall appoint a legislative
 29 member of the commission to serve as chair of the commission.
 30 Whenever there is a new chairman of the legislative council, the new
 31 chairman may remove the chair of the commission and appoint another
 32 chair.

33 (g) If a legislative member of the commission ceases to be a member
 34 of the chamber from which the member was appointed, the member
 35 also ceases to be a member of the commission.

36 (h) A legislative member of the commission may be removed at any
 37 time by the appointing authority who appointed the legislative member.

38 (i) If a vacancy exists on the commission, the appointing authority
 39 who appointed the former member whose position is vacant shall
 40 appoint an individual to fill the vacancy.

41 (j) The commission shall submit a final report of the results of its
 42 study to the legislative council before November 1, ~~2011~~ **2012**. The
 43 report must be in an electronic format under IC 5-14-6.

44 (k) The Indiana criminal justice institute shall provide staff support
 45 to the commission to prepare:

46 (1) minutes of each meeting; and

47 (2) the final report.

48 (l) The legislative services agency shall provide staff support to the
 49 commission to:

50 (1) advise the commission on legal matters, criminal procedures,
 51 and legal research; and

1 (2) draft potential legislation.

2 (m) Each member of the commission is entitled to receive the same
3 per diem, mileage, and travel allowances paid to individuals who serve
4 as legislative and lay members, respectively, of interim study
5 committees established by the legislative council.

6 (n) The affirmative votes of a majority of all the members who serve
7 on the commission are required for the commission to take action on
8 any measure, including the final report.

9 (o) Except as otherwise specifically provided by this SECTION, the
10 commission shall operate under the rules of the legislative council. All
11 funds necessary to carry out this SECTION shall be paid from
12 appropriations to the legislative council and the legislative services
13 agency.

14 **(p) For the 2011 interim, the commission shall study:**

15 **(1) child solicitation (IC 35-42-4-6), including whether or not**
16 **there should be an increased penalty for a person who is at**
17 **least twenty-one (21) years of age to knowingly or**
18 **intentionally solicit a child less than fourteen (14) years of age,**
19 **or an individual the person believes to be a child less than**
20 **fourteen (14) years of age;**

21 **(2) child trafficking, including whether the general assembly**
22 **should enact a crime of promotion of child trafficking and if**
23 **promotion of child trafficking should be added to the list of**
24 **sex offenses under IC 11-8-8-4.5;**

25 **(3) sex crimes against children, including whether there**
26 **should be an increased penalty, or creation of a new crime, for**
27 **the commission of a sex crime by a person at least twenty-one**
28 **(21) years of age with whom the child victim has a**
29 **relationship of trust or emotional dependence, including a**
30 **school employee, school volunteer, counselor, therapist,**
31 **member of the clergy, and medical personnel; and**

32 **(4) the appropriate statute of limitations for sex crimes**
33 **against children, including child molesting (IC 35-42-4-3),**
34 **child exploitation (IC 35-42-4-4(b)), and sexual misconduct**
35 **with a minor (IC 35-42-4-9).**

36 ~~(p)~~ **(q) This SECTION expires December 31, 2011.**

(Reference is to EHB 1083 as reprinted April 21, 2011.)

Conference Committee Report
on
Engrossed House Bill 1083

Signed by:

Representative Crouch
Chairperson

Senator Head

Representative Lawson L

Senator Taylor

House Conferees

Senate Conferees