March 29, 2013

ENGROSSED
SENATE BILL No. 223

DIGEST OF SB 223 (Updated March 27, 2013 4:26 pm - DI 69)

Citations Affected: IC 35-42.

Synopsis: Child exploitation and child pornography. Provides that child exploitation, a Class C felony, includes managing, producing, filming, disseminating, exhibiting, or otherwise making available material depicting: (1) the genitals of a child less than 18 years of age; or (2) the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than 18 years of age; if the filming, dissemination, exhibition, or making material available was performed with the intent to satisfy or arouse the sexual desires of any person. Makes it possession of child pornography, a Class D felony, for a person to knowingly or intentionally possess certain pictures or images that: (1) depict or describe the exhibition of the female breast with less than a fully opaque covering of any part of the nipple intended to satisfy or arouse the sexual desires of any person by a child the person knows is less than 16 years of age, or who appears to be less than 16 years of age; and (2) lack serious literary, artistic, political, or scientific value. Provides for certain defenses.

Effective: Upon passage.

Young R Michael, Miller Patricia,
Randolph, Banks
(HOUSE SPONSOR — MCMILLIN)

January 7, 2013, read first time and referred to Committee on Rules and Legislative Procedure.
February 7, 2013, amended; reassigned to Committee on Corrections and Criminal Law.
February 14, 2013, reported favorably — Do Pass.
February 18, 2013, read second time, ordered engrossed.
February 19, 2013, engrossed. Read third time, passed. Yeas 48, nays 1.

HOUSE ACTION

February 26, 2013, read first time and referred to Committee on Courts and Criminal Code.
March 28, 2013, amended, reported — Do Pass.

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March 29, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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ENGROSSED
SENATE BILL No. 223

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 35-42-4-4, AS AMENDED BY P.L.6-2012, SECTION 226, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The following definitions apply throughout this section:

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

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

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

(4) "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) **knowingly or intentionally** 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 **or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to satisfy or arouse the sexual desires of any person;**

(2) **knowingly or intentionally** 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 **the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to satisfy or arouse the sexual desires of any person;**

(3) **knowingly or intentionally** 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 **or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to satisfy or arouse the sexual desires of any person; or**

(4) with the intent to satisfy or arouse the sexual desires of any person, knowingly or intentionally:

(A) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to satisfy or arouse the sexual desires of any person;

(B) 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 the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to satisfy or arouse the sexual desires of any person; or

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(C) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to satisfy or arouse the sexual desires of any person;

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 **or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple intended to satisfy or arouse the sexual desires of any person** 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) It is a defense to a prosecution under this section that:

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

(f) Except as provided in subsection (g), it is a defense to a prosecution under subsection ~~(b)(1),~~ ~~subsection~~ ~~(b)(2),~~ **(b)** or ~~subsection~~ (c) if all of the following apply:

(1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used

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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.

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

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

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

(A) who sent the image; or

(B) who is depicted in the image;

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

(3) the dissemination of the image violates:

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

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

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

(D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

(E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;

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(F) a no contact order issued as a condition of probation;
(G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
(H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
(I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;
(J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);
(K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:
(i) tribe;
(ii) band;
(iii) pueblo;
(iv) nation; or
(v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);
that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;
(L) an order issued under IC 35-33-8-3.2; or
(M) an order issued under IC 35-38-1-30.

SECTION 2. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 223, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Corrections and Criminal Law.

(Reference is to SB 223 as introduced.)

LONG, Chairperson

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 223, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 223 as printed February 8, 2013.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 223, 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 2, line 3, delete ";" and insert "**or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to**

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satisfy or arouse the sexual desires of any person;".

Page 2, line 8, delete ";".

Page 2, line 8, reset in roman "or".

Page 2, line 8, after "or" insert "**the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to satisfy or arouse the sexual desires of any person;**".

Page 2, line 12, delete ";" and insert "**or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to satisfy or arouse the sexual desires of any person;**".

Page 2, line 18, delete ";" and insert "**or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to satisfy or arouse the sexual desires of any person;**".

Page 2, line 23, delete ";" and insert "**or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to satisfy or arouse the sexual desires of any person;**".

Page 2, line 27, delete ";" and insert "**or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age intended to satisfy or arouse the sexual desires of any person;**".

Page 2, line 39, after "conduct" insert "**or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple intended to satisfy or arouse the sexual desires of any person**".

Page 3, line 14, strike "(b)(1),".

Page 3, line 14, strike "(b)(2)," and insert "**(b)**".

and when so amended that said bill do pass.

(Reference is to SB 223 as printed February 15, 2013.)

MCMILLIN, Chair

Committee Vote: yeas 8, nays 0.

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