

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1053 be amended to read as follows:

- 1 Page 22, between lines 31 and 32, begin a new paragraph and insert:
2 "SECTION 13 IC 35-42-4-4, AS AMENDED BY P.L.6-2012,
3 SECTION 226, IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) The following definitions
5 apply throughout this section:
6 (1) "Disseminate" means to transfer possession for free or for a
7 consideration.
8 (2) "Matter" has the same meaning as in IC 35-49-1-3.
9 (3) "Performance" has the same meaning as in IC 35-49-1-7.
10 (4) "Sexual conduct" means sexual intercourse, deviate sexual
11 conduct, exhibition of the uncovered genitals intended to satisfy
12 or arouse the sexual desires of any person, sadomasochistic abuse,
13 sexual intercourse or deviate sexual conduct with an animal, or
14 any fondling or touching of a child by another person or of
15 another person by a child intended to arouse or satisfy the sexual
16 desires of either the child or the other person.
17 (b) A person who knowingly or intentionally:
18 (1) manages, produces, sponsors, presents, exhibits, photographs,
19 films, videotapes, or creates a digitized image of any performance
20 or incident that includes sexual conduct by a child under eighteen
21 (18) years of age;
22 (2) disseminates, exhibits to another person, offers to disseminate
23 or exhibit to another person, or sends or brings into Indiana for
24 dissemination or exhibition matter that depicts or describes sexual

- 1 conduct by a child under eighteen (18) years of age; or
 2 (3) makes available to another person a computer, knowing that
 3 the computer's fixed drive or peripheral device contains matter
 4 that depicts or describes sexual conduct by a child less than
 5 eighteen (18) years of age;
 6 commits child exploitation, a Class C felony.
- 7 (c) A person who knowingly or intentionally possesses:
- 8 (1) a picture;
 9 (2) a drawing;
 10 (3) a photograph;
 11 (4) a negative image;
 12 (5) undeveloped film;
 13 (6) a motion picture;
 14 (7) a videotape;
 15 (8) a digitized image; or
 16 (9) any pictorial representation;
 17 that depicts or describes sexual conduct by a child who the person
 18 knows is less than ~~sixteen (16)~~ **eighteen (18)** years of age or who
 19 appears to be less than ~~sixteen (16)~~ **eighteen (18)** years of age, and that
 20 lacks serious literary, artistic, political, or scientific value commits
 21 possession of child pornography, a Class D felony.
- 22 (d) Subsections (b) and (c) do not apply to a bona fide school,
 23 museum, or public library that qualifies for certain property tax
 24 exemptions under IC 6-1.1-10, or to an employee of such a school,
 25 museum, or public library acting within the scope of the employee's
 26 employment when the possession of the listed materials is for
 27 legitimate scientific or educational purposes.
- 28 (e) It is a defense to a prosecution under this section that:
- 29 (1) the person is a school employee; and
 30 (2) the acts constituting the elements of the offense were
 31 performed solely within the scope of the person's employment as
 32 a school employee.
- 33 (f) Except as provided in subsection (g), it is a defense to a
 34 prosecution under subsection (b)(1), subsection (b)(2), or subsection
 35 (c) if all of the following apply:
- 36 (1) A cellular telephone, another wireless or cellular
 37 communications device, or a social networking web site was used
 38 to possess, produce, or disseminate the image.
 39 (2) The defendant is not more than four (4) years older or younger
 40 than the person who is depicted in the image or who received the
 41 image.
 42 (3) The relationship between the defendant and the person who
 43 received the image or who is depicted in the image was a dating
 44 relationship or an ongoing personal relationship. For purposes of
 45 this subdivision, the term "ongoing personal relationship" does
 46 not include a family relationship.

- 1 (4) The crime was committed by a person less than twenty-two
 2 (22) years of age.
- 3 (5) The person receiving the image or who is depicted in the
 4 image acquiesced in the defendant's conduct.
- 5 (g) The defense to a prosecution described in subsection (f) does not
 6 apply if:
- 7 (1) the person who receives the image disseminates it to a person
 8 other than the person:
- 9 (A) who sent the image; or
 10 (B) who is depicted in the image;
- 11 (2) the image is of a person other than the person who sent the
 12 image or received the image; or
- 13 (3) the dissemination of the image violates:
- 14 (A) a protective order to prevent domestic or family violence
 15 issued under IC 34-26-5 (or, if the order involved a family or
 16 household member, under IC 34-26-2 or IC 34-4-5.1-5 before
 17 their repeal);
- 18 (B) an ex parte protective order issued under IC 34-26-5 (or,
 19 if the order involved a family or household member, an
 20 emergency order issued under IC 34-26-2 or IC 34-4-5.1
 21 before their repeal);
- 22 (C) a workplace violence restraining order issued under
 23 IC 34-26-6;
- 24 (D) a no contact order in a dispositional decree issued under
 25 IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or
 26 IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an
 27 order issued under IC 31-32-13 (or IC 31-6-7-14 before its
 28 repeal) that orders the person to refrain from direct or indirect
 29 contact with a child in need of services or a delinquent child;
- 30 (E) a no contact order issued as a condition of pretrial release,
 31 including release on bail or personal recognizance, or pretrial
 32 diversion, and including a no contact order issued under
 33 IC 35-33-8-3.6;
- 34 (F) a no contact order issued as a condition of probation;
- 35 (G) a protective order to prevent domestic or family violence
 36 issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2
 37 before their repeal);
- 38 (H) a protective order to prevent domestic or family violence
 39 issued under IC 31-14-16-1 in a paternity action;
- 40 (I) a no contact order issued under IC 31-34-25 in a child in
 41 need of services proceeding or under IC 31-37-25 in a juvenile
 42 delinquency proceeding;
- 43 (J) an order issued in another state that is substantially similar
 44 to an order described in clauses (A) through (I);
- 45 (K) an order that is substantially similar to an order described
 46 in clauses (A) through (I) and is issued by an Indian:

1 (i) tribe;
 2 (ii) band;
 3 (iii) pueblo;
 4 (iv) nation; or
 5 (v) organized group or community, including an Alaska
 6 Native village or regional or village corporation as defined
 7 in or established under the Alaska Native Claims Settlement
 8 Act (43 U.S.C. 1601 et seq.);
 9 that is recognized as eligible for the special programs and
 10 services provided by the United States to Indians because of
 11 their special status as Indians;
 12 (L) an order issued under IC 35-33-8-3.2; or
 13 (M) an order issued under IC 35-38-1-30."

14 Page 26, between lines 15 and 16, begin a new paragraph and insert:
 15 "SECTION 16. IC 35-49-3-1 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. A person who
 17 knowingly or intentionally:
 18 (1) sends or brings into Indiana obscene matter for sale or
 19 distribution; or
 20 (2) offers to distribute, distributes, or exhibits to another person
 21 obscene matter;
 22 commits a Class A misdemeanor. However, the offense is a Class D
 23 felony if the obscene matter depicts or describes sexual conduct
 24 involving any person who is or appears to be under ~~sixteen (16)~~
 25 **eighteen (18)** years of age.
 26 SECTION 17. IC 35-49-3-2 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. A person who
 28 knowingly or intentionally engages in, participates in, manages,
 29 produces, sponsors, presents, exhibits, photographs, films, or
 30 videotapes any obscene performance commits a Class A misdemeanor.
 31 However, the offense is a Class D felony if the obscene performance
 32 depicts or describes sexual conduct involving any person who is or
 33 appears to be under ~~sixteen (16)~~ **eighteen (18)** years of age."
 34 Renumber all SECTIONS consecutively.
 (Reference is to HB 1053 as printed February 15, 2013.)

Representative Goodin