

# COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed House Bill 1053-2013 because it conflicts with SEA 223-2013 and SEA 536-2013 without properly recognizing the existence of SEA 223-2013 and SEA 536-2013, has had Engrossed House Bill 1053-2013 under consideration and begs leave to report back to the House with the recommendation that Engrossed House Bill 1053-2013 be corrected as follows:

- 1           In the conference committee report for EHB 1053-2013, page 21,  
2           delete lines 11 through 50.
- 3           In the conference committee report for EHB 1053-2013, delete lines  
4           1 through 36, begin a new paragraph and insert:  
5           "SECTION 20. IC 20-28-5-8, AS AMENDED BY SEA 536-2013,  
6           SECTION 6, IS AMENDED TO READ AS FOLLOWS [JULY 1,  
7           2014]: Sec. 8. (a) This section applies when a prosecuting attorney  
8           knows that a licensed employee of a public school or a nonpublic  
9           school has been convicted of an offense listed in subsection (c). The  
10          prosecuting attorney shall immediately give written notice of the  
11          conviction to the following:
- 12           (1) The state superintendent.
- 13           (2) Except as provided in subdivision (3), the superintendent of  
14           the school corporation that employs the licensed employee or the  
15           equivalent authority if a nonpublic school employs the licensed  
16           employee.
- 17           (3) The presiding officer of the governing body of the school  
18           corporation that employs the licensed employee, if the convicted  
19           licensed employee is the superintendent of the school corporation.
- 20          (b) The superintendent of a school corporation, presiding officer of  
21          the governing body, or equivalent authority for a nonpublic school shall  
22          immediately notify the state superintendent when the individual knows  
23          that a current or former licensed employee of the public school or  
24          nonpublic school has been convicted of an offense listed in subsection

1 (c), or when the governing body or equivalent authority for a nonpublic  
 2 school takes any final action in relation to an employee who engaged  
 3 in any offense listed in subsection (c).

4 (c) The department, after holding a hearing on the matter, shall  
 5 permanently revoke the license of a person who is known by the  
 6 department to have been convicted of any of the following felonies:

- 7 (1) Kidnapping (IC 35-42-3-2).
- 8 (2) Criminal confinement (IC 35-42-3-3).
- 9 (3) Rape (IC 35-42-4-1).
- 10 (4) Criminal deviate conduct (IC 35-42-4-2) (**repealed**).
- 11 (5) Child molesting (IC 35-42-4-3).
- 12 (6) Child exploitation (IC 35-42-4-4(b)).
- 13 (7) Vicarious sexual gratification (IC 35-42-4-5).
- 14 (8) Child solicitation (IC 35-42-4-6).
- 15 (9) Child seduction (IC 35-42-4-7).
- 16 (10) Sexual misconduct with a minor (IC 35-42-4-9).
- 17 (11) Incest (IC 35-46-1-3).
- 18 (12) Dealing in or manufacturing cocaine or a narcotic drug  
 19 (IC 35-48-4-1).
- 20 (13) Dealing in methamphetamine (IC 35-48-4-1.1).
- 21 (14) Dealing in a schedule I, II, or III controlled substance  
 22 (IC 35-48-4-2).
- 23 (15) Dealing in a schedule IV controlled substance  
 24 (IC 35-48-4-3).
- 25 (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 26 (17) Dealing in a counterfeit substance (IC 35-48-4-5).
- 27 (18) Dealing in marijuana, hash oil, hashish, or salvia  
 28 (IC 35-48-4-10(b)).
- 29 (19) Dealing in a synthetic drug or synthetic drug lookalike  
 30 substance (IC 35-48-4-10.5, or IC 35-48-4-10(b) before its  
 31 amendment in 2013).
- 32 (20) Possession of child pornography (IC 35-42-4-4(c)).
- 33 (21) Homicide (IC 35-42-1).
- 34 (22) Voluntary manslaughter (IC 35-42-1-3).
- 35 (23) Reckless homicide (IC 35-42-1-5).
- 36 (24) Battery as any of the following:  
 37 (A) A Class A felony (IC 35-42-2-1(a)(5)).  
 38 (B) A Class B felony (IC 35-42-2-1(a)(4)).  
 39 (C) A Class C felony (IC 35-42-2-1(a)(3)).
- 40 (25) Aggravated battery (IC 35-42-2-1.5).
- 41 (26) Robbery (IC 35-42-5-1).

- 1 (27) Carjacking (IC 35-42-5-2).
- 2 (28) Arson as a Class A felony or a Class B felony  
3 (IC 35-43-1-1(a)).
- 4 (29) Burglary as a Class A felony or a Class B felony  
5 (IC 35-43-2-1).
- 6 (30) Attempt under IC 35-41-5-1 to commit an offense listed in  
7 this subsection.
- 8 (31) Conspiracy under IC 35-41-5-2 to commit an offense listed  
9 in this subsection.
- 10 (d) The department, after holding a hearing on the matter, shall  
11 permanently revoke the license of a person who is known by the  
12 department to have been convicted of a federal offense or an offense in  
13 another state that is comparable to a felony listed in subsection (c).
- 14 (e) A license may be suspended by the state superintendent as  
15 specified in IC 20-28-7.5.
- 16 (f) The department shall develop a data base of information on  
17 school corporation employees who have been reported to the  
18 department under this section."
- 19 In the conference committee report for EHB 1053-2013, page 34,  
20 delete lines 16 through 50.
- 21 In the conference committee report for EHB 1053-2013, delete page  
22 35.
- 23 In the conference committee report for EHB 1053-2013, page 36,  
24 delete lines 1 through 43, begin a new paragraph and insert:
- 25 "SECTION 38. IC 35-42-4-4, AS AMENDED BY SEA 223-2013,  
26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2013]: Sec. 4. (a) The following definitions apply throughout  
28 this section:
- 29 (1) "Disseminate" means to transfer possession for free or for a  
30 consideration.
- 31 (2) "Matter" has the same meaning as in IC 35-49-1-3.
- 32 (3) "Performance" has the same meaning as in IC 35-49-1-7.
- 33 (4) "Sexual conduct" means:
- 34 (A) sexual intercourse;
- 35 (B) deviate sexual conduct;
- 36 (C) exhibition of the:
- 37 (i) uncovered genitals; or
- 38 (ii) female breast with less than a fully opaque covering of  
39 any part of the nipple;
- 40 intended to satisfy or arouse the sexual desires of any person;
- 41 (D) sadomasochistic abuse;

- 1 (E) sexual intercourse or deviate sexual conduct with an  
 2 animal; or  
 3 (F) any fondling or touching of a child by another person or of  
 4 another person by a child intended to arouse or satisfy the  
 5 sexual desires of either the child or the other person.
- 6 (b) A person who:
- 7 (1) knowingly or intentionally manages, produces, sponsors,  
 8 presents, exhibits, photographs, films, videotapes, or creates a  
 9 digitized image of any performance or incident that includes  
 10 sexual conduct by a child under eighteen (18) years of age;
- 11 (2) knowingly or intentionally disseminates, exhibits to another  
 12 person, offers to disseminate or exhibit to another person, or sends  
 13 or brings into Indiana for dissemination or exhibition matter that  
 14 depicts or describes sexual conduct by a child under eighteen (18)  
 15 years of age;
- 16 (3) knowingly or intentionally makes available to another person  
 17 a computer, knowing that the computer's fixed drive or peripheral  
 18 device contains matter that depicts or describes sexual conduct by  
 19 a child less than eighteen (18) years of age; or
- 20 (4) with the intent to satisfy or arouse the sexual desires of any  
 21 person:
- 22 (A) knowingly or intentionally:
- 23 (i) manages;  
 24 (ii) produces;  
 25 (iii) sponsors;  
 26 (iv) presents;  
 27 (v) exhibits;  
 28 (vi) photographs;  
 29 (vii) films;  
 30 (viii) videotapes; or  
 31 (ix) creates a digitized image of;  
 32 any performance or incident that includes the uncovered  
 33 genitals of a child less than eighteen (18) years of age or the  
 34 exhibition of the female breast with less than a fully opaque  
 35 covering of any part of the nipple by a child less than eighteen  
 36 (18) years of age;
- 37 (B) knowingly or intentionally:
- 38 (i) disseminates to another person;  
 39 (ii) exhibits to another person;  
 40 (iii) offers to disseminate or exhibit to another person; or  
 41 (iv) sends or brings into Indiana for dissemination or

1                   exhibition;  
 2                   matter that depicts the uncovered genitals of a child less than  
 3                   eighteen (18) years of age or the exhibition of the female  
 4                   breast with less than a fully opaque covering of any part of the  
 5                   nipple by a child less than eighteen (18) years of age; or  
 6                   (C) makes available to another person a computer, knowing  
 7                   that the computer's fixed drive or peripheral device contains  
 8                   matter that depicts the uncovered genitals of a child less than  
 9                   eighteen (18) years of age or the exhibition of the female  
 10                   breast with less than a fully opaque covering of any part of the  
 11                   nipple by a child less than eighteen (18) years of age;

12                   commits child exploitation, a Class C felony.

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

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

23                   that depicts or describes sexual conduct by a child who the person  
 24                   knows is less than ~~sixteen (16)~~ **eighteen (18)** years of age or who  
 25                   appears to be less than ~~sixteen (16)~~ **eighteen (18)** years of age, and that  
 26                   lacks serious literary, artistic, political, or scientific value commits  
 27                   possession of child pornography, a Class D felony.

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

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

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

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

- 41                   (1) A cellular telephone, another wireless or cellular

- 1           communications device, or a social networking web site was used  
2           to possess, produce, or disseminate the image.
- 3           (2) The defendant is not more than four (4) years older or younger  
4           than the person who is depicted in the image or who received the  
5           image.
- 6           (3) The relationship between the defendant and the person who  
7           received the image or who is depicted in the image was a dating  
8           relationship or an ongoing personal relationship. For purposes of  
9           this subdivision, the term "ongoing personal relationship" does not  
10          include a family relationship.
- 11          (4) The crime was committed by a person less than twenty-two  
12          (22) years of age.
- 13          (5) The person receiving the image or who is depicted in the  
14          image acquiesced in the defendant's conduct.
- 15          (g) The defense to a prosecution described in subsection (f) does not  
16          apply if:
- 17                (1) the person who receives the image disseminates it to a person  
18                other than the person:
- 19                    (A) who sent the image; or  
20                    (B) who is depicted in the image;
- 21                (2) the image is of a person other than the person who sent the  
22                image or received the image; or
- 23                (3) the dissemination of the image violates:
- 24                    (A) a protective order to prevent domestic or family violence  
25                    issued under IC 34-26-5 (or, if the order involved a family or  
26                    household member, under IC 34-26-2 or IC 34-4-5.1-5 before  
27                    their repeal);
- 28                    (B) an ex parte protective order issued under IC 34-26-5 (or,  
29                    if the order involved a family or household member, an  
30                    emergency order issued under IC 34-26-2 or IC 34-4-5.1  
31                    before their repeal);
- 32                    (C) a workplace violence restraining order issued under  
33                    IC 34-26-6;
- 34                    (D) a no contact order in a dispositional decree issued under  
35                    IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or  
36                    IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an  
37                    order issued under IC 31-32-13 (or IC 31-6-7-14 before its  
38                    repeal) that orders the person to refrain from direct or indirect  
39                    contact with a child in need of services or a delinquent child;
- 40                    (E) a no contact order issued as a condition of pretrial release,  
41                    including release on bail or personal recognizance, or pretrial

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

(Reference is to EHB 1053 as reprinted April 2, 2013, and as amended by the conference committee report for EHB 1053-2013.)

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Representative Torr, Chairperson

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Representative Pierce, R.M.M.

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Representative Steuerwald, Author