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# SENATE BILL No. 256

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-42-4-4; IC 35-45-4-6.

**Synopsis:** Crimes involving indecent images of children. Makes producing, exhibiting, or possessing certain indecent images of a child at least 12 years of age by a person less than 22 years of age indecent display by a youth, a Class B misdemeanor, if the images are produced, exhibited, or possessed on a cellular telephone or social media web site. Provides that a person less than 22 years of age may not be charged with child exploitation or possession of child pornography if the person can be charged with indecent display by a youth.

**Effective:** July 1, 2013.

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## Merritt

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January 8, 2013, read first time and referred to Committee on Corrections & Criminal Law.

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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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# SENATE BILL No. 256



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.6-2012,  
2 SECTION 226, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) **This section does not apply**  
4 **to a person less than twenty-two (22) years of age who may be**  
5 **prosecuted under IC 35-45-4-6.**  
6 (b) The following definitions apply throughout this section:  
7 (1) "Disseminate" means to transfer possession for free or for a  
8 consideration.  
9 (2) "Matter" has the same meaning as in IC 35-49-1-3.  
10 (3) "Performance" has the same meaning as in IC 35-49-1-7.  
11 (4) "Sexual conduct" means sexual intercourse, deviate sexual  
12 conduct, exhibition of the uncovered genitals intended to satisfy  
13 or arouse the sexual desires of any person, sadomasochistic abuse,  
14 sexual intercourse or deviate sexual conduct with an animal, or  
15 any fondling or touching of a child by another person or of  
16 another person by a child intended to arouse or satisfy the sexual  
17 desires of either the child or the other person.



1 (b) (c) A person who knowingly or intentionally:

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

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

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

14 commits child exploitation, a Class C felony.

15 (e) (d) A person who knowingly or intentionally possesses:

16 (1) a picture;

17 (2) a drawing;

18 (3) a photograph;

19 (4) a negative image;

20 (5) undeveloped film;

21 (6) a motion picture;

22 (7) a videotape;

23 (8) a digitized image; or

24 (9) any pictorial representation;

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

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

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

37 (1) the person is a school employee; and

38 (2) the acts constituting the elements of the offense were  
39 performed solely within the scope of the person's employment as  
40 a school employee.

41 (f) Except as provided in subsection (g); it is a defense to a  
42 prosecution under subsection (b)(1); subsection (b)(2); or subsection

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1 (c) if all of the following apply:

2 (1) A cellular telephone, another wireless or cellular  
3 communications device; or a social networking web site was used  
4 to possess, produce, or disseminate the image.

5 (2) The defendant is not more than four (4) years older or younger  
6 than the person who is depicted in the image or who received the  
7 image.

8 (3) The relationship between the defendant and the person who  
9 received the image or who is depicted in the image was a dating  
10 relationship or an ongoing personal relationship. For purposes of  
11 this subdivision, the term "ongoing personal relationship" does  
12 not include a family relationship.

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

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

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

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

21 (A) who sent the image; or

22 (B) who is depicted in the image;

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

25 (3) the dissemination of the image violates:

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

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

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

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

42 (E) a no contact order issued as a condition of pretrial release;

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1 including release on bail or personal recognizance, or pretrial  
 2 diversion; and including a no contact order issued under  
 3 IC 35-33-8-3.6;

4 (F) a no contact order issued as a condition of probation;

5 (G) a protective order to prevent domestic or family violence  
 6 issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2  
 7 before their repeal);

8 (H) a protective order to prevent domestic or family violence  
 9 issued under IC 31-14-16-1 in a paternity action;

10 (I) a no contact order issued under IC 31-34-25 in a child in  
 11 need of services proceeding or under IC 31-37-25 in a juvenile  
 12 delinquency proceeding;

13 (J) an order issued in another state that is substantially similar  
 14 to an order described in clauses (A) through (I);

15 (K) an order that is substantially similar to an order described  
 16 in clauses (A) through (I) and is issued by an Indian:

17 (i) tribe;

18 (ii) band;

19 (iii) pueblo;

20 (iv) nation; or

21 (v) organized group or community, including an Alaska  
 22 Native village or regional or village corporation as defined  
 23 in or established under the Alaska Native Claims Settlement  
 24 Act (43 U.S.C. 1601 et seq.);

25 that is recognized as eligible for the special programs and  
 26 services provided by the United States to Indians because of  
 27 their special status as Indians;

28 (L) an order issued under IC 35-33-8-3.2; or

29 (M) an order issued under IC 35-38-1-30.

30 SECTION 2. IC 35-45-4-6 IS ADDED TO THE INDIANA CODE  
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 32 1, 2013]: **Sec. 6. (a) This section applies only to a person less than  
 33 twenty-two (22) years of age.**

34 **(b) The following definitions apply throughout this section:**

35 **(1) "Disseminate" means to transfer possession for no direct  
 36 or indirect consideration.**

37 **(2) "Matter" has the meaning set forth in IC 35-49-1-3.**

38 **(3) "Performance" has the meaning set forth in IC 35-49-1-7.**

39 **(4) "Sexual conduct" means sexual intercourse, deviate sexual  
 40 conduct, exhibition of the uncovered genitals intended to  
 41 satisfy or arouse the sexual desires of any person,  
 42 sadomasochistic abuse, sexual intercourse or deviate sexual**

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1           **conduct with an animal, or any fondling or touching of a child**  
 2           **by another person or of another person by a child intended to**  
 3           **arouse or satisfy the sexual desires of either the child or the**  
 4           **other person.**

5           **(c) A person who, on or by means of a cellular telephone, social**  
 6           **media web site, or another wireless or cellular communications**  
 7           **device, knowingly or intentionally:**

8           **(1) produces, presents, exhibits, photographs, records, or**  
 9           **creates a digitized image of any performance or incident that**  
 10           **includes sexual conduct by a child at least twelve (12) years of**  
 11           **age;**

12           **(2) disseminates, exhibits to another person, or offers to**  
 13           **disseminate or exhibit to another person, matter that depicts**  
 14           **or describes sexual conduct by a child at least twelve (12)**  
 15           **years of age; or**

16           **(3) possesses:**

17           **(A) a picture;**

18           **(B) a drawing;**

19           **(C) a photograph;**

20           **(D) a motion picture;**

21           **(E) a digitized image; or**

22           **(F) any pictorial representation;**

23           **that depicts or describes sexual conduct by a child at least**  
 24           **twelve (12) years of age who the person knows is less than**  
 25           **sixteen (16) years of age or who appears to be less than sixteen**  
 26           **(16) years of age, and that lacks serious literary, artistic,**  
 27           **political, or scientific value;**

28           **commits indecent display by a youth, a Class B misdemeanor.**

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

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