

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 223**

Citations Affected: IC 35-42-4-4.

Synopsis: Change in definition of sexual conduct. Conference committee report for Engrossed Senate Bill 223. 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 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. **(This conference committee report makes a non-substantive change to the language of the bill by moving certain provisions concerning exhibition of the female breast to the definition of "sexual conduct" and deleting duplicative provisions.)**

Effective: Upon passage.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 223 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House 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 35-42-4-4, AS AMENDED BY P.L.6-2012,
- 3 SECTION 226, IS AMENDED TO READ AS FOLLOWS
- 4 [EFFECTIVE UPON PASSAGE]: 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:
- 11 (A) sexual intercourse;
- 12 (B) deviate sexual conduct;
- 13 (C) exhibition of the:
- 14 (i) uncovered genitals; or
- 15 (ii) **female breast with less than a fully opaque covering**
- 16 **of any part of the nipple;**
- 17 intended to satisfy or arouse the sexual desires of any person;
- 18 (D) sadomasochistic abuse;
- 19 (E) sexual intercourse or deviate sexual conduct with an
- 20 animal; or
- 21 (F) any fondling or touching of a child by another person or of
- 22 another person by a child intended to arouse or satisfy the

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

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

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

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

(Reference is to Engrossed Senate Bill 223 as printed March 29, 2013.)

Conference Committee Report
on
Engrossed Senate Bill 223

Signed by:

Senator Young R Michael
Chairperson

Representative McMillin

Senator Randolph

Representative Hale

Senate Conferees

House Conferees