

COMMITTEE REPORT

Madam President: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedure, 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 Senate 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).

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

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

- 1 (ii) exhibits to another person;
 2 (iii) offers to disseminate or exhibit to another person; or
 3 (iv) sends or brings into Indiana for dissemination or
 4 exhibition;
 5 matter that depicts the uncovered genitals of a child less than
 6 eighteen (18) years of age or the exhibition of the female
 7 breast with less than a fully opaque covering of any part of the
 8 nipple by a child less than eighteen (18) years of age; or
 9 (C) makes available to another person a computer, knowing
 10 that the computer's fixed drive or peripheral device contains
 11 matter that depicts the uncovered genitals of a child less than
 12 eighteen (18) years of age or the exhibition of the female
 13 breast with less than a fully opaque covering of any part of the
 14 nipple by a child less than eighteen (18) years of age;
 15 commits child exploitation, a Class C felony.
- 16 (c) A person who knowingly or intentionally possesses:
 17 (1) a picture;
 18 (2) a drawing;
 19 (3) a photograph;
 20 (4) a negative image;
 21 (5) undeveloped film;
 22 (6) a motion picture;
 23 (7) a videotape;
 24 (8) a digitized image; or
 25 (9) any pictorial representation;
 26 that depicts or describes sexual conduct by a child who the person
 27 knows is less than ~~sixteen (16)~~ **eighteen (18)** years of age or who
 28 appears to be less than ~~sixteen (16)~~ **eighteen (18)** years of age, and that
 29 lacks serious literary, artistic, political, or scientific value commits
 30 possession of child pornography, a Class D felony.
- 31 (d) Subsections (b) and (c) do not apply to a bona fide school,
 32 museum, or public library that qualifies for certain property tax
 33 exemptions under IC 6-1.1-10, or to an employee of such a school,
 34 museum, or public library acting within the scope of the employee's
 35 employment when the possession of the listed materials is for
 36 legitimate scientific or educational purposes.
- 37 (e) It is a defense to a prosecution under this section that:
 38 (1) the person is a school employee; and
 39 (2) the acts constituting the elements of the offense were
 40 performed solely within the scope of the person's employment as

1 a school employee.

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

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

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

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

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

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

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

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

23 (A) who sent the image; or

24 (B) who is depicted in the image;

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

27 (3) the dissemination of the image violates:

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

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

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

38 (D) a no contact order in a dispositional decree issued under
39 IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or
40 IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an

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

Senator LONG, Chairperson

Senator LANANE, R.M.M.

Senator STEELE