

# COMMITTEE REPORT

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## MADAM PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 223, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 criminal law and procedure.
- 4 Delete everything after the enacting clause and insert the
- 5 following:
- 6 SECTION 1. IC 35-42-4-4, AS AMENDED BY P.L.6-2012,
- 7 SECTION 226, IS AMENDED TO READ AS FOLLOWS
- 8 [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The following definitions
- 9 apply throughout this section:
- 10 (1) "Disseminate" means to transfer possession for free or for a
- 11 consideration.
- 12 (2) "Matter" has the same meaning as in IC 35-49-1-3.
- 13 (3) "Performance" has the same meaning as in IC 35-49-1-7.
- 14 (4) "Sexual conduct" means sexual intercourse, deviate sexual
- 15 conduct, exhibition of the uncovered genitals intended to satisfy
- 16 or arouse the sexual desires of any person, sadomasochistic
- 17 abuse, sexual intercourse or deviate sexual conduct with an
- 18 animal, or any fondling or touching of a child by another person
- 19 or of another person by a child intended to arouse or satisfy the
- 20 sexual desires of either the child or the other person.
- 21 (b) A person who: ~~knowingly or intentionally~~:
- 22 (1) **knowingly or intentionally** manages, produces, sponsors,
- 23 presents, exhibits, photographs, films, videotapes, or creates a
- 24 digitized image of any performance or incident that includes
- 25 sexual conduct by a child under eighteen (18) years of age;
- 26 (2) **knowingly or intentionally** disseminates, exhibits to another

1 person, offers to disseminate or exhibit to another person, or  
 2 sends or brings into Indiana for dissemination or exhibition  
 3 matter that depicts or describes sexual conduct by a child under  
 4 eighteen (18) years of age; ~~or~~

5 **(3) knowingly or intentionally** makes available to another  
 6 person a computer, knowing that the computer's fixed drive or  
 7 peripheral device contains matter that depicts or describes sexual  
 8 conduct by a child less than eighteen (18) years of age; **or**

9 **(4) with the intent to satisfy or arouse the sexual desires of**  
 10 **any person, knowingly or intentionally:**

11 **(A) manages, produces, sponsors, presents, exhibits,**  
 12 **photographs, films, videotapes, or creates a digitized**  
 13 **image of any performance or incident that includes the**  
 14 **uncovered genitals of a child less than eighteen (18)**  
 15 **years of age;**

16 **(B) disseminates, exhibits to another person, offers to**  
 17 **disseminate or exhibit to another person, or sends or**  
 18 **brings into Indiana for dissemination or exhibition**  
 19 **matter that depicts the uncovered genitals of a child less**  
 20 **than eighteen (18) years of age; or**

21 **(C) makes available to another person a computer,**  
 22 **knowing that the computer's fixed drive or peripheral**  
 23 **device contains matter that depicts the uncovered**  
 24 **genitals of a child less than eighteen (18) years of age;**

25 commits child exploitation, a Class C felony.

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

- 27 (1) a picture;
- 28 (2) a drawing;
- 29 (3) a photograph;
- 30 (4) a negative image;
- 31 (5) undeveloped film;
- 32 (6) a motion picture;
- 33 (7) a videotape;
- 34 (8) a digitized image; or
- 35 (9) any pictorial representation;

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

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

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

- 48 (1) the person is a school employee; and
- 49 (2) the acts constituting the elements of the offense were
- 50 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)(1), ~~subsection (b)(2)~~, or ~~subsection~~  
4 (c) if all of the following apply:

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

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

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

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

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

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

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

24 (A) who sent the image; or

25 (B) who is depicted in the image;

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

28 (3) the dissemination of the image violates:

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

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

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

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

46 (E) a no contact order issued as a condition of pretrial  
47 release, including release on bail or personal recognizance,  
48 or pretrial diversion, and including a no contact order issued  
49 under IC 35-33-8-3.6;

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

- 1 (G) a protective order to prevent domestic or family  
 2 violence issued under IC 31-15-5 (or IC 31-16-5 or  
 3 IC 31-1-11.5-8.2 before their repeal);  
 4 (H) a protective order to prevent domestic or family  
 5 violence issued under IC 31-14-16-1 in a paternity action;  
 6 (I) a no contact order issued under IC 31-34-25 in a child in  
 7 need of services proceeding or under IC 31-37-25 in a  
 8 juvenile delinquency proceeding;  
 9 (J) an order issued in another state that is substantially  
 10 similar to an order described in clauses (A) through (I);  
 11 (K) an order that is substantially similar to an order  
 12 described in clauses (A) through (I) and is issued by an  
 13 Indian:  
 14 (i) tribe;  
 15 (ii) band;  
 16 (iii) pueblo;  
 17 (iv) nation; or  
 18 (v) organized group or community, including an  
 19 Alaska Native village or regional or village corporation  
 20 as defined in or established under the Alaska Native  
 21 Claims Settlement Act (43 U.S.C. 1601 et seq.);  
 22 that is recognized as eligible for the special programs and  
 23 services provided by the United States to Indians because of  
 24 their special status as Indians;  
 25 (L) an order issued under IC 35-33-8-3.2; or  
 26 (M) an order issued under IC 35-38-1-30.  
 27 **SECTION 2. An emergency is declared for this act.**  
 (Reference is to SB 223 as introduced.)

**and when so amended that said bill be reassigned to the Senate Committee on Corrections and Criminal Law .**

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LONG, Chairperson