

Members

Sen. Brent Steele, Chairperson  
Sen. Richard Bray  
Sen. James Arnold  
Sen. Lindel Hume  
Rep. Ralph Foley  
Rep. Greg Steuerwald  
Rep. Ed DeLaney  
Rep. Vernon Smith  
Larry Landis  
David Powell  
Commissioner Bruce Lemon  
Greg Server  
Don Travis  
Hon. Stephen R. Heimann



# CRIMINAL LAW AND SENTENCING POLICY STUDY COMMITTEE

Legislative Services Agency  
200 West Washington Street, Suite 301  
Indianapolis, Indiana 46204-2789  
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Office of the Governor and Criminal Justice  
Institute  
Andrew Hedges, Attorney for the Committee  
K.C. Norwalk, Attorney for the Committee  
Timothy Tyler, Attorney for the Committee  
Mark Goodpaster, Fiscal Analyst for the  
Committee

Authority: P.L. 100-2010

## MEETING MINUTES<sup>1</sup>

Meeting Date: August 18, 2011  
Meeting Time: 1:00 P.M.  
Meeting Place: State House, 200 W. Washington  
St., Room 431  
Meeting City: Indianapolis, Indiana  
Meeting Number: 2

**Members Present:** Sen. Brent Steele, Chairperson; Sen. Richard Bray; Sen. James Arnold; Sen. Lindel Hume; Rep. Ralph Foley; Rep. Greg Steuerwald; Rep. Ed DeLaney; Rep. Vernon Smith; Larry Landis; David Powell; Commissioner Bruce Lemon; Greg Server; Don Travis; Hon. Stephen R. Heimann.

**Members Absent:** None.

Senator Steele called the meeting to order at 1:10 p.m.

Senator Steele began the meeting by describing the Casey Anthony case and asked the Committee to consider whether people should be penalized for the failure to report a dead body or the failure to report a missing child. Sen. Steele noted that there must be a balance between reporting every absent child to law enforcement and protecting the safety of children.

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<sup>1</sup> These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative> Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

Larry Landis of the Public Defender Council noted that there may be a risk of overloading the Amber Alert system.

Representative Foley asked if a law on reporting a missing child should be specific to the age of the child. He asked Senator Steele whether other states had similar laws. Senator Steele said that at least 14 states had such laws.

Senator Hume asked what kind of defenses may be available for someone charged with not reporting a missing child. He noted that different family situations could complicate the issue of being able to punish someone for not reporting their child missing. He also noted that if a child goes missing and the child is never found, the parent is the only person who will be punished.

Senator Steele instructed the Legislative Services Agency to get more information on what other states do regarding the reporting of a missing child.

Senator Steele recognized Senator Head to speak on the topic of a Child Protective Registry ("CPR").

Senator Head explained that the CPR would be a registry of a child's email, email to which a child has access, and other similar contact information for the child. Internet marketers who are advertising anything that a child is not legally allowed to purchase would submit a list of email addresses to the state and receive in return an email list that does not have the names of registered children on it. The Secretary of State's office has agreed to house the registry. The registry will not cost the state, as user fees will allow the program to pay for itself.

Eric Langheinrich of Unspam, the vendor for the CPR in Michigan and Utah, described how the CPR would work. He noted that in those states vendors are required to submit their mailing lists to the system every 30 days.

Senator Hume asked if this registry was really a CPR or a registry of people who do not want to receive emails advertising adult products. Mr. Langheinrich said that it is a registry for anyone who does not want to receive adult emails. He noted that the proposed law would allow anyone whose email could be accessed by a minor to place the email on the registry.

Senator Steele asked if it would be better to make this an anti-spam registry. Mr. Langheinrich noted that it would be easier to start the program as a CPR and then expand the scope in the future.

Representative Smith inquired as to the penalties for violating the law. Senator Head said that the penalty would be a civil penalty of \$10,000 for the first offense and \$25,000 for any subsequent offenses. Representative Smith expressed a desire to make the penalties fees that were assessed by the state and to expand the program.

Senator Hume asked if this was a service that was already provided by internet providers and antivirus software, and asked about the cost of the program to the state. Mr. Langheinrich said that this program is not a replacement for spam filters and it would be at no cost to the state.

Randy Koester, Indiana Department of Correction, asked what it would mean if he were simply to put his email addresses in the Michigan registry. Mr. Langheinrich said that he could do this, but he would have to enter a Michigan phone number and he would lose protection if he were to make a complaint.

The question was raised as to the cost of the service to marketers. Mr. Langheinrich said that the largest marketers would pay no more than \$6,000 a month. He noted that there was also a cap to the amount that one company could be charged in a year.

Representative Delaney asked who would make the determination as to what ads are considered adult. Mr. Langheinrich said that in the proposed legislation, the state would make the determination. He also asked if a marketer could get in trouble for sending an adult email to a minor that is not on the list. Counsel noted that under current law one has to intentionally send materials harmful to minors to a minor in order to be charged with a crime, and that the definition of "material harmful to minors" in the Indiana Code may be narrower than "adult" material.

Mark Shublak of the Email Sender and Provider Coalition spoke against the proposal, noting that the program could create a greater risk by creating a list of minor's email addresses. He also pointed out that there have been security breaches in states such as Utah, and that the FTC opposes the creation CPRs based on security concerns. He suggested that it would be better to track the internet activity of sex offenders.

In response to a question from Representative Smith, Mr. Shublak noted that there is already an anti-spam law in Indiana, and that those interested in not receiving adult oriented email could use software to filter out spam email.

Representative Smith suggested that not creating a CPR due to the concern of a security breach is tantamount to giving up on protecting children from adult oriented email. He also noted that individuals should have the right to not receive objectionable email.

Carl Szabo of Net Choice spoke against the proposal. He noted the possible negative impacts that such a law could have on small businesses, particularly because there are so many products that are illegal for children to purchase, such as alcohol and automobiles. He suggested that restaurants that advertise alcohol and businesses that sell cars would not be able to advertise to children. He further noted that while the Utah program brought in \$187,000, Utah paid \$150,000 of that to Unspam, and used the remaining amount to defend the law in court. He also mentioned that in Utah there was a security breach that had exposed the list of all children's emails that had been registered on the CPR, and that, since most spammers are not located in the US, the registry would not affect them.

Senator Steele adjourned the meeting at 2:45 p.m.