

HOUSE BILL No. 1221

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-26-5.5; IC 35-49; IC 35-52-20-0.7.

Synopsis: Material that is obscene or harmful to minors. Defines terms and amends the education and criminal laws related to material that is obscene or harmful to minors.

Effective: July 1, 2024.

Abbott, Carbaugh

January 9, 2024, read first time and referred to Committee on Education.



Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

HOUSE BILL No. 1221

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 20-26-5.5-0.5 IS ADDED TO THE INDIANA
- 2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2024]: **Sec. 0.5. (a) As used in this chapter,**
- 4 **"classroom library" means any collection of reading material**
- 5 **other than approved curricular materials available for a student**
- 6 **within each classroom.**
- 7 **(b) As used in this chapter, "material" includes matter or a**
- 8 **performance.**
- 9 **(c) As used in this chapter, "matter" has the meaning set forth**
- 10 **in IC 35-49-1-3.**
- 11 **(d) As used in this chapter, "obscene or harmful to minors"**
- 12 **means matter or a performance that:**
- 13 **(1) has not been approved for instruction on human sexuality**
- 14 **by the:**
- 15 **(A) governing body of a school corporation under**
- 16 **IC 20-26-12-24; or**
- 17 **(B) equivalent authority of a charter school or state**



- 1 **accredited nonpublic school; and**
 2 **(2) includes a patently offensive pictorial depiction or patently**
 3 **offensive written depiction of:**
 4 **(A) nudity involving lewd exhibition of the genitals;**
 5 **(B) nudity involving genitals in an aroused state; or**
 6 **(C) sexual conduct, including:**
 7 **(i) masturbation;**
 8 **(ii) vaginal sex;**
 9 **(iii) oral sex;**
 10 **(iv) anal sex;**
 11 **(v) oral-anal sex;**
 12 **(vi) the use of sex toys or other objects for sexual**
 13 **gratification;**
 14 **(vii) ejaculation; or**
 15 **(viii) sado-masochistic abuse.**
 16 **(e) As used in this chapter, "performance" has the meaning set**
 17 **forth in IC 35-49-1-7.**
 18 **(f) As used in this chapter, "school library" means a room, cart,**
 19 **or location:**
 20 **(1) outside of a classroom; and**
 21 **(2) in which a collection of reading materials other than**
 22 **approved curricular materials is available for student use.**
 23 SECTION 2. IC 20-26-5.5-1, AS ADDED BY P.L.234-2023,
 24 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2024]: Sec. 1. (a) The governing body of a school corporation
 26 or **the equivalent authority of a charter school or state accredited**
 27 **nonpublic school** shall establish a:
 28 (1) procedure for each school to prepare a catalogue of materials
 29 available in the school library **or a classroom library;**
 30 (2) procedure for each school to allow a:
 31 (A) parent or guardian of a student enrolled in the school; or
 32 (B) community member:
 33 (i) within the school district; or
 34 (ii) within the school district in which the charter school is
 35 located;
 36 to submit a request to remove material from the school library **or**
 37 **a classroom library** that is obscene ~~(as described in~~
 38 ~~IC 35-49-2-1)~~ or harmful to minors; ~~(as described in~~
 39 ~~IC 35-49-2-2); and~~
 40 (3) response and appeal procedure for each school to respond to
 41 a removal request submitted by a parent, guardian, or community
 42 member described in subdivision (2).



1 (b) The response and appeal procedure established under subsection
2 (a)(3) must require the governing body to review the request at the next
3 public meeting.

4 **(c) If the governing body of a school corporation or the**
5 **equivalent authority of a charter school or state accredited**
6 **nonpublic school determines material is obscene or harmful to**
7 **minors under subsection (a), the material must be removed from**
8 **the school.**

9 SECTION 3. IC 20-26-5.5-2, AS ADDED BY P.L.234-2023,
10 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2024]: Sec. 2. The governing body of a school corporation or
12 **the equivalent authority of a charter school or state accredited**
13 **nonpublic school** shall:

14 (1) publish on the website of each school; and
15 (2) make available in hard copy for an individual upon request;
16 the catalogue of material available in the school library **and each**
17 **classroom library** and each policy established under this chapter.

18 SECTION 4. IC 20-26-5.5-3, AS ADDED BY P.L.234-2023,
19 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2024]: Sec. 3. **(a) A school corporation or charter school** **The**
21 **following** may not **knowingly** make available materials or provide to
22 **a student material** that contain:

23 ~~(1) obscene matter (as described in IC 35-49-2-1); or~~
24 ~~(2) matter harmful to minors (as described in IC 35-49-2-2);~~
25 **within the school library: is obscene or harmful to minors:**
26 **(1) A school corporation.**
27 **(2) A public school, including a charter school.**
28 **(3) A state accredited nonpublic school.**
29 **(4) An employee, a contractor, or a third party vendor of an**
30 **entity described in subdivisions (1) through (3).**

31 **(b) A violation of subsection (a) is a Level 6 felony under**
32 **IC 35-49-3-3.**

33 SECTION 5. IC 35-49-1-3 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 3. "Matter" means:

35 (1) any book, magazine, newspaper, or other printed, **digitized**, or
36 written material;
37 (2) any picture, drawing, photograph, motion picture, digitized
38 image, or other pictorial representation;
39 (3) any statue or other figure;
40 (4) any recording, transcription, or **digital**, mechanical, chemical,
41 or electrical reproduction; or
42 (5) any other articles, equipment, machines, or materials.



1 SECTION 6. IC 35-49-1-7 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 7. "Performance"
 3 means any play, motion picture, dance, or other exhibition or
 4 presentation, whether pictured, animated, **recorded**, or live, performed
 5 before an audience of one (1) or more persons.

6 SECTION 7. IC 35-49-2-1 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 1. A matter or
 8 performance is obscene for purposes of this article if:

9 **(1) the matter or performance is obscene or harmful to**
 10 **minors (as defined in IC 20-26-5.5-0.5(d)); or**

11 ~~(2)~~ **(2) the:**

12 **(A)** average person, applying contemporary community
 13 standards, finds that the dominant theme of the matter or
 14 performance, taken as a whole, appeals to the prurient interest
 15 in sex;

16 ~~(2)~~ **(B)** ~~the~~ matter or performance depicts or describes, in a
 17 patently offensive way, sexual conduct; and

18 ~~(3)~~ **(C)** ~~the~~ matter or performance, taken as a whole, lacks
 19 serious literary, artistic, political, or scientific value.

20 SECTION 8. IC 35-49-2-2 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 2. A matter or
 22 performance is harmful to minors for purposes of this article if:

23 **(1) the matter or performance is obscene or harmful to**
 24 **minors (as defined in IC 20-26-5.5-0.5(d)); or**

25 ~~(2)~~ **(2) ~~is~~ the matter or performance:**

26 **(A)** describes or represents, in any form, nudity, sexual
 27 conduct, sexual excitement, or sado-masochistic abuse;

28 ~~(2)~~ **(B)** considered as a whole, it appeals to the prurient interest
 29 in sex of minors;

30 ~~(3)~~ **(C)** ~~it~~ is patently offensive to prevailing standards in the
 31 adult community as a whole with respect to what is suitable
 32 matter for or performance before minors; and

33 ~~(4)~~ **(D)** considered as a whole, ~~it~~ lacks serious literary, artistic,
 34 political, or scientific value for minors.

35 SECTION 9. IC 35-49-3-4, AS AMENDED BY P.L.234-2023,
 36 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2024]: Sec. 4. (a) It is a defense to a prosecution under section
 38 3 of this chapter for the defendant to show:

39 (1) that the matter was disseminated or that the performance was
 40 performed for legitimate scientific purposes;

41 (2) that the matter was disseminated or displayed to or that the
 42 performance was performed before the recipient by a bona fide



1 college, university, museum, college library, or public library that
 2 qualifies for certain property tax exemptions under IC 6-1.1-10,
 3 or university library, or by an employee of such a ~~school~~, college,
 4 university, museum, college library, or public library, or
 5 university library acting within the scope of the employee's
 6 employment;

7 (3) that the defendant had reasonable cause to believe that the
 8 minor involved was eighteen (18) years of age or older and that
 9 the minor exhibited to the defendant a draft card, driver's license,
 10 birth certificate, or other official or apparently official document
 11 purporting to establish that the minor was eighteen (18) years of
 12 age or older; ~~or~~

13 (4) that the defendant was a salesclerk, motion picture
 14 projectionist, usher, or ticket taker, acting within the scope of the
 15 defendant's employment and that the defendant had no financial
 16 interest in the place where the defendant was so employed; **or**

17 **(5) that:**

18 **(A) the defendant was:**

19 **(i) an employee of a school corporation, charter school,**
 20 **or state accredited nonpublic school; and**

21 **(ii) acting within the scope of the defendant's**
 22 **employment; and**

23 **(B) the matter or performance was approved for**
 24 **instruction on human sexuality by the:**

25 **(i) governing body of the school corporation under**
 26 **IC 20-26-12-24; or**

27 **(ii) equivalent authority of the charter school or state**
 28 **accredited nonpublic school.**

29 (b) Except as provided in subsection (c), it is a defense to a
 30 prosecution under section 3 of this chapter if all the following apply:

31 (1) A cellular telephone, another wireless or cellular
 32 communications device, or a social networking web site was used
 33 to disseminate matter to a minor that is harmful to minors.

34 (2) The defendant is not more than four (4) years older or younger
 35 than the person who received the matter that is harmful to minors.

36 (3) The relationship between the defendant and the person who
 37 received the matter that is harmful to minors 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.



- 1 (5) The person receiving the matter expressly or implicitly
 2 acquiesced in the defendant's conduct.
- 3 (c) The defense to a prosecution described in subsection (b) does
 4 not apply if:
- 5 (1) the image is disseminated to a person other than the person:
 6 (A) who sent the image; or
 7 (B) who is depicted in the image; or
 8 (2) the dissemination of the image violates:
 9 (A) a protective order to prevent domestic or family violence
 10 or harassment issued under IC 34-26-5 (or, if the order
 11 involved a family or household member, under IC 34-26-2 or
 12 IC 34-4-5.1-5 before their repeal);
 13 (B) an ex parte protective order issued under IC 34-26-5 (or,
 14 if the order involved a family or household member, an
 15 emergency order issued under IC 34-26-2 or IC 34-4-5.1
 16 before their repeal);
 17 (C) a workplace violence restraining order issued under
 18 IC 34-26-6;
 19 (D) a no contact order in a dispositional decree issued under
 20 IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or
 21 IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an
 22 order issued under IC 31-32-13 (or IC 31-6-7-14 before its
 23 repeal) that orders the person to refrain from direct or indirect
 24 contact with a child in need of services or a delinquent child;
 25 (E) a no contact order issued as a condition of pretrial release,
 26 including release on bail or personal recognizance, or pretrial
 27 diversion, and including a no contact order issued under
 28 IC 35-33-8-3.6;
 29 (F) a no contact order issued as a condition of probation;
 30 (G) a protective order to prevent domestic or family violence
 31 issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2
 32 before their repeal);
 33 (H) a protective order to prevent domestic or family violence
 34 issued under IC 31-14-16-1 in a paternity action;
 35 (I) a no contact order issued under IC 31-34-25 in a child in
 36 need of services proceeding or under IC 31-37-25 in a juvenile
 37 delinquency proceeding;
 38 (J) an order issued in another state that is substantially similar
 39 to an order described in clauses (A) through (I);
 40 (K) an order that is substantially similar to an order described
 41 in clauses (A) through (I) and is issued by an Indian:
 42 (i) tribe;



1 (ii) band;
2 (iii) pueblo;
3 (iv) nation; or
4 (v) organized group or community, including an Alaska
5 Native village or regional or village corporation as defined
6 in or established under the Alaska Native Claims Settlement
7 Act (43 U.S.C. 1601 et seq.);
8 that is recognized as eligible for the special programs and
9 services provided by the United States to Indians because of
10 their special status as Indians;
11 (L) an order issued under IC 35-33-8-3.2; or
12 (M) an order issued under IC 35-38-1-30.
13 SECTION 10. IC 35-52-20-0.7 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2024]: **Sec. 0.7. IC 20-26-5.5-3 defines a**
16 **crime concerning materials that are obscene or harmful to minors.**

