

SENATE BILL No. 129

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-21-1-2; IC 20-30-5-17; IC 20-33-13; IC 20-34-3-21; IC 34-30-28-1.

Synopsis: Protection of privacy rights of students. Establishes certain consent requirements regarding students. Provides that, if the attorney general determines that a school corporation or school: (1) discloses a student education record, or any information in a student education record, in violation of federal law; or (2) has a student who is less than 18 years of age and is not emancipated participate in any mental health assessment, mental health service, psychiatric or psychological examination or test, or psychiatric or psychological treatment without the informed written consent of the student's parent; the attorney general may assess a civil penalty against the school corporation or school. Provides that the parent of a student may bring a civil action for certain violations. Provides that the civil penalty and civil action provisions also apply to violations of other provisions concerning: (1) consent for mental health referrals; (2) disclosure of medical records; (3) mental health diagnoses or information; (4) requirements to make certain materials available for inspection; (5) requirements concerning human sexuality instruction; and (6) obtaining consent before requiring a student to participate in certain personal analyses, evaluations, or surveys. Amends a civil immunity provision currently in law to provide that a school, school employee, or school board does not have civil immunity for referrals the school made or services the school offered concerning evaluations or treatment of a student's health if the school, school employee, or school board violated certain consent requirements in making the referral or offering the services. Reconciles the versions of IC 10-21-1-2 that were enacted by the 2019 general assembly.

Effective: Upon passage.

Kruse

January 13, 2020, read first time and referred to Committee on Judiciary.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

SENATE BILL No. 129

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 10-21-1-2, AS AMENDED BY P.L.197-2019,
2 SECTION 3, AND AS AMENDED BY P.L.50-2019, SECTION 2,
3 AND AS AMENDED BY P.L.153-2019, SECTION 1, AND AS
4 AMENDED BY P.L.272-2019, SECTION 3, IS CORRECTED AND
5 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
6 PASSAGE]: Sec. 2. (a) The Indiana secured school fund is established
7 to provide:

8 (1) matching grants to enable school corporations, ~~and~~ charter
9 schools, *and accredited nonpublic schools* to establish programs
10 under which a school corporation, ~~or~~ charter school, *or accredited*
11 *nonpublic school* (or a coalition of schools) may:

12 (A) employ a school resource officer, *employ a law*
13 *enforcement officer*, or enter into a contract or a memorandum
14 of understanding with a:

15 (A) (i) local law enforcement agency;

16 (B) (ii) private entity; or

17 (C) (iii) nonprofit corporation;



- 1 to employ a school resource officer *or a law enforcement*
 2 *officer;*
 3 ~~(2)~~ (B) conduct a threat assessment of the buildings within a
 4 school corporation *or the buildings that are operated by a*
 5 *charter school or accredited nonpublic school; or*
 6 ~~(3)~~ (C) purchase equipment and technology to:
 7 ~~(A)~~ (i) restrict access to school property; or
 8 ~~(B)~~ (ii) expedite notification of first responders; *or*
 9 ~~(4)~~ (D) *implement a student and parent support services plan*
 10 *as described in section 4(a)(5) of this chapter; and*
 11 *(2) one (1) time grants to enable school corporations, charter*
 12 *schools, and accredited nonpublic schools with the sheriff for the*
 13 *county in which the school corporation, charter school, or*
 14 *accredited nonpublic school is located, to provide the initial set*
 15 *up costs for an active event warning system.*
 16 (b) *A school corporation or charter school may use money received*
 17 *under a matching grant for a purpose listed in subsection (a) to*
 18 *provide a response to a threat in a manner that the school corporation*
 19 *or charter school sees fit, including firearms training or other*
 20 *self-defense training.*
 21 ~~(b)~~ (c) The fund shall be administered by the department of
 22 homeland security.
 23 ~~(c)~~ (d) The fund consists of:
 24 (1) appropriations from the general assembly;
 25 (2) grants from the Indiana safe schools fund established by
 26 IC 5-2-10.1-2;
 27 **(3) civil penalties assessed by the attorney general under**
 28 **IC 20-33-13-8;**
 29 ~~(3)~~ (4) federal grants; and
 30 ~~(4)~~ (5) amounts deposited from any other public or private source.
 31 ~~(d)~~ (e) The expenses of administering the fund shall be paid from
 32 money in the fund.
 33 ~~(e)~~ (f) The treasurer of state shall invest the money in the fund not
 34 currently needed to meet the obligations of the fund in the same
 35 manner as other public money may be invested. Interest that accrues
 36 from these investments shall be deposited in the fund.
 37 ~~(f)~~ (g) Money in the fund at the end of a state fiscal year does not
 38 revert to the state general fund.
 39 SECTION 2. IC 20-30-5-17, AS AMENDED BY P.L.154-2018,
 40 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 UPON PASSAGE]: Sec. 17. (a) Each school corporation shall make
 42 available for inspection by the parent of a student any instructional



1 materials, including teachers' manuals, curricular materials, films or
2 other video materials, tapes, and other materials, used in connection
3 with:

- 4 (1) a personal analysis, an evaluation, or a survey described in
5 subsection (b); or
6 (2) instruction on human sexuality.

7 (b) A student shall not be required to participate in a personal
8 analysis, an evaluation, or a survey that is not directly related to
9 academic instruction and that reveals or attempts to affect the student's
10 attitudes, habits, traits, opinions, beliefs, or feelings concerning:

- 11 (1) political affiliations;
12 (2) religious beliefs or practices;
13 (3) mental or psychological conditions that may embarrass the
14 student or the student's family;
15 (4) sexual behavior or attitudes;
16 (5) illegal, antisocial, self-incriminating, or demeaning behavior;
17 (6) critical appraisals of other individuals with whom the student
18 has a close family relationship;
19 (7) legally recognized privileged or confidential relationships,
20 including a relationship with a lawyer, minister, or physician; or
21 (8) income (except as required by law to determine eligibility for
22 participation in a program or for receiving financial assistance
23 under a program);

24 without the prior consent of the student if the student is an adult or an
25 emancipated minor or the prior written consent of the student's parent
26 if the student is an unemancipated minor. A parental consent form for
27 a personal analysis, an evaluation, or a survey described in this
28 subsection shall accurately reflect the contents and nature of the
29 personal analysis, evaluation, or survey.

30 (c) Before a school may provide a student with instruction on human
31 sexuality, the school must provide the parent of the student or the
32 student, if the student is an adult or an emancipated minor, with a
33 written request for consent of instruction. A consent form provided to
34 a parent of a student or a student under this subsection must accurately
35 summarize the contents and nature of the instruction on human
36 sexuality that will be provided to the student and indicate that a parent
37 of a student or an adult or emancipated minor student has the right to
38 review and inspect all materials related to the instruction on human
39 sexuality. The written consent form may be sent in an electronic
40 format. The parent of the student or the student, if the student is an
41 adult or an emancipated minor, may return the consent form indicating
42 that the parent of the student or the adult or emancipated student:



- 1 (1) consents to the instruction; or
 2 (2) declines instruction.

3 If a student does not participate in the instruction on human sexuality,
 4 the school shall provide the student with alternative academic
 5 instruction during the same time frame that the instruction on human
 6 sexuality is provided.

7 (d) If the parent of the student or the student, if the student is an
 8 adult or an emancipated minor, does not respond to the written request
 9 provided by the school under subsection (c) within twenty-one (21)
 10 calendar days after receiving the request under subsection (c), the
 11 school shall provide the parent of the student, or the student, if the
 12 student is an adult or an emancipated minor, a written notice requesting
 13 that the parent of the student, or the student, if the student is an adult
 14 or an emancipated minor, indicate, in a manner prescribed by the
 15 school, whether the parent of the student or the adult or emancipated
 16 student:

- 17 (1) consents to the instruction; or
 18 (2) declines instruction.

19 A notice provided to a parent of a student or a student under this
 20 subsection must accurately summarize the contents and nature of the
 21 instruction on human sexuality that will be provided to the student and
 22 indicate that a parent of a student or an adult or emancipated minor
 23 student has the right to review and inspect all materials related to the
 24 instruction on human sexuality. The notice may be sent in an electronic
 25 format. If the school does not receive a response within ten (10) days
 26 after the notice, the student will receive the instruction on human
 27 sexuality unless the parent or the adult or emancipated student
 28 subsequently opts out of the instruction for the student.

29 (e) The department and the governing body shall give parents and
 30 students notice of their rights under this section.

31 (f) The governing body shall enforce this section.

32 **(g) A public school or an accredited nonpublic school described**
 33 **in IC 20-30-1-1(2) that violates this section is subject to**
 34 **IC 20-33-13-8 and IC 20-33-13-9.**

35 SECTION 3. IC 20-33-13 IS ADDED TO THE INDIANA CODE
 36 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 37 UPON PASSAGE]:

38 **Chapter 13. Protection of Privacy Rights of Students and**
 39 **Families**

40 **Sec. 1. As used in this chapter, "mental health assessment"**
 41 **means providing the following in a written, digital, or electronic**
 42 **format:**



- 1 (1) A behavioral evaluation or survey.
 2 (2) A personality examination or analysis.
 3 (3) A mental health screening or survey.
 4 (4) Any assessment regarding interest inventories that would
 5 collect or elicit information about attitudes, habits, traits,
 6 opinions, beliefs, feelings, or dispositions, including:
 7 (A) multitiered systems of support;
 8 (B) positive behavior intervention and supports;
 9 (C) response to intervention; and
 10 (D) universal design for learning designed to affect
 11 behavioral, emotional, or attitudinal characteristics of an
 12 individual or group.
 13 (5) A social emotional screening, survey, assessment, or
 14 evaluation.
 15 (6) A social emotional wellness screening, survey, assessment,
 16 or evaluation.

17 **Sec. 2.** As used in this chapter, "mental health service" means
 18 any social, emotional, or behavioral interventions, including:

- 19 (1) multitiered systems of support;
 20 (2) positive behavior interventions and support;
 21 (3) response to intervention; or
 22 (4) universal design for learning designed to affect behavioral,
 23 emotional, or attitudinal characteristics of an individual or
 24 group;

25 that are provided to a student as a result of a mental health
 26 assessment of the student.

27 **Sec. 3.** As used in this chapter, "psychiatric or psychological
 28 examination or test" means a method of obtaining information,
 29 including a group activity, that is:

- 30 (1) provided to a student as a result of a mental health
 31 assessment of the student; and
 32 (2) designed to elicit information about attitudes, habits,
 33 traits, opinions, beliefs, or feelings.

34 **Sec. 4.** As used in this chapter, "psychiatric or psychological
 35 treatment" means an activity involving the planned, systematic use
 36 of methods or techniques that are:

- 37 (1) provided to a student as a result of a mental health
 38 assessment of the student; and
 39 (2) designed to affect behavioral, emotional, or attitudinal
 40 characteristics of an individual or group.

41 **Sec. 5.** As used in this chapter, "school" means a charter school
 42 or an accredited nonpublic school.



1 **Sec. 6. As used in this chapter, "student education record"**
 2 **means a record maintained by a school corporation or school in a**
 3 **digital, paper, or other format that contains information directly**
 4 **related to a student that includes, but is not limited to:**

- 5 (1) personally identifiable information;
 6 (2) medical or mental health information regarding the
 7 student;
 8 (3) academic information;
 9 (4) career profile information;
 10 (5) personality information;
 11 (6) any disciplinary action information; and
 12 (7) any other information gathered on the student.

13 **Sec. 7. (a) A school corporation or school shall obtain prior**
 14 **informed written consent from the parent of a student who:**

- 15 (1) is less than eighteen (18) years of age; and
 16 (2) is not emancipated;

17 **before the student may participate in any mental health**
 18 **assessment, mental health services, psychiatric or psychological**
 19 **examination or test, or psychiatric or psychological treatment that**
 20 **is conducted in connection with the school corporation, the school,**
 21 **a contractor of a school corporation or school, or any individual,**
 22 **agency, or entity that the student is referred to by a school**
 23 **corporation or school.**

24 **(b) Before obtaining the prior informed written consent of a**
 25 **parent as described in subsection (a), a school corporation or**
 26 **school shall provide the parent informed written notice describing**
 27 **in detail the mental health assessment, mental health service,**
 28 **psychiatric or psychological examination or test, or psychiatric or**
 29 **psychological treatment, including:**

- 30 (1) the purpose for the assessment, examination, test,
 31 treatment, or service;
 32 (2) the provider or contractor providing the assessment,
 33 examination, test, treatment, or service; and
 34 (3) the date and time at which the assessment, examination,
 35 test, treatment, or service will take place.

36 **Sec. 8. (a) For purposes of this section, a student is considered**
 37 **a student subject to a violation of this section if:**

- 38 (1) a school corporation or school:
 39 (A) discloses a student education record or any
 40 information in a student education record in violation of
 41 federal law; or
 42 (B) has the student participate in any mental health



- 1 assessment, mental health services, psychiatric or
 2 psychological examination or test, or psychiatric or
 3 psychological treatment that is conducted in connection
 4 with the school corporation, the school, a contractor of a
 5 school corporation or school, or any individual, agency, or
 6 entity that the student is referred to by a school
 7 corporation or school without the informed written
 8 consent of the student's parent in violation of this chapter;
- 9 **(2) a public school or accredited nonpublic school described**
 10 **in IC 20-30-1-1(2) violates IC 20-30-5-17 regarding the**
 11 **student; or**
- 12 **(3) a school corporation or charter school violates**
 13 **IC 20-34-3-21 regarding the student.**
- 14 **(b) If the attorney general determines that:**
- 15 **(1) a school corporation or school:**
- 16 **(A) discloses a student education record or any**
 17 **information in a student education record in violation of**
 18 **federal law; or**
- 19 **(B) has a student participate in any mental health**
 20 **assessment, mental health services, psychiatric or**
 21 **psychological examination or test, or psychiatric or**
 22 **psychological treatment that is conducted in connection**
 23 **with the school corporation, the school, a contractor of a**
 24 **school corporation or school, or any individual, agency, or**
 25 **entity that the student is referred to by a school**
 26 **corporation or school without the informed written**
 27 **consent of the student's parent in violation of this chapter;**
- 28 **(2) a public school or accredited nonpublic school described**
 29 **in IC 20-30-1-1(2) violates IC 20-30-5-17; or**
- 30 **(3) a school corporation or charter school violates**
 31 **IC 20-34-3-21;**
- 32 **the attorney general may assess a civil penalty against the school**
 33 **corporation or school in an amount determined under subsection**
 34 **(c). A civil penalty assessed under this subsection must be deposited**
 35 **in the Indiana secured school fund established by IC 10-21-1-2.**
- 36 **(c) The amount of a civil penalty under subsection (b) is as**
 37 **follows:**
- 38 **(1) For a first violation, at least one thousand dollars (\$1,000)**
 39 **but less than five thousand dollars (\$5,000) for each student**
 40 **who is the subject of a violation under this section.**
- 41 **(2) For a second violation, at least five thousand dollars**
 42 **(\$5,000) but less than ten thousand dollars (\$10,000) for each**



1 **student who is the subject of a violation under this section.**

2 **(3) For any violation after a second violation, at least ten**
 3 **thousand dollars (\$10,000) for each student who is the subject**
 4 **of a violation under this section.**

5 **Sec. 9. (a) A parent of a student may bring a civil action against**
 6 **a school corporation or school if the student is the subject of a**
 7 **violation by the school corporation or school as described in section**
 8 **8(a) of this chapter.**

9 **(b) A court may award the following to an individual who**
 10 **prevails under subsection (a):**

11 **(1) Court costs and reasonable attorney's fees.**

12 **(2) The greater of:**

13 **(A) actual damages resulting from the violation; or**

14 **(B) liquidated damages in an amount of five thousand**
 15 **dollars (\$5,000).**

16 SECTION 4. IC 20-34-3-21, AS ADDED BY P.L.185-2015,
 17 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 UPON PASSAGE]: Sec. 21. (a) ~~Before July 1, 2016,~~ Each school
 19 corporation ~~may~~ **shall** enter into a memorandum of understanding with
 20 a community mental health center established under IC 12-29-2 or a
 21 provider certified or licensed by the division of mental health and
 22 addiction to establish conditions or terms for referring students of the
 23 school corporation to the mental health care provider or community
 24 mental health center for services.

25 (b) A school corporation may not refer a student to a mental health
 26 care provider or a community mental health center for services unless
 27 the school corporation has received the written consent of the student's
 28 parent or guardian.

29 (c) If a school corporation refers a student to a mental health care
 30 provider, the school corporation may note the referral in the student's
 31 cumulative record but may not include any possible diagnosis or
 32 information concerning the student's mental health other than any
 33 medication that the student takes for the student's mental health. A
 34 student record that contains medical information must be kept
 35 confidential.

36 (d) A school counselor or other employee of a school corporation
 37 may not diagnose a student as having a mental health condition unless
 38 the individual's scope of practice includes diagnosing a mental health
 39 condition.

40 **(e) A school corporation that violates this section is subject to**
 41 **IC 20-33-13-8 and IC 20-33-13-9.**

42 SECTION 5. IC 34-30-28-1, AS ADDED BY P.L.41-2014,



1 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]: Sec. 1. A school, school employee, or school board
3 is not liable for civil damages as a result of:

4 (1) an injury to a child or family members of the child if the injury
5 is a result of a student's mental health issue that has not been
6 disclosed to the school by the parents or guardian; or

7 (2) any referrals the school made or services the school offered
8 concerning evaluations or treatment of the student's health,
9 including mental health.

10 **However, a school, school employee, or school board is not immune**
11 **from civil liability under this section if the school, school employee,**
12 **or school board committed a violation described in IC 20-30-5-17,**
13 **IC 20-33-13, or IC 20-34-3-21 in making the referral or offering**
14 **services described in subdivision (2).**

15 SECTION 6. An emergency is declared for this act.

