



February 19, 2021

SENATE BILL No. 288

DIGEST OF SB 288 (Updated February 17, 2021 5:00 pm - DI 110)

Citations Affected: IC 35-49.

Synopsis: Material harmful to minors. Removes schools and certain public libraries from the list of entities eligible for a specified defense to criminal prosecutions alleging: (1) the dissemination of material harmful to minors; or (2) a performance harmful to minors. Adds colleges and universities to the list of entities eligible for a specified defense to criminal prosecutions alleging: (1) the dissemination of material harmful to minors; or (2) a performance harmful to minors.

Effective: July 1, 2021.

**Tomes, Kruse, Freeman, Zay,
Messmer, Doriot, Leising, Buck,
Sandlin, Crane**

January 11, 2021, read first time and referred to Committee on Education and Career Development.
February 18, 2021, amended, reported favorably — Do Pass.

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February 19, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 288

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

1 SECTION 1. IC 35-49-3-4, AS AMENDED BY P.L.266-2019,
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 4. (a) It is a defense to a prosecution under section
4 3 of this chapter for the defendant to show:
5 (1) that the matter was disseminated or that the performance was
6 performed for legitimate scientific ~~or educational~~ purposes;
7 (2) that the matter was disseminated or displayed to or that the
8 performance was performed before the recipient by a bona fide
9 ~~school; college, university,~~ museum, **college library**, or **public**
10 **library** that qualifies for certain property tax exemptions under
11 ~~IC 6-1.1-10; university library~~ or by an employee of such a
12 ~~school; college, university,~~ museum, **college library**, or **public**
13 **library university library** acting within the scope of the
14 employee's employment;
15 (3) that the defendant had reasonable cause to believe that the
16 minor involved was eighteen (18) years of age or older and that
17 the minor exhibited to the defendant a draft card, driver's license,

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- 1 birth certificate, or other official or apparently official document
 2 purporting to establish that the minor was eighteen (18) years of
 3 age or older; or
 4 (4) that the defendant was a salesclerk, motion picture
 5 projectionist, usher, or ticket taker, acting within the scope of the
 6 defendant's employment and that the defendant had no financial
 7 interest in the place where the defendant was so employed.
- 8 (b) Except as provided in subsection (c), it is a defense to a
 9 prosecution under section 3 of this chapter if all the following apply:
 10 (1) A cellular telephone, another wireless or cellular
 11 communications device, or a social networking web site was used
 12 to disseminate matter to a minor that is harmful to minors.
 13 (2) The defendant is not more than four (4) years older or younger
 14 than the person who received the matter that is harmful to minors.
 15 (3) The relationship between the defendant and the person who
 16 received the matter that is harmful to minors was a dating
 17 relationship or an ongoing personal relationship. For purposes of
 18 this subdivision, the term "ongoing personal relationship" does
 19 not include a family relationship.
 20 (4) The crime was committed by a person less than twenty-two
 21 (22) years of age.
 22 (5) The person receiving the matter expressly or implicitly
 23 acquiesced in the defendant's conduct.
- 24 (c) The defense to a prosecution described in subsection (b) does
 25 not apply if:
 26 (1) the image is disseminated to a person other than the person:
 27 (A) who sent the image; or
 28 (B) who is depicted in the image; or
 29 (2) the dissemination of the image violates:
 30 (A) a protective order to prevent domestic or family violence
 31 or harassment issued under IC 34-26-5 (or, if the order
 32 involved a family or household member, under IC 34-26-2 or
 33 IC 34-4-5.1-5 before their repeal);
 34 (B) an ex parte protective order issued under IC 34-26-5 (or,
 35 if the order involved a family or household member, an
 36 emergency order issued under IC 34-26-2 or IC 34-4-5.1
 37 before their repeal);
 38 (C) a workplace violence restraining order issued under
 39 IC 34-26-6;
 40 (D) a no contact order in a dispositional decree issued under
 41 IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or
 42 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.



COMMITTEE REPORT

Madam President: The Senate Committee on Education and Career Development, to which was referred Senate Bill No. 288, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 27.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 288 as introduced.)

RAATZ, Chairperson

Committee Vote: Yeas 7, Nays 6.

