SENATE BILL No. 288

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2; IC 34-24-6; IC 35-49-3-4.

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. Allows certain individuals to bring a cause of action against a school or public library that violates a criminal statute concerning: (1) the dissemination of material harmful to a minor; or (2) a performance harmful to a minor. Specifies the remedies available to a plaintiff who prevails in a cause of action against a school or public library that violates a criminal statute concerning: (1) the dissemination of material harmful to minors; or (2) a performance harmful to minors.

Effective: July 1, 2021.

Tomes

January 11, 2021, read first time and referred to Committee on Education and Career Development.

Introduced

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 civil procedure.

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

SECTION 1. IC 34-6-2-83 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 83. "Minor", for purposes of **IC 34-24-6 and** IC 34-28-3, means a person less than eighteen (18) years of age.

SECTION 2. IC 34-6-2-100 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 100. **(a)** "Performance", for purposes of IC 34-30-4, means the acts of a qualified director pertaining to the setting of policy and the controlling or overseeing of the activities or functional responsibilities of the entity served by the qualified director.

(b) "Performance", for purposes of IC 34-24-6, has the meaning set forth in IC 35-49-1-7.

SECTION 3. IC 34-24-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 6. Dissemination of Matter or Conducting a Performance Harmful to Minors

Sec. 1. The parent of a minor who attends or patronizes, as applicable, a school or public library that violates, or causes another person or entity to violate, IC 35-49-3-3 has the standing necessary to pursue the cause of action described in section 2 of this chapter.

Sec. 2. A person who is:

(1) described in section 1 of this chapter; or

(2) injured as a result of a school's or public library's violation of IC 35-49-3-3;

may bring a cause of action in a court of competent jurisdiction against any school or public library that violates, or causes another person or entity to violate, IC 35-49-3-3.

Sec. 3. A person bringing a cause of action under section 2 of this chapter may seek to receive or recover the following, as applicable:

(1) A declaratory judgment.

(2) Injunctive relief.

(3) Reasonable attorney's fees and costs.

(4) Actual, incidental, and consequential damages.

(5) Punitive damages.

(6) Any other equitable relief deemed proper by the court.

Sec. 4. Nothing in this chapter may be construed to preclude:

(1) a criminal prosecution against a school employee or public library employee that is alleged to have violated IC 35-49-3-3; or

(2) any other relief available to a plaintiff under applicable state or federal law.

SECTION 4. IC 35-49-3-4, AS AMENDED BY P.L.266-2019, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4. (a) It is a defense to a prosecution under section 3 of this chapter for the defendant to show:

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

(2) that the matter was disseminated or displayed to or that the performance was performed before the recipient by a bona fide ~~school,~~ **college, university,** museum, **college library,** or ~~public library that qualifies for certain property tax exemptions under IC 6-1.1-10,~~ **university library** or by an employee of such a ~~school,~~ **college, university,** museum, **college library,** or ~~public library~~ **university library** acting within the scope of the employee's employment;

(3) that the defendant had reasonable cause to believe that the

minor involved was eighteen (18) years of age or older and that the minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older; or

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

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

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

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

(3) The relationship between the defendant and the person who received the matter that is harmful to minors was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.

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

(5) The person receiving the matter expressly or implicitly acquiesced in the defendant's conduct.

(c) The defense to a prosecution described in subsection (b) does not apply if:

(1) the image is disseminated to a person other than the person:

(A) who sent the image; or

(B) who is depicted in the image; or

(2) the dissemination of the image violates:

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

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

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

(D) a no contact order in a dispositional decree issued under

IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

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

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

(G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);

(H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;

(I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;

(J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);

(K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:

(i) tribe;

(ii) band;

(iii) pueblo;

(iv) nation; or

(v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

(L) an order issued under IC 35-33-8-3.2; or

(M) an order issued under IC 35-38-1-30.