



January 13, 2022

---

---

## HOUSE BILL No. 1191

---

DIGEST OF HB 1191 (Updated January 12, 2022 11:15 am - DI 140)

**Citations Affected:** IC 31-9; IC 35-31.5; IC 35-42.

**Synopsis:** Child exploitation and child pornography. Provides that a person who knowingly or intentionally produces, disseminates, or possesses with intent to disseminate an image that depicts or describes sexual conduct: (1) by a child who the person knows is less than 18 years of age; (2) by a child who appears to be less than 18 years of age and the representation of the image is obscene; or (3) that is a representation of a child who appears to be less than 18 years of age and the representation of the image is obscene; commits the offense of child exploitation. Provides that a person who knowingly or intentionally receives, possesses, or accesses with intent to view an image that depicts or describes sexual conduct: (1) by a child who the person knows is less than 18 years of age; (2) by a child who appears to be less than 18 years of age and the representation of the image is obscene; or (3) that is a representation of a child who appears to be less than 18 years of age and the representation of the image is obscene; commits the offense of possession of child pornography. Specifies that it is not a required element of the offense of child exploitation or possession of child pornography that the child depicted actually exists under certain circumstances. Defines "image". Makes conforming changes.

**Effective:** July 1, 2022.

---

---

### Karickhoff, Steuerwald, VanNatter

---

---

January 6, 2022, read first time and referred to Committee on Courts and Criminal Code.  
January 13, 2022, reported — Do Pass.

---

---

HB 1191—LS 6069/DI 131





January 13, 2022

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

## HOUSE BILL No. 1191

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 31-9-2-133.1, AS AMENDED BY P.L.94-2020,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2022]: Sec. 133.1. "Victim of human or sexual trafficking",  
4 for purposes of IC 31-34-1-3.5, refers to a child who is recruited,  
5 harbored, transported, or engaged in:  
6 (1) forced labor;  
7 (2) involuntary servitude;  
8 (3) prostitution;  
9 (4) juvenile prostitution, as defined in IC 35-31.5-2-178.5;  
10 (5) child exploitation, as defined in IC 35-42-4-4(b);  
11 (6) marriage, unless authorized by a court under IC 31-11-1-7;  
12 (7) trafficking for the purpose of prostitution, juvenile  
13 prostitution, or participation in sexual conduct as defined in  
14 ~~IC 35-42-4-4(a)(4)~~; **IC 35-42-4-4(a)**; or  
15 (8) human trafficking as defined in IC 35-42-3.5-0.5.  
16 SECTION 2. IC 35-31.5-2-164.2 IS ADDED TO THE INDIANA  
17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS

**HB 1191—LS 6069/DI 131**



1 [EFFECTIVE JULY 1, 2022]: **Sec. 164.2. "Image", for purposes of**  
 2 **IC 35-42-4-4, has the meaning set forth in IC 35-42-4-4(a).**

3 SECTION 3. IC 35-42-4-4, AS AMENDED BY P.L.266-2019,  
 4 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5 JULY 1, 2022]: Sec. 4. (a) The following definitions apply throughout  
 6 this section:

7 (1) "Disseminate" means to transfer possession for free or for a  
 8 consideration.

9 **(2) "Image" means the following:**

10 **(A) A picture.**

11 **(B) A drawing.**

12 **(C) A photograph.**

13 **(D) A negative image.**

14 **(E) An undeveloped film.**

15 **(F) A motion picture.**

16 **(G) A videotape.**

17 **(H) A digitized image.**

18 **(I) A computer generated image.**

19 **(J) Any pictorial representation.**

20 ~~(2)~~ **(3) "Matter" has the same meaning as in IC 35-49-1-3.**

21 ~~(3)~~ **(4) "Performance" has the same meaning as in IC 35-49-1-7.**

22 ~~(4)~~ **(5) "Sexual conduct" means:**

23 (A) sexual intercourse;

24 (B) other sexual conduct (as defined in IC 35-31.5-2-221.5);

25 (C) exhibition of the:

26 (i) uncovered genitals; or

27 (ii) female breast with less than a fully opaque covering of  
 28 any part of the nipple;

29 intended to satisfy or arouse the sexual desires of any person;

30 (D) sadomasochistic abuse;

31 (E) sexual intercourse or other sexual conduct (as defined in  
 32 IC 35-31.5-2-221.5) with an animal; or

33 (F) any fondling or touching of a child by another person or of  
 34 another person by a child intended to arouse or satisfy the  
 35 sexual desires of either the child or the other person.

36 (b) A person who:

37 (1) knowingly or intentionally manages, produces, sponsors,  
 38 presents, exhibits, photographs, films, videotapes, or creates a  
 39 digitized image of any performance or incident that includes  
 40 sexual conduct by a child under eighteen (18) years of age;

41 (2) knowingly or intentionally disseminates, exhibits to another  
 42 person, offers to disseminate or exhibit to another person, or



1 sends or brings into Indiana for dissemination or exhibition matter  
 2 that depicts or describes sexual conduct by a child under eighteen  
 3 (18) years of age;  
 4 (3) knowingly or intentionally makes available to another person  
 5 a computer, knowing that the computer's fixed drive or peripheral  
 6 device contains matter that depicts or describes sexual conduct by  
 7 a child less than eighteen (18) years of age; ~~or~~  
 8 (4) with the intent to satisfy or arouse the sexual desires of any  
 9 person:  
 10 (A) knowingly or intentionally:  
 11 (i) manages;  
 12 (ii) produces;  
 13 (iii) sponsors;  
 14 (iv) presents;  
 15 (v) exhibits;  
 16 (vi) photographs;  
 17 (vii) films;  
 18 (viii) videotapes; or  
 19 (ix) creates a digitized image of;  
 20 any performance or incident that includes the uncovered  
 21 genitals of a child less than eighteen (18) years of age or the  
 22 exhibition of the female breast with less than a fully opaque  
 23 covering of any part of the nipple by a child less than eighteen  
 24 (18) years of age;  
 25 (B) knowingly or intentionally:  
 26 (i) disseminates to another person;  
 27 (ii) exhibits to another person;  
 28 (iii) offers to disseminate or exhibit to another person; or  
 29 (iv) sends or brings into Indiana for dissemination or  
 30 exhibition;  
 31 matter that depicts the uncovered genitals of a child less than  
 32 eighteen (18) years of age or the exhibition of the female  
 33 breast with less than a fully opaque covering of any part of the  
 34 nipple by a child less than eighteen (18) years of age; or  
 35 (C) makes available to another person a computer, knowing  
 36 that the computer's fixed drive or peripheral device contains  
 37 matter that depicts the uncovered genitals of a child less than  
 38 eighteen (18) years of age or the exhibition of the female  
 39 breast with less than a fully opaque covering of any part of the  
 40 nipple by a child less than eighteen (18) years of age; **or**  
 41 **(5) knowingly or intentionally produces, disseminates, or**  
 42 **possesses with intent to disseminate an image that depicts or**



- 1 describes sexual conduct:
- 2 (A) by a child who the person knows is less than eighteen
- 3 (18) years of age;
- 4 (B) by a child who appears to be less than eighteen (18)
- 5 years of age and the representation of the image is obscene
- 6 (as described in IC 35-49-2-1); or
- 7 (C) that is a representation of a child who appears to be
- 8 less than eighteen (18) years of age and the representation
- 9 of the image is obscene (as described in IC 35-49-2-1);
- 10 commits child exploitation, a Level 5 felony. **It is not a required**
- 11 **element of an offense under subdivision (5)(C) that the child**
- 12 **depicted actually exists.**
- 13 (c) However, the offense of child exploitation described in
- 14 subsection (b) is a Level 4 felony if:
- 15 (1) the sexual conduct, matter, performance, or incident depicts
- 16 or describes a child less than eighteen (18) years of age who:
- 17 (A) engages in bestiality (as described in IC 35-46-3-14);
- 18 (B) is mentally disabled or deficient;
- 19 (C) participates in the sexual conduct, matter, performance, or
- 20 incident by use of force or the threat of force;
- 21 (D) physically or verbally resists participating in the sexual
- 22 conduct, matter, performance, or incident;
- 23 (E) receives a bodily injury while participating in the sexual
- 24 conduct, matter, performance, or incident; or
- 25 (F) is less than twelve (12) years of age; or
- 26 (2) the child less than eighteen (18) years of age:
- 27 (A) engages in bestiality (as described in IC 35-46-3-14);
- 28 (B) is mentally disabled or deficient;
- 29 (C) participates in the sexual conduct, matter, performance, or
- 30 incident by use of force or the threat of force;
- 31 (D) physically or verbally resists participating in the sexual
- 32 conduct, matter, performance, or incident;
- 33 (E) receives a bodily injury while participating in the sexual
- 34 conduct, matter, performance, or incident; or
- 35 (F) is less than twelve (12) years of age.
- 36 (d) A person who knowingly or intentionally **receives**, possesses, or
- 37 accesses with intent to view **an image**
- 38 (1) a picture;
- 39 (2) a drawing;
- 40 (3) a photograph;
- 41 (4) a negative image;
- 42 (5) undeveloped film;



- 1 (6) a motion picture;  
 2 (7) a videotape;  
 3 (8) a digitized image; or  
 4 (9) any pictorial representation;  
 5 that depicts or describes sexual conduct:  
 6 (1) by a child who the person knows is less than eighteen (18)  
 7 years of age; or  
 8 (2) by a child who appears to be less than eighteen (18) years of  
 9 age and that lacks serious literary, artistic, political, or scientific  
 10 value and the representation of the image is obscene (as  
 11 described in IC 35-49-2-1); or  
 12 (3) that is a representation of a child who appears to be less  
 13 than eighteen (18) years of age and the representation of the  
 14 image is obscene (as described in IC 35-49-2-1);  
 15 commits possession of child pornography, a Level 6 felony. **It is not a**  
 16 **required element of an offense under subdivision (3) that the child**  
 17 **depicted actually exists.**  
 18 (e) However, the offense of possession of child pornography  
 19 described in subsection (d) is a Level 5 felony if:  
 20 (1) the item described in subsection (d)(1) through (d)(9) **sexual**  
 21 **conduct, matter, performance, or incident** depicts or describes  
 22 ~~sexual conduct~~ by a child who the person knows is less than  
 23 eighteen (18) years of age, or who appears to be less than eighteen  
 24 (18) years of age, who:  
 25 (A) engages in bestiality (as described in IC 35-46-3-14);  
 26 (B) is mentally disabled or deficient;  
 27 (C) participates in the sexual conduct, matter, performance, or  
 28 incident by use of force or the threat of force;  
 29 (D) physically or verbally resists participating in the sexual  
 30 conduct, matter, performance, or incident;  
 31 (E) receives a bodily injury while participating in the sexual  
 32 conduct, matter, performance, or incident; or  
 33 (F) is less than twelve (12) years of age; or  
 34 (2) the child whose sexual conduct is depicted or described in an  
 35 item described in subsection (d)(1) through (d)(9): **less than**  
 36 **eighteen (18) years of age:**  
 37 (A) engages in bestiality (as described in IC 35-46-3-14);  
 38 (B) is mentally disabled or deficient;  
 39 (C) participates in the sexual conduct, matter, performance, or  
 40 incident by use of force or the threat of force;  
 41 (D) physically or verbally resists participating in the sexual  
 42 conduct, matter, performance, or incident;



- 1 (E) receives a bodily injury while participating in the sexual  
 2 conduct, matter, performance, or incident; or  
 3 (F) is less than twelve (12) years of age.
- 4 (f) Subsections (b), (c), (d), and (e) do not apply to a bona fide  
 5 school, museum, or public library that qualifies for certain property tax  
 6 exemptions under IC 6-1.1-10, or to an employee of such a school,  
 7 museum, or public library acting within the scope of the employee's  
 8 employment when the possession of the listed materials is for  
 9 legitimate scientific or educational purposes.
- 10 (g) It is a defense to a prosecution under this section that:  
 11 (1) the person is a school employee; and  
 12 (2) the acts constituting the elements of the offense were  
 13 performed solely within the scope of the person's employment as  
 14 a school employee.
- 15 (h) Except as provided in subsection (i), it is a defense to a  
 16 prosecution under subsection (b), (c), (d), or (e) if all of the following  
 17 apply:  
 18 (1) A cellular telephone, another wireless or cellular  
 19 communications device, or a social networking web site was used  
 20 to possess, produce, or disseminate the image.  
 21 (2) The defendant is not more than four (4) years older or younger  
 22 than the person who is depicted in the image or who received the  
 23 image.  
 24 (3) The relationship between the defendant and the person who  
 25 received the image or who is depicted in the image was a dating  
 26 relationship or an ongoing personal relationship. For purposes of  
 27 this subdivision, the term "ongoing personal relationship" does  
 28 not include a family relationship.  
 29 (4) The crime was committed by a person less than twenty-two  
 30 (22) years of age.  
 31 (5) The person receiving the image or who is depicted in the  
 32 image acquiesced in the defendant's conduct.
- 33 (i) The defense to a prosecution described in subsection (h) does not  
 34 apply if:  
 35 (1) the person who receives the image disseminates it to a person  
 36 other than the person:  
 37 (A) who sent the image; or  
 38 (B) who is depicted in the image;  
 39 (2) the image is of a person other than the person who sent the  
 40 image or received the image; or  
 41 (3) the dissemination of the image violates:  
 42 (A) a protective order to prevent domestic or family violence





- 1 or harassment issued under IC 34-26-5 (or, if the order  
 2 involved a family or household member, under IC 34-26-2 or  
 3 IC 34-4-5.1-5 before their repeal);
- 4 (B) an ex parte protective order issued under IC 34-26-5 (or,  
 5 if the order involved a family or household member, an  
 6 emergency order issued under IC 34-26-2 or IC 34-4-5.1  
 7 before their repeal);
- 8 (C) a workplace violence restraining order issued under  
 9 IC 34-26-6;
- 10 (D) a no contact order in a dispositional decree issued under  
 11 IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or  
 12 IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an  
 13 order issued under IC 31-32-13 (or IC 31-6-7-14 before its  
 14 repeal) that orders the person to refrain from direct or indirect  
 15 contact with a child in need of services or a delinquent child;
- 16 (E) a no contact order issued as a condition of pretrial release,  
 17 including release on bail or personal recognizance, or pretrial  
 18 diversion, and including a no contact order issued under  
 19 IC 35-33-8-3.6;
- 20 (F) a no contact order issued as a condition of probation;
- 21 (G) a protective order to prevent domestic or family violence  
 22 issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2  
 23 before their repeal);
- 24 (H) a protective order to prevent domestic or family violence  
 25 issued under IC 31-14-16-1 in a paternity action;
- 26 (I) a no contact order issued under IC 31-34-25 in a child in  
 27 need of services proceeding or under IC 31-37-25 in a juvenile  
 28 delinquency proceeding;
- 29 (J) an order issued in another state that is substantially similar  
 30 to an order described in clauses (A) through (I);
- 31 (K) an order that is substantially similar to an order described  
 32 in clauses (A) through (I) and is issued by an Indian:
- 33 (i) tribe;
- 34 (ii) band;
- 35 (iii) pueblo;
- 36 (iv) nation; or
- 37 (v) organized group or community, including an Alaska  
 38 Native village or regional or village corporation as defined  
 39 in or established under the Alaska Native Claims Settlement  
 40 Act (43 U.S.C. 1601 et seq.);
- 41 that is recognized as eligible for the special programs and  
 42 services provided by the United States to Indians because of



1                   their special status as Indians;  
2                   (L) an order issued under IC 35-33-8-3.2; or  
3                   (M) an order issued under IC 35-38-1-30.  
4           (j) It is a defense to a prosecution under this section that:  
5               (1) the person was less than eighteen (18) years of age at the time  
6               the alleged offense was committed; and  
7               (2) the circumstances described in IC 35-45-4-6(a)(2) through  
8               IC 35-45-4-6(a)(4) apply.  
9           (k) A person is entitled to present the defense described in  
10           subsection (j) in a pretrial hearing. If a person proves by a  
11           preponderance of the evidence in a pretrial hearing that the defense  
12           described in subsection (j) applies, the court shall dismiss the charges  
13           under this section with prejudice.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1191, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1191 as introduced.)

MCNAMARA

Committee Vote: Yeas 9, Nays 0

