

# HOUSE BILL No. 1533

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-6-15; IC 5-2; IC 24-4-21; IC 31-30-2-1; IC 31-37-22; IC 35-42-4-4.

**Synopsis:** Human trafficking. Provides that a child who was: (1) the victim of human trafficking; and (2) adjudicated a delinquent child for an act performed while a victim of human trafficking; is entitled to have the adjudication vacated if certain conditions are met. Makes it a Level 6 felony to access with intent to view a photograph or other pictorial representation that depicts or describes sexual conduct by a child who the person knows is less than 18 years of age or who appears to be less than 18 years of age. Requires manufacturers, sellers, and distributors of Internet enabled devices to install blocking software to prevent the device from accessing: (1) an Internet web site hosting indecent content; and (2) an Internet web site that promotes human trafficking or prostitution. Allows a consumer to deactivate blocking software by paying a \$20 fee and meeting certain other requirements, and provides that: (1) 60% of the deactivation fee shall be deposited in the victim of violent crimes compensation fund; (2) 20% of the deactivation fee shall be deposited in the human trafficking prevention and victim assistance fund; and (3) 20% of the deactivation fee shall be deposited in the state general fund. Requires the attorney general to monthly compile and transmit a list of Internet web sites to be blocked.

**Effective:** July 1, 2017.

---

---

## McNamara, Steuerwald

---

---

January 18, 2017, read first time and referred to Committee on Courts and Criminal Code.

---

---



First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## HOUSE BILL No. 1533

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 4-6-15 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2017]:

4 **Chapter 15. Indecent Web Sites**

5 **Sec. 1. The following definitions apply throughout this chapter:**

6 (1) "Blocking software" has the meaning set forth in  
7 IC 24-4-21-2.

8 (2) "Indecent" has the meaning set forth in IC 24-4-21-2.

9 (3) "Internet enabled device" has the meaning set forth in  
10 IC 24-4-21-2.

11 **Sec. 2. (a) The attorney general shall compile a list of Internet  
12 web sites that:**

13 (1) contain indecent content; or

14 (2) facilitate human trafficking.

15 **However, the attorney general shall exclude from the list any social  
16 media web site that maintains in good faith its own filter for  
17 indecent content.**



1 (b) The attorney general shall update the list described in  
 2 subsection (a) as frequently as practicable, but at least one (1) time  
 3 every thirty (30) days.

4 (c) At least one (1) time every thirty (30) days, the attorney  
 5 general shall transmit the list to persons who manufacture, sell, or  
 6 distribute Internet enabled devices for use in the blocking software  
 7 installed on the device, as described in IC 24-4-21.

8 (d) The list described in subsection (a) is confidential and may  
 9 not be placed on the Internet web site of the attorney general  
 10 unless access to the list is secured by a password or other security  
 11 measure.

12 **Sec. 3.** The attorney general shall receive and investigate a  
 13 complaint that a particular Internet web site should not be blocked  
 14 by blocking software. If the attorney general determines that an  
 15 Internet web site should not be blocked, the attorney general shall  
 16 inform persons who manufacture, sell, or distribute Internet  
 17 enabled devices to unblock the Internet web site. The attorney  
 18 general shall notify these persons at the time that the attorney  
 19 general transmits the list described in section 2 of this chapter.

20 **Sec. 4.** The attorney general shall develop and distribute a  
 21 written document that describes the dangers of deactivating  
 22 blocking software, as described in IC 24-4-21-4.

23 **Sec. 5.** The attorney general may adopt rules to implement this  
 24 chapter.

25 SECTION 2. IC 5-2-6-25, AS ADDED BY P.L.237-2015,  
 26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 27 JULY 1, 2017]: Sec. 25. (a) The human trafficking prevention and  
 28 victim assistance fund is established for the purpose of providing funds  
 29 for:

- 30 (1) human trafficking victim services; and
- 31 (2) human trafficking prevention programs provided by
- 32 community based organizations.

33 Money in the fund may be used only to carry out the purposes of the  
 34 fund.

35 (b) The fund shall be administered by the institute.

36 (c) The fund consists of:

- 37 (1) money deposited in the fund under IC 32-30-7-24.5 **and**
- 38 **IC 24-4-21-5;**
- 39 (2) grants; and
- 40 (3) donations.

41 (d) The expenses of administering the fund shall be paid from  
 42 money in the fund.



1 (e) The treasurer of state shall invest the money in the fund not  
 2 currently needed to meet the obligations of the fund in the same  
 3 manner as other public money may be invested. Interest that accrues  
 4 from these investments shall be deposited in the fund.

5 (f) Money in the fund at the end of a state fiscal year does not revert  
 6 to the state general fund.

7 (g) The state is subrogated to the rights of a victim to whom services  
 8 are provided, to the extent of the services. The subrogation rights are  
 9 against the perpetrator of the crime or a person otherwise liable for the  
 10 loss. If the victim brings a civil action against the perpetrator of the  
 11 crime or against the person otherwise liable for the loss, the victim  
 12 shall promptly notify the institute of the filing of the civil action.

13 (h) In addition to the subrogation rights under subsection (g), the  
 14 state is entitled to a lien in the amount of the services provided on a  
 15 recovery made by or on behalf of the victim. The state may:

16 (1) recover the amount of services in a separate action; or

17 (2) intervene in an action brought by or on behalf of the victim.

18 SECTION 3. IC 5-2-6.1-41, AS AMENDED BY P.L.105-2006,  
 19 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2017]: Sec. 41. The fund consists of amounts deposited under  
 21 IC 5-2-6.3-6(b)(3), IC 11-10-7-5, IC 11-10-8-6, **IC 24-4-21-5**,  
 22 IC 33-37-7-9, IC 34-51-3-6, and IC 35-50-5-3 and appropriations from  
 23 the general assembly.

24 SECTION 4. IC 24-4-21 IS ADDED TO THE INDIANA CODE AS  
 25 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 26 1, 2017]:

27 **Chapter 21. Indecent Internet Content**

28 **Sec. 1. This chapter does not apply to:**

29 (1) **an occasional sale of an Internet enabled device by a**  
 30 **person that is not regularly engaged in the trade or business**  
 31 **of selling Internet enabled devices; or**

32 (2) **the sale, manufacture, or distribution of an Internet**  
 33 **enabled device manufactured before January 1, 2018.**

34 **Sec. 2. The following definitions apply throughout this chapter:**

35 (1) **"Blocking software" means software that prevents an**  
 36 **Internet enabled device from accessing:**

37 (A) **indecent content; or**

38 (B) **an Internet web site that facilitates human trafficking;**  
 39 **on the Internet. However, blocking software may not prevent**  
 40 **access to a social media web site that maintains in good faith**  
 41 **its own filter for indecent content.**

42 (2) **"Indecent" means:**



- 1           (A) obscene (as described in IC 35-49-2-1); or  
 2           (B) harmful to minors (as described in IC 35-49-2-2).  
 3           (3) "Internet enabled device" means a device that allows a  
 4           user to access the Internet and view or download content from  
 5           the Internet.
- 6           Sec. 3. (a) Except as provided in section 4 of this chapter, a  
 7           person may not manufacture, sell, or distribute an Internet enabled  
 8           device unless the device contains active blocking software.
- 9           (b) A person that manufactures, sells, or distributes an Internet  
 10          enabled device with active blocking software shall make reasonable  
 11          and ongoing efforts to ensure that:
- 12          (1) the blocking software is updated and continues to function  
 13          effectively; and  
 14          (2) the source code and any other information that could  
 15          allow a person to bypass the blocking software is kept  
 16          confidential.
- 17          The person shall ensure that the blocking software blocks Internet  
 18          web sites identified by the attorney general as described in  
 19          IC 4-6-15.
- 20          Sec. 4. A person that manufactures, sells, or distributes an  
 21          Internet enabled device may not disable the blocking software  
 22          unless all the following apply:
- 23          (1) The consumer requests in writing that the blocking  
 24          software be disabled.  
 25          (2) The manufacturer, seller, or distributor verifies that the  
 26          consumer is at least eighteen (18) years of age.  
 27          (3) The consumer receives, and acknowledges in writing the  
 28          receipt of, a written document describing the potential danger  
 29          of deactivating the blocking software.  
 30          (4) The consumer pays a twenty dollar (\$20) deactivation fee.
- 31          Sec. 5. (a) The manufacturer, seller, or distributor shall remit  
 32          the deactivation fee collected under section 4 of this chapter to the  
 33          department of state revenue at the same time and in the same  
 34          manner that the state gross retail tax must be remitted to the  
 35          department of state revenue. The manufacturer, seller, or  
 36          distributor shall remit the fee with either a separate return or with  
 37          a return that is combined with the return filed for the payment of  
 38          the state gross retail tax, as determined by the department of state  
 39          revenue.
- 40          (b) The department of state revenue shall deposit:  
 41          (1) sixty percent (60%) of the proceeds of the deactivation fee  
 42          in the violent crime victims compensation fund established by



1           **IC 5-2-6.1-40;**

2           **(2) twenty percent (20%) of the proceeds of the deactivation**  
 3           **fee in the human trafficking prevention and victim assistance**  
 4           **fund established by IC 5-2-6-25; and**

5           **(3) twenty percent (20%) of the proceeds of the deactivation**  
 6           **fee in the state general fund.**

7           **Sec. 6. (a) A person that violates section 4 of this chapter**  
 8           **commits a Class B infraction.**

9           **(b) All infractions committed on one (1) day constitute only one**  
 10           **(1) infraction.**

11           **(c) Each day on which an infraction is committed constitutes a**  
 12           **separate violation.**

13           **Sec. 7. A violation of this chapter is a deceptive act.**

14           SECTION 5. IC 31-30-2-1, AS AMENDED BY P.L.48-2012,  
 15           SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16           JULY 1, 2017]: Sec. 1. (a) Except as provided in subsections (b), ~~and~~  
 17           (c), **and (h)**, the juvenile court's jurisdiction over a delinquent child or  
 18           a child in need of services and over the child's parent, guardian, or  
 19           custodian continues until:

20           (1) the child becomes twenty-one (21) years of age, unless the  
 21           court discharges the child and the child's parent, guardian, or  
 22           custodian at an earlier time; or

23           (2) guardianship of the child is awarded to the department of  
 24           correction.

25           (b) The juvenile court may, on its own motion, after guardianship of  
 26           a child is awarded to the department of correction, reinstate the court's  
 27           jurisdiction for the purpose of ordering the child's parent, guardian, or  
 28           custodian to participate in programs operated by or through the  
 29           department of correction.

30           (c) The juvenile court's jurisdiction over a parent or guardian of the  
 31           estate of a child under this section continues until the parent or  
 32           guardian of the estate has satisfied the financial obligation of the parent  
 33           or guardian of the estate that is imposed under IC 31-40 (or  
 34           IC 31-6-4-18 before its repeal).

35           (d) Except as provided in subsection (g), the jurisdiction of the  
 36           juvenile court over a proceeding described in IC 31-30-1-1(10) for a  
 37           guardianship of the person continues until the earlier of the date that:

38           (1) the juvenile court terminates the guardianship of the person;  
 39           or

40           (2) the child becomes:

41           (A) nineteen (19) years of age, if a child who is at least  
 42           eighteen (18) years of age is a full-time student in a secondary



- 1 school or the equivalent level of vocational or career and  
 2 technical education; or  
 3 (B) eighteen (18) years of age, if clause (A) does not apply.
- 4 If the guardianship of the person continues after the child becomes the  
 5 age specified in subdivision (2), the juvenile court shall transfer the  
 6 guardianship of the person proceedings to a court having probate  
 7 jurisdiction in the county in which the guardian of the person resides.  
 8 If the juvenile court has both juvenile and probate jurisdiction, the  
 9 juvenile court may transfer the guardianship of the person proceedings  
 10 to the probate docket of the court.
- 11 (e) The jurisdiction of the juvenile court to enter, modify, or enforce  
 12 a support order under IC 31-40-1-5 continues during the time that the  
 13 court retains jurisdiction over a guardianship of the person proceeding  
 14 described in IC 31-30-1-1(10).
- 15 (f) At any time, a juvenile court may, with the consent of a probate  
 16 court, transfer to the probate court guardianship of the person  
 17 proceedings and any related support order initiated in the juvenile  
 18 court.
- 19 (g) A juvenile court may retain jurisdiction over an older youth, as  
 20 defined in IC 31-28-5.8-4, who is a recipient or beneficiary of:
- 21 (1) kinship guardianship assistance under Title IV-E of the federal  
 22 Social Security Act (42 U.S.C. 673), as amended; or  
 23 (2) other financial assistance provided to or for the benefit of a  
 24 child who:
- 25 (A) was previously adjudicated as a child in need of services  
 26 or delinquent child;  
 27 (B) is a protected person under a legal guardianship if  
 28 IC 29-3-8-9(f) applies; and  
 29 (C) is approved for assistance under a rule or published policy  
 30 of the department.
- 31 **(h) Upon receipt of a motion under IC 31-37-22-11, the juvenile**  
 32 **court may reinstate its jurisdiction to conduct a hearing and issue**  
 33 **an appropriate order in accordance with IC 31-37-22-11.**
- 34 SECTION 6. IC 31-37-22-1, AS AMENDED BY P.L.146-2008,  
 35 SECTION 659, IS AMENDED TO READ AS FOLLOWS  
 36 [EFFECTIVE JULY 1, 2017]: Sec. 1. (a) While the juvenile court  
 37 retains jurisdiction under IC 31-30-2, the juvenile court may modify  
 38 any dispositional decree:
- 39 (1) upon the juvenile court's own motion;  
 40 (2) upon the motion of:
- 41 (A) the child;  
 42 (B) the child's parent, guardian, custodian, or guardian ad



1                    litem;  
 2                    (C) the probation officer; or  
 3                    (D) the prosecuting attorney; or  
 4                    (3) upon the motion of any person providing services to the child  
 5                    or to the child's parent, guardian, or custodian under a decree of  
 6                    the court.

7                    **(b) Upon receipt of a motion under section 11 of this chapter,**  
 8                    **the juvenile court may reinstate its jurisdiction to conduct a**  
 9                    **hearing and issue an appropriate order in accordance with section**  
 10                    **11 of this chapter.**

11                    SECTION 7. IC 31-37-22-11 IS ADDED TO THE INDIANA  
 12                    CODE AS A NEW SECTION TO READ AS FOLLOWS  
 13                    [EFFECTIVE JULY 1, 2017]: **Sec. 11. (a) As used in this section,**  
 14                    **"trafficked child" means a child who was the victim of human**  
 15                    **trafficking (IC 35-42-3.5) or a substantially similar offense**  
 16                    **committed in another jurisdiction, regardless of whether the**  
 17                    **person who committed the human trafficking offense was charged,**  
 18                    **tried, or convicted. The term includes a person who is now an**  
 19                    **adult.**

20                    **(b) Upon the written motion of a trafficked child, or any person**  
 21                    **acting on behalf of a trafficked child, the court that adjudicated the**  
 22                    **trafficked child a delinquent child shall vacate the adjudication**  
 23                    **issued with respect to the trafficked child, if the movant proves by**  
 24                    **a preponderance of the evidence that the child was a trafficked**  
 25                    **child at the time the child performed the delinquent act that**  
 26                    **resulted in the adjudication.**

27                    **(c) Before vacating an adjudication under subsection (b), the**  
 28                    **court shall:**

29                    **(1) forward a copy of the motion to the prosecuting attorney;**  
 30                    **and**

31                    **(2) conduct a hearing at which the prosecuting attorney and**  
 32                    **the movant are entitled to be heard.**

33                    SECTION 8. IC 35-42-4-4, AS AMENDED BY P.L.13-2016,  
 34                    SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35                    JULY 1, 2017]: **Sec. 4. (a) The following definitions apply throughout**  
 36                    **this section:**

37                    (1) "Disseminate" means to transfer possession for free or for a  
 38                    consideration.

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

40                    (3) "Performance" has the same meaning as in IC 35-49-1-7.

41                    (4) "Sexual conduct" means:

42                    (A) sexual intercourse;





- 1 (B) other sexual conduct (as defined in IC 35-31.5-2-221.5);  
 2 (C) exhibition of the:  
 3 (i) uncovered genitals; or  
 4 (ii) female breast with less than a fully opaque covering of  
 5 any part of the nipple;  
 6 intended to satisfy or arouse the sexual desires of any person;  
 7 (D) sadomasochistic abuse;  
 8 (E) sexual intercourse or other sexual conduct (as defined in  
 9 IC 35-31.5-2-221.5) with an animal; or  
 10 (F) any fondling or touching of a child by another person or of  
 11 another person by a child intended to arouse or satisfy the  
 12 sexual desires of either the child or the other person.
- 13 (b) A person who:  
 14 (1) knowingly or intentionally manages, produces, sponsors,  
 15 presents, exhibits, photographs, films, videotapes, or creates a  
 16 digitized image of any performance or incident that includes  
 17 sexual conduct by a child under eighteen (18) years of age;  
 18 (2) knowingly or intentionally disseminates, exhibits to another  
 19 person, offers to disseminate or exhibit to another person, or  
 20 sends or brings into Indiana for dissemination or exhibition matter  
 21 that depicts or describes sexual conduct by a child under eighteen  
 22 (18) years of age;  
 23 (3) knowingly or intentionally makes available to another person  
 24 a computer, knowing that the computer's fixed drive or peripheral  
 25 device contains matter that depicts or describes sexual conduct by  
 26 a child less than eighteen (18) years of age; or  
 27 (4) with the intent to satisfy or arouse the sexual desires of any  
 28 person:  
 29 (A) knowingly or intentionally:  
 30 (i) manages;  
 31 (ii) produces;  
 32 (iii) sponsors;  
 33 (iv) presents;  
 34 (v) exhibits;  
 35 (vi) photographs;  
 36 (vii) films;  
 37 (viii) videotapes; or  
 38 (ix) creates a digitized image of;  
 39 any performance or incident that includes the uncovered  
 40 genitals of a child less than eighteen (18) years of age or the  
 41 exhibition of the female breast with less than a fully opaque  
 42 covering of any part of the nipple by a child less than eighteen



- 1 (18) years of age;  
 2 (B) knowingly or intentionally:  
 3 (i) disseminates to another person;  
 4 (ii) exhibits to another person;  
 5 (iii) offers to disseminate or exhibit to another person; or  
 6 (iv) sends or brings into Indiana for dissemination or  
 7 exhibition;  
 8 matter that depicts the uncovered genitals of a child less than  
 9 eighteen (18) years of age or the exhibition of the female  
 10 breast with less than a fully opaque covering of any part of the  
 11 nipple by a child less than eighteen (18) years of age; or  
 12 (C) makes available to another person a computer, knowing  
 13 that the computer's fixed drive or peripheral device contains  
 14 matter that depicts the uncovered genitals of a child less than  
 15 eighteen (18) years of age or the exhibition of the female  
 16 breast with less than a fully opaque covering of any part of the  
 17 nipple by a child less than eighteen (18) years of age;  
 18 commits child exploitation, a Level 5 felony.  
 19 (c) However, the offense of child exploitation described in  
 20 subsection (b) is a Level 4 felony if:  
 21 (1) the sexual conduct, matter, performance, or incident depicts  
 22 or describes a child less than eighteen (18) years of age who:  
 23 (A) engages in bestiality (as described in IC 35-46-3-14);  
 24 (B) is mentally disabled or deficient;  
 25 (C) participates in the sexual conduct, matter, performance, or  
 26 incident by use of force or the threat of force;  
 27 (D) physically or verbally resists participating in the sexual  
 28 conduct, matter, performance, or incident;  
 29 (E) receives a bodily injury while participating in the sexual  
 30 conduct, matter, performance, or incident; or  
 31 (F) is less than twelve (12) years of age; or  
 32 (2) the child less than eighteen (18) years of age:  
 33 (A) engages in bestiality (as described in IC 35-46-3-14);  
 34 (B) is mentally disabled or deficient;  
 35 (C) participates in the sexual conduct, matter, performance, or  
 36 incident by use of force or the threat of force;  
 37 (D) physically or verbally resists participating in the sexual  
 38 conduct, matter, performance, or incident;  
 39 (E) receives a bodily injury while participating in the sexual  
 40 conduct, matter, performance, or incident; or  
 41 (F) is less than twelve (12) years of age.  
 42 (d) A person who knowingly or intentionally possesses **or accesses**



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



1 school, museum, or public library that qualifies for certain property tax  
 2 exemptions under IC 6-1.1-10, or to an employee of such a school,  
 3 museum, or public library acting within the scope of the employee's  
 4 employment when the possession of the listed materials is for  
 5 legitimate scientific or educational purposes.

6 (g) It is a defense to a prosecution under this section that:

7 (1) the person is a school employee; and

8 (2) the acts constituting the elements of the offense were  
 9 performed solely within the scope of the person's employment as  
 10 a school employee.

11 (h) Except as provided in subsection (i), it is a defense to a  
 12 prosecution under subsection (b), (c), (d), or (e) if all of the following  
 13 apply:

14 (1) A cellular telephone, another wireless or cellular  
 15 communications device, or a social networking web site was used  
 16 to possess, produce, or disseminate the image.

17 (2) The defendant is not more than four (4) years older or younger  
 18 than the person who is depicted in the image or who received the  
 19 image.

20 (3) The relationship between the defendant and the person who  
 21 received the image or who is depicted in the image was a dating  
 22 relationship or an ongoing personal relationship. For purposes of  
 23 this subdivision, the term "ongoing personal relationship" does  
 24 not include a family relationship.

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

27 (5) The person receiving the image or who is depicted in the  
 28 image acquiesced in the defendant's conduct.

29 (i) The defense to a prosecution described in subsection (h) does not  
 30 apply if:

31 (1) the person who receives the image disseminates it to a person  
 32 other than the person:

33 (A) who sent the image; or

34 (B) who is depicted in the image;

35 (2) the image is of a person other than the person who sent the  
 36 image or received the image; or

37 (3) the dissemination of the image violates:

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

42 (B) an ex parte protective order issued under IC 34-26-5 (or,



- 1 if the order involved a family or household member, an  
 2 emergency order issued under IC 34-26-2 or IC 34-4-5.1  
 3 before their repeal);  
 4 (C) a workplace violence restraining order issued under  
 5 IC 34-26-6;  
 6 (D) a no contact order in a dispositional decree issued under  
 7 IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or  
 8 IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an  
 9 order issued under IC 31-32-13 (or IC 31-6-7-14 before its  
 10 repeal) that orders the person to refrain from direct or indirect  
 11 contact with a child in need of services or a delinquent child;  
 12 (E) a no contact order issued as a condition of pretrial release,  
 13 including release on bail or personal recognizance, or pretrial  
 14 diversion, and including a no contact order issued under  
 15 IC 35-33-8-3.6;  
 16 (F) a no contact order issued as a condition of probation;  
 17 (G) a protective order to prevent domestic or family violence  
 18 issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2  
 19 before their repeal);  
 20 (H) a protective order to prevent domestic or family violence  
 21 issued under IC 31-14-16-1 in a paternity action;  
 22 (I) a no contact order issued under IC 31-34-25 in a child in  
 23 need of services proceeding or under IC 31-37-25 in a juvenile  
 24 delinquency proceeding;  
 25 (J) an order issued in another state that is substantially similar  
 26 to an order described in clauses (A) through (I);  
 27 (K) an order that is substantially similar to an order described  
 28 in clauses (A) through (I) and is issued by an Indian:  
 29 (i) tribe;  
 30 (ii) band;  
 31 (iii) pueblo;  
 32 (iv) nation; or  
 33 (v) organized group or community, including an Alaska  
 34 Native village or regional or village corporation as defined  
 35 in or established under the Alaska Native Claims Settlement  
 36 Act (43 U.S.C. 1601 et seq.);  
 37 that is recognized as eligible for the special programs and  
 38 services provided by the United States to Indians because of  
 39 their special status as Indians;  
 40 (L) an order issued under IC 35-33-8-3.2; or  
 41 (M) an order issued under IC 35-38-1-30.  
 42 (j) It is a defense to a prosecution under this section that:



1           (1) the person was less than eighteen (18) years of age at the time  
2           the alleged offense was committed; and  
3           (2) the circumstances described in IC 35-45-4-6(a)(2) through  
4           IC 35-45-4-6(a)(4) apply.  
5           (k) A person is entitled to present the defense described in  
6           subsection (j) in a pretrial hearing. If a person proves by a  
7           preponderance of the evidence in a pretrial hearing that the defense  
8           described in subsection (j) applies, the court shall dismiss the charges  
9           under this section with prejudice.

