



February 17, 2023

SENATE BILL No. 12

DIGEST OF SB 12 (Updated February 15, 2023 7:03 pm - DI 149)

Citations Affected: IC 20-26; IC 35-49.

Synopsis: Material harmful to minors. Establishes a procedure: (1) to allow a parent or guardian of a child enrolled in a school to submit a complaint that a book in the school library is inappropriate; and (2) for the school to respond to the complaint. Establishes an appeal procedure. Provides that a school library may not make a book available that contains obscene matter or matters harmful to children. Removes schools 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, 2023.

**Tomes, Doriot, Young M, Messmer,
Zay, Byrne, Sandlin, Niemeyer**

January 9, 2023, read first time and referred to Committee on Judiciary.
February 16, 2023, amended, reported favorably — Do Pass.

SB 12—LS 6006/DI 106



February 17, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE BILL No. 12

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 20-26-5.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]:

4 **Chapter 5.5. School Library**

5 **Sec. 1. As used in this chapter, "appeal committee" refers to a**
6 **committee comprised of:**

- 7 (1) the school principal;
8 (2) a parent or guardian; and
9 (3) a certified librarian employed by the school.

10 **Sec. 2. (a) The governing body of a school corporation or**
11 **charter school shall:**

- 12 (1) publish on the website of each school; and
13 (2) make available in hard copy for a parent or guardian of a
14 child enrolled in the school;

15 **a current list of each book contained within the school library.**

16 **(b) A list under subsection (a) must include the following**
17 **information about each book:**

SB 12—LS 6006/DI 106



- (1) Title.
- (2) First and last name of the author.
- (3) Edition.
- (4) Publisher.
- (5) Year of publication.

Sec. 3. (a) The governing body of a school corporation or charter school shall establish:

- (1) a procedure for each school to allow a parent or guardian of a student enrolled in the school to submit a complaint that a book in the possession of the school library is inappropriate to students; and
- (2) a response and appeal procedure for each school to respond to a complaint submitted by a parent or guardian.

(b) If a parent or guardian submits a complaint under subsection (a), a certified librarian employed by the school corporation or charter school shall review the book that is subject to the complaint and make one (1) of the following recommendations:

- (1) That the book be removed from the school library.
- (2) That the book be placed in an age-appropriate section within the school library.
- (3) That the complaint be denied.

If the recommendation is to deny the complaint, the certified librarian shall provide a written response to the parent or guardian.

(c) If the person who submitted a complaint under subsection (a) disagrees with the recommendation of the certified librarian, the person may request that the appeal committee review the recommendation.

(d) The appeal committee may:

- (1) uphold;
- (2) modify; or
- (3) overturn;

the recommendation of the certified librarian issued under subsection (b). The appeal committee shall issue its decision in writing.

Sec. 4. (a) If the person who submitted the complaint under section 3(a) of this chapter disagrees with the decision of the appeal committee, the person may submit a final appeal to the governing body of the school corporation or charter school.

(b) After reviewing the complaint, the recommendation of the certified librarian, and the decision of the appeal committee, the



governing body of the school corporation or charter school shall do one (1) of the following:

- (1) Order the removal of the book from the school library.
- (2) Order that the book be placed in an age-appropriate section within the school library.
- (3) Deny the complaint.

If the decision is to deny the complaint, the governing body shall provide a written response to the person who submitted the complaint. The written response shall be made public at the next regular meeting of the governing body.

Sec. 5. The governing body of a school corporation or charter school shall publish each policy established under this chapter on the website of each school.

Sec. 6. A school corporation or charter school may not make available a book or materials that contain:

- (1) obscene matter (as described in 35-49-2-1); or
- (2) matter harmful to minors (as described in IC 35-49-2-2); within the school library.

SECTION 2. IC 35-49-3-3, AS AMENDED BY P.L.158-2013, SECTION 648, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) Except as provided in subsection (b) **and section 4 of this chapter**, a person who knowingly or intentionally:

- (1) disseminates matter to minors that is harmful to minors;
- (2) displays matter that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;
- (3) sells, rents, or displays for sale or rent to any person matter that is harmful to minors within five hundred (500) feet of the nearest property line of a school or church;
- (4) engages in or conducts a performance before minors that is harmful to minors;
- (5) engages in or conducts a performance that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;
- (6) misrepresents the minor's age for the purpose of obtaining admission to an area from which minors are restricted because of the display of matter or a performance that is harmful to minors; or
- (7) misrepresents that the person is a parent or guardian of a minor for the purpose of obtaining admission of the minor to an



1 area where minors are being restricted because of display of
 2 matter or performance that is harmful to minors;
 3 commits a Level 6 felony.

4 (b) This section does not apply if a person disseminates, displays,
 5 or makes available the matter described in subsection (a) through the
 6 Internet, computer electronic transfer, or a computer network unless:

- 7 (1) the matter is obscene under IC 35-49-2-1;
- 8 (2) the matter is child pornography under IC 35-42-4-4; or
- 9 (3) the person distributes the matter to a child less than eighteen
 10 (18) years of age believing or intending that the recipient is a
 11 child less than eighteen (18) years of age.

12 SECTION 3. IC 35-49-3-4, AS AMENDED BY P.L.266-2019,
 13 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2023]: Sec. 4. (a) It is a defense to a prosecution under section
 15 3 of this chapter for the defendant to show:

- 16 (1) that the matter was disseminated or that the performance was
 17 performed for legitimate scientific ~~or educational~~ purposes;
- 18 (2) that the matter was disseminated or displayed to or that the
 19 performance was performed before the recipient by a bona fide
 20 ~~school; college, university,~~ museum, **college library,** ~~or~~ public
 21 library that qualifies for certain property tax exemptions under
 22 IC 6-1.1-10, **university library,** or by an employee of such a
 23 ~~school; college, university,~~ museum, **college library,** ~~or~~ public
 24 library, **or university library** acting within the scope of the
 25 employee's employment;
- 26 (3) that the defendant had reasonable cause to believe that the
 27 minor involved was eighteen (18) years of age or older and that
 28 the minor exhibited to the defendant a draft card, driver's license,
 29 birth certificate, or other official or apparently official document
 30 purporting to establish that the minor was eighteen (18) years of
 31 age or older; or
- 32 (4) that the defendant was a salesclerk, motion picture
 33 projectionist, usher, or ticket taker, acting within the scope of the
 34 defendant's employment and that the defendant had no financial
 35 interest in the place where the defendant was so employed.

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

- 38 (1) A cellular telephone, another wireless or cellular
 39 communications device, or a social networking web site was used
 40 to disseminate matter to a minor that is harmful to minors.
- 41 (2) The defendant is not more than four (4) years older or younger
 42 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



1 need of services proceeding or under IC 31-37-25 in a juvenile
2 delinquency proceeding;
3 (J) an order issued in another state that is substantially similar
4 to an order described in clauses (A) through (I);
5 (K) an order that is substantially similar to an order described
6 in clauses (A) through (I) and is issued by an Indian:
7 (i) tribe;
8 (ii) band;
9 (iii) pueblo;
10 (iv) nation; or
11 (v) organized group or community, including an Alaska
12 Native village or regional or village corporation as defined
13 in or established under the Alaska Native Claims Settlement
14 Act (43 U.S.C. 1601 et seq.);
15 that is recognized as eligible for the special programs and
16 services provided by the United States to Indians because of
17 their special status as Indians;
18 (L) an order issued under IC 35-33-8-3.2; or
19 (M) an order issued under IC 35-38-1-30.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 12, 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:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 20-26-5.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 5.5. School Library

Sec. 1. As used in this chapter, "appeal committee" refers to a committee comprised of:

- (1) the school principal;**
- (2) a parent or guardian; and**
- (3) a certified librarian employed by the school.**

Sec. 2. (a) The governing body of a school corporation or charter school shall:

- (1) publish on the website of each school; and**
- (2) make available in hard copy for a parent or guardian of a child enrolled in the school;**

a current list of each book contained within the school library.

(b) A list under subsection (a) must include the following information about each book:

- (1) Title.**
- (2) First and last name of the author.**
- (3) Edition.**
- (4) Publisher.**
- (5) Year of publication.**

Sec. 3. (a) The governing body of a school corporation or charter school shall establish:

- (1) a procedure for each school to allow a parent or guardian of a student enrolled in the school to submit a complaint that a book in the possession of the school library is inappropriate to students; and**
- (2) a response and appeal procedure for each school to respond to a complaint submitted by a parent or guardian.**

(b) If a parent or guardian submits a complaint under subsection (a), a certified librarian employed by the school corporation or charter school shall review the book that is subject to the complaint and make one (1) of the following recommendations:



- (1) That the book be removed from the school library.
- (2) That the book be placed in an age-appropriate section within the school library.
- (3) That the complaint be denied.

If the recommendation is to deny the complaint, the certified librarian shall provide a written response to the parent or guardian.

(c) If the person who submitted a complaint under subsection (a) disagrees with the recommendation of the certified librarian, the person may request that the appeal committee review the recommendation.

(d) The appeal committee may:

- (1) uphold;
- (2) modify; or
- (3) overturn;

the recommendation of the certified librarian issued under subsection (b). The appeal committee shall issue its decision in writing.

Sec. 4. (a) If the person who submitted the complaint under section 3(a) of this chapter disagrees with the decision of the appeal committee, the person may submit a final appeal to the governing body of the school corporation or charter school.

(b) After reviewing the complaint, the recommendation of the certified librarian, and the decision of the appeal committee, the governing body of the school corporation or charter school shall do one (1) of the following:

- (1) Order the removal of the book from the school library.
- (2) Order that the book be placed in an age-appropriate section within the school library.
- (3) Deny the complaint.

If the decision is to deny the complaint, the governing body shall provide a written response to the person who submitted the complaint. The written response shall be made public at the next regular meeting of the governing body.

Sec. 5. The governing body of a school corporation or charter school shall publish each policy established under this chapter on the website of each school.

Sec. 6. A school corporation or charter school may not make available a book or materials that contain:

- (1) obscene matter (as described in 35-49-2-1); or
- (2) matter harmful to minors (as described in IC 35-49-2-2); within the school library."



Page 2, delete lines 19 through 42, begin a new paragraph and insert:

"SECTION 3. IC 35-49-3-4, AS AMENDED BY P.L.266-2019, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: 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, **or 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."

Delete pages 3 through 4.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 12 as introduced.)

BROWN L, Chairperson

Committee Vote: Yeas 7, Nays 4.

