



Reprinted
April 12, 2001

ENGROSSED

SENATE BILL No. 206

DIGEST OF SB 206 (Updated April 11, 2001 4:34 PM - DI 106)

Citations Affected: IC 34-24; IC 35-42; IC 35-49; noncode.

Synopsis: Child pornography. Permits forfeiture of equipment used in preparing or disseminating child pornography or material harmful to minors. Prohibits making available to another person a computer containing material harmful to minors. Raises the penalty for child exploitation from a Class D felony to a Class C felony. Specifies that the laws concerning child exploitation, possession of child pornography, and obscenity and pornography apply to digitized images. Excludes from dissemination of matter harmful to minors material sent over the internet, unless the matter is obscene, is child pornography, or was deliberately sent to a child the sender knows to be less than 18 years of age.

Effective: July 1, 2001.

**Ford, Wyss, Young R Michael, Long,
Waterman**

(HOUSE SPONSORS — STEELE, RICHARDSON, FRY)

January 9, 2001, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

February 1, 2001, reported favorably — Do Pass.

February 5, 2001, read second time, ordered engrossed.

February 6, 2001, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 26, 2001, read first time and referred to Committee on Courts and Criminal Code.

April 9, 2001, amended, reported — Do Pass.

April 11, 2001, read second time, amended, ordered engrossed.

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ES 206—LS 7302/DI 106+



Reprinted
April 12, 2001

First Regular Session 112th General Assembly (2001)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED SENATE BILL No. 206

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 34-24-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) The following
3 may be seized:
4 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
5 intended for use by the person or persons in possession of them to
6 transport or in any manner to facilitate the transportation of the
7 following:
8 (A) A controlled substance for the purpose of committing,
9 attempting to commit, or conspiring to commit any of the
10 following:
11 (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
12 (ii) Dealing in a schedule I, II, or III controlled substance
13 (IC 35-48-4-2).
14 (iii) Dealing in a schedule IV controlled substance
15 (IC 35-48-4-3).
16 (iv) Dealing in a schedule V controlled substance
17 (IC 35-48-4-4).

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- 1 (v) Dealing in a counterfeit substance (IC 35-48-4-5).
 2 (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).
 3 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
 4 (viii) Dealing in marijuana, hash oil, or hashish
 5 (IC 35-48-4-10).
 6 (B) Any stolen (IC 35-43-4-2) or converted property
 7 (IC 35-43-4-3) if the retail or repurchase value of that property
 8 is one hundred dollars (\$100) or more.
 9 (C) Any hazardous waste in violation of IC 13-30-6-6.
 10 (2) All money, negotiable instruments, securities, weapons,
 11 communications devices, or any property commonly used as
 12 consideration for a violation of IC 35-48-4 (other than items
 13 subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1
 14 before its repeal):
 15 (A) furnished or intended to be furnished by any person in
 16 exchange for an act that is in violation of a criminal statute;
 17 (B) used to facilitate any violation of a criminal statute; or
 18 (C) traceable as proceeds of the violation of a criminal statute.
 19 (3) Any portion of real or personal property purchased with
 20 money that is traceable as a proceed of a violation of a criminal
 21 statute.
 22 (4) A vehicle that is used by a person to:
 23 (A) commit, attempt to commit, or conspire to commit;
 24 (B) facilitate the commission of; or
 25 (C) escape from the commission of;
 26 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 27 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 28 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).
 29 (5) Real property owned by a person who uses it to commit any of
 30 the following as a Class A felony, a Class B felony, or a Class C
 31 felony:
 32 (A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
 33 (B) Dealing in a schedule I, II, or III controlled substance
 34 (IC 35-48-4-2).
 35 (C) Dealing in a schedule IV controlled substance
 36 (IC 35-48-4-3).
 37 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
 38 (6) Equipment and recordings used by a person to commit fraud
 39 under IC 35-43-5-4(11).
 40 (7) Recordings sold, rented, transported, or possessed by a person
 41 in violation of IC 24-4-10.
 42 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as

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1 defined by IC 35-45-6-1) that is the object of a corrupt business
2 influence violation (IC 35-45-6-2).

3 (9) Unlawful telecommunications devices (as defined in
4 IC 35-45-13-6) and plans, instructions, or publications used to
5 commit an offense under IC 35-45-13.

6 **(10) Any equipment used or intended for use in the preparing,
7 photographing, recording, videotaping, digitizing, printing,
8 copying, or dissemination of matter in violation of
9 IC 35-42-4-4.**

10 (b) A vehicle used by any person as a common or contract carrier in
11 the transaction of business as a common or contract carrier is not
12 subject to seizure under this section, unless it can be proven by a
13 preponderance of the evidence that the owner of the vehicle knowingly
14 permitted the vehicle to be used to engage in conduct that subjects it to
15 seizure under subsection (a).

16 (c) Money, negotiable instruments, securities, weapons,
17 communications devices, or any property commonly used as
18 consideration for a violation of IC 35-48-4 found near or on a person
19 who is committing, attempting to commit, or conspiring to commit any
20 of the following offenses shall be admitted into evidence in an action
21 under this chapter as prima facie evidence that the money, negotiable
22 instrument, security, or other thing of value is property that has been
23 used or was to have been used to facilitate the violation of a criminal
24 statute or is the proceeds of the violation of a criminal statute:

25 (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).

26 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
27 substance).

28 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

29 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)
30 as a Class B felony.

31 (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a
32 Class A felony, Class B felony, or Class C felony.

33 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as
34 a Class C felony.

35 SECTION 2. IC 35-42-4-4 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) As used in this
37 section:

38 "Disseminate" means to transfer possession for free or for a
39 consideration.

40 "Matter" has the same meaning as in IC 35-49-1-3.

41 "Performance" has the same meaning as in IC 35-49-1-7.

42 "Sexual conduct" means sexual intercourse, deviate sexual conduct,

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1 exhibition of the uncovered genitals intended to satisfy or arouse the
 2 sexual desires of any person, sado-masochistic abuse, sexual
 3 intercourse or deviate sexual conduct with an animal, or any fondling
 4 or touching of a child by another person or of another person by a child
 5 intended to arouse or satisfy the sexual desires of either the child or the
 6 other person.

7 (b) A person who knowingly or intentionally:

8 (1) manages, produces, sponsors, presents, exhibits, photographs,
 9 films, ~~or~~ videotapes, **or creates a digitized image of** any
 10 performance or incident that includes sexual conduct by a child
 11 under eighteen (18) years of age; ~~or~~

12 (2) disseminates, exhibits to another person, offers to disseminate
 13 or exhibit to another person, or sends or brings into Indiana for
 14 dissemination or exhibition matter that depicts or describes sexual
 15 conduct by a child under eighteen (18) years of age; **or**

16 **(3) makes available to another person a computer, knowing**
 17 **that the computer's fixed drive or peripheral device contains**
 18 **matter that depicts or describes sexual conduct by a child less**
 19 **than eighteen (18) years of age;**

20 commits child exploitation, a ~~Class D~~ **Class C** felony. ~~However, the~~
 21 ~~offense is a Class E felony if it is committed by using a computer~~
 22 ~~network (as defined in IC 35-43-2-3(a)).~~

23 (c) A person who knowingly or intentionally possesses:

24 (1) a picture;

25 (2) a drawing;

26 (3) a photograph;

27 (4) a negative image;

28 (5) undeveloped film;

29 (6) a motion picture;

30 (7) a videotape; ~~or~~

31 **(8) a digitized image; or**

32 **(9) any pictorial representation;**

33 that depicts or describes sexual conduct by a child who is less than
 34 sixteen (16) years of age, or appears to be less than sixteen (16) years
 35 of age, and that lacks serious literary, artistic, political, or scientific
 36 value commits possession of child pornography, a Class A
 37 misdemeanor.

38 (d) Subsections (b) and (c) do not apply to a bona fide school,
 39 museum, or public library that qualifies for certain property tax
 40 exemptions under IC 6-1.1-10, or to an employee of such a school,
 41 museum, or public library acting within the scope of the employee's
 42 employment when the possession of the listed materials are for

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1 legitimate scientific or educational purposes.

2 SECTION 3. IC 35-49-1-3 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. "Matter" means:

- 4 (1) any book, magazine, newspaper, or other printed or written
5 material;
6 (2) any picture, drawing, photograph, motion picture, **digitized**
7 **image**, or other pictorial representation;
8 (3) any statue or other figure;
9 (4) any recording, transcription, or mechanical, chemical, or
10 electrical reproduction; or
11 (5) any other articles, equipment, machines, or materials.

12 SECTION 4. IC 35-49-3-3 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. **(a) Except as**
14 **provided in subsection (b)**, a person who knowingly or intentionally:

- 15 (1) disseminates matter to minors that is harmful to minors;
16 (2) displays matter that is harmful to minors in an area to which
17 minors have visual, auditory, or physical access, unless each
18 minor is accompanied by his parent or guardian;
19 (3) sells or displays for sale to any person matter that is harmful
20 to minors within five hundred (500) feet of the nearest property
21 line of a school or church;
22 (4) engages in or conducts a performance before minors that is
23 harmful to minors;
24 (5) engages in or conducts a performance that is harmful to
25 minors in an area to which minors have visual, auditory, or
26 physical access, unless each minor is accompanied by his parent
27 or guardian;
28 (6) misrepresents his age for the purpose of obtaining admission
29 to an area from which minors are restricted because of the display
30 of matter or a performance that is harmful to minors; or
31 (7) misrepresents that he is a parent or guardian of a minor for the
32 purpose of obtaining admission of the minor to an area where
33 minors are being restricted because of display of matter or
34 performance that is harmful to minors;

35 commits a Class D felony.

36 **(b) This section does not apply if a person disseminates,**
37 **displays, or otherwise makes available the matter described in**
38 **subsection (a) through the Internet, computer electronic transfer,**
39 **or a computer network, unless:**

- 40 (1) **the matter is obscene under IC 35-49-2-1;**
41 (2) **the matter is child pornography under IC 35-42-4-4; or**
42 (3) **the person distributes the matter to a child less than**

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1 **eighteen (18) years of age knowing that the recipient is a child**
2 **less than eighteen (18) years of age.**
3 **SECTION 5. [EFFECTIVE JULY 1, 2001] IC 35-42-4-4,**
4 **IC 35-49-1-3, and IC 35-49-3-3, all as amended by this act, apply**
5 **only to crimes committed after June 30, 2001.**

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SENATE MOTION

Mr. President: I move that Senators Wyss and Young R Michael be added as coauthors of Senate Bill 206.

FORD

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COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 206, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 206 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Mr. President: I move that Senator Long be added as coauthor of Engrossed Senate Bill 206.

FORD

SENATE MOTION

Mr. President: I move that Senator Waterman be added as coauthor of Engrossed Senate Bill 206.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 206, has had the same under consideration and begs leave to report the same back to the House 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 34-24-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

- (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
- (ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (v) Dealing in a counterfeit substance (IC 35-48-4-5).
- (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).
- (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
- (viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

- (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;
- (B) used to facilitate any violation of a criminal statute; or
- (C) traceable as proceeds of the violation of a criminal statute.

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(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).

(B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in the preparing, photographing, recording, videotaping, digitizing, printing, copying, or dissemination of matter in violation of IC 35-42-4-4.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person

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who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

- (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).
- (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- (4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.
- (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a Class A felony, Class B felony, or Class C felony.
- (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 206 as printed February 2, 2001.)

DVORAK, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that Senate Bill 206 be amended to read as follows:

Page 5, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 4. IC 35-49-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. **(a) Except as provided in subsection (b),** 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 his parent or guardian;
- (3) sells or displays for sale 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 his parent or guardian;
- (6) misrepresents his 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 he is a parent or guardian of a minor for the purpose of obtaining admission of the minor to an area where minors are being restricted because of display of matter or performance that is harmful to minors;

commits a Class D felony.

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

- (1) the matter is obscene under IC 35-49-2-1;**
- (2) the matter is child pornography under IC 35-42-4-4; or**
- (3) the person distributes the matter to a child less than eighteen (18) years of age knowing that the recipient is a child less than eighteen (18) years of age."**

Page 5, line 8, delete "and" and insert ",".

Page 5, line 9, after "IC 35-49-1-3," insert "and IC 35-49-3-3,".

Page 5, line 9, delete "both" and insert "all".

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Renumber all SECTIONS consecutively.

(Reference is to ESB 206 as printed April 9, 2001.)

DVORAK

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 206 be amended to read as follows:

Page 4, line 11, strike "or".

Page 4, line 15, after "age;" insert "**or**

(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;".

Page 4, line 32, reset in roman "Class A".

Page 4, line 33, reset in roman "misdemeanor.".

Page 4, line 33, delete "Class D felony.".

(Reference is to ESB 206 as printed April 9, 2001.)

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