



February 22, 2002

**ENGROSSED
SENATE BILL No. 207**

DIGEST OF SB 207 (Updated February 21, 2002 11:21 AM - DI 71)

Citations Affected: IC 5-2; IC 20-5; IC 20-6.1; IC 20-8.1; IC 34-13; IC 34-30; IC 35-42.

Synopsis: School employees and children. Allows supervised group living facilities and community mental retardation and other developmental disabilities centers that have been in existence for at least 10 years to obtain limited criminal history records without charge. Enables the professional standards board to suspend a teacher's license for certain noncriminal behaviors. Requires certain officials to report when a teacher is convicted of certain crimes. Provides uniformity in the grounds for which licenses may be revoked and the contracts of permanent and semipermanent teachers may be canceled concerning sexual misconduct with a minor. Requires governmental entities to pay civil judgments on behalf of employees who are sued because of actions taken within the scope of their employment.

Effective: July 1, 2002.

**Clark, Lubbers, Waterman, Howard,
Alting, Hershman**

(HOUSE SPONSORS — STURTZ, ROBERTSON, GOODIN, TORR)

January 7, 2002, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

January 24, 2002, amended, reported favorably — Do Pass.

February 1, 2002, read second time, amended, ordered engrossed.

February 4, 2002, engrossed.

February 5, 2002, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 11, 2002, read first time and referred to Committee on Education.

February 21, 2002, amended, reported — Do Pass.

ES 207—LS 6724/DI 22+



C
o
p
y

February 22, 2002

Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

ENGROSSED SENATE BILL No. 207

A BILL FOR AN ACT to amend the Indiana Code concerning education and criminal history information.

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

- 1 SECTION 1. IC 5-2-5-5, AS AMENDED BY P.L.272-2001,
2 SECTION 2, AND AS AMENDED BY P.L.228-2001, SECTION 2, IS
3 AMENDED AND CORRECTED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) Except as provided in
5 subsection (b), on request, law enforcement agencies shall release or
6 allow inspection of a limited criminal history to noncriminal justice
7 organizations or individuals only if the subject of the request:
8 (1) has applied for employment with a noncriminal justice
9 organization or individual;
10 (2) has applied for a license and criminal history data as required
11 by law to be provided in connection with the license;
12 (3) is a candidate for public office or a public official;
13 (4) is in the process of being apprehended by a law enforcement
14 agency;
15 (5) is placed under arrest for the alleged commission of a crime;
16 (6) has charged that his rights have been abused repeatedly by
17 criminal justice agencies;

ES 207—LS 6724/DI 22+



C
o
p
y

1 (7) is the subject of judicial decision or determination with
 2 respect to the setting of bond, plea bargaining, sentencing, or
 3 probation;

4 (8) has volunteered services that involve contact with, care of, or
 5 supervision over a child who is being placed, matched, or
 6 monitored by a social services agency or a nonprofit corporation;

7 **(9) is employed by an entity that seeks to enter into a contract
 8 with a public school (as defined in IC 20-10.1-1-2) or
 9 nonpublic school (as defined in IC 20-10.1-1-3) if the subject
 10 of the request is expected to have direct, ongoing contact with
 11 school children within the scope of the individual's
 12 employment;**

13 **(10)** has volunteered services at a public school (as defined in
 14 IC 20-10.1-1-2) or non-public school (as defined in
 15 IC 20-10.1-1-3) that involve contact with, care of, or supervision
 16 over a student enrolled in the school;

17 ~~(10)~~ **(11)** is being investigated for welfare fraud by an investigator
 18 of the division of family and children or a county office of family
 19 and children;

20 ~~(11)~~ **(12)** is being sought by the parent locator service of the child
 21 support bureau of the division of family and children; or

22 ~~(12)~~ **(13)** has been convicted of any of the following:

23 (A) Rape (IC 35-42-4-1), if the victim is less than eighteen
 24 (18) years of age.

25 (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is
 26 less than eighteen (18) years of age.

27 (C) Child molesting (IC 35-42-4-3).

28 (D) Child exploitation (IC 35-42-4-4(b)).

29 (E) Possession of child pornography (IC 35-42-4-4(c)).

30 (F) Vicarious sexual gratification (IC 35-42-4-5).

31 (G) Child solicitation (IC 35-42-4-6).

32 (H) Child seduction (IC 35-42-4-7).

33 (I) *Sexual misconduct with a minor as a Class A or B felony*
 34 *(IC 35-42-4-9).*

35 (J) Incest (IC 35-46-1-3), if the victim is less than eighteen
 36 (18) years of age.

37 However, limited criminal history information obtained from the
 38 National Crime Information Center may not be released under this
 39 section except to the extent permitted by the Attorney General of the
 40 United States.

41 (b) A law enforcement agency shall allow inspection of a limited
 42 criminal history by and release a limited criminal history to the

C
O
P
Y



1 following noncriminal justice organizations:

2 (1) Federally chartered or insured banking institutions.

3 (2) Officials of state and local government for *any of the purpose*
4 *of following purposes:*

5 (A) Employment ~~and~~ with a state or local governmental
6 entity.

7 (B) Licensing.

8 (3) Segments of the securities industry identified under 15 U.S.C.
9 78q(f)(2).

10 (c) Any person who uses limited criminal history for any purpose
11 not specified under this section commits a Class A misdemeanor.

12 SECTION 2. IC 5-2-5-7 IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) Except as provided in
14 subsection (c), on request for release or inspection of a limited criminal
15 history, law enforcement agencies may and the department shall do the
16 following:

17 (1) Require a form, provided by them, to be completed. This ~~form~~
18 **information** shall be maintained for a period of two (2) years and
19 shall be available to the record subject upon request.

20 (2) Collect a three dollar (\$3) fee to defray the cost of processing
21 a request for inspection.

22 (3) Collect a seven dollar (\$7) fee to defray the cost of processing
23 a request for release. However, law enforcement agencies and the
24 department may not charge the fee for requests received from the
25 parent locator service of the child support bureau of the division
26 of family and children.

27 (b) Law enforcement agencies and the department shall edit
28 information so that the only information released or inspected is
29 information which:

30 (1) has been requested; and

31 (2) is limited criminal history information.

32 (c) The fee required under subsection (a) shall be waived if the
33 request is from the institute for conviction information that will be used
34 to establish or update the sex and violent offender registry under
35 IC 5-2-12.

36 SECTION 3. IC 5-2-5-13, AS AMENDED BY P.L.272-2001,
37 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2002]: Sec. 13. (a) The department may not charge a fee for
39 responding to a request for the release of a limited criminal history
40 record if the request is made by a nonprofit organization: ~~that:~~

41 (1) ~~that~~ has been in existence for at least ten (10) years; and

42 (2) ~~either:~~ **that:**

C
o
p
y



- 1 (A) has a primary purpose of providing an individual
- 2 relationship for a child with an adult volunteer if the request
- 3 is made as part of a background investigation of a prospective
- 4 adult volunteer for the organization; ~~or~~
- 5 (B) is a home health agency licensed under IC 16-27-1;
- 6 **(C) is a community mental retardation and other**
- 7 **developmental disabilities center (as defined in**
- 8 **IC 12-7-2-39); or**
- 9 **(D) is a supervised group living facility licensed under**
- 10 **IC 12-28-5.**

11 (b) The department may not charge a fee for responding to a request
 12 for the release of a limited criminal history record made by the division
 13 of family and children or a county office of family and children if the
 14 request is made as part of a background investigation of an applicant
 15 for a license under IC 12-17.2 or IC 12-17.4.

16 (c) The department may not charge a fee for responding to a request
 17 for the release of a limited criminal history if the request is made by a
 18 school corporation, special education cooperative, or non-public school
 19 (as defined in IC 20-10.1-1-3) as part of a background investigation of
 20 an employee or adult volunteer for the school corporation, special
 21 education cooperative, or non-public school.

22 SECTION 4. IC 20-5-2-7, AS AMENDED BY P.L.272-2001,
 23 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2002]: Sec. 7. (a) A school corporation, including a school
 25 township, shall adopt a policy concerning criminal history information
 26 for individuals who:

- 27 (1) apply for:
 - 28 (A) employment with the school corporation; or
 - 29 (B) employment with an entity with which the school
 - 30 corporation contracts for services;
- 31 (2) seek to enter into a contract to provide services to the school
- 32 corporation; or
- 33 (3) are employed by an entity that seeks to enter into a contract to
- 34 provide services to the school corporation;

35 if the individuals are likely to have direct, ongoing contact with
 36 children within the scope of the individuals' employment.

37 (b) A school corporation, including a school township, shall
 38 administer a policy adopted under this section uniformly for all
 39 individuals to whom the policy applies. A policy adopted under this
 40 section may require any of the following:

- 41 (1) The school corporation, including a school township, may
- 42 request limited criminal history information concerning each

C
o
p
y



1 applicant for noncertificated employment or certificated
 2 employment from a local or state law enforcement agency before
 3 or not later than three (3) months after the applicant's employment
 4 by the school corporation.

5 (2) Each individual hired for noncertificated employment or
 6 certificated employment may be required to provide a written
 7 consent for the school corporation to request under IC 5-2-5
 8 limited criminal history information or a national criminal history
 9 background check concerning the individual before or not later
 10 than three (3) months after the individual's employment by the
 11 school corporation. The school corporation may require the
 12 individual to provide a set of fingerprints and pay any fees
 13 required for a national criminal history background check.

14 (3) Each individual hired for noncertificated employment may be
 15 required at the time the individual is hired to submit a certified
 16 copy of the individual's limited criminal history (as defined in
 17 IC 5-2-5-1(1)) to the school corporation.

18 (4) Each individual hired for noncertificated employment may be
 19 required at the time the individual is hired to:

20 (A) submit a request to the Indiana central repository for
 21 limited criminal history information under IC 5-2-5;

22 (B) obtain a copy of the individual's limited criminal history;
 23 and

24 (C) submit to the school corporation the individual's limited
 25 criminal history and a document verifying a disposition (as
 26 defined in IC 5-2-5-1(6)) that does not appear on the limited
 27 criminal history.

28 (5) Each applicant for noncertificated employment or certificated
 29 employment may be required at the time the individual applies to
 30 answer questions concerning the individual's limited criminal
 31 history. The failure to answer honestly questions asked under this
 32 subdivision is grounds for termination of the employee's
 33 employment.

34 (6) Each individual that:

35 (A) seeks to enter into a contract to provide services to a
 36 school corporation; or

37 (B) is employed by an entity that seeks to enter into a contract
 38 with a school corporation;

39 may be required at the time the contract is formed to comply with
 40 the procedures described in ~~subdivision (4)(A) and (4)(B)~~. ~~The~~
 41 ~~school corporation either may require that the individual or the~~
 42 ~~contractor comply with the procedures described in subdivision~~

C
o
p
y



1 ~~(4)(C)~~ or (5): subdivisions (2), (4), and (5). An individual who
 2 is employed by an entity that seeks to enter into a contract
 3 with a school corporation may be required to provide the
 4 consent described in subdivision (2) or the information
 5 described in subdivisions (4) and (5) to either the individual's
 6 employer or the school corporation. Failure to comply with
 7 subdivisions (2), (4), and (5), as required by the school
 8 corporation, is grounds for termination of the contract.

9 (c) If an individual is required to obtain a limited criminal history
 10 under this section, the individual is responsible for all costs associated
 11 with obtaining the limited criminal history.

12 (d) Information obtained under this section must be used in
 13 accordance with IC 5-2-5-6 or IC 5-2-5-15.

14 SECTION 5. IC 20-6.1-3-7, AS AMENDED BY P.L.37-2000,
 15 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2002]: Sec. 7. (a) On the written recommendation of the state
 17 superintendent, the board may revoke or suspend a license for:

- 18 (1) immorality;
- 19 (2) misconduct in office;
- 20 (3) incompetency; or
- 21 (4) willful neglect of duty.

22 However, for each revocation or suspension, the board shall comply
 23 with IC 4-21.5-3.

24 (b) This subsection applies when a prosecuting attorney knows
 25 that a licensed employee of a public school (as defined in
 26 IC 20-10.1-1-2) or an accredited nonpublic school has been
 27 convicted of an offense listed in subsection (d). The prosecuting
 28 attorney shall immediately give written notice of the conviction to
 29 the following:

- 30 (1) The state superintendent.
- 31 (2) Except as provided in subdivision (3), the superintendent
 32 of the school corporation that employs the licensed employee
 33 or the equivalent authority for an accredited nonpublic
 34 school.
- 35 (3) The presiding officer of the governing body of the school
 36 corporation that employs the licensed employee, if the
 37 convicted licensed employee is the superintendent of the
 38 school corporation.

39 (c) The superintendent of a school corporation, presiding officer of
 40 the governing body, or equivalent authority for an accredited
 41 nonpublic school shall immediately notify the state superintendent
 42 when the person knows that a current or former licensed employee of

C
o
p
y



1 the **public school corporation** or accredited nonpublic school has been
 2 convicted of an offense listed in subsection ~~(c)~~: **(d)**.

3 ~~(c)~~ **(d)** The board, after holding a hearing on the matter, shall
 4 permanently revoke the license of a person who is known by the board
 5 to have been convicted of any of the following offenses:

6 **(1) Kidnapping (IC 35-42-3-2), if the victim is less than**
 7 **eighteen (18) years of age.**

8 **(2) Criminal confinement (IC 35-42-3-3), if the victim is less**
 9 **than eighteen (18) years of age.**

10 **(3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)**
 11 **years of age.**

12 ~~(2)~~ **(4) Criminal deviate conduct (IC 35-42-4-2), if the victim is**
 13 **less than eighteen (18) years of age.**

14 ~~(3)~~ **(5) Child molesting (IC 35-42-4-3).**

15 ~~(4)~~ **(6) Child exploitation (IC 35-42-4-4(b)).**

16 ~~(5)~~ **(7) Vicarious sexual gratification (IC 35-42-4-5).**

17 ~~(6)~~ **(8) Child solicitation (IC 35-42-4-6).**

18 ~~(7)~~ **(9) Child seduction (IC 35-42-4-7).**

19 ~~(8)~~ **(10) Sexual misconduct with a minor (IC 35-42-4-9).**

20 ~~(9)~~ **(11) Incest (IC 35-46-1-3), if the victim is less than eighteen**
 21 **(18) years of age.**

22 **(12) Dealing in a controlled substance (IC 35-48-4-1 through**
 23 **IC 35-48-4-5).**

24 ~~(d)~~ **(e)** A license may be suspended by the state superintendent as
 25 specified in IC 20-6.1-4-13.

26 SECTION 6. IC 20-6.1-4-10, AS AMENDED BY P.L.228-2001,
 27 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2002]: Sec. 10. (a) An indefinite contract with a permanent
 29 teacher may be canceled in the manner specified in section 11 of this
 30 chapter **for only for one (1) or more of** the following grounds:

31 (1) Immorality.

32 (2) Insubordination, which means a willful refusal to obey the
 33 state school laws or reasonable rules prescribed for the
 34 government of the school corporation.

35 (3) Neglect of duty.

36 (4) Incompetency.

37 (5) Justifiable decrease in the number of teaching positions.

38 (6) A conviction for **one (1) of the following:**

39 **(A) Kidnapping (IC 35-42-3-2), if the victim is less than**
 40 **eighteen (18) years of age.**

41 **(B) Criminal confinement (IC 35-42-3-3), if the victim is**
 42 **less than eighteen (18) years of age.**



C
o
p
y

- 1 **(C)** Rape (IC 35-42-4-1), if the victim is less than eighteen
 2 (18) years of age.
 3 ~~(B)~~ **(D)** Criminal deviate conduct (IC 35-42-4-2), if the victim
 4 is less than eighteen (18) years of age.
 5 ~~(C)~~ **(E)** Child molesting (IC 35-42-4-3).
 6 ~~(D)~~ **(F)** Child exploitation (IC 35-42-4-4(b)).
 7 ~~(E)~~ **(G)** Vicarious sexual gratification (IC 35-42-4-5).
 8 ~~(F)~~ **(H)** Child solicitation (IC 35-42-4-6).
 9 ~~(G)~~ **(I)** Child seduction (IC 35-42-4-7).
 10 ~~(H)~~ **(J)** Sexual misconduct with a minor as a ~~Class A or B~~
 11 ~~felony~~ (IC 35-42-4-9). ~~or~~
 12 ~~(I)~~ **(K)** Incest (IC 35-46-1-3), if the victim is less than eighteen
 13 (18) years of age. ~~or~~
 14 **(L) Dealing in a controlled substance (IC 35-48-4-1**
 15 **through IC 35-48-4-5).**
 16 (7) Other good and just cause.
 17 When the cause of cancellation is ground (1), (2), or (6), the
 18 cancellation is effective immediately. When the cause of cancellation
 19 is ground (3), (4), (5), or (7), the cancellation is effective at the end of
 20 the school term following the cancellation.
 21 (b) An indefinite contract may not be canceled for political or
 22 personal reasons.
 23 SECTION 7. IC 20-6.1-4-10.5 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10.5. (a) An indefinite
 25 contract with a semipermanent teacher may be canceled in the manner
 26 specified in section 11 of this chapter ~~only~~ for **one (1) or more of the**
 27 following grounds:
 28 (1) Immorality.
 29 (2) Insubordination, which means a willful refusal to obey the
 30 state school laws or reasonable rules prescribed for the
 31 government of the school corporation.
 32 (3) Neglect of duty.
 33 (4) Substantial inability to perform teaching duties.
 34 (5) Justifiable decrease in the number of teaching positions.
 35 (6) Good and just cause.
 36 (7) The cancellation is in the best interest of the school
 37 corporation.
 38 (8) A conviction for **one (1) of the following:**
 39 **(A) Kidnapping (IC 35-42-3-2), if the victim is less than**
 40 **eighteen (18) years of age.**
 41 **(B) Criminal confinement (IC 35-42-3-3), if the victim is**
 42 **less than eighteen (18) years of age.**



C
O
P
Y

- 1 (C) Rape (IC 35-42-4-1), if the victim is less than eighteen
 2 (18) years of age.
 3 ~~(B)~~ (D) Criminal deviate conduct (IC 35-42-4-2), if the victim
 4 is less than eighteen (18) years of age.
 5 ~~(C)~~ (E) Child molesting (IC 35-42-4-3).
 6 ~~(D)~~ (F) Child exploitation (IC 35-42-4-4(b)).
 7 ~~(E)~~ (G) Vicarious sexual gratification (IC 35-42-4-5).
 8 ~~(F)~~ (H) Child solicitation (IC 35-42-4-6).
 9 ~~(G)~~ (I) Child seduction (IC 35-42-4-7). ~~or~~
 10 ~~(H)~~ (J) **Sexual misconduct with a minor (IC 35-42-4-9).**
 11 (K) Incest (IC 35-46-1-3), if the victim is less than eighteen
 12 (18) years of age.
 13 (L) **Dealing in a controlled substance (IC 35-48-4-1**
 14 **through IC 35-48-4-5).**

15 (b) An indefinite contract with a semipermanent teacher may not be
 16 canceled for political or personal reasons.

17 (c) Before the cancellation of a semipermanent teacher's indefinite
 18 contract, the principal of the school at which the teacher teaches shall
 19 provide the teacher with a written evaluation of the teacher's
 20 performance before January 1 of each year. Upon the request of a
 21 semipermanent teacher, delivered in writing to the principal within
 22 thirty (30) days after the teacher receives the evaluation required by
 23 this section, the principal shall provide the teacher with an additional
 24 written evaluation.

25 SECTION 8. IC 20-8.1-5.1-7.8 IS ADDED TO THE INDIANA
 26 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2002]: **Sec. 7.8. Before a person may initiate**
 28 **action to suspend or expel a student under this chapter, the person**
 29 **must consult the following:**

30 (1) **A teacher, if any, who is involved in the matter giving rise**
 31 **to possible disciplinary action against the student.**

32 (2) **A classroom teacher of the student.**

33 SECTION 9. IC 20-8.1-5.1-18 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 18. (a) This section
 35 applies to a person who:

36 (1) is a member of the administrative staff, a teacher, or other
 37 school staff member; and

38 (2) has students under the person's charge.

39 (b) A person may take disciplinary action in addition to suspension
 40 and expulsion that is necessary to ensure a safe, orderly, and effective
 41 educational environment. **However, if the person who wishes to take**
 42 **disciplinary action under this section is not a teacher of the**



C
o
p
y

1 **student, before the person may take disciplinary action under this**
 2 **section, the person must consult the following:**

3 **(1) A teacher, if any, who is involved in the matter giving rise**
 4 **to possible disciplinary action against the student.**

5 **(2) A classroom teacher of the student.**

6 **(c) Disciplinary action under this section may include the following:**

7 (1) Counseling with a student or group of students.

8 (2) Conferences with a parent or group of parents.

9 (3) Assigning additional work.

10 (4) Rearranging class schedules.

11 (5) Requiring a student to remain in school after regular school
 12 hours to do additional school work or for counseling.

13 (6) Restricting extracurricular activities.

14 (7) Removal of a student by a teacher from that teacher's class for
 15 a period not to exceed:

16 (A) five (5) class periods for middle, junior high, or high
 17 school students; or

18 (B) one (1) school day for elementary school students;

19 if the student is assigned regular or additional school work to
 20 complete in another school setting.

21 (8) Assignment by the principal of:

22 (A) a special course of study;

23 (B) an alternative educational program; or

24 (C) an alternative school.

25 (9) Assignment by the principal of the school where the recipient
 26 of the disciplinary action is enrolled of not more than one hundred
 27 twenty (120) hours of service with a nonprofit organization
 28 operating in or near the community where the school is located or
 29 where the student resides. The following apply to service assigned
 30 under this subdivision:

31 (A) A principal may not assign a student under this
 32 subdivision unless the student's parent or guardian approves:

33 (i) the nonprofit organization where the student is assigned;
 34 and

35 (ii) the plan described in clause (B)(i).

36 A student's parent or guardian may request or suggest that the
 37 principal assign the student under this subdivision.

38 (B) The principal shall make arrangements for the student's
 39 service with the nonprofit organization. Arrangements must
 40 include the following:

41 (i) A plan for the service that the student is expected to
 42 perform.

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- (ii) A description of the obligations of the nonprofit organization to the student, the student's parents, and the school corporation where the student is enrolled.
- (iii) Monitoring of the student's performance of service by the principal or the principal's designee.
- (iv) Periodic reports from the nonprofit organization to the principal and the student's parent or guardian of the student's performance of the service.

(C) The nonprofit organization must obtain liability insurance in the amount and of the type specified by the school corporation where the student is enrolled that is sufficient to cover liabilities that may be incurred by a student who performs service under this subdivision.

(D) Assignment of service under this subdivision suspends the implementation of a student's suspension or expulsion. A student's completion of service assigned under this subdivision to the satisfaction of the principal and the nonprofit organization terminates the student's suspension or expulsion.

(10) Removal of a student from school sponsored transportation.

(11) Referral to the juvenile court having jurisdiction over the student.

~~(c)~~ (d) As used in this subsection, "physical assault" means the knowing or intentional touching of another person in a rude, insolent, or angry manner. When a student physically assaults a person having authority over the student, the principal of the school where the student is enrolled shall make a referral of the student to the juvenile court having jurisdiction over the student. However, a student with disabilities (as defined in IC 20-1-6.1-7) who physically assaults a person having authority over the student is subject to procedural safeguards under 20 U.S.C. 1415.

SECTION 10. IC 34-13-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee whose conduct gave rise to the claim resulting in that judgment or settlement.

(b) The governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when ~~(1)~~ the act or omission causing the loss is within the scope of the employee's employment. ~~and~~

~~(2) the:~~

- ~~(A) governor, in the case of a claim or suit against a state employee; or~~

C
o
p
y



1 ~~(B) the governing body of the political subdivision, in the case~~
 2 ~~of a claim or suit against an employee of a political~~
 3 ~~subdivision;~~
 4 ~~determines that paying the judgment, compromise, or settlement~~
 5 ~~is in the best interest of the governmental entity.~~

6 (c) The governmental entity shall pay all costs and fees incurred by
 7 or on behalf of an employee in defense of a claim or suit for a loss
 8 occurring because of acts or omissions within the scope of the
 9 employee's employment, regardless of whether the employee can or
 10 cannot be held personally liable for the loss.

11 (d) This chapter shall not be construed as:

- 12 (1) a waiver of the eleventh amendment to the Constitution of the
 13 United States;
 14 (2) consent by the state of Indiana or its employees to be sued in
 15 any federal court; or
 16 (3) consent to be sued in any state court beyond the boundaries of
 17 Indiana.

18 SECTION 11. IC 34-13-3-5, AS AMENDED BY P.L.192-2001,
 19 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2002]: Sec. 5. (a) Civil actions relating to acts taken by a
 21 board, a committee, a commission, an authority, or another
 22 instrumentality of a governmental entity may be brought only against
 23 the board, the committee, the commission, the authority, or the other
 24 instrumentality of a governmental entity. A member of a board, a
 25 committee, a commission, an authority, or another instrumentality of
 26 a governmental entity may not be named as a party in a civil suit that
 27 concerns the acts taken by a board, a committee, a commission, an
 28 authority, or another instrumentality of a governmental entity where the
 29 member was acting within the scope of the member's employment. For
 30 the purposes of this subsection, a member of a board, a committee, a
 31 commission, an authority, or another instrumentality of a governmental
 32 entity is acting within the scope of the member's employment when the
 33 member acts as a member of the board, committee, commission,
 34 authority, or other instrumentality.

35 (b) A judgment rendered with respect to or a settlement made by a
 36 governmental entity bars an action by the claimant against an
 37 employee, including a member of a board, a committee, a commission,
 38 an authority, or another instrumentality of a governmental entity, whose
 39 conduct gave rise to the claim resulting in that judgment or settlement.
 40 A lawsuit alleging that an employee acted within the scope of the
 41 employee's employment must be exclusive to the complaint and bars an
 42 action by the claimant against the employee personally. However, if the

C
o
p
y



1 governmental entity answers that the employee acted outside the scope
 2 of the employee's employment, the plaintiff may amend the complaint
 3 and sue the employee personally. An amendment to the complaint by
 4 the plaintiff under this subsection must be filed not later than one
 5 hundred eighty (180) days from the date the answer was filed and may
 6 be filed notwithstanding the fact that the statute of limitations has run.

7 (c) A lawsuit filed against an employee personally must allege that
 8 an act or omission of the employee that causes a loss is:

- 9 (1) criminal;
 10 (2) clearly outside the scope of the employee's employment;
 11 (3) malicious;
 12 (4) willful and wanton; or
 13 (5) calculated to benefit the employee personally.

14 The complaint must contain a reasonable factual basis supporting the
 15 allegations.

16 (d) Subject to the provisions of sections 4, 14, 15, and 16 of this
 17 chapter, the governmental entity shall pay any judgment, compromise,
 18 or settlement of a claim or suit against an employee when

- 19 (1) the act or omission causing the loss is within the scope of the
 20 employee's employment, regardless of whether the employee can
 21 or cannot be held personally liable for the loss. ~~and~~
 22 (2) the:

23 (A) ~~governor in the case of a claim or suit against a state~~
 24 ~~employee; or~~

25 (B) ~~governing body of the political subdivision, in the case of~~
 26 ~~a claim or suit against an employee of a political subdivision;~~
 27 ~~determines that paying the judgment, compromise, or settlement~~
 28 ~~is in the best interest of the governmental entity.~~

29 (e) The governmental entity shall provide counsel for and pay all
 30 costs and fees incurred by or on behalf of an employee in defense of a
 31 claim or suit for a loss occurring because of acts or omissions within
 32 the scope of the employee's employment, regardless of whether the
 33 employee can or cannot be held personally liable for the loss.

34 (f) This chapter shall not be construed as:

- 35 (1) a waiver of the eleventh amendment to the Constitution of the
 36 United States;
 37 (2) consent by the state of Indiana or its employees to be sued in
 38 any federal court; or
 39 (3) consent to be sued in any state court beyond the boundaries of
 40 Indiana.

41 SECTION 12. IC 34-30-2-84.5 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS

C
O
P
Y



1 [EFFECTIVE JULY 1, 2002]: **Sec. 84.5. IC 20-6.1-3-7 (Concerning**
 2 **a person who makes a report concerning a teacher).**

3 SECTION 13. IC 35-42-4-7, AS AMENDED BY P.L.228-2001,
 4 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2002]: Sec. 7. (a) As used in this section, "adoptive parent"
 6 has the meaning set forth in IC 31-9-2-6.

7 (b) As used in this section, "adoptive grandparent" means the parent
 8 of an adoptive parent.

9 (c) As used in this section, "child care worker" means a person who:

10 (1) provides care, supervision, or instruction to a child within the
 11 scope of the person's employment in a ~~public or private school or~~
 12 shelter care facility; **or**

13 (2) **is employed by a:**

14 (A) **school corporation; or**

15 (B) **nonpublic school;**

16 **attended by a child who is the victim of a crime under this**
 17 **chapter.**

18 (d) As used in this section, "custodian" means any person who
 19 resides with a child and is responsible for the child's welfare.

20 (e) **As used in this section, "nonpublic school" has the meaning**
 21 **set forth in IC 20-10.1-1-3.**

22 (f) **As used in this section, "school corporation" has the meaning**
 23 **set forth in IC 20-10.1-1-1.**

24 (g) As used in this section, "stepparent" means an individual who is
 25 married to a child's custodial or noncustodial parent and is not the
 26 child's adoptive parent.

27 (h) If a person who is:

28 (1) at least eighteen (18) years of age; and

29 (2) the:

30 (A) guardian, adoptive parent, adoptive grandparent,
 31 custodian, or stepparent of; or

32 (B) child care worker for;

33 a child at least sixteen (16) years of age but less than eighteen
 34 (18) years of age;

35 engages **with the child** in sexual intercourse, ~~or~~ deviate sexual conduct
 36 (as defined in IC 35-41-1-9), ~~with the child;~~ **or any fondling or**
 37 **touching with the intent to arouse or satisfy the sexual desires of**
 38 **either the child or the adult,** the person commits child seduction, a
 39 Class D felony.

C
o
p
y



SENATE MOTION

Mr. President: I move that Senator Waterman be added as coauthor of Senate Bill 207.

CLARK

SENATE MOTION

Mr. President: I move that Senator Howard be added as coauthor of Senate Bill 207.

CLARK

C
o
p
y



COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 207, 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 5-2-5-5, AS AMENDED BY P.L.272-2001, SECTION 2, AND AS AMENDED BY P.L.228-2001, SECTION 2, IS AMENDED AND CORRECTED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) Except as provided in subsection (b), on request, law enforcement agencies shall release or allow inspection of a limited criminal history to noncriminal justice organizations or individuals only if the subject of the request:

- (1) has applied for employment with a noncriminal justice organization or individual;
- (2) has applied for a license and criminal history data as required by law to be provided in connection with the license;
- (3) is a candidate for public office or a public official;
- (4) is in the process of being apprehended by a law enforcement agency;
- (5) is placed under arrest for the alleged commission of a crime;
- (6) has charged that his rights have been abused repeatedly by criminal justice agencies;
- (7) is the subject of judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;
- (8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;
- (9) is employed by a public school (as defined in IC 20-10.1-1-2) or nonpublic school (as defined in IC 20-10.1-1-3) or by an entity that seeks to enter into a contract with a public or nonpublic school if the subject of the request is expected to have direct, ongoing contact with school children within the scope of the individual's employment;**
- (10) has volunteered services at a public school (as defined in IC 20-10.1-1-2) or non-public school (as defined in IC 20-10.1-1-3) that involve contact with, care of, or supervision over a student enrolled in the school;
- ~~(11)~~ **(11) is being investigated for welfare fraud by an investigator**

ES 207—LS 6724/DI 22+



C
O
P
Y

of the division of family and children or a county office of family and children;

~~(11)~~ **(12)** is being sought by the parent locator service of the child support bureau of the division of family and children; or

~~(12)~~ **(13)** has been convicted of any of the following:

- (A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
- (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
- (C) Child molesting (IC 35-42-4-3).
- (D) Child exploitation (IC 35-42-4-4(b)).
- (E) Possession of child pornography (IC 35-42-4-4(c)).
- (F) Vicarious sexual gratification (IC 35-42-4-5).
- (G) Child solicitation (IC 35-42-4-6).
- (H) Child seduction (IC 35-42-4-7).
- (I) *Sexual misconduct with a minor as a Class A or B felony (IC 35-42-4-9).*
- (J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to the following noncriminal justice organizations:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for *any of the purpose of following purposes:*
 - (A) Employment ~~and~~ *with a state or local governmental entity.*
 - (B) Licensing.
- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) Any person who uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor."

Page 4, line 21, strike "subdivision (4)(A) and (4)(B). The" and insert "**subdivisions (2), (4), and (5). An individual who is employed by an entity that seeks to enter into a contract with a school corporation may be required to provide the consent described in subdivision (2) or the information described in subdivisions (4) and (5) to either the individual's employer or the school corporation.**".



C
O
P
Y

- Page 4, strike lines 22 through 23.
- Page 4, line 24, strike "(4)(C) or (5).".
- Page 4, line 24, after "subdivisions" insert "(2),".
- Page 4, line 24, after "(4)" insert ",".
- Page 5, line 1, delete "knows" and insert "**has actual knowledge**".
- Page 5, line 1, delete "a licensed" and insert "**an**".
- Page 5, line 1, after "or" delete "an" and insert "**a**".
- Page 5, line 2, delete "accredited".
- Page 5, line 2, after "school" insert "**who instructs or supervises children**".
- Page 5, line 2, after "for a" insert ":".
- Page 5, line 2, delete "felony or a", begin a new line block indented and insert:
- "(1) felony;**
(2) Class A misdemeanor described in IC 35; or
(3) violation of IC 9-30-5-1 (operating while intoxicated) as a Class A misdemeanor."
- Page 5, line 3, delete "misdemeanor".
- Page 5, line 3, beginning with "The" begin a new line blocked left.
- Page 5, line 4, after "give" insert "**written**".
- Page 5, line 6, delete "accredited".
- Page 5, line 8, delete "knows" and insert "**has actual knowledge**".
- Page 5, line 9, delete "a licensed" and insert "**an**".
- Page 5, line 9, delete "an accredited" and insert "**a**".
- Page 5, line 10, after "school" insert "**who instructs or supervises children**".
- Page 5, line 10, after "of a" insert ":".
- Page 5, line 10, delete "felony or a misdemeanor.", begin a new line block indented and insert:
- "(1) felony;**
(2) Class A misdemeanor described in IC 35; or
(3) violation of IC 9-30-5-1 (operating while intoxicated) as a Class A misdemeanor."
- Page 5, line 11, after "give" insert "**written**".
- Page 5, line 13, delete "accredited".
- Page 5, line 16, after "notify" insert "**in writing**".
- Page 5, line 17, strike "knows" and insert "**has actual knowledge**".
- Page 5, line 20, reset in roman "an offense listed in subsection".
- Page 5, line 20, after "subsection" insert "**(b) or**".
- Page 5, line 21, delete "(c). A felony or a misdemeanor;" and insert "(c);".
- Page 5, line 29, after "(1)" insert "**Kidnapping (IC 35-42-3-2), if**

C
O
P
Y



the victim is less than eighteen (18) years of age.

(2) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.

(3)".

Page 5, line 31, strike "(2)" and insert "(4)".

Page 5, line 33, strike "(3)" and insert "(5)".

Page 5, line 34, strike "(4)" and insert "(6)".

Page 5, line 35, strike "(5)" and insert "(7)".

Page 5, line 36, strike "(6)" and insert "(8)".

Page 5, line 37, strike "(7)" and insert "(9)".

Page 5, line 38, strike "(8)" and insert "(10)".

Page 5, line 39, strike "(9)" and insert "(11)".

Page 5, between lines 40 and 41, begin a new line block indented and insert:

"(12) Dealing in a controlled substance (IC 35-48-4-1 through IC 35-48-4-5)."

Page 6, line 10, strike "only".

Page 6, line 10, after "only for" insert "any".

Page 6, line 19, after "(A)" insert "**Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.**

(B) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.

(C)".

Page 6, line 21, strike "(B)" and insert "(D)".

Page 6, line 23, strike "(C)" and insert "(E)".

Page 6, line 24, strike "(D)" and insert "(F)".

Page 6, line 25, strike "(E)" and insert "(G)".

Page 6, line 26, strike "(F)" and insert "(H)".

Page 6, line 27, strike "(G)" and insert "(I)".

Page 6, line 28, strike "(H)" and insert "(J)".

Page 6, line 30, strike "(I)" and insert "(K)".

Page 6, between lines 31 and 32, begin a new line double block indented and insert:

"(L) Dealing in a controlled substance (IC 35-48-4-1 through IC 35-48-4-5)."

Page 7, line 13, after "(A)" insert "**Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.**

(B) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.

(C)".

Page 7, line 15, strike "(B)" and insert "(D)".

Page 7, line 17, strike "(C)" and insert "(E)".

C
o
p
y



Page 7, line 18, strike "(D)" and insert "(F)".

Page 7, line 19, strike "(E)" and insert "(G)".

Page 7, line 20, strike "(F)" and insert "(H)".

Page 7, line 21, strike "(G)" and insert "(I)".

Page 7, line 22, strike "(H)" and insert "(J)".

Page 7, line 23, delete "(I)" and insert "(K)".

Page 7, between lines 24 and 25, begin a new line double block indented and insert:

"(L) Dealing in a controlled substance (IC 35-48-4-1 through IC 35-48-4-5)."

Page 9, delete lines 21 through 42.

Page 10, delete line 1.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 207 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 0.

C
O
P
Y



SENATE MOTION

Mr. President: I move that Senate Bill 207 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning education and criminal history information.

Page 3, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 2. IC 5-2-5-13, AS AMENDED BY P.L.272-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a nonprofit organization: ~~that~~:

(1) **that** has been in existence for at least ten (10) years; and

(2) ~~either:~~ **that**:

(A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization; ~~or~~

(B) is a home health agency licensed under IC 16-27-1;

(C) is a community mental retardation and other developmental disabilities center (as defined in IC 12-7-2-39); or

(D) is a supervised group living facility licensed under IC 12-28-5.

(b) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the division of family and children or a county office of family and children if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 12-17.4.

(c) The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation, special education cooperative, or non-public school (as defined in IC 20-10.1-1-3) as part of a background investigation of an employee or adult volunteer for the school corporation, special education cooperative, or non-public school."

Re-number all SECTIONS consecutively.

(Reference is to SB 207 as printed January 25, 2002.)

HERSHMAN

C
O
P
Y



SENATE MOTION

Mr. President: I move that Senate Bill 207 be amended to read as follows:

Page 6, line 18, after "(c)" insert "**This subsection applies only to an individual who is applicant for employment or who has been employed for less than three (3) months.**".

Page 6, line 36, delete ":".

Page 6, line 37, delete "(1)".

Page 6, line 37, delete ";" and insert ".".

Page 6, run in lines 36 and 37.

Page 6, delete lines 38 through 40.

Page 7, line 21, after "arrested" insert "**for a felony**".

Page 7, line 22, delete "(b) or".

(Reference is to SB 207 as printed January 25, 2002.)

CLARK

C
O
P
Y



SENATE MOTION

Mr. President: I move that Senator Alting be added as coauthor of Engrossed Senate Bill 207.

CLARK

SENATE MOTION

Mr. President: I move that Senator Hershman be added as coauthor of Engrossed Senate Bill 207.

CLARK

C
o
p
y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred Senate Bill 207, 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 2, line 7, delete "a public school (as defined in".

Page 2, delete line 8.

Page 2, line 9, delete "IC 20-10.2-1-3) or by".

Page 2, line 10, after "public" insert "**school (as defined in IC 20-10.1-1-2)**".

Page 2, line 10, after "nonpublic school" insert "**(as defined in IC 20-10.1-1-3)**".

Page 3, between lines 11 and 12, begin a new paragraph and insert: "SECTION 2. IC 5-2-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) Except as provided in subsection (c), on request for release or inspection of a limited criminal history, law enforcement agencies may and the department shall do the following:

(1) Require a form, provided by them, to be completed. This ~~form~~ **information** shall be maintained for a period of two (2) years and shall be available to the record subject upon request.

(2) Collect a three dollar (\$3) fee to defray the cost of processing a request for inspection.

(3) Collect a seven dollar (\$7) fee to defray the cost of processing a request for release. However, law enforcement agencies and the department may not charge the fee for requests received from the parent locator service of the child support bureau of the division of family and children.

(b) Law enforcement agencies and the department shall edit information so that the only information released or inspected is information which:

(1) has been requested; and

(2) is limited criminal history information.

(c) The fee required under subsection (a) shall be waived if the request is from the institute for conviction information that will be used to establish or update the sex and violent offender registry under IC 5-2-12."

Page 3, delete lines 40 through 42.

Delete page 4.

Page 5, delete lines 1 through 12.

Page 5, delete lines 18 through 42, begin a new line block indented and insert:

ES 207—LS 6724/DI 22+



C
O
P
Y

"(1) apply for:

- (A) employment with the school corporation; or
- (B) employment with an entity with which the school corporation contracts for services;
- (2) seek to enter into a contract to provide services to the school corporation; or
- (3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation;

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

(b) A school corporation, including a school township, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies. A policy adopted under this section may require any of the following:

- (1) The school corporation, including a school township, may request limited criminal history information concerning each applicant for noncertificated employment or certificated employment from a local or state law enforcement agency before or not later than three (3) months after the applicant's employment by the school corporation.
- (2) Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation to request under IC 5-2-5 limited criminal history information or a national criminal history background check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school corporation may require the individual to provide a set of fingerprints and pay any fees required for a national criminal history background check.
- (3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 5-2-5-1(1)) to the school corporation.
- (4) Each individual hired for noncertificated employment may be required at the time the individual is hired to:
 - (A) submit a request to the Indiana central repository for limited criminal history information under IC 5-2-5;
 - (B) obtain a copy of the individual's limited criminal history; and
 - (C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 5-2-5-1(6)) that does not appear on the limited

C
O
P
Y



criminal history.

(5) Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's limited criminal history. The failure to answer honestly questions asked under this subdivision is grounds for termination of the employee's employment.

(6) Each individual that:

(A) seeks to enter into a contract to provide services to a school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in ~~subdivision (4)(A) and (4)(B)~~. ~~The school corporation either may require that the individual or the contractor comply with the procedures described in subdivision (4)(C) or (5)~~: **subdivisions (2), (4), and (5). An individual who is employed by an entity that seeks to enter into a contract with a school corporation may be required to provide the consent described in subdivision (2) or the information described in subdivisions (4) and (5) to either the individual's employer or the school corporation.** Failure to comply with subdivisions (2), (4), and (5), as required by the school corporation, is grounds for termination of the contract.

(c) If an individual is required to obtain a limited criminal history under this section, the individual is responsible for all costs associated with obtaining the limited criminal history.

(d) Information obtained under this section must be used in accordance with IC 5-2-5-6 or **IC 5-2-5-15**."

Delete page 6.

Page 7, delete lines 1 through 10.

Page 7, delete lines 21 through 41, begin a new paragraph and insert:

"(b) This subsection applies when a prosecuting attorney knows that a licensed employee of a public school (as defined in IC 20-10.1-1-2) or an accredited nonpublic school has been convicted of an offense listed in subsection (d). The prosecuting attorney shall immediately give written notice of the conviction to the following:

(1) The state superintendent.

(2) Except as provided in subdivision (3), the superintendent of the school corporation that employs the licensed employee

C
O
P
Y



or the equivalent authority for an accredited nonpublic school.

(3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation."

Page 7, line 42, delete "(d)" and insert "(c)".

Page 7, line 42, after "corporation" insert ", **presiding officer of the governing body,**".

Page 8, delete lines 2 through 10, begin a new line blocked left and insert: "the state superintendent when the person knows that a current or former licensed employee of the **public** school ~~corporation~~ or accredited nonpublic school has been convicted of an offense listed in subsection ~~(e)~~: **(d)**".

Page 8, line 11, delete "(e)" and insert "**(d)**".

Page 8, line 32, delete "(f)" and insert "**(e)**".

Page 8, delete lines 34 through 38.

Page 9, line 1, delete "any".

Page 9, line 1, after "(1)" insert "**or more**".

Page 9, line 39, strike "only".

Page 9, line 39, after "(1)" insert "**or more**".

Page 10, delete lines 38 through 42, begin a new paragraph and insert:

"SECTION 7. IC 20-8.1-5.1-7.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 7.8. Before a person may initiate action to suspend or expel a student under this chapter, the person must consult the following:**

(1) A teacher, if any, who is involved in the matter giving rise to possible disciplinary action against the student.

(2) A classroom teacher of the student.

SECTION 8. IC 20-8.1-5.1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 18. (a) This section applies to a person who:

(1) is a member of the administrative staff, a teacher, or other school staff member; and

(2) has students under the person's charge.

(b) A person may take disciplinary action in addition to suspension and expulsion that is necessary to ensure a safe, orderly, and effective educational environment. **However, if the person who wishes to take disciplinary action under this section is not a teacher of the student, before the person may take disciplinary action under this**

C
o
p
y



section, the person must consult the following:

(1) A teacher, if any, who is involved in the matter giving rise to possible disciplinary action against the student.

(2) A classroom teacher of the student.

(c) Disciplinary action under this section may include the following:

(1) Counseling with a student or group of students.

(2) Conferences with a parent or group of parents.

(3) Assigning additional work.

(4) Rearranging class schedules.

(5) Requiring a student to remain in school after regular school hours to do additional school work or for counseling.

(6) Restricting extracurricular activities.

(7) Removal of a student by a teacher from that teacher's class for a period not to exceed:

(A) five (5) class periods for middle, junior high, or high school students; or

(B) one (1) school day for elementary school students;

if the student is assigned regular or additional school work to complete in another school setting.

(8) Assignment by the principal of:

(A) a special course of study;

(B) an alternative educational program; or

(C) an alternative school.

(9) Assignment by the principal of the school where the recipient of the disciplinary action is enrolled of not more than one hundred twenty (120) hours of service with a nonprofit organization operating in or near the community where the school is located or where the student resides. The following apply to service assigned under this subdivision:

(A) A principal may not assign a student under this subdivision unless the student's parent or guardian approves:

(i) the nonprofit organization where the student is assigned; and

(ii) the plan described in clause (B)(i).

A student's parent or guardian may request or suggest that the principal assign the student under this subdivision.

(B) The principal shall make arrangements for the student's service with the nonprofit organization. Arrangements must include the following:

(i) A plan for the service that the student is expected to perform.

(ii) A description of the obligations of the nonprofit

C
O
P
Y



organization to the student, the student's parents, and the school corporation where the student is enrolled.

(iii) Monitoring of the student's performance of service by the principal or the principal's designee.

(iv) Periodic reports from the nonprofit organization to the principal and the student's parent or guardian of the student's performance of the service.

(C) The nonprofit organization must obtain liability insurance in the amount and of the type specified by the school corporation where the student is enrolled that is sufficient to cover liabilities that may be incurred by a student who performs service under this subdivision.

(D) Assignment of service under this subdivision suspends the implementation of a student's suspension or expulsion. A student's completion of service assigned under this subdivision to the satisfaction of the principal and the nonprofit organization terminates the student's suspension or expulsion.

(10) Removal of a student from school sponsored transportation.

(11) Referral to the juvenile court having jurisdiction over the student.

(~~e~~) (d) As used in this subsection, "physical assault" means the knowing or intentional touching of another person in a rude, insolent, or angry manner. When a student physically assaults a person having authority over the student, the principal of the school where the student is enrolled shall make a referral of the student to the juvenile court having jurisdiction over the student. However, a student with disabilities (as defined in IC 20-1-6.1-7) who physically assaults a person having authority over the student is subject to procedural safeguards under 20 U.S.C. 1415.

SECTION 9. IC 34-13-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee whose conduct gave rise to the claim resulting in that judgment or settlement.

(b) The governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when (~~1~~) the act or omission causing the loss is within the scope of the employee's employment. ~~and~~

(~~2~~) the:

(A) governor, in the case of a claim or suit against a state employee; or

(B) the governing body of the political subdivision, in the case

C
O
P
Y



~~of a claim or suit against an employee of a political subdivision;~~

~~determines that paying the judgment, compromise, or settlement is in the best interest of the governmental entity.~~

(c) The governmental entity shall pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(d) This chapter shall not be construed as:

- (1) a waiver of the eleventh amendment to the Constitution of the United States;
- (2) consent by the state of Indiana or its employees to be sued in any federal court; or
- (3) consent to be sued in any state court beyond the boundaries of Indiana.

SECTION 10. IC 34-13-3-5, AS AMENDED BY P.L.192-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) Civil actions relating to acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may be brought only against the board, the committee, the commission, the authority, or the other instrumentality of a governmental entity. A member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may not be named as a party in a civil suit that concerns the acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity where the member was acting within the scope of the member's employment. For the purposes of this subsection, a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity is acting within the scope of the member's employment when the member acts as a member of the board, committee, commission, authority, or other instrumentality.

(b) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, whose conduct gave rise to the claim resulting in that judgment or settlement. A lawsuit alleging that an employee acted within the scope of the employee's employment must be exclusive to the complaint and bars an action by the claimant against the employee personally. However, if the governmental entity answers that the employee acted outside the scope

C
O
P
Y



of the employee's employment, the plaintiff may amend the complaint and sue the employee personally. An amendment to the complaint by the plaintiff under this subsection must be filed not later than one hundred eighty (180) days from the date the answer was filed and may be filed notwithstanding the fact that the statute of limitations has run.

(c) A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is:

- (1) criminal;
- (2) clearly outside the scope of the employee's employment;
- (3) malicious;
- (4) willful and wanton; or
- (5) calculated to benefit the employee personally.

The complaint must contain a reasonable factual basis supporting the allegations.

(d) Subject to the provisions of sections 4, 14, 15, and 16 of this chapter, the governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when

(1) the act or omission causing the loss is within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss. ~~and~~

(2) ~~the:~~

(A) ~~governor in the case of a claim or suit against a state employee; or~~

(B) ~~governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision; determines that paying the judgment, compromise, or settlement is in the best interest of the governmental entity.~~

(e) The governmental entity shall provide counsel for and pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(f) This chapter shall not be construed as:

- (1) a waiver of the eleventh amendment to the Constitution of the United States;
- (2) consent by the state of Indiana or its employees to be sued in any federal court; or
- (3) consent to be sued in any state court beyond the boundaries of Indiana."

Delete page 11.

Page 12, delete lines 1 through 23.

C
O
P
Y



Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 207 as reprinted February 4, 2002.)

PORTER, Chair

Committee Vote: yeas 13, nays 1.

C
o
p
y

