

# HOUSE BILL No. 1097

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-49-3-4.

**Synopsis:** Material harmful to minors. Removes the defense to prosecution for dissemination of matter or conducting a performance harmful to minors that the matter was disseminated or displayed to or that the performance was performed before the recipient by a bona fide school, museum, or public library that qualifies for certain property tax exemptions, or by an employee of such a school, museum, or public library acting within the scope of the employee's employment.

**Effective:** July 1, 2022.

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January 4, 2022, read first time and referred to Committee on Courts and Criminal Code.

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

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

# HOUSE BILL No. 1097

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 35-49-3-4, AS AMENDED BY P.L.266-2019,  
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2022]: Sec. 4. (a) It is a defense to a prosecution under section  
4 3 of this chapter for the defendant to show:

5 (1) that the matter was disseminated or that the performance was  
6 performed for legitimate scientific or educational purposes;  
7 ~~(2) that the matter was disseminated or displayed to or that the~~  
8 ~~performance was performed before the recipient by a bona fide~~  
9 ~~school, museum, or public library that qualifies for certain~~  
10 ~~property tax exemptions under IC 6-1.1-10; or by an employee of~~  
11 ~~such a school, museum, or public library acting within the scope~~  
12 ~~of the employee's employment;~~  
13 ~~(2)~~ (2) that the defendant had reasonable cause to believe that the  
14 minor involved was eighteen (18) years of age or older and that  
15 the minor exhibited to the defendant a draft card, driver's license,  
16 birth certificate, or other official or apparently official document  
17 purporting to establish that the minor was eighteen (18) years of



- 1 age or older; or
- 2 ~~(4)~~ (3) that the defendant was a salesclerk, motion picture
- 3 projectionist, usher, or ticket taker, acting within the scope of the
- 4 defendant's employment and that the defendant had no financial
- 5 interest in the place where the defendant was so employed.
- 6 (b) Except as provided in subsection (c), it is a defense to a
- 7 prosecution under section 3 of this chapter if all the following apply:
- 8 (1) A cellular telephone, another wireless or cellular
- 9 communications device, or a social networking web site was used
- 10 to disseminate matter to a minor that is harmful to minors.
- 11 (2) The defendant is not more than four (4) years older or younger
- 12 than the person who received the matter that is harmful to minors.
- 13 (3) The relationship between the defendant and the person who
- 14 received the matter that is harmful to minors was a dating
- 15 relationship or an ongoing personal relationship. For purposes of
- 16 this subdivision, the term "ongoing personal relationship" does
- 17 not include a family relationship.
- 18 (4) The crime was committed by a person less than twenty-two
- 19 (22) years of age.
- 20 (5) The person receiving the matter expressly or implicitly
- 21 acquiesced in the defendant's conduct.
- 22 (c) The defense to a prosecution described in subsection (b) does
- 23 not apply if:
- 24 (1) the image is disseminated to a person other than the person:
- 25 (A) who sent the image; or
- 26 (B) who is depicted in the image; or
- 27 (2) the dissemination of the image violates:
- 28 (A) a protective order to prevent domestic or family violence
- 29 or harassment issued under IC 34-26-5 (or, if the order
- 30 involved a family or household member, under IC 34-26-2 or
- 31 IC 34-4-5.1-5 before their repeal);
- 32 (B) an ex parte protective order issued under IC 34-26-5 (or,
- 33 if the order involved a family or household member, an
- 34 emergency order issued under IC 34-26-2 or IC 34-4-5.1
- 35 before their repeal);
- 36 (C) a workplace violence restraining order issued under
- 37 IC 34-26-6;
- 38 (D) a no contact order in a dispositional decree issued under
- 39 IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or
- 40 IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an
- 41 order issued under IC 31-32-13 (or IC 31-6-7-14 before its
- 42 repeal) that orders the person to refrain from direct or indirect



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

