

# HOUSE BILL No. 1079

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 20-26-5; IC 20-28-5; IC 31-33-8-12.5; IC 35-31.5-2-38; IC 35-38-1.

**Synopsis:** Teacher licenses. Requires an individual to have a completed expanded criminal history check and expanded child protection index check before beginning employment with a school corporation, charter school, or nonpublic school that employs one or more employees if the individual is likely to have direct, ongoing contact with children. (Under current law, an individual may be employed for up to three months before the checks are completed.) Provides that a school corporation, charter school, or nonpublic school shall conduct an expanded criminal history check and expanded child protection index check on each employee every five years. Provides that a school corporation, charter school, or nonpublic school may implement the requirement for updated background checks for current employees over a five year period. Provides that the employee is responsible for costs associated with obtaining the background checks. Provides that a school corporation, including a charter school, shall adopt a policy requiring the school employer to contact references and, if applicable, the most recent employer of a prospective employee, before the school corporation or charter school may hire the prospective employee. Requires the department of child services to notify a school corporation, charter school, or nonpublic school that employs one or more employees if a report of child abuse or neglect is substantiated against an employee or volunteer of the school corporation, charter school, or nonpublic school. Requires a court to:  
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**Effective:** July 1, 2017.

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## Thompson

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January 5, 2017, read first time and referred to Committee on Education.

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Digest Continued

(1) recommend revocation of a defendant's teaching license (license) if the defendant holds a license and is convicted of certain felonies or the defendant is convicted of certain crimes and the victim is a child less than 18 years of age; and (2) deliver any order recommending revocation of the defendant's license to the department of education (department). Requires the department to revoke the license upon receipt of the order. Allows the department to reinstate a license if a person has been pardoned or the person's conviction has been reversed, vacated, or set aside on appeal.



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

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

# HOUSE BILL No. 1079

A BILL FOR AN ACT to amend the Indiana Code concerning education.

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

1 SECTION 1. IC 20-26-5-10, AS AMENDED BY P.L.106-2016,  
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]: Sec. 10. (a) This section applies to a:  
4 (1) school corporation;  
5 (2) charter school; or  
6 (3) a nonpublic school that employs one (1) or more employees.  
7 (b) A school corporation, including a charter school and a nonpublic  
8 school, shall adopt a policy concerning criminal history information for  
9 individuals who:  
10 (1) apply for:  
11 (A) employment with the school corporation, charter school,  
12 or nonpublic school; or  
13 (B) employment with an entity with which the school  
14 corporation, charter school, or nonpublic school contracts for  
15 services;  
16 (2) seek to enter into a contract to provide services to the school  
17 corporation, charter school, or nonpublic school; or



1 (3) are employed by an entity that seeks to enter into a contract to  
 2 provide services to the school corporation, charter school, or  
 3 nonpublic school;

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

6 (c) A school corporation, including a charter school and a nonpublic  
 7 school, shall administer a policy adopted under this section uniformly  
 8 for all individuals to whom the policy applies.

9 (d) A policy adopted under this section must require that the school  
 10 corporation, charter school, or nonpublic school conduct an expanded  
 11 criminal history check and an expanded child protection index check  
 12 concerning each applicant for noncertificated employment or  
 13 certificated employment before ~~or not later than three (3) months~~ after  
 14 the applicant's employment by the school corporation, charter school,  
 15 or nonpublic school. Each individual hired for noncertificated  
 16 employment or certificated employment may be required to provide a  
 17 written consent for the school corporation, charter school, or nonpublic  
 18 school to request an expanded criminal history check and an expanded  
 19 child protection index check concerning the individual before ~~or not~~  
 20 ~~later than three (3) months~~ after the individual's employment by the  
 21 school corporation or school.

22 (e) **A policy adopted under this section must require that the**  
 23 **school corporation, charter school, or nonpublic school conduct an**  
 24 **expanded criminal history check and an expanded child protection**  
 25 **index check concerning an employee of the school corporation,**  
 26 **charter school, or nonpublic school who is likely to have direct,**  
 27 **ongoing contact with children within the scope of the employee's**  
 28 **employment. The checks must be conducted every five (5) years.**

29 (f) **In implementing subsection (e), and subject to subsection (i),**  
 30 **a school corporation, charter school, or nonpublic school may**  
 31 **update the background checks required under subsection (e) for**  
 32 **employees who:**

33 (1) **are employed by the school corporation, charter school, or**  
 34 **nonpublic school as of July 1, 2017; and**

35 (2) **are likely to have direct, ongoing contact with children**  
 36 **within the scope of the employee's employment;**

37 **over a period not to exceed five (5) years by annually conducting**  
 38 **updated expanded criminal history checks and expanded child**  
 39 **protection index checks for at least one-fifth (1/5) of the total**  
 40 **number of employees of the school corporation, charter school, or**  
 41 **nonpublic school. The annual background check updates**  
 42 **conducted within the five (5) year cycle must begin with the**



1 **employees who have the most outdated expanded criminal history**  
 2 **checks and expanded child protection index checks.**

3 (g) The school corporation, charter school, or nonpublic school may  
 4 require the individual to provide a set of fingerprints and pay any fees  
 5 required for the expanded criminal history check and expanded child  
 6 protection index check. Each applicant for noncertificated employment  
 7 or certificated employment **or an employee described in subsection**  
 8 **(e)** may be required at the time the individual applies **or updates an**  
 9 **expanded criminal history check and expanded child protection**  
 10 **index check under subsection (e)** to answer questions concerning the  
 11 individual's expanded criminal history check and expanded child  
 12 protection index check. The failure to answer honestly questions asked  
 13 under this subsection is grounds for termination of the employee's  
 14 employment.

15 (h) The applicant **or an employee described in subsection (e)** is  
 16 responsible for all costs associated with obtaining the expanded  
 17 criminal history check and expanded child protection index check.

18 (i) An applicant **or employee** may not be required by a school  
 19 corporation, charter school, or nonpublic school to obtain an expanded  
 20 criminal history check or an expanded child protection index check  
 21 more than one (1) time during a five (5) year period.

22 (d) (j) Information obtained under this section must be used in  
 23 accordance with law.

24 SECTION 2. IC 20-26-5-10.5 IS ADDED TO THE INDIANA  
 25 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 26 [EFFECTIVE JULY 1, 2017]: **Sec. 10.5. (a) This section applies to a:**

- 27 (1) **school corporation; or**  
 28 (2) **charter school.**

29 (b) **A school corporation, including a charter school, shall adopt**  
 30 **a policy requiring the school employer to contact employment**  
 31 **references and, if applicable, the most recent employer provided by**  
 32 **a prospective employee, before the school corporation or charter**  
 33 **school may hire the prospective employee.**

34 SECTION 3. IC 20-28-5-8, AS AMENDED BY P.L.13-2016,  
 35 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36 JULY 1, 2017]: Sec. 8. (a) This section applies when a prosecuting  
 37 attorney knows that a licensed employee of a public school or a  
 38 nonpublic school has been convicted of an offense listed in subsection  
 39 (c). The prosecuting attorney shall immediately give written notice of  
 40 the conviction to the following:

- 41 (1) The state superintendent.  
 42 (2) Except as provided in subdivision (3), the superintendent of



1 the school corporation that employs the licensed employee or the  
 2 equivalent authority if a nonpublic school employs the licensed  
 3 employee.

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

7 (b) The superintendent of a school corporation, presiding officer of  
 8 the governing body, or equivalent authority for a nonpublic school shall  
 9 immediately notify the state superintendent when the individual knows  
 10 that a current or former licensed employee of the public school or  
 11 nonpublic school has been convicted of an offense listed in subsection  
 12 (c), or when the governing body or equivalent authority for a nonpublic  
 13 school takes any final action in relation to an employee who engaged  
 14 in any offense listed in subsection (c).

15 (c) **Except as provided in section 8.5 of this chapter**, the  
 16 department, after holding a hearing on the matter, shall permanently  
 17 revoke the license of a person who is known by the department to have  
 18 been convicted of any of the following felonies:

- 19 (1) Kidnapping (IC 35-42-3-2).
- 20 (2) Criminal confinement (IC 35-42-3-3).
- 21 (3) Rape (IC 35-42-4-1).
- 22 (4) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- 23 (5) Child molesting (IC 35-42-4-3).
- 24 (6) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).
- 25 (7) Vicarious sexual gratification (IC 35-42-4-5).
- 26 (8) Child solicitation (IC 35-42-4-6).
- 27 (9) Child seduction (IC 35-42-4-7).
- 28 (10) Sexual misconduct with a minor (IC 35-42-4-9).
- 29 (11) Incest (IC 35-46-1-3).
- 30 (12) Dealing in or manufacturing cocaine or a narcotic drug  
 31 (IC 35-48-4-1).
- 32 (13) Dealing in methamphetamine (IC 35-48-4-1.1).
- 33 (14) Dealing in a schedule I, II, or III controlled substance  
 34 (IC 35-48-4-2).
- 35 (15) Dealing in a schedule IV controlled substance  
 36 (IC 35-48-4-3).
- 37 (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 38 (17) Dealing in a counterfeit substance (IC 35-48-4-5).
- 39 (18) Dealing in marijuana, hash oil, hashish, or salvia as a felony  
 40 (IC 35-48-4-10).
- 41 (19) Dealing in a synthetic drug or synthetic drug lookalike  
 42 substance (IC 35-48-4-10.5, or IC 35-48-4-10(b) before its



- 1 amendment in 2013).  
 2 (20) Possession of child pornography (IC 35-42-4-4(d) or  
 3 IC 35-42-4-4(e)).  
 4 (21) Homicide (IC 35-42-1).  
 5 (22) Voluntary manslaughter (IC 35-42-1-3).  
 6 (23) Reckless homicide (IC 35-42-1-5).  
 7 (24) Battery as any of the following:  
 8 (A) A Class A felony (for a crime committed before July 1,  
 9 2014) or a Level 2 felony (for a crime committed after June  
 10 30, 2014).  
 11 (B) A Class B felony (for a crime committed before July 1,  
 12 2014) or a Level 3 felony (for a crime committed after June  
 13 30, 2014).  
 14 (C) A Class C felony (for a crime committed before July 1,  
 15 2014) or a Level 5 felony (for a crime committed after June  
 16 30, 2014).  
 17 (25) Aggravated battery (IC 35-42-2-1.5).  
 18 (26) Robbery (IC 35-42-5-1).  
 19 (27) Carjacking (IC 35-42-5-2) (before its repeal).  
 20 (28) Arson as a Class A felony or Class B felony (for a crime  
 21 committed before July 1, 2014) or as a Level 2, Level 3, or Level  
 22 4 felony (for a crime committed after June 30, 2014)  
 23 (IC 35-43-1-1(a)).  
 24 (29) Burglary as a Class A felony or Class B felony (for a crime  
 25 committed before July 1, 2014) or as a Level 1, Level 2, Level 3,  
 26 or Level 4 felony (for a crime committed after June 30, 2014)  
 27 (IC 35-43-2-1).  
 28 (30) Attempt under IC 35-41-5-1 to commit an offense listed in  
 29 this subsection.  
 30 (31) Conspiracy under IC 35-41-5-2 to commit an offense listed  
 31 in this subsection.  
 32 (d) The department, after holding a hearing on the matter, shall  
 33 permanently revoke the license of a person who is known by the  
 34 department to have been convicted of a federal offense or an offense in  
 35 another state that is comparable to a felony listed in subsection (c).  
 36 **(e) Subject to section 8.5 of this chapter, upon receipt of a court**  
 37 **order under IC 35-38-1-33 recommending revocation of a person's**  
 38 **license, the department shall revoke the person's license.**  
 39 **(f) Upon receipt of a court order under IC 35-38-1-33**  
 40 **recommending that a person's license be revoked, the department**  
 41 **shall revoke the person's license.**  
 42 ~~(e)~~ (g) A license may be suspended by the state superintendent as



1 specified in IC 20-28-7.5.

2 ~~(f)~~ **(h)** The department shall develop a data base of information on  
3 school corporation employees who have been reported to the  
4 department under this section.

5 SECTION 4. IC 20-28-5-8.5 IS ADDED TO THE INDIANA CODE  
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7 1, 2017]: **Sec. 8.5. The department may, after holding a hearing on  
8 the matter, reinstate the license of a person that has been revoked  
9 under section 8 of this chapter if one (1) or more of the following  
10 occurs with respect to the conviction giving rise to the revocation:**

11 **(1) The person has been pardoned.**

12 **(2) The person's conviction has been reversed, vacated, or set  
13 aside on appeal.**

14 SECTION 5. IC 31-33-8-12.5 IS ADDED TO THE INDIANA  
15 CODE AS A NEW SECTION TO READ AS FOLLOWS  
16 [EFFECTIVE JULY 1, 2017]: **Sec. 12.5. (a) This section applies if:**

17 **(1) a report of child abuse or neglect is substantiated after an  
18 assessment is conducted under section 7 of this chapter; and**

19 **(2) the perpetrator of the child abuse or neglect is an  
20 employee or volunteer of a:**

21 **(A) school corporation;**

22 **(B) charter school; or**

23 **(C) nonpublic school that employs one (1) or more  
24 employees.**

25 **(b) The department shall immediately give written notice of a  
26 substantiated report of child abuse or neglect described in  
27 subsection (a) to the following:**

28 **(1) Except as provided in subdivision (2), the superintendent  
29 of the school corporation that employs the employee or for  
30 which the individual volunteers, or the equivalent authority  
31 if the individual is employed by or volunteers for a charter  
32 school or nonpublic school.**

33 **(2) The presiding officer of the governing body of the school  
34 corporation that employs the employee, if the perpetrator of  
35 the child abuse or neglect is the superintendent of the school  
36 corporation.**

37 **(c) The notice provided under subsection (b) must be limited to  
38 the following:**

39 **(1) The name of the perpetrator of the child abuse or neglect  
40 who is an employee or volunteer of an entity described in  
41 subsection (a)(2).**

42 **(2) The nature of the substantiated report of child abuse or**





- 1           neglect, without providing identifying information about the  
2           victim or victims.
- 3           **(3) The date the report of child abuse or neglect was**  
4           **substantiated.**
- 5           **(d) If a substantiated report described in subsection (a) is**  
6           **expunged, the department shall provide notice of the expungement**  
7           **as described in subsection (b).**
- 8           SECTION 6. IC 35-31.5-2-38, AS ADDED BY P.L.126-2012,  
9           SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10          JULY 1, 2017]: Sec. 38. "Child", for purposes of **IC 35-38-1-33**,  
11          IC 35-47-10, and IC 35-44.1-5-5, has the meaning set forth in  
12          IC 35-47-10-3.
- 13          SECTION 7. IC 35-38-1-9, AS AMENDED BY P.L.179-2015,  
14          SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15          JULY 1, 2017]: Sec. 9. (a) As used in this chapter, "recommendation"  
16          has the meaning set forth in IC 35-31.5-2-272, and "victim" has the  
17          meaning set forth in IC 35-31.5-2-348.
- 18          (b) The presentence investigation consists of the gathering of  
19          information with respect to:
- 20               (1) the circumstances attending the commission of the offense;  
21               (2) the convicted person's history of delinquency or criminality,  
22               social history, employment history, family situation, economic  
23               status, education, and personal habits;  
24               (3) the impact of the crime upon the victim; and  
25               (4) whether the convicted person is:
- 26                       **(A) licensed or certified in a profession regulated by IC 25; or**  
27                       **(B) licensed under IC 20-28-5.**
- 28          (c) The presentence investigation may include any matter that the  
29          probation officer conducting the investigation believes is relevant to  
30          the question of sentence, and must include:
- 31               (1) any matters the court directs to be included;  
32               (2) any written statements submitted to the prosecuting attorney  
33               by a victim under IC 35-35-3;  
34               (3) any written statements submitted to the probation officer by a  
35               victim; and  
36               (4) preparation of the victim impact statement required under  
37               section 8.5 of this chapter.
- 38          (d) If there are no written statements submitted to the probation  
39          officer, the probation officer shall certify to the court:
- 40               (1) that the probation officer has attempted to contact the victim;  
41               and  
42               (2) that if the probation officer has contacted the victim, the



1           probation officer has offered to accept the written statements of  
 2           the victim or to reduce the victim's oral statements to writing,  
 3           concerning the sentence, including the acceptance of any  
 4           recommendation.

5           (e) A presentence investigation report prepared by a probation  
 6           officer must include the information and comply with any other  
 7           requirements established in the rules adopted under IC 11-13-1-8.

8           (f) The probation officer shall consult with a community corrections  
 9           program officer or employee (if there is a community corrections  
 10          program in the county) regarding services and programs available to  
 11          the defendant while preparing the presentence investigation report.

12          SECTION 8. IC 35-38-1-33 IS ADDED TO THE INDIANA CODE  
 13          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 14          1, 2017]: **Sec. 33. (a) At the time of sentencing, the court shall  
 15          determine the following:**

16           **(1) Whether the defendant holds a license under IC 20-28-5.**

17           **(2) Whether the defendant is convicted of:**

18           **(A) a felony under IC 20-28-5;**

19           **(B) a crime under:**

20           **(i) IC 35-42;**

21           **(ii) IC 35-45-4-1 (public indecency);**

22           **(iii) IC 35-45-4-3 (patronizing a prostitute);**

23           **(iv) IC 35-45-4-4 (promoting prostitution); or**

24           **(v) IC 35-46-1-3 (incest);**

25           **(C) an attempt under IC 35-41-5-1 to commit an offense  
 26           listed in clause (B); or**

27           **(D) conspiracy under IC 35-41-5-2 to commit an offense  
 28           listed in clause (B).**

29           **(3) Whether the victim of the crime is a child.**

30           **(b) If the court determines under subsection (a) that:**

31           **(1) the defendant:**

32           **(A) holds a license under IC 20-28-5; and**

33           **(B) is convicted of a crime listed in subsection (a)(2); and**

34           **(C) committed the crime against a child; or**

35           **(2) the defendant:**

36           **(A) holds a license under IC 20-28-5; and**

37           **(B) is convicted of a felony listed in IC 20-28-5-8(c);**

38           **the court shall issue an order recommending that the defendant's  
 39           license under IC 20-28-5 be revoked.**

40           **(c) The court shall deliver any order recommending revocation  
 41           of the defendant's license under this section to the department of  
 42           education.**

