SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 342 be amended to read as follows:

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

"SECTION 1. IC 20-26-5-10, AS AMENDED BY P.L.125-2022, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 10. (a) This section applies to a:

(1) school corporation;

(2) charter school; or

(3) nonpublic school that employs one (1) or more employees.

(b) A school corporation, a charter school, and a nonpublic school shall adopt a policy concerning criminal history information for individuals who:

(1) apply for:

(A) employment with the school corporation, charter school, or nonpublic school; or

(B) employment with an entity with which the school corporation, charter school, or nonpublic school contracts for services;

(2) seek to enter into a contract to provide services to the school corporation, charter school, or nonpublic school; or

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

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

(c) Except as provided in subsections (f) and (g), a school corporation, a charter school, and a nonpublic school shall administer

a policy adopted under this section uniformly for all individuals to whom the policy applies.

(d) A policy adopted under this section must require that the school corporation, charter school, or nonpublic school conduct an expanded criminal history check concerning each applicant for employment who is likely to have direct, ongoing contact with children within the scope of the individual's employment before or not later than thirty (30) days after the start date of the applicant's employment by the school corporation, charter school, or nonpublic school. **If a vendor providing an expanded criminal history check offers more than one (1) type of expanded criminal history check, the policy shall require that the school corporation, charter school, or nonpublic school evaluate all available types of criminal history check and determine whether a more comprehensive expanded criminal history check would better protect the students.**

(e) A policy adopted under this section:

(1) must require that the school corporation, charter school, or nonpublic school conduct an Indiana expanded child protection index check; and

(2) may require that the school corporation, charter school, or nonpublic school conduct an expanded child protection index check in other states;

concerning each applicant for employment who is likely to have direct, ongoing contact with children within the scope of the individual's employment. An Indiana expanded child protection index check must be completed before or not later than sixty (60) days after the start date of the applicant's employment by the school corporation, charter school, or nonpublic school.

(f) A policy adopted under this section must state that the school corporation, charter school, or nonpublic school requires an expanded criminal history check concerning an employee of the school corporation, charter school, or nonpublic school who is likely to have direct, ongoing contact with children within the scope of the employee's employment. The checks must be conducted every five (5) years. A school corporation, charter school, or nonpublic school may adopt a policy to require an employee to obtain an expanded child protection index check every five (5) years.

(g) In implementing subsection (f), and subject to subsection (j), a school corporation, charter school, or nonpublic school may update the checks required under subsection (f) for employees who are employed by the school corporation, charter school, or nonpublic school as of July 1, 2017, over a period not to exceed five (5) years by annually conducting updated expanded criminal history checks and expanded child protection index checks for at least one-fifth (1/5) of the number of employees who are employed by the school corporation, charter school, or nonpublic school on July 1, 2017.

(h) An applicant or employee may be required to provide a written consent for the school corporation, charter school, or nonpublic school to request an expanded criminal history check and an expanded child protection index check concerning the individual before the individual's employment by the school corporation, charter school, or nonpublic school. The school corporation, charter school, or nonpublic school may require the individual to provide a set of fingerprints and pay any fees required for the expanded criminal history check and expanded child protection index check. Each applicant for employment or employee described in subsection (f) may be required:

(1) at the time the individual applies or updates an expanded criminal history check under subsection (f); or

(2) while an expanded criminal history check or expanded child protection index check is being conducted;

to answer questions concerning the individual's expanded criminal history check and expanded child protection index check. The failure to answer honestly questions asked under this subsection is grounds for termination of the employee's employment.

(i) An applicant is responsible for all costs associated with obtaining the expanded criminal history check and expanded child protection index check unless the school corporation, charter school, or nonpublic school agrees to pay the costs. A school corporation, charter school, or nonpublic school may agree to pay the costs associated with obtaining an expanded criminal history background check for an employee. An employee of a school corporation, charter school, or nonpublic school may not be required to pay the costs of an expanded child protection index check.

(j) An applicant or employee may not be required by a school corporation, charter school, or nonpublic school to obtain an expanded criminal history check more than one (1) time during a five (5) year period. However, a school corporation, charter school, or nonpublic school may obtain an expanded criminal history check or an expanded child protection index check at any time if the school corporation, charter school, or nonpublic school has reason to believe that the applicant or employee:

(1) is the subject of a substantiated report of child abuse or neglect; or

(2) has been charged with or convicted of a crime listed in section 11(b) of this chapter or IC 20-28-5-8(c).

(k) As used in this subsection, "offense requiring license revocation" means an offense listed in IC 20-28-5-8(c). A policy adopted under this section must prohibit a school corporation, charter school, or nonpublic school from:

(1) hiring;

(2) continuing the employment of;

(3) contracting with; or

(4) continuing to contract with;

a person who has been convicted of an offense requiring license revocation, unless the conviction has been reversed, vacated, or set aside on appeal.

(l) Information obtained under this section must be used in accordance with law.".

Page 1, line 12, strike "subsection (f)," and insert "**subsection (g), and except as provided in subsection (c),**".

Page 2, line 9, delete "(IC 35-42-2-1)" and insert "(IC 35-42-2-1).".

Page 2, line 9, strike "unless ten (10) years have elapsed from".

Page 2, strike lines 10 through 11.

Page 2, line 18, delete "(IC 35-43-1-1)," and insert "(IC 35-43-1-1).".

Page 2, line 18, strike "unless ten (10) years have elapsed".

Page 2, strike lines 19 through 20.

Page 2, line 24, delete "(IC" and insert "(IC 35-46-1-4(b)(2)).".

Page 2, line 25, delete "35-46-1-4(b)(2)),".

Page 2, line 25, strike "unless ten (10) years have elapsed from the date".

Page 2, strike lines 26 through 27.

Page 2, line 29, delete "(IC 35-46-1-8)," and insert "(IC 35-46-1-8).".

Page 2, strike lines 30 through 32.

Page 2, line 34, delete "IC 35-47.5," and insert "IC 35-47.5.".

Page 2, line 34, strike "unless ten (10) years have elapsed from the date the".

Page 2, strike lines 35 through 36.

Page 2, line 38, strike "unless ten (10) years have elapsed from the date the".

Page 2, strike line 39.

Page 2, line 40, strike "parole, whichever is later." and insert "**other than an offense involving marijuana or paraphernalia used to consume marijuana.**".

Page 2, line 42, delete "IC 35-49-3," and insert "IC 35-49-3.".

Page 2, line 42, strike "unless ten (10)".

Page 3, strike lines 1 through 2.

Page 3, line 4, delete "IC 9-30-5," and insert "IC 9-30-5.".

Page 3, line 4, strike "unless five (5) years have elapsed".

Page 3, strike lines 5 through 6.

Page 3, line 7, delete "(IC 35-42-2-1.3)," and insert "(IC 35-42-2-1.3).".

Page 3, line 7, strike "unless ten (10) years have".

Page 3, strike lines 8 through 9.

Page 3, between lines 27 and 28, begin a new paragraph and insert:

"**(c) This subsection does not apply to the following offenses:**

(1) Murder (IC 35-42-1-1).

(2) Causing suicide (IC 35-42-1-2).
(3) Assisting suicide (IC 35-42-1-2.5).
(4) Voluntary manslaughter (IC 35-42-1-3).
(5) Aggravated battery (IC 35-42-2-1.5).
(6) Kidnapping (IC 35-42-3-2).
(7) A sex offense under IC 35-42-4 (including criminal deviate conduct (IC 35-42-4-2) (before its repeal)).
(8) Carjacking (IC 35-42-5-2) (repealed).
(9) Arson (IC 35-43-1-1).
(10) Incest (IC 35-46-1-3).
(11) Neglect of a dependent as a Class B felony (for a crime committed before July 1, 2014) or a Level 1 felony or Level 3 felony (for a crime committed after June 30, 2014) (IC 35-46-1-4(b)(2)).
(12) Child selling (IC 35-46-1-4(d)).
(13) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.

A school corporation or charter school may employ or contract with an individual convicted of an offense described in subsection (b) if a majority of the members elected or appointed to the school board, or the equivalent body for a charter school, approves the employment or contract.".

Page 3, line 28, strike "(c)" and insert "**(d)**".

Page 3, line 33, strike "(d)" and insert "**(e)**".

Page 3, line 37, strike "(e)" and insert "**(f)**".

Page 3, line 42, strike "(f)" and insert "**(g)**".

Page 4, line 3, after "school" insert "**or entity**".

Page 4, line 10, strike "(g)" and insert "**(h)**".

Page 4, line 14, delete "(h)" and insert "**(i)**".

Page 4, line 14, delete "corporation, charter school, or nonpublic" and insert "**corporation or charter**".

Page 4, line 19, after "misconduct" insert "**relating to the health, safety, or well-being of a student**".

Page 4, line 19, delete "corporation, charter school, or" and insert "**corporation or charter school**".

Page 4, line 20, delete "nonpublic school".

Page 4, line 26, delete "board," and insert "**board**".

Page 4, line 27, delete "or nonpublic school,".

Page 4, between lines 28 and 29, begin a new paragraph and insert:

"**(j) For purposes of subsection (i), "misconduct relating to the health, safety, or well-being of a student" includes:**

(1) engaging in a pattern of flirtatious or otherwise inappropriate comments;
(2) making any effort to gain unreasonable access to, and time alone with, any student with no discernable educational purpose;

(3) engaging in any behavior that can reasonably be construed as involving an inappropriate and overly personal and intimate relationship with, conduct toward, or focus on a student;
(4) engaging in any other individualized, special treatment not in compliance with generally accepted educational practices;
(5) telling explicit sexual jokes and stories;
(6) making sexually related comments;
(7) engaging in sexual kidding or teasing;
(8) engaging in sexual innuendos or making comments with double entendre;
(9) inappropriate physical touching;
(10) using spoken, written, or any electronic communication to importune, invite, participate with, or entice a person to expose or touch the person's own or another person's intimate body parts or to observe the student's intimate body parts via any form of computer network or system, any social media platform, telephone network, or data network or by text message or instant messaging;
(11) sexual advances or requests for sexual favors;
(12) physical or romantic relationship including but not limited to sexual intercourse or oral sexual intercourse;
(13) discussion of one's personal romantic or sexual feelings or activities;
(14) discussion, outside of a professional teaching or counseling context endorsed or required by an employing school district, of a student's romantic or sexual feelings or activities;
(15) displaying, sharing or transmitting pornographic or sexually explicit materials;
(16) any physical contact that the student previously has indicated is unwelcome, unless such contact is professionally required, such as to teach a sport or other skill, or to protect the safety of the student or others;
(17) other than for purposes of addressing student dress code violations or concerns, referencing the physical appearance or clothes of a student in a way that could be interpreted as sexual;
(18) self-disclosure or physical exposure of a sexual, romantic, or erotic nature; and
(19) any other conduct that adversely affects the health, safety, or well-being of a student.".

Page 4, line 29, delete "(i)" and insert "**(k)**".

Page 4, line 29, delete "corporation, charter school, or nonpublic" and insert "**corporation or charter**".

Page 4, line 30, after "hires" insert "**or contracts with an**

individual convicted of an offense described in subsection (b) or".

Page 4, line 30, delete "subsection (h)," and insert "**subsection (i),**".

Page 4, line 31, delete "employing the employee:" and insert "**hiring or contracting with the individual:**".

Page 4, line 32, delete "hiring;" and insert "**hiring or contract;**".

Page 4, line 33, after "hire" insert "**or contract with**".

Page 4, line 34, after "the" insert "**conviction described in subsection (b) or the**".

Page 4, line 34, delete "subsection (h);" and insert "**subsection (i);**".

Page 4, line 36, after "the" insert "**conviction described in subsection (b) or the**".

Page 4, line 36, delete "subsection (h)." and insert "**subsection (i).**".

Page 4, after line 36, begin a new paragraph and insert:

"SECTION 3. IC 20-26-5-11.5, AS ADDED BY P.L.106-2016, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11.5. (a) As used in this section, "school" includes:

(1) a charter school, as defined in IC 20-24-1-4;

(2) a nonpublic school, as defined in IC 20-18-2-12, that employs one (1) or more employees;

(3) a public school, as defined in IC 20-18-2-15(1); and

(4) an entity in another state that carries out a function similar to an entity described in subdivisions (1) through (3).

(b) Notwithstanding any confidentiality agreement entered into by a school and an employee of the school, a school that receives a request for an employment reference, from another school, for a current or former employee, shall disclose to the requesting school any incident known by the school in which the employee committed an act resulting in a substantiated report of abuse or neglect under IC 31-6 (before its repeal) or IC 31-33.

(c) A school may not disclose information under this section that:

(1) identifies a student; or

(2) is confidential student information under the federal Family Education Rights and Privacy Act (20 U.S.C. 1232g et seq.).

(d) A confidentiality agreement entered into or amended after June 30, 2016, by a school and an employee is not enforceable against the school if the employee committed an act resulting in a substantiated report of abuse or neglect under IC 31-6 (before its repeal) or IC 31-33.

(e) Notwithstanding any confidentiality agreement entered into by a school and an employee of the school, a school that receives a request for an employment reference, from another school, for a current or former employee, shall disclose to the requesting school any incident known by the school in which the employee was:

(1) arrested;

(2) charged with a criminal offense;

(3) convicted of a criminal offense;

(4) under court supervision or the supervision of a community correction program as the result of a conviction for a criminal offense (including being placed on home detention, work release, or intermittent incarceration);

(5) the subject of a protection order; or

(6) named as a defendant in a civil action if the civil action could affect the safety of students.

This provision of this subsection concerning a confidentiality agreement applies to a confidentiality agreement entered into or amended after June 30, 2023.

(f) A school may not hire an employee who committed an act resulting in a substantiated report of abuse or neglect as described in subsection (b), or to whom subsection (e)(1) through (e)(6) applies, unless a majority of the members elected or appointed to the school board, or the equivalent body for a charter school or nonpublic school, approves the hire.

(g) If a school knowingly hires an employee who committed an act resulting in a substantiated report of abuse or neglect as described in subsection (b), or to whom subsection (e)(1) through (e)(6) applies, the school shall, not later than thirty (30) days after employing the employee:

(1) notify the department in writing of the employee's hiring;

(2) explain why it was necessary to hire the employee in light of the factors described in subsections (b) and (e); and

(3) set forth the school's plan to protect the safety of students in light of the factors described in subsections (b) and (e).".

Renumber all SECTIONS consecutively.

(Reference is to SB 342 as printed January 27, 2023.)

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Senator FREEMAN