

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 206

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AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

SECTION 1. IC 35-31.5-2-3, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a) Except as provided in subsection (b) or unless otherwise defined in statute, "accused", for purposes of IC 35-40, has the meaning set forth in IC 35-40-4-2.**

**(b) "Accused", for purposes of IC 35-40-5-11.5, has the meaning set forth in IC 35-40-5-11.5.**

SECTION 2. IC 35-31.5-2-40.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 40.5. "Child victim", for purposes of IC 35-40-5-11.5, has the meaning set forth in IC 35-40-5-11.5.**

SECTION 3. IC 35-31.5-2-87.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 87.1. "Defendant", for purposes of IC 35-40-5-11.5, has the meaning set forth in IC 35-40-5-11.5.**

SECTION 4. IC 35-31.5-2-87.5 IS REPEALED [EFFECTIVE UPON PASSAGE]. ~~Sec. 87.5. "Defense counsel", for purposes of IC 35-40-5-11; has the meaning set forth in IC 35-40-5-11(b).~~

SECTION 5. IC 35-31.5-2-90.5 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 90.5. "Deposition", for purposes of IC 35-40-5-11.5, has the meaning set forth in IC 35-40-5-11.5.**

SECTION 6. IC 35-40-5-3, AS AMENDED BY P.L.65-2016, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) This section applies if either of the following has occurred:

(1) The alleged felony or delinquent act that would have been a felony if committed by an adult was directly perpetrated against the victim.

(2) The alleged felony, misdemeanor, or delinquent act that would have been a felony or misdemeanor if committed by an adult was:

(A) a violation of IC 35-42-2 (offenses against the person), IC 35-45-2-1 (intimidation), IC 35-45-2-2 (harassment), IC 35-46-1-15.1 (invasion of privacy), IC 35-46-1-15.3, or IC 35-47-4-3 (pointing a firearm); and

(B) directly perpetrated against the victim by a person who:

- (i) is or was a spouse of the victim;
- (ii) is or was living as if a spouse of the victim; or
- (iii) has a child in common with the victim.

(3) The alleged misdemeanor or delinquent act that would have been a misdemeanor if committed by an adult, other than a misdemeanor described in subdivision (2), was directly perpetrated against the victim, and the victim has complied with the notice requirements under IC 35-40-10.

(b) A victim has the right to confer with a representative of the prosecuting attorney's office:

(1) after a crime allegedly committed against the victim has been charged;

(2) before the trial of a crime allegedly committed against the victim; and

(3) before any disposition of a criminal case involving the victim.

This right does not include the authority to direct the prosecution of a criminal case involving the victim.

**(c) A child victim (as defined in section 11.5 of this chapter) has the right to confer with a representative of the prosecuting attorney's office before being deposed. The representative of the prosecuting attorney's office may not instruct the child victim to refuse to participate in the deposition.**

SECTION 7. IC 35-40-5-11 IS REPEALED [EFFECTIVE UPON PASSAGE] Sec. 11: (a) This section applies only to a child less than



sixteen (16) years of age who is the victim or alleged victim of a sex offense (as defined in IC 11-8-8-5.2):

- (b) As used in this section, "defense counsel" includes an agent of:
- (1) the defense counsel; or
  - (2) the defendant.

(c) After charges are filed against a defendant, if defense counsel would like to interview a child described in subsection (a), the defendant or defense counsel must contact the prosecuting attorney. The child has the right under section 3 of this chapter to confer with the prosecuting attorney before the interview occurs. The prosecuting attorney may not instruct the child not to speak with defense counsel.

(d) If the parties are unable to agree to the terms of the interview, the parties may petition the court for a hearing on the terms of the interview prior to the interview taking place. The court shall review the terms suggested by the parties and consider the age of the child; any special considerations; and the rights of victims provided by IC 35-40-5-1 in setting reasonable terms for the interview.

SECTION 8. IC 35-40-5-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.5. (a) This section applies only to a criminal case involving a child less than sixteen (16) years of age who is the victim or alleged victim of a sex offense.**

**(b) The following definitions apply throughout this section:**

- (1) "Accused" or "the accused" means a person charged with committing a sex offense against a child victim. The term does not include an attorney who represents the accused.**
- (2) "Child victim" means a child less than sixteen (16) years of age who is the victim or alleged victim of a sex offense.**
- (3) "Defendant" means a person charged with committing a sex offense against a child victim and an attorney who represents the defendant.**
- (4) "Deposition" or "depose" means a deposition upon oral examination, or taking a deposition upon oral examination, as described in Indiana Trial Rule 30.**
- (5) "Sex offense" has the meaning set forth in IC 11-8-8-5.2.**

**(c) A defendant may depose a child victim only in accordance with this section.**

**(d) A defendant may not take the deposition of a child victim unless the defendant contacts the prosecuting attorney before contacting the child, and one (1) or more of the following apply:**

- (1) The prosecuting attorney agrees to the deposition. The prosecuting attorney may condition the prosecuting attorney's**



agreement to the deposition upon the defendant's acceptance of the manner in which the deposition shall be conducted.

(2) The court authorizes the deposition after finding, following a hearing under subsection (f), that there is a reasonable likelihood that the child victim will be unavailable for trial and the deposition is necessary to preserve the child victim's testimony.

(3) The court authorizes the deposition after finding, following a hearing under subsection (g), that the deposition is necessary:

(A) due to the existence of extraordinary circumstances; and

(B) in the interest of justice.

(e) If the prosecuting attorney does not agree to the deposition, the defendant may petition the court for authorization to depose the child victim under subsection (d)(2), (d)(3), or both subsection (d)(2) and (d)(3). Upon receipt of the petition, the court shall notify the prosecuting attorney and set a hearing to determine whether to authorize a deposition of the child victim, and, if applicable, to determine the manner in which the deposition shall be conducted.

(f) The court shall authorize the deposition of a child victim under subsection (d)(2) if the defendant proves by a preponderance of the evidence that there is a reasonable likelihood that the child victim will be unavailable for trial and the deposition is necessary to preserve the child victim's testimony.

(g) The court may not authorize the deposition of a child victim under subsection (d)(3) unless the defendant establishes by a preponderance of the evidence that the deposition is necessary:

(1) due to the existence of extraordinary circumstances; and

(2) in the interest of justice.

(h) If the court authorizes the deposition of a child victim under subsection (f) or (g), the court shall determine the manner in which the deposition shall be conducted, after considering:

(1) the age of the child;

(2) the rights of the victim under IC 35-40-5-1; and

(3) any other relevant factors or special considerations.

(i) If the court denies a petition to depose a child victim, the court shall issue a written order describing the reason for the denial.

(j) If the court grants a request to depose a child victim, the court shall issue a written order describing the reason for granting the petition and setting forth the manner in which the deposition



shall be conducted. The order shall:

- (1) expressly prohibit the accused from deposing or being present at the deposition of the child victim unless:
  - (A) there is a reasonable likelihood that the child victim will be unavailable for trial;
  - (B) the deposition is necessary to preserve the child victim's testimony; and
  - (C) the presence of the accused is necessary to preserve the constitutional rights of the accused under the Sixth Amendment of the Constitution of the United States or Article 1, Section 13 of the Constitution of the State of Indiana;
- (2) describe the manner in which the deposition shall be conducted; and
- (3) if applicable, issue a protective order under Indiana Trial Rule 26(C).

SECTION 9. An emergency is declared for this act.



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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