

HOUSE BILL No. 1200

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-37-4-6; IC 35-42-3.5.

Synopsis: Human trafficking. Modifies the definition of "protected person" for purposes of the admission of a statement or videotape of an individual who is less than 14 years of age at the time of the offense. Removes the requirement that money paid for a human trafficking victim or for an act performed by a human trafficking victim be paid to a third party. Increases the penalty if the human trafficking victim is less than 18 years of age. Specifies that: (1) consent by the human trafficking victim; or (2) a belief that the human trafficking victim was at least 18 years of age; is not a defense to a prosecution. Requires law enforcement agencies to report human trafficking investigations to the attorney general within 30 days after an investigation begins.

Effective: July 1, 2021.

**McNamara, Steuerwald, Olthoff,
Negele**

January 7, 2021, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1200

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 35-37-4-6, AS AMENDED BY P.L.142-2020,
2 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 6. (a) This section applies to a criminal action
4 involving the following offenses where the victim is a protected person
5 under subsection (c)(1) or (c)(2):
6 (1) Sex crimes (IC 35-42-4).
7 (2) A battery offense included in IC 35-42-2 upon a child less
8 than fourteen (14) years of age.
9 (3) Kidnapping and confinement (IC 35-42-3).
10 (4) Incest (IC 35-46-1-3).
11 (5) Neglect of a dependent (IC 35-46-1-4).
12 (6) Human and sexual trafficking crimes (IC 35-42-3.5).
13 (b) This section applies to a criminal action involving the following
14 offenses where the victim is a protected person under subsection (c)(3):
15 (1) Exploitation of a dependent or endangered adult (IC
16 35-46-1-12).
17 (2) A sex crime (IC 35-42-4).



- 1 (3) A battery offense included in IC 35-42-2.
 2 (4) Kidnapping, confinement, or interference with custody (IC
 3 35-42-3).
 4 (5) Home improvement fraud (IC 35-43-6).
 5 (6) Fraud (IC 35-43-5).
 6 (7) Identity deception (IC 35-43-5-3.5).
 7 (8) Synthetic identity deception (IC 35-43-5-3.8).
 8 (9) Theft (IC 35-43-4-2).
 9 (10) Conversion (IC 35-43-4-3).
 10 (11) Neglect of a dependent (IC 35-46-1-4).
 11 (12) Human and sexual trafficking crimes (IC 35-42-3.5).
 12 (c) As used in this section, "protected person" means:
 13 (1) a child who is less than fourteen (14) years of age **at the time**
 14 **of the offense;**
 15 (2) an individual with a mental disability who has a disability
 16 attributable to an impairment of general intellectual functioning
 17 or adaptive behavior that:
 18 (A) is manifested before the individual is eighteen (18) years
 19 of age;
 20 (B) is likely to continue indefinitely;
 21 (C) constitutes a substantial impairment of the individual's
 22 ability to function normally in society; and
 23 (D) reflects the individual's need for a combination and
 24 sequence of special, interdisciplinary, or generic care,
 25 treatment, or other services that are of lifelong or extended
 26 duration and are individually planned and coordinated; or
 27 (3) an individual who is:
 28 (A) at least eighteen (18) years of age; and
 29 (B) incapable by reason of mental illness, intellectual
 30 disability, dementia, or other physical or mental incapacity of:
 31 (i) managing or directing the management of the individual's
 32 property; or
 33 (ii) providing or directing the provision of self-care.
 34 (d) A statement or videotape that:
 35 (1) is made by a person who at the time of trial is a protected
 36 person, **as defined in subsection (c);**
 37 (2) concerns an act that is a material element of an offense listed
 38 in subsection (a) or (b) that was allegedly committed against the
 39 person; and
 40 (3) is not otherwise admissible in evidence;
 41 is admissible in evidence in a criminal action for an offense listed in
 42 subsection (a) or (b) if the requirements of subsection (e) are met.



1 (e) A statement or videotape described in subsection (d) is
2 admissible in evidence in a criminal action listed in subsection (a) or
3 (b) if, after notice to the defendant of a hearing and of the defendant's
4 right to be present, all of the following conditions are met:

5 (1) The court finds, in a hearing:

6 (A) conducted outside the presence of the jury; and

7 (B) attended by the protected person in person or by using
8 closed circuit television testimony as described in section 8(f)
9 and 8(g) of this chapter;

10 that the time, content, and circumstances of the statement or
11 videotape provide sufficient indications of reliability.

12 (2) The protected person:

13 (A) testifies at the trial; or

14 (B) is found by the court to be unavailable as a witness for one

15 (1) of the following reasons:

16 (i) From the testimony of a psychiatrist, physician, or
17 psychologist, and other evidence, if any, the court finds that
18 the protected person's testifying in the physical presence of
19 the defendant will cause the protected person to suffer
20 serious emotional distress such that the protected person
21 cannot reasonably communicate.

22 (ii) The protected person cannot participate in the trial for
23 medical reasons.

24 (iii) The court has determined that the protected person is
25 incapable of understanding the nature and obligation of an
26 oath.

27 (f) If a protected person is unavailable to testify at the trial for a
28 reason listed in subsection (e)(2)(B), a statement or videotape may be
29 admitted in evidence under this section only if the protected person was
30 available for cross-examination:

31 (1) at the hearing described in subsection (e)(1); or

32 (2) when the statement or videotape was made.

33 (g) A statement or videotape may not be admitted in evidence under
34 this section unless the prosecuting attorney informs the defendant and
35 the defendant's attorney at least ten (10) days before the trial of:

36 (1) the prosecuting attorney's intention to introduce the statement
37 or videotape in evidence; and

38 (2) the content of the statement or videotape.

39 (h) If a statement or videotape is admitted in evidence under this
40 section, the court shall instruct the jury that it is for the jury to
41 determine the weight and credit to be given the statement or videotape
42 and that, in making that determination, the jury shall consider the



1 following:

- 2 (1) The mental and physical age of the person making the
 3 statement or videotape.
 4 (2) The nature of the statement or videotape.
 5 (3) The circumstances under which the statement or videotape
 6 was made.
 7 (4) Other relevant factors.

8 (i) If a statement or videotape described in subsection (d) is
 9 admitted into evidence under this section, a defendant may introduce
 10 a:

- 11 (1) transcript; or
 12 (2) videotape;

13 of the hearing held under subsection (e)(1) into evidence at trial.

14 SECTION 2. IC 35-42-3.5-1.4, AS ADDED BY P.L.144-2018,
 15 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2021]: Sec. 1.4. **(a)** A person who knowingly or intentionally:

- 17 **(1)** pays, ~~to,~~ **or** offers **or** agrees to pay, ~~to,~~ agrees to pay money or
 18 other property; **or**
 19 **(2)** ~~to,~~ **or** benefits in some other manner another person **offers a**
 20 **benefit;**

21 for a human trafficking victim or **for** an act performed by a human
 22 trafficking victim commits human trafficking, a Level 5 felony.
 23 **However, the offense is a Level 4 felony if the human trafficking**
 24 **victim is less than eighteen (18) years of age.**

25 **(b) It is not a defense to a prosecution under this section that:**

- 26 **(1) the human trafficking victim consented; or**
 27 **(2) the person believed the human trafficking victim to be at**
 28 **least eighteen (18) years of age.**

29 SECTION 3. IC 35-42-3.5-5 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 2021]: Sec. 5. **Not more than thirty (30) days after the date a law**
 32 **enforcement agency begins an investigation regarding a violation**
 33 **of:**

- 34 **(1) section 1 of this chapter;**
 35 **(2) section 1.1 of this chapter;**
 36 **(3) section 1.2 of this chapter;**
 37 **(4) section 1.3 of this chapter; or**
 38 **(5) section 1.4 of this chapter;**

39 **the law enforcement agency shall notify the attorney general of the**
 40 **investigation, so that the attorney general may assist the law**
 41 **enforcement agency pursuant to IC 4-6-2-12.**

