



February 16, 2021

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## HOUSE BILL No. 1200

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DIGEST OF HB 1200 (Updated February 16, 2021 11:56 am - DI 131)

**Citations Affected:** IC 35-37; IC 35-42.

**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 but less than 18 years of age at the time of trial. 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.

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**McNamara, Steuerwald, Olthoff,  
Negele**

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January 7, 2021, read first time and referred to Committee on Courts and Criminal Code.  
February 16, 2021, amended, reported — Do Pass.

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HB 1200—LS 6650/DI 143





February 16, 2021

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

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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  
16 (IC 35-46-1-12).  
17 (2) A sex crime (IC 35-42-4).

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- 1 (3) A battery offense included in IC 35-42-2.  
 2 (4) Kidnapping, confinement, or interference with custody  
 3 (IC 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 but less than eighteen (18) years of age at the**  
 15 **time of trial;**  
 16 (2) an individual with a mental disability who has a disability  
 17 attributable to an impairment of general intellectual functioning  
 18 or adaptive behavior that:  
 19 (A) is manifested before the individual is eighteen (18) years  
 20 of age;  
 21 (B) is likely to continue indefinitely;  
 22 (C) constitutes a substantial impairment of the individual's  
 23 ability to function normally in society; and  
 24 (D) reflects the individual's need for a combination and  
 25 sequence of special, interdisciplinary, or generic care,  
 26 treatment, or other services that are of lifelong or extended  
 27 duration and are individually planned and coordinated; or  
 28 (3) an individual who is:  
 29 (A) at least eighteen (18) years of age; and  
 30 (B) incapable by reason of mental illness, intellectual  
 31 disability, dementia, or other physical or mental incapacity of:  
 32 (i) managing or directing the management of the individual's  
 33 property; or  
 34 (ii) providing or directing the provision of self-care.  
 35 (d) A statement or videotape that:  
 36 (1) is made by a person who at the time of trial is a protected  
 37 person, **as defined in subsection (c);**  
 38 (2) concerns an act that is a material element of an offense listed  
 39 in subsection (a) or (b) that was allegedly committed against the  
 40 person; and  
 41 (3) is not otherwise admissible in evidence;  
 42 is admissible in evidence in a criminal action for an offense listed in



- 1 subsection (a) or (b) if the requirements of subsection (e) are met.
- 2 (e) A statement or videotape described in subsection (d) is
- 3 admissible in evidence in a criminal action listed in subsection (a) or
- 4 (b) if, after notice to the defendant of a hearing and of the defendant's
- 5 right to be present, all of the following conditions are met:
- 6 (1) The court finds, in a hearing:
- 7 (A) conducted outside the presence of the jury; and
- 8 (B) attended by the protected person in person or by using
- 9 closed circuit television testimony as described in section 8(f)
- 10 and 8(g) of this chapter;
- 11 that the time, content, and circumstances of the statement or
- 12 videotape provide sufficient indications of reliability.
- 13 (2) The protected person:
- 14 (A) testifies at the trial; or
- 15 (B) is found by the court to be unavailable as a witness for one
- 16 (1) of the following reasons:
- 17 (i) From the testimony of a psychiatrist, physician, or
- 18 psychologist, and other evidence, if any, the court finds that
- 19 the protected person's testifying in the physical presence of
- 20 the defendant will cause the protected person to suffer
- 21 serious emotional distress such that the protected person
- 22 cannot reasonably communicate.
- 23 (ii) The protected person cannot participate in the trial for
- 24 medical reasons.
- 25 (iii) The court has determined that the protected person is
- 26 incapable of understanding the nature and obligation of an
- 27 oath.
- 28 (f) If a protected person is unavailable to testify at the trial for a
- 29 reason listed in subsection (e)(2)(B), a statement or videotape may be
- 30 admitted in evidence under this section only if the protected person was
- 31 available for cross-examination:
- 32 (1) at the hearing described in subsection (e)(1); or
- 33 (2) when the statement or videotape was made.
- 34 (g) A statement or videotape may not be admitted in evidence under
- 35 this section unless the prosecuting attorney informs the defendant and
- 36 the defendant's attorney at least ten (10) days before the trial of:
- 37 (1) the prosecuting attorney's intention to introduce the statement
- 38 or videotape in evidence; and
- 39 (2) the content of the statement or videotape.
- 40 (h) If a statement or videotape is admitted in evidence under this
- 41 section, the court shall instruct the jury that it is for the jury to
- 42 determine the weight and credit to be given the statement or videotape



1 and that, in making that determination, the jury shall consider the  
2 following:

3 (1) The mental and physical age of the person making the  
4 statement or videotape.

5 (2) The nature of the statement or videotape.

6 (3) The circumstances under which the statement or videotape  
7 was made.

8 (4) Other relevant factors.

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

12 (1) transcript; or

13 (2) videotape;

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

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

18 **(1)** pays, ~~to,~~ or offers or agrees to pay, ~~to,~~ agrees to pay money or  
19 other property; or

20 **(2)** ~~to,~~ or benefits in some other manner another person offers a  
21 **benefit;**

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

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

27 **(1) the human trafficking victim consented; or**

28 **(2) the person believed the human trafficking victim to be at**  
29 **least eighteen (18) years of age.**

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

35 **(1) section 1 of this chapter;**

36 **(2) section 1.1 of this chapter;**

37 **(3) section 1.2 of this chapter;**

38 **(4) section 1.3 of this chapter; or**

39 **(5) section 1.4 of this chapter;**

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



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1200, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 14, delete "offense;" and insert "**offense but less than eighteen (18) years of age at the time of trial;**".

and when so amended that said bill do pass.

(Reference is to HB 1200 as introduced.)

MCNAMARA

Committee Vote: yeas 11, nays 0.

