

SENATE BILL No. 176

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2; IC 35-40-5.

Synopsis: Deposition of a person with a mental disability. Repeals and replaces the term "child victim" with the term "protected victim". Defines "protected victim" as: (1) a child less than 16 years of age; or (2) an individual who is 16 years of age or older and has a mental disability attributable to an impairment of general intellectual functioning or adaptive behavior; who is the victim of a sex offense, and specifies that a protected victim has the right to confer with a representative of the prosecuting attorney's office before being deposed. Provides that a defendant may only depose a protected victim if the prosecuting attorney agrees to the deposition or if a court authorizes the deposition. Sets forth a procedure for a court to use to determine whether to authorize the deposition of a protected victim, and to specify the manner in which the deposition may be conducted. Provides that an order authorizing the deposition of a protected victim must expressly prohibit the presence of the person accused of committing the offense against the protected victim unless certain conditions apply and the presence of the accused is necessary to preserve the person's rights under the constitution of the United States or the State of Indiana. Makes conforming amendments.

Effective: July 1, 2021.

Messmer

January 5, 2021, read first time and referred to Committee on Corrections and Criminal Law.



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.

SENATE BILL No. 176

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 35-31.5-2-40.5 IS REPEALED [EFFECTIVE JULY
2 1, 2021]. ~~Sec. 40.5: "Child victim", for purposes of IC 35-40-5-11.5;~~
3 ~~has the meaning set forth in IC 35-40-5-11.5.~~
- 4 SECTION 2. IC 35-31.5-2-255.4 IS ADDED TO THE INDIANA
5 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2021]: **Sec. 255.4. "Protected victim" for**
7 **purposes of IC 35-40-5-11.5, has the meaning set forth in**
8 **IC 35-40-5-11.5.**
- 9 SECTION 3. IC 35-40-5-3, AS AMENDED BY P.L.62-2020,
10 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2021]: Sec. 3. (a) This section applies if either of the
12 following has occurred:
- 13 (1) The alleged felony or delinquent act that would have been a
14 felony if committed by an adult was directly perpetrated against
15 the victim.
- 16 (2) The alleged felony, misdemeanor, or delinquent act that would
17 have been a felony or misdemeanor if committed by an adult was:



- 1 (A) a violation of IC 35-42-2 (offenses against the person),
 2 IC 35-45-2-1 (intimidation), IC 35-45-2-2 (harassment),
 3 IC 35-46-1-15.1 (invasion of privacy), IC 35-46-1-15.3, or
 4 IC 35-47-4-3 (pointing a firearm); and
 5 (B) directly perpetrated against the victim by a person who:
 6 (i) is or was a spouse of the victim;
 7 (ii) is or was living as if a spouse of the victim; or
 8 (iii) has a child in common with the victim.
 9 (3) The alleged misdemeanor or delinquent act that would have
 10 been a misdemeanor if committed by an adult, other than a
 11 misdemeanor described in subdivision (2), was directly
 12 perpetrated against the victim, and the victim has complied with
 13 the notice requirements under IC 35-40-10.
 14 (b) A victim has the right to confer with a representative of the
 15 prosecuting attorney's office:
 16 (1) after a crime allegedly committed against the victim has been
 17 charged;
 18 (2) before the trial of a crime allegedly committed against the
 19 victim; and
 20 (3) before any disposition of a criminal case involving the victim.
 21 This right does not include the authority to direct the prosecution of a
 22 criminal case involving the victim.
 23 (c) A **child protected** victim (as defined in section 11.5 of this
 24 chapter) has the right to confer with a representative of the prosecuting
 25 attorney's office before being deposed. The representative of the
 26 prosecuting attorney's office may not instruct the **child protected**
 27 victim to refuse to participate in the deposition.
 28 SECTION 4. IC 35-40-5-11.5, AS ADDED BY P.L.62-2020,
 29 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2021]: Sec. 11.5. (a) This section applies only to a criminal
 31 case involving a **child less than sixteen (16) years of age protected**
 32 **victim** who is the victim or alleged victim of a sex offense.
 33 (b) The following definitions apply throughout this section:
 34 (1) "Accused" or "the accused" means a person charged with
 35 committing a sex offense against a **child protected** victim. The
 36 term does not include an attorney who represents the accused.
 37 (2) "**Child victim**" means a **child less than sixteen (16) years of**
 38 **age who is the victim or alleged victim of a sex offense.**
 39 (3) "**Defendant**" means a person charged with committing a
 40 sex offense against a **child protected** victim and an attorney who
 41 represents the defendant.
 42 (4) "**Deposition**" or "depose" means a deposition upon oral



1 examination, or taking a deposition upon oral examination, as
 2 described in Indiana Trial Rule 30.

3 **(4) "Protected victim" means:**

4 **(A) a child less than sixteen (16) years of age; or**

5 **(B) an individual who is sixteen (16) years of age or older**
 6 **and has a mental disability attributable to an impairment**
 7 **of general intellectual functioning or adaptive behavior**
 8 **that:**

9 **(i) is likely to continue indefinitely;**

10 **(ii) constitutes a substantial impairment of the**
 11 **individual's ability to function normally in society; and**

12 **(iii) reflects the individual's need for a combination and**
 13 **sequence of special, interdisciplinary, or generic care,**
 14 **treatment, or other services that are of lifelong or**
 15 **extended duration and are individually planned and**
 16 **coordinated;**

17 **who is the victim or alleged victim of a sex offense.**

18 (5) "Sex offense" has the meaning set forth in IC 11-8-8-5.2.

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

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

25 (1) The prosecuting attorney agrees to the deposition. The
 26 prosecuting attorney may condition the prosecuting attorney's
 27 agreement to the deposition upon the defendant's acceptance of
 28 the manner in which the deposition shall be conducted.

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

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

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

37 (B) in the interest of justice.

38 (e) If the prosecuting attorney does not agree to the deposition, the
 39 defendant may petition the court for authorization to depose the ~~child~~
 40 **protected** victim under subsection (d)(2), (d)(3), or both subsection
 41 (d)(2) and (d)(3). Upon receipt of the petition, the court shall notify the
 42 prosecuting attorney and set a hearing to determine whether to



1 authorize a deposition of the **child protected** victim, and, if applicable,
2 to determine the manner in which the deposition shall be conducted.

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

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

- 12 (1) due to the existence of extraordinary circumstances; and
- 13 (2) in the interest of justice.

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

- 17 (1) the age of the child **described in subsection (b)(4)(A) or the**
18 **mental capacity of the individual described in subsection**
19 **(b)(4)(B);**
- 20 (2) the rights of the victim under IC 35-40-5-1; and
- 21 (3) any other relevant factors or special considerations.

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

24 (j) If the court grants a request to depose a **child protected** victim,
25 the court shall issue a written order describing the reason for granting
26 the petition and setting forth the manner in which the deposition shall
27 be conducted. The order shall:

- 28 (1) expressly prohibit the accused from deposing or being present
29 at the deposition of the **child protected** victim unless:
 - 30 (A) there is a reasonable likelihood that the **child protected**
31 victim will be unavailable for trial;
 - 32 (B) the deposition is necessary to preserve the **child protected**
33 victim's testimony; and
 - 34 (C) the presence of the accused is necessary to preserve the
35 constitutional rights of the accused under the Sixth
36 Amendment of the Constitution of the United States or Article
37 1, Section 13 of the Constitution of the State of Indiana;
- 38 (2) describe the manner in which the deposition shall be
39 conducted; and
- 40 (3) if applicable, issue a protective order under Indiana Trial Rule
41 26(C).

