

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 331

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 35-31.5-2-255.5, AS ADDED BY P.L.58-2020, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 255.5. (a) **"Provider", for purposes of IC 35-37-4, has the meaning set forth in IC 35-37-4-6(d).**

(b) "Provider", for purposes of IC 35-40.5, has the meaning set forth in IC 35-40.5-1-1.

SECTION 2. IC 35-37-4-6, AS AMENDED BY P.L.153-2022, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(1) or (c)(2):

- (1) Sex crimes (IC 35-42-4).
- (2) A battery offense included in IC 35-42-2 upon a child less than fourteen (14) years of age.
- (3) Kidnapping and confinement (IC 35-42-3).
- (4) Incest (IC 35-46-1-3).
- (5) Neglect of a dependent (IC 35-46-1-4).
- (6) Human and sexual trafficking crimes (IC 35-42-3.5).

(b) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(3):

- (1) Exploitation of a dependent or endangered adult

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- (IC 35-46-1-12).
- (2) A sex crime (IC 35-42-4).
 - (3) A battery offense included in IC 35-42-2.
 - (4) Kidnapping, confinement, or interference with custody (IC 35-42-3).
 - (5) Home improvement fraud (IC 35-43-6).
 - (6) Fraud (IC 35-43-5).
 - (7) Identity deception (IC 35-43-5-3.5).
 - (8) Synthetic identity deception (IC 35-43-5-3.8) (before its repeal).
 - (9) Theft (IC 35-43-4-2).
 - (10) Conversion (IC 35-43-4-3).
 - (11) Neglect of a dependent (IC 35-46-1-4).
 - (12) Human and sexual trafficking crimes (IC 35-42-3.5).
- (c) As used in this section, "protected person" means:
- (1) a child who is less than fourteen (14) years of age at the time of the offense but less than eighteen (18) years of age at the time of trial;
 - (2) an individual with a mental disability who has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:
 - (A) is manifested before the individual is eighteen (18) years of age;
 - (B) is likely to continue indefinitely;
 - (C) constitutes a substantial impairment of the individual's ability to function normally in society; and
 - (D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; or
 - (3) an individual who is:
 - (A) at least eighteen (18) years of age; and
 - (B) incapable by reason of mental illness, intellectual disability, dementia, or other physical or mental incapacity of:
 - (i) managing or directing the management of the individual's property; or
 - (ii) providing or directing the provision of self-care.
- (d) As used in this section, "provider" means:
- (1) a psychiatrist or physician licensed under IC 25-22.5;
 - (2) a psychologist licensed under IC 25-33;
 - (3) a marriage and family therapist licensed under 25-23.6-8;
 - (4) an advanced practice registered nurse (APRN) with a



certification as a psychiatric mental health nurse practitioner licensed under 25-23; or
(5) a physician assistant specialized in psychiatry and mental health licensed under 25-27.5.

~~(d)~~ (e) A statement or videotape that:

- (1) is made by a person who at the time of trial is a protected person, as defined in subsection (c);
- (2) concerns an act that is a material element of an offense listed in subsection (a) or (b) that was allegedly committed against the person; and
- (3) is not otherwise admissible in evidence;

is admissible in evidence in a criminal action for an offense listed in subsection (a) or (b) if the requirements of subsection ~~(e)~~ (f) are met.

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

- (1) The court finds, in a hearing:
 - (A) conducted outside the presence of the jury; and
 - (B) attended by the protected person in person or by using closed circuit television testimony as described in section 8(f) and 8(g) of this chapter;

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

- (2) The protected person:
 - (A) testifies at the trial; or
 - (B) is found by the court to be unavailable as a witness for one
 - (1) of the following reasons:
 - (i) From the testimony of a ~~psychiatrist, physician, or psychologist, provider~~, and other evidence, if any, the court finds that the protected person's testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate.
 - (ii) The protected person cannot participate in the trial for medical reasons.
 - (iii) The court has determined that the protected person is incapable of understanding the nature and obligation of an oath.

~~(f)~~ (g) If a protected person is unavailable to testify at the trial for a reason listed in subsection ~~(e)(2)(B)~~, (f)(2)(B), a statement or videotape may be admitted in evidence under this section only if the protected



person was available for cross-examination:

- (1) at the hearing described in subsection ~~(e)(1)~~; **(f)(1)**; or
- (2) when the statement or videotape was made.

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

- (1) the prosecuting attorney's intention to introduce the statement or videotape in evidence; and
- (2) the content of the statement or videotape.

~~(h)~~ **(i)** If a statement or videotape is admitted in evidence under this section, the court shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement or videotape and that, in making that determination, the jury shall consider the following:

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

~~(i)~~ **(j)** If a statement or videotape described in subsection ~~(d)~~ **(e)** is admitted into evidence under this section, a defendant may introduce a:

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

of the hearing held under subsection ~~(e)(1)~~ **(f)(1)** into evidence at trial.

SECTION 3. IC 35-40-5-11.5, AS ADDED BY P.L.62-2020, SECTION 8, IS AMENDED 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~~ **pursuant to Indiana Trial Rule 30 or Indiana Trial Rule 31, or any other formal or informal statement or interview.**

(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 4. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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