



February 25, 2020

---

---

## ENGROSSED SENATE BILL No. 206

---

DIGEST OF SB 206 (Updated February 24, 2020 12:01 pm - DI 123)

**Citations Affected:** IC 35-31.5; IC 35-40.

**Synopsis:** Deposition of a child victim. Defines "child victim" as a child less than 16 years of age who is the victim of a sex offense, and specifies that a child victim has the right to confer with a representative of the prosecuting attorney's office before being deposed. Repeals and replaces the current statute concerning the deposition of a child with a new statute that provides that a defendant may only depose a child victim if the prosecuting attorney agrees to the deposition or if a court authorizes the deposition. Establishes a procedure for a court to use to determine whether to authorize the deposition of a child victim, and to specify the manner in which the deposition may be conducted. Provides that an order authorizing the deposition of a child must expressly prohibit the presence of the person accused of committing the offense against the child unless certain conditions apply and the presence of the accused is necessary to preserve the person's rights under the United States or Indiana constitution. Makes conforming amendments.

**Effective:** Upon passage.

---

---

**Messmer, Young M, Rogers,  
Randolph Lonnie M, Lanane**

(HOUSE SPONSORS — TORR, SCHAIBLEY, KIRCHHOFER, DELANEY)

---

---

January 6, 2020, read first time and referred to Committee on Judiciary.  
January 23, 2020, amended, reported favorably — Do Pass.  
January 27, 2020, read second time, amended, ordered engrossed.  
January 28, 2020, engrossed. Read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

February 4, 2020, read first time and referred to Committee on Judiciary.  
February 25, 2020, amended, reported — Do Pass.

---

---

ES 206—LS 6669/DI 131





February 25, 2020

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.

## ENGROSSED SENATE BILL No. 206

---

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

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

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

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

ES 206—LS 6669/DI 131



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

4 SECTION 5. IC 35-31.5-2-90.5 IS ADDED TO THE INDIANA  
5 CODE AS A NEW SECTION TO READ AS FOLLOWS  
6 [EFFECTIVE UPON PASSAGE]: **Sec. 90.5. "Deposition", 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 6. IC 35-40-5-3, AS AMENDED BY P.L.65-2016,  
10 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 UPON PASSAGE]: 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:

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

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

23 (i) is or was a spouse of the victim;

24 (ii) is or was living as if a spouse of the victim; or

25 (iii) has a child in common with the victim.

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

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

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

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

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

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

40 **(c) A child victim (as defined in section 11.5 of this chapter) has**  
41 **the right to confer with a representative of the prosecuting**  
42 **attorney's office before being deposed. The representative of the**



1 **prosecuting attorney's office may not instruct the child victim to**  
 2 **refuse to participate in the deposition.**

3 SECTION 7. IC 35-40-5-11 IS REPEALED [EFFECTIVE UPON  
 4 PASSAGE] Sec. 11. (a) This section applies only to a child less than  
 5 sixteen (16) years of age who is the victim or alleged victim of a sex  
 6 offense (as defined in IC 11-8-8-5.2):

7 (b) As used in this section, "defense counsel" includes an agent of:

8 (1) the defense counsel; or

9 (2) the defendant.

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

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

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

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

28 (1) "Accused" or "the accused" means a person charged with  
 29 committing a sex offense against a child victim. The term does  
 30 not include an attorney who represents the accused.

31 (2) "Child victim" means a child less than sixteen (16) years  
 32 of age who is the victim or alleged victim of a sex offense.

33 (3) "Defendant" means a person charged with committing a  
 34 sex offense against a child victim and an attorney who  
 35 represents the defendant.

36 (4) "Deposition" or "depose" means a deposition upon oral  
 37 examination, or taking a deposition upon oral examination, as  
 38 described in Indiana Trial Rule 30.

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

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

42 (d) A defendant may not take the deposition of a child victim



1 unless the defendant contacts the prosecuting attorney before  
2 contacting the child, and one (1) or more of the following apply:

3 (1) The prosecuting attorney agrees to the deposition. The  
4 prosecuting attorney may condition the prosecuting attorney's  
5 agreement to the deposition upon the defendant's acceptance  
6 of the manner in which the deposition shall be conducted.

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

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

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

17 (B) in the interest of justice.

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

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

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

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

34 (2) in the interest of justice.

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

38 (1) the age of the child;

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

40 (3) any other relevant factors or special considerations.

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



- 1 denial.
- 2 (j) If the court grants a request to depose a child victim, the
- 3 court shall issue a written order describing the reason for granting
- 4 the petition and setting forth the manner in which the deposition
- 5 shall be conducted. The order shall:
- 6 (1) expressly prohibit the accused from deposing or being
- 7 present at the deposition of the child victim unless:
- 8 (A) there is a reasonable likelihood that the child victim
- 9 will be unavailable for trial;
- 10 (B) the deposition is necessary to preserve the child
- 11 victim's testimony; and
- 12 (C) the presence of the accused is necessary to preserve the
- 13 constitutional rights of the accused under the Sixth
- 14 Amendment of the Constitution of the United States or
- 15 Article 1, Section 13 of the Constitution of the State of
- 16 Indiana;
- 17 (2) describe the manner in which the deposition shall be
- 18 conducted; and
- 19 (3) if applicable, issue a protective order under Indiana Trial
- 20 Rule 26(C).
- 21 SECTION 9. An emergency is declared for this act.



## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 206, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 9 and 10, begin a new paragraph and insert:

**"(c) As used in this section, "deposition" includes:**

- (1) a deposition;**
- (2) a recorded statement; or**
- (3) an interview."**

Page 1, line 10, delete "(c)" and insert "(d)".

Page 1, line 11, strike "interview" and insert **"take the deposition of"**.

Page 1, line 15, strike "interview" and insert **"deposition"**.

Page 1, line 17, after "(d)" insert "(e)".

Page 1, line 17, reset in roman "If the parties are unable to agree to the terms of the".

Page 1, line 17, after "interview," insert **"deposition,"**.

Page 2, reset in roman line 1.

Page 2, line 2, after "interview prior" insert **"deposition prior"**.

Page 2, line 2, reset in roman "to the".

Page 2, line 2, after "interview taking" insert **"deposition taking"**.

Page 2, line 2, reset in roman "place. The court shall review the".

Page 2, reset in roman lines 3 through 4.

Page 2, line 5, reset in roman "IC 35-40-5-1 in setting reasonable terms for the".

Page 2, line 5, after "interview." insert **"deposition."**

Page 2, delete lines 6 through 7.

Page 2, line 8, delete "(e) Except as provided in subsection (d), a" and insert **"(f) A"**.

Page 2, line 16, delete "(f)" and insert "(g)".

Page 2, line 17, delete "(e)," and insert "(f)".

Page 2, line 20, delete "abuse." and insert **"abuse, in accordance with Article 1, Section 13(b) of the Indiana Constitution."**

and when so amended that said bill do pass.

(Reference is to SB 206 as introduced.)

KOCH, Chairperson

Committee Vote: Yeas 10, Nays 0.

ES 206—LS 6669/DI 131





## SENATE MOTION

Madam President: I move that Senate Bill 206 be amended to read as follows:

Page 2, delete lines 19 through 29, begin a new paragraph and insert:

**"(g) Upon the filing of a petition under subsection (e), the court may, in its discretion, order a deposition to be taken pursuant to subsection (f). The court shall issue an order listing both the scope of and the reasons for the deposition. A protective order under Trial Rule 26(C) shall be included to ensure the victim is treated with fairness, dignity, and respect, and is free from intimidation, harassment, and abuse, in accordance with Article 1, Section 13(b) of the Indiana Constitution. The order shall:**

- (1) provide for reasonable accommodations for the child victim during the deposition; and**
- (2) explicitly exclude the defendant from the deposition unless the deposition is:**
  - (A) to perpetuate the testimony of the child; or**
  - (B) needed for other exceptional circumstances and in the interest of justice."**

(Reference is to SB 206 as printed January 24, 2020.)

MESSMER

---

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 206, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 206 as reprinted January 28, 2020.)

TORR

Committee Vote: yeas 10, nays 1.

ES 206—LS 6669/DI 131

