



Reprinted
January 28, 2020

SENATE BILL No. 206

DIGEST OF SB 206 (Updated January 27, 2020 3:59 pm - DI 128)

Citations Affected: IC 35-40.

Synopsis: Depositions of children. Defines "deposition" to include interviews, recorded statements, and depositions. Creates certain procedures and protections in a deposition for a child less than 16 years of age who is the victim of a sex crime. Provides that the term "defense counsel" includes the defense counsel, the defendant, or an agent of the defendant or defense counsel.

Effective: July 1, 2020.

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

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.

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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.

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 35-40-5-11, AS ADDED BY P.L.169-2009,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 11. (a) This section applies only to a child less
4 than sixteen (16) years of age who is the victim or alleged victim of a
5 sex offense (as defined in IC 11-8-8-5.2).
6 (b) As used in this section, "defense counsel" includes: ~~an agent of:~~
7 (1) the defense counsel; ~~or~~
8 (2) the defendant; ~~or~~
9 (3) **an agent of the defendant or defense counsel.**
10 (c) As used in this section, "deposition" includes:
11 (1) **a deposition;**
12 (2) **a recorded statement; or**
13 (3) **an interview.**
14 (d) After charges are filed against a defendant, if defense counsel
15 would like to ~~interview~~ **take the deposition of** a child described in
16 subsection (a), the defendant or defense counsel must contact the
17 prosecuting attorney **prior to contacting the child.** The child has the

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1 right under section 3 of this chapter to confer with the prosecuting
 2 attorney before the ~~interview~~ **deposition** occurs. The prosecuting
 3 attorney may not instruct the child not to speak with defense counsel.

4 ~~(d)~~ **(e)** If the parties are unable to agree to the terms of the ~~interview~~;
 5 **deposition**, the parties may petition the court for a hearing on the terms
 6 of the ~~interview~~ **prior deposition prior** to the ~~interview~~ **taking**
 7 **deposition taking** place. The court shall review the terms suggested by
 8 the parties and consider the age of the child, any special considerations,
 9 and the rights of victims provided by IC 35-40-5-1 in setting reasonable
 10 terms for the ~~interview~~ **deposition**.

11 **(f) A court having jurisdiction over the matter may authorize**
 12 **that the child be deposed by either party. A court may authorize a**
 13 **deposition only:**

14 **(1) upon a finding that the child is likely to become**
 15 **unavailable and the deposition is necessary to preserve the**
 16 **child's testimony for trial; or**

17 **(2) for exceptional circumstances and in the interest of justice.**

18 **A court may not order a deposition solely for discovery purposes.**

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

27 **(1) provide for reasonable accommodations for the child**
 28 **victim during the deposition; and**

29 **(2) explicitly exclude the defendant from the deposition unless**
 30 **the deposition is:**

31 **(A) to perpetuate the testimony of the child; or**

32 **(B) needed for other exceptional circumstances and in the**
 33 **interest of justice.**



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.

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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

