

SENATE BILL No. 206

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-40-5-11.

Synopsis: Interviews and depositions of children. Creates certain procedures and protections in a defense interview or a court ordered 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

January 6, 2020, read first time and referred to Committee on Judiciary.



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) 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 **prior to contacting the child.** The child has the right under section 3
- 14 of this chapter to confer with the prosecuting attorney before the
- 15 interview occurs. The prosecuting attorney may not instruct the child
- 16 not to speak with defense counsel.
- 17 ~~(d) If the parties are unable to agree to the terms of the interview,~~



1 the parties may petition the court for a hearing on the terms of the
2 interview prior to the interview taking place. The court shall review the
3 terms suggested by the parties and consider the age of the child; any
4 special considerations; and the rights of victims provided by
5 IC 35-40-5-1 in setting reasonable terms for the interview:

6 **(d) The child and the child's parent or guardian must consent to**
7 **the interview and any terms agreed to by the parties.**

8 **(e) Except as provided in subsection (d), a court having**
9 **jurisdiction over the matter may authorize that the child be**
10 **deposed by either party. A court may authorize a deposition only:**

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

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

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

16 **(f) If a court orders a deposition to be taken under subsection**
17 **(e), the order shall be reduced to writing and a protective order**
18 **shall be included under Trial Rule 26(C) to ensure the victim is**
19 **treated with fairness, dignity, and respect and free from**
20 **intimidation, harassment, and abuse. The order shall explicitly**
21 **exclude the defendant from the deposition unless:**

22 **(1) the deposition is to perpetuate the testimony of the child;**
23 **or**

24 **(2) it is for other exceptional circumstances and in the interest**
25 **of justice.**

