January 28, 2011

HOUSE BILL No. 1215

DIGEST OF HB 1215 (Updated January 26, 2011 2:09 pm - DI 69)

Citations Affected: IC 35-37.

Synopsis: Closed circuit television testimony. Provides that for purposes of a hearing concerning the admissibility of certain statements or videotapes made by a protected person, the protected person may attend the hearing through the use of closed circuit television.

Effective: July 1, 2011.

Davis, Tyler

January 12, 2011, read first time and referred to Committee on Courts and Criminal Code.
January 27, 2011, reported — Do Pass.

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January 28, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1215

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:

SECTION 1. IC 35-37-4-6, AS AMENDED BY P.L.137-2009, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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) Battery upon a child (IC 35-42-2-1(a)(2)(B)).
(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).
(7) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through (6).

(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 (IC 35-46-1-12).

(2) A sex crime (IC 35-42-4).
(3) Battery (IC 35-42-2-1).
(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).
(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;
(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, mental retardation, 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) A statement or videotape that:
(1) is made by a person who at the time of trial is a protected person;
(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) are met.

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(e) A statement or videotape described in subsection (d) 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, 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) If a protected person is unavailable to testify at the trial for a reason listed in subsection (e)(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); or

(2) when the statement or videotape was made.

(g) 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) 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

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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) If a statement or videotape described in subsection (d) 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) into evidence at trial.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1215, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STEUERWALD, Chair

Committee Vote: yeas 12, nays 0.

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