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# HOUSE BILL No. 1347

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-37-4; IC 35-42-2.

**Synopsis:** Battery upon a law enforcement officer. Makes it a Class D felony if battery is committed against a law enforcement officer or against a person summoned and directed by the officer while the officer is engaged in the execution of the officer's official duty.

**Effective:** July 1, 2011.

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January 13, 2011, read first time and referred to Committee on Courts and Criminal Code.

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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. 1347



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 35-37-4-6, AS AMENDED BY P.L.137-2009,
- 2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2011]: Sec. 6. (a) This section applies to a criminal action
- 4 involving the following offenses where the victim is a protected person
- 5 under subsection (c)(1) or (c)(2):
- 6 (1) Sex crimes (IC 35-42-4).
- 7 (2) Battery upon a child ~~(IC 35-42-2-1(a)(2)(B))~~:
- 8 **(IC 35-42-2-1(a)(2)(A))**.
- 9 (3) Kidnapping and confinement (IC 35-42-3).
- 10 (4) Incest (IC 35-46-1-3).
- 11 (5) Neglect of a dependent (IC 35-46-1-4).
- 12 (6) Human and sexual trafficking crimes (IC 35-42-3.5).
- 13 (7) An attempt under IC 35-41-5-1 for an offense listed in
- 14 subdivisions (1) through (6).
- 15 (b) This section applies to a criminal action involving the following
- 16 offenses where the victim is a protected person under subsection (c)(3):
- 17 (1) Exploitation of a dependent or endangered adult



- 1 (IC 35-46-1-12).
- 2 (2) A sex crime (IC 35-42-4).
- 3 (3) Battery (IC 35-42-2-1).
- 4 (4) Kidnapping, confinement, or interference with custody
- 5 (IC 35-42-3).
- 6 (5) Home improvement fraud (IC 35-43-6).
- 7 (6) Fraud (IC 35-43-5).
- 8 (7) Identity deception (IC 35-43-5-3.5).
- 9 (8) Synthetic identity deception (IC 35-43-5-3.8).
- 10 (9) Theft (IC 35-43-4-2).
- 11 (10) Conversion (IC 35-43-4-3).
- 12 (11) Neglect of a dependent (IC 35-46-1-4).
- 13 (12) Human and sexual trafficking crimes (IC 35-42-3.5).
- 14 (c) As used in this section, "protected person" means:
- 15 (1) a child who is less than fourteen (14) years of age;
- 16 (2) an individual with a mental disability who has a disability
- 17 attributable to an impairment of general intellectual functioning
- 18 or adaptive behavior that:
- 19 (A) is manifested before the individual is eighteen (18) years
- 20 of age;
- 21 (B) is likely to continue indefinitely;
- 22 (C) constitutes a substantial impairment of the individual's
- 23 ability to function normally in society; and
- 24 (D) reflects the individual's need for a combination and
- 25 sequence of special, interdisciplinary, or generic care,
- 26 treatment, or other services that are of lifelong or extended
- 27 duration and are individually planned and coordinated; or
- 28 (3) an individual who is:
- 29 (A) at least eighteen (18) years of age; and
- 30 (B) incapable by reason of mental illness, mental retardation,
- 31 dementia, or other physical or mental incapacity of:
- 32 (i) managing or directing the management of the individual's
- 33 property; or
- 34 (ii) providing or directing the provision of self-care.
- 35 (d) A statement or videotape that:
- 36 (1) is made by a person who at the time of trial is a protected
- 37 person;
- 38 (2) concerns an act that is a material element of an offense listed
- 39 in subsection (a) or (b) that was allegedly committed against the
- 40 person; and
- 41 (3) is not otherwise admissible in evidence;
- 42 is admissible in evidence in a criminal action for an offense listed in

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1 subsection (a) or (b) if the requirements of subsection (e) are met.  
 2 (e) A statement or videotape described in subsection (d) is  
 3 admissible in evidence in a criminal action listed in subsection (a) or  
 4 (b) if, after notice to the defendant of a hearing and of the defendant's  
 5 right to be present, all of the following conditions are met:  
 6 (1) The court finds, in a hearing:  
 7 (A) conducted outside the presence of the jury; and  
 8 (B) attended by the protected person;  
 9 that the time, content, and circumstances of the statement or  
 10 videotape provide sufficient indications of reliability.  
 11 (2) The protected person:  
 12 (A) testifies at the trial; or  
 13 (B) is found by the court to be unavailable as a witness for one  
 14 (1) of the following reasons:  
 15 (i) From the testimony of a psychiatrist, physician, or  
 16 psychologist, and other evidence, if any, the court finds that  
 17 the protected person's testifying in the physical presence of  
 18 the defendant will cause the protected person to suffer  
 19 serious emotional distress such that the protected person  
 20 cannot reasonably communicate.  
 21 (ii) The protected person cannot participate in the trial for  
 22 medical reasons.  
 23 (iii) The court has determined that the protected person is  
 24 incapable of understanding the nature and obligation of an  
 25 oath.  
 26 (f) If a protected person is unavailable to testify at the trial for a  
 27 reason listed in subsection (e)(2)(B), a statement or videotape may be  
 28 admitted in evidence under this section only if the protected person was  
 29 available for cross-examination:  
 30 (1) at the hearing described in subsection (e)(1); or  
 31 (2) when the statement or videotape was made.  
 32 (g) A statement or videotape may not be admitted in evidence under  
 33 this section unless the prosecuting attorney informs the defendant and  
 34 the defendant's attorney at least ten (10) days before the trial of:  
 35 (1) the prosecuting attorney's intention to introduce the statement  
 36 or videotape in evidence; and  
 37 (2) the content of the statement or videotape.  
 38 (h) If a statement or videotape is admitted in evidence under this  
 39 section, the court shall instruct the jury that it is for the jury to  
 40 determine the weight and credit to be given the statement or videotape  
 41 and that, in making that determination, the jury shall consider the  
 42 following:

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

7 (i) If a statement or videotape described in subsection (d) is  
 8 admitted into evidence under this section, a defendant may introduce  
 9 a:

- 10 (1) transcript; or
- 11 (2) videotape;
- 12 of the hearing held under subsection (e)(1) into evidence at trial.

13 SECTION 2. IC 35-37-4-8, AS AMENDED BY P.L.173-2006,  
 14 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2011]: Sec. 8. (a) This section applies to a criminal action  
 16 under the following:

- 17 (1) Sex crimes (IC 35-42-4).
- 18 (2) Battery upon a child (~~IC 35-42-2-1(a)(2)(B)~~);
- 19 **(IC 35-42-2-1(a)(2)(A)).**
- 20 (3) Kidnapping and confinement (IC 35-42-3).
- 21 (4) Incest (IC 35-46-1-3).
- 22 (5) Neglect of a dependent (IC 35-46-1-4).
- 23 (6) Human and sexual trafficking crimes (IC 35-42-3.5).
- 24 (7) An attempt under IC 35-41-5-1 for an offense listed in
- 25 subdivisions (1) through (6).

26 (b) As used in this section, "protected person" has the meaning set  
 27 forth in section 6 of this chapter.

28 (c) On the motion of the prosecuting attorney, the court may order  
 29 that the testimony of a protected person be taken in a room other than  
 30 the courtroom, and that the questioning of the protected person by the  
 31 prosecution and the defense be transmitted using a two-way closed  
 32 circuit television arrangement that:

- 33 (1) allows the protected person to see the accused and the trier of
- 34 fact; and
- 35 (2) allows the accused and the trier of fact to see and hear the
- 36 protected person.

37 (d) On the motion of the prosecuting attorney or the defendant, the  
 38 court may order that the testimony of a protected person be videotaped  
 39 for use at trial. The videotaping of the testimony of a protected person  
 40 under this subsection must meet the requirements of subsection (c).

41 (e) The court may not make an order under subsection (c) or (d)  
 42 unless:

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(1) the testimony to be taken is the testimony of a protected person who:

(A) is the alleged victim of an offense listed in subsection (a) for which the defendant is being tried or is a witness in a trial for an offense listed in subsection (a); and

(B) is found by the court to be a protected person who should be permitted to testify outside the courtroom because:

(i) the court finds from the testimony of a psychiatrist, physician, or psychologist and any other evidence that the protected person's testifying in the physical presence of the defendant would cause the protected person to suffer serious emotional harm and the court finds that the protected person could not reasonably communicate in the physical presence of the defendant to the trier of fact;

(ii) a physician has certified that the protected person cannot be present in the courtroom for medical reasons; or

(iii) evidence has been introduced concerning the effect of the protected person's testifying in the physical presence of the defendant, and the court finds that it is more likely than not that the protected person's testifying in the physical presence of the defendant creates a substantial likelihood of emotional or mental harm to the protected person;

(2) the prosecuting attorney has informed the defendant and the defendant's attorney of the intention to have the protected person testify outside the courtroom; and

(3) the prosecuting attorney informed the defendant and the defendant's attorney under subdivision (2) at least ten (10) days before the trial of the prosecuting attorney's intention to have the protected person testify outside the courtroom.

(f) If the court makes an order under subsection (c), only the following persons may be in the same room as the protected person during the protected person's testimony:

(1) A defense attorney if:

(A) the defendant is represented by the defense attorney; and

(B) the prosecuting attorney is also in the same room.

(2) The prosecuting attorney if:

(A) the defendant is represented by a defense attorney; and

(B) the defense attorney is also in the same room.

(3) Persons necessary to operate the closed circuit television equipment.

(4) Persons whose presence the court finds will contribute to the protected person's well-being.

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- 1 (5) A court bailiff or court representative.
- 2 (g) If the court makes an order under subsection (d), only the
- 3 following persons may be in the same room as the protected person
- 4 during the protected person's videotaped testimony:
- 5 (1) The judge.
- 6 (2) The prosecuting attorney.
- 7 (3) The defendant's attorney (or the defendant, if the defendant is
- 8 not represented by an attorney).
- 9 (4) Persons necessary to operate the electronic equipment.
- 10 (5) The court reporter.
- 11 (6) Persons whose presence the court finds will contribute to the
- 12 protected person's well-being.
- 13 (7) The defendant, who can observe and hear the testimony of the
- 14 protected person with the protected person being able to observe
- 15 or hear the defendant. However, if the defendant is not
- 16 represented by an attorney, the defendant may question the
- 17 protected person.
- 18 (h) If the court makes an order under subsection (c) or (d), only the
- 19 following persons may question the protected person:
- 20 (1) The prosecuting attorney.
- 21 (2) The defendant's attorney (or the defendant, if the defendant is
- 22 not represented by an attorney).
- 23 (3) The judge.
- 24 SECTION 3. IC 35-42-2-1, AS AMENDED BY P.L.131-2009,
- 25 SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 26 JULY 1, 2011]: Sec. 1. (a) A person who knowingly or intentionally
- 27 touches another person in a rude, insolent, or angry manner commits
- 28 battery, a Class B misdemeanor. However, the offense is:
- 29 (1) a Class A misdemeanor if:
- 30 (A) it results in bodily injury to any other person;
- 31 ~~(B)~~ it is committed against a law enforcement officer or
- 32 against a person summoned and directed by the officer while
- 33 the officer is engaged in the execution of the officer's official
- 34 duty;
- 35 ~~(C)~~ (B) it is committed against an employee of a penal facility
- 36 or a juvenile detention facility (as defined in IC 31-9-2-71)
- 37 while the employee is engaged in the execution of the
- 38 employee's official duty;
- 39 ~~(D)~~ (C) it is committed against a firefighter (as defined in
- 40 IC 9-18-34-1) while the firefighter is engaged in the execution
- 41 of the firefighter's official duty;
- 42 ~~(E)~~ (D) it is committed against a community policing

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- 1 volunteer:
- 2 (i) while the volunteer is performing the duties described in
- 3 IC 35-41-1-4.7; or
- 4 (ii) because the person is a community policing volunteer;
- 5 or
- 6 ~~(F)~~ (E) it is committed against the state chemist or the state
- 7 chemist's agent while the state chemist or the state chemist's
- 8 agent is performing a duty under IC 15-16-5;
- 9 (2) a Class D felony if it results in bodily injury to:
  - 10 ~~(A)~~ a law enforcement officer or a person summoned and
  - 11 directed by a law enforcement officer while the officer is
  - 12 engaged in the execution of the officer's official duty;
  - 13 ~~(B)~~ (A) a person less than fourteen (14) years of age and is
  - 14 committed by a person at least eighteen (18) years of age;
  - 15 ~~(C)~~ (B) a person of any age who has a mental or physical
  - 16 disability and is committed by a person having the care of the
  - 17 person with a mental or physical disability, whether the care
  - 18 is assumed voluntarily or because of a legal obligation;
  - 19 ~~(D)~~ (C) the other person and the person who commits the
  - 20 battery was previously convicted of a battery in which the
  - 21 victim was the other person;
  - 22 ~~(E)~~ (D) an endangered adult (as defined in IC 12-10-3-2);
  - 23 ~~(F)~~ (E) an employee of the department of correction while the
  - 24 employee is engaged in the execution of the employee's
  - 25 official duty;
  - 26 ~~(G)~~ (F) an employee of a school corporation while the
  - 27 employee is engaged in the execution of the employee's
  - 28 official duty;
  - 29 ~~(H)~~ (G) a correctional professional while the correctional
  - 30 professional is engaged in the execution of the correctional
  - 31 professional's official duty;
  - 32 ~~(I)~~ (H) a person who is a health care provider (as defined in
  - 33 IC 16-18-2-163) while the health care provider is engaged in
  - 34 the execution of the health care provider's official duty;
  - 35 ~~(J)~~ (I) an employee of a penal facility or a juvenile detention
  - 36 facility (as defined in IC 31-9-2-71) while the employee is
  - 37 engaged in the execution of the employee's official duty;
  - 38 ~~(K)~~ (J) a firefighter (as defined in IC 9-18-34-1) while the
  - 39 firefighter is engaged in the execution of the firefighter's
  - 40 official duty;
  - 41 ~~(L)~~ (K) a community policing volunteer:
    - 42 (i) while the volunteer is performing the duties described in

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- 1 IC 35-41-1-4.7; or
- 2 (ii) because the person is a community policing volunteer;
- 3 ~~(M)~~ (L) a family or household member (as defined in
- 4 IC 35-41-1-10.6) if the person who committed the offense:
- 5 (i) is at least eighteen (18) years of age; and
- 6 (ii) committed the offense in the physical presence of a child
- 7 less than sixteen (16) years of age, knowing that the child
- 8 was present and might be able to see or hear the offense; or
- 9 ~~(N)~~ (M) a department of child services employee while the
- 10 employee is engaged in the execution of the employee's
- 11 official duty;
- 12 (3) a Class C felony if it results in serious bodily injury to any
- 13 other person or if it is committed by means of a deadly weapon;
- 14 (4) a Class B felony if it results in serious bodily injury to a
- 15 person less than fourteen (14) years of age and is committed by a
- 16 person at least eighteen (18) years of age;
- 17 (5) a Class A felony if it results in the death of a person less than
- 18 fourteen (14) years of age and is committed by a person at least
- 19 eighteen (18) years of age;
- 20 (6) a Class C felony if it results in serious bodily injury to an
- 21 endangered adult (as defined in IC 12-10-3-2);
- 22 (7) a Class B felony if it results in the death of an endangered
- 23 adult (as defined in IC 12-10-3-2); ~~and~~
- 24 (8) a Class C felony if it results in bodily injury to a pregnant
- 25 woman and the person knew the woman was pregnant; **and**
- 26 **(9) a Class D felony if it is committed against:**
- 27 **(A) a law enforcement officer; or**
- 28 **(B) a person summoned and directed by the officer;**
- 29 **while the officer is engaged in the execution of the officer's**
- 30 **official duty.**
- 31 (b) For purposes of this section:
- 32 (1) "law enforcement officer" includes an alcoholic beverage
- 33 enforcement officer; and
- 34 (2) "correctional professional" means a:
- 35 (A) probation officer;
- 36 (B) parole officer;
- 37 (C) community corrections worker; or
- 38 (D) home detention officer.

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