

# HOUSE BILL No. 1077

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-37-4; IC 35-42-2-1; IC 35-46-1.

**Synopsis:** Battery upon a law enforcement officer. Makes battery a Class D felony if the offense is committed against a: (1) law enforcement officer; or (2) person summoned and directed by a law enforcement officer; while the officer is engaged in the execution of the officer's official duty. Makes conforming amendments.

**Effective:** July 1, 2012.

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January 9, 2012, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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# HOUSE BILL No. 1077



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.28-2011,
- 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2012]: 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 in person or by using  
9 closed circuit television testimony as described in section 8(f)  
10 and 8(g) of this chapter;

11 that the time, content, and circumstances of the statement or  
12 videotape provide sufficient indications of reliability.

13 (2) The protected person:

14 (A) testifies at the trial; or

15 (B) is found by the court to be unavailable as a witness for one  
16 (1) of the following reasons:

17 (i) From the testimony of a psychiatrist, physician, or  
18 psychologist, and other evidence, if any, the court finds that  
19 the protected person's testifying in the physical presence of  
20 the defendant will cause the protected person to suffer  
21 serious emotional distress such that the protected person  
22 cannot reasonably communicate.

23 (ii) The protected person cannot participate in the trial for  
24 medical reasons.

25 (iii) The court has determined that the protected person is  
26 incapable of understanding the nature and obligation of an  
27 oath.

28 (f) If a protected person is unavailable to testify at the trial for a  
29 reason listed in subsection (e)(2)(B), a statement or videotape may be  
30 admitted in evidence under this section only if the protected person was  
31 available for cross-examination:

32 (1) at the hearing described in subsection (e)(1); or

33 (2) when the statement or videotape was made.

34 (g) A statement or videotape may not be admitted in evidence under  
35 this section unless the prosecuting attorney informs the defendant and  
36 the defendant's attorney at least ten (10) days before the trial of:

37 (1) the prosecuting attorney's intention to introduce the statement  
38 or videotape in evidence; and

39 (2) the content of the statement or videotape.

40 (h) If a statement or videotape is admitted in evidence under this  
41 section, the court shall instruct the jury that it is for the jury to  
42 determine the weight and credit to be given the statement or videotape

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1 and that, in making that determination, the jury shall consider the  
2 following:

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

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

- 12 (1) transcript; or  
13 (2) videotape;

14 of the hearing held under subsection (e)(1) into evidence at trial.

15 SECTION 2. IC 35-37-4-8, AS AMENDED BY P.L.173-2006,  
16 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2012]: Sec. 8. (a) This section applies to a criminal action  
18 under the following:

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

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

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

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

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



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- 1 (e) The court may not make an order under subsection (c) or (d)
- 2 unless:
- 3 (1) the testimony to be taken is the testimony of a protected
- 4 person who:
- 5 (A) is the alleged victim of an offense listed in subsection (a)
- 6 for which the defendant is being tried or is a witness in a trial
- 7 for an offense listed in subsection (a); and
- 8 (B) is found by the court to be a protected person who should
- 9 be permitted to testify outside the courtroom because:
- 10 (i) the court finds from the testimony of a psychiatrist,
- 11 physician, or psychologist and any other evidence that the
- 12 protected person's testifying in the physical presence of the
- 13 defendant would cause the protected person to suffer serious
- 14 emotional harm and the court finds that the protected person
- 15 could not reasonably communicate in the physical presence
- 16 of the defendant to the trier of fact;
- 17 (ii) a physician has certified that the protected person cannot
- 18 be present in the courtroom for medical reasons; or
- 19 (iii) evidence has been introduced concerning the effect of
- 20 the protected person's testifying in the physical presence of
- 21 the defendant, and the court finds that it is more likely than
- 22 not that the protected person's testifying in the physical
- 23 presence of the defendant creates a substantial likelihood of
- 24 emotional or mental harm to the protected person;
- 25 (2) the prosecuting attorney has informed the defendant and the
- 26 defendant's attorney of the intention to have the protected person
- 27 testify outside the courtroom; and
- 28 (3) the prosecuting attorney informed the defendant and the
- 29 defendant's attorney under subdivision (2) at least ten (10) days
- 30 before the trial of the prosecuting attorney's intention to have the
- 31 protected person testify outside the courtroom.
- 32 (f) If the court makes an order under subsection (c), only the
- 33 following persons may be in the same room as the protected person
- 34 during the protected person's testimony:
- 35 (1) A defense attorney if:
- 36 (A) the defendant is represented by the defense attorney; and
- 37 (B) the prosecuting attorney is also in the same room.
- 38 (2) The prosecuting attorney if:
- 39 (A) the defendant is represented by a defense attorney; and
- 40 (B) the defense attorney is also in the same room.
- 41 (3) Persons necessary to operate the closed circuit television
- 42 equipment.

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- 1 (4) Persons whose presence the court finds will contribute to the  
 2 protected person's well-being.  
 3 (5) A court bailiff or court representative.  
 4 (g) If the court makes an order under subsection (d), only the  
 5 following persons may be in the same room as the protected person  
 6 during the protected person's videotaped testimony:  
 7 (1) The judge.  
 8 (2) The prosecuting attorney.  
 9 (3) The defendant's attorney (or the defendant, if the defendant is  
 10 not represented by an attorney).  
 11 (4) Persons necessary to operate the electronic equipment.  
 12 (5) The court reporter.  
 13 (6) Persons whose presence the court finds will contribute to the  
 14 protected person's well-being.  
 15 (7) The defendant, who can observe and hear the testimony of the  
 16 protected person with the protected person being able to observe  
 17 or hear the defendant. However, if the defendant is not  
 18 represented by an attorney, the defendant may question the  
 19 protected person.  
 20 (h) If the court makes an order under subsection (c) or (d), only the  
 21 following persons may question the protected person:  
 22 (1) The prosecuting attorney.  
 23 (2) The defendant's attorney (or the defendant, if the defendant is  
 24 not represented by an attorney).  
 25 (3) The judge.  
 26 SECTION 3. IC 35-42-2-1, AS AMENDED BY P.L.131-2009,  
 27 SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2012]: Sec. 1. (a) A person who knowingly or intentionally  
 29 touches another person in a rude, insolent, or angry manner commits  
 30 battery, a Class B misdemeanor. However, the offense is:  
 31 (1) a Class A misdemeanor if:  
 32 (A) it results in bodily injury to any other person;  
 33 ~~(B) it is committed against a law enforcement officer or~~  
 34 ~~against a person summoned and directed by the officer while~~  
 35 ~~the officer is engaged in the execution of the officer's official~~  
 36 ~~duty;~~  
 37 ~~(C) (B) it is committed against an employee of a penal facility~~  
 38 ~~or a juvenile detention facility (as defined in IC 31-9-2-71)~~  
 39 ~~while the employee is engaged in the execution of the~~  
 40 ~~employee's official duty;~~  
 41 ~~(D) (C) it is committed against a firefighter (as defined in~~  
 42 ~~IC 9-18-34-1) while the firefighter is engaged in the execution~~

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

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

SECTION 4. IC 35-46-1-13, AS AMENDED BY P.L.153-2011,

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1 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2012]: Sec. 13. (a) A person who:

3 (1) believes or has reason to believe that an endangered adult is  
4 the victim of battery, neglect, or exploitation as prohibited by this  
5 chapter, ~~IC 35-42-2-1(a)(2)(C)~~; **IC 35-42-2-1(a)(2)(B)**, or  
6 ~~IC 35-42-2-1(a)(2)(E)~~; **IC 35-42-2-1(a)(2)(D)**; and

7 (2) knowingly fails to report the facts supporting that belief to the  
8 division of disability and rehabilitative services, the division of  
9 aging, the adult protective services unit designated under  
10 IC 12-10-3, or a law enforcement agency having jurisdiction over  
11 battery, neglect, or exploitation of an endangered adult;

12 commits a Class B misdemeanor.

13 (b) An officer or employee of the division or adult protective  
14 services unit who unlawfully discloses information contained in the  
15 records of the division of aging under IC 12-10-3-12 through  
16 IC 12-10-3-15 commits a Class C infraction.

17 (c) A law enforcement agency that receives a report that an  
18 endangered adult is or may be a victim of battery, neglect, or  
19 exploitation as prohibited by this chapter, ~~IC 35-42-2-1(a)(2)(C)~~;  
20 **IC 35-42-2-1(a)(2)(B)**, or ~~IC 35-42-2-1(a)(2)(E)~~  
21 **IC 35-42-2-1(a)(2)(D)** shall immediately communicate the report to  
22 the adult protective services unit designated under IC 12-10-3.

23 (d) An individual who discharges, demotes, transfers, prepares a  
24 negative work performance evaluation, reduces benefits, pay, or work  
25 privileges, or takes other action to retaliate against an individual who  
26 in good faith makes a report under IC 12-10-3-9 concerning an  
27 endangered individual commits a Class A infraction.

28 SECTION 5. IC 35-46-1-14, AS AMENDED BY P.L.2-2005,  
29 SECTION 127, IS AMENDED TO READ AS FOLLOWS  
30 [EFFECTIVE JULY 1, 2012]: Sec. 14. Any person acting in good faith  
31 who:

32 (1) makes or causes to be made a report of neglect, battery, or  
33 exploitation under this chapter, ~~IC 35-42-2-1(a)(2)(C)~~;  
34 **IC 35-42-2-1(a)(2)(B)**, or ~~IC 35-42-2-1(a)(2)(E)~~;  
35 **IC 35-42-2-1(a)(2)(D)**;

36 (2) makes or causes to be made photographs or x-rays of a victim  
37 of suspected neglect or battery of an endangered adult or a  
38 dependent eighteen (18) years of age or older; or

39 (3) participates in any official proceeding or a proceeding  
40 resulting from a report of neglect, battery, or exploitation of an  
41 endangered adult or a dependent eighteen (18) years of age or  
42 older relating to the subject matter of that report;



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1 is immune from any civil or criminal liability that might otherwise be  
2 imposed because of these actions. However, this section does not apply  
3 to a person accused of neglect, battery, or exploitation of an  
4 endangered adult or a dependent eighteen (18) years of age or older.

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