
SENATE BILL No. 265

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-8-1-3; IC 34-45-5; IC 35-42-2.

Synopsis: Domestic violence. Makes domestic battery a Class D felony if it is knowingly committed in the presence of a child less than 16 years of age. Permits a court to admit evidence that a defendant has a previous conviction for domestic violence if the evidence is otherwise relevant, and permits a court to admit a witness's out of court statement that is consistent with the witness's trial testimony if the witness's credibility has been challenged and certain other conditions are met. Makes strangulation a Class D felony.

Effective: July 1, 2006.

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January 9, 2006, read first time and referred to Committee on Judiciary.

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Second Regular Session 114th General Assembly (2006)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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SENATE BILL No. 265



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 34-8-1-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) The supreme court has
3 authority to adopt, amend, and rescind rules of court that govern and
4 control practice and procedure in all the courts of Indiana. These rules
5 must be promulgated and take effect under the rules adopted by the
6 supreme court, and, ~~thereafter all laws~~ **except as provided in**
7 **subsection (b), a statute** in conflict with the supreme court's rules ~~have~~
8 **has** no further force or effect.

9 (b) **IC 34-45-5 supersedes rules of court adopted by the supreme**
10 **court.**

11 SECTION 2. IC 34-45-5 IS ADDED TO THE INDIANA CODE AS
12 A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2006]:

14 **Chapter 5. Crime of Domestic Violence; Credibility**

15 **Sec. 1. (a) Except as provided in subsection (b) or (c), in a**
16 **criminal action in which a defendant is accused of a crime of**
17 **domestic violence (as defined in IC 35-41-1-6.3), Indiana Evidence**



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Rule 404 does not make evidence of the defendant's commission of another crime of domestic violence inadmissible if the evidence is admissible under Indiana Evidence Rule 401.

(b) If the state intends to offer evidence under subsection (a), the state shall disclose this evidence, including witness statements or a summary of the testimony, to the defendant before trial.

(c) Evidence of a crime of domestic violence that occurred more than ten (10) years before the charged offense may not be admitted under this section unless the court determines that the admission of this evidence is in the interest of justice.

Sec. 2. Evidence of a statement made by a witness that is consistent with the witness's testimony at the trial or hearing is inadmissible to support the credibility of the witness unless the evidence is offered after:

- (1) evidence of a statement made by a witness that is inconsistent with any part of the witness's testimony at the trial or hearing has been admitted for the purpose of attacking the witness's credibility, if the consistent statement was made before the alleged inconsistent statement; or**
- (2) an express or implied charge has been made that a witness's testimony at the hearing is recently fabricated or is influenced by bias or other improper motive, and the statement was made before the bias, motive for fabrication, or other improper motive is alleged to have arisen.**

SECTION 3. IC 35-42-2-1.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.3. (a) A person who knowingly or intentionally touches an individual who:

- (1) is or was a spouse of the other person;**
- (2) is or was living as if a spouse of the other person as provided in subsection (b); or**
- (3) has a child in common with the other person;**

in a rude, insolent, or angry manner that results in bodily injury to the person described in subdivision (1), (2), or (3) commits domestic battery, a Class A misdemeanor. However, the offense is a Class D felony if the person has a previous, unrelated conviction under this section (or IC 35-42-2-1(a)(2)(E) before its repeal), or if the person committed the offense in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense.

(b) In considering whether a person is or was living as a spouse of another individual in subsection (a)(2), the court shall review the following:

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- 1 (1) the duration of the relationship;
- 2 (2) the frequency of contact;
- 3 (3) the financial interdependence;
- 4 (4) whether the two (2) individuals are raising children together;
- 5 (5) whether the two (2) individuals have engaged in tasks directed
- 6 toward maintaining a common household; and
- 7 (6) other factors the court considers relevant.

8 SECTION 4. IC 35-42-2-9 IS ADDED TO THE INDIANA CODE
 9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2006]: **Sec. 9. (a) This section does not apply to a medical
 11 procedure.**

12 **(b) A person who knowingly or intentionally impedes the
 13 normal breathing or the blood circulation of another person by:**

- 14 **(1) applying pressure to the throat or neck of the other
 15 person; or**
- 16 **(2) obstructing the nose or mouth of the other person;**

17 **commits strangulation, a Class D felony.**
 18 SECTION 5. [EFFECTIVE JULY 1, 2006] IC 35-42-2-1.3, as
 19 amended by this act, and IC 35-42-2-9, as added by this act, apply
 20 only to crimes committed after June 30, 2006.

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