
SENATE BILL No. 574

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-3.5; IC 35-38-8.

Synopsis: Innocence review commission; interrogations. Requires state and local law enforcement agencies to electronically record custodial interrogations of suspects during felony investigations. Requires the agencies to retain copies of custodial interrogations for certain periods. Provides that any statements made by a suspect that are in violation of the custodial interrogation requirements are inadmissible in a felony prosecution against the suspect. Provides for certain exceptions. Establishes the innocence review commission ("commission") to consider claims of individuals convicted of a felony who assert: (1) complete innocence of criminal responsibility for the felony; and (2) credible, verifiable evidence of innocence that was not previously considered at trial or in a hearing for post-conviction relief. Provides that if the commission votes that an individual has a claim of factual innocence, the state public defender shall file a petition for post-conviction relief on the individual's behalf.

Effective: July 1, 2007.

Bowser

January 23, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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SENATE BILL No. 574



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 35-33-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]:

4 **Chapter 3.5. Recording of Custodial Interrogations**

5 **Sec. 1. As used in this chapter, "custodial interrogation" means**
6 **an interrogation conducted by a law enforcement agency during**
7 **which:**

- 8 (1) a reasonable person being interrogated would consider
9 himself or herself to be in custody; and
- 10 (2) a question is asked that is reasonably likely to elicit an
11 incriminating response from the person.

12 **Sec. 2. As used in this chapter, "electronically record" means to**
13 **make a record of:**

- 14 (1) sounds by using audio electronic equipment; or
- 15 (2) visual images and sounds by using video and audio
16 electronic equipment.

17 **Sec. 3. As used in this chapter, "law enforcement agency" means**



1 an agency or a department of any level of state or local government
2 whose principal function is the apprehension of criminal offenders.

3 Sec. 4. A law enforcement agency shall electronically record all
4 custodial interrogations:

- 5 (1) of suspects involved in felony investigations; and
- 6 (2) that occur at:

- 7 (A) a law enforcement agency station house; or
- 8 (B) any other building owned or operated by the law
9 enforcement agency;

10 at which persons are detained in connection with criminal
11 investigations.

12 Sec. 5. A law enforcement agency shall retain a copy of a
13 custodial interrogation of a person electronically recorded under
14 this chapter until:

- 15 (1) if the person is convicted of a felony, the:
 - 16 (A) person's conviction is final; and
 - 17 (B) person has exhausted all direct and habeas corpus
18 appeals related to the conviction; or
- 19 (2) a prosecution of the person for a felony for which the
20 person was interrogated is barred by law.

21 Sec. 6. (a) A custodial interrogation electronically recorded
22 under this chapter is:

- 23 (1) confidential; and
- 24 (2) exempt from disclosure under IC 5-14-3.

25 (b) This section does not preclude:

- 26 (1) the state or a defendant in a criminal action from
27 obtaining a copy of a custodial interrogation electronically
28 recorded under this chapter for use in:
 - 29 (A) a criminal action; or
 - 30 (B) an appeal related to the criminal action; or
- 31 (2) a party in a civil suit from obtaining a copy of a custodial
32 interrogation electronically recorded under this chapter for
33 use in:

- 34 (A) a civil suit; or
- 35 (B) an appeal related to a civil suit.

36 Sec. 7. (a) Except as provided in subsection (b), if a court finds
37 by a preponderance of the evidence that a suspect in a felony was
38 subjected to a custodial interrogation in violation of this chapter,
39 any statements made by the suspect during or following the
40 interrogation are inadmissible in a felony prosecution against the
41 suspect.

42 (b) This chapter does not preclude the admission in any action

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of the following statements:

- (1) A statement made by a defendant:
 - (A) in open court at the defendant's trial;
 - (B) before a grand jury; or
 - (C) at a preliminary hearing.
- (2) A statement made during a custodial interrogation that was not recorded as required by this chapter because electronic recording was not feasible.
- (3) A voluntary statement, whether or not the result of a custodial interrogation, that has a bearing on the credibility of a person as a witness.
- (4) A spontaneous statement that is not made in response to a question.
- (5) A statement made after questioning that is routinely asked during the processing of the arrest of a suspect.
- (6) A statement made during a custodial interrogation by a suspect who requests, before making a statement, that the statement not be electronically recorded. However, the suspect's request under this subdivision must be electronically recorded.
- (7) A statement made during a custodial interrogation that is conducted outside Indiana.
- (8) A statement given at a time when the interrogator is not aware that a murder has occurred.
- (9) Any other statement that may be admissible under law.

The state has the burden of proving by a preponderance of the evidence that a statement is admissible under this subsection.

SECTION 2. IC 35-38-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 8. Innocence Review Commission

Sec. 1. The following definitions apply throughout this chapter:

- (1) "Claim of factual innocence" means a claim on behalf of a living individual convicted of a felony in an Indiana court who asserts:
 - (A) complete innocence of any criminal responsibility for the felony for which the person was convicted; and
 - (B) credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through post-conviction relief.
- (2) "Commission" means the innocence review commission established by section 2 of this chapter.

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(3) "Director" means the director of the commission.

(4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim.

Sec. 2. The innocence review commission is established.

Sec. 3. (a) The criminal justice institute shall provide staff to support the commission.

(b) The staff shall carry out the directives of the commission described in section 5 of this chapter.

(c) The staff must include a director to assist the commission in carrying out its duties.

Sec. 4. (a) The commission consists of seven (7) members as follows:

(1) four (4) voting members appointed as follows by the chief justice of the supreme court:

- (A) a judge who exercises criminal jurisdiction;
- (B) a prosecuting attorney;
- (C) a criminal defense attorney;
- (D) a judge of the court of appeals;

(2) the director of the Indiana criminal justice institute or the director's designee;

(3) the director of the prosecuting attorneys council of Indiana or the executive director's designee; and

(4) the executive director of the public defender council of Indiana or the executive director's designee.

(b) The chief justice of the supreme court shall appoint a member of the committee to serve as chair of the committee.

(c) A vacancy on the commission shall be filled by the appointing authority.

Sec. 5. The commission has the following duties and powers:

(1) To establish criteria and screening processes used to determine which cases will be accepted for review.

(2) To conduct inquiries into claims of factual innocence, with priority given to cases in which the convicted person is currently incarcerated solely for the crime for which the person claims factual innocence.

(3) To coordinate the investigation of cases accepted for review.

(4) To maintain records of all case investigations.

(5) To prepare a report outlining the commission's investigation and recommendations to the criminal court that tried and sentenced the individual bringing a claim of factual innocence.

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1 **(6) To apply for and accept funds that may become available**
2 **for the commission's work from government grants, gifts,**
3 **donations, or bequests.**
4 **Sec. 6. (a) A claim of factual innocence may be referred to the**
5 **commission by any court, person, or agency after the defendant**
6 **has exhausted direct appeals.**
7 **(b) The determination whether to grant a formal inquiry**
8 **regarding a claim of factual innocence is at the discretion of the**
9 **commission.**
10 **(c) The commission may informally or formally screen a case**
11 **and dismiss a case summarily.**
12 **(d) The commission shall not begin an inquiry regarding a claim**
13 **of factual innocence until the director or the director's designee**
14 **obtains a signed agreement from the defendant in which the**
15 **defendant:**
16 **(1) waives the defendant's procedural safeguards and**
17 **privileges;**
18 **(2) agrees to cooperate with the commission; and**
19 **(3) agrees to provide full disclosure regarding all of the**
20 **commission's inquiry requirements.**
21 **(e) A defendant has the right:**
22 **(1) to the advice of an attorney before the execution of; and**
23 **(2) to have an attorney present when the defendant signs;**
24 **an agreement required under subsection (d).**
25 **(f) If a defendant does not have an attorney before signing a**
26 **agreement required under subsection (d), the chair of the**
27 **committee may appoint an attorney to represent the defendant to**
28 **advise the defendant regarding the agreement required under**
29 **subsection (d).**
30 **(g) If the commission grants a request for a formal inquiry**
31 **regarding a claim of factual innocence, the director shall:**
32 **(1) notify the victim of the case;**
33 **(2) explain the inquiry process; and**
34 **(3) inform the victim that the victim may present views and**
35 **concerns to the commission regarding the inquiry.**
36 **(h) As part of an investigation, the commission may:**
37 **(1) administer oaths;**
38 **(2) examine witnesses under oath;**
39 **(3) issue subpoenas and subpoenas duces tecum; and**
40 **(4) review any evidence presented at trial.**
41 **(i) If at any point during an inquiry the defendant refuses to**
42 **comply with requests of the commission or is considered**

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1 uncooperative by the commission, the commission shall discontinue
2 the inquiry.

3 Sec. 7. (a) Except as provided in subsection (b), at the
4 completion of a formal inquiry, all relevant evidence shall be
5 presented to the full commission in a public hearing.

6 (b) The commission may close all or part of a hearing to the
7 public if the commission determines the hearing could interfere
8 with an investigation.

9 Sec. 8. (a) The director shall notify the victim at least thirty (30)
10 days before any proceeding of the full commission regarding the
11 victim's case.

12 (b) A victim may attend a closed hearing described in section
13 7(b) of this chapter at the commission's discretion.

14 Sec. 9. (a) After hearing the evidence presented to the full
15 commission, the full commission shall vote to establish further case
16 disposition.

17 (b) If at least five (5) members of the commission vote that there
18 is sufficient evidence of factual innocence to merit further review,
19 the case shall be referred to a state public defender to file a petition
20 for post-conviction relief.

21 (c) If less than five (5) members of the commission vote that
22 there is sufficient evidence of factual innocence to merit judicial
23 review, the commission shall conclude that there is insufficient
24 evidence of factual innocence to merit judicial review.

25 (d) For a determination under subsection (b) or (c), the
26 commission shall:

- 27 (1) document the opinion with supporting findings of fact;
28 (2) file the opinion and supporting findings of fact with the
29 clerk of the supreme court;
30 (3) send copies of the opinion and supporting findings of fact
31 to the:

- 32 (A) defendant;
33 (B) victim;
34 (C) court that heard the original case;
35 (D) attorneys representing the:
36 (i) state;
37 (ii) victim; and
38 (iii) defendant;
39 (E) parole board so the parole board can consider making
40 pardon, clemency, reprieve, or remission recommendations
41 to the governor under IC 11-9-2; and
42 (F) state public defender.

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1 (e) If the commission determines that anyone involved in a
2 criminal case being reviewed committed a crime, the commission
3 shall inform a local law enforcement agency.
4 Sec. 10. (a) All proceedings of the commission shall be recorded
5 and transcribed as part of the record.
6 (b) All commission votes shall be recorded.
7 (c) Except for an opinion and findings of fact under section 9 of
8 this chapter, all records and proceedings of the commission are
9 confidential and are exempt from public record and public meeting
10 laws under IC 5-14.

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