

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1281 be amended to read as follows:

1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 5-2-5-14 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 1998]: **Sec. 14. (a) A law enforcement agency shall collect**
6 **information concerning crimes that are apparently directed at an**
7 **individual or a group because of the individual's or group's race,**
8 **color, religion, sexual orientation, or national origin.**
9 **(b) At least two (2) times each year, a law enforcement agency**
10 **shall submit information collected under subsection (a) to the**
11 **Indiana central repository for criminal history information.**
12 **(c) At least one (1) time each year, the Indiana central**
13 **repository for criminal history information shall submit a report**
14 **that includes a compilation of information obtained under**
15 **subsection (b) to each law enforcement agency.**
16 **(d) Information collected, submitted, and reported under this**
17 **section must be consistent with guidelines established for the**
18 **acquisition, preservation, and exchange of identification records**
19 **and information by:**
20 **(1) the Attorney General of the United States; or**
21 **(2) the Federal Bureau of Investigation under 28 U.S.C. 534.**
22 SECTION 2. IC 35-38-1-7.1, AS AMENDED BY P.L.210-1997,
23 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 1998]: Sec. 7.1. (a) In determining what sentence to impose

- 1 for a crime, the court shall consider:
- 2 (1) the risk that the person will commit another crime;
- 3 (2) the nature and circumstances of the crime committed;
- 4 (3) the person's:
- 5 (A) prior criminal record;
- 6 (B) character; and
- 7 (C) condition;
- 8 (4) whether the victim of the crime was less than twelve (12)
- 9 years of age or at least sixty-five (65) years of age;
- 10 (5) whether the person violated a protective order issued against
- 11 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before
- 12 its repeal) or IC 34-4-5.1; and
- 13 (6) any oral or written statement made by a victim of the crime.
- 14 (b) The court may consider the following factors as aggravating
- 15 circumstances or as favoring imposing consecutive terms of
- 16 imprisonment:
- 17 (1) The person has recently violated the conditions of any
- 18 probation, parole, or pardon granted to the person.
- 19 (2) The person has a history of criminal or delinquent activity.
- 20 (3) The person is in need of correctional or rehabilitative
- 21 treatment that can best be provided by commitment of the person
- 22 to a penal facility.
- 23 (4) Imposition of a reduced sentence or suspension of the
- 24 sentence and imposition of probation would depreciate the
- 25 seriousness of the crime.
- 26 (5) The victim of the crime was less than twelve (12) years of
- 27 age or at least sixty-five (65) years of age.
- 28 (6) The victim of the crime was mentally or physically infirm.
- 29 (7) The person committed a forcible felony while wearing a
- 30 garment designed to resist the penetration of a bullet.
- 31 (8) The person committed a sex crime listed in subsection (e)
- 32 and:
- 33 (A) the crime created an epidemiologically demonstrated
- 34 risk of transmission of the human immunodeficiency virus
- 35 (HIV) and involved the sex organ of one (1) person and the
- 36 mouth, anus, or sex organ of another person;
- 37 (B) the person had knowledge that the person was a carrier
- 38 of HIV; and
- 39 (C) the person had received risk counseling as described in
- 40 subsection (g).
- 41 (9) The person committed an offense related to controlled
- 42 substances listed in subsection (f) if:
- 43 (A) the offense involved:
- 44 (i) the delivery by any person to another person; or
- 45 (ii) the use by any person on another person;
- 46 of a contaminated sharp (as defined in IC 16-41-16-2) or

- 1 other paraphernalia that creates an epidemiologically
 2 demonstrated risk of transmission of HIV by involving
 3 percutaneous contact;
 4 (B) the person had knowledge that the person was a carrier
 5 of the human immunodeficiency virus (HIV); and
 6 (C) the person had received risk counseling as described in
 7 subsection (g).
- 8 (10) The person committed the offense in an area of a
 9 consolidated or second class city that is designated as a public
 10 safety improvement area by the Indiana criminal justice institute
 11 under IC 36-8-19.5.
- 12 **(11) The person who committed the offense knowingly or**
 13 **intentionally:**
 14 **(A) selected another individual who was injured; or**
 15 **(B) damaged or otherwise affected property that was**
 16 **damaged or affected;**
 17 **by the offense because of the race, color, religion, sexual**
 18 **orientation, or national origin of the injured individual or of**
 19 **the owner or occupant of the affected property.**
- 20 (c) The court may consider the following factors as mitigating
 21 circumstances or as favoring suspending the sentence and imposing
 22 probation:
- 23 (1) The crime neither caused nor threatened serious harm to
 24 persons or property, or the person did not contemplate that it
 25 would do so.
- 26 (2) The crime was the result of circumstances unlikely to recur.
- 27 (3) The victim of the crime induced or facilitated the offense.
- 28 (4) There are substantial grounds tending to excuse or justify the
 29 crime, though failing to establish a defense.
- 30 (5) The person acted under strong provocation.
- 31 (6) The person has no history of delinquency or criminal activity,
 32 or the person has led a law-abiding life for a substantial period
 33 before commission of the crime.
- 34 (7) The person is likely to respond affirmatively to probation or
 35 short term imprisonment.
- 36 (8) The character and attitudes of the person indicate that the
 37 person is unlikely to commit another crime.
- 38 (9) The person has made or will make restitution to the victim of
 39 the crime for the injury, damage, or loss sustained.
- 40 (10) Imprisonment of the person will result in undue hardship to
 41 the person or the dependents of the person.
- 42 (11) The person was convicted of a crime involving the use of
 43 force against a person who had repeatedly inflicted physical or
 44 sexual abuse upon the convicted person and evidence shows that
 45 the convicted person suffered from the effects of battery as a
 46 result of the past course of conduct of the individual who is the

- 1 victim of the crime for which the person was convicted.
- 2 (d) The criteria listed in subsections (b) and (c) do not limit the
- 3 matters that the court may consider in determining the sentence.
- 4 (e) For the purposes of this article, the following crimes are
- 5 considered sex crimes:
- 6 (1) Rape (IC 35-42-4-1).
- 7 (2) Criminal deviate conduct (IC 35-42-4-2).
- 8 (3) Child molesting (IC 35-42-4-3).
- 9 (4) Child seduction (IC 35-42-4-7).
- 10 (5) Prostitution (IC 35-45-4-2).
- 11 (6) Patronizing a prostitute (IC 35-45-4-3).
- 12 (7) Incest (IC 35-46-1-3).
- 13 (f) For the purposes of this article, the following crimes are
- 14 considered offenses related to controlled substances:
- 15 (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 16 (2) Dealing in a schedule I, II, or III controlled substance
- 17 (IC 35-48-4-2).
- 18 (3) Dealing in a schedule IV controlled substance
- 19 (IC 35-48-4-3).
- 20 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 21 (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- 22 (6) Possession of a controlled substance (IC 35-48-4-7).
- 23 (7) Dealing in paraphernalia (IC 35-48-4-8.5).
- 24 (8) Possession of paraphernalia (IC 35-48-4-8.3).
- 25 (9) Offenses relating to registration (IC 35-48-4-14).
- 26 (g) For the purposes of this section, a person received risk
- 27 counseling if the person had been:
- 28 (1) notified in person or in writing that tests have confirmed the
- 29 presence of antibodies to the human immunodeficiency virus
- 30 (HIV) in the person's blood; and
- 31 (2) warned of the behavior that can transmit HIV."
- 32 Page 3, after line 3, begin a new paragraph and insert:
- 33 "SECTION 4. IC 35-50-2-9, AS AMENDED BY P.L.216-1996,
- 34 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 35 JULY 1, 1998]: Sec. 9. (a) The state may seek either a death sentence
- 36 or a sentence of life imprisonment without parole for murder by
- 37 alleging, on a page separate from the rest of the charging instrument,
- 38 the existence of at least one (1) of the aggravating circumstances listed
- 39 in subsection (b). In the sentencing hearing after a person is convicted
- 40 of murder, the state must prove beyond a reasonable doubt the
- 41 existence of at least one (1) of the aggravating circumstances alleged.
- 42 However, the state may not proceed against a defendant under this
- 43 section if a court determines at a pretrial hearing under IC 35-36-9 that
- 44 the defendant is a mentally retarded individual.
- 45 (b) The aggravating circumstances are as follows:
- 46 (1) The defendant committed the murder by intentionally killing

- 1 the victim while committing or attempting to commit any of the
 2 following:
- 3 (A) Arson (IC 35-43-1-1).
 - 4 (B) Burglary (IC 35-43-2-1).
 - 5 (C) Child molesting (IC 35-42-4-3).
 - 6 (D) Criminal deviate conduct (IC 35-42-4-2).
 - 7 (E) Kidnapping (IC 35-42-3-2).
 - 8 (F) Rape (IC 35-42-4-1).
 - 9 (G) Robbery (IC 35-42-5-1).
 - 10 (H) Carjacking (IC 35-42-5-2).
 - 11 (I) Criminal gang activity (IC 35-45-9-3).
 - 12 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 13 (2) The defendant committed the murder by the unlawful
 14 detonation of an explosive with intent to injure person or damage
 15 property.
- 16 (3) The defendant committed the murder by lying in wait.
- 17 (4) The defendant who committed the murder was hired to kill.
- 18 (5) The defendant committed the murder by hiring another
 19 person to kill.
- 20 (6) The victim of the murder was a corrections employee,
 21 probation officer, parole officer, community corrections worker,
 22 home detention officer, fireman, judge, or law enforcement
 23 officer, and either:
- 24 (A) the victim was acting in the course of duty; or
 - 25 (B) the murder was motivated by an act the victim
 26 performed while acting in the course of duty.
- 27 (7) The defendant has been convicted of another murder.
- 28 (8) The defendant has committed another murder, at any time,
 29 regardless of whether the defendant has been convicted of that
 30 other murder.
- 31 (9) The defendant was:
- 32 (A) under the custody of the department of correction;
 - 33 (B) under the custody of a county sheriff;
 - 34 (C) on probation after receiving a sentence for the
 35 commission of a felony; or
 - 36 (D) on parole;
- 37 at the time the murder was committed.
- 38 (10) The defendant dismembered the victim.
- 39 (11) The defendant burned, mutilated, or tortured the victim
 40 while the victim was alive.
- 41 (12) The victim of the murder was less than twelve (12) years of
 42 age.
- 43 (13) The victim was a victim of any of the following offenses for
 44 which the defendant was convicted:
- 45 (A) Battery as a Class D felony or as a Class C felony under
 46 IC 35-42-2-1.

- 1 (B) Kidnapping (IC 35-42-3-2).
 2 (C) Criminal confinement (IC 35-42-3-3).
 3 (D) A sex crime under IC 35-42-4.
 4 (14) The victim of the murder was listed by the state or known
 5 by the defendant to be a witness against the defendant and the
 6 defendant committed the murder with the intent to prevent the
 7 person from testifying.
 8 (15) The defendant committed the murder by intentionally
 9 discharging a firearm (as defined in IC 35-47-1-5):
 10 (A) into an inhabited dwelling; or
 11 (B) from a vehicle.
 12 **(16) The defendant committed the murder by knowingly or**
 13 **intentionally selecting the victim of the murder because of**
 14 **the race, color, religion, sexual orientation, or national origin**
 15 **of the victim.**
 16 (c) The mitigating circumstances that may be considered under
 17 this section are as follows:
 18 (1) The defendant has no significant history of prior criminal
 19 conduct.
 20 (2) The defendant was under the influence of extreme mental or
 21 emotional disturbance when the murder was committed.
 22 (3) The victim was a participant in or consented to the
 23 defendant's conduct.
 24 (4) The defendant was an accomplice in a murder committed by
 25 another person, and the defendant's participation was relatively
 26 minor.
 27 (5) The defendant acted under the substantial domination of
 28 another person.
 29 (6) The defendant's capacity to appreciate the criminality of the
 30 defendant's conduct or to conform that conduct to the
 31 requirements of law was substantially impaired as a result of
 32 mental disease or defect or of intoxication.
 33 (7) The defendant was less than eighteen (18) years of age at the
 34 time the murder was committed.
 35 (8) Any other circumstances appropriate for consideration.
 36 (d) If the defendant was convicted of murder in a jury trial, the
 37 jury shall reconvene for the sentencing hearing. If the trial was to the
 38 court, or the judgment was entered on a guilty plea, the court alone
 39 shall conduct the sentencing hearing. The jury or the court may
 40 consider all the evidence introduced at the trial stage of the
 41 proceedings, together with new evidence presented at the sentencing
 42 hearing. The court shall instruct the jury concerning the statutory
 43 penalties for murder and any other offenses for which the defendant
 44 was convicted, the potential for consecutive or concurrent sentencing,
 45 and the availability of good time credit and clemency. The defendant
 46 may present any additional evidence relevant to:

- 1 (1) the aggravating circumstances alleged; or
2 (2) any of the mitigating circumstances listed in subsection (c).
- 3 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the
4 jury shall recommend to the court whether the death penalty or life
5 imprisonment without parole, or neither, should be imposed. The jury
6 may recommend:
7 (1) the death penalty; or
8 (2) life imprisonment without parole;
9 only if it makes the findings described in subsection (k). The court shall
10 make the final determination of the sentence, after considering the
11 jury's recommendation, and the sentence shall be based on the same
12 standards that the jury was required to consider. The court is not bound
13 by the jury's recommendation. In making the final determination of the
14 sentence after receiving the jury's recommendation, the court may
15 receive evidence of the crime's impact on members of the victim's
16 family.
- 17 (f) If a jury is unable to agree on a sentence recommendation after
18 reasonable deliberations, the court shall discharge the jury and proceed
19 as if the hearing had been to the court alone.
- 20 (g) If the hearing is to the court alone, except as provided by
21 IC 35-36-9, the court shall:
22 (1) sentence the defendant to death; or
23 (2) impose a term of life imprisonment without parole;
24 only if it makes the findings described in subsection (k).
- 25 (h) If a court sentences a defendant to death, the court shall order
26 the defendant's execution to be carried out not later than one (1) year
27 and one (1) day after the date the defendant was convicted. The
28 supreme court has exclusive jurisdiction to stay the execution of a
29 death sentence. If the supreme court stays the execution of a death
30 sentence, the supreme court shall order a new date for the defendant's
31 execution.
- 32 (i) If a person sentenced to death by a court files a petition for
33 post-conviction relief, the court, not later than ninety (90) days after the
34 date the petition is filed, shall set a date to hold a hearing to consider
35 the petition. If a court does not, within the ninety (90) day period, set
36 the date to hold the hearing to consider the petition, the court's failure
37 to set the hearing date is not a basis for additional post-conviction
38 relief. The attorney general shall answer the petition for post-conviction
39 relief on behalf of the state. At the request of the attorney general, a
40 prosecuting attorney shall assist the attorney general. The court shall
41 enter written findings of fact and conclusions of law concerning the
42 petition not later than ninety (90) days after the date the hearing
43 concludes. However, if the court determines that the petition is without
44 merit, the court may dismiss the petition within ninety (90) days
45 without conducting a hearing under this subsection.
- 46 (j) A death sentence is subject to automatic review by the supreme

1 court. The review, which shall be heard under rules adopted by the
 2 supreme court, shall be given priority over all other cases. The supreme
 3 court's review must take into consideration all claims that the:

4 (1) conviction or sentence was in violation of the:

5 (A) Constitution of the State of Indiana; or

6 (B) Constitution of the United States;

7 (2) sentencing court was without jurisdiction to impose a
 8 sentence; and

9 (3) sentence:

10 (A) exceeds the maximum sentence authorized by law; or

11 (B) is otherwise erroneous.

12 If the supreme court cannot complete its review by the date set by the
 13 sentencing court for the defendant's execution under subsection (h), the
 14 supreme court shall stay the execution of the death sentence and set a
 15 new date to carry out the defendant's execution.

16 (k) Before a sentence may be imposed under this section, the jury,
 17 in a proceeding under subsection (e), or the court, in a proceeding
 18 under subsection (g), must find that:

19 (1) the state has proved beyond a reasonable doubt that at least
 20 one (1) of the aggravating circumstances listed in subsection (b)
 21 exists; and

22 (2) any mitigating circumstances that exist are outweighed by the
 23 aggravating circumstance or circumstances.

24 **SECTION 5. [EFFECTIVE JULY 1, 1998] IC 35-38-1-7.1 and**
 25 **IC 35-50-2-9, both as amended by this act, apply only to crimes**
 26 **committed after June 30, 1998."**

27 Renumber all SECTIONS consecutively.

(Reference is to HB 1281 as printed January 27, 1998.)

Representative Crawford