

## SENATE BILL No. 80

---

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-1-7.1; IC 35-46-2-1; IC 35-46-2-2; IC 35-50-2-9.

**Synopsis:** Hate crimes. Makes commission of a crime because of the color, creed, national origin, race, religion, sexual orientation, or sex of the victim an aggravating circumstance that may be considered by a judge when the judge imposes a sentence for the crime. Expands the scope of the offenses relating to civil rights to include violations directed at a person because of the person's sexual orientation.

**Effective:** July 1, 1999.

---

---

### Simpson

---

---

January 6, 1999, read first time and referred to Committee on Judiciary.

---

---

C  
O  
P  
Y



First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

## SENATE BILL No. 80

---

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 35-38-1-7.1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7.1. (a) In determining  
3 what sentence to impose for a crime, the court shall consider:  
4 (1) the risk that the person will commit another crime;  
5 (2) the nature and circumstances of the crime committed;  
6 (3) the person's:  
7 (A) prior criminal record;  
8 (B) character; and  
9 (C) condition;  
10 (4) whether the victim of the crime was less than twelve (12)  
11 years of age or at least sixty-five (65) years of age;  
12 (5) whether the person violated a protective order issued against  
13 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its  
14 repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and  
15 (6) any oral or written statement made by a victim of the crime.  
16 (b) The court may consider the following factors as aggravating  
17 circumstances or as favoring imposing consecutive terms of



C  
O  
P  
Y

- 1 imprisonment:
- 2 (1) The person has recently violated the conditions of any
- 3 probation, parole, or pardon granted to the person.
- 4 (2) The person has a history of criminal or delinquent activity.
- 5 (3) The person is in need of correctional or rehabilitative
- 6 treatment that can best be provided by commitment of the person
- 7 to a penal facility.
- 8 (4) Imposition of a reduced sentence or suspension of the
- 9 sentence and imposition of probation would depreciate the
- 10 seriousness of the crime.
- 11 (5) The victim of the crime was less than twelve (12) years of age
- 12 or at least sixty-five (65) years of age.
- 13 (6) The victim of the crime was mentally or physically infirm.
- 14 (7) The person committed a forcible felony while wearing a
- 15 garment designed to resist the penetration of a bullet.
- 16 (8) The person committed a sex crime listed in subsection (e) and:
- 17 (A) the crime created an epidemiologically demonstrated risk
- 18 of transmission of the human immunodeficiency virus (HIV)
- 19 and involved the sex organ of one (1) person and the mouth,
- 20 anus, or sex organ of another person;
- 21 (B) the person had knowledge that the person was a carrier of
- 22 HIV; and
- 23 (C) the person had received risk counseling as described in
- 24 subsection (g).
- 25 (9) The person committed an offense related to controlled
- 26 substances listed in subsection (f) if:
- 27 (A) the offense involved:
- 28 (i) the delivery by any person to another person; or
- 29 (ii) the use by any person on another person;
- 30 of a contaminated sharp (as defined in IC 16-41-16-2) or other
- 31 paraphernalia that creates an epidemiologically demonstrated
- 32 risk of transmission of HIV by involving percutaneous contact;
- 33 (B) the person had knowledge that the person was a carrier of
- 34 the human immunodeficiency virus (HIV); and
- 35 (C) the person had received risk counseling as described in
- 36 subsection (g).
- 37 (10) The person committed the offense in an area of a
- 38 consolidated or second class city that is designated as a public
- 39 safety improvement area by the Indiana criminal justice institute
- 40 under IC 36-8-19.5.
- 41 (11) The injury to or death of the victim of the crime was the
- 42 result of shaken baby syndrome (as defined in IC 16-41-40-2).

C  
O  
P  
Y



1 (12) Before the commission of the crime, the person administered  
 2 to the victim of the crime, without the victim's knowledge, a  
 3 sedating drug or a drug that had a hypnotic effect on the victim,  
 4 or the person had knowledge that such a drug had been  
 5 administered to the victim without the victim's knowledge.

6 **(13) The person who committed the offense knowingly or**  
 7 **intentionally:**

8 **(A) selected another individual who was injured; or**

9 **(B) damaged or otherwise affected property;**

10 **by the offense because of the color, creed, national origin,**  
 11 **race, religion, sexual orientation, or sex of the injured**  
 12 **individual or of the owner or occupant of the affected**  
 13 **property.**

14 (c) The court may consider the following factors as mitigating  
 15 circumstances or as favoring suspending the sentence and imposing  
 16 probation:

17 (1) The crime neither caused nor threatened serious harm to  
 18 persons or property, or the person did not contemplate that it  
 19 would do so.

20 (2) The crime was the result of circumstances unlikely to recur.

21 (3) The victim of the crime induced or facilitated the offense.

22 (4) There are substantial grounds tending to excuse or justify the  
 23 crime, though failing to establish a defense.

24 (5) The person acted under strong provocation.

25 (6) The person has no history of delinquency or criminal activity,  
 26 or the person has led a law-abiding life for a substantial period  
 27 before commission of the crime.

28 (7) The person is likely to respond affirmatively to probation or  
 29 short term imprisonment.

30 (8) The character and attitudes of the person indicate that the  
 31 person is unlikely to commit another crime.

32 (9) The person has made or will make restitution to the victim of  
 33 the crime for the injury, damage, or loss sustained.

34 (10) Imprisonment of the person will result in undue hardship to  
 35 the person or the dependents of the person.

36 (11) The person was convicted of a crime involving the use of  
 37 force against a person who had repeatedly inflicted physical or  
 38 sexual abuse upon the convicted person and evidence shows that  
 39 the convicted person suffered from the effects of battery as a  
 40 result of the past course of conduct of the individual who is the  
 41 victim of the crime for which the person was convicted.

42 (d) The criteria listed in subsections (b) and (c) do not limit the

C  
O  
P  
Y



1 matters that the court may consider in determining the sentence.

2 (e) For the purposes of this article, the following crimes are  
3 considered sex crimes:

- 4 (1) Rape (IC 35-42-4-1).  
5 (2) Criminal deviate conduct (IC 35-42-4-2).  
6 (3) Child molesting (IC 35-42-4-3).  
7 (4) Child seduction (IC 35-42-4-7).  
8 (5) Prostitution (IC 35-45-4-2).  
9 (6) Patronizing a prostitute (IC 35-45-4-3).  
10 (7) Incest (IC 35-46-1-3).  
11 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).

12 (f) For the purposes of this article, the following crimes are  
13 considered offenses related to controlled substances:

- 14 (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).  
15 (2) Dealing in a schedule I, II, or III controlled substance (IC  
16 35-48-4-2).  
17 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).  
18 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).  
19 (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).  
20 (6) Possession of a controlled substance (IC 35-48-4-7).  
21 (7) Dealing in paraphernalia (IC 35-48-4-8.5).  
22 (8) Possession of paraphernalia (IC 35-48-4-8.3).  
23 (9) Offenses relating to registration (IC 35-48-4-14).

24 (g) For the purposes of this section, a person received risk  
25 counseling if the person had been:

- 26 (1) notified in person or in writing that tests have confirmed the  
27 presence of antibodies to the human immunodeficiency virus  
28 (HIV) in the person's blood; and  
29 (2) warned of the behavior that can transmit HIV.

30 SECTION 2. IC 35-46-2-1 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. A person who  
32 knowingly or intentionally denies to another person, because of color,  
33 creed, disability, national origin, race, religion, **sexual orientation**, or  
34 sex, the full and equal use of the services, facilities, or goods in:

- 35 (1) an establishment that caters or offers its services, facilities, or  
36 goods to the general public; or  
37 (2) a housing project owned or subsidized by a governmental  
38 entity;

39 commits a civil rights violation, a Class B misdemeanor.

40 SECTION 3. IC 35-46-2-2 IS AMENDED TO READ AS  
41 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. A public servant  
42 having the duty to select or summon persons for grand jury or trial jury

C  
O  
P  
Y



1 service who knowingly or intentionally fails to select or summon a  
 2 person because of color, creed, disability, national origin, race, religion,  
 3 **sexual orientation**, or sex commits discrimination in jury selection, a  
 4 Class A misdemeanor.

5 SECTION 4. IC 35-50-2-9 IS AMENDED TO READ AS  
 6 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) The state may  
 7 seek either a death sentence or a sentence of life imprisonment without  
 8 parole for murder by alleging, on a page separate from the rest of the  
 9 charging instrument, the existence of at least one (1) of the aggravating  
 10 circumstances listed in subsection (b). In the sentencing hearing after  
 11 a person is convicted of murder, the state must prove beyond a  
 12 reasonable doubt the existence of at least one (1) of the aggravating  
 13 circumstances alleged. However, the state may not proceed against a  
 14 defendant under this section if a court determines at a pretrial hearing  
 15 under IC 35-36-9 that the defendant is a mentally retarded individual.

16 (b) The aggravating circumstances are as follows:

17 (1) The defendant committed the murder by intentionally killing  
 18 the victim while committing or attempting to commit any of the  
 19 following:

- 20 (A) Arson (IC 35-43-1-1).
- 21 (B) Burglary (IC 35-43-2-1).
- 22 (C) Child molesting (IC 35-42-4-3).
- 23 (D) Criminal deviate conduct (IC 35-42-4-2).
- 24 (E) Kidnapping (IC 35-42-3-2).
- 25 (F) Rape (IC 35-42-4-1).
- 26 (G) Robbery (IC 35-42-5-1).
- 27 (H) Carjacking (IC 35-42-5-2).
- 28 (I) Criminal gang activity (IC 35-45-9-3).
- 29 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

30 (2) The defendant committed the murder by the unlawful  
 31 detonation of an explosive with intent to injure person or damage  
 32 property.

33 (3) The defendant committed the murder by lying in wait.

34 (4) The defendant who committed the murder was hired to kill.

35 (5) The defendant committed the murder by hiring another person  
 36 to kill.

37 (6) The victim of the murder was a corrections employee,  
 38 probation officer, parole officer, community corrections worker,  
 39 home detention officer, fireman, judge, or law enforcement  
 40 officer, and either:

41 (A) the victim was acting in the course of duty; or

42 (B) the murder was motivated by an act the victim performed



C  
O  
P  
Y

- 1 while acting in the course of duty.
- 2 (7) The defendant has been convicted of another murder.
- 3 (8) The defendant has committed another murder, at any time,  
4 regardless of whether the defendant has been convicted of that  
5 other murder.
- 6 (9) The defendant was:
- 7 (A) under the custody of the department of correction;
- 8 (B) under the custody of a county sheriff;
- 9 (C) on probation after receiving a sentence for the commission  
10 of a felony; or  
11 (D) on parole;
- 12 at the time the murder was committed.
- 13 (10) The defendant dismembered the victim.
- 14 (11) The defendant burned, mutilated, or tortured the victim while  
15 the victim was alive.
- 16 (12) The victim of the murder was less than twelve (12) years of  
17 age.
- 18 (13) The victim was a victim of any of the following offenses for  
19 which the defendant was convicted:
- 20 (A) Battery as a Class D felony or as a Class C felony under  
21 IC 35-42-2-1.
- 22 (B) Kidnapping (IC 35-42-3-2).
- 23 (C) Criminal confinement (IC 35-42-3-3).
- 24 (D) A sex crime under IC 35-42-4.
- 25 (14) The victim of the murder was listed by the state or known by  
26 the defendant to be a witness against the defendant and the  
27 defendant committed the murder with the intent to prevent the  
28 person from testifying.
- 29 (15) The defendant committed the murder by intentionally  
30 discharging a firearm (as defined in IC 35-47-1-5):
- 31 (A) into an inhabited dwelling; or  
32 (B) from a vehicle.
- 33 (16) The victim of the murder was pregnant and the murder  
34 resulted in the intentional killing of a fetus that has attained  
35 viability (as defined in IC 16-18-2-365).
- 36 **(17) The defendant committed the murder by knowingly or**  
37 **intentionally selecting the victim of the murder because of the**  
38 **color, creed, national origin, race, religion, sexual orientation,**  
39 **or sex of the victim.**
- 40 (c) The mitigating circumstances that may be considered under this  
41 section are as follows:
- 42 (1) The defendant has no significant history of prior criminal

C  
O  
P  
Y

- 1           conduct.
- 2           (2) The defendant was under the influence of extreme mental or
- 3           emotional disturbance when the murder was committed.
- 4           (3) The victim was a participant in or consented to the defendant's
- 5           conduct.
- 6           (4) The defendant was an accomplice in a murder committed by
- 7           another person, and the defendant's participation was relatively
- 8           minor.
- 9           (5) The defendant acted under the substantial domination of
- 10          another person.
- 11          (6) The defendant's capacity to appreciate the criminality of the
- 12          defendant's conduct or to conform that conduct to the
- 13          requirements of law was substantially impaired as a result of
- 14          mental disease or defect or of intoxication.
- 15          (7) The defendant was less than eighteen (18) years of age at the
- 16          time the murder was committed.
- 17          (8) Any other circumstances appropriate for consideration.
- 18          (d) If the defendant was convicted of murder in a jury trial, the jury
- 19          shall reconvene for the sentencing hearing. If the trial was to the court,
- 20          or the judgment was entered on a guilty plea, the court alone shall
- 21          conduct the sentencing hearing. The jury or the court may consider all
- 22          the evidence introduced at the trial stage of the proceedings, together
- 23          with new evidence presented at the sentencing hearing. The court shall
- 24          instruct the jury concerning the statutory penalties for murder and any
- 25          other offenses for which the defendant was convicted, the potential for
- 26          consecutive or concurrent sentencing, and the availability of good time
- 27          credit and clemency. The defendant may present any additional
- 28          evidence relevant to:
- 29                (1) the aggravating circumstances alleged; or
- 30                (2) any of the mitigating circumstances listed in subsection (c).
- 31          (e) Except as provided by IC 35-36-9, if the hearing is by jury, the
- 32          jury shall recommend to the court whether the death penalty or life
- 33          imprisonment without parole, or neither, should be imposed. The jury
- 34          may recommend:
- 35                (1) the death penalty; or
- 36                (2) life imprisonment without parole;
- 37          only if it makes the findings described in subsection (k). The court shall
- 38          make the final determination of the sentence, after considering the
- 39          jury's recommendation, and the sentence shall be based on the same
- 40          standards that the jury was required to consider. The court is not bound
- 41          by the jury's recommendation. In making the final determination of the
- 42          sentence after receiving the jury's recommendation, the court may

C  
O  
P  
Y

1 receive evidence of the crime's impact on members of the victim's  
2 family.

3 (f) If a jury is unable to agree on a sentence recommendation after  
4 reasonable deliberations, the court shall discharge the jury and proceed  
5 as if the hearing had been to the court alone.

6 (g) If the hearing is to the court alone, except as provided by  
7 IC 35-36-9, the court shall:

8 (1) sentence the defendant to death; or

9 (2) impose a term of life imprisonment without parole;  
10 only if it makes the findings described in subsection (k).

11 (h) If a court sentences a defendant to death, the court shall order  
12 the defendant's execution to be carried out not later than one (1) year  
13 and one (1) day after the date the defendant was convicted. The  
14 supreme court has exclusive jurisdiction to stay the execution of a  
15 death sentence. If the supreme court stays the execution of a death  
16 sentence, the supreme court shall order a new date for the defendant's  
17 execution.

18 (i) If a person sentenced to death by a court files a petition for  
19 post-conviction relief, the court, not later than ninety (90) days after the  
20 date the petition is filed, shall set a date to hold a hearing to consider  
21 the petition. If a court does not, within the ninety (90) day period, set  
22 the date to hold the hearing to consider the petition, the court's failure  
23 to set the hearing date is not a basis for additional post-conviction  
24 relief. The attorney general shall answer the petition for post-conviction  
25 relief on behalf of the state. At the request of the attorney general, a  
26 prosecuting attorney shall assist the attorney general. The court shall  
27 enter written findings of fact and conclusions of law concerning the  
28 petition not later than ninety (90) days after the date the hearing  
29 concludes. However, if the court determines that the petition is without  
30 merit, the court may dismiss the petition within ninety (90) days  
31 without conducting a hearing under this subsection.

32 (j) A death sentence is subject to automatic review by the supreme  
33 court. The review, which shall be heard under rules adopted by the  
34 supreme court, shall be given priority over all other cases. The supreme  
35 court's review must take into consideration all claims that the:

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

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

38 (B) Constitution of the United States;

39 (2) sentencing court was without jurisdiction to impose a  
40 sentence; and

41 (3) sentence:

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

C  
O  
P  
Y



1 (B) is otherwise erroneous.  
2 If the supreme court cannot complete its review by the date set by the  
3 sentencing court for the defendant's execution under subsection (h), the  
4 supreme court shall stay the execution of the death sentence and set a  
5 new date to carry out the defendant's execution.  
6 (k) Before a sentence may be imposed under this section, the jury,  
7 in a proceeding under subsection (e), or the court, in a proceeding  
8 under subsection (g), must find that:  
9 (1) the state has proved beyond a reasonable doubt that at least  
10 one (1) of the aggravating circumstances listed in subsection (b)  
11 exists; and  
12 (2) any mitigating circumstances that exist are outweighed by the  
13 aggravating circumstance or circumstances.  
14 SECTION 5. [EFFECTIVE JULY 1, 1999] **IC 35-38-1-7.1,**  
15 **IC 35-46-2-1, IC 35-46-2-2, and IC 35-50-2-9, all as amended by**  
16 **this act, apply only to offenses committed after June 30, 1999.**

C  
O  
P  
Y