
SENATE BILL No. 380

DIGEST OF INTRODUCED BILL

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

Synopsis: Bias crimes. Makes commission of a crime because of the color, creed, disability, national origin, race, religion, sexual orientation, or sex of the victim an aggravating circumstance: (1) that may be considered by a judge when the judge imposes a sentence for the crime; and (2) that, in a murder case, may provide the grounds on which the state seeks the death penalty. Makes it discrimination in jury selection, a Class A misdemeanor, for a public servant having the duty to select or summon persons for grand jury or trial jury service to knowingly or intentionally fail to select or summon a person because of the person's sexual orientation. Makes a technical correction.

Effective: July 1, 2003.

Broden

January 16, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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SENATE BILL No. 380



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, AS AMENDED BY P.L.133-2002,
- 2 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2003]: Sec. 7.1. (a) In determining what sentence to impose
- 4 for a crime, the court shall consider:
- 5 (1) the risk that the person will commit another crime;
- 6 (2) the nature and circumstances of the crime committed;
- 7 (3) the person's:
- 8 (A) prior criminal record;
- 9 (B) character; and
- 10 (C) condition;
- 11 (4) whether the victim of the crime was less than twelve (12)
- 12 years of age or at least sixty-five (65) years of age;
- 13 (5) whether the person committed the offense in the presence or
- 14 within hearing of a person who is less than eighteen (18) years of
- 15 age who was not the victim of the offense;
- 16 (6) whether the person violated a protective order issued against
- 17 the person under IC 31-15, IC 31-16, or IC 34-26-5 (or



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

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1 safety improvement area by the Indiana criminal justice institute
2 under IC 36-8-19.5.

3 (11) The injury to or death of the victim of the crime was the
4 result of shaken baby syndrome (as defined in IC 16-41-40-2).

5 (12) Before the commission of the crime, the person administered
6 to the victim of the crime, without the victim's knowledge, a
7 sedating drug or a drug that had a hypnotic effect on the victim,
8 or the person had knowledge that such a drug had been
9 administered to the victim without the victim's knowledge.

10 (13) The person:

11 (A) committed trafficking with an inmate under IC 35-44-3-9;
12 and

13 (B) is an employee of the penal facility.

14 (14) The person committed the offense in the presence or within
15 hearing of a person who is less than eighteen (18) years of age
16 who was not the victim of the offense.

17 **(15) The person who committed the offense knowingly or**
18 **intentionally:**

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

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

21 **in the commission of the offense because of the color, creed,**
22 **disability, national origin, race, religion, sexual orientation, or**
23 **sex of the injured individual or of the owner or occupant of**
24 **the affected property.**

25 (c) The court may consider the following factors as mitigating
26 circumstances or as favoring suspending the sentence and imposing
27 probation:

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

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

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

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

35 (5) The person acted under strong provocation.

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

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

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

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- 1 (9) The person has made or will make restitution to the victim of
 2 the crime for the injury, damage, or loss sustained.
 3 (10) Imprisonment of the person will result in undue hardship to
 4 the person or the dependents of the person.
 5 (11) The person was convicted of a crime involving the use of
 6 force against a person who had repeatedly inflicted physical or
 7 sexual abuse upon the convicted person and evidence shows that
 8 the convicted person suffered from the effects of battery as a
 9 result of the past course of conduct of the individual who is the
 10 victim of the crime for which the person was convicted.
 11 (d) The criteria listed in subsections (b) and (c) do not limit the
 12 matters that the court may consider in determining the sentence.
 13 (e) For the purposes of this article, the following crimes are
 14 considered sex crimes:
 15 (1) Rape (IC 35-42-4-1).
 16 (2) Criminal deviate conduct (IC 35-42-4-2).
 17 (3) Child molesting (IC 35-42-4-3).
 18 (4) Child seduction (IC 35-42-4-7).
 19 (5) Prostitution (IC 35-45-4-2).
 20 (6) Patronizing a prostitute (IC 35-45-4-3).
 21 (7) Incest (IC 35-46-1-3).
 22 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).
 23 (f) For the purposes of this article, the following crimes are
 24 considered offenses related to controlled substances:
 25 (1) Dealing in or manufacturing cocaine, a narcotic drug, or
 26 methamphetamine (IC 35-48-4-1).
 27 (2) Dealing in a schedule I, II, or III controlled substance
 28 (IC 35-48-4-2).
 29 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
 30 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
 31 (5) Possession of cocaine, a narcotic drug, or methamphetamine
 32 (IC 35-48-4-6).
 33 (6) Possession of a controlled substance (IC 35-48-4-7).
 34 (7) Dealing in paraphernalia (IC 35-48-4-8.5).
 35 (8) Possession of paraphernalia (IC 35-48-4-8.3).
 36 (9) Offenses relating to registration (IC 35-48-4-14).
 37 (g) For the purposes of this section, a person received risk
 38 counseling if the person had been:
 39 (1) notified in person or in writing that tests have confirmed the
 40 presence of antibodies to the human immunodeficiency virus
 41 (HIV) in the person's blood; and
 42 (2) warned of the behavior that can transmit HIV.

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1 SECTION 2. IC 35-46-2-2 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. A public servant
 3 having the duty to select or summon persons for grand jury or trial jury
 4 service who knowingly or intentionally fails to select or summon a
 5 person because of color, creed, disability, national origin, race, religion,
 6 **sexual orientation**, or sex commits discrimination in jury selection, a
 7 Class A misdemeanor.

8 SECTION 3. IC 35-50-2-9, AS AMENDED BY P.L.117-2002,
 9 SECTION 2, IS AMENDED AND CORRECTED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The state may
 11 seek either a death sentence or a sentence of life imprisonment without
 12 parole for murder by alleging, on a page separate from the rest of the
 13 charging instrument, the existence of at least one (1) of the aggravating
 14 circumstances listed in subsection (b). In the sentencing hearing after
 15 a person is convicted of murder, the state must prove beyond a
 16 reasonable doubt the existence of at least one (1) of the aggravating
 17 circumstances alleged. However, the state may not proceed against a
 18 defendant under this section if a court determines at a pretrial hearing
 19 under IC 35-36-9 that the defendant is a mentally retarded individual.

20 (b) The aggravating circumstances are as follows:

21 (1) The defendant committed the murder by intentionally killing
 22 the victim while committing or attempting to commit any of the
 23 following:

24 (A) Arson (IC 35-43-1-1).

25 (B) Burglary (IC 35-43-2-1).

26 (C) Child molesting (IC 35-42-4-3).

27 (D) Criminal deviate conduct (IC 35-42-4-2).

28 (E) Kidnapping (IC 35-42-3-2).

29 (F) Rape (IC 35-42-4-1).

30 (G) Robbery (IC 35-42-5-1).

31 (H) Carjacking (IC 35-42-5-2).

32 (I) Criminal gang activity (IC 35-45-9-3).

33 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

34 (2) The defendant committed the murder by the unlawful
 35 detonation of an explosive with intent to injure person or damage
 36 property.

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

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

39 (5) The defendant committed the murder by hiring another person
 40 to kill.

41 (6) The victim of the murder was a corrections employee,
 42 probation officer, parole officer, community corrections worker,

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- 1 home detention officer, fireman, judge, or law enforcement
 2 officer, and either:
- 3 (A) the victim was acting in the course of duty; or
 4 (B) the murder was motivated by an act the victim performed
 5 while acting in the course of duty.
- 6 (7) The defendant has been convicted of another murder.
 7 (8) The defendant has committed another murder, at any time,
 8 regardless of whether the defendant has been convicted of that
 9 other murder.
- 10 (9) The defendant was:
 11 (A) under the custody of the department of correction;
 12 (B) under the custody of a county sheriff;
 13 (C) on probation after receiving a sentence for the commission
 14 of a felony; or
 15 (D) on parole;
 16 at the time the murder was committed.
- 17 (10) The defendant dismembered the victim.
 18 (11) The defendant burned, mutilated, or tortured the victim while
 19 the victim was alive.
- 20 (12) The victim of the murder was less than twelve (12) years of
 21 age.
- 22 (13) The victim was a victim of any of the following offenses for
 23 which the defendant was convicted:
 24 (A) Battery as a Class D felony or as a Class C felony under
 25 IC 35-42-2-1.
 26 (B) Kidnapping (IC 35-42-3-2).
 27 (C) Criminal confinement (IC 35-42-3-3).
 28 (D) A sex crime under IC 35-42-4.
- 29 (14) The victim of the murder was listed by the state or known by
 30 the defendant to be a witness against the defendant and the
 31 defendant committed the murder with the intent to prevent the
 32 person from testifying.
- 33 (15) The defendant committed the murder by intentionally
 34 discharging a firearm (as defined in IC 35-47-1-5):
 35 (A) into an inhabited dwelling; or
 36 (B) from a vehicle.
- 37 (16) The victim of the murder was pregnant and the murder
 38 resulted in the intentional killing of a fetus that has attained
 39 viability (as defined in IC 16-18-2-365).
- 40 **(17) The defendant committed the murder by knowingly or**
 41 **intentionally selecting the victim of the murder because of the**
 42 **color, creed, disability, national origin, race, religion, sexual**

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1 **orientation, or sex of the victim.**

2 (c) The mitigating circumstances that may be considered under this
3 section are as follows:

4 (1) The defendant has no significant history of prior criminal
5 conduct.

6 (2) The defendant was under the influence of extreme mental or
7 emotional disturbance when the murder was committed.

8 (3) The victim was a participant in or consented to the defendant's
9 conduct.

10 (4) The defendant was an accomplice in a murder committed by
11 another person, and the defendant's participation was relatively
12 minor.

13 (5) The defendant acted under the substantial domination of
14 another person.

15 (6) The defendant's capacity to appreciate the criminality of the
16 defendant's conduct or to conform that conduct to the
17 requirements of law was substantially impaired as a result of
18 mental disease or defect or of intoxication.

19 (7) The defendant was less than eighteen (18) years of age at the
20 time the murder was committed.

21 (8) Any other circumstances appropriate for consideration.

22 (d) If the defendant was convicted of murder in a jury trial, the jury
23 shall reconvene for the sentencing hearing. If the trial was to the court,
24 or the judgment was entered on a guilty plea, the court alone shall
25 conduct the sentencing hearing. The jury or the court may consider all
26 the evidence introduced at the trial stage of the proceedings, together
27 with new evidence presented at the sentencing hearing. The court shall
28 instruct the jury concerning the statutory penalties for murder and any
29 other offenses for which the defendant was convicted, the potential for
30 consecutive or concurrent sentencing, and the availability of good time
31 credit and clemency. The court shall instruct the jury that, in order for
32 the jury to recommend to the court that the death penalty or life
33 imprisonment without parole should be imposed, the jury must find at
34 least one (1) aggravating circumstance beyond a reasonable doubt as
35 described in subsection (k) and shall provide a special verdict form for
36 each aggravating circumstance alleged. The defendant may present any
37 additional evidence relevant to:

38 (1) the aggravating circumstances alleged; or

39 (2) any of the mitigating circumstances listed in subsection (c).

40 (e) For a defendant sentenced after June 30, 2002, except as
41 provided by IC 35-36-9, if the hearing is by jury, the jury shall
42 recommend to the court whether the death penalty or life imprisonment

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1 without parole, or neither, should be imposed. The jury may
2 recommend:

3 (1) the death penalty; or

4 (2) life imprisonment without parole;

5 only if it makes the findings described in subsection (k). If the jury
6 reaches a sentencing recommendation, the court shall sentence the
7 defendant accordingly. After a court pronounces sentence, a
8 representative of the victim's family and friends may present a
9 statement regarding the impact of the crime on family and friends. The
10 impact statement may be submitted in writing or given orally by the
11 representative. The statement shall be given in the presence of the
12 defendant.

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

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

18 (1) sentence the defendant to death; or

19 (2) impose a term of life imprisonment without parole;

20 only if it makes the findings described in subsection (k).

21 (h) If a court sentences a defendant to death, the court shall order
22 the defendant's execution to be carried out not later than one (1) year
23 and one (1) day after the date the defendant was convicted. The
24 supreme court has exclusive jurisdiction to stay the execution of a
25 death sentence. If the supreme court stays the execution of a death
26 sentence, the supreme court shall order a new date for the defendant's
27 execution.

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

42 (j) A death sentence is subject to automatic review by the supreme

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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 4. [EFFECTIVE JULY 1, 2003] IC 35-38-1-7.1,**
 25 **IC 35-46-2-2, and IC 35-50-2-9, all as amended by this act, apply**
 26 **only to offenses committed after June 30, 2003.**

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