



January 29, 2003

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## SENATE BILL No. 41

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DIGEST OF SB 41 (Updated January 28, 2003 12:28 pm - DI jhm)

**Citations Affected:** IC 35-50.

**Synopsis:** Death penalty and protective orders. Makes a person who is the subject of a protective order eligible for the death penalty if the person murders the individual who sought the protective order. Makes a technical correction.

**Effective:** July 1, 2003.

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### Young R Michael

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January 7, 2003, read first time and referred to Committee on Rules and Legislative Procedure.

January 28, 2003, amended; reassigned to Committee on Criminal, Civil and Public Policy.

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SB 41—LS 6113/DI 13+



January 29, 2003

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. 41

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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 35-50-2-9, AS AMENDED BY P.L.117-2002,  
2 SECTION 2, IS AMENDED AND CORRECTED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The state may  
4 seek either a death sentence or a sentence of life imprisonment without  
5 parole for murder by alleging, on a page separate from the rest of the  
6 charging instrument, the existence of at least one (1) of the aggravating  
7 circumstances listed in subsection (b). In the sentencing hearing after  
8 a person is convicted of murder, the state must prove beyond a  
9 reasonable doubt the existence of at least one (1) of the aggravating  
10 circumstances alleged. However, the state may not proceed against a  
11 defendant under this section if a court determines at a pretrial hearing  
12 under IC 35-36-9 that the defendant is a mentally retarded individual.  
13 (b) The aggravating circumstances are as follows:  
14 (1) The defendant committed the murder by intentionally killing  
15 the victim while committing or attempting to commit any of the  
16 following:  
17 (A) Arson (IC 35-43-1-1).

SB 41—LS 6113/DI 13+



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

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- 1 IC 35-42-2-1.
- 2 (B) Kidnapping (IC 35-42-3-2).
- 3 (C) Criminal confinement (IC 35-42-3-3).
- 4 (D) A sex crime under IC 35-42-4.
- 5 (14) The victim of the murder was listed by the state or known by
- 6 the defendant to be a witness against the defendant and the
- 7 defendant committed the murder with the intent to prevent the
- 8 person from testifying.
- 9 (15) The defendant committed the murder by intentionally
- 10 discharging a firearm (as defined in IC 35-47-1-5):
- 11 (A) into an inhabited dwelling; or
- 12 (B) from a vehicle.
- 13 (16) The victim of the murder was pregnant and the murder
- 14 resulted in the intentional killing of a fetus that has attained
- 15 viability (as defined in IC 16-18-2-365).
- 16 **(17) At the time of the murder, the defendant was the subject**
- 17 **of any of the following orders:**
- 18 **(A) A foreign protection order or an order for protection**
- 19 **that ordered the defendant to refrain from abusing,**
- 20 **harassing, or disturbing the peace of the victim.**
- 21 **(B) A temporary restraining order that ordered the**
- 22 **defendant to refrain from abusing, harassing, or disturbing**
- 23 **the peace of the victim.**
- 24 **(C) A judicial order that ordered the defendant to refrain**
- 25 **from direct or indirect contact with the victim.**
- 26 (c) The mitigating circumstances that may be considered under this
- 27 section are as follows:
- 28 (1) The defendant has no significant history of prior criminal
- 29 conduct.
- 30 (2) The defendant was under the influence of extreme mental or
- 31 emotional disturbance when the murder was committed.
- 32 (3) The victim was a participant in or consented to the defendant's
- 33 conduct.
- 34 (4) The defendant was an accomplice in a murder committed by
- 35 another person, and the defendant's participation was relatively
- 36 minor.
- 37 (5) The defendant acted under the substantial domination of
- 38 another person.
- 39 (6) The defendant's capacity to appreciate the criminality of the
- 40 defendant's conduct or to conform that conduct to the
- 41 requirements of law was substantially impaired as a result of
- 42 mental disease or defect or of intoxication.

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

3 (8) Any other circumstances appropriate for consideration.

4 (d) If the defendant was convicted of murder in a jury trial, the jury  
5 shall reconvene for the sentencing hearing. If the trial was to the court,  
6 or the judgment was entered on a guilty plea, the court alone shall  
7 conduct the sentencing hearing. The jury or the court may consider all  
8 the evidence introduced at the trial stage of the proceedings, together  
9 with new evidence presented at the sentencing hearing. The court shall  
10 instruct the jury concerning the statutory penalties for murder and any  
11 other offenses for which the defendant was convicted, the potential for  
12 consecutive or concurrent sentencing, and the availability of good time  
13 credit and clemency. The court shall instruct the jury that, in order for  
14 the jury to recommend to the court that the death penalty or life  
15 imprisonment without parole should be imposed, the jury must find at  
16 least one (1) aggravating circumstance beyond a reasonable doubt as  
17 described in subsection (k) and shall provide a special verdict form for  
18 each aggravating circumstance alleged. The defendant may present any  
19 additional evidence relevant to:

20 (1) the aggravating circumstances alleged; or

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

22 (e) For a defendant sentenced after June 30, 2002, except as  
23 provided by IC 35-36-9, if the hearing is by jury, the jury shall  
24 recommend to the court whether the death penalty or life imprisonment  
25 without parole, or neither, should be imposed. The jury may  
26 recommend:

27 (1) the death penalty; or

28 (2) life imprisonment without parole;

29 only if it makes the findings described in subsection (k). If the jury  
30 reaches a sentencing recommendation, the court shall sentence the  
31 defendant accordingly. After a court pronounces sentence, a  
32 representative of the victim's family and friends may present a  
33 statement regarding the impact of the crime on family and friends. The  
34 impact statement may be submitted in writing or given orally by the  
35 representative. The statement shall be given in the presence of the  
36 defendant.

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

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

42 (1) sentence the defendant to death; or

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

3 (h) If a court sentences a defendant to death, the court shall order  
4 the defendant's execution to be carried out not later than one (1) year  
5 and one (1) day after the date the defendant was convicted. The  
6 supreme court has exclusive jurisdiction to stay the execution of a  
7 death sentence. If the supreme court stays the execution of a death  
8 sentence, the supreme court shall order a new date for the defendant's  
9 execution.

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

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

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

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

30 (B) Constitution of the United States;

31 (2) sentencing court was without jurisdiction to impose a  
32 sentence; and

33 (3) sentence:

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

35 **(B) is otherwise erroneous.**

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

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



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1 (1) the state has proved beyond a reasonable doubt that at least  
2 one (1) of the aggravating circumstances listed in subsection (b)  
3 exists; and  
4 (2) any mitigating circumstances that exist are outweighed by the  
5 aggravating circumstance or circumstances.

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SENATE MOTION

Mr. President: I move that Senator Garton be removed as author of Senate Bill 41 and that Senator Young R Michael be substituted therefor.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 41, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Criminal, Civil and Public Policy.

(Reference is to SB 41 as introduced.)

GARTON, Chairperson

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