
HOUSE BILL No. 1027

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-41-1-4.7; IC 35-42-2-1; IC 35-45-2-1; IC 35-50-2-9.

Synopsis: Community policing volunteers. Defines "community policing volunteer" as a person who is actively participating in a plan, system, or strategy: (1) established by and conducted under the authority of a law enforcement agency; and (2) in which citizens work with members of the law enforcement agency to reduce or prevent crime within a defined geographic area. Increases the penalties for battery and intimidation if the victim is a community policing volunteer. Makes the fact that a murder victim was a community policing volunteer an aggravating circumstance when determining whether to impose a sentence of life imprisonment without parole or death on the person convicted of committing the murder.

Effective: July 1, 2001.

Smith V, Crosby

January 8, 2001, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 112th General Assembly (2001)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

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HOUSE BILL No. 1027



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 35-41-1-4.7 IS ADDED TO THE INDIANA CODE
- 2 AS **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2001]: **Sec. 4.7. "Community policing volunteer" means a person**
- 4 **who is:**
- 5 **(1) not a law enforcement officer; and**
- 6 **(2) actively participating in a plan, system, or strategy:**
- 7 **(A) established by and conducted under the authority of a**
- 8 **law enforcement agency; and**
- 9 **(B) in which citizens:**
- 10 **(i) participate with and are guided by the law**
- 11 **enforcement agency; and**
- 12 **(ii) work with members of the law enforcement agency to**
- 13 **reduce or prevent crime within a defined geographic**
- 14 **area.**
- 15 SECTION 2. IC 35-42-2-1, AS AMENDED BY P.L.43-2000,
- 16 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 17 JULY 1, 2001]: Sec. 1. (a) A person who knowingly or intentionally



1 touches another person in a rude, insolent, or angry manner commits
2 battery, a Class B misdemeanor. However, the offense is:

3 (1) a Class A misdemeanor if:

4 (A) it results in bodily injury to any other person;

5 (B) it is committed against a law enforcement officer or
6 against a person summoned and directed by the officer while
7 the officer is engaged in the execution of his official duty;

8 (C) it is committed against an employee of a penal facility or
9 a juvenile detention facility (as defined in IC 31-9-2-71) while
10 the employee is engaged in the execution of the employee's
11 official duty; ~~or~~

12 (D) it is committed against a firefighter (as defined in
13 IC 9-18-34-1) while the firefighter is engaged in the execution
14 of the firefighter's official duty; **or**

15 **(E) it is committed against a community policing**
16 **volunteer;**

17 (2) a Class D felony if it results in bodily injury to:

18 (A) a law enforcement officer or a person summoned and
19 directed by a law enforcement officer while the officer is
20 engaged in the execution of his official duty;

21 (B) a person less than fourteen (14) years of age and is
22 committed by a person at least eighteen (18) years of age;

23 (C) a person of any age who is mentally or physically disabled
24 and is committed by a person having the care of the mentally
25 or physically disabled person, whether the care is assumed
26 voluntarily or because of a legal obligation;

27 (D) the other person and the person who commits the battery
28 was previously convicted of a battery in which the victim was
29 the other person;

30 (E) an endangered adult (as defined by IC 35-46-1-1);

31 (F) an employee of the department of correction while the
32 employee is engaged in the execution of the employee's
33 official duty;

34 (G) an employee of a school corporation while the employee
35 is engaged in the execution of the employee's official duty;

36 (H) a correctional professional while the correctional
37 professional is engaged in the execution of the correctional
38 professional's official duty;

39 (I) a person who is a health care provider (as defined in
40 IC 16-18-2-163) while the health care provider is engaged in
41 the execution of the health care provider's official duty;

42 (J) an employee of a penal facility or a juvenile detention

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- 1 facility (as defined in IC 31-9-2-71) while the employee is
 2 engaged in the execution of the employee's official duty; ~~or~~
 3 (K) a firefighter (as defined in IC 9-18-34-1) while the
 4 firefighter is engaged in the execution of the firefighter's
 5 official duty; **or**
 6 **(L) a community policing volunteer;**
 7 (3) a Class C felony if it results in serious bodily injury to any
 8 other person or if it is committed by means of a deadly weapon;
 9 and
 10 (4) a Class B felony if it results in serious bodily injury to a
 11 person less than fourteen (14) years of age and is committed by a
 12 person at least eighteen (18) years of age.
 13 (b) For purposes of this section:
 14 (1) "law enforcement officer" includes an alcoholic beverage
 15 enforcement officer; and
 16 (2) "correctional professional" means a:
 17 (A) probation officer;
 18 (B) parole officer;
 19 (C) community corrections worker; or
 20 (D) home detention officer.
 21 SECTION 3. IC 35-45-2-1 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) A person who
 23 communicates a threat to another person, with the intent that:
 24 (1) the other person engage in conduct against his will; or
 25 (2) the other person be placed in fear of retaliation for a prior
 26 lawful act;
 27 commits intimidation, a Class A misdemeanor.
 28 (b) However, the offense is a:
 29 (1) Class D felony if:
 30 (A) the threat is to commit a forcible felony;
 31 (B) the person to whom the threat is communicated:
 32 (i) is a law enforcement officer;
 33 (ii) is a judge or bailiff of any court;
 34 (iii) is a witness (or the spouse or child of a witness) in any
 35 pending criminal proceeding against the person making the
 36 threat; ~~or~~
 37 (iv) is an employee of a school corporation; or
 38 **(v) is a community policing volunteer; or**
 39 (C) the person has a prior unrelated conviction for an offense
 40 under this section concerning the same victim; and
 41 (2) Class C felony if, while committing it, the person draws or
 42 uses a deadly weapon.

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1 (c) "Threat" means an expression, by words or action, of an
2 intention to:

- 3 (1) unlawfully injure the person threatened or another person, or
4 damage property;
5 (2) unlawfully subject a person to physical confinement or
6 restraint;
7 (3) commit a crime;
8 (4) unlawfully withhold official action, or cause such withholding;
9 (5) unlawfully withhold testimony or information with respect to
10 another person's legal claim or defense, except for a reasonable
11 claim for witness fees or expenses;
12 (6) expose the person threatened to hatred, contempt, disgrace, or
13 ridicule; or
14 (7) falsely harm the credit or business reputation of the person
15 threatened.

16 SECTION 4. IC 35-50-2-9 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) The state may
18 seek either a death sentence or a sentence of life imprisonment without
19 parole for murder by alleging, on a page separate from the rest of the
20 charging instrument, the existence of at least one (1) of the aggravating
21 circumstances listed in subsection (b). In the sentencing hearing after
22 a person is convicted of murder, the state must prove beyond a
23 reasonable doubt the existence of at least one (1) of the aggravating
24 circumstances alleged. However, the state may not proceed against a
25 defendant under this section if a court determines at a pretrial hearing
26 under IC 35-36-9 that the defendant is a mentally retarded individual.

27 (b) The aggravating circumstances are as follows:

- 28 (1) The defendant committed the murder by intentionally killing
29 the victim while committing or attempting to commit any of the
30 following:
31 (A) Arson (IC 35-43-1-1).
32 (B) Burglary (IC 35-43-2-1).
33 (C) Child molesting (IC 35-42-4-3).
34 (D) Criminal deviate conduct (IC 35-42-4-2).
35 (E) Kidnapping (IC 35-42-3-2).
36 (F) Rape (IC 35-42-4-1).
37 (G) Robbery (IC 35-42-5-1).
38 (H) Carjacking (IC 35-42-5-2).
39 (I) Criminal gang activity (IC 35-45-9-3).
40 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
41 (2) The defendant committed the murder by the unlawful
42 detonation of an explosive with intent to injure person or damage

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

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(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

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

- (1) The defendant has no significant history of prior criminal conduct.
- (2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.
- (3) The victim was a participant in or consented to the defendant's conduct.
- (4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.
- (5) The defendant acted under the substantial domination of another person.
- (6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.
- (7) The defendant was less than eighteen (18) years of age at the time the murder was committed.
- (8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).

(e) Except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

- (1) the death penalty; or

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- 1 (2) life imprisonment without parole;
2 only if it makes the findings described in subsection (k). The court shall
3 make the final determination of the sentence, after considering the
4 jury's recommendation, and the sentence shall be based on the same
5 standards that the jury was required to consider. The court is not bound
6 by the jury's recommendation. In making the final determination of the
7 sentence after receiving the jury's recommendation, the court may
8 receive evidence of the crime's impact on members of the victim's
9 family.
- 10 (f) If a jury is unable to agree on a sentence recommendation after
11 reasonable deliberations, the court shall discharge the jury and proceed
12 as if the hearing had been to the court alone.
- 13 (g) If the hearing is to the court alone, except as provided by
14 IC 35-36-9, the court shall:
- 15 (1) sentence the defendant to death; or
16 (2) impose a term of life imprisonment without parole;
17 only if it makes the findings described in subsection (k).
- 18 (h) If a court sentences a defendant to death, the court shall order
19 the defendant's execution to be carried out not later than one (1) year
20 and one (1) day after the date the defendant was convicted. The
21 supreme court has exclusive jurisdiction to stay the execution of a
22 death sentence. If the supreme court stays the execution of a death
23 sentence, the supreme court shall order a new date for the defendant's
24 execution.
- 25 (i) If a person sentenced to death by a court files a petition for
26 post-conviction relief, the court, not later than ninety (90) days after the
27 date the petition is filed, shall set a date to hold a hearing to consider
28 the petition. If a court does not, within the ninety (90) day period, set
29 the date to hold the hearing to consider the petition, the court's failure
30 to set the hearing date is not a basis for additional post-conviction
31 relief. The attorney general shall answer the petition for post-conviction
32 relief on behalf of the state. At the request of the attorney general, a
33 prosecuting attorney shall assist the attorney general. The court shall
34 enter written findings of fact and conclusions of law concerning the
35 petition not later than ninety (90) days after the date the hearing
36 concludes. However, if the court determines that the petition is without
37 merit, the court may dismiss the petition within ninety (90) days
38 without conducting a hearing under this subsection.
- 39 (j) A death sentence is subject to automatic review by the supreme
40 court. The review, which shall be heard under rules adopted by the
41 supreme court, shall be given priority over all other cases. The supreme
42 court's review must take into consideration all claims that the:

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- 1 (1) conviction or sentence was in violation of the:
- 2 (A) Constitution of the State of Indiana; or
- 3 (B) Constitution of the United States;
- 4 (2) sentencing court was without jurisdiction to impose a
- 5 sentence; and
- 6 (3) sentence:
- 7 (A) exceeds the maximum sentence authorized by law; or
- 8 (B) is otherwise erroneous.

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

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

- 16 (1) the state has proved beyond a reasonable doubt that at least
- 17 one (1) of the aggravating circumstances listed in subsection (b)
- 18 exists; and
- 19 (2) any mitigating circumstances that exist are outweighed by the
- 20 aggravating circumstance or circumstances.

21 SECTION 5. [EFFECTIVE JULY 1, 2001] **This act applies only to**
 22 **crimes committed after June 30, 2001.**

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