



January 25, 2008

SENATE BILL No. 171

DIGEST OF SB 171 (Updated January 22, 2008 2:55 pm - DI 106)

Citations Affected: IC 35-38; noncode.

Synopsis: Crimes against persons with a disability. Makes committing an offense against a person with a disability an aggravating circumstance for sentencing purposes if the defendant knew or should have known that the victim was a person with a disability.

Effective: July 1, 2008.

Lanane, Drozda, Zakas, Steele

January 8, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 24, 2008, amended, reported favorably — Do Pass.

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SB 171—LS 6527/DI 106+



January 25, 2008

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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SENATE BILL No. 171

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.213-2005,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]: Sec. 7.1. (a) In determining what sentence to impose
4 for a crime, the court may consider the following aggravating
5 circumstances:
- 6 (1) The harm, injury, loss, or damage suffered by the victim of an
7 offense was:
 - 8 (A) significant; and
 - 9 (B) greater than the elements necessary to prove the
10 commission of the offense.
 - 11 (2) The person has a history of criminal or delinquent behavior.
 - 12 (3) The victim of the offense was less than twelve (12) years of
13 age or at least sixty-five (65) years of age at the time the person
14 committed the offense.
 - 15 (4) The person:
 - 16 (A) committed a crime of violence (IC 35-50-1-2); and
 - 17 (B) knowingly committed the offense in the presence or within

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- 1 hearing of an individual who:
- 2 (i) was less than eighteen (18) years of age at the time the
- 3 person committed the offense; and
- 4 (ii) is not the victim of the offense.
- 5 (5) The person violated a protective order issued against the
- 6 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
- 7 IC 34-4-5.1 before their repeal), a workplace violence restraining
- 8 order issued against the person under IC 34-26-6, or a no contact
- 9 order issued against the person.
- 10 (6) The person has recently violated the conditions of any
- 11 probation, parole, pardon, community corrections placement, or
- 12 pretrial release granted to the person.
- 13 (7) The victim of the offense was:
- 14 **(A) a person with a disability (as defined in IC 27-7-6-12),**
- 15 **and the defendant knew or should have known that the**
- 16 **victim was a person with a disability; or**
- 17 **(B) mentally or physically infirm.**
- 18 (8) The person was in a position having care, custody, or control
- 19 of the victim of the offense.
- 20 (9) The injury to or death of the victim of the offense was the
- 21 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 22 (10) The person threatened to harm the victim of the offense or a
- 23 witness if the victim or witness told anyone about the offense.
- 24 (11) The person:
- 25 (A) committed trafficking with an inmate under IC 35-44-3-9;
- 26 and
- 27 (B) is an employee of the penal facility.
- 28 (b) The court may consider the following factors as mitigating
- 29 circumstances or as favoring suspending the sentence and imposing
- 30 probation:
- 31 (1) The crime neither caused nor threatened serious harm to
- 32 persons or property, or the person did not contemplate that it
- 33 would do so.
- 34 (2) The crime was the result of circumstances unlikely to recur.
- 35 (3) The victim of the crime induced or facilitated the offense.
- 36 (4) There are substantial grounds tending to excuse or justify the
- 37 crime, though failing to establish a defense.
- 38 (5) The person acted under strong provocation.
- 39 (6) The person has no history of delinquency or criminal activity,
- 40 or the person has led a law-abiding life for a substantial period
- 41 before commission of the crime.
- 42 (7) The person is likely to respond affirmatively to probation or

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1 short term imprisonment.
 2 (8) The character and attitudes of the person indicate that the
 3 person is unlikely to commit another crime.
 4 (9) The person has made or will make restitution to the victim of
 5 the crime for the injury, damage, or loss sustained.
 6 (10) Imprisonment of the person will result in undue hardship to
 7 the person or the dependents of the person.
 8 (11) The person was convicted of a crime involving the use of
 9 force against a person who had repeatedly inflicted physical or
 10 sexual abuse upon the convicted person and evidence shows that
 11 the convicted person suffered from the effects of battery as a
 12 result of the past course of conduct of the individual who is the
 13 victim of the crime for which the person was convicted.
 14 (c) The criteria listed in subsections (a) and (b) do not limit the
 15 matters that the court may consider in determining the sentence.
 16 (d) A court may impose any sentence that is:
 17 (1) authorized by statute; and
 18 (2) permissible under the Constitution of the State of Indiana;
 19 regardless of the presence or absence of aggravating circumstances or
 20 mitigating circumstances.
 21 SECTION 2. [EFFECTIVE JULY 1, 2008] **IC 35-38-1-7.1, as**
 22 **amended by this act, applies only to crimes committed after June**
 23 **30, 2008.**

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SENATE MOTION

Madam President: I move that Senator Zakas be added as coauthor of Senate Bill 171.

LANANE

SENATE MOTION

Madam President: I move that Senator Drozda be added as second author and Senator Steele be added as coauthor of Senate Bill 171.

LANANE

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 171, 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:

Page 2, line 13, after "was" insert "
(A)".

Page 2, line 14, delete "27-7-6-12) or" and insert "**27-7-6-12), and the defendant knew or should have known that the victim was a person with a disability; or**
(B)".

and when so amended that said bill do pass.

(Reference is to SB 171 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 0.

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