



March 27, 2009

ENGROSSED
SENATE BILL No. 236

DIGEST OF SB 236 (Updated March 25, 2009 10:27 am - DI 14)

Citations Affected: IC 35-42; IC 35-50; noncode.

Synopsis: Sentence enhancement for feticide. Provides that a person who, while committing or attempting to commit murder or felony murder, causes the termination of a human pregnancy may be sentenced to an additional term of imprisonment of six to 20 years. Increases the penalty for feticide from a Class C felony to a Class B felony.

Effective: July 1, 2009.

Merritt, Steele, Delph, Holdman,
Wyss, Miller, Stutzman
(HOUSE SPONSORS — LAWSON L, MURPHY)

January 7, 2009, read first time and referred to Committee on Judiciary.
February 19, 2009, amended, reported favorably — Do Pass.
February 23, 2009, read second time, ordered engrossed. Engrossed.
February 24, 2009, read third time, passed. Yeas 40, nays 9.

HOUSE ACTION

March 2, 2009, read first time and referred to Committee on Public Policy.
March 26, 2009, amended, reported — Do Pass.

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ES 236—LS 7377/DI 106+



March 27, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 236

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 35-42-1-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. A person who
3 knowingly or intentionally terminates a human pregnancy with an
4 intention other than to produce a live birth or to remove a dead fetus
5 commits feticide, a ~~Class C~~ **Class B** felony. This section does not apply
6 to an abortion performed in compliance with:

7 (1) IC 16-34; or

8 (2) IC 35-1-58.5 (before its repeal).

9 SECTION 2. IC 35-50-2-16 IS ADDED TO THE INDIANA CODE
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2009]: **Sec. 16. (a) The state may seek, on a page separate from
12 the rest of the charging instrument, to have a person who allegedly
13 committed or attempted to commit murder under IC 35-42-1-1(1)
14 or IC 35-42-1-1(2) sentenced to an additional fixed term of
15 imprisonment if the state can show beyond a reasonable doubt that
16 the person, while committing or attempting to commit murder
17 under IC 35-42-1-1(1) or IC 35-42-1-1(2), caused the termination**

ES 236—LS 7377/DI 106+



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of a human pregnancy.

(b) If the person is convicted of the murder or attempted murder in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(c) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person, while committing or attempting to commit murder under IC 35-42-1-1(1) or IC 35-42-1-1(2), caused the termination of a human pregnancy, the court shall sentence the person to an additional fixed term of imprisonment of not less than six (6) or more than twenty (20) years.

(d) A sentence imposed under this section runs consecutively to the underlying sentence.

(e) For purposes of this section, prosecution of the murder or attempted murder under IC 35-42-1-1(1) or IC 35-42-1-1(2) and the enhancement of the penalty for that crime does not require proof that:

- (1) the person committing or attempting to commit the murder had knowledge or should have had knowledge that the victim was pregnant; or
- (2) the defendant intended to cause the termination of a human pregnancy.

SECTION 3. [EFFECTIVE JULY 1, 2009] IC 35-42-1-6, as amended by this act, and IC 35-50-2-16, as added by this act, apply only to a crime committed after June 30, 2009.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 236, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-42-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. A person who knowingly or intentionally terminates a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus commits feticide, a ~~Class C~~ **Class B** felony. This section does not apply to an abortion performed in compliance with:

- (1) IC 16-34; or
- (2) IC 35-1-58.5 (before its repeal)."

Page 1, line 7, after "committed" insert "**or attempted to commit**".

Page 1, line 10, after "committing" insert "**or attempting to commit**".

Page 1, line 13, after "murder" insert "**or attempted murder**".

Page 2, line 3, after "committing" insert "**or attempting to commit**".

Page 2, line 6, delete "equal to the advisory sentence for" and insert "**of not less than six (6) or more than twenty (20) years.**".

Page 2, delete line 7.

Page 2, delete lines 10 through 11.

Page 2, line 12, delete "(g)" and insert "**(f)**".

Page 2, line 12, after "murder" insert "**or attempted murder**".

Page 2, line 15, after "committing" insert "**or attempting to commit**".

Page 2, line 19, after "2009]" insert "**IC 35-42-1-6, as amended by this act, and**".

Page 2, line 20, delete "applies" and insert "**apply**".

Page 2, line 20, delete "violent".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 236 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

ES 236—LS 7377/DI 106+



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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred Senate Bill 236, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 11, delete "(a) As used in this section, "child in utero" means".

Page 1, delete lines 12 through 13.

Page 1, line 14, delete "(b)" and insert "**(a)**".

Page 1, run in lines 11 through 14.

Page 2, line 3, delete "death of a" and insert "**termination of a human pregnancy.**".

Page 2, delete line 4.

Page 2, line 5, delete "(c)" and insert "**(b)**".

Page 2, line 10, delete "(d)" and insert "**(c)**".

Page 2, line 14, delete "death of a child in utero," and insert "**termination of a human pregnancy.**".

Page 2, line 17, delete "(e)" and insert "**(d)**".

Page 2, line 19, delete "(f)" and insert "**(e)**".

Page 2, line 26, delete "death of, or bodily" and insert "**termination of a human pregnancy.**".

Page 2, delete line 27.

and when so amended that said bill do pass.

(Reference is to SB 236 as printed February 20, 2009.)

VAN HAAFTEN, Chair

Committee Vote: yeas 9, nays 0.

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