
SENATE BILL No. 56

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-42; IC 35-50-2-9.

Synopsis: Battery and sexual battery. Makes it battery, a Class D felony, for a person to, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person, touch: (1) the other person's genitals or buttocks; or (2) if the other person is a female, the other person's breast. Makes it sexual battery, a Class D felony, for a person to, with the intent to arouse or satisfy the person's sexual desires or the sexual desires of another person, touch the other person when the other person is unaware that the touching is occurring.

Effective: July 1, 2009.

Becker

January 7, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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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.

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SENATE BILL No. 56



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 35-42-2-1, AS AMENDED BY P.L.120-2008,
2 SECTION 93, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 1. (a) A person who knowingly or intentionally
4 touches another person in a rude, **an** insolent, or **an** angry manner
5 commits battery, a Class B misdemeanor. However, the offense is:
6 (1) a Class A misdemeanor if:
7 (A) it results in bodily injury to any other person;
8 (B) it is committed against a law enforcement officer or
9 against a person summoned and directed by the officer while
10 the officer is engaged in the execution of the officer's official
11 duty;
12 (C) it is committed against an employee of a penal facility or
13 a juvenile detention facility (as defined in IC 31-9-2-71) while
14 the employee is engaged in the execution of the employee's
15 official duty;
16 (D) it is committed against a firefighter (as defined in
17 IC 9-18-34-1) while the firefighter is engaged in the execution



- 1 of the firefighter's official duty;
- 2 (E) it is committed against a community policing volunteer:
- 3 (i) while the volunteer is performing the duties described in
- 4 IC 35-41-1-4.7; or
- 5 (ii) because the person is a community policing volunteer;
- 6 or
- 7 (F) it is committed against the state chemist or the state
- 8 chemist's agent while the state chemist or the state chemist's
- 9 agent is performing a duty under IC 15-16-5;
- 10 (2) a Class D felony if it results in bodily injury to:
- 11 (A) a law enforcement officer or a person summoned and
- 12 directed by a law enforcement officer while the officer is
- 13 engaged in the execution of the officer's official duty;
- 14 (B) a person less than fourteen (14) years of age and is
- 15 committed by a person at least eighteen (18) years of age;
- 16 (C) a person of any age who has a mental or physical disability
- 17 and is committed by a person having the care of the person
- 18 with a mental or physical disability, whether the care is
- 19 assumed voluntarily or because of a legal obligation;
- 20 (D) the other person and the person who commits the battery
- 21 was previously convicted of a battery in which the victim was
- 22 the other person;
- 23 (E) an endangered adult (as defined in IC 12-10-3-2);
- 24 (F) an employee of the department of correction while the
- 25 employee is engaged in the execution of the employee's
- 26 official duty;
- 27 (G) an employee of a school corporation while the employee
- 28 is engaged in the execution of the employee's official duty;
- 29 (H) a correctional professional while the correctional
- 30 professional is engaged in the execution of the correctional
- 31 professional's official duty;
- 32 (I) a person who is a health care provider (as defined in
- 33 IC 16-18-2-163) while the health care provider is engaged in
- 34 the execution of the health care provider's official duty;
- 35 (J) an employee of a penal facility or a juvenile detention
- 36 facility (as defined in IC 31-9-2-71) while the employee is
- 37 engaged in the execution of the employee's official duty;
- 38 (K) a firefighter (as defined in IC 9-18-34-1) while the
- 39 firefighter is engaged in the execution of the firefighter's
- 40 official duty;
- 41 (L) a community policing volunteer:
- 42 (i) while the volunteer is performing the duties described in

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- 1 IC 35-41-1-4.7; or
- 2 (ii) because the person is a community policing volunteer;
- 3 or
- 4 (M) a family or household member (as defined in
- 5 IC 35-41-1-10.6) if the person who committed the offense:
- 6 (i) is at least eighteen (18) years of age; and
- 7 (ii) committed the offense in the physical presence of a child
- 8 less than sixteen (16) years of age, knowing that the child
- 9 was present and might be able to see or hear the offense;
- 10 (3) a Class C felony if it results in serious bodily injury to any
- 11 other person or if it is committed by means of a deadly weapon;
- 12 (4) a Class B felony if it results in serious bodily injury to a
- 13 person less than fourteen (14) years of age and is committed by a
- 14 person at least eighteen (18) years of age;
- 15 (5) a Class A felony if it results in the death of a person less than
- 16 fourteen (14) years of age and is committed by a person at least
- 17 eighteen (18) years of age;
- 18 (6) a Class C felony if it results in serious bodily injury to an
- 19 endangered adult (as defined in IC 12-10-3-2);
- 20 (7) a Class B felony if it results in the death of an endangered
- 21 adult (as defined in IC 12-10-3-2); ~~and~~
- 22 (8) a Class C felony if it results in bodily injury to a pregnant
- 23 woman and the person knew the woman was pregnant; **and**
- 24 **(9) a Class D felony if the person, with intent to arouse or**
- 25 **satisfy the person's own sexual desires or the sexual desires of**
- 26 **the other person, touches:**
- 27 **(A) the other person's genitals or buttocks; or**
- 28 **(B) if the other person is a female, the other person's**
- 29 **breast.**
- 30 (b) For purposes of this section:
- 31 (1) "law enforcement officer" includes an alcoholic beverage
- 32 enforcement officer; and
- 33 (2) "correctional professional" means a:
- 34 (A) probation officer;
- 35 (B) parole officer;
- 36 (C) community corrections worker; or
- 37 (D) home detention officer.

38 SECTION 2. IC 35-42-4-8 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A person who,
 40 with intent to arouse or satisfy the person's own sexual desires or the
 41 sexual desires of another person, touches another person when that
 42 person is:

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1 (1) compelled to submit to the touching by force or the imminent
 2 threat of force; or
 3 **(2) unaware that the touching is occurring; or**
 4 ~~(2)~~ **(3)** so mentally disabled or deficient that consent to the
 5 touching cannot be given;
 6 commits sexual battery, a Class D felony.

7 (b) An offense described in subsection (a) is a Class C felony if:
 8 (1) it is committed by using or threatening the use of deadly force;
 9 (2) it is committed while armed with a deadly weapon; or
 10 (3) the commission of the offense is facilitated by furnishing the
 11 victim, without the victim's knowledge, with a drug (as defined in
 12 IC 16-42-19-2(1)) or a controlled substance (as defined in
 13 IC 35-48-1-9) or knowing that the victim was furnished with the
 14 drug or controlled substance without the victim's knowledge.

15 SECTION 3. IC 35-50-2-9, AS AMENDED BY P.L.99-2007,
 16 SECTION 213, IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) The state may seek either a
 18 death sentence or a sentence of life imprisonment without parole for
 19 murder by alleging, on a page separate from the rest of the charging
 20 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 an individual with mental
 27 retardation.

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

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

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discharging a firearm (as defined in IC 35-47-1-5):

- (A) into an inhabited dwelling; or
- (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 court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (1) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

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1 (1) the aggravating circumstances alleged; or

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

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

8 (1) the death penalty; or

9 (2) life imprisonment without parole;

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

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

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

23 (1) sentence the defendant to death; or

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

25 only if it makes the findings described in subsection (l).

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

33 (i) If a person sentenced to death by a court files a petition for
34 post-conviction relief, the court, not later than ninety (90) days after the
35 date the petition is filed, shall set a date to hold a hearing to consider
36 the petition. If a court does not, within the ninety (90) day period, set
37 the date to hold the hearing to consider the petition, the court's failure
38 to set the hearing date is not a basis for additional post-conviction
39 relief. The attorney general shall answer the petition for post-conviction
40 relief on behalf of the state. At the request of the attorney general, a
41 prosecuting attorney shall assist the attorney general. The court shall
42 enter written findings of fact and conclusions of law concerning the

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1 petition not later than ninety (90) days after the date the hearing
 2 concludes. However, if the court determines that the petition is without
 3 merit, the court may dismiss the petition within ninety (90) days
 4 without conducting a hearing under this subsection.

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

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

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

11 (B) Constitution of the United States;

12 (2) sentencing court was without jurisdiction to impose a
 13 sentence; and

14 (3) sentence:

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

16 (B) is otherwise erroneous.

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

21 (k) A person who has been sentenced to death and who has
 22 completed state post-conviction review proceedings may file a written
 23 petition with the supreme court seeking to present new evidence
 24 challenging the person's guilt or the appropriateness of the death
 25 sentence if the person serves notice on the attorney general. The
 26 supreme court shall determine, with or without a hearing, whether the
 27 person has presented previously undiscovered evidence that
 28 undermines confidence in the conviction or the death sentence. If
 29 necessary, the supreme court may remand the case to the trial court for
 30 an evidentiary hearing to consider the new evidence and its effect on
 31 the person's conviction and death sentence. The supreme court may not
 32 make a determination in the person's favor nor make a decision to
 33 remand the case to the trial court for an evidentiary hearing without
 34 first providing the attorney general with an opportunity to be heard on
 35 the matter.

36 (l) Before a sentence may be imposed under this section, the jury,
 37 in a proceeding under subsection (e), or the court, in a proceeding
 38 under subsection (g), must find that:

39 (1) the state has proved beyond a reasonable doubt that at least
 40 one (1) of the aggravating circumstances listed in subsection (b)
 41 exists; and

42 (2) any mitigating circumstances that exist are outweighed by the

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1 aggravating circumstance or circumstances.
2 SECTION 4. [EFFECTIVE JULY 1, 2009] IC 35-42-2-1 and
3 **IC 35-42-4-8, both as amended by this act, apply only to crimes**
4 **committed after June 30, 2009.**

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