



February 20, 2009

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## SENATE BILL No. 236

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DIGEST OF SB 236 (Updated February 18, 2009 3:19 pm - DI 106)

**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 death of a child in utero 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.

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**Merritt, Steele, Delph**

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January 7, 2009, read first time and referred to Committee on Judiciary.  
February 19, 2009, amended, reported favorably — Do Pass.

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SB 236—LS 7377/DI 106+



February 20, 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.

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## 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) As used in this section, "child in utero" means**  
12 **a member of the species Homo sapiens, at any stage of**  
13 **development, who is carried in the womb.**

14 **(b) The state may seek, on a page separate from the rest of the**  
15 **charging instrument, to have a person who allegedly committed or**  
16 **attempted to commit murder under IC 35-42-1-1(1) or**  
17 **IC 35-42-1-1(2) sentenced to an additional fixed term of**

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1 imprisonment if the state can show beyond a reasonable doubt that  
2 the person, while committing or attempting to commit murder  
3 under IC 35-42-1-1(1) or IC 35-42-1-1(2), caused the death of a  
4 child in utero.

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

10 (d) If the jury (if the hearing is by jury) or the court (if the  
11 hearing is to the court alone) finds that the state has proved beyond  
12 a reasonable doubt that the person, while committing or  
13 attempting to commit murder under IC 35-42-1-1(1) or  
14 IC 35-42-1-1(2), caused the death of a child in utero, the court shall  
15 sentence the person to an additional fixed term of imprisonment of  
16 not less than six (6) or more than twenty (20) years.

17 (e) A sentence imposed under this section runs consecutively to  
18 the underlying sentence.

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

23 (1) the person committing or attempting to commit the  
24 murder had knowledge or should have had knowledge that  
25 the victim was pregnant; or

26 (2) the defendant intended to cause the death of, or bodily  
27 injury to, the child in utero.

28 SECTION 3. [EFFECTIVE JULY 1, 2009] IC 35-42-1-6, as  
29 amended by this act, and IC 35-50-2-16, as added by this act, apply  
30 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.

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