

HOUSE BILL No. 1301

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-2.

Synopsis: Murder sentencing and sentence enhancements. Makes committing a murder in the physical presence of a person who: (1) is less than 16 years of age; and (2) might be able to see or hear the murder; an aggravating circumstance that may be considered during the sentencing hearing for the murder. Allows a court to sentence a person to an additional fixed term of imprisonment that: (1) is not less than the advisory sentence for the underlying offense nor more than three times the advisory sentence for the underlying offense; and (2) does not exceed 30 years; if the person knowingly or intentionally committed certain offenses in the physical presence of a person less than 16 years of age who might be able to see or hear the offense. Allows a court to sentence a person to an additional fixed term of imprisonment of ten years if the person knowingly or intentionally violated a protective order in the commission of certain offenses.

Effective: July 1, 2010.

**Thompson, Lawson L, Noe,
Clements**

January 13, 2010, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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HOUSE BILL No. 1301



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 35-50-2-9, AS AMENDED BY P.L.99-2007,
2 SECTION 213, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2010]: Sec. 9. (a) The state may seek either a
4 death sentence or a sentence of life imprisonment without parole for
5 murder by alleging, on a page separate from the rest of the charging
6 instrument, the existence of at least one (1) of the aggravating
7 circumstances listed in subsection (b). In the sentencing hearing after
8 a person is convicted of murder, the state must prove beyond a
9 reasonable doubt the existence of at least one (1) of the aggravating
10 circumstances alleged. However, the state may not proceed against a
11 defendant under this section if a court determines at a pretrial hearing
12 under IC 35-36-9 that the defendant is an individual with mental
13 retardation.

14 (b) The aggravating circumstances are as follows:
15 (1) The defendant committed the murder by intentionally killing
16 the victim while committing or attempting to commit any of the
17 following:



- 1 (A) Arson (IC 35-43-1-1).
 2 (B) Burglary (IC 35-43-2-1).
 3 (C) Child molesting (IC 35-42-4-3).
 4 (D) Criminal deviate conduct (IC 35-42-4-2).
 5 (E) Kidnapping (IC 35-42-3-2).
 6 (F) Rape (IC 35-42-4-1).
 7 (G) Robbery (IC 35-42-5-1).
 8 (H) Carjacking (IC 35-42-5-2).
 9 (I) Criminal gang activity (IC 35-45-9-3).
 10 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
 11 (2) The defendant committed the murder by the unlawful
 12 detonation of an explosive with intent to injure a person or
 13 damage property.
 14 (3) The defendant committed the murder by lying in wait.
 15 (4) The defendant who committed the murder was hired to kill.
 16 (5) The defendant committed the murder by hiring another person
 17 to kill.
 18 (6) The victim of the murder was a corrections employee,
 19 probation officer, parole officer, community corrections worker,
 20 home detention officer, fireman, judge, or law enforcement
 21 officer, and either:
 22 (A) the victim was acting in the course of duty; or
 23 (B) the murder was motivated by an act the victim performed
 24 while acting in the course of duty.
 25 (7) The defendant has been convicted of another murder.
 26 (8) The defendant has committed another murder, at any time,
 27 regardless of whether the defendant has been convicted of that
 28 other murder.
 29 (9) The defendant was:
 30 (A) under the custody of the department of correction;
 31 (B) under the custody of a county sheriff;
 32 (C) on probation after receiving a sentence for the commission
 33 of a felony; or
 34 (D) on parole;
 35 at the time the murder was committed.
 36 (10) The defendant dismembered the victim.
 37 (11) The defendant burned, mutilated, or tortured the victim while
 38 the victim was alive.
 39 (12) The victim of the murder was less than twelve (12) years of
 40 age.
 41 (13) The victim was a victim of any of the following offenses for
 42 which the defendant was convicted:

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- 1 (A) Battery as a Class D felony or as a Class C felony under
- 2 IC 35-42-2-1.
- 3 (B) Kidnapping (IC 35-42-3-2).
- 4 (C) Criminal confinement (IC 35-42-3-3).
- 5 (D) A sex crime under IC 35-42-4.
- 6 (14) The victim of the murder was listed by the state or known by
- 7 the defendant to be a witness against the defendant and the
- 8 defendant committed the murder with the intent to prevent the
- 9 person from testifying.
- 10 (15) The defendant committed the murder by intentionally
- 11 discharging a firearm (as defined in IC 35-47-1-5):
- 12 (A) into an inhabited dwelling; or
- 13 (B) from a vehicle.
- 14 (16) The victim of the murder was pregnant and the murder
- 15 resulted in the intentional killing of a fetus that has attained
- 16 viability (as defined in IC 16-18-2-365).
- 17 **(17) The defendant committed the murder in the physical**
- 18 **presence of a person less than sixteen (16) years of age,**
- 19 **knowing that the person was present and might be able to see**
- 20 **or hear the murder.**
- 21 (c) The mitigating circumstances that may be considered under this
- 22 section are as follows:
- 23 (1) The defendant has no significant history of prior criminal
- 24 conduct.
- 25 (2) The defendant was under the influence of extreme mental or
- 26 emotional disturbance when the murder was committed.
- 27 (3) The victim was a participant in or consented to the defendant's
- 28 conduct.
- 29 (4) The defendant was an accomplice in a murder committed by
- 30 another person, and the defendant's participation was relatively
- 31 minor.
- 32 (5) The defendant acted under the substantial domination of
- 33 another person.
- 34 (6) The defendant's capacity to appreciate the criminality of the
- 35 defendant's conduct or to conform that conduct to the
- 36 requirements of law was substantially impaired as a result of
- 37 mental disease or defect or of intoxication.
- 38 (7) The defendant was less than eighteen (18) years of age at the
- 39 time the murder was committed.
- 40 (8) Any other circumstances appropriate for consideration.
- 41 (d) If the defendant was convicted of murder in a jury trial, the jury
- 42 shall reconvene for the sentencing hearing. If the trial was to the court,

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1 or the judgment was entered on a guilty plea, the court alone shall
 2 conduct the sentencing hearing. The jury or the court may consider all
 3 the evidence introduced at the trial stage of the proceedings, together
 4 with new evidence presented at the sentencing hearing. The court shall
 5 instruct the jury concerning the statutory penalties for murder and any
 6 other offenses for which the defendant was convicted, the potential for
 7 consecutive or concurrent sentencing, and the availability of good time
 8 credit and clemency. The court shall instruct the jury that, in order for
 9 the jury to recommend to the court that the death penalty or life
 10 imprisonment without parole should be imposed, the jury must find at
 11 least one (1) aggravating circumstance beyond a reasonable doubt as
 12 described in subsection (l) and shall provide a special verdict form for
 13 each aggravating circumstance alleged. The defendant may present any
 14 additional evidence relevant to:

15 (1) the aggravating circumstances alleged; or

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

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

22 (1) the death penalty; or

23 (2) life imprisonment without parole;

24 only if it makes the findings described in subsection (l). If the jury
 25 reaches a sentencing recommendation, the court shall sentence the
 26 defendant accordingly. After a court pronounces sentence, a
 27 representative of the victim's family and friends may present a
 28 statement regarding the impact of the crime on family and friends. The
 29 impact statement may be submitted in writing or given orally by the
 30 representative. The statement shall be given in the presence of the
 31 defendant.

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

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

37 (1) sentence the defendant to death; or

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

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

40 (h) If a court sentences a defendant to death, the court shall order
 41 the defendant's execution to be carried out not later than one (1) year
 42 and one (1) day after the date the defendant was convicted. The

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1 supreme court has exclusive jurisdiction to stay the execution of a
 2 death sentence. If the supreme court stays the execution of a death
 3 sentence, the supreme court shall order a new date for the defendant's
 4 execution.

5 (i) If a person sentenced to death by a court files a petition for
 6 post-conviction relief, the court, not later than ninety (90) days after the
 7 date the petition is filed, shall set a date to hold a hearing to consider
 8 the petition. If a court does not, within the ninety (90) day period, set
 9 the date to hold the hearing to consider the petition, the court's failure
 10 to set the hearing date is not a basis for additional post-conviction
 11 relief. The attorney general shall answer the petition for post-conviction
 12 relief on behalf of the state. At the request of the attorney general, a
 13 prosecuting attorney shall assist the attorney general. The court shall
 14 enter written findings of fact and conclusions of law concerning the
 15 petition not later than ninety (90) days after the date the hearing
 16 concludes. However, if the court determines that the petition is without
 17 merit, the court may dismiss the petition within ninety (90) days
 18 without conducting a hearing under this subsection.

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

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

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

25 (B) Constitution of the United States;

26 (2) sentencing court was without jurisdiction to impose a
 27 sentence; and

28 (3) sentence:

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

30 (B) is otherwise erroneous.

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

35 (k) A person who has been sentenced to death and who has
 36 completed state post-conviction review proceedings may file a written
 37 petition with the supreme court seeking to present new evidence
 38 challenging the person's guilt or the appropriateness of the death
 39 sentence if the person serves notice on the attorney general. The
 40 supreme court shall determine, with or without a hearing, whether the
 41 person has presented previously undiscovered evidence that
 42 undermines confidence in the conviction or the death sentence. If

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1 necessary, the supreme court may remand the case to the trial court for
 2 an evidentiary hearing to consider the new evidence and its effect on
 3 the person's conviction and death sentence. The supreme court may not
 4 make a determination in the person's favor nor make a decision to
 5 remand the case to the trial court for an evidentiary hearing without
 6 first providing the attorney general with an opportunity to be heard on
 7 the matter.

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

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

14 (2) any mitigating circumstances that exist are outweighed by the
 15 aggravating circumstance or circumstances.

16 SECTION 2. IC 35-50-2-17 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2010]: **Sec. 17. (a) As used in this section, "offense" means any**
 19 **of the following:**

20 (1) **A felony under IC 35-42 that resulted in death or serious**
 21 **bodily injury.**

22 (2) **Kidnapping (IC 35-42-3-2).**

23 (3) **Criminal confinement as a Class B felony**
 24 **(IC 35-42-3-3(b)(2)).**

25 (b) **The state may seek, on a page separate from the rest of a**
 26 **charging instrument, to have a person who allegedly committed an**
 27 **offense sentenced to an additional fixed term of imprisonment if**
 28 **the state can show beyond a reasonable doubt that the person**
 29 **knowingly or intentionally committed the offense in the physical**
 30 **presence of a person less than sixteen (16) years of age, knowing**
 31 **that the person was present and might be able to see or hear the**
 32 **offense.**

33 (c) **If the person was convicted of the offense in a jury trial, the**
 34 **jury shall reconvene to hear evidence in the enhancement hearing.**
 35 **If the trial was to the court, or the judgment was entered on a**
 36 **guilty plea, the court alone shall hear evidence in the enhancement**
 37 **hearing.**

38 (d) **If the jury (if the hearing is by jury) or the court (if the**
 39 **hearing is to the court alone) finds that the state has proved beyond**
 40 **a reasonable doubt that the person knowingly or intentionally**
 41 **committed the offense in the physical presence of a person less than**
 42 **sixteen (16) years of age, knowing that the person was present and**

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1 might be able to see or hear the offense, the court may sentence the
 2 person to an additional fixed term of imprisonment that is not less
 3 than the advisory sentence for the underlying offense nor more
 4 than three (3) times the advisory sentence for the underlying
 5 offense. However, the additional sentence may not exceed thirty
 6 (30) years.

7 SECTION 3. IC 35-50-2-18 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 2010]: Sec. 18. (a) As used in this section, "offense" means any
 10 of the following:

11 (1) A felony under IC 35-42 that resulted in death or serious
 12 bodily injury.

13 (2) Kidnapping (IC 35-42-3-2).

14 (3) Criminal confinement as a Class B felony
 15 (IC 35-42-3-3(b)(2)).

16 (b) As used in this section, "protective order" means any of the
 17 following:

18 (1) A protective order to prevent domestic or family violence
 19 issued under IC 34-26-5 (or, if the order involved a family or
 20 household member, under IC 34-26-2 or IC 34-4-5.1-5 before
 21 their repeal).

22 (2) An ex parte protective order issued under IC 34-26-5 (or,
 23 if the order involved a family or household member, an
 24 emergency order issued under IC 34-26-2 or IC 34-4-5.1
 25 before their repeal).

26 (3) A workplace violence restraining order issued under
 27 IC 34-26-6.

28 (4) A no contact order in a dispositional decree issued under
 29 IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-6-6 (or
 30 IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an
 31 order issued under IC 31-32-13 (or IC 31-6-7-14 before its
 32 repeal) that orders the person to refrain from direct or
 33 indirect contact with a child in need of services or a
 34 delinquent child.

35 (5) A no contact order issued as a condition of pretrial release,
 36 including release on bail or personal recognizance, or pretrial
 37 diversion.

38 (6) A no contact order issued as a condition of probation.

39 (7) A protective order to prevent domestic or family violence
 40 issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2
 41 before their repeal).

42 (8) A protective order to prevent domestic or family violence

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issued under IC 31-14-16-1 in a paternity action.

(9) A no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding.

(10) An order issued in another state that is substantially similar to an order described in subdivisions (1) through (9).

(11) An order that is substantially similar to an order described in subdivisions (1) through (9) and is issued by an Indian:

- (A) tribe;
- (B) band;
- (C) pueblo;
- (D) nation; or
- (E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

(12) An order issued under IC 35-33-8-3.2.

(13) An order issued under IC 35-38-1-30.

(c) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally violated a protective order in the commission of the offense.

(d) If the person was convicted of the offense 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.

(e) 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 knowingly or intentionally violated a protective order in the commission of the offense, the court may sentence the person to an additional fixed term of imprisonment of ten (10) years.

SECTION 4. [EFFECTIVE JULY 1, 2010] IC 35-50-2-9, as amended by this act, and IC 35-50-2-17 and IC 35-50-2-18, both as added by this act, apply only to crimes committed after June 30,

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