

PROPOSED AMENDMENT

SB 324 # 6

DIGEST

Sentencing of aliens unlawfully present. Makes it a sentencing aggravator that the person is or has been an alien unlawfully present in the United States.

- 1 Page 7, between lines 16 and 17, begin a new paragraph and insert:
2 "SECTION 6. IC 35-38-1-7.1, AS AMENDED BY P.L.148-2024,
3 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2025]: Sec. 7.1. (a) In determining what sentence to impose
5 for a crime, the court may consider the following aggravating
6 circumstances:
7 (1) The harm, injury, loss, or damage suffered by the victim of an
8 offense was:
9 (A) significant; and
10 (B) greater than the elements necessary to prove the
11 commission of the offense.
12 (2) The person has a history of criminal or delinquent behavior.
13 (3) The victim of the offense was less than twelve (12) years of
14 age or at least sixty-five (65) years of age at the time the person
15 committed the offense.
16 (4) The person:
17 (A) committed a crime of violence (IC 35-50-1-2); and
18 (B) knowingly committed the offense in the presence or within
19 hearing of an individual who:
20 (i) was less than eighteen (18) years of age at the time the
21 person committed the offense; and
22 (ii) is not the victim of the offense.
23 (5) The person violated a protective order issued against the
24 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
25 IC 34-4-5.1 before their repeal), a workplace violence restraining
26 order issued against the person under IC 34-26-6, or a no contact

1 order issued against the person.

2 (6) The person has recently violated the conditions of any
3 probation, parole, pardon, community corrections placement, or
4 pretrial release granted to the person.

5 (7) The victim of the offense was:

6 (A) a person with a disability (as defined in IC 27-7-6-12), and
7 the defendant knew or should have known that the victim was
8 a person with a disability; or

9 (B) mentally or physically infirm.

10 (8) The person was in a position having care, custody, or control
11 of the victim of the offense.

12 (9) The injury to or death of the victim of the offense was the
13 result of shaken baby syndrome (as defined in IC 16-41-40-2) or
14 abusive head trauma.

15 (10) The person threatened to harm the victim of the offense or a
16 witness if the victim or witness told anyone about the offense.

17 (11) The person:

18 (A) committed trafficking with an inmate under
19 IC 35-44.1-3-5; and

20 (B) is an employee of the penal facility.

21 (12) The person committed the offense with bias due to the
22 victim's or the group's real or perceived characteristic, trait, belief,
23 practice, association, or other attribute the court chooses to
24 consider, including but not limited to an attribute described in
25 IC 10-13-3-1.

26 **(13) The person is or has been an alien (as defined by 8 U.S.C.**
27 **1101(a)) unlawfully present in the United States. A**
28 **determination by the United States Department of Homeland**
29 **Security that an alien has come to, entered, or remained in the**
30 **United States in violation of law is evidence that the alien is or**
31 **has been unlawfully present in the United States.**

32 (b) The court may consider the following factors as mitigating
33 circumstances or as favoring suspending the sentence and imposing
34 probation:

35 (1) The crime neither caused nor threatened serious harm to
36 persons or property, or the person did not contemplate that it
37 would do so.

38 (2) The crime was the result of circumstances unlikely to recur.

39 (3) The victim of the crime induced or facilitated the offense.

40 (4) There are substantial grounds tending to excuse or justify the

- 1 crime, though failing to establish a defense.
- 2 (5) The person acted under strong provocation.
- 3 (6) The person has no history of delinquency or criminal activity,
4 or the person has led a law-abiding life for a substantial period
5 before commission of the crime.
- 6 (7) The person is likely to respond affirmatively to probation or
7 short term imprisonment.
- 8 (8) The character and attitudes of the person indicate that the
9 person is unlikely to commit another crime.
- 10 (9) The person has made or will make restitution to the victim of
11 the crime for the injury, damage, or loss sustained.
- 12 (10) Imprisonment of the person will result in undue hardship to
13 the person or the dependents of the person.
- 14 (11) The person was convicted of a crime involving the use of
15 force against a person who had repeatedly inflicted physical or
16 sexual abuse upon the convicted person and evidence shows that
17 the convicted person suffered from the effects of battery as a
18 result of the past course of conduct of the individual who is the
19 victim of the crime for which the person was convicted.
- 20 (12) The person was convicted of a crime relating to a controlled
21 substance and the person's arrest or prosecution was facilitated in
22 part because the person:
- 23 (A) requested emergency medical assistance; or
- 24 (B) acted in concert with another person who requested
25 emergency medical assistance;
26 for an individual who reasonably appeared to be in need of
27 medical assistance due to the use of alcohol or a controlled
28 substance.
- 29 (13) The person has posttraumatic stress disorder, traumatic brain
30 injury, or a postconcussive brain injury.
- 31 (14) The person is a person described in IC 31-30-1-4(d) who
32 committed the offense while the person was a child but is now at
33 least twenty-one (21) years of age.
- 34 (c) The criteria listed in subsections (a) and (b) do not limit the
35 matters that the court may consider in determining the sentence.
- 36 (d) A court may impose any sentence that is:
- 37 (1) authorized by statute; and
- 38 (2) permissible under the Constitution of the State of Indiana;
39 regardless of the presence or absence of aggravating circumstances or
40 mitigating circumstances.

1 (e) If a court suspends a sentence and orders probation for a person
2 described in subsection (b)(13), the court may require the person to
3 receive treatment for the person's injuries."

4 Renumber all SECTIONS consecutively.
 (Reference is to SB 324 as reprinted February 18, 2025.)