

HOUSE BILL No. 1236

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-1-7.1.

Synopsis: Sentencing aggravators. Specifies that aggravating circumstances based on the commission of certain offenses include only those offenses of which the defendant was convicted. Provides that a court, when sentencing a defendant, may not consider as an aggravating circumstance: (1) any charge of which the defendant was acquitted; or (2) the fact that the state elected not to charge the defendant with one or more offenses.

Effective: July 1, 2021.

Young J

January 14, 2021, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1236

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 35-38-1-7.1, AS AMENDED BY P.L.5-2019,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 7.1. (a) In determining what sentence to impose
4 for a crime, the court may consider the following aggravating
5 circumstances:
6 (1) The harm, injury, loss, or damage suffered by the victim of ~~an~~
7 **the offense of which the defendant was convicted** was:
8 (A) significant; and
9 (B) greater than the elements necessary to prove the
10 commission of the offense.
11 (2) The person has a history of criminal or delinquent behavior.
12 (3) The victim of the offense **of which the defendant was**
13 **convicted** was less than twelve (12) years of age or at least
14 sixty-five (65) years of age at the time the person committed the
15 offense.
16 (4) The person:
17 (A) ~~committed~~ **was convicted of committing** a crime of



- 1 violence (IC 35-50-1-2); and
 2 (B) knowingly committed the offense in the presence or within
 3 hearing of an individual who:
 4 (i) was less than eighteen (18) years of age at the time the
 5 person committed the offense; and
 6 (ii) is not the victim of the offense.
 7 (5) The person violated a protective order issued against the
 8 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
 9 IC 34-4-5.1 before their repeal), a workplace violence restraining
 10 order issued against the person under IC 34-26-6, or a no contact
 11 order issued against the person.
 12 (6) The person has recently violated the conditions of any
 13 probation, parole, pardon, community corrections placement, or
 14 pretrial release granted to the person.
 15 (7) The victim of the offense **of which the defendant was**
 16 **convicted** was:
 17 (A) a person with a disability (as defined in IC 27-7-6-12), and
 18 the defendant knew or should have known that the victim was
 19 a person with a disability; or
 20 (B) mentally or physically infirm.
 21 (8) The person was in a position having care, custody, or control
 22 of the victim of the offense **of which the defendant was**
 23 **convicted**.
 24 (9) The injury to or death of the victim of the offense **of which**
 25 **the defendant was convicted** was the result of shaken baby
 26 syndrome (as defined in IC 16-41-40-2).
 27 (10) The person threatened to harm the victim of the offense **of**
 28 **which the defendant was convicted** or a witness if the victim or
 29 witness told anyone about the offense.
 30 (11) The person:
 31 (A) ~~committed~~ **was convicted of committing** trafficking with
 32 an inmate under IC 35-44.1-3-5; and
 33 (B) is an employee of the penal facility.
 34 (12) The person committed the offense with bias due to the
 35 victim's or the group's real or perceived characteristic, trait, belief,
 36 practice, association, or other attribute the court chooses to
 37 consider, including but not limited to an attribute described in
 38 IC 10-13-3-1.
 39 (b) The court may consider the following factors as mitigating
 40 circumstances or as favoring suspending the sentence and imposing
 41 probation:
 42 (1) The crime neither caused nor threatened serious harm to



- 1 persons or property, or the person did not contemplate that it
 2 would do so.
- 3 (2) The crime was the result of circumstances unlikely to recur.
- 4 (3) The victim of the crime induced or facilitated the offense.
- 5 (4) There are substantial grounds tending to excuse or justify the
 6 crime, though failing to establish a defense.
- 7 (5) The person acted under strong provocation.
- 8 (6) The person has no history of delinquency or criminal activity,
 9 or the person has led a law-abiding life for a substantial period
 10 before commission of the crime.
- 11 (7) The person is likely to respond affirmatively to probation or
 12 short term imprisonment.
- 13 (8) The character and attitudes of the person indicate that the
 14 person is unlikely to commit another crime.
- 15 (9) The person has made or will make restitution to the victim of
 16 the crime for the injury, damage, or loss sustained.
- 17 (10) Imprisonment of the person will result in undue hardship to
 18 the person or the dependents of the person.
- 19 (11) The person was convicted of a crime involving the use of
 20 force against a person who had repeatedly inflicted physical or
 21 sexual abuse upon the convicted person and evidence shows that
 22 the convicted person suffered from the effects of battery as a
 23 result of the past course of conduct of the individual who is the
 24 victim of the crime for which the person was convicted.
- 25 (12) The person was convicted of a crime relating to a controlled
 26 substance and the person's arrest or prosecution was facilitated in
 27 part because the person:
- 28 (A) requested emergency medical assistance; or
 29 (B) acted in concert with another person who requested
 30 emergency medical assistance;
- 31 for an individual who reasonably appeared to be in need of
 32 medical assistance due to the use of alcohol or a controlled
 33 substance.
- 34 (13) The person has posttraumatic stress disorder, traumatic brain
 35 injury, or a postconcussive brain injury.
- 36 (c) The criteria listed in subsections (a) and (b) do not limit the
 37 matters that the court may consider in determining the sentence.
 38 **However, the court may not consider as an aggravating**
 39 **circumstance:**
- 40 **(1) any charge of which the defendant was acquitted; or**
 41 **(2) the fact that the state, as part of a plea agreement, elected**
 42 **not to charge the defendant with one (1) or more offenses.**



- 1 (d) A court may impose any sentence that is:
- 2 (1) authorized by statute; and
- 3 (2) permissible under the Constitution of the State of Indiana;
- 4 regardless of the presence or absence of aggravating circumstances or
- 5 mitigating circumstances.
- 6 (e) If a court suspends a sentence and orders probation for a person
- 7 described in subsection (b)(13), the court may require the person to
- 8 receive treatment for the person's injuries.

