

HOUSE BILL No. 1337

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-45-22; IC 35-50-2-9.

Synopsis: Religious motivated crimes. Provides that a person commits the offense of a religious motivated crime if the person knowingly or intentionally: (1) causes bodily injury to another person; or (2) damages the property of another person; because of the other person's actual or perceived religion or creed. Provides that the state may seek either a death sentence or a sentence of life imprisonment without parole if the murder was a result of a religious motivated crime.

Effective: July 1, 2019.

Speedy

January 14, 2019, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1337

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 35-45-22 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]:

4 **Chapter 22. Offenses Relating to Religious Motivated Crimes**

5 **Sec. 1. (a) A person who knowingly or intentionally causes**
6 **bodily injury to another person because of the other person's**
7 **actual or perceived religion or creed commits a religious motivated**
8 **crime, a Level 4 felony.**

9 **(b) However, the offense of a religious motivated crime as**
10 **described in subsection (a) is:**

11 **(1) a Level 3 felony if it:**

12 **(A) is committed by use of a deadly weapon; or**

13 **(B) causes moderate bodily injury to the other person; or**

14 **(2) a Level 2 felony if it:**

15 **(A) is committed by shooting a firearm into or inside an**
16 **inhabited dwelling or other building or place where people**
17 **are gathered for religious purposes; or**



(B) causes serious bodily injury to another person.

Sec. 2. A person who knowingly or intentionally damages the property of another person who:

(1) owns;

(2) rents; or

(3) uses;

the property because of the other person's actual or perceived religion or creed commits a religious motivated property crime, a Level 5 felony. However, the offense is a Level 4 felony if the value of the property is at least seven hundred fifty dollars (\$750).

SECTION 2. IC 35-50-2-9, AS AMENDED BY P.L.65-2016, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with an intellectual disability.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

(A) Arson (IC 35-43-1-1).

(B) Burglary (IC 35-43-2-1).

(C) Child molesting (IC 35-42-4-3).

(D) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).

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

(F) Rape (IC 35-42-4-1).

(G) Robbery (IC 35-42-5-1).

(H) Carjacking (IC 35-42-5-2) (before its repeal).

(I) Criminal organization activity (IC 35-45-9-3).

(J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(K) Criminal confinement (IC 35-42-3-3).

(2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure a person or damage property.

(3) The defendant committed the murder by lying in wait.



- 1 (4) The defendant who committed the murder was hired to kill.
- 2 (5) The defendant committed the murder by hiring another person
- 3 to kill.
- 4 (6) The victim of the murder was a corrections employee,
- 5 probation officer, parole officer, community corrections worker,
- 6 home detention officer, fireman, judge, or law enforcement
- 7 officer, and either:
- 8 (A) the victim was acting in the course of duty; or
- 9 (B) the murder was motivated by an act the victim performed
- 10 while acting in the course of duty.
- 11 (7) The defendant has been convicted of another murder.
- 12 (8) The defendant has committed another murder, at any time,
- 13 regardless of whether the defendant has been convicted of that
- 14 other murder.
- 15 (9) The defendant was:
- 16 (A) under the custody of the department of correction;
- 17 (B) under the custody of a county sheriff;
- 18 (C) on probation after receiving a sentence for the commission
- 19 of a felony; or
- 20 (D) on parole;
- 21 at the time the murder was committed.
- 22 (10) The defendant dismembered the victim.
- 23 (11) The defendant:
- 24 (A) burned, mutilated, or tortured the victim; or
- 25 (B) decapitated or attempted to decapitate the victim;
- 26 while the victim was alive.
- 27 (12) The victim of the murder was less than twelve (12) years of
- 28 age.
- 29 (13) The victim was a victim of any of the following offenses for
- 30 which the defendant was convicted:
- 31 (A) A battery offense included in IC 35-42-2 committed before
- 32 July 1, 2014, as a Class D felony or as a Class C felony, or a
- 33 battery offense included in IC 35-42-2 committed after June
- 34 30, 2014, as a Level 6 felony, a Level 5 felony, a Level 4
- 35 felony, or a Level 3 felony.
- 36 (B) Kidnapping (IC 35-42-3-2).
- 37 (C) Criminal confinement (IC 35-42-3-3).
- 38 (D) A sex crime under IC 35-42-4.
- 39 (14) The victim of the murder was listed by the state or known by
- 40 the defendant to be a witness against the defendant and the
- 41 defendant committed the murder with the intent to prevent the
- 42 person from testifying.



(15) The defendant committed the murder by intentionally 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).

(17) The defendant knowingly or intentionally:

(A) committed the murder:

(i) in a building primarily used for an educational purpose;

(ii) on school property; and

(iii) when students are present; or

(B) committed the murder:

(i) in a building or other structure owned or rented by a state educational institution or any other public or private postsecondary educational institution and primarily used for an educational purpose; and

(ii) at a time when classes are in session.

(18) The murder is committed:

(A) in a building that is primarily used for religious worship; and

(B) at a time when persons are present for religious worship or education.

(19) The victim of the murder was selected because of the victim's actual or perceived religion or creed.

(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 educational credit, 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 (l) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

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

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

(1) the death penalty; or

(2) life imprisonment without parole;

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

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

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



- 1 (1) sentence the defendant to death; or
 2 (2) impose a term of life imprisonment without parole;
 3 only if it makes the findings described in subsection (l).

4 (h) If a court sentences a defendant to death, the court shall order
 5 the defendant's execution to be carried out not later than one (1) year
 6 and one (1) day after the date the defendant was convicted. The
 7 supreme court has exclusive jurisdiction to stay the execution of a
 8 death sentence. If the supreme court stays the execution of a death
 9 sentence, the supreme court shall order a new date for the defendant's
 10 execution.

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

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

- 29 (1) conviction or sentence was in violation of the:
 30 (A) Constitution of the State of Indiana; or
 31 (B) Constitution of the United States;
 32 (2) sentencing court was without jurisdiction to impose a
 33 sentence; and
 34 (3) sentence:
 35 (A) exceeds the maximum sentence authorized by law; or
 36 (B) is otherwise erroneous.

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

41 (k) A person who has been sentenced to death and who has
 42 completed state post-conviction review proceedings may file a written



1 petition with the supreme court seeking to present new evidence
2 challenging the person's guilt or the appropriateness of the death
3 sentence if the person serves notice on the attorney general. The
4 supreme court shall determine, with or without a hearing, whether the
5 person has presented previously undiscovered evidence that
6 undermines confidence in the conviction or the death sentence. If
7 necessary, the supreme court may remand the case to the trial court for
8 an evidentiary hearing to consider the new evidence and its effect on
9 the person's conviction and death sentence. The supreme court may not
10 make a determination in the person's favor nor make a decision to
11 remand the case to the trial court for an evidentiary hearing without
12 first providing the attorney general with an opportunity to be heard on
13 the matter.

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

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

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

