



January 26, 2018

SENATE BILL No. 203

DIGEST OF SB 203 (Updated January 23, 2018 1:18 pm - DI 106)

Citations Affected: IC 35-38; IC 35-42; IC 35-50.

Synopsis: Crimes resulting in the loss of a fetus. Provides that the crimes of: (1) murder; (2) voluntary manslaughter; (3) involuntary manslaughter; and (4) feticide; may be committed against a fetus in any stage of development. Specifies that the offenses do not apply to a: (1) lawfully performed abortion; or (2) pregnant woman with respect to a fetus carried by the woman. Repeals a superseded provision.

Effective: July 1, 2018.

**Freeman, Houchin, Koch, Crane,
Leising, Sandlin, Tomes, Young M**

January 3, 2018, read first time and referred to Committee on Corrections and Criminal Law.
January 25, 2018, amended, reported favorably — Do Pass.

SB 203—LS 6188/DI 106



January 26, 2018

Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 203

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 35-38-3-3, AS AMENDED BY P.L.7-2017,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 3. (a) Except as provided by subsection (b), a
4 person convicted of a misdemeanor may not be committed to the
5 department of correction.
6 (b) Upon a request from the sheriff, the commissioner may agree to
7 accept custody of a misdemeanor:
8 (1) if placement in the county jail:
9 (A) places the inmate in danger of serious bodily injury or
10 death; or
11 (B) represents a substantial threat to the safety of others;
12 (2) for other good cause shown; or
13 (3) if a person has more than five hundred forty-seven (547) days
14 remaining before the person's earliest release date as a result of:
15 (A) consecutive misdemeanor sentences; or
16 (B) a sentencing enhancement applied to a misdemeanor
17 sentence.

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1 (c) After June 30, 2014, and before January 1, 2016, a court may not
 2 commit a person convicted of a Level 6 felony to the department of
 3 correction if the person's earliest possible release date is less than
 4 ninety-one (91) days from the date of sentencing, unless the
 5 commitment is due to the person violating a condition of probation,
 6 parole, or community corrections by committing a new criminal
 7 offense.

8 (d) After December 31, 2015, a court may not commit a person
 9 convicted of a Level 6 felony to the department of correction unless:

10 (1) the commitment is due to the revocation of the person's
 11 sentence for violating probation, parole, or community corrections
 12 and the revocation of the person's sentence is due to a new
 13 criminal offense; or

14 (2) the person:

15 (A) is convicted of a Level 6 felony and the sentence for that
 16 felony is ordered to be served consecutively to the sentence for
 17 another felony;

18 (B) is convicted of a Level 6 felony that is enhanced by an
 19 additional fixed term under IC 35-50-2-8 through
 20 ~~IC 35-50-2-16~~; **IC 35-50-2-15**; or

21 (C) has received an enhanced sentence under IC 9-30-15.5-2;
 22 and the person's earliest possible release date is more than three
 23 hundred sixty-five (365) days after the date of sentencing.

24 A person who may not be committed to the department of correction
 25 may be placed on probation, committed to the county jail, or placed in
 26 community corrections for assignment to an appropriate community
 27 corrections program.

28 (e) After June 30, 2014, and before January 1, 2016, a sheriff is
 29 entitled to a per diem and medical expense reimbursement as described
 30 in P.L.205-2013, SECTION 4 for the cost of incarcerating a person
 31 described in subsections (c) and (d) in a county jail. The sheriff is
 32 entitled to a per diem and medical expense reimbursement only for the
 33 time that the person described in subsections (c) and (d) is incarcerated
 34 in the county jail. The reimbursement:

35 (1) shall be reviewed by the budget committee; and

36 (2) is subject to approval by the budget agency.

37 (f) Subject to appropriation from the general assembly, a sheriff is
 38 entitled to a per diem and medical expense reimbursement from the
 39 department of correction for the cost of incarcerating a person
 40 described in subsections (c) and (d) in a county jail. The sheriff is
 41 entitled to a per diem and medical expense reimbursement only for the
 42 time that the person described in subsections (c) and (d) is incarcerated



- 1 in the county jail.
- 2 SECTION 2. IC 35-42-1-1, AS AMENDED BY P.L.252-2017,
 3 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2018]: Sec. 1. A person who:
- 5 (1) knowingly or intentionally kills another human being;
 - 6 (2) kills another human being while committing or attempting to
 7 commit arson, burglary, child molesting, consumer product
 8 tampering, criminal deviate conduct (under IC 35-42-4-2 before
 9 its repeal), kidnapping, rape, robbery, human trafficking,
 10 promotion of human trafficking, sexual trafficking of a minor, or
 11 carjacking (before its repeal);
 - 12 (3) kills another human being while committing or attempting to
 13 commit:
 - 14 (A) dealing in or manufacturing cocaine or a narcotic drug
 15 (IC 35-48-4-1);
 - 16 (B) dealing in methamphetamine (IC 35-48-4-1.1);
 - 17 (C) manufacturing methamphetamine (IC 35-48-4-1.2);
 - 18 (D) dealing in a schedule I, II, or III controlled substance
 19 (IC 35-48-4-2);
 - 20 (E) dealing in a schedule IV controlled substance
 21 (IC 35-48-4-3); or
 - 22 (F) dealing in a schedule V controlled substance; or
 - 23 (4) **except as provided in section 6.5 of this chapter**, knowingly
 24 or intentionally kills a fetus ~~that has attained viability (as defined~~
 25 ~~in IC 16-18-2-365)~~ **in any stage of development;**
- 26 commits murder, a felony.
- 27 SECTION 3. IC 35-42-1-3, AS AMENDED BY P.L.158-2013,
 28 SECTION 413, IS AMENDED TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2018]: Sec. 3. (a) A person who knowingly or
 30 intentionally:
- 31 (1) kills another human being; or
 - 32 (2) **except as provided in section 6.5 of this chapter**, kills a
 33 fetus ~~that has attained viability (as defined in IC 16-18-2-365)~~ **in**
 34 **any stage of development;**
- 35 while acting under sudden heat commits voluntary manslaughter, a
 36 Level 2 felony.
- 37 (b) The existence of sudden heat is a mitigating factor that reduces
 38 what otherwise would be murder under section 1(1) of this chapter to
 39 voluntary manslaughter.
- 40 SECTION 4. IC 35-42-1-4, AS AMENDED BY P.L.65-2016,
 41 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2018]: Sec. 4. (a) As used in this section, "fetus" means a



1 fetus that has attained viability (as defined in IC 16-18-2-365): **in any**
 2 **stage of development.**

3 (b) A person who kills another human being while committing or
 4 attempting to commit:

5 (1) a Level 5 or Level 6 felony that inherently poses a risk of
 6 serious bodily injury;

7 (2) a Class A misdemeanor that inherently poses a risk of serious
 8 bodily injury; or

9 (3) battery;

10 commits involuntary manslaughter, a Level 5 felony.

11 (c) **Except as provided in section 6.5 of this chapter**, a person
 12 who kills a fetus while committing or attempting to commit:

13 (1) a Level 5 or Level 6 felony that inherently poses a risk of
 14 serious bodily injury;

15 (2) a Class A misdemeanor that inherently poses a risk of serious
 16 bodily injury;

17 (3) a battery offense included in IC 35-42-2; or

18 (4) a violation of IC 9-30-5-1 through IC 9-30-5-5 (operating a
 19 vehicle while intoxicated);

20 commits involuntary manslaughter, a Level 5 felony.

21 SECTION 5. IC 35-42-1-6, AS AMENDED BY P.L.158-2013,
 22 SECTION 416, IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2018]: Sec. 6. **Except as provided in section**
 24 **6.5 of this chapter**, a person who knowingly or intentionally terminates
 25 a human pregnancy with an intention other than to produce a live birth
 26 or to remove a dead fetus commits feticide, a Level 3 felony. **This**
 27 **section does not apply to an abortion performed in compliance with:**

28 (1) IC 16-34; or

29 (2) IC 35-1-58.5 (before its repeal):

30 SECTION 6. IC 35-42-1-6.5 IS ADDED TO THE INDIANA CODE
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2018]: Sec. 6.5 (a). **The following sections of this chapter do not**
 33 **apply to an abortion performed in compliance with IC 16-34 or**
 34 **IC 35-1-58.5 (before its repeal):**

35 (1) Section 1 (murder).

36 (2) Section 3 (voluntary manslaughter).

37 (3) Section 4 (involuntary manslaughter).

38 (4) Section 6 (feticide).

39 (b) **The following sections of this chapter do not apply to a**
 40 **pregnant woman who terminates her own pregnancy or kills a**
 41 **fetus that she is carrying:**

42 (1) Section 1 (murder).



1 **(2) Section 3 (voluntary manslaughter).**

2 **(3) Section 4 (involuntary manslaughter).**

3 **(4) Section 6 (feticide).**

4 SECTION 7. IC 35-50-2-16 IS REPEALED [EFFECTIVE JULY 1,
5 2018]. Sec. 16. (a) The state may seek, on a page separate from the rest
6 of the charging instrument, to have a person who allegedly committed
7 or attempted to commit murder under IC 35-42-1-1(1) or
8 IC 35-42-1-1(2) sentenced to an additional fixed term of imprisonment
9 if the state can show beyond a reasonable doubt that the person, while
10 committing or attempting to commit murder under IC 35-42-1-1(1) or
11 IC 35-42-1-1(2), caused the termination of a human pregnancy.

12 (b) If the person is convicted of the murder or attempted murder in
13 a jury trial, the jury shall reconvene to hear evidence in the
14 enhancement hearing. If the trial was to the court, or the judgment was
15 entered on a guilty plea, the court alone shall hear evidence in the
16 enhancement hearing.

17 (c) If the jury (if the hearing is by jury) or the court (if the hearing
18 is to the court alone) finds that the state has proved beyond a
19 reasonable doubt that the person, while committing or attempting to
20 commit murder under IC 35-42-1-1(1) or IC 35-42-1-1(2), caused the
21 termination of a human pregnancy, the court shall sentence the person
22 to an additional fixed term of imprisonment of not less than six (6) or
23 more than twenty (20) years.

24 (d) A sentence imposed under this section runs consecutively to the
25 underlying sentence.

26 (e) For purposes of this section, prosecution of the murder or
27 attempted murder under IC 35-42-1-1(1) or IC 35-42-1-1(2) and the
28 enhancement of the penalty for that crime does not require proof that:

29 (1) the person committing or attempting to commit the murder
30 had knowledge or should have had knowledge that the victim was
31 pregnant; or

32 (2) the defendant intended to cause the termination of a human
33 pregnancy.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 203, 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 4, line 32, after "6.5" insert "**(a)**".

Page 4, between lines 38 and 39, begin a new paragraph and insert:

"(b) The following sections of this chapter do not apply to a pregnant woman who terminates her own pregnancy or kills a fetus that she is carrying:

(1) Section 1 (murder).

(2) Section 3 (voluntary manslaughter).

(3) Section 4 (involuntary manslaughter).

(4) Section 6 (feticide)."

and when so amended that said bill do pass.

(Reference is to SB 203 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 8, Nays 1.

