



February 10, 2017

SENATE BILL No. 439

DIGEST OF SB 439 (Updated February 7, 2017 12:29 pm - DI 106)

Citations Affected: IC 35-31.5; IC 35-38.

Synopsis: Bias crimes. Makes it an aggravating circumstance (for purposes of imposing a criminal sentence) that the crime was committed with the intent to harm or intimidate an individual because of certain perceived or actual characteristics of the individual.

Effective: July 1, 2017.

Glick, Ruckelshaus, Taylor G

January 12, 2017, read first time and referred to Committee on Corrections and Criminal Law.
February 9, 2017, amended, reported favorably — Do Pass.

SB 439—LS 6790/DI 107



February 10, 2017

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 439

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 35-31.5-2-260.2, AS ADDED BY P.L.238-2015,
2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 260.2. "Public safety official" ~~for purposes of~~
4 ~~IC 35-42-2-1~~, has the meaning set forth in IC 35-42-2-1.
5 SECTION 2. IC 35-31.5-2-273.4 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2017]: **Sec. 273.4. "Relative" has the**
8 **meaning set forth in IC 35-42-2-1.**
9 SECTION 3. IC 35-38-1-7.1, AS AMENDED BY P.L.213-2015,
10 SECTION 261, IS AMENDED TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2017]: Sec. 7.1. (a) In determining what
12 sentence to impose for a crime, the court may consider the following
13 aggravating circumstances:
14 (1) The harm, injury, loss, or damage suffered by the victim of an
15 offense was:
16 (A) significant; and
17 (B) greater than the elements necessary to prove the

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- 1 commission of the offense.
- 2 (2) The person has a history of criminal or delinquent behavior.
- 3 (3) The victim of the offense was less than twelve (12) years of
- 4 age or at least sixty-five (65) years of age at the time the person
- 5 committed the offense.
- 6 (4) The person:
- 7 (A) committed a crime of violence (IC 35-50-1-2); and
- 8 (B) knowingly committed the offense in the presence or within
- 9 hearing of an individual who:
- 10 (i) was less than eighteen (18) years of age at the time the
- 11 person committed the offense; and
- 12 (ii) is not the victim of the offense.
- 13 (5) The person violated a protective order issued against the
- 14 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
- 15 IC 34-4-5.1 before their repeal), a workplace violence restraining
- 16 order issued against the person under IC 34-26-6, or a no contact
- 17 order issued against the person.
- 18 (6) The person has recently violated the conditions of any
- 19 probation, parole, pardon, community corrections placement, or
- 20 pretrial release granted to the person.
- 21 (7) The victim of the offense was:
- 22 (A) a person with a disability (as defined in IC 27-7-6-12), and
- 23 the defendant knew or should have known that the victim was
- 24 a person with a disability; or
- 25 (B) mentally or physically infirm.
- 26 (8) The person was in a position having care, custody, or control
- 27 of the victim of the offense.
- 28 (9) The injury to or death of the victim of the offense was the
- 29 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 30 (10) The person threatened to harm the victim of the offense or a
- 31 witness if the victim or witness told anyone about the offense.
- 32 (11) The person:
- 33 (A) committed trafficking with an inmate under
- 34 IC 35-44.1-3-5; and
- 35 (B) is an employee of the penal facility.
- 36 **(12) The person committed the offense with the intent to harm**
- 37 **or intimidate an individual because of the individual's**
- 38 **perceived or actual:**
- 39 **(A) race;**
- 40 **(B) religion;**
- 41 **(C) color;**
- 42 **(D) sex;**



- 1 **(E) gender identity;**
 2 **(F) disability;**
 3 **(G) national origin;**
 4 **(H) ancestry;**
 5 **(I) sexual orientation; or**
 6 **(J) status as a public safety official or a relative of a public**
 7 **safety official.**
- 8 (b) The court may consider the following factors as mitigating
 9 circumstances or as favoring suspending the sentence and imposing
 10 probation:
- 11 (1) The crime neither caused nor threatened serious harm to
 12 persons or property, or the person did not contemplate that it
 13 would do so.
 14 (2) The crime was the result of circumstances unlikely to recur.
 15 (3) The victim of the crime induced or facilitated the offense.
 16 (4) There are substantial grounds tending to excuse or justify the
 17 crime, though failing to establish a defense.
 18 (5) The person acted under strong provocation.
 19 (6) The person has no history of delinquency or criminal activity,
 20 or the person has led a law-abiding life for a substantial period
 21 before commission of the crime.
 22 (7) The person is likely to respond affirmatively to probation or
 23 short term imprisonment.
 24 (8) The character and attitudes of the person indicate that the
 25 person is unlikely to commit another crime.
 26 (9) The person has made or will make restitution to the victim of
 27 the crime for the injury, damage, or loss sustained.
 28 (10) Imprisonment of the person will result in undue hardship to
 29 the person or the dependents of the person.
 30 (11) The person was convicted of a crime involving the use of
 31 force against a person who had repeatedly inflicted physical or
 32 sexual abuse upon the convicted person and evidence shows that
 33 the convicted person suffered from the effects of battery as a
 34 result of the past course of conduct of the individual who is the
 35 victim of the crime for which the person was convicted.
 36 (12) The person was convicted of a crime relating to a controlled
 37 substance and the person's arrest or prosecution was facilitated in
 38 part because the person:
 39 (A) requested emergency medical assistance; or
 40 (B) acted in concert with another person who requested
 41 emergency medical assistance;
 42 for an individual who reasonably appeared to be in need of



1 medical assistance due to the use of alcohol or a controlled
2 substance.
3 (13) The person has posttraumatic stress disorder, traumatic brain
4 injury, or a postconcussive brain injury.
5 (c) The criteria listed in subsections (a) and (b) do not limit the
6 matters that the court may consider in determining the sentence.
7 (d) A court may impose any sentence that is:
8 (1) authorized by statute; and
9 (2) permissible under the Constitution of the State of Indiana;
10 regardless of the presence or absence of aggravating circumstances or
11 mitigating circumstances.
12 (e) If a court suspends a sentence and orders probation for a person
13 described in subsection (b)(13), the court may require the person to
14 receive treatment for the person's injuries.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 439, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-31.5-2-260.2, AS ADDED BY P.L.238-2015, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 260.2. "Public safety official" ~~for purposes of IC 35-42-2-1,~~ has the meaning set forth in IC 35-42-2-1.

SECTION 2. IC 35-31.5-2-273.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2017]: **Sec. 273.4. "Relative" has the meaning set forth in IC 35-42-2-1."**

Page 2, line 38, delete "or".

Page 2, line 39, delete "orientation." and insert "**orientation; or (J) status as a public safety official or a relative of a public safety official."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 439 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 6, Nays 3.

