



Reprinted
March 26, 2019

ENGROSSED SENATE BILL No. 198

DIGEST OF SB 198 (Updated March 25, 2019 7:18 pm - DI 106)

Citations Affected: IC 35-38; IC 35-48.

Synopsis: Sentencing. Makes committing a controlled substance offense on the property of a penal facility or juvenile facility an enhancing circumstance. Makes it an aggravating circumstance that a crime was committed because of certain perceived or actual characteristics of the victim.

Effective: July 1, 2019.

**Bohacek, Crider, Young M,
Randolph Lonnie M**

(HOUSE SPONSORS — PRESSEL, STEUERWALD, MCNAMARA)

January 3, 2019, read first time and referred to Committee on Corrections and Criminal Law.

January 10, 2019, amended, reported favorably — Do Pass.

January 14, 2019, read second time, ordered engrossed. Engrossed.

January 15, 2019, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 26, 2019, read first time and referred to Committee on Courts and Criminal Code.

March 14, 2019, reported — Do Pass.

March 25, 2019, read second time, amended, ordered engrossed.

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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.

ENGROSSED SENATE BILL No. 198

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.213-2015,
2 SECTION 261, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: Sec. 7.1. (a) In determining what
4 sentence to impose for a crime, the court may consider the following
5 aggravating circumstances:
6 (1) The harm, injury, loss, or damage suffered by the victim of an
7 offense 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 was less than twelve (12) years of
13 age or at least sixty-five (65) years of age at the time the person
14 committed the offense.
15 (4) The person:
16 (A) committed a crime of violence (IC 35-50-1-2); and
17 (B) knowingly committed the offense in the presence or within

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hearing of an individual who:

- (i) was less than eighteen (18) years of age at the time the person committed the offense; and
- (ii) is not the victim of the offense.

(5) The person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person.

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

(7) The victim of the offense was:

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

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

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

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

(11) The person:

- (A) committed trafficking with an inmate under IC 35-44.1-3-5; and
- (B) is an employee of the penal facility.

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

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

- (1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.
- (2) The crime was the result of circumstances unlikely to recur.
- (3) The victim of the crime induced or facilitated the offense.
- (4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.



(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(12) The person was convicted of a crime relating to a controlled substance and the person's arrest or prosecution was facilitated in part because the person:

(A) requested emergency medical assistance; or

(B) acted in concert with another person who requested emergency medical assistance;

for an individual who reasonably appeared to be in need of medical assistance due to the use of alcohol or a controlled substance.

(13) The person has posttraumatic stress disorder, traumatic brain injury, or a postconcussive brain injury.

(c) The criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence.

(d) A court may impose any sentence that is:

(1) authorized by statute; and

(2) permissible under the Constitution of the State of Indiana; regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

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

SECTION 2. IC 35-48-1-16.5, AS AMENDED BY P.L.168-2014, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 16.5. "Enhancing circumstance" means one (1) or



- 1 more of the following:
- 2 (1) The person has a prior conviction, in any jurisdiction, for
- 3 dealing in a controlled substance that is not marijuana, hashish,
- 4 hash oil, **or** salvia divinorum, **or a synthetic drug**, including an
- 5 attempt or conspiracy to commit the offense.
- 6 (2) The person committed the offense while in possession of a
- 7 firearm.
- 8 (3) The person committed the offense:
- 9 (A) on a school bus; or
- 10 (B) in, on, or within five hundred (500) feet of:
- 11 (i) school property while a person under eighteen (18) years
- 12 of age was reasonably expected to be present; or
- 13 (ii) a public park while a person under eighteen (18) years
- 14 of age was reasonably expected to be present.
- 15 (4) The person delivered or financed the delivery of the drug to a
- 16 person under eighteen (18) years of age at least three (3) years
- 17 junior to the person.
- 18 (5) The person manufactured or financed the manufacture of the
- 19 drug.
- 20 (6) The person committed the offense in the physical presence of
- 21 a child less than eighteen (18) years of age, knowing that the child
- 22 was present and might be able to see or hear the offense.
- 23 **(7) The person committed the offense on the property of a:**
- 24 **(A) penal facility; or**
- 25 **(B) juvenile facility (as defined in IC 35-44.1-3-5).**



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 198, 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, line 7, after "oil," insert "**or**".

Page 1, line 7, strike "or a synthetic drug,".

and when so amended that said bill do pass.

(Reference is to SB 198 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 9, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 198, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 198 as printed January 11, 2019.)

MCNAMARA

Committee Vote: Yeas 12, Nays 0

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 198 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-38-1-7.1, AS AMENDED BY P.L.213-2015, SECTION 261, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court may consider the following aggravating circumstances:

(1) The harm, injury, loss, or damage suffered by the victim of an

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offense was:

- (A) significant; and
- (B) greater than the elements necessary to prove the commission of the offense.
- (2) The person has a history of criminal or delinquent behavior.
- (3) The victim of the offense was less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense.
- (4) The person:
 - (A) committed a crime of violence (IC 35-50-1-2); and
 - (B) knowingly committed the offense in the presence or within hearing of an individual who:
 - (i) was less than eighteen (18) years of age at the time the person committed the offense; and
 - (ii) is not the victim of the offense.
- (5) The person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person.
- (6) The person has recently violated the conditions of any probation, parole, pardon, community corrections placement, or pretrial release granted to the person.
- (7) The victim of the offense was:
 - (A) a person with a disability (as defined in IC 27-7-6-12), and the defendant knew or should have known that the victim was a person with a disability; or
 - (B) mentally or physically infirm.
- (8) The person was in a position having care, custody, or control of the victim of the offense.
- (9) The injury to or death of the victim of the offense was the result of shaken baby syndrome (as defined in IC 16-41-40-2).
- (10) The person threatened to harm the victim of the offense or a witness if the victim or witness told anyone about the offense.
- (11) The person:
 - (A) committed trafficking with an inmate under IC 35-44.1-3-5; and
 - (B) is an employee of the penal facility.
- (12) The person committed the offense with bias due to the victim's or the group's real or perceived characteristic, trait, belief, practice, association, or other attribute the court chooses to consider, including but not limited to an attribute**



described in IC 10-13-3-1.

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

- (1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.
- (2) The crime was the result of circumstances unlikely to recur.
- (3) The victim of the crime induced or facilitated the offense.
- (4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.
- (5) The person acted under strong provocation.
- (6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.
- (7) The person is likely to respond affirmatively to probation or short term imprisonment.
- (8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.
- (9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.
- (10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.
- (11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.
- (12) The person was convicted of a crime relating to a controlled substance and the person's arrest or prosecution was facilitated in part because the person:
 - (A) requested emergency medical assistance; or
 - (B) acted in concert with another person who requested emergency medical assistance;
 for an individual who reasonably appeared to be in need of medical assistance due to the use of alcohol or a controlled substance.
- (13) The person has posttraumatic stress disorder, traumatic brain injury, or a postconcussive brain injury.

(c) The criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence.



(d) A court may impose any sentence that is:

(1) authorized by statute; and

(2) permissible under the Constitution of the State of Indiana; regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

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

Renumber all SECTIONS consecutively.

(Reference is to ESB 198 as printed March 15, 2019.)

STEUERWALD

