



February 19, 2016

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**ENGROSSED**  
**SENATE BILL No. 141**

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DIGEST OF SB 141 (Updated February 17, 2016 2:06 pm - DI 84)

**Citations Affected:** IC 5-2; IC 20-18; IC 20-19; IC 20-26; IC 20-33; IC 31-37; IC 32-21; IC 34-6; IC 34-31; IC 35-31.5; IC 35-44.1; IC 35-45; IC 35-47; IC 35-50.

**Synopsis:** Criminal gang organization. Changes the term "criminal gang" to "criminal organization". Provides that a criminal organization is a group organized to commit a felony or the crime of battery. Increases the penalty for assisting a criminal to a Level 6 felony if the person who commits the offense or the person assisted is a member of a criminal organization. Makes criminal organization activity a Level 6 felony, and increases the penalty to a Level 5 felony if the person commits an offense involving the unlawful use of a firearm. Specifies certain additional evidence that the trier-of-fact may consider in determining whether a person has committed specified offenses involving criminal organizations.

**Effective:** July 1, 2016.

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**Young R Michael, Steele, Houchin,**  
**Delph, Buck**

(HOUSE SPONSORS — KIRCHHOFER, DELANEY)

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January 5, 2016, read first time and referred to Committee on Corrections & Criminal Law.  
January 13, 2016, amended, reported favorably — Do Pass.  
January 19, 2016, read second time, amended, ordered engrossed.  
January 20, 2016, engrossed.  
January 21, 2016, read third time, passed. Yeas 44, nays 4.

HOUSE ACTION

February 8, 2016, read first time and referred to Committee on Courts and Criminal Code.  
February 18, 2016, reported — Do Pass.

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ES 141—LS 6357/DI 106





February 19, 2016

Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 141

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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 5-2-10.1-2, AS AMENDED BY P.L.220-2015,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2016]: Sec. 2. (a) The Indiana safe schools fund is established  
4 to do the following:
- 5 (1) Promote school safety through the:
    - 6 (A) use of dogs trained to detect drugs and illegal substances;
    - 7 and
    - 8 (B) purchase of other equipment and materials used to
    - 9 enhance the safety of schools.
  - 10 (2) Combat truancy.
  - 11 (3) Provide matching grants to schools for school safe haven
  - 12 programs.
  - 13 (4) Provide grants for school safety and safety plans.
  - 14 (5) Provide educational outreach and training to school personnel
  - 15 concerning:
    - 16 (A) the identification of;
    - 17 (B) the prevention of; and

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- 1 (C) intervention in;  
 2 bullying.  
 3 (6) Provide educational outreach to school personnel and training  
 4 to school safety specialists and school resource officers  
 5 concerning:  
 6 (A) the identification of;  
 7 (B) the prevention of; and  
 8 (C) intervention in;  
 9 criminal **gang organization** activities.  
 10 (7) Provide grants for school wide programs to improve school  
 11 climate and professional development and training for school  
 12 personnel concerning:  
 13 (A) alternatives to suspension and expulsion; and  
 14 (B) evidence based practices that contribute to a positive  
 15 school environment, including classroom management skills,  
 16 positive behavioral intervention and support, restorative  
 17 practices, and social emotional learning.  
 18 (b) The fund consists of amounts deposited:  
 19 (1) under IC 33-37-9-4; and  
 20 (2) from any other public or private source.  
 21 (c) The institute shall determine grant recipients from the fund with  
 22 a priority on awarding grants in the following order:  
 23 (1) A grant for a safety plan.  
 24 (2) A safe haven grant requested under section 10 of this chapter.  
 25 (3) A safe haven grant requested under section 7 of this chapter.  
 26 (d) Upon recommendation of the council, the institute shall establish  
 27 a method for determining the maximum amount a grant recipient may  
 28 receive under this section.  
 29 SECTION 2. IC 5-2-10.1-11, AS AMENDED BY P.L.190-2013,  
 30 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 2016]: Sec. 11. (a) The school safety specialist training and  
 32 certification program is established.  
 33 (b) The school safety specialist training program shall provide:  
 34 (1) annual training sessions, which may be conducted through  
 35 distance learning or at regional centers; and  
 36 (2) information concerning best practices and available resources;  
 37 for school safety specialists and county school safety commissions.  
 38 (c) The department of education shall do the following:  
 39 (1) Assemble an advisory group of school safety specialists from  
 40 around the state to make recommendations concerning the  
 41 curriculum and standards for school safety specialist training.  
 42 (2) Develop an appropriate curriculum and the standards for the



1 school safety specialist training and certification program. The  
 2 department of education may consult with national school safety  
 3 experts in developing the curriculum and standards. The  
 4 curriculum developed under this subdivision must include  
 5 training in:

- 6 (A) identifying, preventing, and intervening in bullying; and
- 7 (B) identifying, preventing, and intervening in criminal ~~gang~~  
 8 **organization** activity.
- 9 (3) Administer the school safety specialist training program and  
 10 notify the institute of candidates for certification who have  
 11 successfully completed the training program.
- 12 (d) The institute shall do the following:

- 13 (1) Establish a school safety specialist certificate.
- 14 (2) Review the qualifications of each candidate for certification  
 15 named by the department of education.
- 16 (3) Present a certificate to each school safety specialist that the  
 17 institute determines to be eligible for certification.

18 SECTION 3. IC 5-2-10.1-12, AS AMENDED BY P.L.233-2015,  
 19 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2016]: Sec. 12. (a) Each school corporation shall establish a  
 21 safe school committee. The committee may be a subcommittee of the  
 22 committee that develops the strategic and continuous school  
 23 improvement and achievement plan under IC 20-31-5. Each committee  
 24 may include at least one (1) member who is a member of the support  
 25 staff of the school or school corporation career and technical education  
 26 school.

27 (b) The department of education, the school corporation's school  
 28 safety specialist, and, upon request, a school resource officer (as  
 29 described in IC 20-26-18.2-1) shall provide materials and guidelines to  
 30 assist a safe school committee in developing a plan and policy for the  
 31 school that addresses the following issues:

- 32 (1) Unsafe conditions, crime prevention, school violence,  
 33 bullying, criminal ~~gang~~ **organization** activity, and other issues  
 34 that prevent the maintenance of a safe school.
  - 35 (2) Professional development needs for faculty and staff to  
 36 implement methods that decrease problems identified under  
 37 subdivision (1).
  - 38 (3) Methods to encourage:
- 39 (A) involvement by the community and students;
  - 40 (B) development of relationships between students and school  
 41 faculty and staff; and
  - 42 (C) use of problem solving teams.



1 (c) As a part of the plan developed under subsection (b), each safe  
 2 school committee shall provide a copy of the floor plans for each  
 3 building located on the school's property that clearly indicates each  
 4 exit, the interior rooms and hallways, and the location of any hazardous  
 5 materials located in the building to the law enforcement agency and the  
 6 fire department that have jurisdiction over the school.

7 (d) The guidelines developed under subsection (b) must include age  
 8 appropriate, research based information that assists school corporations  
 9 and safe school committees in:

- 10 (1) developing and implementing bullying prevention programs;  
 11 (2) establishing investigation and reporting procedures related to  
 12 bullying; and  
 13 (3) adopting discipline rules that comply with IC 20-33-8-13.5.

14 (e) In addition to developing guidelines under subsection (b), the  
 15 department of education shall establish categories of types of bullying  
 16 incidents to allow school corporations to use the categories in making  
 17 reports under IC 20-20-8-8 and IC 20-34-6-1.

18 SECTION 4. IC 20-18-2-2.8, AS ADDED BY P.L.190-2013,  
 19 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2016]: Sec. 2.8. "Criminal ~~gang~~ **organization**" has the  
 21 meaning set forth in IC 35-45-9-1.

22 SECTION 5. IC 20-19-3-12, AS AMENDED BY P.L.233-2015,  
 23 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2016]: Sec. 12. (a) The department, in collaboration with the  
 25 Indiana criminal justice institute, the department of child services, the  
 26 center for evaluation and education policy at Indiana University, the  
 27 state police department, and any organization that has expertise in  
 28 providing criminal ~~gang~~ **organization** education, prevention, or  
 29 intervention that the department determines to be appropriate, shall:

- 30 (1) identify or develop evidence based model educational  
 31 materials on criminal ~~gang~~ **organization** activity; and  
 32 (2) develop and maintain a model policy to address criminal  
 33 ~~gangs~~ **organizations** and criminal ~~gang~~ **organization** activity in  
 34 schools.

35 (b) Not later than July 1, 2015, the department shall make the model  
 36 policy developed under subsection (a)(2) available to assist schools in  
 37 the development and implementation of a criminal ~~gang~~ **organization**  
 38 policy.

39 (c) The model educational materials on criminal ~~gang~~ **organization**  
 40 activity identified or developed under subsection (a)(1) must include  
 41 information:

- 42 (1) to educate students and parents on the extent to which



- 1 criminal **gang organization** activity exists;  
 2 (2) regarding the negative societal impact that criminal **gangs**  
 3 **organizations** have on the community;  
 4 (3) on methods to discourage participation in criminal **gangs**  
 5 **organizations**; and  
 6 (4) on methods of providing intervention to a child suspected of  
 7 participating in criminal **gang organization** activity.

8 (d) The model criminal **gang organization** policy developed under  
 9 subsection (a)(2) must include:

- 10 (1) a statement prohibiting criminal **gang organization** activity in  
 11 schools;  
 12 (2) a statement prohibiting reprisal or retaliation against a  
 13 individual who reports suspected criminal **gang organization**  
 14 activity;  
 15 (3) definitions of "criminal **gang**" **organization**" as set forth in  
 16 IC 35-45-9-1 and "criminal **gang organization** activity";  
 17 (4) model procedures for:  
 18 (A) reporting suspected criminal **gang organization** activity;  
 19 and  
 20 (B) the prompt investigation of suspected criminal **gang**  
 21 **organization** activity;  
 22 (5) information about the types of support services, including  
 23 family support services, available for a student suspected of  
 24 participating in criminal **gang organization** activity; and  
 25 (6) recommendations concerning criminal **gang organization**  
 26 prevention and intervention services and programs for students  
 27 that maximize community participation and the use of federal  
 28 funding.

29 SECTION 6. IC 20-26-18-2, AS ADDED BY P.L.190-2013,  
 30 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 2016]: Sec. 2. (a) Not later than June 1, 2016, the governing  
 32 body of each school corporation shall establish a written policy to  
 33 address criminal **gangs organizations** and criminal **gang organization**  
 34 activity in schools. The governing body of a school corporation shall  
 35 develop the policy in consultation with:

- 36 (1) parents;  
 37 (2) school employees;  
 38 (3) local law enforcement officials;  
 39 (4) the county prosecuting attorney;  
 40 (5) the county public defender;  
 41 (6) organizations that have expertise in criminal **gang**  
 42 **organization** education, prevention, or intervention;



- 1 (7) a juvenile court judge;  
 2 (8) a school behavioral health or community mental health  
 3 professional; and  
 4 (9) any other person or entity the governing body of the school  
 5 corporation determines to be appropriate.

6 (b) The policy must meet all the requirements for the department's  
 7 model criminal **gang organization** policy set forth in IC 20-19-3-12(d).

8 (c) Not later than September 1, 2016, each school corporation shall  
 9 submit a copy of its criminal **gang organization** policy to the  
 10 department.

11 SECTION 7. IC 20-26-18-3, AS ADDED BY P.L.190-2013,  
 12 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2016]: Sec. 3. A school corporation shall put a copy of the  
 14 school corporation's criminal **gang organization** policy established  
 15 under section 2 of this chapter:

- 16 (1) on its Internet web site;  
 17 (2) in school student handbooks; and  
 18 (3) in any location the school corporation determines to be  
 19 appropriate.

20 SECTION 8. IC 20-26-18-4, AS ADDED BY P.L.190-2013,  
 21 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2016]: Sec. 4. A school corporation shall establish the  
 23 following educational programs in its efforts to address criminal **gang**  
 24 **organization** activity:

- 25 (1) An evidence based educational criminal **gang organization**  
 26 awareness program for students, school employees, and parents.  
 27 (2) A school employee development program to provide training  
 28 to school employees in the implementation of the criminal **gang**  
 29 **organization** policy established under section 2 of this chapter.

30 SECTION 9. IC 20-26-18-5, AS ADDED BY P.L.190-2013,  
 31 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 2016]: Sec. 5. To foster the continuing coordination of  
 33 **criminal gang organization** prevention, intervention, and suppression  
 34 efforts, the governing body of a school corporation may establish a  
 35 program to provide criminal **gang organization** intervention services  
 36 to students. If a school corporation chooses to develop a program under  
 37 this section, the governing body shall establish an advisory committee  
 38 that includes the following members:

- 39 (1) Parents.  
 40 (2) School employees.  
 41 (3) Local law enforcement officials.  
 42 (4) The county prosecuting attorney.





1 (5) The county public defender.

2 (6) A juvenile court judge.

3 (7) A school behavioral health or community mental health  
4 professional.

5 (8) Representatives of organizations that have expertise in  
6 criminal **gang organization** education, prevention, or  
7 intervention.

8 (9) Any other person or entity the governing body determines is  
9 appropriate.

10 SECTION 10. IC 20-26-18-6, AS ADDED BY P.L.190-2013,  
11 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
12 JULY 1, 2016]: Sec. 6. (a) Not later than June 1, 2017, and before June  
13 2 of each year thereafter, each school corporation shall submit to the  
14 department a written report, on forms developed by the department,  
15 outlining the activities undertaken as part of the school corporation's  
16 compliance with this chapter. The report must include school based  
17 data to monitor for disproportionality, with each school reporting the  
18 number of investigations disposed of internally and the number of  
19 cases referred to local law enforcement, disaggregated by race,  
20 ethnicity, age, and gender.

21 (b) Not later than November 1, 2017, and before November 2 of  
22 each year thereafter, the department shall submit a comprehensive  
23 report concerning criminal **gang organization** activity in schools to the  
24 governor and the general assembly. A report submitted to the general  
25 assembly under this subsection must be in an electronic format under  
26 IC 5-14-6. The report must include the following:

27 (1) A summary of the activities reported to the department under  
28 subsection (a).

29 (2) Any recommendations or conclusions made by the department  
30 to assist in the prevention of, education about, and intervention in  
31 criminal **gang organization** activity in schools.

32 SECTION 11. IC 20-33-9-10.5, AS ADDED BY P.L.190-2013,  
33 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
34 JULY 1, 2016]: Sec. 10.5. (a) This section does not apply to a charter  
35 school or an accredited nonpublic school.

36 (b) A school employee shall report any incidence of suspected  
37 criminal **gang organization** activity, criminal **gang organization**  
38 intimidation, or criminal **gang organization** recruitment to the  
39 principal and the school safety specialist.

40 (c) The principal and the school safety specialist may take  
41 appropriate action to maintain a safe and secure school environment,  
42 including providing appropriate intervention services.



1 SECTION 12. IC 31-37-4-3, AS AMENDED BY P.L.168-2014,  
 2 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2016]: Sec. 3. (a) This section applies if a child is arrested or  
 4 taken into custody for allegedly committing an act that would be any of  
 5 the following crimes if committed by an adult:

- 6 (1) Murder (IC 35-42-1-1).
- 7 (2) Attempted murder (IC 35-41-5-1).
- 8 (3) Voluntary manslaughter (IC 35-42-1-3).
- 9 (4) Involuntary manslaughter (IC 35-42-1-4).
- 10 (5) Reckless homicide (IC 35-42-1-5).
- 11 (6) Aggravated battery (IC 35-42-2-1.5).
- 12 (7) Battery (IC 35-42-2-1).
- 13 (8) Kidnapping (IC 35-42-3-2).
- 14 (9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8.
- 15 (10) Sexual misconduct with a minor (IC 35-42-4-9).
- 16 (11) Incest (IC 35-46-1-3).
- 17 (12) Robbery as a Level 2 felony or a Level 3 felony
- 18 (IC 35-42-5-1).
- 19 (13) Burglary as a Level 1 felony, Level 2 felony, Level 3 felony,
- 20 or Level 4 felony (IC 35-43-2-1).
- 21 (14) Assisting a criminal as a Level 5 felony (IC 35-44.1-2-5).
- 22 (15) Escape (IC 35-44.1-3-4) as a Level 4 felony or Level 5
- 23 felony.
- 24 (16) Trafficking with an inmate as a Level 5 felony
- 25 (IC 35-44.1-3-5).
- 26 (17) Causing death when operating a vehicle (IC 9-30-5-5).
- 27 (18) Criminal confinement (IC 35-42-3-3) as a Level 2 or Level
- 28 3 felony.
- 29 (19) Arson (IC 35-43-1-1) as a Level 2 felony, Level 3 felony, or
- 30 Level 4 felony.
- 31 (20) Possession, use, or manufacture of a weapon of mass
- 32 destruction (IC 35-47-12-1).
- 33 (21) Terroristic mischief (IC 35-47-12-3) as a Level 2 or Level 3
- 34 felony.
- 35 (22) Hijacking or disrupting an aircraft (IC 35-47-6-1.6).
- 36 (23) A violation of IC 35-47.5 (controlled explosives) as a Level
- 37 2 felony, Level 3 felony, or Level 4 felony.
- 38 (24) A controlled substances offense under IC 35-48.
- 39 (25) A criminal **gang organization** offense under IC 35-45-9.

40 (b) If a child is taken into custody under this chapter for a crime or  
 41 act listed in subsection (a) or a situation to which IC 12-26-4-1 applies,  
 42 the law enforcement agency that employs the law enforcement officer



1 who takes the child into custody shall notify the chief administrative  
 2 officer of the primary or secondary school, including a public or  
 3 nonpublic school, in which the child is enrolled or, if the child is  
 4 enrolled in a public school, the superintendent of the school district in  
 5 which the child is enrolled:

- 6 (1) that the child was taken into custody; and
- 7 (2) of the reason why the child was taken into custody.

8 (c) The notification under subsection (b) must occur within  
 9 forty-eight (48) hours after the child is taken into custody.

10 (d) A law enforcement agency may not disclose information that is  
 11 confidential under state or federal law to a school or school district  
 12 under this section.

13 (e) A law enforcement agency shall include in its training for law  
 14 enforcement officers training concerning the notification requirements  
 15 under subsection (b).

16 SECTION 13. IC 32-21-6-3 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. As used in this  
 18 chapter, "psychologically affected property" includes real estate or a  
 19 dwelling that is for sale, rent, or lease and to which one (1) or more of  
 20 the following facts or a reasonable suspicion of facts apply:

- 21 (1) That an occupant of the property was afflicted with or died  
 22 from a disease related to the human immunodeficiency virus  
 23 (HIV).
- 24 (2) That an individual died on the property.
- 25 (3) That the property was the site of:
  - 26 (A) a felony under IC 35;
  - 27 (B) criminal ~~gang~~ **organization** (as defined in IC 35-45-9-1)
  - 28 activity;
  - 29 (C) the discharge of a firearm involving a law enforcement
  - 30 officer while engaged in the officer's official duties; or
  - 31 (D) the illegal manufacture or distribution of a controlled
  - 32 substance.

33 SECTION 14. IC 34-6-2-6 IS AMENDED TO READ AS  
 34 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. "Aggrieved person",  
 35 for purposes of IC 34-24-2, means any of the following:

- 36 (1) A person who has an interest in property or in an enterprise  
 37 that:
  - 38 (A) is the object of corrupt business influence (IC 35-45-6-2);
  - 39 or
  - 40 (B) has suffered damages or harm as a result of corrupt
  - 41 business influence (IC 35-45-6-2).
- 42 (2) An individual whose personal safety is threatened by criminal



- 1           **gang organization** (as defined in section 32 of this chapter)  
 2 activity.
- 3           (3) An individual or a business whose property value or business  
 4 activity is negatively affected due to criminal **gang organization**  
 5 (as defined in section 32 of this chapter) activity.
- 6           (4) A political subdivision in which criminal **gang organization**  
 7 (as defined in section 32 of this chapter) activity negatively  
 8 affects the property values or business activity of the political  
 9 subdivision or the personal safety of the political subdivision's  
 10 residents.
- 11           (5) The state.
- 12           SECTION 15. IC 34-6-2-32 IS AMENDED TO READ AS  
 13 FOLLOWS: Sec. 32. "Criminal **gang**", **organization**", for purposes of  
 14 section 6 of this chapter, has the meaning set forth in IC 35-45-9-1.
- 15           SECTION 16. IC 34-31-4-2 IS AMENDED TO READ AS  
 16 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. A parent of a child  
 17 who is a member of a criminal **gang organization** (as defined in  
 18 IC 35-45-9-1), who actively encourages or knowingly benefits from the  
 19 child's involvement in the criminal **gang, organization**, is liable for  
 20 actual damages arising from harm to a person or property intentionally  
 21 caused by the child while participating in a criminal **gang organization**  
 22 activity if:
- 23           (1) the parent has custody of the child;  
 24           (2) the child is living with the parent or guardian; and  
 25           (3) the parent failed to use reasonable efforts to prevent the child's  
 26 involvement in the criminal **gang, organization**.
- 27           SECTION 17. IC 35-31.5-2-27.4, AS ADDED BY P.L.158-2013,  
 28 SECTION 352, IS AMENDED TO READ AS FOLLOWS  
 29 [EFFECTIVE JULY 1, 2016]: Sec. 27.4. "Benefit, promote, or further  
 30 the interests of a criminal **gang" organization**", for purposes of  
 31 IC 35-45-9-3, has the meaning set forth in IC 35-45-9-3(a).
- 32           SECTION 18. IC 35-31.5-2-74, AS ADDED BY P.L.114-2012,  
 33 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2016]: Sec. 74. (a) "Criminal **gang" organization**", for  
 35 purposes of **IC 35-44.1-2-5**, IC 35-45-9, and IC 35-50-2-1.4, has the  
 36 meaning set forth in IC 35-45-9-1.
- 37           (b) "Criminal **gang**", for purposes of IC 35-50-2-15, has the meaning  
 38 set forth in IC 35-50-2-1.4.
- 39           SECTION 19. IC 35-31.5-2-264.5, AS ADDED BY P.L.158-2013,  
 40 SECTION 382, IS AMENDED TO READ AS FOLLOWS  
 41 [EFFECTIVE JULY 1, 2016]: Sec. 264.5. "Purpose of increasing a  
 42 person's own standing or position within a criminal **gang**"



1 **organization"**, for purposes of IC 35-45-9-3, has the meaning set forth  
2 in IC 35-45-9-3(b).

3 SECTION 20. IC 35-44.1-2-5, AS AMENDED BY P.L.158-2013,  
4 SECTION 504, IS AMENDED TO READ AS FOLLOWS  
5 [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) A person not standing in the  
6 relation of parent, child, or spouse to another person who has  
7 committed a crime or is a fugitive from justice who, with intent to  
8 hinder the apprehension or punishment of the other person, harbors,  
9 conceals, or otherwise assists the person commits assisting a criminal,  
10 a Class A misdemeanor. However, the offense is:

11 (1) a Level 6 felony, if:

12 (A) the person assisted has committed a Class B, Class C, or  
13 Class D felony before July 1, 2014, or a Level 3, Level 4,  
14 Level 5, or Level 6 felony after June 30, 2014; **or**

15 (B) **the person or the person assisted is a member of a**  
16 **criminal organization;** and

17 (2) a Level 5 felony, if the person assisted has committed murder  
18 or has committed a Class A felony before July 1, 2014, or a Level  
19 1 or Level 2 felony after June 30, 2014, or if the assistance was  
20 providing a deadly weapon.

21 (b) It is not a defense to a prosecution under this section that the  
22 person assisted:

23 (1) has not been prosecuted for the offense;

24 (2) has not been convicted of the offense; or

25 (3) has been acquitted of the offense by reason of insanity.

26 However, the acquittal of the person assisted for other reasons may be  
27 a defense.

28 SECTION 21. IC 35-45-9-1, AS AMENDED BY P.L.192-2007,  
29 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
30 JULY 1, 2016]: Sec. 1. As used in this chapter, "criminal ~~gang~~  
31 **organization"** means a **formal or informal** group with at least three  
32 (3) members that specifically:

33 (1) either:

34 (A) promotes, sponsors, or assists in; ~~or~~

35 (B) participates in; **or**

36 (C) **has as one (1) of its goals;** or

37 (2) requires as a condition of membership or continued  
38 membership;

39 the commission of a felony, ~~or~~ an act that would be a felony if  
40 committed by an adult, or the offense of battery (IC 35-42-2-1).

41 SECTION 22. IC 35-45-9-3, AS AMENDED BY P.L.158-2013,  
42 SECTION 538, IS AMENDED TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) As used in this section,  
 2 "benefit, promote, or further the interests of a criminal ~~gang~~  
 3 **organization**" means to commit a felony or misdemeanor that would  
 4 cause a reasonable person to believe results in:

- 5 (1) a benefit to a criminal ~~gang~~; **organization or a member of a**  
 6 **criminal organization;**  
 7 (2) the promotion of a criminal ~~gang~~; **organization;** or  
 8 (3) furthering the interests of a criminal ~~gang~~; **organization.**

9 (b) As used in this section, "purpose of increasing a person's own  
 10 standing or position within a criminal ~~gang~~" **organization**" means  
 11 committing a felony or misdemeanor that would cause a reasonable  
 12 person to believe results in increasing the person's standing or position  
 13 within a criminal ~~gang~~; **organization.**

14 (c) A person who knowingly or intentionally commits an act:  
 15 **offense:**

- 16 (1) with the intent to benefit, promote, or further the interests of  
 17 a criminal ~~gang~~; **organization;** or  
 18 (2) for the purpose of increasing the person's own standing or  
 19 position within a criminal ~~gang~~; **organization;**

20 commits criminal ~~gang~~ **organization** activity, a Level 6 felony.  
 21 **However, the offense is a Level 5 felony if the offense involves,**  
 22 **directly or indirectly, the unlawful use of a firearm (including**  
 23 **assisting a criminal (IC 35-44.1-2-5) if the offense committed by the**  
 24 **person assisted involves the unlawful use of a firearm).**

25 (d) In determining whether a person committed an offense under  
 26 this section, the trier of fact may consider a person's association with  
 27 a criminal ~~gang~~; **organization**, including: ~~but not limited to:~~

- 28 (1) an admission of criminal ~~gang~~ **organization** membership by  
 29 the person;  
 30 (2) a statement by:  
 31 (A) a member of the person's family;  
 32 (B) the person's guardian; or  
 33 (C) a reliable member of the criminal ~~gang~~; **organization;**  
 34 stating the person is a member of a criminal ~~gang~~; **organization;**  
 35 (3) the person having tattoos identifying the person as a member  
 36 of a criminal ~~gang~~; **organization;**  
 37 (4) the person having a style of dress that is particular to members  
 38 of a criminal ~~gang~~; **organization;**  
 39 (5) the person associating with one (1) or more members of a  
 40 criminal ~~gang~~; **organization;**  
 41 (6) physical evidence indicating the person is a member of a  
 42 criminal ~~gang~~; **organization;**



- 1 (7) an observation of the person in the company of a known  
 2 criminal ~~gang~~ **organization** member on ~~multiple~~ **at least three**  
 3 **(3)** occasions; ~~and~~  
 4 (8) communications authored by the person indicating criminal  
 5 ~~gang~~ **organization** membership, **promotion of the membership**  
 6 **in a criminal organization, or responsibility for an offense**  
 7 **committed by a criminal organization;**  
 8 **(9) the person's use of the hand signs of a criminal**  
 9 **organization; and**  
 10 **(10) the person's involvement in recruiting criminal**  
 11 **organization members.**

12 SECTION 23. IC 35-45-9-4, AS AMENDED BY P.L.158-2013,  
 13 SECTION 539, IS AMENDED TO READ AS FOLLOWS  
 14 [EFFECTIVE JULY 1, 2016]: Sec. 4. A person who **knowingly or**  
 15 **intentionally** threatens another person because the other person:

- 16 (1) refuses to join a criminal ~~gang;~~ **organization;**  
 17 (2) has withdrawn from a criminal ~~gang;~~ **organization;** or  
 18 (3) wishes to withdraw from a criminal ~~gang;~~ **organization;**

19 commits criminal ~~gang~~ **organization** intimidation, a Level 5 felony.

20 SECTION 24. IC 35-45-9-5, AS AMENDED BY P.L.158-2013,  
 21 SECTION 540, IS AMENDED TO READ AS FOLLOWS  
 22 [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) Except as provided in  
 23 subsection (b), an individual who knowingly or intentionally solicits,  
 24 recruits, entices, or intimidates another individual to join a criminal  
 25 ~~gang~~ **organization** or remain in a criminal ~~gang~~ **organization** commits  
 26 criminal ~~gang~~ **organization** recruitment, a Level 6 felony.

27 (b) The offense under subsection (a) is a Level 5 felony if:

- 28 (1) the solicitation, recruitment, enticement, or intimidation  
 29 occurs within one thousand (1,000) feet of school property; or  
 30 (2) the individual who is solicited, recruited, enticed, or  
 31 intimidated is less than eighteen (18) years of age.

32 SECTION 25. IC 35-45-9-6, AS ADDED BY P.L.192-2007,  
 33 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2016]: Sec. 6. In addition to any sentence or fine imposed on  
 35 a criminal ~~gang~~ **organization** member for committing a felony or  
 36 misdemeanor, the court shall order a criminal ~~gang~~ **organization**  
 37 member convicted of a felony or misdemeanor to make restitution to  
 38 the victim of the crime under IC 35-50-5-3.

39 SECTION 26. IC 35-47-4-5, AS AMENDED BY P.L.168-2014,  
 40 SECTION 88, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 41 JULY 1, 2016]: Sec. 5. (a) As used in this section, "serious violent  
 42 felon" means a person who has been convicted of:



- 1 (1) committing a serious violent felony in:  
 2 (A) Indiana; or  
 3 (B) any other jurisdiction in which the elements of the crime  
 4 for which the conviction was entered are substantially similar  
 5 to the elements of a serious violent felony; or  
 6 (2) attempting to commit or conspiring to commit a serious  
 7 violent felony in:  
 8 (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2;  
 9 or  
 10 (B) any other jurisdiction in which the elements of the crime  
 11 for which the conviction was entered are substantially similar  
 12 to the elements of attempting to commit or conspiring to  
 13 commit a serious violent felony.
- 14 (b) As used in this section, "serious violent felony" means:  
 15 (1) murder (IC 35-42-1-1);  
 16 (2) voluntary manslaughter (IC 35-42-1-3);  
 17 (3) reckless homicide not committed by means of a vehicle  
 18 (IC 35-42-1-5);  
 19 (4) battery (IC 35-42-2-1) as a:  
 20 (A) Class A felony, Class B felony, or Class C felony, for a  
 21 crime committed before July 1, 2014; or  
 22 (B) Level 2 felony, Level 3 felony, Level 4 felony, or Level 5  
 23 felony, for a crime committed after June 30, 2014;  
 24 (5) aggravated battery (IC 35-42-2-1.5);  
 25 (6) kidnapping (IC 35-42-3-2);  
 26 (7) criminal confinement (IC 35-42-3-3);  
 27 (8) rape (IC 35-42-4-1);  
 28 (9) criminal deviate conduct (IC 35-42-4-2) (before its repeal);  
 29 (10) child molesting (IC 35-42-4-3);  
 30 (11) sexual battery (IC 35-42-4-8) as a:  
 31 (A) Class C felony, for a crime committed before July 1, 2014;  
 32 or  
 33 (B) Level 5 felony, for a crime committed after June 30, 2014;  
 34 (12) robbery (IC 35-42-5-1);  
 35 (13) carjacking (IC 35-42-5-2) (before its repeal);  
 36 (14) arson (IC 35-43-1-1(a)) as a:  
 37 (A) Class A felony or Class B felony, for a crime committed  
 38 before July 1, 2014; or  
 39 (B) Level 2 felony, Level 3 felony, or Level 4 felony, for a  
 40 crime committed after June 30, 2014;  
 41 (15) burglary (IC 35-43-2-1) as a:  
 42 (A) Class A felony or Class B felony, for a crime committed





- 1 before July 1, 2014; or  
 2 (B) Level 1 felony, Level 2 felony, Level 3 felony, or Level 4  
 3 felony, for a crime committed after June 30, 2014;  
 4 (16) assisting a criminal (IC 35-44.1-2-5) as a:  
 5 (A) Class C felony, for a crime committed before July 1, 2014;  
 6 or  
 7 (B) Level 5 felony, for a crime committed after June 30, 2014;  
 8 (17) resisting law enforcement (IC 35-44.1-3-1) as a:  
 9 (A) Class B felony or Class C felony, for a crime committed  
 10 before July 1, 2014; or  
 11 (B) Level 2 felony, Level 3 felony, or Level 5 felony, for a  
 12 crime committed after June 30, 2014;  
 13 (18) escape (IC 35-44.1-3-4) as a:  
 14 (A) Class B felony or Class C felony, for a crime committed  
 15 before July 1, 2014; or  
 16 (B) Level 4 felony or Level 5 felony, for a crime committed  
 17 after June 30, 2014;  
 18 (19) trafficking with an inmate (IC 35-44.1-3-5) as a:  
 19 (A) Class C felony, for a crime committed before July 1, 2014;  
 20 or  
 21 (B) Level 5 felony, for a crime committed after June 30, 2014;  
 22 (20) criminal **gang organization** intimidation (IC 35-45-9-4);  
 23 (21) stalking (IC 35-45-10-5) as a:  
 24 (A) Class B felony or Class C felony, for a crime committed  
 25 before July 1, 2014; or  
 26 (B) Level 4 felony or Level 5 felony, for a crime committed  
 27 after June 30, 2014;  
 28 (22) incest (IC 35-46-1-3);  
 29 (23) dealing in or manufacturing cocaine or a narcotic drug  
 30 (IC 35-48-4-1);  
 31 (24) dealing in methamphetamine (IC 35-48-4-1.1);  
 32 (25) dealing in a schedule I, II, or III controlled substance  
 33 (IC 35-48-4-2);  
 34 (26) dealing in a schedule IV controlled substance (IC 35-48-4-3);  
 35 or  
 36 (27) dealing in a schedule V controlled substance (IC 35-48-4-4).  
 37 (c) A serious violent felon who knowingly or intentionally possesses  
 38 a firearm commits unlawful possession of a firearm by a serious violent  
 39 felon, a Level 4 felony.  
 40 SECTION 27. IC 35-50-2-1.4, AS AMENDED BY P.L.192-2007,  
 41 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 2016]: Sec. 1.4. For purposes of section 15 of this chapter,



1 "criminal gang" **organization**" means a group with at least three (3)  
2 members that specifically:

3 (1) either:

4 (A) promotes, sponsors, or assists in; or

5 (B) participates in; or

6 (2) requires as a condition of membership or continued  
7 membership;

8 the commission of a felony or an act that would be a felony if  
9 committed by an adult or the offense of battery (IC 35-42-2-1); **has the**  
10 **meaning set forth in IC 35-45-9-1.**

11 SECTION 28. IC 35-50-2-9, AS AMENDED BY P.L.187-2015,  
12 SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2016]: Sec. 9. (a) The state may seek either a death sentence  
14 or a sentence of life imprisonment without parole for murder by  
15 alleging, on a page separate from the rest of the charging instrument,  
16 the existence of at least one (1) of the aggravating circumstances listed  
17 in subsection (b). In the sentencing hearing after a person is convicted  
18 of murder, the state must prove beyond a reasonable doubt the  
19 existence of at least one (1) of the aggravating circumstances alleged.  
20 However, the state may not proceed against a defendant under this  
21 section if a court determines at a pretrial hearing under IC 35-36-9 that  
22 the defendant is an individual with an intellectual disability.

23 (b) The aggravating circumstances are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (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) Battery committed before July 1, 2014, as a Class D felony  
 32 or as a Class C felony under IC 35-42-2-1 or battery  
 33 committed after June 30, 2014, as a Level 6 felony, a Level 5  
 34 felony, a Level 4 felony, or a Level 3 felony.  
 35 (B) Kidnapping (IC 35-42-3-2).  
 36 (C) Criminal confinement (IC 35-42-3-3).  
 37 (D) A sex crime under IC 35-42-4.  
 38 (14) The victim of the murder was listed by the state or known by  
 39 the defendant to be a witness against the defendant and the  
 40 defendant committed the murder with the intent to prevent the  
 41 person from testifying.  
 42 (15) The defendant committed the murder by intentionally



- 1           discharging a firearm (as defined in IC 35-47-1-5):  
 2           (A) into an inhabited dwelling; or  
 3           (B) from a vehicle.  
 4           (16) The victim of the murder was pregnant and the murder  
 5           resulted in the intentional killing of a fetus that has attained  
 6           viability (as defined in IC 16-18-2-365).  
 7           (17) The defendant knowingly or intentionally:  
 8           (A) committed the murder:  
 9           (i) in a building primarily used for an educational purpose;  
 10           (ii) on school property; and  
 11           (iii) when students are present; or  
 12           (B) committed the murder:  
 13           (i) in a building or other structure owned or rented by a state  
 14           educational institution or any other public or private  
 15           postsecondary educational institution and primarily used for  
 16           an educational purpose; and  
 17           (ii) at a time when classes are in session.  
 18           (18) The murder is committed:  
 19           (A) in a building that is primarily used for religious worship;  
 20           and  
 21           (B) at a time when persons are present for religious worship or  
 22           education.  
 23           (c) The mitigating circumstances that may be considered under this  
 24           section are as follows:  
 25           (1) The defendant has no significant history of prior criminal  
 26           conduct.  
 27           (2) The defendant was under the influence of extreme mental or  
 28           emotional disturbance when the murder was committed.  
 29           (3) The victim was a participant in or consented to the defendant's  
 30           conduct.  
 31           (4) The defendant was an accomplice in a murder committed by  
 32           another person, and the defendant's participation was relatively  
 33           minor.  
 34           (5) The defendant acted under the substantial domination of  
 35           another person.  
 36           (6) The defendant's capacity to appreciate the criminality of the  
 37           defendant's conduct or to conform that conduct to the  
 38           requirements of law was substantially impaired as a result of  
 39           mental disease or defect or of intoxication.  
 40           (7) The defendant was less than eighteen (18) years of age at the  
 41           time the murder was committed.  
 42           (8) Any other circumstances appropriate for consideration.



1 (d) If the defendant was convicted of murder in a jury trial, the jury  
 2 shall reconvene for the sentencing hearing. If the trial was to the court,  
 3 or the judgment was entered on a guilty plea, the court alone shall  
 4 conduct the sentencing hearing. The jury or the court may consider all  
 5 the evidence introduced at the trial stage of the proceedings, together  
 6 with new evidence presented at the sentencing hearing. The court shall  
 7 instruct the jury concerning the statutory penalties for murder and any  
 8 other offenses for which the defendant was convicted, the potential for  
 9 consecutive or concurrent sentencing, and the availability of  
 10 educational credit, good time credit, and clemency. The court shall  
 11 instruct the jury that, in order for the jury to recommend to the court  
 12 that the death penalty or life imprisonment without parole should be  
 13 imposed, the jury must find at least one (1) aggravating circumstance  
 14 beyond a reasonable doubt as described in subsection (l) and shall  
 15 provide a special verdict form for each aggravating circumstance  
 16 alleged. The defendant may present any additional evidence relevant  
 17 to:

18 (1) the aggravating circumstances alleged; or

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

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

25 (1) the death penalty; or

26 (2) life imprisonment without parole;

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

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

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

40 (1) sentence the defendant to death; or

41 (2) impose a term of life imprisonment without parole;

42 only if it makes the findings described in subsection (l).



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

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

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

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

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

38 (k) A person who has been sentenced to death and who has  
 39 completed state post-conviction review proceedings may file a written  
 40 petition with the supreme court seeking to present new evidence  
 41 challenging the person's guilt or the appropriateness of the death  
 42 sentence if the person serves notice on the attorney general. The



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

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

- 14 (1) the state has proved beyond a reasonable doubt that at least  
 15 one (1) of the aggravating circumstances listed in subsection (b)  
 16 exists; and  
 17 (2) any mitigating circumstances that exist are outweighed by the  
 18 aggravating circumstance or circumstances.

19 SECTION 29. IC 35-50-2-15, AS AMENDED BY P.L.158-2013,  
 20 SECTION 666, IS AMENDED TO READ AS FOLLOWS  
 21 [EFFECTIVE JULY 1, 2016]: Sec. 15. (a) This section does not apply  
 22 to an individual who is convicted of a felony offense under  
 23 ~~IC 35-45-9-3.~~ **IC 35-45-9.**

24 (b) The state may seek, on a page separate from the rest of a  
 25 charging instrument, to have a person who allegedly committed a  
 26 felony offense sentenced to an additional fixed term of imprisonment  
 27 if the state can show beyond a reasonable doubt that the person:

- 28 (1) knowingly or intentionally was a member of a criminal ~~gang~~  
 29 **organization** while committing the offense; and  
 30 (2) committed the felony offense:  
 31 (A) at the direction of or in affiliation with a criminal ~~gang~~;  
 32 **organization**; or  
 33 (B) with the intent to benefit, promote, or further the interests  
 34 of a criminal ~~gang~~, **organization**, or for the purposes of  
 35 increasing the person's own standing or position with a  
 36 criminal ~~gang~~, **organization**.

37 (c) If the person is convicted of the felony offense in a jury trial, the  
 38 jury shall reconvene to hear evidence in the enhancement hearing. If  
 39 the trial was to the court, or the judgment was entered on a guilty plea,  
 40 the court alone shall hear evidence in the enhancement hearing.

41 (d) If the jury (if the hearing is by jury) or the court (if the hearing  
 42 is to the court alone) finds that the state has proved beyond a



1 reasonable doubt that the person knowingly or intentionally was a  
 2 member of a criminal ~~gang~~ **organization** while committing the felony  
 3 offense and committed the felony offense at the direction of or in  
 4 affiliation with a criminal ~~gang~~ **organization** as described in  
 5 subsection (b), the court shall:

6 (1) sentence the person to an additional fixed term of  
 7 imprisonment equal to the sentence imposed for the underlying  
 8 felony, if the person is sentenced for only one (1) felony; or

9 (2) sentence the person to an additional fixed term of  
 10 imprisonment equal to the longest sentence imposed for the  
 11 underlying felonies, if the person is being sentenced for more than  
 12 one (1) felony.

13 (e) A sentence imposed under this section shall run consecutively  
 14 to the underlying sentence.

15 (f) A term of imprisonment imposed under this section may not be  
 16 suspended.

17 (g) For purposes of subsection (c), evidence that a person was a  
 18 member of a criminal ~~gang~~ **organization** or committed a felony at the  
 19 direction of or in affiliation with a criminal ~~gang~~ **organization** may  
 20 include the following:

21 (1) An admission of criminal ~~gang~~ **organization** membership by  
 22 the person.

23 (2) A statement by:

24 (A) a member of the person's family;

25 (B) the person's guardian; or

26 (C) a reliable member of the criminal ~~gang~~; **organization**;  
 27 stating the person is a member of a criminal ~~gang~~; **organization**.

28 (3) The person having tattoos identifying the person as a member  
 29 of a criminal ~~gang~~; **organization**.

30 (4) The person having a style of dress that is particular to  
 31 members of a criminal ~~gang~~; **organization**.

32 (5) The person associating with one (1) or more members of a  
 33 criminal ~~gang~~; **organization**.

34 (6) Physical evidence indicating the person is a member of a  
 35 criminal ~~gang~~; **organization**.

36 (7) An observation of the person in the company of a known  
 37 criminal ~~gang~~ **organization** member on ~~multiple~~ **at least three**  
 38 **(3)** occasions.

39 (8) Communications authored by the person indicating criminal  
 40 ~~gang~~ **organization** membership, **promotion of the membership**  
 41 **in a criminal organization, or responsibility for an offense**  
 42 **committed by a criminal organization.**





- 1           **(9) The person's use of the hand signs of a criminal**
- 2           **organization.**
- 3           **(10) The person's involvement in recruiting criminal**
- 4           **organization members.**



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 141, 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 11, line 39, after "of a" reset in roman "felony".
- Page 11, line 39, delete "crime".
- Page 11, line 39, after "be a" reset in roman "felony".
- Page 11, line 40, delete "crime".

and when so amended that said bill do pass.

(Reference is to SB 141 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 141 be amended to read as follows:

- Page 11, line 39, delete "of a felony" and insert "of a felony,".
- Page 11, line 39, strike "or".
- Page 11, line 40, delete "adult." and insert "adult,".
- Page 11, line 40, reset in roman "or the offense of battery (IC 35-42-2-1)".
- Page 12, line 20, reset in roman "Level 6 felony.".
- Page 12, line 20, delete "Class".
- Page 12, line 21, delete "A misdemeanor.".
- Page 12, line 21, delete "Level 6 felony if the".
- Page 12, delete line 22.

(Reference is to SB 141 as printed January 14, 2016.)

YOUNG R MICHAEL



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 141, 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 141 as reprinted January 20, 2016.)

WASHBURN

Committee Vote: Yeas 11, Nays 0

