

SENATE BILL No. 8

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-2-9.

Synopsis: Death penalty aggravator. Makes a murder eligible for the death penalty if the murder involved decapitating or attempting to decapitate the victim while the victim was still alive.

Effective: July 1, 2015.

Steele

January 6, 2015, read first time and referred to Committee on Corrections & Criminal Law.



First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 8

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 35-50-2-9, AS AMENDED BY P.L.168-2014,
2 SECTION 119, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) The state may seek either a
4 death sentence or a sentence of life imprisonment without parole for
5 murder by alleging, on a page separate from the rest of the charging
6 instrument, the existence of at least one (1) of the aggravating
7 circumstances listed in subsection (b). In the sentencing hearing after
8 a person is convicted of murder, the state must prove beyond a
9 reasonable doubt the existence of at least one (1) of the aggravating
10 circumstances alleged. However, the state may not proceed against a
11 defendant under this section if a court determines at a pretrial hearing
12 under IC 35-36-9 that the defendant is an individual with mental
13 retardation.
14 (b) The aggravating circumstances are as follows:
15 (1) The defendant committed the murder by intentionally killing
16 the victim while committing or attempting to commit any of the



- 1 following:
- 2 (A) Arson (IC 35-43-1-1).
- 3 (B) Burglary (IC 35-43-2-1).
- 4 (C) Child molesting (IC 35-42-4-3).
- 5 (D) Criminal deviate conduct (IC 35-42-4-2) (before its
- 6 repeal).
- 7 (E) Kidnapping (IC 35-42-3-2).
- 8 (F) Rape (IC 35-42-4-1).
- 9 (G) Robbery (IC 35-42-5-1).
- 10 (H) Carjacking (IC 35-42-5-2) (before its repeal).
- 11 (I) Criminal gang activity (IC 35-45-9-3).
- 12 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 13 (K) Criminal confinement (IC 35-42-3-3).
- 14 (2) The defendant committed the murder by the unlawful
- 15 detonation of an explosive with intent to injure a person or
- 16 damage property.
- 17 (3) The defendant committed the murder by lying in wait.
- 18 (4) The defendant who committed the murder was hired to kill.
- 19 (5) The defendant committed the murder by hiring another person
- 20 to kill.
- 21 (6) The victim of the murder was a corrections employee,
- 22 probation officer, parole officer, community corrections worker,
- 23 home detention officer, fireman, judge, or law enforcement
- 24 officer, and either:
- 25 (A) the victim was acting in the course of duty; or
- 26 (B) the murder was motivated by an act the victim performed
- 27 while acting in the course of duty.
- 28 (7) The defendant has been convicted of another murder.
- 29 (8) The defendant has committed another murder, at any time,
- 30 regardless of whether the defendant has been convicted of that
- 31 other murder.
- 32 (9) The defendant was:
- 33 (A) under the custody of the department of correction;
- 34 (B) under the custody of a county sheriff;
- 35 (C) on probation after receiving a sentence for the commission
- 36 of a felony; or
- 37 (D) on parole;
- 38 at the time the murder was committed.
- 39 (10) The defendant dismembered the victim.
- 40 (11) The defendant:
- 41 (A) burned, mutilated, or tortured the victim; or
- 42 (B) decapitated or attempted to decapitate the victim;



- 1 while the victim was alive.
 2 (12) The victim of the murder was less than twelve (12) years of
 3 age.
 4 (13) The victim was a victim of any of the following offenses for
 5 which the defendant was convicted:
 6 (A) Battery committed before July 1, 2014, as a Class D felony
 7 or as a Class C felony under IC 35-42-2-1 or battery
 8 committed after June 30, 2014, as a Level 6 felony, a Level 5
 9 felony, a Level 4 felony, or a Level 3 felony.
 10 (B) Kidnapping (IC 35-42-3-2).
 11 (C) Criminal confinement (IC 35-42-3-3).
 12 (D) A sex crime under IC 35-42-4.
 13 (14) The victim of the murder was listed by the state or known by
 14 the defendant to be a witness against the defendant and the
 15 defendant committed the murder with the intent to prevent the
 16 person from testifying.
 17 (15) The defendant committed the murder by intentionally
 18 discharging a firearm (as defined in IC 35-47-1-5):
 19 (A) into an inhabited dwelling; or
 20 (B) from a vehicle.
 21 (16) The victim of the murder was pregnant and the murder
 22 resulted in the intentional killing of a fetus that has attained
 23 viability (as defined in IC 16-18-2-365).
 24 (c) The mitigating circumstances that may be considered under this
 25 section are as follows:
 26 (1) The defendant has no significant history of prior criminal
 27 conduct.
 28 (2) The defendant was under the influence of extreme mental or
 29 emotional disturbance when the murder was committed.
 30 (3) The victim was a participant in or consented to the defendant's
 31 conduct.
 32 (4) The defendant was an accomplice in a murder committed by
 33 another person, and the defendant's participation was relatively
 34 minor.
 35 (5) The defendant acted under the substantial domination of
 36 another person.
 37 (6) The defendant's capacity to appreciate the criminality of the
 38 defendant's conduct or to conform that conduct to the
 39 requirements of law was substantially impaired as a result of
 40 mental disease or defect or of intoxication.
 41 (7) The defendant was less than eighteen (18) years of age at the
 42 time the murder was committed.



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



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.

