

SENATE BILL No. 146

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-32-3-1; IC 33-40; IC 35-36; IC 35-37; IC 35-38; IC 35-50-2.

Synopsis: Death sentence elimination. Abolishes the death penalty. Repeals the law concerning the imposition and execution of death sentences, and makes conforming amendments. Specifies that if a person was sentenced to death and is awaiting execution of the death sentence, the person's death sentence is commuted to a sentence of life imprisonment without parole. Provides that when a defendant is charged with a murder for which the state seeks a sentence of life imprisonment without parole, the defendant may file a petition alleging that the defendant is an individual with an intellectual disability. Provides that if a defendant who is determined to be an individual with an intellectual disability is convicted of murder, the court may sentence the defendant only to a fixed term of imprisonment. Makes technical corrections.

Effective: July 1, 2017.

Randolph Lonnie M

January 4, 2017, read first time and referred to Committee on Judiciary.



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. 146

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 33-32-3-1, AS AMENDED BY P.L.78-2014,
- 2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2017]: Sec. 1. (a) The clerk shall endorse the time of filing on
- 4 each writing required to be filed in the office of the clerk.
- 5 (b) The clerk shall carefully preserve in the office of the clerk all
- 6 records and writings pertaining to the clerk's official duties.
- 7 (c) The clerk shall procure, at the expense of the county, all
- 8 necessary judges' appearance, bar, judgment, and execution dockets,
- 9 order books, and final record books.
- 10 (d) The clerk shall enter in proper record books all orders,
- 11 judgments, and decrees of the court.
- 12 (e) Not more than fifteen (15) days after the cases are finally
- 13 determined, the clerk shall enter in final record books a complete
- 14 record of:
- 15 (1) all cases involving the title to land;
- 16 (2) all criminal cases in which the punishment is ~~death or~~
- 17 imprisonment, except where a nolle prosequi is entered or an



1 acquittal is had; and

2 (3) all other cases, at the request of either party and upon payment
3 of the costs.

4 SECTION 2. IC 33-40-5-4, AS AMENDED BY P.L.187-2015,
5 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2017]: Sec. 4. The commission shall do the following:

7 ~~(1) Make recommendations to the supreme court concerning~~
8 ~~standards for indigent defense services provided for defendants~~
9 ~~against whom the state has sought the death sentence under~~
10 ~~IC 35-50-2-9; including the following:~~

11 ~~(A) Determining indigency and eligibility for legal~~
12 ~~representation.~~

13 ~~(B) Selection and qualifications of attorneys to represent~~
14 ~~indigent defendants at public expense.~~

15 ~~(C) Determining conflicts of interest.~~

16 ~~(D) Investigative, clerical, and other support services~~
17 ~~necessary to provide adequate legal representation.~~

18 ~~(2) (1) Adopt guidelines and standards for indigent defense~~
19 ~~services under which the counties will be eligible for~~
20 ~~reimbursement under IC 33-40-6, including the following:~~

21 ~~(A) Determining indigency and the eligibility for legal~~
22 ~~representation.~~

23 ~~(B) The issuance and enforcement of orders requiring the~~
24 ~~defendant to pay for the costs of court appointed legal~~
25 ~~representation under IC 33-40-3.~~

26 ~~(C) The use and expenditure of funds in the county~~
27 ~~supplemental public defender services fund established under~~
28 ~~IC 33-40-3-1.~~

29 ~~(D) Qualifications of attorneys to represent indigent~~
30 ~~defendants at public expense.~~

31 ~~(E) Compensation rates for salaried, contractual, and assigned~~
32 ~~counsel.~~

33 ~~(F) Minimum and maximum caseloads of public defender~~
34 ~~offices and contract attorneys.~~

35 ~~(3) (2) Make recommendations concerning the delivery of~~
36 ~~indigent defense services in Indiana, including the funding and~~
37 ~~delivery of indigent defense services for juveniles.~~

38 ~~(4) (3) Make an annual report to the governor, the general~~
39 ~~assembly, and the supreme court on the operation of the public~~
40 ~~defense fund.~~

41 The report to the general assembly under subdivision ~~(4) (3)~~ must be
42 in an electronic format under IC 5-14-6.



1 SECTION 3. IC 33-40-6-4 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. ~~(a) A county auditor~~
 3 ~~may submit on a quarterly basis a certified request to the public~~
 4 ~~defender commission for reimbursement from the public defense fund~~
 5 ~~for an amount equal to fifty percent (50%) of the county's expenditures~~
 6 ~~for indigent defense services provided to a defendant against whom the~~
 7 ~~death sentence is sought under IC 35-50-2-9.~~

8 ~~(b) (a)~~ A county auditor may submit on a quarterly basis a certified
 9 request to the public defender commission for reimbursement from the
 10 public defense fund for an amount equal to forty percent (40%) of the
 11 county's expenditures for indigent defense services provided in all
 12 ~~noncapital~~ cases except misdemeanors.

13 ~~(c) (b)~~ A request under this section from a county described in
 14 IC 33-40-7-1(3) may be limited to expenditures for indigent defense
 15 services provided by a particular division of a court.

16 SECTION 4. IC 33-40-6-5 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) Except as
 18 provided under section 6 of this chapter, upon certification by a county
 19 auditor and a determination by the public defender commission that the
 20 request is in compliance with the guidelines and standards set by the
 21 commission, the commission shall quarterly authorize an amount of
 22 reimbursement due the county

23 ~~(1) that is equal to fifty percent (50%) of the county's certified~~
 24 ~~expenditures for indigent defense services provided for a~~
 25 ~~defendant against whom the death sentence is sought under~~
 26 ~~IC 35-50-2-9; and~~

27 ~~(2) that is equal to forty percent (40%) of the county's certified~~
 28 ~~expenditures for defense services provided in ~~noncapital~~ all cases~~
 29 ~~except misdemeanors.~~

30 The division of state court administration shall then certify to the
 31 auditor of state the amount of reimbursement owed to a county under
 32 this chapter.

33 (b) Upon receiving certification from the division of state court
 34 administration, the auditor of state shall issue a warrant to the treasurer
 35 of state for disbursement to the county of the amount certified.

36 SECTION 5. IC 33-40-6-6 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6. ~~The commission~~
 38 ~~shall give priority to certified claims for reimbursement in capital~~
 39 ~~cases. If the balance in the public defense fund is not adequate to fully~~
 40 ~~reimburse all certified claims in ~~noncapital~~ all cases, the commission~~
 41 ~~shall prorate reimbursement of certified claims in ~~noncapital~~ all cases.~~

42 SECTION 6. IC 33-40-7-11 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 11. (a) A county public
 2 defender board shall submit a written request for reimbursement to the
 3 county auditor. The request must set forth the total of the county's
 4 expenditures for indigent defense services to the county auditor and
 5 may be limited in a county described in section 1(3) of this chapter to
 6 expenditures for indigent defense services provided by a particular
 7 division of a court. The county auditor shall review the request and
 8 certify the total of the county's expenditures for indigent defense
 9 services to the Indiana public defender commission.

10 (b) Upon certification by the Indiana public defender commission
 11 that the county's indigent defense services meet the commission's
 12 standards, the auditor of state shall issue a warrant to the treasurer of
 13 state for disbursement to the county of a sum equal to forty percent
 14 (40%) of the county's certified expenditures for indigent defense
 15 services provided in ~~noncapital~~ **all** cases except misdemeanors.

16 (c) If a county's indigent defense services fail to meet the standards
 17 adopted by the Indiana public defender commission, the public
 18 defender commission shall notify the county public defender board and
 19 the county fiscal body of the failure to comply with the Indiana public
 20 defender commission's standards. Unless the county public defender
 21 board corrects the deficiencies to comply with the standards not more
 22 than ninety (90) days after the date of the notice, the county's eligibility
 23 for reimbursement from the public defense fund terminates at the close
 24 of that fiscal year.

25 SECTION 7. IC 35-36-2-5, AS AMENDED BY P.L.117-2015,
 26 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2017]: Sec. 5. (a) Except as provided by subsection (e),
 28 whenever a defendant is found guilty but mentally ill at the time of the
 29 crime or enters a plea to that effect that is accepted by the court, the
 30 court shall sentence the defendant in the same manner as a defendant
 31 found guilty of the offense.

32 (b) Before sentencing the defendant under subsection (a), the court
 33 shall require the defendant to be evaluated by a physician licensed
 34 under IC 25-22.5 who practices psychiatric medicine, a licensed
 35 psychologist, or a community mental health center (as defined in
 36 IC 12-7-2-38). However, the court may waive this requirement if the
 37 defendant was evaluated by a physician licensed under IC 25-22.5 who
 38 practices psychiatric medicine, a licensed psychologist, or a community
 39 mental health center and the evaluation is contained in the record of the
 40 defendant's trial or plea agreement hearing.

41 (c) If a defendant who is found guilty but mentally ill at the time of
 42 the crime is committed to the department of correction, the defendant



1 shall be further evaluated and then treated in such a manner as is
 2 psychiatrically indicated for the defendant's mental illness. Treatment
 3 may be provided by:

- 4 (1) the department of correction; or
 5 (2) the division of mental health and addiction after transfer under
 6 IC 11-10-4.

7 (d) If a defendant who is found guilty but mentally ill at the time of
 8 the crime is placed on probation, the court may, in accordance with
 9 IC 35-38-2-2.3, require that the defendant undergo treatment.

10 (e) As used in this subsection, "individual with an intellectual
 11 disability" means an individual who, before becoming twenty-two (22)
 12 years of age, manifests:

- 13 (1) significantly subaverage intellectual functioning; and
 14 (2) substantial impairment of adaptive behavior;

15 that is documented in a court ordered evaluative report. If a court
 16 determines under IC 35-36-9 that a defendant who is charged with a
 17 murder for which the state seeks a ~~death~~ sentence **of life imprisonment**
 18 **without parole** is an individual with an intellectual disability, the court
 19 shall sentence the defendant under IC 35-50-2-3(a).

20 (f) If a defendant is found guilty but mentally ill, the court shall
 21 transmit any information required by the division of state court
 22 administration to the division of state court administration for
 23 transmission to the NICS (as defined in IC 35-47-2.5-2.5) in
 24 accordance with IC 33-24-6-3.

25 SECTION 8. IC 35-36-9-1 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. This chapter applies
 27 when a defendant is charged with a murder for which the state seeks a
 28 ~~death~~ sentence **of life imprisonment without parole** under
 29 IC 35-50-2-9.

30 SECTION 9. IC 35-36-9-6, AS AMENDED BY P.L.117-2015,
 31 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2017]: Sec. 6. If the court determines that the defendant is an
 33 individual with an intellectual disability under section 5 of this chapter,
 34 the part of the state's charging instrument filed under IC 35-50-2-9(a)
 35 that seeks a ~~death~~ sentence **of life imprisonment without parole**
 36 against the defendant shall be dismissed.

37 SECTION 10. IC 35-37-1-3, AS AMENDED BY P.L.158-2013,
 38 SECTION 392, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) ~~In prosecutions for murder~~
 39 ~~where the death penalty is sought, the defendant may challenge,~~
 40 ~~peremptorily, twenty (20) jurors:~~

41 (b) (a) In prosecutions for murder where the death penalty is not
 42



1 ~~sought, and or~~ Level 1, Level 2, Level 3, Level 4, or Level 5 felonies,
2 the defendant may challenge, peremptorily, ten (10) jurors.

3 ~~(e)~~ **(b)** In prosecutions for all other crimes, the defendant may
4 challenge, peremptorily, five (5) jurors.

5 ~~(d)~~ **(c)** When several defendants are tried together, they must join in
6 their challenges.

7 SECTION 11. IC 35-37-1-5 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) The following are
9 good causes for challenge to any person called as a juror in any
10 criminal trial:

11 (1) That the person was a member of the grand jury that found the
12 indictment.

13 (2) That the person has formed or expressed an opinion as to the
14 guilt or innocence of the defendant. However, such an opinion is
15 subject to subsection (b).

16 ~~(3) If the state is seeking a death sentence, that the person
17 entertains such conscientious opinions as would preclude the
18 person from recommending that the death penalty be imposed.~~

19 ~~(4)~~ **(3)** That the person is related within the fifth degree to the
20 person alleged to be the victim of the offense charged, to the
21 person on whose complaint the prosecution was instituted, or to
22 the defendant.

23 ~~(5)~~ **(4)** That the person has served on a trial jury which was sworn
24 in the same case against the same defendant, and which jury was
25 discharged after hearing the evidence, or rendered a verdict which
26 was set aside.

27 ~~(6)~~ **(5)** That the person served as a juror in a civil case brought
28 against the defendant for the same act.

29 ~~(7)~~ **(6)** That the person has been subpoenaed in good faith as a
30 witness in the case.

31 ~~(8)~~ **(7)** That the person is a mentally incompetent person.

32 ~~(9)~~ **(8)** That the person is an alien.

33 ~~(10)~~ **(9)** That the person has been called to sit on the jury at the
34 person's own solicitation or that of another.

35 ~~(11)~~ **(10)** That the person is biased or prejudiced for or against the
36 defendant.

37 ~~(12)~~ **(11)** That the person does not have the qualifications for a
38 juror prescribed by law.

39 ~~(13)~~ **(12)** That, from defective sight or hearing, ignorance of the
40 English language, or other cause, the person is unable to
41 comprehend the evidence and the instructions of the court.

42 ~~(14)~~ **(13)** That the person has a personal interest in the result of



- 1 the trial.
- 2 ~~(15)~~ (14) If the person is not a member of the regular panel, that
- 3 the person has served on a jury within twelve (12) months
- 4 immediately preceding the trial.
- 5 (b) If a person called as a juror states that the person has formed or
- 6 expressed an opinion as to the guilt or innocence of the defendant, the
- 7 court or the parties shall proceed to examine the juror on oath as to the
- 8 grounds of the juror's opinion. If the juror's opinion appears to have
- 9 been founded upon reading newspaper statements, communications,
- 10 comments, reports, rumors, or hearsay, and if:
- 11 (1) the juror's opinion appears not to have been founded upon:
- 12 (A) conversation with a witness of the transaction;
- 13 (B) reading reports of a witness testimony; or
- 14 (C) hearing a witness testify;
- 15 (2) the juror states on oath that the juror feels able,
- 16 notwithstanding the juror's opinion, to render an impartial verdict
- 17 upon the law and evidence; and
- 18 (3) the court is satisfied that the juror will render an impartial
- 19 verdict;
- 20 the court may admit the juror as competent to serve in the case.
- 21 SECTION 12. IC 35-37-5-6 IS AMENDED TO READ AS
- 22 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6. (a) If a judge of a
- 23 court of record in any other state, which by its laws has made provision
- 24 for commanding a prisoner within that state to attend and testify in this
- 25 state, certifies under the seal of the court that:
- 26 (1) there is a criminal prosecution pending in such court or that a
- 27 grand jury investigation has commenced;
- 28 (2) a person confined by the department of correction (~~other than~~
- 29 ~~a person awaiting execution of a sentence of death~~) is a material
- 30 witness in such prosecution or investigation; and
- 31 (3) ~~his~~ **the prisoner's** presence is required for a specified number
- 32 of days;
- 33 a judge of a court with jurisdiction to try felony cases in the county
- 34 where the person is confined, after notice to the attorney general, shall
- 35 fix a time and place for a hearing and shall order the person having
- 36 custody of the prisoner to produce ~~him~~ **the prisoner** at the hearing.
- 37 (b) If at such hearing the judge determines that the prisoner is a
- 38 material and necessary witness in the requesting state, the judge shall
- 39 issue an order directing that the prisoner attend the court where the
- 40 prosecution or investigation is pending, upon such terms and
- 41 conditions as the judge prescribes, including:
- 42 (1) provision for the return of the prisoner at the conclusion of ~~his~~



1 **the prisoner's** testimony;

2 (2) proper safeguards on ~~his~~ **the prisoner's** custody; and

3 (3) proper financial reimbursement or other payment by the
4 demanding jurisdiction for all expenses incurred in the production
5 and return of the prisoner.

6 (c) The attorney general is authorized to enter into agreements with
7 authorities of the demanding jurisdiction to ~~insure~~ **ensure** proper
8 compliance with the order of the court.

9 (d) If:

10 (1) a criminal action is pending in a court of record of this state by
11 reason of the filing of an indictment or affidavit or by reason of
12 the commencement of a grand jury proceeding or investigation;

13 (2) there is reasonable cause to believe that a person confined in
14 a correctional institution or prison of another state (other than a
15 person awaiting execution of a sentence of death or one confined
16 as mentally ill) possesses information material to such criminal
17 action;

18 (3) the attendance of such person as a witness in such action is
19 desired by a party; and

20 (4) the state in which such person is confined possesses a statute
21 equivalent to this section;

22 a judge of the court in which such action is pending may issue a
23 certificate certifying all such facts and that the attendance of such
24 person as a witness in such court is required for a specified number of
25 days. Such a certificate may be issued upon application of either the
26 state or defendant demonstrating all the facts specified in this section.

27 (e) Upon issuing such a certificate, the court may deliver it to a
28 court of such other state which, pursuant to the laws thereof, is
29 authorized to undertake legal action for the delivery of such prisoners
30 to this state as witnesses.

31 SECTION 13. IC 35-38-4-6, AS AMENDED BY P.L.106-2010,
32 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2017]: Sec. 6. (a) An appeal to the supreme court or to the
34 court of appeals from a judgment of conviction does not stay the
35 execution of the sentence, unless

36 ~~(1) the punishment is to be death; or~~

37 ~~(2) the judgment is for a fine and costs (including fees) only, in~~
38 which case the execution of the sentence may be stayed by an
39 order of the court.

40 (b) If the punishment is to be imprisonment and a fine and costs
41 (including fees), the execution of the sentence as to the fine and costs
42 (including fees) only may be stayed by the court.



1 (c) In the case of an appeal from a judgment in a capital case, the
 2 order of suspension must specify the day until which the execution of
 3 the sentence is stayed.

4 SECTION 14. IC 35-38-6 IS REPEALED [EFFECTIVE JULY 1,
 5 2017]. (Execution of Death Sentence).

6 SECTION 15. IC 35-50-2-3, AS AMENDED BY P.L.117-2015,
 7 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2017]: Sec. 3. (a) A person who commits murder shall be
 9 imprisoned for a fixed term of between forty-five (45) and sixty-five
 10 (65) years, with the advisory sentence being fifty-five (55) years. In
 11 addition, the person may be fined not more than ten thousand dollars
 12 (\$10,000).

13 (b) Notwithstanding subsection (a), a person who was

14 ~~(+)~~ at least ~~eighteen (18)~~ **sixteen (16)** years of age at the time the
 15 murder was committed may be sentenced to

16 ~~(A) death; or~~

17 ~~(B) life imprisonment without parole and~~

18 ~~(2) at least sixteen (16) years of age but less than eighteen (18)~~
 19 ~~years of age at the time the murder was committed may be~~
 20 ~~sentenced to life imprisonment without parole;~~

21 under section 9 of this chapter unless a court determines under
 22 IC 35-36-9 that the person is an individual with an intellectual
 23 disability.

24 SECTION 16. IC 35-50-2-3.5 IS ADDED TO THE INDIANA
 25 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2017]: **Sec. 3.5. If a person:**

27 **(1) was sentenced to death under Indiana law before the**
 28 **effective date of this section; and**

29 **(2) is awaiting execution of the death sentence on the effective**
 30 **date of this section;**

31 **the person's death sentence shall be commuted to a sentence of life**
 32 **imprisonment without parole.**

33 SECTION 17. IC 35-50-2-9, AS AMENDED BY P.L.65-2016,
 34 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2017]: Sec. 9. (a) The state may seek ~~either a death sentence~~
 36 ~~or~~ a sentence of life imprisonment without parole for murder by
 37 alleging, on a page separate from the rest of the charging instrument,
 38 the existence of at least one (1) of the aggravating circumstances listed
 39 in subsection (b). In the sentencing hearing after a person is convicted
 40 of murder, the state must prove beyond a reasonable doubt the
 41 existence of at least one (1) of the aggravating circumstances alleged.
 42 However, the state may not proceed against a defendant under this



1 section if a court determines at a pretrial hearing under IC 35-36-9 that
2 the defendant is an individual with an intellectual disability.

3 (b) The aggravating circumstances are as follows:

4 (1) The defendant committed the murder by intentionally killing
5 the victim while committing or attempting to commit any of the
6 following:

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

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

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

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

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

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

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

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

16 (I) Criminal organization activity (IC 35-45-9-3).

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

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

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

22 (3) The defendant committed the murder by lying in wait.

23 (4) The defendant who committed the murder was hired to kill.

24 (5) The defendant committed the murder by hiring another person
25 to kill.

26 (6) The victim of the murder was a corrections employee,
27 probation officer, parole officer, community corrections worker,
28 home detention officer, ~~fireman~~, **firefighter**, judge, or law
29 enforcement officer, and either:

30 (A) the victim was acting in the course of duty; or

31 (B) the murder was motivated by an act the victim performed
32 while acting in the course of duty.

33 (7) The defendant has been convicted of another murder.

34 (8) The defendant has committed another murder, at any time,
35 regardless of whether the defendant has been convicted of that
36 other murder.

37 (9) The defendant was:

38 (A) under the custody of the department of correction;

39 (B) under the custody of a county sheriff;

40 (C) on probation after receiving a sentence for the commission
41 of a felony; or

42 (D) on parole;



- 1 at the time the murder was committed.
 2 (10) The defendant dismembered the victim.
 3 (11) The defendant:
 4 (A) burned, mutilated, or tortured the victim; or
 5 (B) decapitated or attempted to decapitate the victim;
 6 while the victim was alive.
 7 (12) The victim of the murder was less than twelve (12) years of
 8 age.
 9 (13) The victim was a victim of any of the following offenses for
 10 which the defendant was convicted:
 11 (A) A battery offense included in IC 35-42-2 committed before
 12 July 1, 2014, as a Class D felony or as a Class C felony, or a
 13 battery offense included in IC 35-42-2 committed after June
 14 30, 2014, as a Level 6 felony, a Level 5 felony, a Level 4
 15 felony, or a Level 3 felony.
 16 (B) Kidnapping (IC 35-42-3-2).
 17 (C) Criminal confinement (IC 35-42-3-3).
 18 (D) A sex crime under IC 35-42-4.
 19 (14) The victim of the murder was listed by the state or known by
 20 the defendant to be a witness against the defendant and the
 21 defendant committed the murder with the intent to prevent the
 22 person from testifying.
 23 (15) The defendant committed the murder by intentionally
 24 discharging a firearm (as defined in IC 35-47-1-5):
 25 (A) into an inhabited dwelling; or
 26 (B) from a vehicle.
 27 (16) The victim of the murder was pregnant and the murder
 28 resulted in the intentional killing of a fetus that has attained
 29 viability (as defined in IC 16-18-2-365).
 30 (17) The defendant knowingly or intentionally:
 31 (A) committed the murder:
 32 (i) in a building primarily used for an educational purpose;
 33 (ii) on school property; and
 34 (iii) when students are present; or
 35 (B) committed the murder:
 36 (i) in a building or other structure owned or rented by a state
 37 educational institution or any other public or private
 38 postsecondary educational institution and primarily used for
 39 an educational purpose; and
 40 (ii) at a time when classes are in session.
 41 (18) The murder is committed:
 42 (A) in a building that is primarily used for religious worship;



1 and
 2 (B) at a time when persons are present for religious worship or
 3 education.

4 (c) The mitigating circumstances that may be considered under this
 5 section are as follows:

- 6 (1) The defendant has no significant history of prior criminal
 7 conduct.
 8 (2) The defendant was under the influence of extreme mental or
 9 emotional disturbance when the murder was committed.
 10 (3) The victim was a participant in or consented to the defendant's
 11 conduct.
 12 (4) The defendant was an accomplice in a murder committed by
 13 another person, and the defendant's participation was relatively
 14 minor.
 15 (5) The defendant acted under the substantial domination of
 16 another person.
 17 (6) The defendant's capacity to appreciate the criminality of the
 18 defendant's conduct or to conform that conduct to the
 19 requirements of law was substantially impaired as a result of
 20 mental disease or defect or of intoxication.
 21 (7) The defendant was less than eighteen (18) years of age at the
 22 time the murder was committed.
 23 (8) Any other circumstances appropriate for consideration.

24 (d) If the defendant was convicted of murder in a jury trial, the jury
 25 shall reconvene for the sentencing hearing. If the trial was to the court,
 26 or the judgment was entered on a guilty plea, the court alone shall
 27 conduct the sentencing hearing. The jury or the court may consider all
 28 the evidence introduced at the trial stage of the proceedings, together
 29 with new evidence presented at the sentencing hearing. The court shall
 30 instruct the jury concerning the statutory penalties for murder and any
 31 other offenses for which the defendant was convicted, the potential for
 32 consecutive or concurrent sentencing, and the availability of
 33 educational credit, good time credit, and clemency. The court shall
 34 instruct the jury that, in order for the jury to recommend to the court
 35 that ~~the death penalty~~ or life imprisonment without parole should be
 36 imposed, the jury must find at least one (1) aggravating circumstance
 37 beyond a reasonable doubt as described in subsection ~~(†)~~ **(h)** and shall
 38 provide a special verdict form for each aggravating circumstance
 39 alleged. The defendant may present any additional evidence relevant
 40 to:

- 41 (1) the aggravating circumstances alleged; or
 42 (2) any of the mitigating circumstances listed in subsection (c).



1 (e) For a defendant sentenced after June 30, 2002, except as
 2 provided by IC 35-36-9, if the hearing is by jury, the jury shall
 3 recommend to the court whether ~~the death penalty or~~ life imprisonment
 4 without parole ~~or neither~~; should be imposed. The jury may recommend

5 ~~(1) the death penalty; or~~

6 ~~(2) life imprisonment without parole~~

7 only if it makes the findings described in subsection ~~(1)~~: **(h)**. If the jury
 8 reaches a sentencing recommendation, the court shall sentence the
 9 defendant accordingly. After a court pronounces sentence, a
 10 representative of the victim's family and friends may present a
 11 statement regarding the impact of the crime on family and friends. The
 12 impact statement may be submitted in writing or given orally by the
 13 representative. The statement shall be given in the presence of the
 14 defendant.

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

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

20 ~~(1) sentence the defendant to death; or~~

21 ~~(2) impose a term of life imprisonment without parole~~

22 only if it makes the findings described in subsection ~~(1)~~: **(h)**.

23 ~~(h) If a court sentences a defendant to death, the court shall order~~
 24 ~~the defendant's execution to be carried out not later than one (1) year~~
 25 ~~and one (1) day after the date the defendant was convicted. The~~
 26 ~~supreme court has exclusive jurisdiction to stay the execution of a~~
 27 ~~death sentence. If the supreme court stays the execution of a death~~
 28 ~~sentence, the supreme court shall order a new date for the defendant's~~
 29 ~~execution.~~

30 ~~(i) If a person sentenced to death by a court files a petition for~~
 31 ~~post-conviction relief, the court, not later than ninety (90) days after the~~
 32 ~~date the petition is filed, shall set a date to hold a hearing to consider~~
 33 ~~the petition. If a court does not, within the ninety (90) day period, set~~
 34 ~~the date to hold the hearing to consider the petition, the court's failure~~
 35 ~~to set the hearing date is not a basis for additional post-conviction~~
 36 ~~relief. The attorney general shall answer the petition for post-conviction~~
 37 ~~relief on behalf of the state. At the request of the attorney general, a~~
 38 ~~prosecuting attorney shall assist the attorney general. The court shall~~
 39 ~~enter written findings of fact and conclusions of law concerning the~~
 40 ~~petition not later than ninety (90) days after the date the hearing~~
 41 ~~concludes. However, if the court determines that the petition is without~~
 42 ~~merit, the court may dismiss the petition within ninety (90) days~~



1 without conducting a hearing under this subsection.

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

6 (1) conviction or sentence was in violation of the:

7 (A) Constitution of the State of Indiana; or

8 (B) Constitution of the United States;

9 (2) sentencing court was without jurisdiction to impose a
10 sentence; and

11 (3) sentence:

12 (A) exceeds the maximum sentence authorized by law; or

13 (B) is otherwise erroneous.

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

18 (k) A person who has been sentenced to death and who has
19 completed state post-conviction review proceedings may file a written
20 petition with the supreme court seeking to present new evidence
21 challenging the person's guilt or the appropriateness of the death
22 sentence if the person serves notice on the attorney general. The
23 supreme court shall determine, with or without a hearing, whether the
24 person has presented previously undiscovered evidence that
25 undermines confidence in the conviction or the death sentence. If
26 necessary, the supreme court may remand the case to the trial court for
27 an evidentiary hearing to consider the new evidence and its effect on
28 the person's conviction and death sentence. The supreme court may not
29 make a determination in the person's favor nor make a decision to
30 remand the case to the trial court for an evidentiary hearing without
31 first providing the attorney general with an opportunity to be heard on
32 the matter.

33 (†) (h) Before a sentence may be imposed under this section, the
34 jury, in a proceeding under subsection (e), or the court, in a proceeding
35 under subsection (g), must find that:

36 (1) the state has proved beyond a reasonable doubt that at least
37 one (1) of the aggravating circumstances listed in subsection (b)
38 exists; and

39 (2) any mitigating circumstances that exist are outweighed by the
40 aggravating circumstance or circumstances.

