

# SENATE BILL No. 591

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-6-6; IC 35-50-2-9.

**Synopsis:** Death sentences. Expands the list of aggravating circumstances that allows the state to seek either a sentence of death or life imprisonment in a murder case to include that the victim of the murder had a protective order against the person who committed the murder. Allows evidence of the defendant's criminal history to be presented at the sentencing hearing of a murder case in which the state has sought either a sentence of death or life imprisonment. Allows a person who is invited based upon the wishes of the victim's survivors to be present at the execution of a person who is convicted of murder.

**Effective:** July 1, 1999.

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January 21, 1999, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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## SENATE BILL No. 591



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 35-38-6-6 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. Only the following  
3 persons may be present at the execution:

- 4 (1) The warden and any of his assistants who are necessary to
- 5 assist him in the execution.
- 6 (2) The prison physician.
- 7 (3) One (1) other physician.
- 8 (4) The spiritual advisor of the convicted person.
- 9 (5) The prison chaplain.
- 10 (6) Not more than ten (10) friends or relatives of the convicted
- 11 person who are invited by the convicted person to attend.
- 12 **(7) One (1) person who is invited by the superintendent of the**
- 13 **department of correction after making a good faith effort to**
- 14 **carry out the wishes of the victim's survivors with respect to**
- 15 **the selection of the person.**

16 SECTION 2. IC 35-50-2-9 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) The state may



1 seek either a death sentence or a sentence of life imprisonment without  
 2 parole for murder by alleging, on a page separate from the rest of the  
 3 charging instrument, the existence of at least one (1) of the aggravating  
 4 circumstances listed in subsection (b). In the sentencing hearing after  
 5 a person is convicted of murder, the state must prove beyond a  
 6 reasonable doubt the existence of at least one (1) of the aggravating  
 7 circumstances alleged. However, the state may not proceed against a  
 8 defendant under this section if a court determines at a pretrial hearing  
 9 under IC 35-36-9 that the defendant is a mentally retarded individual.

10 (b) The aggravating circumstances are as follows:

11 (1) The defendant committed the murder by intentionally killing  
 12 the victim while committing or attempting to commit any of the  
 13 following:

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

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

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

17 (D) Criminal deviate conduct (IC 35-42-4-2).

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

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

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

21 (H) Carjacking (IC 35-42-5-2).

22 (I) Criminal gang activity (IC 35-45-9-3).

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

24 (2) The defendant committed the murder by the unlawful  
 25 detonation of an explosive with intent to injure person or damage  
 26 property.

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

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

29 (5) The defendant committed the murder by hiring another person  
 30 to kill.

31 (6) The victim of the murder was a corrections employee,  
 32 probation officer, parole officer, community corrections worker,  
 33 home detention officer, fireman, judge, or law enforcement  
 34 officer, and either:

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

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

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

39 (8) The defendant has committed another murder, at any time,  
 40 regardless of whether the defendant has been convicted of that  
 41 other murder.

42 (9) The defendant was:

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- 1 (A) under the custody of the department of correction;  
 2 (B) under the custody of a county sheriff;  
 3 (C) on probation after receiving a sentence for the commission  
 4 of a felony; or  
 5 (D) on parole;  
 6 at the time the murder was committed.  
 7 (10) The defendant dismembered the victim.  
 8 (11) The defendant burned, mutilated, or tortured the victim while  
 9 the victim was alive.  
 10 (12) The victim of the murder was less than twelve (12) years of  
 11 age.  
 12 (13) The victim was a victim of any of the following offenses for  
 13 which the defendant was convicted:  
 14 (A) Battery as a Class D felony or as a Class C felony under  
 15 IC 35-42-2-1.  
 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 victim of the murder had a protective order against**  
 31 **the defendant.**  
 32 (c) The mitigating circumstances that may be considered under this  
 33 section are as follows:  
 34 (1) The defendant has no significant history of prior criminal  
 35 conduct.  
 36 (2) The defendant was under the influence of extreme mental or  
 37 emotional disturbance when the murder was committed.  
 38 (3) The victim was a participant in or consented to the defendant's  
 39 conduct.  
 40 (4) The defendant was an accomplice in a murder committed by  
 41 another person, and the defendant's participation was relatively  
 42 minor.

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- 1 (5) The defendant acted under the substantial domination of  
 2 another person.
- 3 (6) The defendant's capacity to appreciate the criminality of the  
 4 defendant's conduct or to conform that conduct to the  
 5 requirements of law was substantially impaired as a result of  
 6 mental disease or defect or of intoxication.
- 7 (7) The defendant was less than eighteen (18) years of age at the  
 8 time the murder was committed.
- 9 (8) Any other circumstances appropriate for consideration.
- 10 (d) If the defendant was convicted of murder in a jury trial, the jury  
 11 shall reconvene for the sentencing hearing. If the trial was to the court,  
 12 or the judgment was entered on a guilty plea, the court alone shall  
 13 conduct the sentencing hearing. The jury or the court may consider all  
 14 the evidence introduced at the trial stage of the proceedings, together  
 15 with new evidence presented at the sentencing hearing, **including**  
 16 **evidence of the defendant's criminal history.** The court shall instruct  
 17 the jury concerning the statutory penalties for murder and any other  
 18 offenses for which the defendant was convicted, the potential for  
 19 consecutive or concurrent sentencing, and the availability of good time  
 20 credit and clemency. The defendant may present any additional  
 21 evidence relevant to:
- 22 (1) the aggravating circumstances alleged; or  
 23 (2) any of the mitigating circumstances listed in subsection (c).
- 24 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the  
 25 jury shall recommend to the court whether the death penalty or life  
 26 imprisonment without parole, or neither, should be imposed. The jury  
 27 may recommend:
- 28 (1) the death penalty; or  
 29 (2) life imprisonment without parole;  
 30 only if it makes the findings described in subsection (k). The court shall  
 31 make the final determination of the sentence, after considering the  
 32 jury's recommendation, and the sentence shall be based on the same  
 33 standards that the jury was required to consider. The court is not bound  
 34 by the jury's recommendation. In making the final determination of the  
 35 sentence after receiving the jury's recommendation, the court may  
 36 receive evidence of the crime's impact on members of the victim's  
 37 family.
- 38 (f) If a jury is unable to agree on a sentence recommendation after  
 39 reasonable deliberations, the court shall discharge the jury and proceed  
 40 as if the hearing had been to the court alone.
- 41 (g) If the hearing is to the court alone, except as provided by  
 42 IC 35-36-9, the court shall:

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- 1 (1) sentence the defendant to death; or  
 2 (2) impose a term of life imprisonment without parole;  
 3 only if it makes the findings described in subsection (k).

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

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

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

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

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

41 (k) Before a sentence may be imposed under this section, the jury,  
 42 in a proceeding under subsection (e), or the court, in a proceeding



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1 under subsection (g), must find that:  
2 (1) the state has proved beyond a reasonable doubt that at least  
3 one (1) of the aggravating circumstances listed in subsection (b)  
4 exists; and  
5 (2) any mitigating circumstances that exist are outweighed by the  
6 aggravating circumstance or circumstances.

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