

HOUSE BILL No. 1011

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2; IC 34-24-5; IC 35-38-1-7.1; IC 35-41-1-3.5; IC 35-50-2-9.

Synopsis: Bias crimes. Defines a bias crime as an offense in which the person who committed the offense knowingly or intentionally selected the person injured or damaged or otherwise affected property because of the color, creed, disability, national origin, race, religion, or sex of the injured person or of the owner or occupant of the affected property. Requires law enforcement officers to receive training in identifying, responding to, and reporting bias crimes. Requires law enforcement agencies to collect and report information concerning bias crimes. Requires the Indiana central repository for criminal history information to submit a compiled report of this information to each law enforcement agency. Allows a person that suffers a pecuniary loss as a result of the commission of a bias crime to bring a civil action to recover actual, consequential, and incidental damages. Makes commission of a bias crime an aggravating circumstance that may be considered by a judge when the judge imposes a sentence for the crime.

Effective: July 1, 2000.

Porter

January 10, 2000, read first time and referred to Committee on Judiciary.

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Introduced

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

HOUSE BILL No. 1011

A BILL FOR AN ACT to amend the Indiana Code concerning bias crimes.

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

1 SECTION 1. IC 5-2-1-9 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2000]: Sec. 9. (a) The board shall adopt in
3 accordance with IC 4-22-2 all necessary rules to carry out the
4 provisions of this chapter. Such rules, which shall be adopted only after
5 necessary and proper investigation and inquiry by the board, shall
6 include the establishment of the following:

7 (1) Minimum standards of physical, educational, mental, and
8 moral fitness which shall govern the acceptance of any person for
9 training by any law enforcement training school or academy
10 meeting or exceeding the minimum standards established
11 pursuant to this chapter.

12 (2) Minimum standards for law enforcement training schools
13 administered by towns, cities, counties, the northwest Indiana law
14 enforcement training center, agencies, or departments of the state.

15 (3) Minimum standards for courses of study, attendance
16 requirements, equipment, and facilities for approved town, city,
17 county, and state law enforcement officer, police reserve officer,



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1 and conservation reserve officer training schools.

2 (4) Minimum qualifications for instructors at approved law
3 enforcement training schools.

4 (5) Minimum basic training requirements which law enforcement
5 officers appointed to probationary terms shall complete before
6 being eligible for continued or permanent employment.

7 (6) Minimum basic training requirements which law enforcement
8 officers not appointed for probationary terms but appointed on
9 other than a permanent basis shall complete in order to be eligible
10 for continued employment or permanent appointment.

11 (7) Minimum basic training requirements which law enforcement
12 officers appointed on a permanent basis shall complete in order
13 to be eligible for continued employment.

14 (b) Except as provided in subsection (l), a law enforcement officer
15 appointed after July 5, 1972, and before July 1, 1993, may not enforce
16 the laws or ordinances of the state or any political subdivision unless
17 the officer has, within one (1) year from the date of appointment,
18 successfully completed the minimum basic training requirements
19 established under this chapter by the board. If a person fails to
20 successfully complete the basic training requirements within one (1)
21 year from the date of employment, the officer may not perform any of
22 the duties of a law enforcement officer involving control or direction
23 of members of the public or exercising the power of arrest until the
24 officer has successfully completed the training requirements. This
25 subsection does not apply to any law enforcement officer appointed
26 before July 6, 1972, or after June 30, 1993.

27 (c) Military leave or other authorized leave of absence from law
28 enforcement duty during the first year of employment after July 6,
29 1972, shall toll the running of the first year, which in such cases shall
30 be calculated by the aggregate of the time before and after the leave, for
31 the purposes of this chapter.

32 (d) Except as provided in subsections (e) and (l), a law enforcement
33 officer appointed to a law enforcement department or agency after June
34 30, 1993, may not:

- 35 (1) make an arrest;
36 (2) conduct a search or a seizure of a person or property; or
37 (3) carry a firearm;

38 unless the law enforcement officer successfully completes, at a board
39 certified law enforcement academy or at the northwest Indiana law
40 enforcement training center under section 15.2 of this chapter, the basic
41 training requirements established by the board under this chapter.

42 (e) Before a law enforcement officer appointed after June 30, 1993,

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1 completes the basic training requirements, the law enforcement officer
2 may exercise the police powers described in subsection (d) if the
3 officer successfully completes the pre-basic course established in
4 subsection (f). Successful completion of the pre-basic course authorizes
5 a law enforcement officer to exercise the police powers described in
6 subsection (d) for one (1) year after the date the law enforcement
7 officer is appointed.

8 (f) The board shall adopt rules under IC 4-22-2 to establish a
9 pre-basic course for the purpose of training:

10 (1) law enforcement officers;

11 (2) police reserve officers (as described in IC 36-8-3-20); and

12 (3) conservation reserve officers (as described in IC 14-9-8-27);

13 regarding the subjects of arrest, search and seizure, use of force, and
14 firearm qualification. The pre-basic course must be offered on a
15 periodic basis throughout the year at regional sites statewide. The
16 pre-basic course must consist of forty (40) hours of course work. The
17 board may prepare a pre-basic course on videotape that must be used
18 in conjunction with live instruction. The board shall provide the course
19 material, the instructors, and the facilities at the regional sites
20 throughout the state that are used for the pre-basic course. In addition,
21 the board may certify pre-basic courses that may be conducted by other
22 public or private training entities, including colleges and universities.

23 (g) The board shall adopt rules under IC 4-22-2 to establish a
24 mandatory inservice training program for police officers. After June 30,
25 1993, a law enforcement officer who has satisfactorily completed the
26 basic training and has been appointed to a law enforcement department
27 or agency on either a full-time or part-time basis is not eligible for
28 continued employment unless the officer satisfactorily completes a
29 minimum of sixteen (16) hours each year of inservice training in any
30 subject area included in the law enforcement academy's basic training
31 course or other job related subjects that are approved by the board as
32 determined by the law enforcement department's or agency's needs. In
33 addition, a certified academy staff may develop and make available
34 inservice training programs on a regional or local basis. The board may
35 approve courses offered by other public or private training entities,
36 including colleges and universities, as necessary in order to ensure the
37 availability of an adequate number of inservice training programs. The
38 board may waive an officer's inservice training requirements if the
39 board determines that the officer's reason for lacking the required
40 amount of inservice training hours is due to any of the following:

41 (1) An emergency situation.

42 (2) The unavailability of courses.

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1 (h) The board shall also adopt rules establishing a town marshal
2 basic training program, subject to the following:

3 (1) The program must require fewer hours of instruction and class
4 attendance and fewer courses of study than are required for the
5 mandated basic training program.

6 (2) Certain parts of the course materials may be studied by a
7 candidate at the candidate's home in order to fulfill requirements
8 of the program.

9 (3) Law enforcement officers successfully completing the
10 requirements of the program are eligible for appointment only in
11 towns employing the town marshal system (IC 36-5-7) and having
12 no more than one (1) marshal and two (2) deputies.

13 (4) The limitation imposed by subdivision (3) does not apply to an
14 officer who has successfully completed the mandated basic
15 training program.

16 (5) The time limitations imposed by subsections (b) and (c) for
17 completing the training are also applicable to the town marshal
18 basic training program.

19 (i) The board shall adopt rules under IC 4-22-2 to establish a police
20 chief executive training program. The program must include training
21 in the following areas:

22 (1) Liability.

23 (2) Media relations.

24 (3) Accounting and administration.

25 (4) Discipline.

26 (5) Department policy making.

27 (6) Firearm policies.

28 (7) Department programs.

29 (j) A police chief shall apply for admission to the police chief
30 executive training program within two (2) months of the date the police
31 chief initially takes office. A police chief must successfully complete
32 the police chief executive training program within six (6) months of the
33 date the police chief initially takes office. However, if space in the
34 program is not available at a time that will allow the police chief to
35 complete the program within six (6) months of the date the police chief
36 initially takes office, the police chief must successfully complete the
37 next available program that is offered to the police chief after the police
38 chief initially takes office.

39 (k) A police chief who fails to comply with subsection (j) may not
40 serve as the police chief until the police chief has completed the police
41 chief executive training program. For the purposes of this subsection
42 and subsection (j), "police chief" refers to:



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1 (1) the police chief of any city; and

2 (2) the police chief of any town having a metropolitan police
3 department.

4 A town marshal is not considered to be a police chief for these
5 purposes, but a town marshal may enroll in the police chief executive
6 training program.

7 (l) An investigator in the arson division of the office of the state fire
8 marshal appointed:

9 (1) before January 1, 1994, is not required; or

10 (2) after December 31, 1993, is required;

11 to comply with the basic training standards established under this
12 section.

13 **(m) This subsection applies to the following:**

14 **(1) The minimum basic training program required under**
15 **subsection (d).**

16 **(2) The mandatory inservice training program required under**
17 **subsection (g).**

18 **(3) The town marshal basic training program required under**
19 **subsection (h).**

20 **(4) The police chief executive training program required**
21 **under subsection (k).**

22 **(5) Any other training program for which the board adopts**
23 **standards.**

24 **After December 31, 2000, the standards adopted by the board for**
25 **each program described in this subsection must include**
26 **requirements for mandatory training in identifying, responding to,**
27 **and reporting bias crimes (as defined in IC 35-41-1-3.5).**

28 SECTION 2. IC 5-2-5-14 IS ADDED TO THE INDIANA CODE
29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
30 1, 2000]: **Sec. 14. (a) A law enforcement agency shall collect**
31 **information concerning bias crimes (as defined in IC 35-41-1-3.5).**

32 **(b) At least two (2) times each year, a law enforcement agency**
33 **shall submit information collected under subsection (a) to the**
34 **Indiana central repository for criminal history information.**

35 **(c) At least one (1) time each year, the Indiana central**
36 **repository for criminal history information shall submit a report**
37 **that includes a compilation of information obtained under**
38 **subsection (b) to each law enforcement agency.**

39 **(d) Information collected, submitted, and reported under this**
40 **section must be consistent with guidelines established for the**
41 **acquisition, preservation, and exchange of identification records**
42 **and information by:**



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1 **(1) the Attorney General of the United States; or**

2 **(2) the Federal Bureau of Investigation under 28 U.S.C. 534.**

3 SECTION 3. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS
4 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2000]:

6 **Chapter 5. Civil Action for Victims of Bias Crime**

7 **Sec. 1. This chapter applies only to a cause of action that accrues**
8 **after June 30, 2000.**

9 **Sec. 2. If a person suffers a pecuniary loss because of the**
10 **commission of a bias crime (as defined in IC 35-41-1-3.5) by**
11 **another person, the person may bring a civil action against the**
12 **person who caused the loss.**

13 **Sec. 3. In an action brought under section 2 of this chapter, the**
14 **plaintiff may seek to recover the following:**

15 **(1) Actual, consequential, and incidental damages.**

16 **(2) The costs of the action.**

17 **(3) Reasonable attorney's fees.**

18 **Sec. 4. A person may not recover damages under IC 34-24-3 and**
19 **this chapter for the same offense.**

20 SECTION 4. IC 35-38-1-7.1, AS AMENDED BY P.L.183-1999,
21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2000]: Sec. 7.1. (a) In determining what sentence to impose
23 for a crime, the court shall consider:

24 (1) the risk that the person will commit another crime;

25 (2) the nature and circumstances of the crime committed;

26 (3) the person's:

27 (A) prior criminal record;

28 (B) character; and

29 (C) condition;

30 (4) whether the victim of the crime was less than twelve (12)
31 years of age or at least sixty-five (65) years of age;

32 (5) whether the person violated a protective order issued against
33 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its
34 repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and

35 (6) any oral or written statement made by a victim of the crime.

36 (b) The court may consider the following factors as aggravating
37 circumstances or as favoring imposing consecutive terms of
38 imprisonment:

39 (1) The person has recently violated the conditions of any
40 probation, parole, or pardon granted to the person.

41 (2) The person has a history of criminal or delinquent activity.

42 (3) The person is in need of correctional or rehabilitative

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- 1 treatment that can best be provided by commitment of the person
2 to a penal facility.
- 3 (4) Imposition of a reduced sentence or suspension of the
4 sentence and imposition of probation would depreciate the
5 seriousness of the crime.
- 6 (5) The victim of the crime was less than twelve (12) years of age
7 or at least sixty-five (65) years of age.
- 8 (6) The victim of the crime was mentally or physically infirm.
- 9 (7) The person committed a forcible felony while wearing a
10 garment designed to resist the penetration of a bullet.
- 11 (8) The person committed a sex crime listed in subsection (e) and:
12 (A) the crime created an epidemiologically demonstrated risk
13 of transmission of the human immunodeficiency virus (HIV)
14 and involved the sex organ of one (1) person and the mouth,
15 anus, or sex organ of another person;
16 (B) the person had knowledge that the person was a carrier of
17 HIV; and
18 (C) the person had received risk counseling as described in
19 subsection (g).
- 20 (9) The person committed an offense related to controlled
21 substances listed in subsection (f) if:
22 (A) the offense involved:
23 (i) the delivery by any person to another person; or
24 (ii) the use by any person on another person;
25 of a contaminated sharp (as defined in IC 16-41-16-2) or other
26 paraphernalia that creates an epidemiologically demonstrated
27 risk of transmission of HIV by involving percutaneous contact;
28 (B) the person had knowledge that the person was a carrier of
29 the human immunodeficiency virus (HIV); and
30 (C) the person had received risk counseling as described in
31 subsection (g).
- 32 (10) The person committed the offense in an area of a
33 consolidated or second class city that is designated as a public
34 safety improvement area by the Indiana criminal justice institute
35 under IC 36-8-19.5.
- 36 (11) The injury to or death of the victim of the crime was the
37 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 38 (12) Before the commission of the crime, the person administered
39 to the victim of the crime, without the victim's knowledge, a
40 sedating drug or a drug that had a hypnotic effect on the victim,
41 or the person had knowledge that such a drug had been
42 administered to the victim without the victim's knowledge.

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1 (13) The person:

2 (A) committed trafficking with an inmate under IC 35-44-3-9;

3 and

4 (B) is an employee of the penal facility.

5 **(14) The offense was a bias crime.**

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

9 (1) The crime neither caused nor threatened serious harm to
10 persons or property, or the person did not contemplate that it
11 would do so.

12 (2) The crime was the result of circumstances unlikely to recur.

13 (3) The victim of the crime induced or facilitated the offense.

14 (4) There are substantial grounds tending to excuse or justify the
15 crime, though failing to establish a defense.

16 (5) The person acted under strong provocation.

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

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

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

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

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

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

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

36 (e) For the purposes of this article, the following crimes are
37 considered sex crimes:

38 (1) Rape (IC 35-42-4-1).

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

40 (3) Child molesting (IC 35-42-4-3).

41 (4) Child seduction (IC 35-42-4-7).

42 (5) Prostitution (IC 35-45-4-2).

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1 (6) Patronizing a prostitute (IC 35-45-4-3).

2 (7) Incest (IC 35-46-1-3).

3 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).

4 (f) For the purposes of this article, the following crimes are
5 considered offenses related to controlled substances:

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

7 (2) Dealing in a schedule I, II, or III controlled substance
8 (IC 35-48-4-2).

9 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

10 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).

11 (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

12 (6) Possession of a controlled substance (IC 35-48-4-7).

13 (7) Dealing in paraphernalia (IC 35-48-4-8.5).

14 (8) Possession of paraphernalia (IC 35-48-4-8.3).

15 (9) Offenses relating to registration (IC 35-48-4-14).

16 (g) For the purposes of this section, a person received risk
17 counseling if the person had been:

18 (1) notified in person or in writing that tests have confirmed the
19 presence of antibodies to the human immunodeficiency virus
20 (HIV) in the person's blood; and

21 (2) warned of the behavior that can transmit HIV.

22 SECTION 5. IC 35-41-1-3.5 IS ADDED TO THE INDIANA CODE
23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
24 1, 2000]: **Sec. 3.5. "Bias crime", for purposes of IC 34-24-5, means
25 an offense in which the person who committed the offense
26 knowingly or intentionally:**

27 (1) **selected the person who was injured; or**

28 (2) **damaged or otherwise affected property;**

29 **by the offense because of the color, creed, disability, national
30 origin, race, religion, or sex of the injured person or of the owner
31 or occupant of the affected property.**

32 SECTION 6. IC 35-50-2-9 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 9. (a) The state may
34 seek either a death sentence or a sentence of life imprisonment without
35 parole for murder by alleging, on a page separate from the rest of the
36 charging instrument, the existence of at least one (1) of the aggravating
37 circumstances listed in subsection (b). In the sentencing hearing after
38 a person is convicted of murder, the state must prove beyond a
39 reasonable doubt the existence of at least one (1) of the aggravating
40 circumstances alleged. However, the state may not proceed against a
41 defendant under this section if a court determines at a pretrial hearing
42 under IC 35-36-9 that the defendant is a mentally retarded individual.



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

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

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1 shall reconvene for the sentencing hearing. If the trial was to the court,
 2 or the judgment was entered on a guilty plea, the court alone shall
 3 conduct the sentencing hearing. The jury or the court may consider all
 4 the evidence introduced at the trial stage of the proceedings, together
 5 with new evidence presented at the sentencing hearing. The court shall
 6 instruct the jury concerning the statutory penalties for murder and any
 7 other offenses for which the defendant was convicted, the potential for
 8 consecutive or concurrent sentencing, and the availability of good time
 9 credit and clemency. The defendant may present any additional
 10 evidence relevant to:

11 (1) the aggravating circumstances alleged; or

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

13 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the
 14 jury shall recommend to the court whether the death penalty or life
 15 imprisonment without parole, or neither, should be imposed. The jury
 16 may recommend:

17 (1) the death penalty; or

18 (2) life imprisonment without parole;

19 only if it makes the findings described in subsection (k). The court shall
 20 make the final determination of the sentence, after considering the
 21 jury's recommendation, and the sentence shall be based on the same
 22 standards that the jury was required to consider. The court is not bound
 23 by the jury's recommendation. In making the final determination of the
 24 sentence after receiving the jury's recommendation, the court may
 25 receive evidence of the crime's impact on members of the victim's
 26 family.

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

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

32 (1) sentence the defendant to death; or

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

34 only if it makes the findings described in subsection (k).

35 (h) If a court sentences a defendant to death, the court shall order
 36 the defendant's execution to be carried out not later than one (1) year
 37 and one (1) day after the date the defendant was convicted. The
 38 supreme court has exclusive jurisdiction to stay the execution of a
 39 death sentence. If the supreme court stays the execution of a death
 40 sentence, the supreme court shall order a new date for the defendant's
 41 execution.

42 (i) If a person sentenced to death by a court files a petition for

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1 post-conviction relief, the court, not later than ninety (90) days after the
 2 date the petition is filed, shall set a date to hold a hearing to consider
 3 the petition. If a court does not, within the ninety (90) day period, set
 4 the date to hold the hearing to consider the petition, the court's failure
 5 to set the hearing date is not a basis for additional post-conviction
 6 relief. The attorney general shall answer the petition for post-conviction
 7 relief on behalf of the state. At the request of the attorney general, a
 8 prosecuting attorney shall assist the attorney general. The court shall
 9 enter written findings of fact and conclusions of law concerning the
 10 petition not later than ninety (90) days after the date the hearing
 11 concludes. However, if the court determines that the petition is without
 12 merit, the court may dismiss the petition within ninety (90) days
 13 without conducting a hearing under this subsection.

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

- 18 (1) conviction or sentence was in violation of the:
 - 19 (A) Constitution of the State of Indiana; or
 - 20 (B) Constitution of the United States;
- 21 (2) sentencing court was without jurisdiction to impose a
 22 sentence; and
- 23 (3) sentence:
 - 24 (A) exceeds the maximum sentence authorized by law; or
 - 25 (B) is otherwise erroneous.

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

30 (k) Before a sentence may be imposed under this section, the jury,
 31 in a proceeding under subsection (e), or the court, in a proceeding
 32 under subsection (g), must find that:

- 33 (1) the state has proved beyond a reasonable doubt that at least
 34 one (1) of the aggravating circumstances listed in subsection (b)
 35 exists; and
- 36 (2) any mitigating circumstances that exist are outweighed by the
 37 aggravating circumstance or circumstances.

38 **SECTION 7. [EFFECTIVE JULY 1, 2000] IC 35-38-1-7.1 and**
 39 **IC 35-50-2-9, both as amended by this act, and IC 34-24-5 and**
 40 **IC 35-41-1-3.5, both as added by this act, apply only to offenses**
 41 **committed and civil actions accruing after June 30, 2000.**



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