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# SENATE BILL No. 282

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-9; IC 33-17-2-1; IC 34-39-3-1; IC 35-36; IC 35-37; IC 35-38-4-6; IC 35-50-2; IC 35-38-6.

**Synopsis:** Death penalty. Abolishes the death penalty. 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. Prohibits the state from seeking a sentence of life imprisonment without parole against a defendant if a court determines that the defendant is a mentally retarded individual. Repeals the law concerning execution of the death sentence. Makes conforming amendments.

**Effective:** Upon passage.

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January 15, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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## SENATE BILL No. 282



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 33-9-13-3 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The  
 3 commission shall do the following:  
 4 (1) Make recommendations to the supreme court of Indiana  
 5 concerning standards for indigent defense services provided for  
 6 defendants against whom the state has sought the death sentence  
 7 under IC 35-50-2-9, including the following:  
 8 (A) Determining indigency and eligibility for legal  
 9 representation.  
 10 (B) Selection and qualifications of attorneys to represent  
 11 indigent defendants at public expense.  
 12 (C) Determining conflicts of interest.  
 13 (D) Investigative, clerical, and other support services  
 14 necessary to provide adequate legal representation.  
 15 (2) (1) Adopt guidelines and standards for indigent defense  
 16 services under which the counties will be eligible for  
 17 reimbursement under IC 33-9-14, including but not limited to the



1 following:

2 (A) Determining indigency and the eligibility for legal  
3 representation.

4 (B) The issuance and enforcement of orders requiring the  
5 defendant to pay for the costs of court appointed legal  
6 representation under IC 33-9-11.5.

7 (C) The use and expenditure of funds in the county  
8 supplemental public defender services fund established by  
9 IC 33-9-11.5.

10 (D) Qualifications of attorneys to represent indigent  
11 defendants at public expense.

12 (E) Compensation rates for salaried, contractual, and assigned  
13 counsel.

14 (F) Minimum and maximum caseloads of public defender  
15 offices and contract attorneys.

16 ~~(3)~~ **(2)** Make recommendations concerning the delivery of  
17 indigent defense services in Indiana.

18 ~~(4)~~ **(3)** Make an annual report to the governor, the general  
19 assembly, and the supreme court on the operation of the public  
20 defense fund.

21 SECTION 2. IC 33-9-14-4 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. ~~(a)~~ **A county**  
23 **auditor may submit on a quarterly basis a certified request to the public**  
24 **defender commission for reimbursement from the public defense fund**  
25 **for an amount equal to fifty percent (50%) of the county's expenditures**  
26 **for indigent defense services provided to a defendant against whom the**  
27 **death sentence is sought under IC 35-50-2-9.**

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

33 ~~(c)~~ **(b)** A request under this section from a county described in  
34 IC 33-9-15-1(3) may be limited to expenditures for indigent defense  
35 services provided by a particular division of a court.

36 SECTION 3. IC 33-9-14-5 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as  
38 provided under section 6 of this chapter, upon certification by a county  
39 auditor and a determination by the public defender commission that the  
40 request is in compliance with the guidelines and standards set by the  
41 commission, the commission shall quarterly authorize an amount of  
42 reimbursement due the county that is equal to ~~fifty percent (50%) of the~~

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1 county's certified expenditures for indigent defense services provided  
 2 for a defendant against whom the death sentence is sought under  
 3 IC 35-50-2-9, and that is equal to forty percent (40%) of the county's  
 4 certified expenditures for defense services provided in **non-capital all**  
 5 cases except misdemeanors. The state court administrator shall then  
 6 certify to the auditor of state the amount of reimbursement owed to a  
 7 county under this chapter.

8 (b) Upon receiving certification from the state court administrator,  
 9 the auditor of state shall issue a warrant to the treasurer of state for  
 10 disbursement to the county of the amount certified.

11 SECTION 4. IC 33-9-14-6 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. If the public  
 13 defense fund would be reduced below two hundred fifty thousand  
 14 dollars (\$250,000) by payment in full of all county reimbursement for  
 15 net expenditures **in non-capital cases for defense services** that is  
 16 certified by the state court administrator in any quarter, the commission  
 17 shall suspend payment of reimbursement to counties **in non-capital**  
 18 **cases for defense services** until the next semiannual deposit in the  
 19 public defense fund. At the end of the suspension period, the state court  
 20 administrator shall certify all suspended reimbursement. If the public  
 21 defense fund would be reduced below two hundred fifty thousand  
 22 dollars (\$250,000) by payment in full of all suspended reimbursement  
 23 **in non-capital cases, for defense services**, the amount certified by the  
 24 state court administrator for each county entitled to reimbursement  
 25 shall be prorated.

26 SECTION 5. IC 33-9-15-10.5 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) A county  
 28 public defender board shall submit a written request for reimbursement  
 29 to the county auditor. The request must set forth the total of the  
 30 county's expenditures for indigent defense services to the county  
 31 auditor and may be limited in a county described in section 1(3) of this  
 32 chapter to expenditures for indigent defense services provided by a  
 33 particular division of a court. The county auditor shall review the  
 34 request and certify the total of the county's expenditures for indigent  
 35 defense services to the public defender commission.

36 (b) Upon certification by the public defender commission that the  
 37 county's indigent defense services meet the commission's standards, the  
 38 auditor of state shall issue a warrant to the treasurer of state for  
 39 disbursement to the county of a sum equal to forty percent (40%) of the  
 40 county's certified expenditures for indigent defense services provided  
 41 in **noncapital all** cases except misdemeanors.

42 (c) If a county's indigent defense services fail to meet the standards

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1 adopted by the public defender commission, the commission shall  
 2 notify the county public defender board and the county fiscal body of  
 3 the failure to comply with the commission's standards. Unless the  
 4 county public defender board corrects the deficiencies to comply with  
 5 the standards not more than ninety (90) days after the date of the  
 6 notice, the county's eligibility for reimbursement from the public  
 7 defense fund terminates at the close of that fiscal year.

8 SECTION 6. IC 33-17-2-1 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The clerk  
 10 shall endorse, on each writing required to be filed in ~~his~~ **the clerk's**  
 11 office, the time when it was filed.

12 (b) The clerk shall carefully preserve in ~~his~~ **the clerk's** office all  
 13 records and writings pertaining to ~~his~~ **the clerk's** official duties.

14 (c) The clerk shall procure, at the expense of the county, all  
 15 necessary judges' appearance, bar, judgment, and execution dockets,  
 16 order books, and final record books.

17 (d) The clerk shall attend, in person or by deputy, the circuit court  
 18 of the county, and enter in proper record books all orders, judgments,  
 19 and decrees of that court.

20 (e) Within fifteen (15) days after the cases are finally determined,  
 21 the clerk shall enter in final record books a complete record of:

22 (1) all cases involving the title to land;

23 (2) all criminal cases in which the punishment is ~~death or~~  
 24 imprisonment, except where a nolle prosequi is entered or an  
 25 acquittal is had; and

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

28 SECTION 7. IC 34-39-3-1 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Evidence of  
 30 a final judgment that:

31 (1) is entered after a trial or upon a plea of guilty; and

32 (2) adjudges a person guilty of a crime punishable by ~~death or~~  
 33 imprisonment of more than one (1) year;

34 shall be admissible in a civil action to prove any fact essential to  
 35 sustaining the judgment, and is not excluded from admission as hearsay  
 36 regardless of whether the declarant is available as a witness.

37 (b) The pendency of an appeal may be shown but does not affect the  
 38 admissibility of evidence under this section.

39 SECTION 8. IC 35-36-2-5, AS AMENDED BY P.L.215-2001,  
 40 SECTION 108, IS AMENDED TO READ AS FOLLOWS  
 41 [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as provided by  
 42 subsection (e), whenever a defendant is found guilty but mentally ill at

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1 the time of the crime or enters a plea to that effect that is accepted by  
 2 the court, the court shall sentence the defendant in the same manner as  
 3 a defendant found guilty of the offense.

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

13 (c) If a defendant who is found guilty but mentally ill at the time of  
 14 the crime is committed to the department of correction, the defendant  
 15 shall be further evaluated and then treated in such a manner as is  
 16 psychiatrically indicated for the defendant's mental illness. Treatment  
 17 may be provided by:

18 (1) the department of correction; or

19 (2) the division of mental health and addiction after transfer under  
 20 IC 11-10-4.

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

24 (e) As used in this subsection, "mentally retarded individual" has the  
 25 meaning set forth in IC 35-36-9-2. If a court determines under  
 26 IC 35-36-9 that a defendant who is charged with a murder for which  
 27 the state seeks a ~~death~~ sentence **of life imprisonment without parole**  
 28 is a mentally retarded individual, the court shall sentence the defendant  
 29 under IC 35-50-2-3(a).

30 SECTION 9. IC 35-36-9-1 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. This chapter  
 32 applies when a defendant is charged with a murder for which the state  
 33 seeks a ~~death~~ sentence **of life imprisonment without parole** under  
 34 IC 35-50-2-9.

35 SECTION 10. IC 35-36-9-6 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. If the court  
 37 determines that the defendant is a mentally retarded individual under  
 38 section 5 of this chapter, the part of the state's charging instrument filed  
 39 under IC 35-50-2-9(a) that seeks a ~~death~~ sentence **of life**  
 40 **imprisonment without parole** against the defendant shall be  
 41 dismissed.

42 SECTION 11. IC 35-37-1-3 IS AMENDED TO READ AS



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1 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. ~~(a)~~ In  
 2 prosecutions for murder where the death penalty is sought, the  
 3 defendant may challenge, peremptorily, twenty (20) jurors:

4 ~~(b)~~ (a) In prosecutions for murder, where the death penalty is not  
 5 sought, and Class A, Class B, or Class C felonies, the defendant may  
 6 challenge, peremptorily, ten (10) jurors.

7 ~~(c)~~ (b) In prosecutions for all other crimes, the defendant may  
 8 challenge, peremptorily, five (5) jurors.

9 ~~(d)~~ (c) When several defendants are tried together, they must join in  
 10 their challenges.

11 SECTION 12. IC 35-37-1-5 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The  
 13 following are good causes for challenge to any person called as a juror  
 14 in any criminal trial:

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

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

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

23 ~~(4)~~ (3) That the person is related within the fifth degree to the  
 24 person alleged to be the victim of the offense charged, to the  
 25 person on whose complaint the prosecution was instituted, or to  
 26 the defendant.

27 ~~(5)~~ (4) That the person has served on a trial jury which was sworn  
 28 in the same case against the same defendant, and which jury was  
 29 discharged after hearing the evidence, or rendered a verdict which  
 30 was set aside.

31 ~~(6)~~ (5) That the person served as a juror in a civil case brought  
 32 against the defendant for the same act.

33 ~~(7)~~ (6) That the person has been subpoenaed in good faith as a  
 34 witness in the case.

35 ~~(8)~~ (7) That the person is a mentally incompetent person.

36 ~~(9)~~ (8) That the person is an alien.

37 ~~(10)~~ (9) That the person has been called to sit on the jury at the  
 38 person's own solicitation or that of another.

39 ~~(11)~~ (10) That the person is biased or prejudiced for or against the  
 40 defendant.

41 ~~(12)~~ (11) That the person does not have the qualifications for a  
 42 juror prescribed by law.

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1           ~~(13)~~ **(12)** That, from defective sight or hearing, ignorance of the  
2           English language, or other cause, the person is unable to  
3           comprehend the evidence and the instructions of the court.

4           ~~(14)~~ **(13)** That the person has a personal interest in the result of  
5           the trial.

6           ~~(15)~~ **(14)** If the person is not a member of the regular panel, that  
7           the person has served on a jury within twelve (12) months  
8           immediately preceding the trial.

9           (b) If a person called as a juror states that the person has formed or  
10          expressed an opinion as to the guilt or innocence of the defendant, the  
11          court or the parties shall proceed to examine the juror on oath as to the  
12          grounds of the juror's opinion. If the juror's opinion appears to have  
13          been founded upon reading newspaper statements, communications,  
14          comments, reports, rumors, or hearsay, and if:

15           (1) the juror's opinion appears not to have been founded upon:

16                   (A) conversation with a witness of the transaction;

17                   (B) reading reports of a witness' testimony; or

18                   (C) hearing a witness testify;

19           (2) the juror states on oath that the juror feels able,  
20           notwithstanding the juror's opinion, to render an impartial verdict  
21           upon the law and evidence; and

22           (3) the court is satisfied that the juror will render an impartial  
23           verdict;

24          the court may admit the juror as competent to serve in the case.

25          SECTION 13. IC 35-37-5-6 IS AMENDED TO READ AS  
26          FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) If a judge of  
27          a court of record in any other state, which by its laws has made  
28          provision for commanding a prisoner within that state to attend and  
29          testify in this state, certifies under the seal of the court that:

30           (1) there is a criminal prosecution pending in ~~such the~~ court or  
31           that a grand jury investigation has commenced;

32           (2) a person confined by the department of correction (~~other than~~  
33           ~~a person awaiting execution of a sentence of death~~) is a material  
34           witness in ~~such the~~ prosecution or investigation; and

35           (3) ~~his the prisoner's~~ presence is required for a specified number  
36           of days;

37          a judge of a court with jurisdiction to try felony cases in the county  
38          where the person is confined, after notice to the attorney general, shall  
39          fix a time and place for a hearing and shall order the person having  
40          custody of the prisoner to produce ~~him the prisoner~~ at the hearing.

41          (b) If at ~~such the~~ hearing the judge determines that the prisoner is  
42          a material and necessary witness in the requesting state, the judge shall

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1 issue an order directing that the prisoner attend the court where the  
 2 prosecution or investigation is pending, upon ~~such~~ terms and  
 3 conditions as the judge prescribes, including:

- 4 (1) provision for the return of the prisoner at the conclusion of ~~his~~  
 5 **the prisoner's** testimony;  
 6 (2) proper safeguards on ~~his~~ **the prisoner's** custody; and  
 7 (3) proper financial reimbursement or other payment by the  
 8 demanding jurisdiction for all expenses incurred in the production  
 9 and return of the prisoner.

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

13 (d) If:

- 14 (1) a criminal action is pending in a court of record of this state by  
 15 reason of the filing of an indictment or affidavit or by reason of  
 16 the commencement of a grand jury proceeding or investigation;  
 17 (2) there is reasonable cause to believe that a person confined in  
 18 a correctional institution or prison of another state (other than a  
 19 person awaiting execution of a sentence of death or one confined  
 20 as mentally ill) possesses information material to such criminal  
 21 action;  
 22 (3) the attendance of ~~such the~~ person as a witness in ~~such the~~  
 23 action is desired by a party; and  
 24 (4) the state in which ~~such the~~ person is confined possesses a  
 25 statute equivalent to this section;

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

31 (e) Upon issuing such a certificate, the court may deliver it to a  
 32 court of ~~such the~~ other state which, pursuant to the laws ~~thereof~~, **of the**  
 33 **other state**, is authorized to undertake legal action for the delivery of  
 34 ~~such~~ prisoners to this state as witnesses.

35 SECTION 14. IC 35-38-4-6 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) An appeal to  
 37 the supreme court or to the court of appeals from a judgment of  
 38 conviction does not stay the execution of the sentence, unless

- 39 (1) ~~the punishment is to be death; or~~  
 40 (2) the judgment is for a fine and costs only, in which case the  
 41 execution of the sentence may be stayed by an order of the court.

42 (b) If the punishment is to be imprisonment and a fine and costs, the

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1 execution of the sentence as to the fine and costs only may be stayed by  
2 the court.

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

6 SECTION 15. IC 35-50-2-3, AS AMENDED BY P.L.117-2002,  
7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 UPON PASSAGE]: Sec. 3. (a) A person who commits murder shall be  
9 imprisoned for a fixed term of fifty-five (55) years, with not more than  
10 ten (10) years added for aggravating circumstances or not more than  
11 ten (10) years subtracted for mitigating circumstances; in addition, the  
12 person may be fined not more than ten thousand dollars (\$10,000).

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

14 ~~(1) at least eighteen (18) years of age at the time the murder was~~  
15 ~~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 a mentally retarded individual.

23 SECTION 16. IC 35-50-2-9, AS AMENDED BY P.L.117-2002,  
24 SECTION 2, IS AMENDED AND CORRECTED TO READ AS  
25 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The state  
26 may seek ~~either a death sentence or~~ a sentence of life imprisonment  
27 without parole for murder by alleging, on a page separate from the rest  
28 of the charging instrument, the existence of at least one (1) of the  
29 aggravating circumstances listed in subsection (b). In the sentencing  
30 hearing after a person is convicted of murder, the state must prove  
31 beyond a reasonable doubt the existence of at least one (1) of the  
32 aggravating circumstances alleged. However, the state may not proceed  
33 against a defendant under this section if a court determines at a pretrial  
34 hearing under IC 35-36-9 that the defendant is a mentally retarded  
35 individual.

36 (b) The aggravating circumstances are as follows:

37 (1) The defendant committed the murder by intentionally killing  
38 the victim while committing or attempting to commit any of the  
39 following:

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

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

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

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

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(C) Criminal confinement (IC 35-42-3-3).

(D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

- (A) into an inhabited dwelling; or
- (B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

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

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

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time

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1 credit and clemency. The court shall instruct the jury that, in order for  
 2 the jury to recommend to the court that ~~the death penalty or~~ life  
 3 imprisonment without parole should be imposed, the jury must find at  
 4 least one (1) aggravating circumstance beyond a reasonable doubt as  
 5 described in subsection ~~(k)~~ **(h)** and shall provide a special verdict form  
 6 for each aggravating circumstance alleged. The defendant may present  
 7 any additional evidence relevant to:

8 (1) the aggravating circumstances alleged; or

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

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

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

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

16 only if it makes the findings described in subsection ~~(k)~~ **(h)**. If the jury  
 17 reaches a sentencing recommendation, the court shall sentence the  
 18 defendant accordingly. After a court pronounces sentence, a  
 19 representative of the victim's family and friends may present a  
 20 statement regarding the impact of the crime on family and friends. The  
 21 impact statement may be submitted in writing or given orally by the  
 22 representative. The statement shall be given in the presence of the  
 23 defendant.

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

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

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

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

31 only if it makes the findings described in subsection ~~(k)~~ **(h)**.

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

39 (i) If a person sentenced to death by a court files a petition for  
 40 post-conviction relief, the court, not later than ninety (90) days after the  
 41 date the petition is filed, shall set a date to hold a hearing to consider  
 42 the petition. If a court does not, within the ninety (90) day period, set

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

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

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

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

17 (B) Constitution of the United States;

18 (2) sentencing court was without jurisdiction to impose a  
 19 sentence; and

20 (3) sentence:

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

22 (B) is otherwise erroneous.

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

27 (k) (h) Before a sentence may be imposed under this section, the  
 28 jury, in a proceeding under subsection (e), or the court, in a proceeding  
 29 under subsection (g), must find that:

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

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

35 SECTION 17. IC 35-38-6 IS REPEALED [EFFECTIVE UPON  
 36 PASSAGE].

37 SECTION 18. [EFFECTIVE UPON PASSAGE] (a) **If a person:**

38 (1) **was sentenced to death before the effective date of this**  
 39 **SECTION; and**

40 (2) **is awaiting execution of the death sentence on the effective**  
 41 **date of this SECTION;**

42 **the person's death sentence shall be commuted to a sentence of life**

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1 **imprisonment without parole.**  
2 **(b) This SECTION expires July 1, 2006.**  
3 **SECTION 19. An emergency is declared for this act.**

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