

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1459 be amended to read as follows:

- 1 Page 1, line 10, delete "because" and insert "**because:**
- 2 **(i) the individual was a law enforcement officer; or**
- 3 **(ii)**".
- 4 Page 1, line 17, delete "because" and insert "**because:**
- 5 **(i) the individual was a law enforcement officer; or**
- 6 **(ii)**".
- 7 Page 3, line 19, after "because" insert "**the individual was a law**
- 8 **enforcement officer or because**".
- 9 Page 4, between lines 15 and 16, begin a new paragraph and insert:
- 10 "SECTION 3. IC 35-50-2-9, AS AMENDED BY P.L.1-2006,
- 11 SECTION 550, IS AMENDED TO READ AS FOLLOWS
- 12 [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) **Except as provided in**
- 13 **subsection (m), this section does not apply to a defendant described**
- 14 **in section 9.5 of this chapter.** The state may seek either a death
- 15 sentence or a sentence of life imprisonment without parole for murder
- 16 by alleging, on a page separate from the rest of the charging instrument,
- 17 the existence of at least one (1) of the aggravating circumstances listed
- 18 in subsection (b). In the sentencing hearing after a person is convicted
- 19 of murder, the state must prove beyond a reasonable doubt the
- 20 existence of at least one (1) of the aggravating circumstances alleged.
- 21 However, the state may not proceed against a defendant under this
- 22 section if a court determines at a pretrial hearing under IC 35-36-9 that
- 23 the defendant is a mentally retarded individual.
- 24 (b) The aggravating circumstances are as follows:

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

- 1 IC 35-42-2-1.  
2 (B) Kidnapping (IC 35-42-3-2).  
3 (C) Criminal confinement (IC 35-42-3-3).  
4 (D) A sex crime under IC 35-42-4.
- 5 (14) The victim of the murder was listed by the state or known by  
6 the defendant to be a witness against the defendant and the  
7 defendant committed the murder with the intent to prevent the  
8 person from testifying.
- 9 (15) The defendant committed the murder by intentionally  
10 discharging a firearm (as defined in IC 35-47-1-5):  
11 (A) into an inhabited dwelling; or  
12 (B) from a vehicle.
- 13 (16) The victim of the murder was pregnant and the murder  
14 resulted in the intentional killing of a fetus that has attained  
15 viability (as defined in IC 16-18-2-365).
- 16 (c) The mitigating circumstances that may be considered under this  
17 section are as follows:  
18 (1) The defendant has no significant history of prior criminal  
19 conduct.  
20 (2) The defendant was under the influence of extreme mental or  
21 emotional disturbance when the murder was committed.  
22 (3) The victim was a participant in or consented to the defendant's  
23 conduct.  
24 (4) The defendant was an accomplice in a murder committed by  
25 another person, and the defendant's participation was relatively  
26 minor.  
27 (5) The defendant acted under the substantial domination of  
28 another person.  
29 (6) The defendant's capacity to appreciate the criminality of the  
30 defendant's conduct or to conform that conduct to the  
31 requirements of law was substantially impaired as a result of  
32 mental disease or defect or of intoxication.  
33 (7) The defendant was less than eighteen (18) years of age at the  
34 time the murder was committed.  
35 (8) Any other circumstances appropriate for consideration.
- 36 (d) If the defendant was convicted of murder in a jury trial, the jury  
37 shall reconvene for the sentencing hearing. If the trial was to the court,  
38 or the judgment was entered on a guilty plea, the court alone shall  
39 conduct the sentencing hearing. The jury or the court may consider all  
40 the evidence introduced at the trial stage of the proceedings, together  
41 with new evidence presented at the sentencing hearing. The court shall  
42 instruct the jury concerning the statutory penalties for murder and any  
43 other offenses for which the defendant was convicted, the potential for  
44 consecutive or concurrent sentencing, and the availability of good time  
45 credit and clemency. The court shall instruct the jury that, in order for  
46 the jury to recommend to the court that the death penalty or life

1 imprisonment without parole should be imposed, the jury must find at  
2 least one (1) aggravating circumstance beyond a reasonable doubt as  
3 described in subsection (l) and shall provide a special verdict form for  
4 each aggravating circumstance alleged. The defendant may present any  
5 additional evidence relevant to:

6 (1) the aggravating circumstances alleged; or

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

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

13 (1) the death penalty; or

14 (2) life imprisonment without parole;

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

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

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

28 (1) sentence the defendant to death; or

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

30 only if it makes the findings described in subsection (l).

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

38 (i) If a person sentenced to death by a court files a petition for  
39 postconviction relief, the court, not later than ninety (90) days after the  
40 date the petition is filed, shall set a date to hold a hearing to consider  
41 the petition. If a court does not, within the ninety (90) day period, set  
42 the date to hold the hearing to consider the petition, the court's failure  
43 to set the hearing date is not a basis for additional postconviction relief.  
44 The attorney general shall answer the petition for postconviction relief  
45 on behalf of the state. At the request of the attorney general, a  
46 prosecuting attorney shall assist the attorney general. The court shall

1 enter written findings of fact and conclusions of law concerning the  
 2 petition not later than ninety (90) days after the date the hearing  
 3 concludes. However, if the court determines that the petition is without  
 4 merit, the court may dismiss the petition within ninety (90) days  
 5 without conducting a hearing under this subsection.

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

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

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

12 (B) Constitution of the United States;

13 (2) sentencing court was without jurisdiction to impose a  
 14 sentence; and

15 (3) sentence:

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

17 (B) is otherwise erroneous.

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

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

37 (l) Before a sentence may be imposed under this section, the jury,  
 38 in a proceeding under subsection (e), or the court, in a proceeding  
 39 under subsection (g), must find that:

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

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

45 **(m) The state may proceed against a defendant who is alleged to**  
 46 **have committed murder and at least one (1) aggravating**

1 circumstance described in section 9.5(a) of this chapter and in  
 2 subsection (b). If the state proceeds against a defendant who is  
 3 alleged to have committed murder and at least one (1) aggravating  
 4 circumstance described in section 9.5(a) of this chapter and in  
 5 subsection (b), the procedures described in:

- 6 (1) this section apply to the proceedings concerning the  
 7 aggravating circumstances described in subsection (b); and  
 8 (2) section 9.5 of this chapter apply to the proceedings  
 9 concerning the aggravating circumstances described in  
 10 subsection (b).

11 Procedures described in this section and section 9.5 of this chapter  
 12 shall be combined if they are not inconsistent with each other.

13 SECTION 4. IC 35-50-2-9.5 IS ADDED TO THE INDIANA CODE  
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 15 1, 2007]: **Sec. 9.5. (a) If the prosecuting attorney has reason to  
 16 believe that the defendant committed murder and the victim was  
 17 a law enforcement officer:**

- 18 (1) acting in the line of duty (including an off duty officer who  
 19 identified himself or herself as a law enforcement officer); or  
 20 (2) whose murder was motivated by an act the law  
 21 enforcement officer performed while acting in the course of  
 22 duty;

23 the state shall seek either a death sentence or a sentence of life  
 24 imprisonment without parole for murder by alleging the existence  
 25 of one (1) or both of these aggravating circumstances on a page  
 26 separate from the rest of the charging instrument. However, the  
 27 state may not proceed against a defendant under this section if a  
 28 court determines at a pretrial hearing under IC 35-36-9 that the  
 29 defendant is a mentally retarded individual.

30 (b) If the defendant was convicted of murder in a jury trial, the  
 31 jury shall reconvene for the sentencing hearing. If the trial was to  
 32 the court, or the judgment was entered on a guilty plea, the court  
 33 alone shall conduct the sentencing hearing. The jury or the court  
 34 may consider all the evidence introduced at the trial stage of the  
 35 proceedings, together with new evidence presented at the  
 36 sentencing hearing. The court shall instruct the jury concerning the  
 37 statutory penalties for murder and any other offenses for which the  
 38 defendant was convicted, the potential for consecutive or  
 39 concurrent sentencing, and the availability of good time credit and  
 40 clemency. The court shall instruct the jury that, in order for the  
 41 jury to recommend to the court that the death penalty or life  
 42 imprisonment without parole should be imposed, the jury must  
 43 find beyond a reasonable doubt the existence of at least one (1) of  
 44 the aggravating circumstances described in subsection (a), and  
 45 shall provide a special verdict form for these aggravating  
 46 circumstances. The defendant may present any additional evidence  
 47 relevant to:

- 1           (1) the aggravating circumstances alleged; or  
2           (2) any of the mitigating circumstances listed in subsection (c).  
3       (c) The mitigating circumstances that may be considered under  
4 this section are as follows:  
5           (1) The defendant has no significant history of prior criminal  
6           conduct.  
7           (2) The defendant was under the influence of extreme mental  
8           or emotional disturbance when the murder was committed.  
9           (3) The victim was a participant in or consented to the  
10          defendant's conduct.  
11          (4) The defendant was an accomplice in a murder committed  
12          by another person, and the defendant's participation was  
13          relatively minor.  
14          (5) The defendant acted under the substantial domination of  
15          another person.  
16          (6) The defendant's capacity to appreciate the criminality of  
17          the defendant's conduct or to conform that conduct to the  
18          requirements of law was substantially impaired as a result of  
19          mental disease or defect or of intoxication.  
20          (7) The defendant was less than eighteen (18) years of age at  
21          the time the murder was committed.  
22          (8) Any other circumstances appropriate for consideration.  
23       (d) Except as provided by IC 35-36-9, if the hearing is by jury,  
24 the jury shall recommend to the court whether the death penalty  
25 or life imprisonment without parole should be imposed. The jury  
26 may recommend:  
27           (1) the death penalty; or  
28           (2) life imprisonment without parole;  
29 only if it makes the findings described in subsection (k). If the jury  
30 makes the findings described in subsection (k), the jury may not  
31 recommend that the defendant be sentenced to a term of years. If  
32 the state seeks a sentence of life imprisonment without parole and  
33 does not seek the death penalty, the jury shall recommend a  
34 sentence of life imprisonment without parole if it makes the  
35 findings described in subsection (k). If the jury reaches a  
36 sentencing recommendation, the court shall sentence the defendant  
37 accordingly. After a court pronounces sentence, a representative  
38 of the victim's family and friends may present a statement  
39 regarding the impact of the crime on family and friends. The  
40 impact statement may be submitted in writing or given orally by  
41 the representative. The statement shall be given in the presence of  
42 the defendant.  
43       (e) If a jury is unable to agree on a sentence recommendation  
44 after reasonable deliberations, the court shall discharge the jury  
45 and proceed as if the hearing had been to the court alone.  
46       (f) If the hearing is to the court alone, except as provided by  
47 IC 35-36-9, the court shall:

1           (1) sentence the defendant to death; or  
 2           (2) impose a term of life imprisonment without parole;  
 3 if it makes the findings described in subsection (k). If the court  
 4 makes the findings described in subsection (k), the court may not  
 5 sentence the defendant to a term of years. If the state seeks a  
 6 sentence of life imprisonment without parole and does not seek the  
 7 death penalty, the court shall impose a sentence of life  
 8 imprisonment without parole if it makes the findings described in  
 9 subsection (k).

10          (g) If a court sentences a defendant to death, the court shall  
 11 order the defendant's execution to be carried out not later than one  
 12 (1) year and one (1) day after the date the defendant was convicted.  
 13 The supreme court has exclusive jurisdiction to stay the execution  
 14 of a death sentence. If the supreme court stays the execution of a  
 15 death sentence, the supreme court shall order a new date for the  
 16 defendant's execution.

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

32          (i) A death sentence is subject to automatic review by the  
 33 supreme court. The review, which shall be heard under rules  
 34 adopted by the supreme court, shall be given priority over all other  
 35 cases. The supreme court's review must take into consideration all  
 36 claims that the:

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

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

39           (B) Constitution of the United States;

40           (2) sentencing court was without jurisdiction to impose a  
 41 sentence; and

42           (3) sentence:

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

44           (B) is otherwise erroneous.

45 If the supreme court cannot complete its review by the date set by  
 46 the sentencing court for the defendant's execution under subsection  
 47 (g), the supreme court shall stay the execution of the death sentence

1 and set a new date to carry out the defendant's execution.

2 (j) A person who has been sentenced to death and who has  
 3 completed state postconviction review proceedings may file a  
 4 written petition with the supreme court seeking to present new  
 5 evidence challenging the person's guilt or the appropriateness of  
 6 the death sentence if the person serves notice on the attorney  
 7 general. The supreme court shall determine, with or without a  
 8 hearing, whether the person has presented previously undiscovered  
 9 evidence that undermines confidence in the conviction or the death  
 10 sentence. If necessary, the supreme court may remand the case to  
 11 the trial court for an evidentiary hearing to consider the new  
 12 evidence and its effect on the person's conviction and death  
 13 sentence. The supreme court may not make a determination in the  
 14 person's favor nor make a decision to remand the case to the trial  
 15 court for an evidentiary hearing without first providing the  
 16 attorney general with an opportunity to be heard on the matter.

17 (k) Before a sentence may be imposed under this section, the  
 18 jury, in a proceeding under subsection (d), or the court, in a  
 19 proceeding under subsection (f), must find that the state has  
 20 proved beyond a reasonable doubt that at least one (1) of the  
 21 aggravating circumstances listed in subsection (a) exists.

22 (l) The state may proceed against a defendant who is alleged to  
 23 have committed murder and at least one (1) aggravating  
 24 circumstance described in subsection (a) and in section 9(b) of this  
 25 chapter. If the state proceeds against a defendant who is alleged to  
 26 have committed murder and at least one (1) aggravating  
 27 circumstance described in subsection (a) and in section 9(b) of this  
 28 chapter, the procedures described in:

- 29 (1) this section apply to the proceedings concerning the  
 30 aggravating circumstances described in subsection (a); and  
 31 (2) section 9 of this chapter apply to the proceedings  
 32 concerning the aggravating circumstances described in  
 33 section 9(b) of this chapter.

34 Procedures described in this section and section 9 of this chapter  
 35 shall be combined if they are not inconsistent with each other."

36 Page 4, line 16, after "2007]" insert "(a)".

37 Page 4, after line 19, begin a new paragraph and insert:

1           **"(b) IC 35-50-2-9, as amended by this act, and IC 35-50-2-9.5, as**  
2           **added by this act, apply only to crimes committed after June 30,**  
3           **2007."**

(Reference is to HB 1459 as printed February 20, 2007.)

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Representative Walorski