
SENATE BILL No. 344

DIGEST OF INTRODUCED BILL

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

Synopsis: Elimination of 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. Repeals the law concerning execution of death sentences and makes other conforming amendments.

Effective: Upon passage.

Randolph

January 11, 2011, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 344



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

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

- 1 SECTION 1. IC 33-32-3-1 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The clerk
- 3 shall endorse the time of filing on each writing required to be filed in
- 4 the office of the clerk.
- 5 (b) The clerk shall carefully preserve in the office of the clerk all
- 6 records and writings pertaining to the clerk's official duties.
- 7 (c) The clerk shall procure, at the expense of the county, all
- 8 necessary judges' appearance, bar, judgment, and execution dockets,
- 9 order books, and final record books.
- 10 (d) The clerk shall:
- 11 (1) attend, in person or by deputy, the circuit court of the county;
- 12 and
- 13 (2) enter in proper record books all orders, judgments, and
- 14 decrees of the court.
- 15 (e) Not more than fifteen (15) days after the cases are finally
- 16 determined, the clerk shall enter in final record books a complete
- 17 record of:



- 1 (1) all cases involving the title to land;
- 2 (2) all criminal cases in which the punishment is ~~death or~~
- 3 imprisonment, except where a nolle prosequi is entered or an
- 4 acquittal is had; and
- 5 (3) all other cases, at the request of either party and upon payment
- 6 of the costs.

7 SECTION 2. IC 33-40-5-4 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. The commission
 9 shall do the following:

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

- 14 ~~(A) Determining indigency and eligibility for legal~~
- 15 ~~representation.~~
- 16 ~~(B) Selection and qualifications of attorneys to represent~~
- 17 ~~indigent defendants at public expense.~~
- 18 ~~(C) Determining conflicts of interest.~~
- 19 ~~(D) Investigative, clerical, and other support services~~
- 20 ~~necessary to provide adequate legal representation.~~

21 ~~(2) (1) Adopt guidelines and standards for indigent defense~~
 22 ~~services under which the counties will be eligible for~~
 23 ~~reimbursement under IC 33-40-6, including the following:~~

- 24 ~~(A) Determining indigency and the eligibility for legal~~
- 25 ~~representation.~~
- 26 ~~(B) The issuance and enforcement of orders requiring the~~
- 27 ~~defendant to pay for the costs of court appointed legal~~
- 28 ~~representation under IC 33-40-3.~~
- 29 ~~(C) The use and expenditure of funds in the county~~
- 30 ~~supplemental public defender services fund established under~~
- 31 ~~IC 33-40-3-1.~~
- 32 ~~(D) Qualifications of attorneys to represent indigent~~
- 33 ~~defendants at public expense.~~
- 34 ~~(E) Compensation rates for salaried, contractual, and assigned~~
- 35 ~~counsel.~~
- 36 ~~(F) Minimum and maximum caseloads of public defender~~
- 37 ~~offices and contract attorneys.~~

38 ~~(3) (2) Make recommendations concerning the delivery of~~
 39 ~~indigent defense services in Indiana.~~

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

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

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

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

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

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

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

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

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

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

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

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1 shall prorate reimbursement of certified claims in ~~noncapital~~ all cases.
 2 SECTION 6. IC 33-40-7-11 IS AMENDED TO READ AS
 3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) A county
 4 public defender board shall submit a written request for reimbursement
 5 to the county auditor. The request must set forth the total of the
 6 county's expenditures for indigent defense services to the county
 7 auditor and may be limited in a county described in section 1(3) of this
 8 chapter to expenditures for indigent defense services provided by a
 9 particular division of a court. The county auditor shall review the
 10 request and certify the total of the county's expenditures for indigent
 11 defense services to the Indiana public defender commission.

12 (b) Upon certification by the Indiana public defender commission
 13 that the county's indigent defense services meet the commission's
 14 standards, the auditor of state shall issue a warrant to the treasurer of
 15 state for disbursement to the county of a sum equal to forty percent
 16 (40%) of the county's certified expenditures for indigent defense
 17 services provided in ~~noncapital~~ all cases except misdemeanors.

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

27 SECTION 7. IC 35-36-2-5, AS AMENDED BY P.L.110-2009,
 28 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 UPON PASSAGE]: Sec. 5. (a) Except as provided by subsection (e),
 30 whenever a defendant is found guilty but mentally ill at the time of the
 31 crime or enters a plea to that effect that is accepted by the court, the
 32 court shall sentence the defendant in the same manner as a defendant
 33 found guilty of the offense.

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

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

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

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

12 (e) As used in this subsection, "individual with mental retardation"
13 has the meaning set forth in IC 35-36-9-2. If a court determines under
14 IC 35-36-9 that a defendant who is charged with a murder for which
15 the state seeks a ~~death~~ sentence **of life imprisonment without parole**
16 is an individual with mental retardation, the court shall sentence the
17 defendant under IC 35-50-2-3(a).

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

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

28 SECTION 9. IC 35-36-9-6, AS AMENDED BY P.L.99-2007,
29 SECTION 205, IS AMENDED TO READ AS FOLLOWS
30 [EFFECTIVE UPON PASSAGE]: Sec. 6. If the court determines that
31 the defendant is an individual with mental retardation under section 5
32 of this chapter, the part of the state's charging instrument filed under
33 IC 35-50-2-9(a) that seeks a ~~death~~ sentence **of life imprisonment**
34 **without parole** against the defendant shall be dismissed.

35 SECTION 10. IC 35-37-1-3 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. ~~(a) In~~
37 ~~prosecutions for murder where the death penalty is sought, the~~
38 ~~defendant may challenge, peremptorily, twenty (20) jurors:~~

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

42 ~~(c) (b) In prosecutions for all other crimes, the defendant may~~

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1 challenge, peremptorily, five (5) jurors.

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

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

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

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

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

16 ~~(4)~~ (3) That the person is related within the fifth degree to the
17 person alleged to be the victim of the offense charged, to the
18 person on whose complaint the prosecution was instituted, or to
19 the defendant.

20 ~~(5)~~ (4) That the person has served on a trial jury which was sworn
21 in the same case against the same defendant, and which jury was
22 discharged after hearing the evidence, or rendered a verdict which
23 was set aside.

24 ~~(6)~~ (5) That the person served as a juror in a civil case brought
25 against the defendant for the same act.

26 ~~(7)~~ (6) That the person has been subpoenaed in good faith as a
27 witness in the case.

28 ~~(8)~~ (7) That the person is a mentally incompetent person.

29 ~~(9)~~ (8) That the person is an alien.

30 ~~(10)~~ (9) That the person has been called to sit on the jury at the
31 person's own solicitation or that of another.

32 ~~(11)~~ (10) That the person is biased or prejudiced for or against the
33 defendant.

34 ~~(12)~~ (11) That the person does not have the qualifications for a
35 juror prescribed by law.

36 ~~(13)~~ (12) That, from defective sight or hearing, ignorance of the
37 English language, or other cause, the person is unable to
38 comprehend the evidence and the instructions of the court.

39 ~~(14)~~ (13) That the person has a personal interest in the result of
40 the trial.

41 ~~(15)~~ (14) If the person is not a member of the regular panel, that
42 the person has served on a jury within twelve (12) months

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1 immediately preceding the trial.

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

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

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

10 (B) reading reports of a witness testimony; or

11 (C) hearing a witness testify;

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

15 (3) the court is satisfied that the juror will render an impartial
16 verdict;

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

18 SECTION 12. IC 35-37-5-6 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) If a judge of
20 a court of record in any other state, which by its laws has made
21 provision for commanding a prisoner within that state to attend and
22 testify in this state, certifies under the seal of the court that:

23 (1) there is a criminal prosecution pending in such court or that a
24 grand jury investigation has commenced;

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

28 (3) ~~his~~ **the prisoner's** presence is required for a specified number
29 of days;

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

34 (b) If at such hearing the judge determines that the prisoner is a
35 material and necessary witness in the requesting state, the judge shall
36 issue an order directing that the prisoner attend the court where the
37 prosecution or investigation is pending, upon such terms and
38 conditions as the judge prescribes, including:

39 (1) provision for the return of the prisoner at the conclusion of ~~his~~
40 **the prisoner's** testimony;

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

42 (3) proper financial reimbursement or other payment by the

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1 demanding jurisdiction for all expenses incurred in the production
2 and return of the prisoner.

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

6 (d) If:

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

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

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

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

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

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

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

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

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

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

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

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1 SECTION 14. IC 35-50-2-3, AS AMENDED BY P.L.99-2007,
2 SECTION 212, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A person who commits
4 murder shall be imprisoned for a fixed term of between forty-five (45)
5 and sixty-five (65) years, with the advisory sentence being fifty-five
6 (55) years. In addition, the person may be fined not more than ten
7 thousand dollars (\$10,000).

8 (b) Notwithstanding subsection (a), a person who was
9 ~~(1) at least eighteen (18)~~ **sixteen (16)** years of age at the time the
10 murder was committed may be sentenced to

11 ~~(A) death; or~~

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

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

16 under section 9 of this chapter unless a court determines under
17 IC 35-36-9 that the person is an individual with mental retardation.

18 SECTION 15. IC 35-50-2-9, AS AMENDED BY P.L.99-2007,
19 SECTION 213, IS AMENDED TO READ AS FOLLOWS
20 [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The state may seek ~~either~~
21 ~~a death sentence or~~ a sentence of life imprisonment without parole for
22 murder by alleging, on a page separate from the rest of the charging
23 instrument, the existence of at least one (1) of the aggravating
24 circumstances listed in subsection (b). In the sentencing hearing after
25 a person is convicted of murder, the state must prove beyond a
26 reasonable doubt the existence of at least one (1) of the aggravating
27 circumstances alleged. However, the state may not proceed against a
28 defendant under this section if a court determines at a pretrial hearing
29 under IC 35-36-9 that the defendant is an individual with mental
30 retardation.

31 (b) The aggravating circumstances are as follows:

32 (1) The defendant committed the murder by intentionally killing
33 the victim while committing or attempting to commit any of the
34 following:

- 35 (A) Arson (IC 35-43-1-1).
- 36 (B) Burglary (IC 35-43-2-1).
- 37 (C) Child molesting (IC 35-42-4-3).
- 38 (D) Criminal deviate conduct (IC 35-42-4-2).
- 39 (E) Kidnapping (IC 35-42-3-2).
- 40 (F) Rape (IC 35-42-4-1).
- 41 (G) Robbery (IC 35-42-5-1).
- 42 (H) Carjacking (IC 35-42-5-2).

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

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1 person from testifying.
 2 (15) The defendant committed the murder by intentionally
 3 discharging a firearm (as defined in IC 35-47-1-5):
 4 (A) into an inhabited dwelling; or
 5 (B) from a vehicle.
 6 (16) The victim of the murder was pregnant and the murder
 7 resulted in the intentional killing of a fetus that has attained
 8 viability (as defined in IC 16-18-2-365).
 9 (c) The mitigating circumstances that may be considered under this
 10 section are as follows:
 11 (1) The defendant has no significant history of prior criminal
 12 conduct.
 13 (2) The defendant was under the influence of extreme mental or
 14 emotional disturbance when the murder was committed.
 15 (3) The victim was a participant in or consented to the defendant's
 16 conduct.
 17 (4) The defendant was an accomplice in a murder committed by
 18 another person, and the defendant's participation was relatively
 19 minor.
 20 (5) The defendant acted under the substantial domination of
 21 another person.
 22 (6) The defendant's capacity to appreciate the criminality of the
 23 defendant's conduct or to conform that conduct to the
 24 requirements of law was substantially impaired as a result of
 25 mental disease or defect or of intoxication.
 26 (7) The defendant was less than eighteen (18) years of age at the
 27 time the murder was committed.
 28 (8) Any other circumstances appropriate for consideration.
 29 (d) If the defendant was convicted of murder in a jury trial, the jury
 30 shall reconvene for the sentencing hearing. If the trial was to the court,
 31 or the judgment was entered on a guilty plea, the court alone shall
 32 conduct the sentencing hearing. The jury or the court may consider all
 33 the evidence introduced at the trial stage of the proceedings, together
 34 with new evidence presented at the sentencing hearing. The court shall
 35 instruct the jury concerning the statutory penalties for murder and any
 36 other offenses for which the defendant was convicted, the potential for
 37 consecutive or concurrent sentencing, and the availability of good time
 38 credit and clemency. The court shall instruct the jury that, in order for
 39 the jury to recommend to the court that ~~the death penalty or~~ life
 40 imprisonment without parole should be imposed, the jury must find at
 41 least one (1) aggravating circumstance beyond a reasonable doubt as
 42 described in subsection ~~(f)~~ (h) and shall provide a special verdict form

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1 for each aggravating circumstance alleged. The defendant may present
 2 any additional evidence relevant to:
 3 (1) the aggravating circumstances alleged; or
 4 (2) any of the mitigating circumstances listed in subsection (c).
 5 (e) For a defendant sentenced after June 30, 2002, except as
 6 provided by IC 35-36-9, if the hearing is by jury, the jury shall
 7 recommend to the court whether ~~the death penalty or~~ life imprisonment
 8 without parole ~~or neither~~; should be imposed. The jury may recommend
 9 ~~(1) the death penalty; or~~
 10 ~~(2) life imprisonment without parole~~
 11 only if it makes the findings described in subsection ~~(1)~~: **(h)**. If the jury
 12 reaches a sentencing recommendation, the court shall sentence the
 13 defendant accordingly. After a court pronounces sentence, a
 14 representative of the victim's family and friends may present a
 15 statement regarding the impact of the crime on family and friends. The
 16 impact statement may be submitted in writing or given orally by the
 17 representative. The statement shall be given in the presence of the
 18 defendant.
 19 (f) If a jury is unable to agree on a sentence recommendation after
 20 reasonable deliberations, the court shall discharge the jury and proceed
 21 as if the hearing had been to the court alone.
 22 (g) If the hearing is to the court alone, except as provided by
 23 IC 35-36-9, the court shall
 24 ~~(1) sentence the defendant to death; or~~
 25 ~~(2) impose a term of life imprisonment without parole~~
 26 only if it makes the findings described in subsection ~~(1)~~: **(h)**.
 27 ~~(h) If a court sentences a defendant to death, the court shall order~~
 28 ~~the defendant's execution to be carried out not later than one (1) year~~
 29 ~~and one (1) day after the date the defendant was convicted. The~~
 30 ~~supreme court has exclusive jurisdiction to stay the execution of a~~
 31 ~~death sentence. If the supreme court stays the execution of a death~~
 32 ~~sentence, the supreme court shall order a new date for the defendant's~~
 33 ~~execution.~~
 34 (i) If a person sentenced to death by a court files a petition for
 35 post-conviction relief, the court, not later than ninety (90) days after the
 36 date the petition is filed, shall set a date to hold a hearing to consider
 37 the petition. If a court does not, within the ninety (90) day period, set
 38 the date to hold the hearing to consider the petition, the court's failure
 39 to set the hearing date is not a basis for additional post-conviction
 40 relief. The attorney general shall answer the petition for post-conviction
 41 relief on behalf of the state. At the request of the attorney general, a
 42 prosecuting attorney shall assist the attorney general. The court shall

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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 post-conviction 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 (†) (h) Before a sentence may be imposed under this section, the
38 jury, 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

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1 (2) any mitigating circumstances that exist are outweighed by the
2 aggravating circumstance or circumstances.
3 SECTION 16. IC 35-38-6 IS REPEALED [EFFECTIVE UPON
4 PASSAGE].
5 SECTION 17. [EFFECTIVE UPON PASSAGE] **(a) If a person:**
6 **(1) was sentenced to death before the effective date of this**
7 **SECTION; and**
8 **(2) is awaiting execution of the death sentence on the effective**
9 **date of this SECTION;**
10 **the person's death sentence shall be commuted to a sentence of life**
11 **imprisonment without parole.**
12 **(b) This SECTION expires July 1, 2012.**
13 SECTION 18. **An emergency is declared for this act.**

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