

# SENATE BILL No. 583

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## 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. Makes a technical correction.

**Effective:** Upon passage.

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January 15, 2013, read first time and referred to Committee on Corrections & Criminal Law.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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# SENATE BILL No. 583



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.114-2012,  
 28 SECTION 75, 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 means an individual who, before becoming twenty-two (22) years of  
 14 age, manifests:

- 15 (1) significantly subaverage intellectual functioning; and  
 16 (2) substantial impairment of adaptive behavior;

17 that is documented in a court ordered evaluative report. If a court  
 18 determines under IC 35-36-9 that a defendant who is charged with a  
 19 murder for which the state seeks a ~~death~~ sentence **of life imprisonment**  
 20 **without parole** is an individual with mental retardation, the court shall  
 21 sentence the defendant under IC 35-50-2-3(a).

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

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

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

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

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

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

6           ~~(d)~~ **(c)** When several defendants are tried together, they must join in  
 7 their challenges.

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

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

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

17           ~~(3) If the state is seeking a death sentence, that the person~~  
 18 ~~entertains such conscientious opinions as would preclude the~~  
 19 ~~person from recommending that the death penalty be imposed:~~

20           ~~(4)~~ **(3)** That the person is related within the fifth degree to the  
 21 person alleged to be the victim of the offense charged, to the  
 22 person on whose complaint the prosecution was instituted, or to  
 23 the defendant.

24           ~~(5)~~ **(4)** That the person has served on a trial jury which was sworn  
 25 in the same case against the same defendant, and which jury was  
 26 discharged after hearing the evidence, or rendered a verdict which  
 27 was set aside.

28           ~~(6)~~ **(5)** That the person served as a juror in a civil case brought  
 29 against the defendant for the same act.

30           ~~(7)~~ **(6)** That the person has been subpoenaed in good faith as a  
 31 witness in the case.

32           ~~(8)~~ **(7)** That the person is a mentally incompetent person.

33           ~~(9)~~ **(8)** That the person is an alien.

34           ~~(10)~~ **(9)** That the person has been called to sit on the jury at the  
 35 person's own solicitation or that of another.

36           ~~(11)~~ **(10)** That the person is biased or prejudiced for or against the  
 37 defendant.

38           ~~(12)~~ **(11)** That the person does not have the qualifications for a  
 39 juror prescribed by law.

40           ~~(13)~~ **(12)** That, from defective sight or hearing, ignorance of the  
 41 English language, or other cause, the person is unable to  
 42 comprehend the evidence and the instructions of the court.

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- 1           ~~(14)~~ **(13)** That the person has a personal interest in the result of  
 2           the trial.
- 3           ~~(15)~~ **(14)** If the person is not a member of the regular panel, that  
 4           the person has served on a jury within twelve (12) months  
 5           immediately preceding the trial.
- 6           (b) If a person called as a juror states that the person has formed or  
 7           expressed an opinion as to the guilt or innocence of the defendant, the  
 8           court or the parties shall proceed to examine the juror on oath as to the  
 9           grounds of the juror's opinion. If the juror's opinion appears to have  
 10          been founded upon reading newspaper statements, communications,  
 11          comments, reports, rumors, or hearsay, and if:
- 12           (1) the juror's opinion appears not to have been founded upon:
- 13                (A) conversation with a witness of the transaction;  
 14                (B) reading reports of a witness testimony; or  
 15                (C) hearing a witness testify;
- 16           (2) the juror states on oath that the juror feels able,  
 17           notwithstanding the juror's opinion, to render an impartial verdict  
 18           upon the law and evidence; and
- 19           (3) the court is satisfied that the juror will render an impartial  
 20           verdict;
- 21          the court may admit the juror as competent to serve in the case.
- 22          SECTION 12. IC 35-37-5-6 IS AMENDED TO READ AS  
 23          FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) If a judge of  
 24          a court of record in any other state, which by its laws has made  
 25          provision for commanding a prisoner within that state to attend and  
 26          testify in this state, certifies under the seal of the court that:
- 27           (1) there is a criminal prosecution pending in such court or that a  
 28           grand jury investigation has commenced;
- 29           (2) a person confined by the department of correction ~~(other than~~  
 30           ~~a person awaiting execution of a sentence of death)~~ is a material  
 31           witness in such prosecution or investigation; and
- 32           (3) ~~his~~ **the prisoner's** presence is required for a specified number  
 33           of days;
- 34          a judge of a court with jurisdiction to try felony cases in the county  
 35          where the person is confined, after notice to the attorney general, shall  
 36          fix a time and place for a hearing and shall order the person having  
 37          custody of the prisoner to produce ~~him~~ **the prisoner** at the hearing.
- 38          (b) If at such hearing the judge determines that the prisoner is a  
 39          material and necessary witness in the requesting state, the judge shall  
 40          issue an order directing that the prisoner attend the court where the  
 41          prosecution or investigation is pending, upon such terms and  
 42          conditions as the judge prescribes, including:

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

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

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

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

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

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

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

41 (b) If the punishment is to be imprisonment and a fine and costs  
 42 (including fees), the execution of the sentence as to the fine and costs

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1 (including fees) only may be stayed by the court.

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

5 SECTION 14. IC 35-38-6 IS REPEALED [EFFECTIVE UPON  
 6 PASSAGE]. (Execution of Death Sentence).

7 SECTION 15. IC 35-50-2-3, AS AMENDED BY P.L.99-2007,  
 8 SECTION 212, IS AMENDED TO READ AS FOLLOWS  
 9 [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A person who commits  
 10 murder shall be imprisoned for a fixed term of between forty-five (45)  
 11 and sixty-five (65) years, with the advisory sentence being fifty-five  
 12 (55) years. In addition, the person may be fined not more than ten  
 13 thousand dollars (\$10,000).

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

15 (1) at least ~~eighteen (18)~~ **sixteen (16)** years of age at the time the  
 16 murder was committed may be sentenced to

17 (A) ~~death; or~~

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

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

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

24 SECTION 16. IC 35-50-2-3.5 IS ADDED TO THE INDIANA  
 25 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 26 [EFFECTIVE UPON PASSAGE]: **Sec. 3.5. If a person:**

27 **(1) was sentenced to death under Indiana law before the**  
 28 **effective date of this section; and**

29 **(2) is awaiting execution of the death sentence on the effective**  
 30 **date of this section;**

31 **the person's death sentence shall be commuted to a sentence of life**  
 32 **imprisonment without parole.**

33 SECTION 17. IC 35-50-2-9, AS AMENDED BY P.L.99-2007,  
 34 SECTION 213, IS AMENDED TO READ AS FOLLOWS  
 35 [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The state may seek ~~either~~  
 36 ~~a death sentence or~~ a sentence of life imprisonment without parole for  
 37 murder by alleging, on a page separate from the rest of the charging  
 38 instrument, the existence of at least one (1) of the aggravating  
 39 circumstances listed in subsection (b). In the sentencing hearing after  
 40 a person is convicted of murder, the state must prove beyond a  
 41 reasonable doubt the existence of at least one (1) of the aggravating  
 42 circumstances alleged. However, the state may not proceed against a

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1 defendant under this section if a court determines at a pretrial hearing  
 2 under IC 35-36-9 that the defendant is an individual with mental  
 3 retardation.

4 (b) The aggravating circumstances are as follows:

5 (1) The defendant committed the murder by intentionally killing  
 6 the victim while committing or attempting to commit any of the  
 7 following:

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

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

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

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

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

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

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

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

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

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

18 (2) The defendant committed the murder by the unlawful  
 19 detonation of an explosive with intent to injure person or damage  
 20 property.

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

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

23 (5) The defendant committed the murder by hiring another person  
 24 to kill.

25 (6) The victim of the murder was a corrections employee,  
 26 probation officer, parole officer, community corrections worker,  
 27 home detention officer, ~~fireman~~, **firefighter**, judge, or law  
 28 enforcement officer, and either:

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

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

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

33 (8) The defendant has committed another murder, at any time,  
 34 regardless of whether the defendant has been convicted of that  
 35 other murder.

36 (9) The defendant was:

37 (A) under the custody of the department of correction;

38 (B) under the custody of a county sheriff;

39 (C) on probation after receiving a sentence for the commission  
 40 of a felony; or

41 (D) on parole;

42 at the time the murder was committed.

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

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1 (8) Any other circumstances appropriate for consideration.

2 (d) If the defendant was convicted of murder in a jury trial, the jury  
3 shall reconvene for the sentencing hearing. If the trial was to the court,  
4 or the judgment was entered on a guilty plea, the court alone shall  
5 conduct the sentencing hearing. The jury or the court may consider all  
6 the evidence introduced at the trial stage of the proceedings, together  
7 with new evidence presented at the sentencing hearing. The court shall  
8 instruct the jury concerning the statutory penalties for murder and any  
9 other offenses for which the defendant was convicted, the potential for  
10 consecutive or concurrent sentencing, and the availability of good time  
11 credit and clemency. The court shall instruct the jury that, in order for  
12 the jury to recommend to the court that ~~the death penalty~~ or life  
13 imprisonment without parole should be imposed, the jury must find at  
14 least one (1) aggravating circumstance beyond a reasonable doubt as  
15 described in subsection ~~(f)~~ **(h)** and shall provide a special verdict form  
16 for each aggravating circumstance alleged. The defendant may present  
17 any additional evidence relevant to:

18 (1) the aggravating circumstances alleged; or

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

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

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

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

26 only if it makes the findings described in subsection ~~(f)~~: **(h)**. If the jury  
27 reaches a sentencing recommendation, the court shall sentence the  
28 defendant accordingly. After a court pronounces sentence, a  
29 representative of the victim's family and friends may present a  
30 statement regarding the impact of the crime on family and friends. The  
31 impact statement may be submitted in writing or given orally by the  
32 representative. The statement shall be given in the presence of the  
33 defendant.

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

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

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

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

41 only if it makes the findings described in subsection ~~(f)~~: **(h)**.

42 ~~(h) If a court sentences a defendant to death, the court shall order~~

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

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

21 (j) A death sentence is subject to automatic review by the supreme  
 22 court. The review; which shall be heard under rules adopted by the  
 23 supreme court; shall be given priority over all other cases. The supreme  
 24 court's review must take into consideration all claims that the:

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

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

27 (B) Constitution of the United States;

28 (2) sentencing court was without jurisdiction to impose a  
 29 sentence; and

30 (3) sentence:

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

32 (B) is otherwise erroneous.

33 If the supreme court cannot complete its review by the date set by the  
 34 sentencing court for the defendant's execution under subsection (h); the  
 35 supreme court shall stay the execution of the death sentence and set a  
 36 new date to carry out the defendant's execution.

37 (k) A person who has been sentenced to death and who has  
 38 completed state post-conviction review proceedings may file a written  
 39 petition with the supreme court seeking to present new evidence  
 40 challenging the person's guilt or the appropriateness of the death  
 41 sentence if the person serves notice on the attorney general. The  
 42 supreme court shall determine; with or without a hearing; whether the

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1 person has presented previously undiscovered evidence that  
2 undermines confidence in the conviction or the death sentence. If  
3 necessary, the supreme court may remand the case to the trial court for  
4 an evidentiary hearing to consider the new evidence and its effect on  
5 the person's conviction and death sentence. The supreme court may not  
6 make a determination in the person's favor nor make a decision to  
7 remand the case to the trial court for an evidentiary hearing without  
8 first providing the attorney general with an opportunity to be heard on  
9 the matter.

10 (†) (h) Before a sentence may be imposed under this section, the  
11 jury, in a proceeding under subsection (e), or the court, in a proceeding  
12 under subsection (g), must find that:

- 13 (1) the state has proved beyond a reasonable doubt that at least  
14 one (1) of the aggravating circumstances listed in subsection (b)  
15 exists; and  
16 (2) any mitigating circumstances that exist are outweighed by the  
17 aggravating circumstance or circumstances.

18 **SECTION 18. An emergency is declared for this act.**

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