

IC 35-36-9

Chapter 9. Pretrial Determination of Mental Retardation in Death Sentence Cases

IC 35-36-9-1

Applicability

Sec. 1. This chapter applies when a defendant is charged with a murder for which the state seeks a death sentence under IC 35-50-2-9.

As added by P.L.158-1994, SEC.3. Amended by P.L.2-1996, SEC.283.

IC 35-36-9-2

Individual with mental retardation

Sec. 2. As used in this chapter, "individual with mental retardation" means an individual who, before becoming twenty-two (22) years of age, manifests:

(1) significantly subaverage intellectual functioning; and

(2) substantial impairment of adaptive behavior;

that is documented in a court ordered evaluative report.

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007, SEC.201.

IC 35-36-9-3

Petition alleging mental retardation; filing

Sec. 3. (a) The defendant may file a petition alleging that the defendant is an individual with mental retardation.

(b) The petition must be filed not later than twenty (20) days before the omnibus date.

(c) Whenever the defendant files a petition under this section, the court shall order an evaluation of the defendant for the purpose of providing evidence of the following:

(1) Whether the defendant has a significantly subaverage level of intellectual functioning.

(2) Whether the defendant's adaptive behavior is substantially impaired.

(3) Whether the conditions described in subdivisions (1) and (2) existed before the defendant became twenty-two (22) years of age.

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007, SEC.202.

IC 35-36-9-4

Hearing on petition

Sec. 4. (a) The court shall conduct a hearing on the petition under this chapter.

(b) At the hearing, the defendant must prove by clear and convincing evidence that the defendant is an individual with mental retardation.

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007,

SEC.203.

IC 35-36-9-5

Determination within ten days of trial

Sec. 5. Not later than ten (10) days before the initial trial date, the court shall determine whether the defendant is an individual with mental retardation based on the evidence set forth at the hearing under section 4 of this chapter. The court shall articulate findings supporting the court's determination under this section.

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007, SEC.204.

IC 35-36-9-6

Dismissal of death sentence charging instrument

Sec. 6. If the court determines that the defendant is an individual with mental retardation under section 5 of this chapter, the part of the state's charging instrument filed under IC 35-50-2-9(a) that seeks a death sentence against the defendant shall be dismissed.

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007, SEC.205.

IC 35-36-9-7

Sentencing

Sec. 7. If a defendant who is determined to be an individual with mental retardation under this chapter is convicted of murder, the court shall sentence the defendant under IC 35-50-2-3(a).

As added by P.L.158-1994, SEC.3. Amended by P.L.99-2007, SEC.206.