
HOUSE BILL No. 1204

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-36-2-5; IC 35-50-2.

Synopsis: Murder sentences for mentally ill defendants. Prohibits a court from sentencing a defendant to death or life imprisonment without parole for committing murder if the defendant is found guilty but mentally ill at the time the defendant committed the murder or enters a plea to that effect that is accepted by the court.

Effective: July 1, 2001.

Crawford

January 9, 2001, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 112th General Assembly (2001)

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 2000 General Assembly.

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HOUSE BILL No. 1204



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 35-36-2-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) Except as
3 provided by subsection (e), whenever a defendant is found guilty but
4 mentally ill at the time of the crime or enters a plea to that effect that
5 is accepted by the court, the court shall sentence the defendant in the
6 same manner as a defendant found guilty of the offense.

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

16 (c) If a defendant who is found guilty but mentally ill at the time of
17 the crime is committed to the department of correction, the defendant



1 shall be further evaluated and then treated in such a manner as is
 2 psychiatrically indicated for the defendant's mental illness. Treatment
 3 may be provided by:

- 4 (1) the department of correction; or
 5 (2) the division of mental health after transfer under IC 11-10-4.

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

9 (e) As used in this subsection, "mentally retarded individual" has the
 10 meaning set forth in IC 35-36-9-2. If:

11 **(1) a defendant is found guilty but mentally ill at the time the**
 12 **defendant committed murder or enters a plea to that effect**
 13 **that is accepted by the court; or**

14 **(2) a court determines under IC 35-36-9 that a defendant who is**
 15 **charged with a murder for which the state seeks a death sentence**
 16 **or a sentence of life imprisonment without parole is a mentally**
 17 **retarded individual;**

18 the court shall sentence the defendant under IC 35-50-2-3(a).

19 SECTION 2. IC 35-50-2-3 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) A person who
 21 commits murder shall be imprisoned for a fixed term of fifty-five (55)
 22 years, with not more than ten (10) years added for aggravating
 23 circumstances or not more than ten (10) years subtracted for mitigating
 24 circumstances; in addition, the person may be fined not more than ten
 25 thousand dollars (\$10,000).

26 (b) Notwithstanding subsection (a), a person who was at least
 27 sixteen (16) years of age at the time the murder was committed may be
 28 sentenced to:

- 29 (1) death; or
 30 (2) life imprisonment without parole;

31 under section 9 of this chapter unless **the person is found guilty but**
 32 **mentally ill at the time the person committed the murder or enters**
 33 **a plea to that effect that is accepted by the court or** a court
 34 determines under IC 35-36-9 that the person is a mentally retarded
 35 individual.

36 SECTION 3. IC 35-50-2-9 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) The state may
 38 seek either a death sentence or a sentence of life imprisonment without
 39 parole for murder by alleging, on a page separate from the rest of the
 40 charging instrument, the existence of at least one (1) of the aggravating
 41 circumstances listed in subsection (b). In the sentencing hearing after
 42 a person is convicted of murder, the state must prove beyond a

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1 reasonable doubt the existence of at least one (1) of the aggravating
 2 circumstances alleged. However, the state may not proceed against a
 3 defendant under this section if:

4 **(1) the defendant is found guilty but mentally ill at the time**
 5 **the person committed the murder or enters a plea to that**
 6 **effect that is accepted by the court; or**

7 (2) a court determines at a pretrial hearing under IC 35-36-9 that
 8 the defendant is a mentally retarded individual.

9 (b) The aggravating circumstances are as follows:

10 (1) The defendant committed the murder by intentionally killing
 11 the victim while committing or attempting to commit any of the
 12 following:

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

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

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

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

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

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

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

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

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

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

23 (2) The defendant committed the murder by the unlawful
 24 detonation of an explosive with intent to injure person or damage
 25 property.

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

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

28 (5) The defendant committed the murder by hiring another person
 29 to kill.

30 (6) The victim of the murder was a corrections employee,
 31 probation officer, parole officer, community corrections worker,
 32 home detention officer, fireman, judge, or law enforcement
 33 officer, and either:

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

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

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

38 (8) The defendant has committed another murder, at any time,
 39 regardless of whether the defendant has been convicted of that
 40 other murder.

41 (9) The defendant was:

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

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

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1 defendant's conduct or to conform that conduct to the
 2 requirements of law was substantially impaired as a result of
 3 mental disease or defect or of intoxication.

4 (7) The defendant was less than eighteen (18) years of age at the
 5 time the murder was committed.

6 (8) Any other circumstances appropriate for consideration.

7 (d) If the defendant was convicted of murder in a jury trial, the jury
 8 shall reconvene for the sentencing hearing. If the trial was to the court,
 9 or the judgment was entered on a guilty plea, the court alone shall
 10 conduct the sentencing hearing. The jury or the court may consider all
 11 the evidence introduced at the trial stage of the proceedings, together
 12 with new evidence presented at the sentencing hearing. The court shall
 13 instruct the jury concerning the statutory penalties for murder and any
 14 other offenses for which the defendant was convicted, the potential for
 15 consecutive or concurrent sentencing, and the availability of good time
 16 credit and clemency. The defendant may present any additional
 17 evidence relevant to:

18 (1) the aggravating circumstances alleged; or

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

20 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the
 21 jury shall recommend to the court whether the death penalty or life
 22 imprisonment without parole, or neither, should be imposed. The jury
 23 may recommend:

24 (1) the death penalty; or

25 (2) life imprisonment without parole;

26 only if it makes the findings described in subsection (k). The court shall
 27 make the final determination of the sentence, after considering the
 28 jury's recommendation, and the sentence shall be based on the same
 29 standards that the jury was required to consider. The court is not bound
 30 by the jury's recommendation. In making the final determination of the
 31 sentence after receiving the jury's recommendation, the court may
 32 receive evidence of the crime's impact on members of the victim's
 33 family.

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 (k).

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) 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

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

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