
HOUSE BILL No. 1598

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-9; IC 33-17-2-1; IC 34-39-3-1; 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. Makes conforming amendments.

Effective: Upon passage.

Smith V, Brown C

January 17, 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. 1598



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 33-9-13-3 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. ~~(a)~~ The
 3 commission shall do the following:
 4 ~~(1)~~ Make recommendations to the supreme court of Indiana
 5 concerning standards for indigent defense services provided for
 6 defendants against whom the state has sought the death sentence
 7 under IC 35-50-2-9, including the following:
 8 ~~(A)~~ Determining indigency and eligibility for legal
 9 representation.
 10 ~~(B)~~ Selection and qualifications of attorneys to represent
 11 indigent defendants at public expense.
 12 ~~(C)~~ Determining conflicts of interest.
 13 ~~(D)~~ Investigative, clerical, and other support services
 14 necessary to provide adequate legal representation.
 15 ~~(2)~~ **(1)** Adopt guidelines and standards for indigent defense
 16 services under which the counties will be eligible for
 17 reimbursement under IC 33-9-14, including but not limited to the



- 1 following:
- 2 (A) Determining indigency and the eligibility for legal
- 3 representation.
- 4 (B) The issuance and enforcement of orders requiring the
- 5 defendant to pay for the costs of court appointed legal
- 6 representation under IC 33-9-11.5.
- 7 (C) The use and expenditure of funds in the county
- 8 supplemental public defender services fund established by
- 9 IC 33-9-11.5.
- 10 (D) Qualifications of attorneys to represent indigent
- 11 defendants at public expense.
- 12 (E) Compensation rates for salaried, contractual, and assigned
- 13 counsel.
- 14 (F) Minimum and maximum caseloads of public defender
- 15 offices and contract attorneys.
- 16 ~~(3)~~ **(2)** Make recommendations concerning the delivery of
- 17 indigent defense services in Indiana.
- 18 ~~(4)~~ **(3)** Make an annual report to the governor, the general
- 19 assembly, and the supreme court on the operation of the public
- 20 defense fund.

21 SECTION 2. IC 33-9-14-4 IS AMENDED TO READ AS

22 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. ~~(a)~~ **A county**

23 **auditor may submit on a quarterly basis a certified request to the public**

24 **defender commission for reimbursement from the public defense fund**

25 **for an amount equal to fifty percent (50%) of the county's expenditures**

26 **for indigent defense services provided to a defendant against whom the**

27 **death sentence is sought under IC 35-50-2-9.**

28 ~~(b)~~ **(a)** A county auditor may submit on a quarterly basis a certified

29 request to the public defender commission for reimbursement from the

30 public defense fund for an amount equal to forty percent (40%) of the

31 county's expenditures for indigent defense services provided in all

32 ~~noncapital~~ cases except misdemeanors.

33 ~~(c)~~ **(b)** A request under this section from a county described in

34 IC 33-9-15-1(3) may be limited to expenditures for indigent defense

35 services provided by a particular division of a court.

36 SECTION 3. IC 33-9-14-5 IS AMENDED TO READ AS

37 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as

38 provided under section 6 of this chapter, upon certification by a county

39 auditor and a determination by the public defender commission that the

40 request is in compliance with the guidelines and standards set by the

41 commission, the commission shall quarterly authorize an amount of

42 reimbursement due the county that is equal to ~~fifty percent (50%) of the~~

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1 county's certified expenditures for indigent defense services provided
 2 for a defendant against whom the death sentence is sought under
 3 IC 35-50-2-9, and that is equal to forty percent (40%) of the county's
 4 certified expenditures for defense services provided in **non-capital all**
 5 cases except misdemeanors. The state court administrator shall then
 6 certify to the auditor of state the amount of reimbursement owed to a
 7 county under this chapter.

8 (b) Upon receiving certification from the state court administrator,
 9 the auditor of state shall issue a warrant to the treasurer of state for
 10 disbursement to the county of the amount certified.

11 SECTION 4. IC 33-9-14-6 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. If the public
 13 defense fund would be reduced below two hundred fifty thousand
 14 dollars (\$250,000) by payment in full of all county reimbursement for
 15 net expenditures **in non-capital cases for defense services** that is
 16 certified by the state court administrator in any quarter, the commission
 17 shall suspend payment of reimbursement to counties **in non-capital**
 18 **cases for defense services** until the next semiannual deposit in the
 19 public defense fund. At the end of the suspension period, the state court
 20 administrator shall certify all suspended reimbursement. If the public
 21 defense fund would be reduced below two hundred fifty thousand
 22 dollars (\$250,000) by payment in full of all suspended reimbursement
 23 **in non-capital cases, for defense services**, the amount certified by the
 24 state court administrator for each county entitled to reimbursement
 25 shall be prorated.

26 SECTION 5. IC 33-9-15-10.5 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) A county
 28 public defender board shall submit a written request for reimbursement
 29 to the county auditor. The request must set forth the total of the
 30 county's expenditures for indigent defense services to the county
 31 auditor and may be limited in a county described in section 1(3) of this
 32 chapter to expenditures for indigent defense services provided by a
 33 particular division of a court. The county auditor shall review the
 34 request and certify the total of the county's expenditures for indigent
 35 defense services to the public defender commission.

36 (b) Upon certification by the public defender commission that the
 37 county's indigent defense services meet the commission's standards, the
 38 auditor of state shall issue a warrant to the treasurer of state for
 39 disbursement to the county of a sum equal to forty percent (40%) of the
 40 county's certified expenditures for indigent defense services provided
 41 in **noncapital all** cases except misdemeanors.

42 (c) If a county's indigent defense services fail to meet the standards

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1 adopted by the public defender commission, the commission shall
 2 notify the county public defender board and the county fiscal body of
 3 the failure to comply with the commission's standards. Unless the
 4 county public defender board corrects the deficiencies to comply with
 5 the standards not more than ninety (90) days after the date of the
 6 notice, the county's eligibility for reimbursement from the public
 7 defense fund terminates at the close of that fiscal year.

8 SECTION 6. IC 33-17-2-1 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The clerk
 10 shall endorse, on each writing required to be filed in his office, the time
 11 when it was filed.

12 (b) The clerk shall carefully preserve in his office all records and
 13 writings pertaining to his official duties.

14 (c) The clerk shall procure, at the expense of the county, all
 15 necessary judges' appearance, bar, judgment, and execution dockets,
 16 order books, and final record books.

17 (d) The clerk shall attend, in person or by deputy, the circuit court
 18 of the county, and enter in proper record books all orders, judgments,
 19 and decrees of that court.

20 (e) Within fifteen (15) days after the cases are finally determined,
 21 the clerk shall enter in final record books a complete record of:

22 (1) all cases involving the title to land;

23 (2) all criminal cases in which the punishment is ~~death or~~
 24 imprisonment, except where a nolle prosequi is entered or an
 25 acquittal is had; and

26 (3) all other cases, at the request of either party and upon payment
 27 of the costs.

28 SECTION 7. IC 34-39-3-1 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Evidence of
 30 a final judgment that:

31 (1) is entered after a trial or upon a plea of guilty; and

32 (2) adjudges a person guilty of a crime punishable by ~~death or~~
 33 imprisonment of more than one (1) year;

34 shall be admissible in a civil action to prove any fact essential to
 35 sustaining the judgment, and is not excluded from admission as hearsay
 36 regardless of whether the declarant is available as a witness.

37 (b) The pendency of an appeal may be shown but does not affect the
 38 admissibility of evidence under this section.

39 SECTION 8. IC 35-36-2-5 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as
 41 provided by subsection (e), whenever a defendant is found guilty but
 42 mentally ill at the time of the crime or enters a plea to that effect that

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1 is accepted by the court, the court shall sentence the defendant in the
2 same manner as a defendant found guilty of the offense.

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

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

17 (1) the department of correction; or

18 (2) the division of mental health after transfer under IC 11-10-4.

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

22 (e) As used in this subsection, "mentally retarded individual" has the
23 meaning set forth in IC 35-36-9-2. If a court determines under
24 IC 35-36-9 that a defendant who is charged with a murder for which
25 the state seeks a ~~death~~ sentence **of life imprisonment without parole**
26 is a mentally retarded individual, the court shall sentence the defendant
27 under IC 35-50-2-3(a).

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

33 SECTION 10. IC 35-36-9-6 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. If the court
35 determines that the defendant is a mentally retarded individual under
36 section 5 of this chapter, the part of the state's charging instrument filed
37 under IC 35-50-2-9(a) that seeks a ~~death~~ sentence **of life**
38 **imprisonment without parole** against the defendant shall be
39 dismissed.

40 SECTION 11. IC 35-37-1-3 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. ~~(a) In~~
42 ~~prosecutions for murder where the death penalty is sought, the~~

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1 ~~defendant may challenge, peremptorily, twenty (20) jurors.~~

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

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

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

9 SECTION 12. IC 35-37-1-5 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The
11 following are good causes for challenge to any person called as a juror
12 in any criminal trial:

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

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

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

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

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

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

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

33 ~~(8)~~ (7) That the person is a mentally incompetent person.

34 ~~(9)~~ (8) That the person is an alien.

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

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

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

41 ~~(13)~~ (12) That, from defective sight or hearing, ignorance of the
42 English language, or other cause, the person is unable to

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1 comprehend the evidence and the instructions of the court.

2 ~~(14)~~ (13) That the person has a personal interest in the result of
3 the trial.

4 ~~(15)~~ (14) If the person is not a member of the regular panel, that
5 the person has served on a jury within twelve (12) months
6 immediately preceding the trial.

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

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

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

15 (B) reading reports of a witness' testimony; or

16 (C) hearing a witness testify;

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

20 (3) the court is satisfied that the juror will render an impartial
21 verdict;

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

23 SECTION 13. IC 35-37-5-6 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) If a judge of
25 a court of record in any other state, which by its laws has made
26 provision for commanding a prisoner within that state to attend and
27 testify in this state, certifies under the seal of the court that:

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

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

33 (3) his presence is required for a specified number 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 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 testimony;

3 (2) proper safeguards on his 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 14. IC 35-38-4-6 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) An appeal to
34 the supreme court or to the court of appeals from a judgment of
35 conviction does not stay the execution of the sentence, unless

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

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

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

42 ~~(c) In the case of an appeal from a judgment in a capital case, the~~

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1 order of suspension must specify the day until which the execution of
2 the sentence is stayed:

3 SECTION 15. IC 35-50-2-3 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A person
5 who commits murder shall be imprisoned for a fixed term of fifty-five
6 (55) years, with not more than ten (10) years added for aggravating
7 circumstances or not more than ten (10) years subtracted for mitigating
8 circumstances; in addition, the person may be fined not more than ten
9 thousand dollars (\$10,000).

10 (b) Notwithstanding subsection (a), a person who was at least
11 sixteen (16) years of age at the time the murder was committed may be
12 sentenced to

13 ~~(1) death; or~~

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

15 under section 9 of this chapter unless a court determines under
16 IC 35-36-9 that the person is a mentally retarded individual.

17 SECTION 16. IC 35-50-2-9 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The state
19 may seek ~~either a death sentence or~~ a sentence of life imprisonment
20 without parole for murder by alleging, on a page separate from the rest
21 of the charging instrument, the existence of at least one (1) of the
22 aggravating circumstances listed in subsection (b). In the sentencing
23 hearing after a person is convicted of murder, the state must prove
24 beyond a reasonable doubt the existence of at least one (1) of the
25 aggravating circumstances alleged. However, the state may not proceed
26 against a defendant under this section if a court determines at a pretrial
27 hearing under IC 35-36-9 that the defendant is a mentally retarded
28 individual.

29 (b) The aggravating circumstances are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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1 discharging a firearm (as defined in IC 35-47-1-5):

2 (A) into an inhabited dwelling; or

3 (B) from a vehicle.

4 (16) The victim of the murder was pregnant and the murder
5 resulted in the intentional killing of a fetus that has attained
6 viability (as defined in IC 16-18-2-365).

7 (c) The mitigating circumstances that may be considered under this
8 section are as follows:

9 (1) The defendant has no significant history of prior criminal
10 conduct.

11 (2) The defendant was under the influence of extreme mental or
12 emotional disturbance when the murder was committed.

13 (3) The victim was a participant in or consented to the defendant's
14 conduct.

15 (4) The defendant was an accomplice in a murder committed by
16 another person, and the defendant's participation was relatively
17 minor.

18 (5) The defendant acted under the substantial domination of
19 another person.

20 (6) The defendant's capacity to appreciate the criminality of the
21 defendant's conduct or to conform that conduct to the
22 requirements of law was substantially impaired as a result of
23 mental disease or defect or of intoxication.

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

26 (8) Any other circumstances appropriate for consideration.

27 (d) If the defendant was convicted of murder in a jury trial, the jury
28 shall reconvene for the sentencing hearing. If the trial was to the court,
29 or the judgment was entered on a guilty plea, the court alone shall
30 conduct the sentencing hearing. The jury or the court may consider all
31 the evidence introduced at the trial stage of the proceedings, together
32 with new evidence presented at the sentencing hearing. The court shall
33 instruct the jury concerning the statutory penalties for murder and any
34 other offenses for which the defendant was convicted, the potential for
35 consecutive or concurrent sentencing, and the availability of good time
36 credit and clemency. The defendant may present any additional
37 evidence relevant to:

38 (1) the aggravating circumstances alleged; or

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

40 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the
41 jury shall recommend to the court whether ~~the death penalty or~~ life
42 imprisonment without parole ~~or neither~~, should be imposed. The jury

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1 may recommend
 2 ~~(1) the death penalty; or~~
 3 ~~(2) life imprisonment without parole~~
 4 only if it makes the findings described in subsection ~~(k)~~: **(i)**. The court
 5 shall make the final determination of the sentence, after considering the
 6 jury's recommendation, and the sentence shall be based on the same
 7 standards that the jury was required to consider. The court is not bound
 8 by the jury's recommendation. In making the final determination of the
 9 sentence after receiving the jury's recommendation, the court may
 10 receive evidence of the crime's impact on members of the victim's
 11 family.
 12 (f) If a jury is unable to agree on a sentence recommendation after
 13 reasonable deliberations, the court shall discharge the jury and proceed
 14 as if the hearing had been to the court alone.
 15 (g) If the hearing is to the court alone, except as provided by
 16 IC 35-36-9, the court shall
 17 ~~(1) sentence the defendant to death; or~~
 18 ~~(2) impose a term of life imprisonment without parole~~
 19 only if it makes the findings described in subsection ~~(k)~~: **(i)**.
 20 ~~(h) If a court sentences a defendant to death, the court shall order~~
 21 ~~the defendant's execution to be carried out not later than one (1) year~~
 22 ~~and one (1) day after the date the defendant was convicted. The~~
 23 ~~supreme court has exclusive jurisdiction to stay the execution of a~~
 24 ~~death sentence. If the supreme court stays the execution of a death~~
 25 ~~sentence, the supreme court shall order a new date for the defendant's~~
 26 ~~execution.~~
 27 ~~(i) If a person sentenced to death by a court files a petition for~~
 28 ~~post-conviction relief, the court, not later than ninety (90) days after the~~
 29 ~~date the petition is filed, shall set a date to hold a hearing to consider~~
 30 ~~the petition. If a court does not, within the ninety (90) day period, set~~
 31 ~~the date to hold the hearing to consider the petition, the court's failure~~
 32 ~~to set the hearing date is not a basis for additional post-conviction~~
 33 ~~relief. The attorney general shall answer the petition for post-conviction~~
 34 ~~relief on behalf of the state. At the request of the attorney general, a~~
 35 ~~prosecuting attorney shall assist the attorney general. The court shall~~
 36 ~~enter written findings of fact and conclusions of law concerning the~~
 37 ~~petition not later than ninety (90) days after the date the hearing~~
 38 ~~concludes. However, if the court determines that the petition is without~~
 39 ~~merit, the court may dismiss the petition within ninety (90) days~~
 40 ~~without conducting a hearing under this subsection.~~
 41 ~~(j) (h) A death sentence of life imprisonment without parole is~~
 42 subject to automatic review by the supreme court. The review, which

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1 shall be heard under rules adopted by the supreme court, shall be given
 2 priority over all other cases. The supreme court's review must take into
 3 consideration all claims that the:

- 4 (1) conviction or sentence was in violation of the:
 - 5 (A) Constitution of the State of Indiana; or
 - 6 (B) Constitution of the United States;
- 7 (2) sentencing court was without jurisdiction to impose a
 8 sentence; and
- 9 (3) sentence:
 - 10 (A) exceeds the maximum sentence authorized by law; or
 - 11 (B) is otherwise erroneous.

12 ~~If the supreme court cannot complete its review by the date set by the~~
 13 ~~sentencing court for the defendant's execution under subsection (h); the~~
 14 ~~supreme court shall stay the execution of the death sentence and set a~~
 15 ~~new date to carry out the defendant's execution.~~

16 ~~(*)~~ (i) Before a sentence may be imposed under this section, the
 17 jury, in a proceeding under subsection (e), or the court, in a proceeding
 18 under subsection (g), must find that:

- 19 (1) the state has proved beyond a reasonable doubt that at least
 20 one (1) of the aggravating circumstances listed in subsection (b)
 21 exists; and
- 22 (2) any mitigating circumstances that exist are outweighed by the
 23 aggravating circumstance or circumstances.

24 SECTION 17. IC 35-38-6 IS REPEALED [EFFECTIVE UPON
 25 PASSAGE].

26 SECTION 18. [EFFECTIVE UPON PASSAGE] (a) **If a person:**
 27 **(1) was sentenced to death before the effective date of this**
 28 **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 **(b) This SECTION expires July 1, 2004.**
 34 SECTION 19. **An emergency is declared for this act.**

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