
SENATE BILL No. 334

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-2-9.

Synopsis: Murder sentencing. Provides that a person who commits murder may receive the death penalty or life imprisonment without parole if a protective order was in effect for the benefit of the murder victim and against the person who committed the murder at the time the murder was committed. Allows the state to present evidence of a defendant's history of delinquency or criminality during the penalty phase of the defendant's murder trial.

Effective: July 1, 2005.

Young R Michael

January 11, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

C
o
p
y



First Regular Session 114th General Assembly (2005)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

C
o
p
y

SENATE BILL No. 334



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 35-50-2-9 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) The state may
- 3 seek either a death sentence or a sentence of life imprisonment without
- 4 parole for murder by alleging, on a page separate from the rest of the
- 5 charging instrument, the existence of at least one (1) of the aggravating
- 6 circumstances listed in subsection (b). In the sentencing hearing after
- 7 a person is convicted of murder, the state must prove beyond a
- 8 reasonable doubt the existence of at least one (1) of the aggravating
- 9 circumstances alleged. However, the state may not proceed against a
- 10 defendant under this section if a court determines at a pretrial hearing
- 11 under IC 35-36-9 that the defendant is a mentally retarded individual.
- 12 (b) The aggravating circumstances are as follows:
- 13 (1) The defendant committed the murder by intentionally killing
- 14 the victim while committing or attempting to commit any of the
- 15 following:
- 16 (A) Arson (IC 35-43-1-1).
- 17 (B) Burglary (IC 35-43-2-1).



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

COPY



- 1 (B) Kidnapping (IC 35-42-3-2).
- 2 (C) Criminal confinement (IC 35-42-3-3).
- 3 (D) A sex crime under IC 35-42-4.
- 4 (14) The victim of the murder was listed by the state or known by
- 5 the defendant to be a witness against the defendant and the
- 6 defendant committed the murder with the intent to prevent the
- 7 person from testifying.
- 8 (15) The defendant committed the murder by intentionally
- 9 discharging a firearm (as defined in IC 35-47-1-5):
- 10 (A) into an inhabited dwelling; or
- 11 (B) from a vehicle.
- 12 (16) The victim of the murder was pregnant and the murder
- 13 resulted in the intentional killing of a fetus that has attained
- 14 viability (as defined in IC 16-18-2-365).
- 15 **(17) The defendant was the subject of at least one (1) of the**
- 16 **following orders at the time the murder was committed:**
- 17 **(A) A foreign protection order or an order for protection**
- 18 **that ordered the defendant to refrain from committing acts**
- 19 **described in:**
- 20 **(i) IC 34-26-5-9(b)(1); or**
- 21 **(ii) IC 34-26-5-9(b)(2);**
- 22 **against the victim of the murder.**
- 23 **(B) A temporary restraining order that ordered the**
- 24 **defendant to refrain from:**
- 25 **(i) abusing;**
- 26 **(ii) harassing;**
- 27 **(iii) disturbing the peace of; or**
- 28 **(iv) committing a battery on;**
- 29 **the victim of the murder.**
- 30 **(C) A judicial order that ordered the defendant to refrain**
- 31 **from direct or indirect contact with the victim of the**
- 32 **murder.**
- 33 **(D) A workplace violence restraining order that ordered**
- 34 **the defendant to refrain from:**
- 35 **(i) committing unlawful acts of violence; or**
- 36 **(ii) making credible threats of violence;**
- 37 **against the victim of the murder.**
- 38 (c) The mitigating circumstances that may be considered under this
- 39 section are as follows:
- 40 (1) The defendant has no significant history of prior criminal
- 41 conduct.
- 42 (2) The defendant was under the influence of extreme mental or

COPY



1 emotional disturbance when the murder was committed.

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

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

7 (5) The defendant acted under the substantial domination of
8 another person.

9 (6) The defendant's capacity to appreciate the criminality of the
10 defendant's conduct or to conform that conduct to the
11 requirements of law was substantially impaired as a result of
12 mental disease or defect or of intoxication.

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

15 (8) Any other circumstances appropriate for consideration.

16 (d) If the defendant was convicted of murder in a jury trial, the jury
17 shall reconvene for the sentencing hearing. If the trial was to the court,
18 or the judgment was entered on a guilty plea, the court alone shall
19 conduct the sentencing hearing. The jury or the court may consider all
20 the evidence introduced at the trial stage of the proceedings, together
21 with new evidence presented at the sentencing hearing. The court shall
22 instruct the jury concerning the statutory penalties for murder and any
23 other offenses for which the defendant was convicted, the potential for
24 consecutive or concurrent sentencing, and the availability of good time
25 credit and clemency. The court shall instruct the jury that, in order for
26 the jury to recommend to the court that the death penalty or life
27 imprisonment without parole should be imposed, the jury must find at
28 least one (1) aggravating circumstance beyond a reasonable doubt as
29 described in subsection (k) and shall provide a special verdict form for
30 each aggravating circumstance alleged. The:

31 (1) defendant may present any additional evidence relevant to:

32 ~~(1)~~ (A) the aggravating circumstances alleged; or

33 ~~(2)~~ (B) any of the mitigating circumstances listed in subsection
34 (c); and

35 (2) state may present additional evidence of the defendant's
36 history of delinquency or criminality.

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

42 (1) the death penalty; or

C
O
P
Y



1 (2) life imprisonment without parole;
 2 only if it makes the findings described in subsection (l). If the jury
 3 reaches a sentencing recommendation, the court shall sentence the
 4 defendant accordingly. After a court pronounces sentence, a
 5 representative of the victim's family and friends may present a
 6 statement regarding the impact of the crime on family and friends. The
 7 impact statement may be submitted in writing or given orally by the
 8 representative. The statement shall be given in the presence of the
 9 defendant.

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

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

15 (1) sentence the defendant to death; or
 16 (2) impose a term of life imprisonment without parole;
 17 only if it makes the findings described in subsection (l).

18 (h) If a court sentences a defendant to death, the court shall order
 19 the defendant's execution to be carried out not later than one (1) year
 20 and one (1) day after the date the defendant was convicted. The
 21 supreme court has exclusive jurisdiction to stay the execution of a
 22 death sentence. If the supreme court stays the execution of a death
 23 sentence, the supreme court shall order a new date for the defendant's
 24 execution.

25 (i) If a person sentenced to death by a court files a petition for
 26 post-conviction relief, the court, not later than ninety (90) days after the
 27 date the petition is filed, shall set a date to hold a hearing to consider
 28 the petition. If a court does not, within the ninety (90) day period, set
 29 the date to hold the hearing to consider the petition, the court's failure
 30 to set the hearing date is not a basis for additional post-conviction
 31 relief. The attorney general shall answer the petition for post-conviction
 32 relief on behalf of the state. At the request of the attorney general, a
 33 prosecuting attorney shall assist the attorney general. The court shall
 34 enter written findings of fact and conclusions of law concerning the
 35 petition not later than ninety (90) days after the date the hearing
 36 concludes. However, if the court determines that the petition is without
 37 merit, the court may dismiss the petition within ninety (90) days
 38 without conducting a hearing under this subsection.

39 (j) A death sentence is subject to automatic review by the supreme
 40 court. The review, which shall be heard under rules adopted by the
 41 supreme court, shall be given priority over all other cases. The supreme
 42 court's review must take into consideration all claims that the:

C
O
P
Y



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

9 If the supreme court cannot complete its review by the date set by the
 10 sentencing court for the defendant's execution under subsection (h), the
 11 supreme court shall stay the execution of the death sentence and set a
 12 new date to carry out the defendant's execution.

13 (k) A person who has been sentenced to death and who has
 14 completed state post-conviction review proceedings may file a written
 15 petition with the supreme court seeking to present new evidence
 16 challenging the person's guilt or the appropriateness of the death
 17 sentence if the person serves notice on the attorney general. The
 18 supreme court shall determine, with or without a hearing, whether the
 19 person has presented previously undiscovered evidence that
 20 undermines confidence in the conviction or the death sentence. If
 21 necessary, the supreme court may remand the case to the trial court for
 22 an evidentiary hearing to consider the new evidence and its effect on
 23 the person's conviction and death sentence. The supreme court may not
 24 make a determination in the person's favor nor make a decision to
 25 remand the case to the trial court for an evidentiary hearing without
 26 first providing the attorney general with an opportunity to be heard on
 27 the matter.

28 (l) Before a sentence may be imposed under this section, the jury,
 29 in a proceeding under subsection (e), or the court, in a proceeding
 30 under subsection (g), must find that:

- 31 (1) the state has proved beyond a reasonable doubt that at least
- 32 one (1) of the aggravating circumstances listed in subsection (b)
- 33 exists; and
- 34 (2) any mitigating circumstances that exist are outweighed by the
- 35 aggravating circumstance or circumstances.

36 **SECTION 2. [EFFECTIVE JULY 1, 2005] IC 35-50-2-9, as**
 37 **amended by this act, applies only to murders committed after June**
 38 **30, 2005.**

C
o
p
y

