
SENATE BILL No. 356

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-8.

Synopsis: Voluntary election of death sentence. Allows certain incarcerated persons who have been sentenced to: (1) at least 200 years; (2) life imprisonment; or (3) life imprisonment without parole; to request the imposition of a death sentence by filing a petition in a circuit or superior court.

Effective: July 1, 2005.

Waterman

January 11, 2005, read first time and referred to Committee on Judiciary.

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

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SENATE BILL No. 356



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 35-38-8 IS ADDED TO THE INDIANA CODE AS
 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2005]:
 4 **Chapter 8. Voluntary Election of Death Sentence**
 5 **Sec. 1. As used in this chapter, "mentally ill" means having a**
 6 **psychiatric disorder that:**
 7 (1) **substantially disturbs a person's thinking, feeling, or**
 8 **behavior; and**
 9 (2) **impairs the person's ability to function.**
 10 **Sec. 2. As used in this chapter, "incarcerated person" means an**
 11 **individual who is serving:**
 12 (1) **an executed sentence of at least two hundred (200) years;**
 13 (2) **an executed sentence of life imprisonment; or**
 14 (3) **a sentence of life imprisonment without parole;**
 15 **imposed by an Indiana court.**
 16 **Sec. 3. (a) An incarcerated person may request the imposition**
 17 **of a death sentence by filing a petition in a circuit or superior court**



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in the county in which the person is incarcerated.

(b) An incarcerated person may file only one (1) petition under this chapter during the incarcerated person's lifetime.

(c) The office of the prosecuting attorney located in the county in which the incarcerated person is incarcerated shall represent the interests of the state at a hearing under this chapter.

Sec. 4. A petition filed under this chapter must be verified and include the following:

(1) A certified copy of the order that imposed the sentence described in section 2 of this chapter.

(2) An affidavit signed by the incarcerated person indicating that the incarcerated person freely and voluntarily waives the incarcerated person's right to:

- (A) have a public and speedy trial by jury in which the state must prove beyond a reasonable doubt that the incarcerated person committed murder;
- (B) confront and cross-examine adverse witnesses at a trial described in clause (A);
- (C) have compulsory process for obtaining witnesses in a trial described in clause (A);
- (D) have the state prove beyond a reasonable doubt the presence of at least one (1) aggravating circumstance described in IC 35-50-2-9(b) in the sentencing phase of a trial described in clause (A);
- (E) have the state prove a mitigating circumstance or circumstances described in IC 35-50-2-9(c) are outweighed by an aggravating circumstance or circumstances described in IC 35-50-2-9(b) in the sentencing phase of a trial described in clause (A); and
- (F) have a jury determine whether the imposition of a death sentence is appropriate in the sentencing phase of a trial described in clause (A).

(3) A statement by the incarcerated person of:

- (A) each instance in which the incarcerated person was diagnosed as having a mental illness by; and
- (B) treatments received by the incarcerated person for a mental illness from;

a mental health service provider (as defined in IC 34-6-2-80).

(4) A copy of the incarcerated person's conduct record while committed to a penal facility for execution of the sentence described in section 2 of this chapter.

(5) A statement by the incarcerated person explaining why the

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incarcerated person requests the imposition of a death sentence.

Sec. 5. (a) Upon receipt of a petition filed under section 3 of this chapter, a court shall:

- (1) set the matter for a hearing; and**
- (2) appoint a competent, disinterested:**
 - (A) psychiatrist; or**
 - (B) psychologist endorsed by the Indiana state board of examiners in psychology as a health service provider in psychology.**

(b) The psychiatrist or psychologist appointed under subsection (a) shall interview the incarcerated person and submit a written report to the court at least ten (10) days before a hearing under this chapter. The court shall provide copies of the report to the state and counsel for the incarcerated person.

(c) The report under subsection (b) must address:

- (1) the incarcerated person's ability to understand the:**
 - (A) nature of the proceedings; and**
 - (B) effect of an order issued under section 7(a) of this chapter;**
- (2) whether the incarcerated person is a mentally retarded individual (as defined in IC 35-36-9-2);**
- (3) whether the incarcerated person is mentally ill;**
- (4) what treatment, if any, the incarcerated person is receiving or has received for a mental illness;**
- (5) whether the incarcerated person has attempted suicide; and**
- (6) other matters the psychiatrist or psychologist determines are germane to the ability of the incarcerated person to rationally elect a death sentence under this chapter.**

(d) The psychiatrist or psychologist appointed under subsection (a) must be present and available to testify at a hearing under this chapter.

(e) A report submitted under subsection (b) shall be admitted into evidence on request of the state or counsel for the incarcerated person.

Sec. 6. (a) An incarcerated person who:

- (1) files a petition; or**
- (2) elects to halt the execution of a death sentence under section 9 of this chapter;**

is entitled to be represented by counsel at a hearing under this chapter.

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1 **(b) The court shall appoint counsel to represent the incarcerated**
 2 **person if the incarcerated person is determined by the court to be**
 3 **indigent.**

4 **Sec. 7. (a) Subject to subsections (b) and (c), a court shall issue**
 5 **an order abrogating the sentence described in section 2 of this**
 6 **chapter and impose a death sentence following a hearing under this**
 7 **chapter if the court finds by clear and convincing evidence that the**
 8 **incarcerated person:**

- 9 **(1) has freely and voluntarily elected a death sentence; and**
 10 **(2) understands the nature of the proceeding and the effect of**
 11 **an order imposing a death sentence.**

12 **(b) A court may not issue an order described in subsection (a)**
 13 **for a mentally retarded individual (as defined in IC 35-36-9-2).**

14 **(c) A court may not issue an order described in subsection (a)**
 15 **for a mentally ill person unless the court:**

- 16 **(1) makes the findings required under subsection (a)(1) and**
 17 **(a)(2); and**
 18 **(2) finds by clear and convincing evidence that the**
 19 **incarcerated person has not elected a death sentence in part**
 20 **or in whole based on reasoning that is substantially impaired**
 21 **by the incarcerated person's mental illness.**

22 **A court may appoint additional psychiatrists or psychologists**
 23 **described in section 5 of this chapter to assist the court in making**
 24 **a determination under this subsection.**

25 **(d) A court that issues an order imposing a death sentence under**
 26 **this section must include in the order an execution date. The**
 27 **execution date must be at least one hundred (100) days after the**
 28 **date on which the order is issued by the court.**

29 **Sec. 8. A death sentence imposed by a court under this chapter**
 30 **shall be carried out as if an incarcerated person sentenced to death**
 31 **is a convicted person or a convicted female under IC 35-38-6.**
 32 **However, if an incarcerated person sentenced to death under this**
 33 **chapter escapes from custody before the date set for execution, the:**

- 34 **(1) incarcerated person, on rearrest, may not be executed, as**
 35 **provided in IC 35-38-6-7; and**
 36 **(2) court shall issue an order abrogating the death sentence**
 37 **and reinstating the original sentence.**

38 **Sec. 9. (a) An incarcerated person against whom a death**
 39 **sentence is imposed under this chapter has a right to elect to halt**
 40 **the execution of the death sentence at any time.**

41 **(b) An election to halt the execution of a death sentence may be**
 42 **made orally or in writing.**

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1 (c) If an incarcerated person against whom a death sentence has
 2 been imposed under this chapter makes a clear and unambiguous
 3 election to halt the execution of the death sentence, the penal
 4 facility in which the incarcerated person is confined shall
 5 immediately:

6 (1) suspend the execution of the death sentence; and
 7 (2) send written notification of the election to halt the
 8 execution to the court that imposed the death sentence under
 9 this chapter.

10 (d) The court that imposed the death sentence under this
 11 chapter shall set the matter for a hearing not later than thirty (30)
 12 days after receipt of a notice under subsection (c). The court shall
 13 issue an order abrogating the death sentence and reinstating the
 14 original sentence following a hearing if the court finds by a
 15 preponderance of the evidence that the incarcerated person:

16 (1) freely and voluntarily elected to halt the execution of the
 17 death sentence; and
 18 (2) understood the effect of the election to halt the execution
 19 at the time it was made.

20 (e) The court shall vacate the suspension of the death sentence
 21 under subsection (c)(1) and affirm the original death sentence
 22 order if the court, following the hearing, does not make the
 23 findings under subsection (d)(1) and (d)(2). If the court affirms the
 24 original death sentence, the incarcerated person shall be executed:

25 (1) on the date established under section 7(d) of this chapter,
 26 if the affirmation of the original death sentence is entered by
 27 the court at least ten (10) days before the date established
 28 under section 7(d) of this chapter; or
 29 (2) at least thirty (30) days after the order affirming the death
 30 sentence is entered, if the affirmation of the original death
 31 sentence is entered less than ten (10) days before the date
 32 established under section 7(d) of this chapter.

33 (f) An election by an incarcerated person to halt the execution
 34 of a death sentence after the death sentence is affirmed under
 35 subsection (e) shall be resolved as set forth in this section.

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