

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1263 be amended to read as follows:

- 1 Delete the title and insert the following:
2 A BILL FOR AN ACT to amend the Indiana Code concerning
3 courts and court officers and criminal law.
4 Page 2, after line 40 , begin a new paragraph and insert:
5 "SECTION 2. IC 35-50-2-9 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) The state may
7 seek either a death sentence or a sentence of life imprisonment without
8 parole for murder by alleging, on a page separate from the rest of the
9 charging instrument, the existence of at least one (1) of the aggravating
10 circumstances listed in subsection (b). In the sentencing hearing after
11 a person is convicted of murder, the state must prove beyond a
12 reasonable doubt the existence of at least one (1) of the aggravating
13 circumstances alleged. However, the state may not proceed against a
14 defendant under this section if a court determines at a pretrial hearing
15 under IC 35-36-9 that the defendant is a mentally retarded individual.
16 (b) The aggravating circumstances are as follows:
17 (1) The defendant committed the murder by intentionally killing
18 the victim while committing or attempting to commit any of the
19 following:
20 (A) Arson (IC 35-43-1-1).
21 (B) Burglary (IC 35-43-2-1).
22 (C) Child molesting (IC 35-42-4-3).
23 (D) Criminal deviate conduct (IC 35-42-4-2).
24 (E) Kidnapping (IC 35-42-3-2).
25 (F) Rape (IC 35-42-4-1).
26 (G) Robbery (IC 35-42-5-1).
27 (H) Carjacking (IC 35-42-5-2).
28 (I) Criminal gang activity (IC 35-45-9-3).
29 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
30 (2) The defendant committed the murder by the unlawful
31 detonation of an explosive with intent to injure person or damage
32 property.

- 1 (3) The defendant committed the murder by lying in wait.
2 (4) The defendant who committed the murder was hired to kill.
3 (5) The defendant committed the murder by hiring another
4 person to kill.
5 (6) The victim of the murder was a corrections employee,
6 probation officer, parole officer, community corrections worker,
7 home detention officer, fireman, judge, or law enforcement
8 officer, and either:
9 (A) the victim was acting in the course of duty; or
10 (B) the murder was motivated by an act the victim
11 performed while acting in the course of duty.
12 (7) The defendant has been convicted of another murder.
13 (8) The defendant has committed another murder, at any time,
14 regardless of whether the defendant has been convicted of that
15 other murder.
16 (9) The defendant was:
17 (A) under the custody of the department of correction;
18 (B) under the custody of a county sheriff;
19 (C) on probation after receiving a sentence for the
20 commission of a felony; or
21 (D) on parole;
22 at the time the murder was committed.
23 (10) The defendant dismembered the victim.
24 (11) The defendant burned, mutilated, or tortured the victim
25 while the victim was alive.
26 (12) The victim of the murder was less than twelve (12) years of
27 age.
28 (13) The victim was a victim of any of the following offenses for
29 which the defendant was convicted:
30 (A) Battery as a Class D felony or as a Class C felony under
31 IC 35-42-2-1.
32 (B) Kidnapping (IC 35-42-3-2).
33 (C) Criminal confinement (IC 35-42-3-3).
34 (D) A sex crime under IC 35-42-4.
35 (14) The victim of the murder was listed by the state or known
36 by the defendant to be a witness against the defendant and the
37 defendant committed the murder with the intent to prevent the
38 person from testifying.
39 (15) The defendant committed the murder by intentionally
40 discharging a firearm (as defined in IC 35-47-1-5):
41 (A) into an inhabited dwelling; or
42 (B) from a vehicle.
43 (16) The victim of the murder was pregnant and the murder
44 resulted in the intentional killing of a fetus that has attained
45 viability (as defined in IC 16-18-2-365).
46 **(17) The defendant was the subject of at least one (1) of the**
47 **following orders at the time the murder was committed:**
48 **(A) A foreign protection order or an order for protection**
49 **that ordered the defendant to refrain from committing**
50 **acts described in:**
51 **(i) IC 34-26-5-9(b)(1); or**
52 **(ii) IC 34-26-5-9(b)(2);**

- 1 **against the victim of the murder.**
 2 **(B) A judicial order that ordered the defendant to**
 3 **refrain from direct or indirect contact with the victim of**
 4 **the murder.**
 5 **(C) A workplace violence restraining order that ordered**
 6 **the defendant to refrain from:**
 7 **(i) committing unlawful acts of violence; or**
 8 **(ii) making credible threats of violence;**
 9 **against the victim of the murder.**
 10 (c) The mitigating circumstances that may be considered under this
 11 section are as follows:
 12 (1) The defendant has no significant history of prior criminal
 13 conduct.
 14 (2) The defendant was under the influence of extreme mental or
 15 emotional disturbance when the murder was committed.
 16 (3) The victim was a participant in or consented to the
 17 defendant's conduct.
 18 (4) The defendant was an accomplice in a murder committed by
 19 another person, and the defendant's participation was relatively
 20 minor.
 21 (5) The defendant acted under the substantial domination of
 22 another person.
 23 (6) The defendant's capacity to appreciate the criminality of the
 24 defendant's conduct or to conform that conduct to the
 25 requirements of law was substantially impaired as a result of
 26 mental disease or defect or of intoxication.
 27 (7) The defendant was less than eighteen (18) years of age at the
 28 time the murder was committed.
 29 (8) Any other circumstances appropriate for consideration.
 30 (d) If the defendant was convicted of murder in a jury trial, the jury
 31 shall reconvene for the sentencing hearing. If the trial was to the court,
 32 or the judgment was entered on a guilty plea, the court alone shall
 33 conduct the sentencing hearing. The jury or the court may consider all
 34 the evidence introduced at the trial stage of the proceedings, together
 35 with new evidence presented at the sentencing hearing. The court shall
 36 instruct the jury concerning the statutory penalties for murder and any
 37 other offenses for which the defendant was convicted, the potential for
 38 consecutive or concurrent sentencing, and the availability of good time
 39 credit and clemency. The court shall instruct the jury that, in order for
 40 the jury to recommend to the court that the death penalty or life
 41 imprisonment without parole should be imposed, the jury must find at
 42 least one (1) aggravating circumstance beyond a reasonable doubt as
 43 described in subsection (k) and shall provide a special verdict form for
 44 each aggravating circumstance alleged. The defendant may present any
 45 additional evidence relevant to:
 46 (1) the aggravating circumstances alleged; or
 47 (2) any of the mitigating circumstances listed in subsection (c).
 48 (e) For a defendant sentenced after June 30, 2002, except as
 49 provided by IC 35-36-9, if the hearing is by jury, the jury shall
 50 recommend to the court whether the death penalty or life imprisonment

1 without parole, or neither, should be imposed. The jury may
2 recommend:

3 (1) the death penalty; or

4 (2) life imprisonment without parole;

5 only if it makes the findings described in subsection (l). If the jury
6 reaches a sentencing recommendation, the court shall sentence the
7 defendant accordingly. After a court pronounces sentence, a
8 representative of the victim's family and friends may present a
9 statement regarding the impact of the crime on family and friends. The
10 impact statement may be submitted in writing or given orally by the
11 representative. The statement shall be given in the presence of the
12 defendant.

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

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

18 (1) sentence the defendant to death; or

19 (2) impose a term of life imprisonment without parole;

20 only if it makes the findings described in subsection (l).

21 (h) If a court sentences a defendant to death, the court shall order
22 the defendant's execution to be carried out not later than one (1) year
23 and one (1) day after the date the defendant was convicted. The
24 supreme court has exclusive jurisdiction to stay the execution of a death
25 sentence. If the supreme court stays the execution of a death sentence,
26 the supreme court shall order a new date for the defendant's 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) A death sentence is subject to automatic review by the supreme
42 court. The review, which shall be heard under rules adopted by the
43 supreme court, shall be given priority over all other cases. The supreme
44 court's review must take into consideration all claims that the:

45 (1) conviction or sentence was in violation of the:

46 (A) Constitution of the State of Indiana; or

47 (B) Constitution of the United States;

48 (2) sentencing court was without jurisdiction to impose a
49 sentence; and

50 (3) sentence:

- 1 (A) exceeds the maximum sentence authorized by law; or
 2 (B) is otherwise erroneous.

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

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

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

- 24 (1) the state has proved beyond a reasonable doubt that at least
 25 one (1) of the aggravating circumstances listed in subsection (b)
 26 exists; and
 27 (2) any mitigating circumstances that exist are outweighed by the
 28 aggravating circumstance or circumstances.

29 **SECTION 3. [EFFECTIVE JULY 1, 2005] IC 35-50-2-9, as**
 30 **amended by this act, applies only to murders committed after June**
 31 **30, 2005."**

32 Renumber all SECTIONS consecutively.

(Reference is to EHB 1263 as printed March 25, 2005.)

Senator YOUNG R MICHAEL