



Reprinted
February 8, 2005

SENATE BILL No. 334

DIGEST OF SB 334 (Updated February 7, 2005 3:07 pm - DI 69)

Citations Affected: IC 35-50; noncode.

Synopsis: Murder sentencing. Provides that persons who commit murder may receive the death penalty or life imprisonment without parole if certain protective orders were in effect for the benefit of the murder victim and against the person who committed the murder at the time the murder was committed.

Effective: July 1, 2005.

Young R Michael

January 11, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 3, 2005, amended, reported favorably — Do Pass.
February 7, 2005, read second time, amended, ordered engrossed.

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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. 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).

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- 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.

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- 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 judicial order that ordered the defendant to refrain**
- 24 **from direct or indirect contact with the victim of the**
- 25 **murder.**
- 26 **(C) A workplace violence restraining order that ordered**
- 27 **the defendant to refrain from:**
- 28 **(i) committing unlawful acts of violence; or**
- 29 **(ii) making credible threats of violence;**
- 30 **against the victim of the murder.**
- 31 (c) The mitigating circumstances that may be considered under this
- 32 section are as follows:
- 33 (1) The defendant has no significant history of prior criminal
- 34 conduct.
- 35 (2) The defendant was under the influence of extreme mental or
- 36 emotional disturbance when the murder was committed.
- 37 (3) The victim was a participant in or consented to the defendant's
- 38 conduct.
- 39 (4) The defendant was an accomplice in a murder committed by
- 40 another person, and the defendant's participation was relatively
- 41 minor.
- 42 (5) The defendant acted under the substantial domination of

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1 another person.

2 (6) The defendant's capacity to appreciate the criminality of the

3 defendant's conduct or to conform that conduct to the

4 requirements of law was substantially impaired as a result of

5 mental disease or defect or of intoxication.

6 (7) The defendant was less than eighteen (18) years of age at the

7 time the murder was committed.

8 (8) Any other circumstances appropriate for consideration.

9 (d) If the defendant was convicted of murder in a jury trial, the jury

10 shall reconvene for the sentencing hearing. If the trial was to the court,

11 or the judgment was entered on a guilty plea, the court alone shall

12 conduct the sentencing hearing. The jury or the court may consider all

13 the evidence introduced at the trial stage of the proceedings, together

14 with new evidence presented at the sentencing hearing. The court shall

15 instruct the jury concerning the statutory penalties for murder and any

16 other offenses for which the defendant was convicted, the potential for

17 consecutive or concurrent sentencing, and the availability of good time

18 credit and clemency. The court shall instruct the jury that, in order for

19 the jury to recommend to the court that the death penalty or life

20 imprisonment without parole should be imposed, the jury must find at

21 least one (1) aggravating circumstance beyond a reasonable doubt as

22 described in subsection (k) and shall provide a special verdict form for

23 each aggravating circumstance alleged. The defendant may present any

24 additional evidence relevant to:

25 (1) the aggravating circumstances alleged; or

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

27 (e) For a defendant sentenced after June 30, 2002, except as

28 provided by IC 35-36-9, if the hearing is by jury, the jury shall

29 recommend to the court whether the death penalty or life imprisonment

30 without parole, or neither, should be imposed. The jury may

31 recommend:

32 (1) the death penalty; or

33 (2) life imprisonment without parole;

34 only if it makes the findings described in subsection (l). If the jury

35 reaches a sentencing recommendation, the court shall sentence the

36 defendant accordingly. After a court pronounces sentence, a

37 representative of the victim's family and friends may present a

38 statement regarding the impact of the crime on family and friends. The

39 impact statement may be submitted in writing or given orally by the

40 representative. The statement shall be given in the presence of the

41 defendant.

42 (f) If a jury is unable to agree on a sentence recommendation after

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1 reasonable deliberations, the court shall discharge the jury and proceed
2 as if the hearing had been to the court alone.

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

5 (1) sentence the defendant to death; or

6 (2) impose a term of life imprisonment without parole;
7 only if it makes the findings described in subsection (l).

8 (h) If a court sentences a defendant to death, the court shall order
9 the defendant's execution to be carried out not later than one (1) year
10 and one (1) day after the date the defendant was convicted. The
11 supreme court has exclusive jurisdiction to stay the execution of a
12 death sentence. If the supreme court stays the execution of a death
13 sentence, the supreme court shall order a new date for the defendant's
14 execution.

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

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

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

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

35 (B) Constitution of the United States;

36 (2) sentencing court was without jurisdiction to impose a
37 sentence; and

38 (3) sentence:

39 (A) exceeds the maximum sentence authorized by law; or

40 (B) is otherwise erroneous.

41 If the supreme court cannot complete its review by the date set by the
42 sentencing court for the defendant's execution under subsection (h), the

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1 supreme court shall stay the execution of the death sentence and set a
2 new date to carry out the defendant's execution.

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

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

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

26 **SECTION 2. [EFFECTIVE JULY 1, 2005] IC 35-50-2-9, as**
27 **amended by this act, applies only to murders committed after June**
28 **30, 2005.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 334, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 30, delete ":".

Page 4, line 31, delete "(1)".

Page 4, run in lines 30 through 31.

Page 4, line 32, beginning with "(1)", begin a new line single block indented and reset in roman "(1)".

Page 4, line 32, delete "(A)".

Page 4, line 33, beginning with "(2)", begin a new line single block indented and reset in roman "(2)".

Page 4, line 33, delete "(B)".

Page 4, line 34, delete "; and" and insert ".".

Page 4, delete lines 35 through 36.

and when so amended that said bill do pass.

(Reference is to SB 334 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 3.

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SENATE MOTION

Madam President: I move that Senate Bill 334 be amended to read as follows:

Page 3, delete lines 23 through 29.

Page 3, line 30, delete "(C)" and insert "**(B)**".

Page 3, line 33, delete "(D)" and insert "**(C)**".

(Reference is to SB 334 as printed February 4, 2005.)

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