

HOUSE BILL No. 1342

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2; IC 12-18-9; IC 34-26-5-9; IC 35-33-1-1.7; IC 35-38-1-7.1; IC 35-44.1-2-12; IC 35-50-2-9.

Synopsis: Domestic violence. Requires the criminal justice institute (institute) to compile information concerning crimes that involve domestic violence and submit the information to the National Incident-Based Reporting System maintained by the Federal Bureau of Investigation. Requires, instead of allows, the victim services division of the institute to make grants from the domestic violence prevention and treatment fund. Requires each county to establish and operate a domestic violence shelter in the county to assist victims of domestic violence in the county. Provides that, upon a finding of a violation of an order for protection concerning a victim of domestic or family violence, a court shall require the person who violated the order to wear a GPS tracking device. Requires a facility having custody of a person arrested for a crime of domestic violence to keep the person in custody for at least 24 hours instead of at least eight hours from the time of the person's arrest. Allows a sentencing court to consider as a mitigating factor the fact that a person who was convicted of: (1) a crime involving the use of force against another person; or (2) murdering another person; had been the victim of an act of domestic violence committed by the other person. Makes it a Class B misdemeanor for a person to knowingly or intentionally dismiss an employee, deprive an employee of employment benefits, or threaten such a dismissal or deprivation: (1) because the employee attended a court proceeding or participated in a law enforcement investigation related to a criminal case in which the employee is a crime victim or attended a court proceeding related to a civil case in which the employee is a victim of domestic or family violence; (2) because an order for protection has been issued on the employee's behalf; or (3) because the employee is a victim of family violence.

Effective: July 1, 2015.

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January 13, 2015, read first time and referred to Committee on Family, Children and Human Affairs.



First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1342



A BILL FOR AN ACT to amend the Indiana Code concerning domestic violence.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-6-3, AS AMENDED BY P.L.168-2014,
- 2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2015]: Sec. 3. The institute is established to do the following:
- 4 (1) Evaluate state and local programs associated with:
- 5 (A) the prevention, detection, and solution of criminal
- 6 offenses;
- 7 (B) law enforcement; and
- 8 (C) the administration of criminal and juvenile justice.
- 9 (2) Improve and coordinate all aspects of law enforcement,
- 10 juvenile justice, and criminal justice in this state.
- 11 (3) Stimulate criminal and juvenile justice research.
- 12 (4) Develop new methods for the prevention and reduction of
- 13 crime.
- 14 (5) Prepare applications for funds under the Omnibus Act and the
- 15 Juvenile Justice Act.



- 1 (6) Administer victim and witness assistance funds.
 2 (7) Administer the traffic safety functions assigned to the institute
 3 under IC 9-27-2.
 4 (8) Compile and analyze information and disseminate the
 5 information to persons who make criminal justice decisions in this
 6 state.
 7 (9) Serve as the criminal justice statistical analysis center for this
 8 state.
 9 (10) Identify grants and other funds that can be used by the
 10 department of correction to carry out its responsibilities
 11 concerning sex or violent offender registration under IC 11-8-8.
 12 (11) Administer the application and approval process for
 13 designating an area of a consolidated or second class city as a
 14 public safety improvement area under IC 36-8-19.5.
 15 (12) Develop and maintain a meth watch program to inform
 16 retailers and the public about illicit methamphetamine production,
 17 distribution, and use in Indiana.
 18 (13) Develop and manage the gang crime witness protection
 19 program established by section 21 of this chapter.
 20 (14) Identify grants and other funds that can be used to fund the
 21 gang crime witness protection program.
 22 (15) Administer any sexual offense services.
 23 (16) Administer domestic violence programs.
 24 (17) Administer assistance to victims of human sexual trafficking
 25 offenses as provided in IC 35-42-3.5-4.
 26 (18) Administer the domestic violence prevention and treatment
 27 fund under IC 5-2-6.7.
 28 (19) Administer the family violence and victim assistance fund
 29 under IC 5-2-6.8.
 30 ~~(20)~~ **(20)** Monitor and evaluate criminal code reform under
 31 IC 5-2-6-24.
 32 **(21) Compile information concerning crimes that:**
 33 **(A) occur in Indiana; and**
 34 **(B) involve domestic violence;**
 35 **and submit the information to the National Incident-Based**
 36 **Reporting System (NIBRS) maintained by the Federal Bureau**
 37 **of Investigation.**
 38 **(22) Assist counties in establishing and operating domestic**
 39 **violence shelters under IC 12-18-9.**
 40 SECTION 2. IC 5-2-6.7-10, AS AMENDED BY P.L.150-2014,
 41 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2015]: Sec. 10. The division ~~may~~ **shall** make grants to and



1 enter into contracts with entities eligible under section 9 of this chapter.
 2 SECTION 3. IC 12-18-9 IS ADDED TO THE INDIANA CODE AS
 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 4 1, 2015]:

5 **Chapter 9. Domestic Violence Shelters**

6 **Sec. 1. As used in this chapter, "domestic violence" includes**
 7 **conduct that is an element of an offense under IC 35-42 or a threat**
 8 **to commit an act described in IC 35-42 by a person against another**
 9 **person who:**

- 10 (1) is or was a spouse of;
 11 (2) is or was living as if a spouse of;
 12 (3) has a child in common with;
 13 (4) is a minor subject to the control of; or
 14 (5) is an incapacitated individual under the guardianship or
 15 otherwise subject to the control of;

16 the person regardless of whether the act or threat has been
 17 reported to a law enforcement agency or results in a criminal
 18 prosecution.

19 **Sec. 2. As used in this chapter, "shelter" refers to a domestic**
 20 **violence shelter established under section 3 of this chapter.**

21 **Sec. 3. (a) Each county shall establish and operate a domestic**
 22 **violence shelter in the county to assist victims of domestic violence**
 23 **in the county.**

24 **(b) The expenses of establishing and operating a shelter shall be**
 25 **paid from the county general fund. However, a county may accept:**

- 26 (1) appropriations from the general assembly; and
 27 (2) grants, gifts, and donations from any other source;

28 to assist in operating a shelter.

29 **Sec. 4. The Indiana criminal justice institute established under**
 30 **IC 5-2-6-3 shall assist counties in establishing and operating**
 31 **shelters under this chapter.**

32 SECTION 4. IC 34-26-5-9, AS AMENDED BY P.L.1-2010,
 33 SECTION 135, IS AMENDED TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) If it appears from a petition
 35 for an order for protection or from a petition to modify an order for
 36 protection that domestic or family violence has occurred or that a
 37 modification of an order for protection is required, a court may:

- 38 (1) without notice or hearing, immediately issue an order for
 39 protection ex parte or modify an order for protection ex parte; or
 40 (2) upon notice and after a hearing, whether or not a respondent
 41 appears, issue or modify an order for protection.

42 (b) A court may grant the following relief without notice and



1 hearing in an ex parte order for protection or in an ex parte order for
 2 protection modification:

3 (1) Enjoin a respondent from threatening to commit or
 4 committing acts of domestic or family violence against a
 5 petitioner and each designated family or household member.

6 (2) Prohibit a respondent from harassing, annoying, telephoning,
 7 contacting, or directly or indirectly communicating with a
 8 petitioner.

9 (3) Remove and exclude a respondent from the residence of a
 10 petitioner, regardless of ownership of the residence.

11 (4) Order a respondent to stay away from the residence, school, or
 12 place of employment of a petitioner or a specified place
 13 frequented by a petitioner and each designated family or
 14 household member.

15 (5) Order possession and use of the residence, an automobile, and
 16 other essential personal effects, regardless of the ownership of the
 17 residence, automobile, and essential personal effects. If
 18 possession is ordered under this subdivision, the court may direct
 19 a law enforcement officer to accompany a petitioner to the
 20 residence of the parties to:

21 (A) ensure that a petitioner is safely restored to possession of
 22 the residence, automobile, and other essential personal effects;
 23 or

24 (B) supervise a petitioner's or respondent's removal of personal
 25 belongings.

26 (6) Order other relief necessary to provide for the safety and
 27 welfare of a petitioner and each designated family or household
 28 member.

29 (c) A court may grant the following relief after notice and a hearing,
 30 whether or not a respondent appears, in an order for protection or in a
 31 modification of an order for protection:

32 (1) Grant the relief under subsection (b).

33 (2) Specify arrangements for parenting time of a minor child by
 34 a respondent and:

35 (A) require supervision by a third party; or

36 (B) deny parenting time;

37 if necessary to protect the safety of a petitioner or child.

38 (3) Order a respondent to:

39 (A) pay attorney's fees;

40 (B) pay rent or make payment on a mortgage on a petitioner's
 41 residence;

42 (C) if the respondent is found to have a duty of support, pay



- 1 for the support of a petitioner and each minor child;
 2 (D) reimburse a petitioner or other person for expenses related
 3 to the domestic or family violence, including:
 4 (i) medical expenses;
 5 (ii) counseling;
 6 (iii) shelter; and
 7 (iv) repair or replacement of damaged property;
 8 (E) pay the costs and expenses incurred in connection with the
 9 use of a GPS tracking device under subsection (i); or
 10 (F) pay the costs and fees incurred by a petitioner in bringing
 11 the action.
- 12 (4) Prohibit a respondent from using or possessing a firearm,
 13 ammunition, or a deadly weapon specified by the court, and direct
 14 the respondent to surrender to a specified law enforcement agency
 15 the firearm, ammunition, or deadly weapon for the duration of the
 16 order for protection unless another date is ordered by the court.
- 17 An order issued under subdivision (4) does not apply to a person who
 18 is exempt under 18 U.S.C. 925.
- 19 (d) The court shall:
 20 (1) cause the order for protection to be delivered to the county
 21 sheriff for service;
 22 (2) make reasonable efforts to ensure that the order for protection
 23 is understood by a petitioner and a respondent if present;
 24 (3) electronically notify each law enforcement agency:
 25 (A) required to receive notification under IC 5-2-9-6; or
 26 (B) designated by the petitioner;
 27 (4) transmit a copy of the order to the clerk for processing under
 28 IC 5-2-9;
 29 (5) indicate in the order if the order and the parties meet the
 30 criteria under 18 U.S.C. 922(g)(8); and
 31 (6) require the clerk of court to enter or provide a copy of the
 32 order to the Indiana protective order registry established by
 33 IC 5-2-9-5.5.
- 34 (e) An order for protection issued ex parte or upon notice and a
 35 hearing, or a modification of an order for protection issued ex parte or
 36 upon notice and a hearing, is effective for two (2) years after the date
 37 of issuance unless another date is ordered by the court. The sheriff of
 38 each county shall provide expedited service for an order for protection.
- 39 (f) A finding that domestic or family violence has occurred
 40 sufficient to justify the issuance of an order under this section means
 41 that a respondent represents a credible threat to the safety of a
 42 petitioner or a member of a petitioner's household. Upon a showing of



1 domestic or family violence by a preponderance of the evidence, the
 2 court shall grant relief necessary to bring about a cessation of the
 3 violence or the threat of violence. The relief may include an order
 4 directing a respondent to surrender to a law enforcement officer or
 5 agency all firearms, ammunition, and deadly weapons:

- 6 (1) in the control, ownership, or possession of a respondent; or
 7 (2) in the control or possession of another person on behalf of a
 8 respondent;

9 for the duration of the order for protection unless another date is
 10 ordered by the court.

11 (g) An order for custody, parenting time, or possession or control of
 12 property issued under this chapter is superseded by an order issued
 13 from a court exercising dissolution, legal separation, paternity, or
 14 guardianship jurisdiction over the parties.

15 (h) The fact that an order for protection is issued under this chapter
 16 does not raise an inference or presumption in a subsequent case or
 17 hearings between the parties.

18 (i) Upon a finding of a violation of an order for protection, the court:
 19 ~~may:~~

- 20 (1) **shall** require a respondent to wear a GPS tracking device; and
 21 (2) **may** prohibit the respondent from approaching or entering
 22 certain locations where the petitioner may be found.

23 **If** ~~When~~ the court requires a respondent to wear a GPS tracking device
 24 under subdivision (1), the court shall, if available, require the
 25 respondent to wear a GPS tracking device with victim notification
 26 capabilities.

27 (j) The court may permit a victim, a petitioner, another person, an
 28 organization, or an agency to pay the costs and expenses incurred in
 29 connection with the use of a GPS tracking device under subsection (i).

30 SECTION 5. IC 35-33-1-1.7, AS AMENDED BY P.L.114-2012,
 31 SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2015]: Sec. 1.7. (a) A facility having custody of a person
 33 arrested for a crime of domestic violence (as described in
 34 IC 35-31.5-2-78) shall keep the person in custody for at least ~~eight (8)~~
 35 **twenty-four (24)** hours from the time of the arrest.

36 (b) A person described in subsection (a) may not be released on bail
 37 until at least ~~eight (8)~~ **twenty-four (24)** hours from the time of the
 38 person's arrest.

39 SECTION 6. IC 35-38-1-7.1, AS AMENDED BY P.L.156-2014,
 40 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2015]: Sec. 7.1. (a) In determining what sentence to impose
 42 for a crime, the court may consider the following aggravating



- 1 circumstances:
2 (1) The harm, injury, loss, or damage suffered by the victim of an
3 offense was:
4 (A) significant; and
5 (B) greater than the elements necessary to prove the
6 commission of the offense.
7 (2) The person has a history of criminal or delinquent behavior.
8 (3) The victim of the offense was less than twelve (12) years of
9 age or at least sixty-five (65) years of age at the time the person
10 committed the offense.
11 (4) The person:
12 (A) committed a crime of violence (IC 35-50-1-2); and
13 (B) knowingly committed the offense in the presence or within
14 hearing of an individual who:
15 (i) was less than eighteen (18) years of age at the time the
16 person committed the offense; and
17 (ii) is not the victim of the offense.
18 (5) The person violated a protective order issued against the
19 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
20 IC 34-4-5.1 before their repeal), a workplace violence restraining
21 order issued against the person under IC 34-26-6, or a no contact
22 order issued against the person.
23 (6) The person has recently violated the conditions of any
24 probation, parole, pardon, community corrections placement, or
25 pretrial release granted to the person.
26 (7) The victim of the offense was:
27 (A) a person with a disability (as defined in IC 27-7-6-12), and
28 the defendant knew or should have known that the victim was
29 a person with a disability; or
30 (B) mentally or physically infirm.
31 (8) The person was in a position having care, custody, or control
32 of the victim of the offense.
33 (9) The injury to or death of the victim of the offense was the
34 result of shaken baby syndrome (as defined in IC 16-41-40-2).
35 (10) The person threatened to harm the victim of the offense or a
36 witness if the victim or witness told anyone about the offense.
37 (11) The person:
38 (A) committed trafficking with an inmate under
39 IC 35-44.1-3-5; and
40 (B) is an employee of the penal facility.
41 (b) The court may consider the following factors as mitigating
42 circumstances or as favoring suspending the sentence and imposing



- 1 probation:
- 2 (1) The crime neither caused nor threatened serious harm to
- 3 persons or property, or the person did not contemplate that it
- 4 would do so.
- 5 (2) The crime was the result of circumstances unlikely to recur.
- 6 (3) The victim of the crime induced or facilitated the offense.
- 7 (4) There are substantial grounds tending to excuse or justify the
- 8 crime, though failing to establish a defense.
- 9 (5) The person acted under strong provocation.
- 10 (6) The person has no history of delinquency or criminal activity,
- 11 or the person has led a law-abiding life for a substantial period
- 12 before commission of the crime.
- 13 (7) The person is likely to respond affirmatively to probation or
- 14 short term imprisonment.
- 15 (8) The character and attitudes of the person indicate that the
- 16 person is unlikely to commit another crime.
- 17 (9) The person has made or will make restitution to the victim of
- 18 the crime for the injury, damage, or loss sustained.
- 19 (10) Imprisonment of the person will result in undue hardship to
- 20 the person or the dependents of the person.
- 21 (11) The person was convicted of a crime involving the use of
- 22 force against **another** person who had:
- 23 (A) repeatedly inflicted physical or sexual abuse upon the
- 24 convicted person and evidence shows that the convicted
- 25 person suffered from the effects of battery as a result of the
- 26 past course of conduct of the individual who is the victim of
- 27 the crime for which the person was convicted; **or**
- 28 **(B) committed an act of domestic violence (as defined in**
- 29 **IC 5-26.5-1-3) against the convicted person.**
- 30 (12) The person was convicted of a crime relating to a controlled
- 31 substance and the person's arrest or prosecution was facilitated in
- 32 part because the person:
- 33 (A) requested emergency medical assistance; or
- 34 (B) acted in concert with another person who requested
- 35 emergency medical assistance;
- 36 for an individual who reasonably appeared to be in need of
- 37 medical assistance due to the use of alcohol or a controlled
- 38 substance.
- 39 (c) The criteria listed in subsections (a) and (b) do not limit the
- 40 matters that the court may consider in determining the sentence.
- 41 (d) A court may impose any sentence that is:
- 42 (1) authorized by statute; and



1 (2) permissible under the Constitution of the State of Indiana;
 2 regardless of the presence or absence of aggravating circumstances or
 3 mitigating circumstances.

4 SECTION 7. IC 35-44.1-2-12, AS ADDED BY P.L.126-2012,
 5 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2015]: Sec. 12. A person who knowingly or intentionally

- 7 (1) dismisses an employee,
 8 (2) deprives an employee of employment benefits, or
 9 (3) threatens such a dismissal or deprivation

10 because:

11 (1) the employee has received or responded to a subpoena in a
 12 criminal proceeding;

13 (2) the employee:

14 (A) attended a court proceeding or participated in a law
 15 enforcement investigation related to a criminal case in
 16 which the employee is a crime victim; or

17 (B) attended a court proceeding related to a civil case in
 18 which the employee is a victim of domestic or family
 19 violence (as defined in IC 31-9-2-42);

20 (3) an order for protection has been issued under IC 34-26-5
 21 on the employee's behalf; or

22 (4) the employee is a victim of family violence (as defined in
 23 IC 31-9-2-42);

24 commits interference with witness service; a Class B misdemeanor.

25 SECTION 8. IC 35-50-2-9, AS AMENDED BY P.L.168-2014,
 26 SECTION 119, IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) The state may seek either a
 28 death sentence or a sentence of life imprisonment without parole for
 29 murder by alleging, on a page separate from the rest of the charging
 30 instrument, the existence of at least one (1) of the aggravating
 31 circumstances listed in subsection (b). In the sentencing hearing after
 32 a person is convicted of murder, the state must prove beyond a
 33 reasonable doubt the existence of at least one (1) of the aggravating
 34 circumstances alleged. However, the state may not proceed against a
 35 defendant under this section if a court determines at a pretrial hearing
 36 under IC 35-36-9 that the defendant is an individual with mental
 37 retardation.

38 (b) The aggravating circumstances are as follows:

39 (1) The defendant committed the murder by intentionally killing
 40 the victim while committing or attempting to commit any of the
 41 following:

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



- 1 (B) Burglary (IC 35-43-2-1).
 2 (C) Child molesting (IC 35-42-4-3).
 3 (D) Criminal deviate conduct (IC 35-42-4-2) (before its
 4 repeal).
 5 (E) Kidnapping (IC 35-42-3-2).
 6 (F) Rape (IC 35-42-4-1).
 7 (G) Robbery (IC 35-42-5-1).
 8 (H) Carjacking (IC 35-42-5-2) (before its repeal).
 9 (I) Criminal gang activity (IC 35-45-9-3).
 10 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
 11 (K) Criminal confinement (IC 35-42-3-3).
- 12 (2) The defendant committed the murder by the unlawful
 13 detonation of an explosive with intent to injure a person or
 14 damage property.
- 15 (3) The defendant committed the murder by lying in wait.
- 16 (4) The defendant who committed the murder was hired to kill.
- 17 (5) The defendant committed the murder by hiring another person
 18 to kill.
- 19 (6) The victim of the murder was a corrections employee,
 20 probation officer, parole officer, community corrections worker,
 21 home detention officer, fireman, judge, or law enforcement
 22 officer, and either:
- 23 (A) the victim was acting in the course of duty; or
 24 (B) the murder was motivated by an act the victim performed
 25 while acting in the course of duty.
- 26 (7) The defendant has been convicted of another murder.
- 27 (8) The defendant has committed another murder, at any time,
 28 regardless of whether the defendant has been convicted of that
 29 other murder.
- 30 (9) The defendant was:
- 31 (A) under the custody of the department of correction;
 32 (B) under the custody of a county sheriff;
 33 (C) on probation after receiving a sentence for the commission
 34 of a felony; or
 35 (D) on parole;
- 36 at the time the murder was committed.
- 37 (10) The defendant dismembered the victim.
- 38 (11) The defendant burned, mutilated, or tortured the victim while
 39 the victim was alive.
- 40 (12) The victim of the murder was less than twelve (12) years of
 41 age.
- 42 (13) The victim was a victim of any of the following offenses for



- 1 which the defendant was convicted:
- 2 (A) Battery committed before July 1, 2014, as a Class D felony
- 3 or as a Class C felony under IC 35-42-2-1 or battery
- 4 committed after June 30, 2014, as a Level 6 felony, a Level 5
- 5 felony, a Level 4 felony, or a Level 3 felony.
- 6 (B) Kidnapping (IC 35-42-3-2).
- 7 (C) Criminal confinement (IC 35-42-3-3).
- 8 (D) A sex crime under IC 35-42-4.
- 9 (14) The victim of the murder was listed by the state or known by
- 10 the defendant to be a witness against the defendant and the
- 11 defendant committed the murder with the intent to prevent the
- 12 person from testifying.
- 13 (15) The defendant committed the murder by intentionally
- 14 discharging a firearm (as defined in IC 35-47-1-5):
- 15 (A) into an inhabited dwelling; or
- 16 (B) from a vehicle.
- 17 (16) The victim of the murder was pregnant and the murder
- 18 resulted in the intentional killing of a fetus that has attained
- 19 viability (as defined in IC 16-18-2-365).
- 20 (c) The mitigating circumstances that may be considered under this
- 21 section are as follows:
- 22 (1) The defendant has no significant history of prior criminal
- 23 conduct.
- 24 (2) The defendant was under the influence of extreme mental or
- 25 emotional disturbance when the murder was committed.
- 26 (3) The victim was a participant in or consented to the defendant's
- 27 conduct.
- 28 (4) The defendant was an accomplice in a murder committed by
- 29 another person, and the defendant's participation was relatively
- 30 minor.
- 31 (5) The defendant acted under the substantial domination of
- 32 another person.
- 33 (6) The defendant's capacity to appreciate the criminality of the
- 34 defendant's conduct or to conform that conduct to the
- 35 requirements of law was substantially impaired as a result of
- 36 mental disease or defect or of intoxication.
- 37 (7) The defendant was less than eighteen (18) years of age at the
- 38 time the murder was committed.
- 39 **(8) The victim committed an act of domestic violence (as**
- 40 **defined in IC 5-26.5-1-3) against the defendant.**
- 41 ~~(8)~~ **(9)** Any other circumstances appropriate for consideration.
- 42 (d) If the defendant was convicted of murder in a jury trial, the jury



1 shall reconvene for the sentencing hearing. If the trial was to the court,
 2 or the judgment was entered on a guilty plea, the court alone shall
 3 conduct the sentencing hearing. The jury or the court may consider all
 4 the evidence introduced at the trial stage of the proceedings, together
 5 with new evidence presented at the sentencing hearing. The court shall
 6 instruct the jury concerning the statutory penalties for murder and any
 7 other offenses for which the defendant was convicted, the potential for
 8 consecutive or concurrent sentencing, and the availability of good time
 9 credit and clemency. The court shall instruct the jury that, in order for
 10 the jury to recommend to the court that the death penalty or life
 11 imprisonment without parole should be imposed, the jury must find at
 12 least one (1) aggravating circumstance beyond a reasonable doubt as
 13 described in subsection (1) and shall provide a special verdict form for
 14 each aggravating circumstance alleged. The defendant may present any
 15 additional evidence relevant to:

16 (1) the aggravating circumstances alleged; or

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

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

23 (1) the death penalty; or

24 (2) life imprisonment without parole;

25 only if it makes the findings described in subsection (1). If the jury
 26 reaches a sentencing recommendation, the court shall sentence the
 27 defendant accordingly. After a court pronounces sentence, a
 28 representative of the victim's family and friends may present a
 29 statement regarding the impact of the crime on family and friends. The
 30 impact statement may be submitted in writing or given orally by the
 31 representative. The statement shall be given in the presence of the
 32 defendant.

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

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

38 (1) sentence the defendant to death; or

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

40 only if it makes the findings described in subsection (1).

41 (h) If a court sentences a defendant to death, the court shall order
 42 the defendant's execution to be carried out not later than one (1) year



1 and one (1) day after the date the defendant was convicted. The
 2 supreme court has exclusive jurisdiction to stay the execution of a
 3 death sentence. If the supreme court stays the execution of a death
 4 sentence, the supreme court shall order a new date for the defendant's
 5 execution.

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

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

- 24 (1) conviction or sentence was in violation of the:
 25 (A) Constitution of the State of Indiana; or
 26 (B) Constitution of the United States;
 27 (2) sentencing court was without jurisdiction to impose a
 28 sentence; and
 29 (3) sentence:
 30 (A) exceeds the maximum sentence authorized by law; or
 31 (B) is otherwise erroneous.

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

36 (k) A person who has been sentenced to death and who has
 37 completed state post-conviction review proceedings may file a written
 38 petition with the supreme court seeking to present new evidence
 39 challenging the person's guilt or the appropriateness of the death
 40 sentence if the person serves notice on the attorney general. The
 41 supreme court shall determine, with or without a hearing, whether the
 42 person has presented previously undiscovered evidence that



1 undermines confidence in the conviction or the death sentence. If
2 necessary, the supreme court may remand the case to the trial court for
3 an evidentiary hearing to consider the new evidence and its effect on
4 the person's conviction and death sentence. The supreme court may not
5 make a determination in the person's favor nor make a decision to
6 remand the case to the trial court for an evidentiary hearing without
7 first providing the attorney general with an opportunity to be heard on
8 the matter.

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

12 (1) the state has proved beyond a reasonable doubt that at least
13 one (1) of the aggravating circumstances listed in subsection (b)
14 exists; and

15 (2) any mitigating circumstances that exist are outweighed by the
16 aggravating circumstance or circumstances.

