

# SENATE BILL No. 155

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-36-13; IC 35-50-2.

**Synopsis:** Capital punishment and serious mental illness. Establishes a procedure to determine whether a defendant charged with or convicted of murder is an individual with a serious mental illness. Prohibits the imposition of the death penalty on a defendant found to be an individual with a serious mental illness.

**Effective:** July 1, 2017.

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## Merritt

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January 4, 2017, read first time and referred to Committee on Judiciary.

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First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## SENATE BILL No. 155

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 35-36-13 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]:

4 **Chapter 13. Determination of Serious Mental Illness in Capital**  
5 **Cases**

6 **Sec. 1. This chapter applies to a person:**

- 7 (1) **charged with an offense for which the state seeks a death**
- 8 **sentence under IC 35-50-2-9; or**
- 9 (2) **convicted of an offense and sentenced to death.**

10 **Sec. 2. As used in this chapter, "active symptoms" means**  
11 **symptoms of the disorders described in section 4 of this chapter,**  
12 **including:**

- 13 (1) **delusions (fixed, clearly false beliefs);**
- 14 (2) **hallucinations (clearly erroneous perceptions of reality);**
- 15 (3) **extremely disorganized thinking;**
- 16 (4) **mania; or**
- 17 (5) **very significant disruptions of consciousness, memory, and**



1 perception of the environment.

2 **Sec. 3.** As used in this chapter, "individual with a serious mental  
3 illness" means an individual who, at the time of the offense, had  
4 active symptoms of a serious mental illness that substantially  
5 impaired the individual's capacity to:

- 6 (1) appreciate the nature, consequences, or wrongfulness of  
7 the individual's conduct;  
8 (2) exercise rational judgment in relation to the individual's  
9 conduct; or  
10 (3) conform the individual's conduct to the requirements of  
11 the law.

12 The term includes an individual diagnosed with a serious mental  
13 illness before or after commission of the offense.

14 **Sec. 4.** (a) Except as provided in subsection (b), as used in this  
15 chapter, "serious mental illness" means one (1) or more of the  
16 following disorders as classified in the American Psychiatric  
17 Association's Diagnostic and Statistical Manual of Mental  
18 Disorders (DSM) as amended and supplemented:

- 19 (1) Schizophrenia spectrum and other psychotic disorders.  
20 (2) Bipolar disorder.  
21 (3) Major depressive disorder.  
22 (4) Delusional disorder.  
23 (5) Posttraumatic stress disorder.  
24 (6) Traumatic brain injury.

25 (b) The term does not include a disorder manifested primarily  
26 by repeated criminal conduct or attributable solely to the acute  
27 effects of the voluntary use of alcohol or other drugs.

28 **Sec. 5.** (a) Except as provided in section 11 of this chapter, a  
29 person may file a petition with the trial court alleging that the  
30 person is an individual with a serious mental illness.

31 (b) If the offense is committed after June 30, 2017, the petition  
32 must be filed not later than twenty (20) days before the omnibus  
33 date.

34 (c) If the offense is committed before July 1, 2017, and the  
35 person has not been sentenced, the petition must be filed in  
36 accordance with section 10 of this chapter.

37 **Sec. 6.** (a) If a person files a petition under section 5 of this  
38 chapter, the court shall order an evaluation of the person to  
39 provide evidence of whether the person is an individual with a  
40 serious mental illness.

41 (b) The court shall appoint two (2) examiners, each of whom  
42 must be a:



1           (1) psychiatrist; or  
 2           (2) psychologist;  
 3 endorsed by the state psychology board as a health service  
 4 provider in psychology and experienced in the diagnosis and  
 5 treatment of individuals with a serious mental illness.

6           (c) The examiners shall provide a written report to the court  
 7 offering an opinion as to whether the person has a serious mental  
 8 illness.

9           (d) No statement that a person makes as part of:

10           (1) an evaluation; or

11           (2) a hearing;

12 under this chapter may be used against the person on the issue of  
 13 guilt in the criminal proceeding. However, the person and the state  
 14 may call an examiner as a witness in the criminal proceeding.

15           (e) This chapter does not preclude the person or the state from  
 16 presenting any other evidence on the issue of whether the person  
 17 suffers from a serious mental illness.

18           Sec. 7. (a) The court shall conduct a hearing on a petition filed  
 19 under section 5 of this chapter.

20           (b) The court may determine that the person is an individual  
 21 with a serious mental illness only if the person proves by a  
 22 preponderance of the evidence at the hearing that the person is an  
 23 individual with a serious mental illness.

24           Sec. 8. Not later than thirty (30) days after the hearing, the  
 25 court shall determine whether the person is an individual with a  
 26 serious mental illness based on the evidence presented at the  
 27 hearing. The court shall issue written findings supporting the  
 28 court's determination.

29           Sec. 9. If the court determines that the person is an individual  
 30 with a serious mental illness, the part of the state's charging  
 31 instrument filed under IC 35-50-2-9 that seeks a death sentence  
 32 against the person shall be dismissed. This section does not  
 33 preclude the state from seeking a sentence of life imprisonment  
 34 without parole under IC 35-50-2-9.

35           Sec. 10. (a) This section applies to a person who:

36           (1) is alleged to have committed an offense before July 1,  
 37 2017, for which the state seeks a death sentence under  
 38 IC 35-50-2-9; and

39           (2) has not been sentenced.

40           (b) The following apply to a petition filed by a person to whom  
 41 this section applies:

42           (1) If the person's trial has not commenced and the person is



1 reasonably able to file a petition by not later than twenty (20)  
 2 days before the omnibus date, the person shall file the petition  
 3 not later than twenty (20) days before the omnibus date.

4 (2) If the person's trial has not commenced and the person is  
 5 not reasonably able to file a petition by not later than twenty  
 6 (20) days before the omnibus date, the court shall grant the  
 7 person a reasonable time to file a petition under this chapter.

8 (3) If the person's trial has commenced, the court shall grant  
 9 the person a reasonable time to file a petition under this  
 10 chapter. A court may not impose a death sentence on the  
 11 person until the court has ruled on a petition filed under this  
 12 subdivision.

13 **Sec. 11. (a) This section applies to a person who is sentenced to**  
 14 **death before July 1, 2017.**

15 (b) If a person to whom this section applies has not completed  
 16 state postconviction proceedings, the person may include in the  
 17 petition for postconviction relief an allegation that the person is an  
 18 individual with a serious mental illness. If the postconviction court  
 19 determines that the person is an individual with a serious mental  
 20 illness, the court shall vacate the petitioner's death sentence and  
 21 impose a sentence of life imprisonment without parole. This  
 22 subsection does not preclude the court from granting the person  
 23 any additional relief to which the person may be entitled based on  
 24 the merits of the person's additional postconviction claims.

25 (c) If a person to whom this section applies has completed state  
 26 postconviction proceedings, the person may request permission to  
 27 file a successive petition for postconviction relief in accordance  
 28 with the Indiana rules of postconviction procedure, alleging that  
 29 the petitioner is an individual with a serious mental illness. A  
 30 request under this subsection must be filed not later than July 1,  
 31 2018. If the successive petition is authorized, the postconviction  
 32 court shall proceed under the Indiana rules of postconviction relief.  
 33 If the postconviction court determines that the petitioner is an  
 34 individual with a serious mental illness, it shall vacate the  
 35 petitioner's death sentence and impose a sentence of life  
 36 imprisonment without parole. This subsection does not preclude  
 37 the postconviction court from granting the person any additional  
 38 relief to which the person may be entitled based on the merits of  
 39 the person's additional postconviction claims.

40 SECTION 2. IC 35-50-2-3, AS AMENDED BY P.L.117-2015,  
 41 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 2017]: Sec. 3. (a) A person who commits murder shall be



1 imprisoned for a fixed term of between forty-five (45) and sixty-five  
 2 (65) years, with the advisory sentence being fifty-five (55) years. In  
 3 addition, the person may be fined not more than ten thousand dollars  
 4 (\$10,000).

5 (b) Notwithstanding subsection (a), **and except as provided in**  
 6 **subsection (c)**, a person who was:

7 (1) at least eighteen (18) years of age at the time the murder was  
 8 committed may be sentenced to:

9 (A) death; or

10 (B) life imprisonment without parole; and

11 (2) at least sixteen (16) years of age but less than eighteen (18)  
 12 years of age at the time the murder was committed may be  
 13 sentenced to life imprisonment without parole;

14 under section 9 of this chapter unless a court determines under  
 15 IC 35-36-9 that the person is an individual with an intellectual  
 16 disability.

17 (c) **A court may not impose a death sentence on a person**  
 18 **determined under IC 35-36-13 to be an individual with a serious**  
 19 **mental illness.**

20 SECTION 3. IC 35-50-2-9, AS AMENDED BY P.L.65-2016,  
 21 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2017]: Sec. 9. (a) **Subject to section 3 of this chapter**, the  
 23 state may seek either a death sentence or a sentence of life  
 24 imprisonment without parole for murder by alleging, on a page separate  
 25 from the rest of the charging instrument, the existence of at least one  
 26 (1) of the aggravating circumstances listed in subsection (b). In the  
 27 sentencing hearing after a person is convicted of murder, the state must  
 28 prove beyond a reasonable doubt the existence of at least one (1) of the  
 29 aggravating circumstances alleged. However, the state may not proceed  
 30 against a defendant under this section if a court determines at a pretrial  
 31 hearing under IC 35-36-9 that the defendant is an individual with an  
 32 intellectual disability.

33 (b) The aggravating circumstances are as follows:

34 (1) The defendant committed the murder by intentionally killing  
 35 the victim while committing or attempting to commit any of the  
 36 following:

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

38 (B) Burglary (IC 35-43-2-1).

39 (C) Child molesting (IC 35-42-4-3).

40 (D) Criminal deviate conduct (IC 35-42-4-2) (before its  
 41 repeal).

42 (E) Kidnapping (IC 35-42-3-2).



- 1 (F) Rape (IC 35-42-4-1).  
 2 (G) Robbery (IC 35-42-5-1).  
 3 (H) Carjacking (IC 35-42-5-2) (before its repeal).  
 4 (I) Criminal organization activity (IC 35-45-9-3).  
 5 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).  
 6 (K) Criminal confinement (IC 35-42-3-3).  
 7 (2) The defendant committed the murder by the unlawful  
 8 detonation of an explosive with intent to injure a person or  
 9 damage property.  
 10 (3) The defendant committed the murder by lying in wait.  
 11 (4) The defendant who committed the murder was hired to kill.  
 12 (5) The defendant committed the murder by hiring another person  
 13 to kill.  
 14 (6) The victim of the murder was a corrections employee,  
 15 probation officer, parole officer, community corrections worker,  
 16 home detention officer, ~~fireman~~, **firefighter**, judge, or law  
 17 enforcement officer, and either:  
 18 (A) the victim was acting in the course of duty; or  
 19 (B) the murder was motivated by an act the victim performed  
 20 while acting in the course of duty.  
 21 (7) The defendant has been convicted of another murder.  
 22 (8) The defendant has committed another murder, at any time,  
 23 regardless of whether the defendant has been convicted of that  
 24 other murder.  
 25 (9) The defendant was:  
 26 (A) under the custody of the department of correction;  
 27 (B) under the custody of a county sheriff;  
 28 (C) on probation after receiving a sentence for the commission  
 29 of a felony; or  
 30 (D) on parole;  
 31 at the time the murder was committed.  
 32 (10) The defendant dismembered the victim.  
 33 (11) The defendant:  
 34 (A) burned, mutilated, or tortured the victim; or  
 35 (B) decapitated or attempted to decapitate the victim;  
 36 while 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) A battery offense included in IC 35-42-2 committed before  
 42 July 1, 2014, as a Class D felony or as a Class C felony, or a



- 1 battery offense included in IC 35-42-2 committed after June  
 2 30, 2014, as a Level 6 felony, a Level 5 felony, a Level 4  
 3 felony, or a Level 3 felony.  
 4 (B) Kidnapping (IC 35-42-3-2).  
 5 (C) Criminal confinement (IC 35-42-3-3).  
 6 (D) A sex crime under IC 35-42-4.
- 7 (14) The victim of the murder was listed by the state or known by  
 8 the defendant to be a witness against the defendant and the  
 9 defendant committed the murder with the intent to prevent the  
 10 person from testifying.
- 11 (15) The defendant committed the murder by intentionally  
 12 discharging a firearm (as defined in IC 35-47-1-5):  
 13 (A) into an inhabited dwelling; or  
 14 (B) from a vehicle.
- 15 (16) The victim of the murder was pregnant and the murder  
 16 resulted in the intentional killing of a fetus that has attained  
 17 viability (as defined in IC 16-18-2-365).
- 18 (17) The defendant knowingly or intentionally:  
 19 (A) committed the murder:  
 20 (i) in a building primarily used for an educational purpose;  
 21 (ii) on school property; and  
 22 (iii) when students are present; or  
 23 (B) committed the murder:  
 24 (i) in a building or other structure owned or rented by a state  
 25 educational institution or any other public or private  
 26 postsecondary educational institution and primarily used for  
 27 an educational purpose; and  
 28 (ii) at a time when classes are in session.
- 29 (18) The murder is committed:  
 30 (A) in a building that is primarily used for religious worship;  
 31 and  
 32 (B) at a time when persons are present for religious worship or  
 33 education.
- 34 (c) The mitigating circumstances that may be considered under this  
 35 section are as follows:  
 36 (1) The defendant has no significant history of prior criminal  
 37 conduct.  
 38 (2) The defendant was under the influence of extreme mental or  
 39 emotional disturbance when the murder was committed.  
 40 (3) The victim was a participant in or consented to the defendant's  
 41 conduct.  
 42 (4) The defendant was an accomplice in a murder committed by





- 1 another person, and the defendant's participation was relatively  
2 minor.
- 3 (5) The defendant acted under the substantial domination of  
4 another person.
- 5 (6) The defendant's capacity to appreciate the criminality of the  
6 defendant's conduct or to conform that conduct to the  
7 requirements of law was substantially impaired as a result of  
8 mental disease or defect or of intoxication.
- 9 (7) The defendant was less than eighteen (18) years of age at the  
10 time the murder was committed.
- 11 (8) Any other circumstances appropriate for consideration.
- 12 (d) If the defendant was convicted of murder in a jury trial, the jury  
13 shall reconvene for the sentencing hearing. If the trial was to the court,  
14 or the judgment was entered on a guilty plea, the court alone shall  
15 conduct the sentencing hearing. The jury or the court may consider all  
16 the evidence introduced at the trial stage of the proceedings, together  
17 with new evidence presented at the sentencing hearing. The court shall  
18 instruct the jury concerning the statutory penalties for murder and any  
19 other offenses for which the defendant was convicted, the potential for  
20 consecutive or concurrent sentencing, and the availability of  
21 educational credit, good time credit, and clemency. The court shall  
22 instruct the jury that, in order for the jury to recommend to the court  
23 that the death penalty or life imprisonment without parole should be  
24 imposed, the jury must find at least one (1) aggravating circumstance  
25 beyond a reasonable doubt as described in subsection (l) and shall  
26 provide a special verdict form for each aggravating circumstance  
27 alleged. The defendant may present any additional evidence relevant  
28 to:
- 29 (1) the aggravating circumstances alleged; or  
30 (2) any of the mitigating circumstances listed in subsection (c).
- 31 (e) For a defendant sentenced after June 30, 2002, except as  
32 provided by IC 35-36-9 or **IC 35-36-13**, if the hearing is by jury, the  
33 jury shall recommend to the court whether the death penalty or life  
34 imprisonment without parole, or neither, should be imposed. The jury  
35 may recommend:
- 36 (1) the death penalty; or  
37 (2) life imprisonment without parole;
- 38 only if it makes the findings described in subsection (l). If the jury  
39 reaches a sentencing recommendation, the court shall sentence the  
40 defendant accordingly. After a court pronounces sentence, a  
41 representative of the victim's family and friends may present a  
42 statement regarding the impact of the crime on family and friends. The



1 impact statement may be submitted in writing or given orally by the  
 2 representative. The statement shall be given in the presence of the  
 3 defendant.

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

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

9 (1) sentence the defendant to death; or

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

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

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

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

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

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

40 (B) Constitution of the United States;

41 (2) sentencing court was without jurisdiction to impose a  
 42 sentence; and



- 1 (3) sentence:  
2 (A) exceeds the maximum sentence authorized by law; or  
3 (B) is otherwise erroneous.  
4 If the supreme court cannot complete its review by the date set by the  
5 sentencing court for the defendant's execution under subsection (h), the  
6 supreme court shall stay the execution of the death sentence and set a  
7 new date to carry out the defendant's execution.  
8 (k) A person who has been sentenced to death and who has  
9 completed state ~~post-conviction~~ **postconviction** review proceedings  
10 may file a written petition with the supreme court seeking to present  
11 new evidence challenging the person's guilt or the appropriateness of  
12 the death sentence if the person serves notice on the attorney general.  
13 The supreme court shall determine, with or without a hearing, whether  
14 the person has presented previously undiscovered evidence that  
15 undermines confidence in the conviction or the death sentence. If  
16 necessary, the supreme court may remand the case to the trial court for  
17 an evidentiary hearing to consider the new evidence and its effect on  
18 the person's conviction and death sentence. The supreme court may not  
19 make a determination in the person's favor nor make a decision to  
20 remand the case to the trial court for an evidentiary hearing without  
21 first providing the attorney general with an opportunity to be heard on  
22 the matter.  
23 (l) Before a sentence may be imposed under this section, the jury,  
24 in a proceeding under subsection (e), or the court, in a proceeding  
25 under subsection (g), must find that:  
26 (1) the state has proved beyond a reasonable doubt that at least  
27 one (1) of the aggravating circumstances listed in subsection (b)  
28 exists; and  
29 (2) any mitigating circumstances that exist are outweighed by the  
30 aggravating circumstance or circumstances.

