

SENATE BILL No. 252

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-2.

Synopsis: Death penalty. Provides that a person may not be sentenced to death unless: (1) the victim is a specified public safety officer and certain other circumstances apply; or (2) the person commits murder against two or more victims. Adds to the list of aggravating circumstances permitting a sentence of life without parole (LWOP) the commission of murder against two or more victims. Provides that a death sentence imposed before July 1, 2021, is reduced to LWOP unless: (1) the victim is a specified public safety officer and certain other circumstances apply; or (2) the person commits murder against two or more victims. Specifies that the provisions of the bill apply to pending cases.

Effective: July 1, 2021.

Boots

January 11, 2021, read first time and referred to Committee on Judiciary.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 252

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 35-50-2-0.1, AS AMENDED BY P.L.168-2014,
2 SECTION 109, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2021]: Sec. 0.1. The following amendments to
4 this chapter apply as follows:
5 (1) The amendments described in section 0.2 of this chapter apply
6 as described in section 0.2 of this chapter.
7 (2) The amendments made to sections 3 and 9 of this chapter by
8 P.L.332-1987 do not apply to a case in which a death sentence has
9 been imposed before September 1, 1987.
10 (3) The amendments made to sections 3 and 9 of this chapter by
11 P.L.250-1993 apply only to murders committed after June 30,
12 1993.
13 (4) The amendments made to section 2 of this chapter by
14 P.L.11-1994 (before the repeal of section 2 of this chapter) apply
15 only to an offender (as defined in IC 5-2-12-4, as added by
16 P.L.11-1994 and before its repeal) convicted after June 30, 1994.
17 (5) The amendments made to section 8 of this chapter by



- 1 P.L.166-2001 apply only if the offense for which the state seeks
 2 to have the person sentenced as a habitual offender was
 3 committed after June 30, 2001.
- 4 (6) The amendments made to section 1 of this chapter by
 5 P.L.243-2001 apply to crimes committed on and after May 11,
 6 2001. It is the intent of the general assembly that section 1 of this
 7 chapter, as it applies to crimes committed before May 11, 2001,
 8 be construed without drawing any inference from the passage of
 9 P.L.243-2001.
- 10 (7) The amendments made to section 8(b)(3) of this chapter by
 11 P.L.291-2001 (before its deletion on July 1, 2014) apply only if
 12 the last offense for which the state seeks to have the person
 13 sentenced as a habitual offender was committed after June 30,
 14 2001.
- 15 (8) The amendments made to section 10 of this chapter by
 16 P.L.291-2001 (before the repeal of section 10 of this chapter)
 17 apply only if the last offense for which the state seeks to have the
 18 person sentenced as a habitual substance offender was committed
 19 after June 30, 2001. However, a prior unrelated conviction
 20 committed before, on, or after July 1, 2001, may be used to
 21 qualify an offender as a habitual offender under section 8 of this
 22 chapter or as a habitual substance offender under section 10 of
 23 this chapter.
- 24 (9) The amendments made to section 1 of this chapter by
 25 P.L.291-2001 apply to crimes committed on and after May 11,
 26 2001. It is the intent of the general assembly that section 1 of this
 27 chapter, as it applies to crimes committed before May 11, 2001,
 28 be construed without drawing any inference from the passage of
 29 P.L.291-2001.
- 30 (10) The amendments made to section 9 of this chapter by
 31 P.L.80-2002 apply only to a conviction for murder that occurs
 32 after March 20, 2002, including a conviction entered as a result
 33 of a retrial of a person, regardless of when the offense occurred.
- 34 **(11) The amendments made to section 9 of this chapter,**
 35 **authorizing the imposition of a death sentence only if an**
 36 **aggravating circumstance described in section 9(b) of this**
 37 **chapter exists, apply to all cases in which a sentence of death**
 38 **has not yet been imposed, including pending cases.**
- 39 SECTION 2. IC 35-50-2-9, AS AMENDED BY P.L.65-2016,
 40 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2021]: Sec. 9. (a) The state may seek either a death sentence
 42 or a sentence of life imprisonment without parole for murder by



1 alleging, on a page separate from the rest of the charging instrument,
 2 the existence of at least one (1) of the aggravating circumstances listed
 3 in:

- 4 **(1) subsection (b), if the state seeks a death sentence; or**
 5 **(2) subsection (c), if the state seeks a sentence of life**
 6 **imprisonment without parole.**

7 In the sentencing hearing after a person is convicted of murder, the
 8 state must prove beyond a reasonable doubt the existence of at least
 9 one (1) of the aggravating circumstances alleged. However, the state
 10 may not proceed against a defendant under this section if a court
 11 determines at a pretrial hearing under IC 35-36-9 that the defendant is
 12 an individual with an intellectual disability.

13 **(b) The aggravating circumstances permitting a sentence of**
 14 **death are as follows:**

- 15 **(1) The victim of the murder was a corrections employee,**
 16 **probation officer, parole officer, community corrections**
 17 **worker, home detention officer, fireman, judge, or law**
 18 **enforcement officer, and either:**

- 19 **(A) the victim was acting in the course of duty; or**
 20 **(B) the murder was motivated by an act the victim**
 21 **performed while acting in the course of duty.**

- 22 **(2) The murder is committed against two (2) or more victims.**

23 **(c) The aggravating circumstances permitting a sentence of life**
 24 **imprisonment without parole are as follows:**

25 (1) The defendant committed the murder by intentionally killing
 26 the victim while committing or attempting to commit any of the
 27 following:

- 28 (A) Arson (IC 35-43-1-1).
 29 (B) Burglary (IC 35-43-2-1).
 30 (C) Child molesting (IC 35-42-4-3).
 31 (D) Criminal deviate conduct (IC 35-42-4-2) (before its
 32 repeal).
 33 (E) Kidnapping (IC 35-42-3-2).
 34 (F) Rape (IC 35-42-4-1).
 35 (G) Robbery (IC 35-42-5-1).
 36 (H) Carjacking (IC 35-42-5-2) (before its repeal).
 37 (I) Criminal organization activity (IC 35-45-9-3).
 38 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
 39 (K) Criminal confinement (IC 35-42-3-3).

40 (2) The defendant committed the murder by the unlawful
 41 detonation of an explosive with intent to injure a person or
 42 damage 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 person
 4 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 performed
 11 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 commission
 20 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:
 25 (A) burned, mutilated, or tortured the victim; or
 26 (B) decapitated or attempted to decapitate the victim;
 27 while the victim was alive.
 28 (12) The victim of the murder was less than twelve (12) years of
 29 age.
 30 (13) The victim was a victim of any of the following offenses for
 31 which the defendant was convicted:
 32 (A) A battery offense included in IC 35-42-2 committed before
 33 July 1, 2014, as a Class D felony or as a Class C felony, or a
 34 battery offense included in IC 35-42-2 committed after June
 35 30, 2014, as a Level 6 felony, a Level 5 felony, a Level 4
 36 felony, or a Level 3 felony.
 37 (B) Kidnapping (IC 35-42-3-2).
 38 (C) Criminal confinement (IC 35-42-3-3).
 39 (D) A sex crime under IC 35-42-4.
 40 (14) The victim of the murder was listed by the state or known by
 41 the defendant to be a witness against the defendant and the
 42 defendant committed the murder with the intent to prevent the



- 1 person from testifying.
- 2 (15) The defendant committed the murder by intentionally
- 3 discharging a firearm (as defined in IC 35-47-1-5):
- 4 (A) into an inhabited dwelling; or
- 5 (B) from a vehicle.
- 6 (16) The victim of the murder was pregnant and the murder
- 7 resulted in the intentional killing of a fetus that has attained
- 8 viability (as defined in IC 16-18-2-365).
- 9 (17) The defendant knowingly or intentionally:
- 10 (A) committed the murder:
- 11 (i) in a building primarily used for an educational purpose;
- 12 (ii) on school property; and
- 13 (iii) when students are present; or
- 14 (B) committed the murder:
- 15 (i) in a building or other structure owned or rented by a state
- 16 educational institution or any other public or private
- 17 postsecondary educational institution and primarily used for
- 18 an educational purpose; and
- 19 (ii) at a time when classes are in session.
- 20 (18) The murder is committed:
- 21 (A) in a building that is primarily used for religious worship;
- 22 and
- 23 (B) at a time when persons are present for religious worship or
- 24 education.
- 25 **(19) The murder is committed against two (2) or more**
- 26 **victims.**
- 27 ~~(c)~~ **(d)** The mitigating circumstances that may be considered under
- 28 this section are as follows:
- 29 (1) The defendant has no significant history of prior criminal
- 30 conduct.
- 31 (2) The defendant was under the influence of extreme mental or
- 32 emotional disturbance when the murder was committed.
- 33 (3) The victim was a participant in or consented to the defendant's
- 34 conduct.
- 35 (4) The defendant was an accomplice in a murder committed by
- 36 another person, and the defendant's participation was relatively
- 37 minor.
- 38 (5) The defendant acted under the substantial domination of
- 39 another person.
- 40 (6) The defendant's capacity to appreciate the criminality of the
- 41 defendant's conduct or to conform that conduct to the
- 42 requirements of law was substantially impaired as a result of



1 mental disease or defect or of intoxication.

2 (7) The defendant was less than eighteen (18) years of age at the
3 time the murder was committed.

4 (8) Any other circumstances appropriate for consideration.

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

22 (1) the aggravating circumstances alleged; or

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

24 ~~(e)~~ (f) For a defendant sentenced after June 30, 2002, except as
25 provided by IC 35-36-9, if the hearing is by jury, the jury shall
26 recommend to the court whether the death penalty or life imprisonment
27 without parole, or neither, should be imposed. The jury may
28 recommend:

29 (1) the death penalty; or

30 (2) life imprisonment without parole;

31 only if it makes the findings described in subsection ~~(f)~~ (m). If the jury
32 reaches a sentencing recommendation, the court shall sentence the
33 defendant accordingly. After a court pronounces sentence, a
34 representative of the victim's family and friends may present a
35 statement regarding the impact of the crime on family and friends. The
36 impact statement may be submitted in writing or given orally by the
37 representative. The statement shall be given in the presence of the
38 defendant.

39 ~~(f)~~ (g) If a jury is unable to agree on a sentence recommendation
40 after reasonable deliberations, the court shall discharge the jury and
41 proceed as if the hearing had been to the court alone.

42 ~~(g)~~ (h) If the hearing is to the court alone, except as provided by



- 1 IC 35-36-9, the court shall:
- 2 (1) sentence the defendant to death; or
- 3 (2) impose a term of life imprisonment without parole;
- 4 only if it makes the findings described in subsection ~~(h)~~ **(m)**.
- 5 ~~(h)~~ **(i)** If a court sentences a defendant to death, the court shall order
- 6 the defendant's execution to be carried out not later than one (1) year
- 7 and one (1) day after the date the defendant was convicted. The
- 8 supreme court has exclusive jurisdiction to stay the execution of a
- 9 death sentence. If the supreme court stays the execution of a death
- 10 sentence, the supreme court shall order a new date for the defendant's
- 11 execution.
- 12 ~~(i)~~ **(j)** If a person sentenced to death by a court files a petition for
- 13 post-conviction relief, the court, not later than ninety (90) days after the
- 14 date the petition is filed, shall set a date to hold a hearing to consider
- 15 the petition. If a court does not, within the ninety (90) day period, set
- 16 the date to hold the hearing to consider the petition, the court's failure
- 17 to set the hearing date is not a basis for additional post-conviction
- 18 relief. The attorney general shall answer the petition for post-conviction
- 19 relief on behalf of the state. At the request of the attorney general, a
- 20 prosecuting attorney shall assist the attorney general. The court shall
- 21 enter written findings of fact and conclusions of law concerning the
- 22 petition not later than ninety (90) days after the date the hearing
- 23 concludes. However, if the court determines that the petition is without
- 24 merit, the court may dismiss the petition within ninety (90) days
- 25 without conducting a hearing under this subsection.
- 26 ~~(j)~~ **(k)** A death sentence is subject to automatic review by the
- 27 supreme court. The review, which shall be heard under rules adopted
- 28 by the supreme court, shall be given priority over all other cases. The
- 29 supreme court's review must take into consideration all claims that the:
- 30 (1) conviction or sentence was in violation of the:
- 31 (A) Constitution of the State of Indiana; or
- 32 (B) Constitution of the United States;
- 33 (2) sentencing court was without jurisdiction to impose a
- 34 sentence; and
- 35 (3) sentence:
- 36 (A) exceeds the maximum sentence authorized by law; or
- 37 (B) is otherwise erroneous.
- 38 If the supreme court cannot complete its review by the date set by the
- 39 sentencing court for the defendant's execution under subsection ~~(h)~~ **(i)**,
- 40 the supreme court shall stay the execution of the death sentence and set
- 41 a new date to carry out the defendant's execution.
- 42 ~~(k)~~ **(l)** A person who has been sentenced to death and who has



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

15 (†) **(m)** Before a sentence may be imposed under this section, the
 16 jury, in a proceeding under subsection ~~(e)~~, **(f)**, or the court, in a
 17 proceeding under subsection ~~(g)~~, **(h)**, must find that:

18 (1) the state has proved beyond a reasonable doubt that at least
 19 one (1) of the aggravating circumstances listed in:

20 **(A) subsection (b), if the state seeks a death sentence; or**

21 **(B) subsection (c), if the state seeks a sentence of life**
 22 **without parole;**

23 exists; and

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

26 SECTION 3. IC 35-50-2-9.1 IS ADDED TO THE INDIANA CODE
 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 28 1, 2021]: **Sec. 9.1. (a) This section applies to a death sentence**
 29 **imposed before July 1, 2021.**

30 **(b) A death sentence imposed before July 1, 2021, is reduced to**
 31 **a sentence of life imprisonment without parole by operation of law,**
 32 **unless at least one (1) of the aggravating circumstances found in**
 33 **accordance with section 9(m) of this chapter is an aggravating**
 34 **circumstance described in section 9(b) of this chapter.**

