

SENATE BILL No. 368

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-6-24; IC 31-30; IC 31-37; IC 31-39; IC 35-38-1; IC 35-50-2; IC 36-2-13-12.

Synopsis: Juvenile justice. Requires the Indiana criminal justice institute to track the number of children committed to jail. Repeals the juvenile direct file statute, increases the age at which a court may waive juveniles in certain circumstances, and makes certain firearm offenses waivable. Provides for the automatic expungement of certain juvenile offenses. Removes the penalty of life without parole for persons who commit murder while less than 18 years of age. Makes it a mitigating factor for imposition of the death penalty that the defendant was less than 25 years of age. (Under current law, the mitigator applies if the defendant was less than 18.) Makes possession by a minor of marijuana and paraphernalia used with marijuana a juvenile status offense. Prohibits a juvenile arrestee who meets certain requirements from being housed with adult inmates prior to trial, with certain exceptions. Increases the availability of sentence modification for crimes committed by persons less than 18 years of age. Establishes a procedure for determining juvenile competency. Makes other changes and conforming amendments.

Effective: July 1, 2021.

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January 12, 2021, read first time and referred to Committee on Corrections and Criminal Law.



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. 368

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 5-2-6-24, AS AMENDED BY P.L.142-2018,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 24. (a) As used in this section, "criminal code
4 reform" refers to statutory provisions relating to criminal law enacted
5 by P.L.158-2013 and HEA 1006-2014.
6 (b) The institute shall monitor and evaluate criminal code reform as
7 described in this section.
8 (c) The institute shall annually gather data and analyze the impact
9 of criminal code reform on:
10 (1) local units of government;
11 (2) the department of correction; and
12 (3) the office of judicial administration.
13 (d) The institute shall prepare an annual report, in conjunction with
14 the justice reinvestment advisory council (established by
15 IC 33-38-9.5-2), containing the results of its analysis before December
16 1 of each year. The report shall be provided to the governor, the chief
17 justice, and the legislative council. The report provided to the



- 1 legislative council must be in an electronic format under IC 5-14-6.
 2 (e) The report required under this section must:
 3 (1) include an analysis of:
 4 (A) the effect of criminal code reform on:
 5 (i) county jails;
 6 (ii) community corrections programs;
 7 (iii) probation departments; and
 8 (iv) courts;
 9 (B) recidivism rates;
 10 (C) reentry court programs; and
 11 (D) data relevant to the availability and effectiveness of mental
 12 health and addiction programs for persons who are at risk of
 13 entering the criminal justice system, who are in the criminal
 14 justice system, and who have left the criminal justice system;
 15 (2) track the number of requests for sentence modification that are
 16 set for hearing by the court, including the relief granted by the
 17 court, if any. The report must include whether the grant or denial
 18 of a request for sentence modification was discretionary or
 19 mandatory, and whether the prosecuting attorney opposed the
 20 request for sentence modification, agreed to the request for
 21 sentence modification, or took no position on the request for
 22 sentence modification;
 23 (3) track, by age and offense, the number of juveniles under the
 24 jurisdiction of an adult court due to:
 25 (A) lack of jurisdiction under IC 31-30-1-4 **(before its**
 26 **repeal)**; or
 27 (B) waiver of jurisdiction under IC 31-30-3-2 through
 28 IC 31-30-3-6;
 29 (4) track the number of juveniles under the jurisdiction of adult
 30 court due to a juvenile court not having jurisdiction of the cases
 31 in accordance with IC 31-30-1-4 **(before its repeal)**, by:
 32 (A) age;
 33 (B) sex;
 34 (C) race;
 35 (D) county of prosecution;
 36 (E) offenses charged;
 37 (F) convictions received; and
 38 (G) sentences received; ~~and~~
 39 (5) track the number of waivers of juvenile court jurisdiction
 40 granted under IC 31-30-3-2 through IC 31-30-3-6 by:
 41 (A) age;
 42 (B) sex;



- 1 (C) race;
 2 (D) charges filed in juvenile court in which a waiver was
 3 sought;
 4 (E) charges filed in adult court following the waiver of
 5 juvenile court jurisdiction;
 6 (F) county of prosecution;
 7 (G) convictions received; and
 8 (H) sentences received; **and**
 9 **(6) track the number of persons housed in a jail for an offense**
 10 **committed before the person was eighteen (18) years of age,**
 11 **including:**
 12 **(A) pretrial commitments; and**
 13 **(B) commitments based on juvenile waiver under**
 14 **IC 31-30-3-2 through IC 31-30-3-6, and based on lack of**
 15 **juvenile court jurisdiction under IC 31-30-1-4 (before its**
 16 **repeal).**
 17 (f) All local units of government and local elected officials,
 18 including sheriffs, prosecuting attorneys, judges, and county fiscal
 19 bodies, shall cooperate with the institute by providing data as requested
 20 by the institute.
 21 (g) State agencies, including the department of correction, the
 22 Indiana prosecuting attorneys council, the Indiana public defender
 23 council, and the office of judicial administration, shall assist the
 24 institute by providing requested data in a timely manner.
 25 (h) Based on their analysis, the institute and the justice reinvestment
 26 advisory council shall include recommendations to improve the
 27 criminal justice system in Indiana, with particular emphasis being
 28 placed on recommendations that relate to sentencing policies and
 29 reform.
 30 (i) The institute and the justice reinvestment advisory council shall
 31 include research data relevant to their analysis and recommendations
 32 in the report.
 33 (j) The institute shall:
 34 (1) make the data collected under subsection (e)(4) and (e)(5)
 35 available to the public in an annual report, by fiscal year, due by
 36 October 30 of each year;
 37 (2) post the annual report required by subdivision (1) on the
 38 institute's Internet web site; **and**
 39 **(3) post the reports received from a county sheriff under**
 40 **IC 36-2-13-12 on the institute's Internet web site; and**
 41 ~~(3)~~ **(4) provide a copy of the annual report required by subdivision**
 42 **(1) to the commission on improving the status of children in**



1 Indiana established by IC 2-5-36-3.

2 SECTION 2. IC 31-30-1-4 IS REPEALED [EFFECTIVE JULY 1,
3 2021]. Sec. 4. (a) The juvenile court does not have jurisdiction over an
4 individual for an alleged violation of:

5 (1) IC 35-41-5-1(a) (attempted murder);

6 (2) IC 35-42-1-1 (murder);

7 (3) IC 35-42-3-2 (kidnapping);

8 (4) IC 35-42-4-1 (rape);

9 (5) IC 35-42-4-2 (criminal deviate conduct) (before its repeal);

10 (6) IC 35-42-5-1 (robbery) if:

11 (A) the robbery was committed while armed with a deadly
12 weapon; or

13 (B) the robbery results in bodily injury or serious bodily
14 injury;

15 (7) IC 35-42-5-2 (carjacking) (before its repeal);

16 (8) IC 35-47-2-1 (carrying a handgun without a license); if
17 charged as a felony;

18 (9) IC 35-47-10 (children and firearms); if charged as a felony; or

19 (10) any offense that may be joined under IC 35-34-1-9(a)(2) with
20 any crime listed in this subsection;

21 if the individual was at least sixteen (16) years of age but less than
22 eighteen (18) years of age at the time of the alleged violation.

23 (b) Once an individual described in subsection (a) has been charged
24 with any offense listed in subsection (a); the court having adult
25 criminal jurisdiction shall retain jurisdiction over the case if the
26 individual pleads guilty to or is convicted of any offense listed in
27 subsection (a)(1) through (a)(9):

28 (c) If:

29 (1) an individual described in subsection (a) is charged with one
30 (1) or more offenses listed in subsection (a);

31 (2) all the charges under subsection (a)(1) through (a)(9) resulted
32 in an acquittal or were dismissed; and

33 (3) the individual pleads guilty to or is convicted of any offense
34 other than an offense listed in subsection (a)(1) through (a)(9);

35 the court having adult criminal jurisdiction may withhold judgment and
36 transfer jurisdiction to the juvenile court for adjudication and
37 disposition. In determining whether to transfer jurisdiction to the
38 juvenile court for adjudication and disposition; the court having adult
39 criminal jurisdiction shall consider whether there are appropriate
40 services available in the juvenile justice system; whether the child is
41 amenable to rehabilitation under the juvenile justice system; and
42 whether it is in the best interests of the safety and welfare of the



1 community that the child be transferred to juvenile court. All orders
 2 concerning release conditions remain in effect until a juvenile court
 3 detention hearing, which must be held not later than forty-eight (48)
 4 hours, excluding Saturdays, Sundays, and legal holidays, after the order
 5 of transfer of jurisdiction:

6 SECTION 3. IC 31-30-3-2, AS AMENDED BY P.L.67-2008,
 7 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2021]: Sec. 2. Upon motion of the prosecuting attorney and
 9 after full investigation and hearing, the juvenile court may waive
 10 jurisdiction if it finds that:

- 11 (1) the child is charged with an act that is a felony:
 - 12 (A) that is heinous or aggravated, with greater weight given to
 - 13 acts against the person than to acts against property; or
 - 14 (B) that is a part of a repetitive pattern of delinquent acts, even
 - 15 though less serious;
- 16 (2) the child was at least ~~fourteen (14)~~ **sixteen (16)** years of age
- 17 when the act charged was allegedly committed;
- 18 (3) there is probable cause to believe that the child committed the
- 19 act;
- 20 (4) the child is beyond rehabilitation under the juvenile justice
- 21 system; and
- 22 (5) it is in the best interests of the safety and welfare of the
- 23 community that the child stand trial as an adult.

24 SECTION 4. IC 31-30-3-4, AS AMENDED BY P.L.187-2015,
 25 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2021]: Sec. 4. Upon motion of the prosecuting attorney and
 27 after full investigation and hearing, the juvenile court shall waive
 28 jurisdiction if it finds that:

- 29 (1) the child is charged with an act that would be murder if
- 30 committed by an adult;
- 31 (2) there is probable cause to believe that the child has committed
- 32 the act; and
- 33 (3) the child was at least ~~twelve (12)~~ **fourteen (14)** years of age
- 34 when the act charged was allegedly committed;

35 unless it would be in the best interests of the child and of the safety and
 36 welfare of the community for the child to remain within the juvenile
 37 justice system.

38 SECTION 5. IC 31-30-3-5, AS AMENDED BY P.L.158-2013,
 39 SECTION 316, IS AMENDED TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2021]: Sec. 5. ~~Except for those cases in which~~
 41 ~~the juvenile court has no jurisdiction in accordance with IC 31-30-1-4;~~
 42 The court shall, upon motion of the prosecuting attorney and after full



1 investigation and hearing, waive jurisdiction if it finds that:

2 (1) the child is charged with an act that, if committed by an adult,
3 would be:

4 (A) a Level 1 felony, Level 2 felony, Level 3 felony, or Level
5 4 felony, except a felony defined by IC 35-48-4;

6 (B) involuntary manslaughter as a Level 5 felony under
7 IC 35-42-1-4; or

8 (C) reckless homicide as a Level 5 felony under IC 35-42-1-5;

9 **(D) carrying a handgun without a license as a felony under
10 IC 35-47-2-1; or**

11 **(E) a felony described in IC 35-47-10 (children and
12 firearms);**

13 (2) there is probable cause to believe that the child has committed
14 the act; and

15 (3) the child was at least sixteen (16) years of age when the act
16 charged was allegedly committed;

17 unless it would be in the best interests of the child and of the safety and
18 welfare of the community for the child to remain within the juvenile
19 justice system.

20 SECTION 6. IC 31-30-3-8 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. If jurisdiction is
22 waived, the juvenile court:

23 (1) shall order the child held for proceedings; ~~in the court to
24 which the child is waived;~~ and

25 (2) may fix a recognizance bond for the child to answer the charge
26 in the court to which the child is waived.

27 SECTION 7. IC 31-30-3-12 IS ADDED TO THE INDIANA CODE
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
29 1, 2021]: **Sec. 12. (a) As used in this section, "juvenile arrestee"
30 means a child who:**

31 **(1) is less than eighteen (18) years of age;**

32 **(2) has been charged as an adult; and**

33 **(3) is awaiting trial, sentencing, or other legal process.**

34 **(b) A juvenile arrestee who is housed in a secure facility may not
35 be held in:**

36 **(1) an adult facility, except as provided in IC 31-37-7-2; or**

37 **(2) a facility that permits sight contact with adult inmates;**

38 **unless a court finds, after a hearing, that it is in the best interests
39 of justice for the juvenile arrestee to be housed in an adult facility
40 or a facility permitting sight contact with adult inmates. If a court
41 orders a juvenile arrestee to be housed in an adult facility or a
42 facility permitting sight contact with adult inmates, the court shall**



1 issue its decision in writing.

2 (c) In making a determination under subsection (b), the court
3 shall consider:

- 4 (1) the age of the juvenile arrestee;
5 (2) the physical and mental maturity of the juvenile arrestee;
6 (3) the present mental state of the juvenile arrestee, including
7 whether the juvenile arrestee presents an imminent risk of
8 harm to the arrestee or others;
9 (4) the nature and circumstances of the alleged offense;
10 (5) any prior history of delinquent or criminal acts of the
11 juvenile arrestee;
12 (6) the relative ability of the available adult and juvenile
13 detention facilities to not only meet the specific needs of the
14 juvenile but also to protect the safety of the public as well as
15 the safety of other detained youth; and
16 (7) any other relevant factors.

17 (d) If a court determines it is in the best interests of justice for
18 the juvenile arrestee to be housed in an adult facility or a facility
19 permitting sight contact with adult inmates, the court may order
20 that the juvenile arrestee be held in an adult facility or a facility
21 permitting sight contact with adult inmates for not more than one
22 hundred eighty days (180) days.

23 (e) The court may extend the one hundred eighty (180) day
24 period described in subsection (d) for another one hundred eighty
25 (180) days if the court finds, in writing, that there is good cause to
26 extend the juvenile arrestee's placement in an adult facility or a
27 facility permitting sight contact with adult inmates. However, the
28 juvenile arrestee may waive the good cause requirement if the
29 juvenile arrestee prefers to keep the same placement.

30 (f) If the court orders a juvenile arrestee to be held under
31 subsection (d) or (e), the court shall hold a hearing at least one (1)
32 time every thirty (30) days to review whether it is still in the
33 interests of justice to house the arrestee in the adult facility or the
34 facility permitting sight contact with adult inmates.

35 SECTION 8. IC 31-30-4-1, AS ADDED BY P.L.104-2013,
36 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2021]: Sec. 1. This chapter applies to the following:

- 38 (1) An offender who:
39 (A) is less than eighteen (18) years of age;
40 (B) has been waived to a court with criminal jurisdiction under
41 IC 31-30-3; and
42 (C) is charged as an adult offender.



1 (2) An offender who:

2 (A) is less than eighteen (18) years of age; and

3 (B) does not come under the jurisdiction of a juvenile court
4 because the offender is charged with an offense listed in
5 IC 31-30-1-4 **(before its repeal)**.

6 SECTION 9. IC 31-30-4-2, AS AMENDED BY P.L.168-2014,
7 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2021]: Sec. 2. (a) Subject to subsection (c), if:

9 (1) an offender is:

10 (A) less than eighteen (18) years of age;

11 (B) waived to a court with criminal jurisdiction under
12 IC 31-30-3 because the offender committed an act that would
13 be a felony if committed by an adult; and

14 (C) convicted of committing the felony or enters a plea of
15 guilty to committing the felony; or

16 (2) an offender is:

17 (A) less than eighteen (18) years of age;

18 (B) charged with a felony over which a juvenile court does not
19 have jurisdiction under IC 31-30-1-4 **(before its repeal)**; and

20 (C) convicted of committing the felony by a court with
21 criminal jurisdiction or enters a plea of guilty to committing
22 the felony with the court;

23 the court may, upon its own motion, a motion of the prosecuting
24 attorney, or a motion of the offender's legal representative, impose a
25 sentence upon the conviction of the offender under this chapter.

26 (b) If a court elects to impose a sentence upon conviction of an
27 offender under subsection (a) and, before the offender is sentenced, the
28 department of correction determines that there is space available for the
29 offender in a juvenile facility of the division of youth services of the
30 department, the sentencing court may:

31 (1) impose an appropriate criminal sentence on the offender under
32 IC 35-50-2;

33 (2) suspend the criminal sentence imposed, notwithstanding
34 IC 35-50-2-2 (before its repeal), IC 35-50-2-2.1, and
35 IC 35-50-2-2.2;

36 (3) order the offender to be placed into the custody of the
37 department of correction to be placed in the juvenile facility of the
38 division of youth services; and

39 (4) provide that the successful completion of the placement of the
40 offender in the juvenile facility is a condition of the suspended
41 criminal sentence.

42 (c) The court may not impose a sentence on an offender under



- 1 subsection (a) until:
- 2 (1) the prosecuting attorney has notified the victim of the felony
- 3 of the possible imposition of a sentence on the offender under this
- 4 chapter; and
- 5 (2) either:
- 6 (A) the probation department of the court has conducted a
- 7 presentence investigation concerning the offender and reported
- 8 its findings to the court; or
- 9 (B) the department of correction has conducted a diagnostic
- 10 evaluation of the offender and reported its findings to the
- 11 court.
- 12 SECTION 10. IC 31-30-4-5, AS AMENDED BY P.L.168-2014,
- 13 SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 14 JULY 1, 2021]: Sec. 5. (a) At the request of a sentencing court, the
- 15 department of correction shall provide a progress report to the
- 16 sentencing court concerning an offender sentenced and placed in a
- 17 juvenile facility under section 2(b) of this chapter. When the offender
- 18 becomes eighteen (18) years of age:
- 19 (1) the department shall notify the sentencing court; and
- 20 (2) the sentencing court shall hold a review hearing concerning
- 21 the offender before the offender becomes nineteen (19) years of
- 22 age.
- 23 (b) Except as provided in subsection (c), after a hearing conducted
- 24 under subsection (a), the sentencing court may:
- 25 (1) continue the offender's placement in a juvenile facility until
- 26 the objectives of the sentence imposed on the offender have been
- 27 met, if the sentencing court finds that the objectives of the
- 28 sentence imposed on the offender have not been met;
- 29 (2) discharge the offender if the sentencing court finds that the
- 30 objectives of the sentence imposed on the offender have been
- 31 met;
- 32 (3) order execution of all or part of the offender's suspended
- 33 criminal sentence in an adult facility of the department of
- 34 correction; or
- 35 (4) place the offender:
- 36 (A) in home detention under IC 35-38-2.5;
- 37 (B) in a community corrections program under IC 35-38-2.6;
- 38 (C) on probation under IC 35-50-7; or
- 39 (D) in any other appropriate alternative sentencing program.
- 40 (c) This subsection applies to an offender over whom a juvenile
- 41 court lacks jurisdiction under IC 31-30-1-4 (**before its repeal**) who is
- 42 convicted of one (1) or more of the following offenses:



- 1 (1) Murder (IC 35-42-1-1).
 2 (2) Attempted murder (IC 35-41-5-1).
 3 (3) Kidnapping (IC 35-42-3-2).
 4 (4) Rape as a Class A felony (for a crime committed before July
 5 1, 2014) or a Level 1 felony (for a crime committed after June 30,
 6 2014) (IC 35-42-4-1(b)).
 7 (5) Criminal deviate conduct as a Class A felony (IC
 8 35-42-4-2(b)) (before its repeal).
 9 (6) Robbery as a Class A felony (for a crime committed before
 10 July 1, 2014) or a Level 2 felony (for a crime committed after
 11 June 30, 2014) (IC 35-42-5-1), if:
 12 (A) the offense was committed while armed with a deadly
 13 weapon; and
 14 (B) the offense resulted in bodily injury to any person other
 15 than a defendant.

16 The court may not modify the original sentence of an offender to whom
 17 this subsection applies if the prosecuting attorney objects in writing to
 18 the modification. The prosecuting attorney shall set forth in writing the
 19 prosecuting attorney's reasons for objecting to the sentence
 20 modification.

21 SECTION 11. IC 31-37-2-8 IS ADDED TO THE INDIANA CODE
 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 23 1, 2021]: **Sec. 8. A child commits a delinquent act if, before
 24 becoming eighteen (18) years of age, the child:**

- 25 **(1) knowingly or intentionally possesses (pure or adulterated):**
 26 **(A) less than thirty (30) grams of marijuana; or**
 27 **(B) less than five (5) grams of hash oil, hashish, or salvia;**
 28 **(2) knowingly or intentionally grows or cultivates marijuana;**
 29 **(3) knowing that marijuana is growing on the child's**
 30 **premises, fails to destroy the marijuana plants;**
 31 **(4) manufactures, finances the manufacture of, or designs an**
 32 **instrument, a device, or other object that is intended to be**
 33 **used primarily for:**
 34 **(A) introducing into the human body marijuana, hash oil,**
 35 **hashish, or salvia;**
 36 **(B) testing the strength, effectiveness, or purity of**
 37 **marijuana, hash oil, hashish, or salvia; or**
 38 **(C) enhancing the effect of marijuana, hash oil, hashish, or**
 39 **salvia; or**
 40 **(5) knowingly or intentionally possesses an instrument, a**
 41 **device, or another object that the child intends to use for:**
 42 **(A) introducing into the human body marijuana, hash oil,**



- 1 hashish, or salvia;
- 2 (B) testing the strength, effectiveness, or purity of
- 3 marijuana, hash oil, hashish, or salvia; or
- 4 (C) enhancing the effect of marijuana, hash oil, hashish, or
- 5 salvia.

6 SECTION 12. IC 31-37-11-11 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2021]: **Sec. 11. If a child is found to be**
 9 **competent after a competency evaluation is ordered, the**
 10 **factfinding hearing must be commenced not later than ten (10)**
 11 **business days after the competency determination.**

12 SECTION 13. IC 31-37-26 IS ADDED TO THE INDIANA CODE
 13 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2021]:

15 **Chapter 26. Competency**

16 **Sec. 1. (a) This chapter applies to a delinquency proceeding**
 17 **brought pursuant to IC 31-37-1 through IC 31-37-3.**

18 **(b) In computing time under this chapter, Saturdays, Sundays,**
 19 **and legal holidays are not included in the computation if the time**
 20 **prescribed is less than fifteen (15) days.**

21 **Sec. 2. The following definitions apply throughout this chapter:**

22 **(1) "Competent" and "competency" mean the present ability**
 23 **of a child to:**

24 **(A) understand the nature and objectives of a proceeding**
 25 **against the child; and**

26 **(B) assist in the child's defense.**

27 **(2) "State institution" has the meaning set forth in**
 28 **IC 12-7-2-184.**

29 **Sec. 3. If:**

30 **(1) a child is less than fourteen (14) years of age; or**

31 **(2) at any time before disposition, a court has reasonable**
 32 **grounds to believe that a child is not competent;**

33 **the court shall order the child to undergo a competency evaluation**
 34 **as described in section 4 of this chapter.**

35 **Sec. 4. (a) If the court orders a competency evaluation under**
 36 **section 3 of this chapter, the court shall appoint two (2) or more**
 37 **disinterested persons to evaluate the child's competency.**

38 **(b) A person appointed under subsection (a) may be a:**

39 **(1) psychiatrist; or**

40 **(2) psychologist endorsed by the Indiana state board of**
 41 **examiners in psychology as health service providers in**
 42 **psychology;**



1 who has expertise in determining competency in juveniles and who
2 is not an employee or a contractor of a state institution.

3 (c) The court shall order the competency evaluation to be
4 performed in a location or facility that, consistent with the nature
5 of the case and the best interest and needs of the child:

6 (1) imposes the fewest restrictions on the freedom of the child
7 and the child's parent, guardian, or custodian;

8 (2) interferes the least with family autonomy and family life;
9 and

10 (3) is as close as practicable to the home of the parents,
11 guardian, or custodian, consistent with the best interest and
12 special needs of the child.

13 (d) Not later than seven (7) days from the date the court
14 appoints persons to conduct a competency evaluation, the juvenile
15 probation department shall provide the persons appointed to
16 conduct the competency evaluation with all relevant files in the
17 possession of the probation department, including any preliminary
18 investigatory records and a copy of the delinquency allegations.

19 (e) A person appointed to conduct a competency evaluation may
20 consider any relevant information.

21 (f) Not later than fourteen (14) days upon completion of the
22 competency evaluation, the persons who conducted the evaluation
23 shall provide a written report to the court and to all attorneys of
24 record. The competency report shall include the following:

25 (1) The opinion of the persons who conducted the competency
26 evaluation as to the child's ability to understand the nature
27 and objectives of the proceeding against the child.

28 (2) The opinion of the persons who conducted the competency
29 evaluation as to the child's ability to assist in the child's
30 defense.

31 (3) If one (1) or more persons who conducted the competency
32 evaluation determine that the child is not competent, a:

33 (A) description of the child's need for services; and

34 (B) recommendation concerning the least restrictive setting
35 and treatment that would assist in restoring the child's
36 competency.

37 The competency evaluation may not contain any statement from
38 the child relating to the alleged delinquent act.

39 Sec. 5. As soon as practicable after receiving the written
40 competency evaluation, the court shall determine whether the child
41 is competent for adjudication or disposition. Upon a motion by any
42 party, the court shall conduct a hearing to determine competency.



- 1 **The child has:**
2 (1) the right to notice;
3 (2) the opportunity to participate personally at the hearing;
4 (3) the right to present evidence; and
5 (4) the right to be represented by counsel. If the child is
6 indigent, the court shall appoint a public defender or
7 guardian ad litem for the child.
- 8 **The party alleging that the child is not competent has the burden**
9 **of proving that the child is not competent by a preponderance of**
10 **the evidence.**
- 11 **Sec. 6. (a) If the court determines that the juvenile is competent,**
12 **the court shall proceed with the delinquency proceedings as**
13 **provided by law. No statement that a child makes during an**
14 **evaluation or hearing conducted under this chapter may be used**
15 **against the child in any juvenile or adult proceeding.**
- 16 **(b) If the court determines that the juvenile is not competent,**
17 **the court shall determine whether the child may attain competency**
18 **within:**
- 19 (1) one hundred eighty (180) days, if the child is alleged to
20 have committed an act that would be a felony if committed by
21 an adult; or
22 (2) ninety (90) days, if the child is alleged to have committed
23 an act that would not be a felony if committed by an adult.
- 24 **(c) If the court determines that the juvenile is not competent and**
25 **will not attain competency within the relevant time periods as**
26 **described in subsection (b), the court shall:**
- 27 (1) dismiss the allegations without prejudice; or
28 (2) delay dismissing the allegations for not more than ninety
29 (90) days and:
- 30 **(A) refer the matter to the department and request that the**
31 **department determine whether the child may be a child in**
32 **need of services; or**
33 **(B) assign court staff to:**
- 34 (i) refer the child or the child's family to an agency
35 funded by the division of mental health and addiction, or
36 an agency funded by the bureau of developmental
37 disabilities services; or
38 (ii) otherwise secure services to reduce the potential that
39 the child will engage in behavior that could result in
40 delinquent child or other criminal charges.
- 41 **(d) If the court determines that the juvenile is not competent but**
42 **is reasonably likely to attain competency within the relevant time**



1 periods as described in subsection (b), the court may order the
2 child to participate in services specifically designed to help the
3 child attain competency, to be paid by the department. If the court
4 orders the child to receive competency attainment services, the
5 court shall:

6 (1) identify a qualified provider to deliver the competency
7 attainment services; and

8 (2) order the child's parent, guardian, or custodian to contact
9 that provider by a specified date to arrange for services.

10 (e) Not later than ten (10) days after the court identifies the
11 qualified competency attainment services provider as described in
12 subsection (d), the court shall transmit to the provider a copy of
13 each competency assessment report it has received for review. The
14 provider shall return the copies of the reports to the court upon the
15 termination of the services.

16 (f) Not later than thirty (30) days after the child contacts the
17 competency attainment services provider under subsection (d), the
18 provider shall submit to the court a competency attainment plan
19 for the court's approval. If the court approves the plan, the court
20 shall provide copies of the plan to the prosecuting attorney, the
21 child's attorney, the child's guardian ad litem, if any, and the
22 child's parents, guardian, or custodian.

23 (g) Competency attainment services provided to a child are
24 subject to the following conditions and time periods measured from
25 the date the court approves the plan:

26 (1) Services shall be provided in the least restrictive setting
27 that is consistent with the child's ability to attain competency,
28 and the safety of both the child and the community. If the
29 child has been released on a temporary or interim order and
30 refuses or fails to cooperate with the provider, the court may
31 reassess the order and amend it to require a more appropriate
32 setting.

33 (2) No child may be required to participate in competency
34 attainment services for longer than is required for the child to
35 attain competency. In addition, if a child is ordered to
36 participate in competency attainment services that are
37 provided:

38 (A) outside of a residential setting, the child may not be
39 required to participate for more than:

40 (i) ninety (90) days if the child is charged with an act that
41 would be a misdemeanor if committed by an adult; or

42 (ii) one hundred eighty (180) days if the child is charged



- 1 with an act that would be a felony or murder if
2 committed by an adult;
- 3 **(B) in a residential setting that is operated solely or in part**
4 **for the purpose of providing competency attainment**
5 **services, the child may not be ordered to participate for**
6 **more than:**
- 7 **(i) forty-five (45) days if the child is charged with an act**
8 **that would be a misdemeanor if committed by an adult;**
9 **(ii) ninety (90) days if the child is charged with an act**
10 **that would be a Level 4, Level 5, or Level 6 felony if**
11 **committed by an adult; or**
12 **(iii) one hundred eighty (180) days if the child is charged**
13 **with an act that would be murder or a Level 1, Level 2,**
14 **or Level 3 felony if committed by an adult; and**
- 15 **(C) in a residential, detention, or other secured setting**
16 **where the child has been placed for reasons other than to**
17 **participate in competency attainment services, but where**
18 **the child is also ordered to participate in competency**
19 **attainment services, the child may not be required to**
20 **participate for more than:**
- 21 **(i) ninety (90) days if the child is charged with an act that**
22 **would be a misdemeanor if committed by an adult; or**
23 **(ii) one hundred eighty (180) days if the child is charged**
24 **with an act that would be a felony or murder if**
25 **committed by an adult.**
- 26 **(h) The provider that provides the child's competency**
27 **attainment services shall submit reports to the court as follows:**
- 28 **(1) The provider shall report on the child's progress every**
29 **thirty (30) days, and upon the termination of services. The**
30 **report may not include any details of the alleged offense as**
31 **reported by the child.**
- 32 **(2) If the provider determines that the current setting is no**
33 **longer the least restrictive setting that is consistent with the**
34 **child's ability to attain competency and the safety of both the**
35 **child and the community, the provider shall report this to the**
36 **court within three (3) days of the determination.**
- 37 **(3) If the provider determines that the child has achieved the**
38 **goals of the plan and is able to understand the nature and**
39 **objectives of the proceeding against the child and to assist in**
40 **the child's defense, with or without reasonable**
41 **accommodations, the provider shall issue a report informing**
42 **the court of that determination within three (3) days of the**



1 determination. If the provider believes that accommodations
 2 are necessary or desirable, the report shall include
 3 recommendations for accommodations.

4 (4) If the provider determines that the child will not achieve
 5 the goals of the plan within the applicable period of time
 6 under this section, the provider shall issue a report informing
 7 the court of the determination within three (3) days of the
 8 determination. The report shall include recommendations for
 9 services for the child that would support the safety of the child
 10 or the community.

11 (i) The court shall provide a copy of any report received under
 12 subsection (h) to the following:

- 13 (1) The prosecuting attorney.
- 14 (2) The attorney representing the child.
- 15 (3) The child's guardian ad litem, if any.
- 16 (4) The child's parent, guardian, or custodian, unless the court
 17 finds that providing a copy of the report is not in the best
 18 interests of the child.

19 (j) Not later than fifteen (15) days after receiving a report under
 20 subsection (h), the court may hold a hearing to determine if it
 21 should issue a new order. The court may order a new competency
 22 evaluation if the court believes that it may assist the court in
 23 making its determination. The child shall continue to participate in
 24 competency attainment services until a new order is issued or the
 25 required period of participation ends.

26 (k) If, following a hearing held under subsection (j), the court
 27 determines that the child has not or will not attain competency
 28 within the relevant period of time under subsection (g), the court
 29 shall:

- 30 (1) dismiss the allegations without prejudice; or
- 31 (2) delay dismissing the allegations for not more than ninety
 32 (90) days and:
 - 33 (A) refer the matter to the department and request that the
 34 department determine whether the child may be a child in
 35 need of services; or
 - 36 (B) assign court staff to:
 - 37 (i) refer the child or the child's family to an agency
 38 funded by the division of mental health and addiction, or
 39 an agency funded by the bureau of developmental
 40 disabilities services; or
 - 41 (ii) otherwise secure services to reduce the potential that
 42 the child will engage in behavior that could result in



1 **delinquent child or other criminal charges.**

2 **(l) If, following a hearing held under subsection (j), the court**
 3 **determines that the child is competent, the court shall proceed with**
 4 **the delinquency proceedings as described in subsection (a).**

5 **(m) Allegations dismissed under subsections (c) and (k) do not**
 6 **preclude:**

7 **(1) a future proceeding against the child if the child eventually**
 8 **attains competency; or**

9 **(2) a civil action against the child based on the conduct that**
 10 **formed the basis of the allegations against the child.**

11 **(n) Proceedings under this chapter do not toll the time limits**
 12 **under IC 31-37-11.**

13 SECTION 14. IC 31-39-3-2 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. The following
 15 information contained in records involving allegations of delinquency
 16 that would be a crime if committed by an adult is considered public
 17 information:

18 (1) The nature of the offense allegedly committed and the
 19 circumstances immediately surrounding the alleged offense,
 20 including the time, location, and property involved.

21 (2) The identity of any victim.

22 (3) A description of the method of apprehension.

23 (4) Any instrument of physical force used.

24 (5) The identity of any officers assigned to the investigation,
 25 except for the undercover units.

26 (6) The age and sex of any child apprehended or sought for the
 27 alleged commission of the offense.

28 (7) The identity of a child, if the child is apprehended or sought
 29 for the alleged commission of:

30 (A) an offense over which a juvenile court does not have
 31 jurisdiction under IC 31-30-1-2 and IC 31-30-1-4 **(before its**
 32 **repeal); or**

33 (B) an act specified under IC 31-30-3-3.

34 SECTION 15. IC 31-39-8-3.5 IS ADDED TO THE INDIANA
 35 CODE AS A NEW SECTION TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2021]: **Sec. 3.5. (a) This section does not**
 37 **apply to the records of a child adjudicated a delinquent child for**
 38 **committing an act that would be:**

39 **(1) murder, a Level 1 felony, Level 2 felony, Level 3 felony, or**
 40 **Level 4 felony, except a felony under IC 35-48-4;**

41 **(2) involuntary manslaughter as a Level 5 felony (IC**
 42 **35-42-1-4); or**



1 **(3) reckless homicide as a Level 5 felony (IC 35-42-1-5);**
 2 **if committed by an adult.**

3 **(b) This section applies to the records of a child adjudicated a**
 4 **delinquent child after June 30, 2020.**

5 **(c) One (1) year after the date on which the juvenile court**
 6 **discharges the child under IC 31-37-20-7, the court shall, on its**
 7 **own motion and without holding a hearing, order expungement of**
 8 **the records relating to the child's delinquency adjudication.**

9 **(d) The expungement provisions in this section supplement and**
 10 **are in addition to expungement provisions located elsewhere in this**
 11 **chapter. A person entitled to expungement of delinquency records**
 12 **under this section may also seek expungement under any other**
 13 **applicable section of this chapter.**

14 SECTION 16. IC 31-39-8-5 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. If the court grants the
 16 expungement petition, **or orders expungement under section 3.5 of**
 17 **this chapter**, the court shall order each law enforcement agency and
 18 each person who provided treatment for the child under an order of the
 19 court to send that person's records to the court.

20 SECTION 17. IC 31-39-8-6, AS AMENDED BY P.L.86-2017,
 21 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2021]: Sec. 6. (a) Subject to subsections (b) and (c), the
 23 records shall be destroyed upon a grant of an expungement petition by
 24 the court, **including an expungement order issued under section 3.5**
 25 **of this chapter.**

26 (b) Data from the records in subsection (a) shall be maintained by
 27 the court on a secure data base that does not enable identification of the
 28 offender to the public or another person not having legal or statutory
 29 authority to access the records.

30 (c) The records maintained in the data base under subsection (b)
 31 may be used only for statistical analysis, research, and financial
 32 auditing purposes.

33 SECTION 18. IC 35-38-1-17, AS AMENDED BY P.L.45-2018,
 34 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2021]: Sec. 17. (a) Notwithstanding IC 1-1-5.5-21, this section
 36 applies to a person who:

37 (1) commits an offense; or

38 (2) is sentenced;

39 **before July 1, 2014, if the person was at least eighteen (18) years of**
 40 **age at the time the person committed the offense.**

41 (b) This section does not apply to a credit restricted felon.

42 (c) Except as provided in subsections (k) and (m), this section does



- 1 not apply to a violent criminal.
- 2 (d) As used in this section, "violent criminal" means a person
- 3 convicted of any of the following offenses:
- 4 (1) Murder (IC 35-42-1-1).
- 5 (2) Attempted murder (IC 35-41-5-1).
- 6 (3) Voluntary manslaughter (IC 35-42-1-3).
- 7 (4) Involuntary manslaughter (IC 35-42-1-4).
- 8 (5) Reckless homicide (IC 35-42-1-5).
- 9 (6) Aggravated battery (IC 35-42-2-1.5).
- 10 (7) Kidnapping (IC 35-42-3-2).
- 11 (8) Rape (IC 35-42-4-1).
- 12 (9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- 13 (10) Child molesting (IC 35-42-4-3).
- 14 (11) Sexual misconduct with a minor as a Class A felony under
- 15 IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2)
- 16 (for a crime committed before July 1, 2014) or sexual misconduct
- 17 with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a
- 18 Level 2 felony under IC 35-42-4-9(b)(2) (for a crime committed
- 19 after June 30, 2014).
- 20 (12) Robbery as a Class A felony or a Class B felony (IC
- 21 35-42-5-1) (for a crime committed before July 1, 2014) or robbery
- 22 as a Level 2 felony or a Level 3 felony (IC 35-42-5-1) (for a crime
- 23 committed after June 30, 2014).
- 24 (13) Burglary as Class A felony or a Class B felony (IC
- 25 35-43-2-1) (for a crime committed before July 1, 2014) or
- 26 burglary as a Level 1 felony, Level 2 felony, Level 3 felony, or
- 27 Level 4 felony (IC 35-43-2-1) (for a crime committed after June
- 28 30, 2014).
- 29 (14) Unlawful possession of a firearm by a serious violent felon
- 30 (IC 35-47-4-5).
- 31 (e) At any time after:
- 32 (1) a convicted person begins serving the person's sentence; and
- 33 (2) the court obtains a report from the department of correction
- 34 concerning the convicted person's conduct while imprisoned;
- 35 the court may reduce or suspend the sentence and impose a sentence
- 36 that the court was authorized to impose at the time of sentencing.
- 37 However, if the convicted person was sentenced under the terms of a
- 38 plea agreement, the court may not, without the consent of the
- 39 prosecuting attorney, reduce or suspend the sentence and impose a
- 40 sentence not authorized by the plea agreement. The court must
- 41 incorporate its reasons in the record.
- 42 (f) If the court sets a hearing on a petition under this section, the



1 court must give notice to the prosecuting attorney and the prosecuting
 2 attorney must give notice to the victim (as defined in IC 35-31.5-2-348)
 3 of the crime for which the convicted person is serving the sentence.

4 (g) The court may suspend a sentence for a felony under this section
 5 only if suspension is permitted under IC 35-50-2-2.2.

6 (h) The court may deny a request to suspend or reduce a sentence
 7 under this section without making written findings and conclusions.

8 (i) The court is not required to conduct a hearing before reducing or
 9 suspending a sentence under this section if:

10 (1) the prosecuting attorney has filed with the court an agreement
 11 of the reduction or suspension of the sentence; and

12 (2) the convicted person has filed with the court a waiver of the
 13 right to be present when the order to reduce or suspend the
 14 sentence is considered.

15 (j) This subsection applies only to a convicted person who is not a
 16 violent criminal. A convicted person who is not a violent criminal may
 17 file a petition for sentence modification under this section:

18 (1) not more than one (1) time in any three hundred sixty-five
 19 (365) day period; and

20 (2) a maximum of two (2) times during any consecutive period of
 21 incarceration;

22 without the consent of the prosecuting attorney.

23 (k) This subsection applies to a convicted person who is a violent
 24 criminal. A convicted person who is a violent criminal may, not later
 25 than three hundred sixty-five (365) days from the date of sentencing,
 26 file one (1) petition for sentence modification under this section
 27 without the consent of the prosecuting attorney. After the elapse of the
 28 three hundred sixty-five (365) day period, a violent criminal may not
 29 file a petition for sentence modification without the consent of the
 30 prosecuting attorney.

31 (l) A person may not waive the right to sentence modification under
 32 this section as part of a plea agreement. Any purported waiver of the
 33 right to sentence modification under this section in a plea agreement is
 34 invalid and unenforceable as against public policy. This subsection
 35 does not prohibit the finding of a waiver of the right to:

36 (1) have a court modify a sentence and impose a sentence not
 37 authorized by the plea agreement, as described under subsection
 38 (e); or

39 (2) sentence modification for any other reason, including failure
 40 to comply with the provisions of this section.

41 (m) Notwithstanding subsection (k), a person who commits an
 42 offense after June 30, 2014, and before May 15, 2015, may file one (1)



1 petition for sentence modification without the consent of the
 2 prosecuting attorney, even if the person has previously filed a petition
 3 for sentence modification.

4 SECTION 19. IC 35-38-1-17.1 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2021]: **Sec. 17.1. (a) Notwithstanding any
 7 other law, this section applies to:**

8 **(1) a person who commits an offense before reaching eighteen
 9 (18) years of age; and**

10 **(2) an offense committed before, after, or on July 1, 2021.**

11 **(b) Not earlier than fifteen (15) years after the date of
 12 conviction, the person may petition for a sentence modification
 13 under this section. If the petition contains a verified statement that
 14 the person is indigent and desires the appointment of counsel, the
 15 court shall appoint counsel for the person to represent them in
 16 seeking the modification.**

17 **(c) The court shall transmit a copy of a petition filed under this
 18 section to the prosecuting attorney. Not later than thirty (30) days
 19 after receipt, the prosecuting attorney shall notify any victims of
 20 the person's crimes that the person is seeking sentence
 21 modification, and inform them of the rights provided by Article 1,
 22 Section 13 of the Constitution of the State of Indiana and IC 35-40.**

23 **(d) Not later than ninety (90) days after a petition is filed under
 24 this section, the court shall conduct a hearing on the petition. At
 25 the hearing, the court shall consider whether the person is a danger
 26 to the public, and whether it is in the interest of justice to reduce or
 27 modify the sentence. The court shall consider the following factors:**

28 **(1) Whether the person has substantially complied with the
 29 rules of the institution in which the individual has been
 30 confined, taking into consideration the age of the offender at
 31 the time of any violations of institutional rules.**

32 **(2) The nature of the offense and the history and
 33 characteristics of the offender.**

34 **(3) Any statement offered by a victim or victim's
 35 representative.**

36 **(4) Any reports from a physical, mental, or behavioral
 37 examination conducted by a health professional.**

38 **(5) Influences that may have contributed to the offender's
 39 behavior at the time of the offense, including a history of
 40 trauma, neglect, abuse, or involvement in the child welfare
 41 system.**

42 **(6) The role of the offender in the offense, and to what extent**



1 the offender's behavior was influenced by others.

2 **(7) The diminished capacity of a juvenile as compared to an**
 3 **adult, including the inability to fully appreciate risks and**
 4 **consequences at the time of the offense.**

5 **(8) Any other consideration the court finds relevant.**

6 **(e) If, after considering the factors described in subsection (d),**
 7 **the court finds that the person is not a danger to the public, and it**
 8 **is in the interest of justice to reduce or modify the sentence, the**
 9 **court shall modify the person's sentence.**

10 **(f) The court shall issue its decision in writing and set forth the**
 11 **basis for its decision, including a brief description explaining the**
 12 **court's reasoning, with reference to the factors described in**
 13 **subsection (d).**

14 **(g) If the court:**

15 **(1) denies the petition; or**

16 **(2) reduces or modifies the person's sentence in such a manner**
 17 **that the offender is still confined five (5) years after the**
 18 **court's reduction or modification;**

19 **the person may file another petition under this section.**

20 **(h) A person may file no more than three (3) petitions under this**
 21 **section, not including any amendments made to a petition before**
 22 **the court issues an order on the petition.**

23 **(i) The grant or denial of a petition under this section is a final**
 24 **appealable order.**

25 SECTION 20. IC 35-50-2-3, AS AMENDED BY P.L.117-2015,
 26 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2021]: Sec. 3. (a) A person who commits murder shall be
 28 imprisoned for a fixed term of between forty-five (45) and sixty-five
 29 (65) years, with the advisory sentence being fifty-five (55) years. In
 30 addition, the person may be fined not more than ten thousand dollars
 31 (\$10,000).

32 (b) Notwithstanding subsection (a), a person who was

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

35 ~~(A)~~ **(1)** death; or

36 ~~(B)~~ **(2)** life imprisonment without parole. ~~and~~

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

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



1 SECTION 21. IC 35-50-2-9, AS AMENDED BY P.L.65-2016,
 2 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2021]: Sec. 9. (a) The state may seek either a death sentence
 4 or a sentence of life imprisonment without parole for murder by
 5 alleging, on a page separate from the rest of the charging instrument,
 6 the existence of at least one (1) of the aggravating circumstances listed
 7 in subsection (b). In the sentencing hearing after a person is convicted
 8 of murder, the state must prove beyond a reasonable doubt the
 9 existence of at least one (1) of the aggravating circumstances alleged.
 10 However, the state may not proceed against a defendant under this
 11 section if a court determines at a pretrial hearing under IC 35-36-9 that
 12 the defendant is an individual with an intellectual disability.

13 (b) The aggravating circumstances are as follows:

14 (1) The defendant committed the murder by intentionally killing
 15 the victim while committing or attempting to commit any of the
 16 following:

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

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

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

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

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

23 (F) Rape (IC 35-42-4-1).

24 (G) Robbery (IC 35-42-5-1).

25 (H) Carjacking (IC 35-42-5-2) (before its repeal).

26 (I) Criminal organization activity (IC 35-45-9-3).

27 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

28 (K) Criminal confinement (IC 35-42-3-3).

29 (2) The defendant committed the murder by the unlawful
 30 detonation of an explosive with intent to injure a person or
 31 damage property.

32 (3) The defendant committed the murder by lying in wait.

33 (4) The defendant who committed the murder was hired to kill.

34 (5) The defendant committed the murder by hiring another person
 35 to kill.

36 (6) The victim of the murder was a corrections employee,
 37 probation officer, parole officer, community corrections worker,
 38 home detention officer, fireman, judge, or law enforcement
 39 officer, and either:

40 (A) the victim was acting in the course of duty; or

41 (B) the murder was motivated by an act the victim performed
 42 while acting in the course of duty.



- 1 (7) The defendant has been convicted of another murder.
 2 (8) The defendant has committed another murder, at any time,
 3 regardless of whether the defendant has been convicted of that
 4 other murder.
 5 (9) The defendant was:
 6 (A) under the custody of the department of correction;
 7 (B) under the custody of a county sheriff;
 8 (C) on probation after receiving a sentence for the commission
 9 of a felony; or
 10 (D) on parole;
 11 at the time the murder was committed.
 12 (10) The defendant dismembered the victim.
 13 (11) The defendant:
 14 (A) burned, mutilated, or tortured the victim; or
 15 (B) decapitated or attempted to decapitate the victim;
 16 while the victim was alive.
 17 (12) The victim of the murder was less than twelve (12) years of
 18 age.
 19 (13) The victim was a victim of any of the following offenses for
 20 which the defendant was convicted:
 21 (A) A battery offense included in IC 35-42-2 committed before
 22 July 1, 2014, as a Class D felony or as a Class C felony, or a
 23 battery offense included in IC 35-42-2 committed after June
 24 30, 2014, as a Level 6 felony, a Level 5 felony, a Level 4
 25 felony, or a Level 3 felony.
 26 (B) Kidnapping (IC 35-42-3-2).
 27 (C) Criminal confinement (IC 35-42-3-3).
 28 (D) A sex crime under IC 35-42-4.
 29 (14) The victim of the murder was listed by the state or known by
 30 the defendant to be a witness against the defendant and the
 31 defendant committed the murder with the intent to prevent the
 32 person from testifying.
 33 (15) The defendant committed the murder by intentionally
 34 discharging a firearm (as defined in IC 35-47-1-5):
 35 (A) into an inhabited dwelling; or
 36 (B) from a vehicle.
 37 (16) The victim of the murder was pregnant and the murder
 38 resulted in the intentional killing of a fetus that has attained
 39 viability (as defined in IC 16-18-2-365).
 40 (17) The defendant knowingly or intentionally:
 41 (A) committed the murder:
 42 (i) in a building primarily used for an educational purpose;



- 1 (ii) on school property; and
 2 (iii) when students are present; or
 3 (B) committed the murder:
 4 (i) in a building or other structure owned or rented by a state
 5 educational institution or any other public or private
 6 postsecondary educational institution and primarily used for
 7 an educational purpose; and
 8 (ii) at a time when classes are in session.
 9 (18) The murder is committed:
 10 (A) in a building that is primarily used for religious worship;
 11 and
 12 (B) at a time when persons are present for religious worship or
 13 education.
 14 (c) The mitigating circumstances that may be considered under this
 15 section are as follows:
 16 (1) The defendant has no significant history of prior criminal
 17 conduct.
 18 (2) The defendant was under the influence of extreme mental or
 19 emotional disturbance when the murder was committed.
 20 (3) The victim was a participant in or consented to the defendant's
 21 conduct.
 22 (4) The defendant was an accomplice in a murder committed by
 23 another person, and the defendant's participation was relatively
 24 minor.
 25 (5) The defendant acted under the substantial domination of
 26 another person.
 27 (6) The defendant's capacity to appreciate the criminality of the
 28 defendant's conduct or to conform that conduct to the
 29 requirements of law was substantially impaired as a result of
 30 mental disease or defect or of intoxication.
 31 (7) The defendant was less than ~~eighteen (18)~~ **twenty-five (25)**
 32 years of age at the time the murder was committed.
 33 (8) Any other circumstances appropriate for consideration.
 34 (d) If the defendant was convicted of murder in a jury trial, the jury
 35 shall reconvene for the sentencing hearing. If the trial was to the court,
 36 or the judgment was entered on a guilty plea, the court alone shall
 37 conduct the sentencing hearing. The jury or the court may consider all
 38 the evidence introduced at the trial stage of the proceedings, together
 39 with new evidence presented at the sentencing hearing. The court shall
 40 instruct the jury concerning the statutory penalties for murder and any
 41 other offenses for which the defendant was convicted, the potential for
 42 consecutive or concurrent sentencing, and the availability of



1 educational credit, good time credit, and clemency. The court shall
 2 instruct the jury that, in order for the jury to recommend to the court
 3 that the death penalty or life imprisonment without parole should be
 4 imposed, the jury must find at least one (1) aggravating circumstance
 5 beyond a reasonable doubt as described in subsection (l) and shall
 6 provide a special verdict form for each aggravating circumstance
 7 alleged. The defendant may present any additional evidence relevant
 8 to:

9 (1) the aggravating circumstances alleged; or

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

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

16 (1) the death penalty; or

17 (2) life imprisonment without parole;

18 only if it makes the findings described in subsection (l). If the jury
 19 reaches a sentencing recommendation, the court shall sentence the
 20 defendant accordingly. After a court pronounces sentence, a
 21 representative of the victim's family and friends may present a
 22 statement regarding the impact of the crime on family and friends. The
 23 impact statement may be submitted in writing or given orally by the
 24 representative. The statement shall be given in the presence of the
 25 defendant.

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

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

31 (1) sentence the defendant to death; or

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

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

34 (h) If a court sentences a defendant to death, the court shall order
 35 the defendant's execution to be carried out not later than one (1) year
 36 and one (1) day after the date the defendant was convicted. The
 37 supreme court has exclusive jurisdiction to stay the execution of a
 38 death sentence. If the supreme court stays the execution of a death
 39 sentence, the supreme court shall order a new date for the defendant's
 40 execution.

41 (i) If a person sentenced to death by a court files a petition for
 42 post-conviction relief, the court, not later than ninety (90) days after the



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

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

- 17 (1) conviction or sentence was in violation of the:
 - 18 (A) Constitution of the State of Indiana; or
 - 19 (B) Constitution of the United States;
- 20 (2) sentencing court was without jurisdiction to impose a
 21 sentence; and
- 22 (3) sentence:
 - 23 (A) exceeds the maximum sentence authorized by law; or
 - 24 (B) is otherwise erroneous.

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

29 (k) A person who has been sentenced to death and who has
 30 completed state post-conviction review proceedings may file a written
 31 petition with the supreme court seeking to present new evidence
 32 challenging the person's guilt or the appropriateness of the death
 33 sentence if the person serves notice on the attorney general. The
 34 supreme court shall determine, with or without a hearing, whether the
 35 person has presented previously undiscovered evidence that
 36 undermines confidence in the conviction or the death sentence. If
 37 necessary, the supreme court may remand the case to the trial court for
 38 an evidentiary hearing to consider the new evidence and its effect on
 39 the person's conviction and death sentence. The supreme court may not
 40 make a determination in the person's favor nor make a decision to
 41 remand the case to the trial court for an evidentiary hearing without
 42 first providing the attorney general with an opportunity to be heard on



1 the matter.

2 (l) Before a sentence may be imposed under this section, the jury,

3 in a proceeding under subsection (e), or the court, in a proceeding

4 under subsection (g), must find that:

5 (1) the state has proved beyond a reasonable doubt that at least

6 one (1) of the aggravating circumstances listed in subsection (b)

7 exists; and

8 (2) any mitigating circumstances that exist are outweighed by the

9 aggravating circumstance or circumstances.

10 SECTION 22. IC 35-50-2-17, AS ADDED BY P.L.104-2013,

11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

12 JULY 1, 2021]: Sec. 17. Notwithstanding any other provision of this

13 chapter, if:

14 (1) an offender is:

15 (A) less than eighteen (18) years of age;

16 (B) waived to a court with criminal jurisdiction under

17 IC 31-30-3 because the offender committed an act that would

18 be a felony if committed by an adult; and

19 (C) convicted of committing the felony or enters a plea of

20 guilty to committing the felony; or

21 (2) an offender is:

22 (A) less than eighteen (18) years of age;

23 (B) charged with a felony over which a juvenile court does not

24 have jurisdiction under IC 31-30-1-4 (**before its repeal**); and

25 (C) convicted of committing the felony by a court with

26 criminal jurisdiction or enters a plea of guilty to committing

27 the felony with the court;

28 the court may impose a sentence upon the conviction of the offender

29 under IC 31-30-4 concerning sentencing alternatives for certain

30 offenders under criminal court jurisdiction.

31 SECTION 23. IC 36-2-13-12 IS AMENDED TO READ AS

32 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 12. (a) The sheriff shall

33 file with the appropriate court, **the Indiana criminal justice institute,**

34 and, in the case of a person awaiting trial on a criminal charge, with the

35 county prosecuting attorney, a weekly report of each person confined

36 in the county jail. The report must include the confined person's:

37 (1) name, **if the person was at least eighteen (18) years of age**

38 **at the time of allegedly committing the charged offense; or**

39 **(2) initials, if the person was less than eighteen (18) years of**

40 **age at the time of allegedly committing the offense or**

41 **delinquent act;**

42 the date of commitment, the court or officer ordering the commitment,



1 the criminal charge, conviction, or civil action underlying the
2 commitment, the term of commitment, and whether the person is
3 awaiting trial or serving a term of imprisonment.

4 (b) The sheriff shall file with the county executive an annual report
5 of the condition of the county jail and any recommended improvements
6 in its maintenance and operation. The report shall also be filed with the
7 county auditor and maintained as a public record.

