

HOUSE BILL No. 1432

DIGEST OF INTRODUCED BILL

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

Synopsis: Death sentence and intellectual disabilities. Prohibits the state from seeking the death penalty against a defendant if a court determines at any time before trial that the defendant has an intellectual disability. (Under current law, the court must make this determination at a specified pretrial hearing.)

Effective: July 1, 2026.

Bascom, Zimmerman, Greene

January 8, 2026, read first time and referred to Committee on Courts and Criminal Code.



Introduced

Second Regular Session of the 124th General Assembly (2026)

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 2025 Regular Session of the General Assembly.

HOUSE BILL No. 1432

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 35-36-2-2, AS AMENDED BY P.L.54-2014,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2026]: Sec. 2. (a) At the trial of a criminal case in which the
4 defendant intends to interpose the defense of insanity, evidence may be
5 introduced to prove the defendant's sanity or insanity at the time at
6 which the defendant is alleged to have committed the offense charged
7 in the indictment or information.
8 (b) When notice of an insanity defense is filed in a case in which the
9 defendant is not charged with a homicide offense under IC 35-42-1, the
10 court shall appoint two (2) or three (3) competent disinterested:
11 (1) psychiatrists;
12 (2) psychologists endorsed by the state psychology board as
13 health service providers in psychology; or
14 (3) physicians;
15 who have expertise in determining insanity. At least one (1) of the
16 individuals appointed under this subsection must be a psychiatrist or
17 psychologist. The individuals appointed under this subsection shall



1 examine the defendant and testify at the trial. This testimony shall
2 follow the presentation of the evidence for the prosecution and for the
3 defense, including the testimony of any mental health experts employed
4 by the state or by the defense.

5 (c) When notice of an insanity defense is filed in a case in which the
6 defendant is charged with a homicide offense under IC 35-42-1, the
7 court shall appoint two (2) or three (3) competent disinterested:

8 (1) psychiatrists;
9 (2) psychologists endorsed by the state psychology board as
10 health service providers in psychology; or
11 (3) physicians;

12 who have expertise in determining insanity. At least one (1) individual
13 appointed under this subsection must be a psychiatrist and at least one
14 (1) individual appointed under this subsection must be a psychologist.
15 The individuals appointed under this subsection shall examine the
16 defendant and testify at the trial. **The examination must evaluate the**
17 **defendant's sanity and whether the defendant is an individual with**
18 **an intellectual disability.** This testimony must follow the presentation
19 of the evidence for the prosecution and for the defense, including the
20 testimony of any mental health experts employed by the state or by the
21 defense. **The mental health witnesses shall testify as to whether the**
22 **defendant is an individual with an intellectual disability even if the**
23 **defendant elects not to raise the defense of insanity at trial.**

24 (d) If a defendant does not adequately communicate, participate, and
25 cooperate with the mental health witnesses appointed by the court after
26 being ordered to do so by the court, the defendant may not present as
27 evidence the testimony of any other mental health witness:

28 (1) with whom the defendant adequately communicated,
29 participated, and cooperated; and
30 (2) whose opinion is based upon examinations of the defendant;
31 unless the defendant shows by a preponderance of the evidence that the
32 defendant's failure to communicate, participate, or cooperate with the
33 mental health witnesses appointed by the court was caused by the
34 defendant's mental illness **or intellectual disability.**

35 (e) The mental health witnesses appointed by the court may be
36 cross-examined by both the prosecution and the defense, and each side
37 may introduce evidence in rebuttal to the testimony of a mental health
38 witness.

39 SECTION 2. IC 35-36-2-5, AS AMENDED BY P.L.161-2018,
40 SECTION 119, IS AMENDED TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 2026]: Sec. 5. (a) Except as provided by
42 subsection (e), whenever a defendant is found guilty but mentally ill at



1 the time of the crime or enters a plea to that effect that is accepted by
2 the court, the court shall sentence the defendant in the same manner as
3 a defendant found guilty of the offense.

4 (b) Before sentencing the defendant under subsection (a), the court
5 shall require the defendant to be evaluated by a physician licensed
6 under IC 25-22.5 who practices psychiatric medicine, a licensed
7 psychologist, or a community mental health center (as defined in
8 IC 12-7-2-38). However, the court may waive this requirement if the
9 defendant was evaluated by a physician licensed under IC 25-22.5 who
10 practices psychiatric medicine, a licensed psychologist, or a community
11 mental health center and the evaluation is contained in the record of the
12 defendant's trial or plea agreement hearing.

13 (c) If a defendant who is found guilty but mentally ill at the time of
14 the crime is committed to the department of correction, the defendant
15 shall be further evaluated and then treated in such a manner as is
16 psychiatrically indicated for the defendant's mental illness. Treatment
17 may be provided by:

18 (1) the department of correction; or
19 (2) the division of mental health and addiction after transfer under
20 IC 11-10-4.

21 (d) If a defendant who is found guilty but mentally ill at the time of
22 the crime is placed on probation, the court may, in accordance with
23 IC 35-38-2-2.3, require that the defendant undergo treatment.

24 (e) As used in this subsection, "individual with an intellectual
25 disability" means an individual who, before becoming twenty-two (22)
26 years of age, manifests:

27 (1) significantly subaverage intellectual functioning; and
28 (2) substantial impairment of adaptive behavior;

29 that is documented in a court ordered evaluative report. If a court
30 determines ~~under IC 35-36-9~~ that a defendant who is charged with a
31 murder for which the state seeks a death sentence is an individual with
32 an intellectual disability, the court shall sentence the defendant under
33 IC 35-50-2-3(a).

34 (f) If a defendant is found guilty but mentally ill, the court shall
35 transmit any information required by the office of judicial
36 administration to the office of judicial administration for transmission
37 to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with
38 IC 33-24-6-3.

39 SECTION 3. IC 35-36-9-3, AS AMENDED BY P.L.117-2015,
40 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2026]: Sec. 3. (a) The defendant may file a petition alleging
42 that the defendant is an individual with an intellectual disability.



(b) The petition must be filed not later than twenty (20) days before the omnibus date ten (10) days before trial.

(c) Whenever the defendant files a petition under this section, the court shall order an evaluation of the defendant for the purpose of providing evidence of the following:

(1) Whether the defendant has a significantly subaverage level of intellectual functioning.

(2) Whether the defendant's adaptive behavior is substantially impaired.

(3) Whether the conditions described in subdivisions (1) and (2) existed before the defendant became twenty-two (22) years of age.

However, if the defendant has also raised the defense of insanity, the court shall order the evaluation performed in conjunction with the evaluation required under IC 35-36-2-2.

SECTION 4. IC 35-50-2-3, AS AMENDED BY P.L.117-2015, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 3. (a) A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

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

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

(A) death; or

(B) life imprisonment without parole; and

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

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

SECTION 5. IC 35-50-2-9, AS AMENDED BY P.L.65-2016, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this



1 section if a court determines at a ~~pretrial hearing under IC 35-36-9 any~~
2 ~~time before trial~~, that the defendant is an individual with an
3 intellectual disability.

4 (b) The aggravating circumstances are as follows:

5 (1) The defendant committed the murder by intentionally killing
6 the victim while committing or attempting to commit any of the
7 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (5) The defendant committed the murder by hiring another person
26 to kill.

27 (6) The victim of the murder was a corrections employee,
28 probation officer, parole officer, community corrections worker,
29 home detention officer, fireman, judge, or law enforcement
30 officer, and either:

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

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

34 (7) The defendant has been convicted of another murder.

35 (8) The defendant has committed another murder, at any time,
36 regardless of whether the defendant has been convicted of that
37 other murder.

38 (9) The defendant was:

39 (A) under the custody of the department of correction;

40 (B) under the custody of a county sheriff;

41 (C) on probation after receiving a sentence for the commission
42 of a felony; or



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



(A) in a building that is primarily used for religious worship;
and

(B) at a time when persons are present for religious worship or education.

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

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

(8) Any other circumstances appropriate for consideration.

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

(1) the aggravating circumstances alleged; or



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

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

(1) the death penalty; or

(2) life imprisonment without parole;

9 only if it makes the findings described in subsection (l). If the jury
10 reaches a sentencing recommendation, the court shall sentence the
11 defendant accordingly. After a court pronounces sentence, a
12 representative of the victim's family and friends may present a
13 statement regarding the impact of the crime on family and friends. The
14 impact statement may be submitted in writing or given orally by the
15 representative. The statement shall be given in the presence of the
16 defendant.

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

(1) sentence the defendant to death; or

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

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



1 concludes. However, if the court determines that the petition is without
2 merit, the court may dismiss the petition within ninety (90) days
3 without conducting a hearing under this subsection.

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

8 (1) conviction or sentence was in violation of the:
9 (A) Constitution of the State of Indiana; or
10 (B) Constitution of the United States;
11 (2) sentencing court was without jurisdiction to impose a
12 sentence; and
13 (3) sentence:
14 (A) exceeds the maximum sentence authorized by law; or
15 (B) is otherwise erroneous.

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

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

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

38 (1) the state has proved beyond a reasonable doubt that at least
39 one (1) of the aggravating circumstances listed in subsection (b)
40 exists; and
41 (2) any mitigating circumstances that exist are outweighed by the
42 aggravating circumstance or circumstances.

