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HOUSE BILL No. 1432

Proposed Changes to introduced printing by AM143201

DIGEST OF PROPOSED AMENDMENT

Intellectual disability. Establishes a procedure to determine if the defendant in a capital case has an intellectual disability.

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;~~ IC 35-36-9-2.5 IS ADDED TO THE
2 INDIANA CODE AS ~~AMENDED BY P.L. 54-2014;~~ [A NEW]
3 SECTION ~~1, IS AMENDED~~ TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2026]: [Sec. 2.5.] (a) ~~At~~ [After] the ~~trial~~
5 ~~of a criminal case in which the defendant intends to interpose the~~
6 ~~defense of insanity, evidence may be introduced to prove the~~
7 ~~defendant's sanity or insanity at the time at which the defendant is~~
8 ~~alleged to have committed the offense charged in the indictment or~~
9 ~~information.~~
10 — (b) ~~When notice of an insanity defense is filed in a case in~~
11 ~~which the defendant is not charged with a homicide offense under~~
12 ~~IC 35-42-1;~~ [state has filed the charging instrument under
13 IC 35-50-2-9(a) that seeks a death sentence], the court shall
14 appoint [] two (2) or three (3) competent disinterested:
15 (1) psychiatrists;
16 (2) psychologists endorsed by the state psychology board as
17 health service providers in psychology; or
18 (3) physicians;
19 who have expertise in ~~determining insanity~~ [diagnosing and
20 treating intellectual disabilities]. At least one (1) ~~of the individuals~~
21 ~~appointed under this subsection must be a psychiatrist or~~

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psychologist. The individuals appointed under this subsection shall examine the defendant and testify at the trial. This testimony shall follow the presentation of the evidence for the prosecution and for the defense, including the testimony of any mental health experts employed by the state or by the defense.

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

— (1) psychiatrists;

— (2) psychologists endorsed by the state psychology board as health service providers in psychology; or

— (3) physicians;

who have expertise in determining insanity. At least one (1) individual [person] appointed under this subsection must be a psychiatrist and at least one (1) [person] appointed under this subsection must be a psychologist.

(b) The [persons] appointed under [this subsection] (a) shall examine the defendant and [testify at the trial. The examination must evaluate the defendant's sanity and whether the defendant is an individual with an intellectual disability. This testimony must follow the presentation of the evidence for the prosecution and for the defense, including the testimony of any mental health experts employed by the state or by the defense. The mental health witnesses shall testify as to whether the defendant is an individual with an intellectual disability even if the defendant elects not to raise the defense of insanity at trial.]

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

— (1) with whom the defendant adequately communicated, participated, and cooperated; and

— (2) whose opinion is based upon examinations of the defendant;

unless the defendant shows by a preponderance of the evidence that the defendant's failure to communicate, participate, or cooperate with the mental health witnesses appointed by the court was caused by the defendant's mental illness or intellectual disability.

— (e) The mental health witnesses appointed by the court may be



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cross-examined by both the prosecution and the defense, and each side may introduce evidence in rebuttal to the testimony of a mental health witness:

—SECTION 2. IC 35-36-2-5, AS AMENDED BY P.L.161-2018, SECTION 119, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 5. (a) Except as provided by subsection (c), whenever a defendant is found guilty but mentally ill at the time of the crime or enters a plea to that effect that is accepted by the court, the court shall sentence the defendant in the same manner as a defendant found guilty of the offense:

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

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

—(1) the department of correction; or

—(2) the division of mental health and addiction after transfer under IC 11-10-4:

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

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

—(1) significantly subaverage intellectual functioning; and

—(2) substantial impairment of adaptive behavior;

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



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

~~— SECTION 3. IC 35-36-9-3, AS AMENDED BY P.L.117-2015, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 3. (a) The defendant may file a petition alleging 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~~ [each shall prepare a separate written evaluation] 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~~ [

(c) After all written evaluations have been completed, each person appointed under subsection (a) shall:

(1) transmit a copy their evaluation to the defendant; and

(2) notify the court that they have transmitted a copy of their evaluation to the defendant.

SECTION 2. IC 35-36-9-3], AS AMENDED BY P.L.117-2015, SECTION 49, 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~~ [The defendant may file a petition alleging that the defendant] is an individual with an intellectual disability~~;~~
~~SECTION 5. IC 35-50-2-9~~ [not later than thirty (30) days after receipt of all evaluations described in section 2.5 of this chapter.
(b) The petition must be filed not later than twenty (20) days before the omnibus date.
(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;
(b) If the defendant elects not to file a petition alleging that the defendant is an individual with a disability, the intellectual disability evaluations and any other evidence produced as a result of the examination of the defendant are privileged and inadmissible at trial by either party for any purpose.
(c) If the defendant files a petition alleging that the defendant is an individual with a disability the court shall:
(1) order the persons who conducted the examinations of the defendant under section 2.5 of this chapter to transmit a copy of their evaluations to the court and to the appropriate prosecuting attorney; and
(2) set the matter for hearing.
 SECTION 3. IC 35-36-9-4], AS AMENDED BY P.L. ~~<65-2016>~~ [117-2015], SECTION ~~<40>~~ [50], IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. ~~<9>~~ [4]. (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~~



1 prove beyond a reasonable doubt the existence of at least one (1) of the
 2 aggravating circumstances alleged. However, the state may not proceed
 3 against a ~~[The court shall conduct a~~ The persons who examined the
 4 defendant under ~~<this>~~ section ~~<if a court determines at a pretrial~~
 5 ~~hearing under IC 35-36-9 any time before trial,>~~ [2.5 of this chapter
 6 shall testify at the hearing on the a petition filed under this chapter

7 (b) At the hearing, the defendant must prove by clear and
 8 convincing evidence] that the defendant is an individual with an
 9 intellectual disability.

10 ~~<(b) The aggravating circumstances are as follows:~~

11 ~~— (1) The defendant committed the murder by intentionally killing~~
 12 ~~the victim while committing or attempting to commit any of the~~
 13 ~~following:~~

- 14 ~~— (A) Arson (IC 35-43-1-1);~~
- 15 ~~— (B) Burglary (IC 35-43-2-1);~~
- 16 ~~— (C) Child molesting (IC 35-42-4-3);~~
- 17 ~~— (D) Criminal deviate conduct (IC 35-42-4-2) (before its~~
 18 ~~repeal);~~
- 19 ~~— (E) Kidnapping (IC 35-42-3-2);~~
- 20 ~~— (F) Rape (IC 35-42-4-1);~~
- 21 ~~— (G) Robbery (IC 35-42-5-1);~~
- 22 ~~— (H) Carjacking (IC 35-42-5-2) (before its repeal);~~
- 23 ~~— (I) Criminal organization activity (IC 35-45-9-3);~~
- 24 ~~— (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1);~~
- 25 ~~— (K) Criminal confinement (IC 35-42-3-3);~~

26 ~~— (2) The defendant committed the murder by the unlawful~~
 27 ~~detonation of an explosive with intent to injure a person or~~
 28 ~~damage property;~~

29 ~~— (3) The defendant committed the murder by lying in wait.~~

30 ~~— (4) The defendant who committed the murder was hired to kill.~~

31 ~~— (5) The defendant committed the murder by hiring another~~
 32 ~~person to kill.~~

33 ~~— (6) The victim of the murder was a corrections employee;~~
 34 ~~probation officer, parole officer, community corrections worker;~~
 35 ~~home detention officer, fireman, judge, or law enforcement~~
 36 ~~officer, and either:~~

37 ~~— (A) the victim was acting in the course of duty; or~~

38 ~~— (B) the murder was motivated by an act the victim~~
 39 ~~performed while acting in the course of duty.~~

40 ~~— (7) The defendant has been convicted of another murder.~~

41 ~~— (8) The defendant has committed another murder, at any time,~~
 42 ~~regardless of~~ [SECTION 4. IC 35-36-9-5, AS AMENDED BY



P.L.117-2015, SECTION 51, IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 5. ~~Not later than
 ten (10) days before the initial trial date, The court shall
 determine before trial]~~whether the defendant ~~has been
 convicted of that other murder:~~

~~(9) The defendant was:~~

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

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

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

~~(D) on parole;~~

~~at the time the murder was committed:~~

~~(10) The defendant dismembered the victim.~~

~~(11) The defendant:~~

~~(A) burned, mutilated, or tortured the victim; or~~

~~(B) decapitated or attempted to decapitate the victim;~~

~~while the victim was alive.~~

~~(12) The victim of the murder was less than twelve (12) years of
 age.~~

~~(13) The victim was a victim of any of the following offenses for
 which the defendant was convicted:~~

~~(A) A battery offense included in IC 35-42-2 committed
 before July 1, 2014, as a Class D felony or as a Class C
 felony, or a battery offense included in IC 35-42-2
 committed after June 30, 2014, as a Level 6 felony, a Level
 5 felony, a Level 4 felony, or a Level 3 felony.~~

~~(B) Kidnapping (IC 35-42-3-2).~~

~~(C) Criminal confinement (IC 35-42-3-3).~~

~~(D) A sex crime under IC 35-42-4.~~

~~(14) The victim of the murder was listed by the state or known
 by the defendant to be a witness against the defendant and the
 defendant committed the murder with the intent to prevent the
 person from testifying.~~

~~(15) The defendant committed the murder by intentionally
 discharging a firearm (as defined in IC 35-47-1-5):~~

~~(A) into an inhabited dwelling; or~~

~~(B) from a vehicle.~~

~~(16) The victim of the murder was pregnant and the murder
 resulted in the intentional killing of a fetus that has attained
 viability (as defined in IC 16-18-2-365).~~

~~(17) The defendant knowingly or intentionally:~~

~~(A) committed the murder:~~



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

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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):

— (c) 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;

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

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

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

— (1) sentence the defendant to death; or

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

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

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



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

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

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

~~— (A) Constitution of the State of Indiana; or~~

~~— (B) Constitution of the United States;~~

~~— (2) sentencing court was without jurisdiction to impose a sentence; and~~

~~— (3) sentence:~~

~~— (A) exceeds the maximum sentence authorized by law; or~~

~~— (B) is otherwise erroneous.~~

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

~~— (k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to~~



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1 remand the case to the trial court for an evidentiary hearing without
 2 first providing the attorney general with an opportunity to be heard on
 3 the matter.

4 — (1) Before a sentence may be imposed under this section, the jury,
 5 in a proceeding under subsection (c), or the court, in a proceeding
 6 under subsection (g), must find that:

7 — (1) the state has proved beyond a reasonable doubt that at least
 8 one (1) of the aggravating circumstances listed in subsection (b)
 9 exists; and

10 — (2) any mitigating circumstances that exist are outweighed by the
 11 ~~aggravating circumstance or circumstances.~~ is an individual
 12 with an intellectual disability based on the evidence set forth at
 13 the hearing under section 4 of this chapter. The court shall
 14 articulate findings supporting the court's determination under
 15 this section.

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