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

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

10 ~~(1) psychiatrists;~~

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

13 ~~(3) physicians;~~

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

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

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

33 ~~(1) with whom the defendant adequately communicated,  
 34 participated, and cooperated; and~~

35 ~~(2) whose opinion is based upon examinations of the  
 36 defendant;~~

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

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



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

4       ~~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 (e), 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.

11       ~~(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.~~

21       ~~(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:~~

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

29       ~~(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.~~

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

36       ~~(1) significantly subaverage intellectual functioning; and  
 37       (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).~~



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

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

13 ~~(c) Whenever the defendant files a petition under this section, the court shall order an evaluation of the defendant [each shall~~  
14 ~~prepare a separate written evaluation]~~ for the purpose of providing  
15 evidence of the following: [ ]

17        (1) Whether the defendant has a significantly subaverage  
18        level of intellectual functioning.  
19        (2) Whether the defendant's adaptive behavior is  
20        substantially impaired.  
21        (3) Whether the conditions described in subdivisions (1) and  
22        (2) existed before the defendant became twenty-two (22)  
23        years of age. <

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

27 ~~SECTION 4. IC 35-50-2-3~~

30                   (1) transmit a copy their evaluation to the defendant; and  
31                   (2) notify the court that they have transmitted a copy of their  
32                   evaluation to the defendant.

33 SECTION 2. IC 35-36-9-3, AS AMENDED BY P.L.117-2015,  
34 SECTION ~~56~~<sup>49</sup>, IS AMENDED TO READ AS FOLLOWS  
35 [EFFECTIVE JULY 1, 2026]: Sec. 3. (a) ~~A person who commits~~  
36 ~~murder shall be imprisoned for a fixed term of between forty-five (45)~~  
37 ~~and sixty-five (65) years, with the advisory sentence being fifty-five~~  
38 ~~(55) years. In addition, the person may be fined not more than ten~~  
39 ~~thousand dollars (\$10,000).~~

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

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



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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



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

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



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

11       \_\_\_\_ (1) the aggravating circumstances alleged; or  
 12       \_\_\_\_ (2) any of the mitigating circumstances listed in subsection (e).  
 13       \_\_\_\_ (e) For a defendant sentenced after June 30, 2002, except as  
 14       provided by IC 35-36-9, if the hearing is by jury, the jury shall  
 15       recommend to the court whether the death penalty or life imprisonment  
 16       without parole, or neither, should be imposed. The jury may  
 17       recommend:

18       \_\_\_\_ (1) the death penalty; or  
 19       \_\_\_\_ (2) life imprisonment without parole;

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

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

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

33       \_\_\_\_ (1) sentence the defendant to death; or  
 34       \_\_\_\_ (2) impose a term of life imprisonment without parole;

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

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



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

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

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

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

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



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 (e), 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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