

SENATE BILL No. 155

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-36-13; IC 35-50-2.

Synopsis: Capital punishment and serious mental illness. Establishes a procedure to determine whether a defendant charged with or convicted of murder is an individual with a serious mental illness. Prohibits the imposition of the death penalty on a defendant found to be an individual with a serious mental illness.

Effective: July 1, 2017.

Merritt

January 4, 2017, read first time and referred to Committee on Judiciary.



First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 155

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 35-36-13 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2017]:
- 4 **Chapter 13. Determination of Serious Mental Illness in Capital**
- 5 **Cases**
- 6 **Sec. 1. This chapter applies to a person:**
- 7 **(1) charged with an offense for which the state seeks a death**
- 8 **sentence under IC 35-50-2-9; or**
- 9 **(2) convicted of an offense and sentenced to death.**
- 10 **Sec. 2. As used in this chapter, "active symptoms" means**
- 11 **symptoms of the disorders described in section 4 of this chapter,**
- 12 **including:**
- 13 **(1) delusions (fixed, clearly false beliefs);**
- 14 **(2) hallucinations (clearly erroneous perceptions of reality);**
- 15 **(3) extremely disorganized thinking;**
- 16 **(4) mania; or**
- 17 **(5) very significant disruptions of consciousness, memory, and**



1 perception of the environment.

2 **Sec. 3.** As used in this chapter, "individual with a serious mental
3 illness" means an individual who, at the time of the offense, had
4 active symptoms of a serious mental illness that substantially
5 impaired the individual's capacity to:

6 (1) appreciate the nature, consequences, or wrongfulness of
7 the individual's conduct;

8 (2) exercise rational judgment in relation to the individual's
9 conduct; or

10 (3) conform the individual's conduct to the requirements of
11 the law.

12 The term includes an individual diagnosed with a serious mental
13 illness before or after commission of the offense.

14 **Sec. 4.** (a) Except as provided in subsection (b), as used in this
15 chapter, "serious mental illness" means one (1) or more of the
16 following disorders as classified in the American Psychiatric
17 Association's Diagnostic and Statistical Manual of Mental
18 Disorders (DSM) as amended and supplemented:

19 (1) Schizophrenia spectrum and other psychotic disorders.

20 (2) Bipolar disorder.

21 (3) Major depressive disorder.

22 (4) Delusional disorder.

23 (5) Posttraumatic stress disorder.

24 (6) Traumatic brain injury.

25 (b) The term does not include a disorder manifested primarily
26 by repeated criminal conduct or attributable solely to the acute
27 effects of the voluntary use of alcohol or other drugs.

28 **Sec. 5.** (a) Except as provided in section 11 of this chapter, a
29 person may file a petition with the trial court alleging that the
30 person is an individual with a serious mental illness.

31 (b) If the offense is committed after June 30, 2017, the petition
32 must be filed not later than twenty (20) days before the omnibus
33 date.

34 (c) If the offense is committed before July 1, 2017, and the
35 person has not been sentenced, the petition must be filed in
36 accordance with section 10 of this chapter.

37 **Sec. 6.** (a) If a person files a petition under section 5 of this
38 chapter, the court shall order an evaluation of the person to
39 provide evidence of whether the person is an individual with a
40 serious mental illness.

41 (b) The court shall appoint two (2) examiners, each of whom
42 must be a:



1 (1) psychiatrist; or
 2 (2) psychologist;
 3 endorsed by the state psychology board as a health service
 4 provider in psychology and experienced in the diagnosis and
 5 treatment of individuals with a serious mental illness.

6 (c) The examiners shall provide a written report to the court
 7 offering an opinion as to whether the person has a serious mental
 8 illness.

9 (d) No statement that a person makes as part of:

10 (1) an evaluation; or

11 (2) a hearing;

12 under this chapter may be used against the person on the issue of
 13 guilt in the criminal proceeding. However, the person and the state
 14 may call an examiner as a witness in the criminal proceeding.

15 (e) This chapter does not preclude the person or the state from
 16 presenting any other evidence on the issue of whether the person
 17 suffers from a serious mental illness.

18 Sec. 7. (a) The court shall conduct a hearing on a petition filed
 19 under section 5 of this chapter.

20 (b) The court may determine that the person is an individual
 21 with a serious mental illness only if the person proves by a
 22 preponderance of the evidence at the hearing that the person is an
 23 individual with a serious mental illness.

24 Sec. 8. Not later than thirty (30) days after the hearing, the
 25 court shall determine whether the person is an individual with a
 26 serious mental illness based on the evidence presented at the
 27 hearing. The court shall issue written findings supporting the
 28 court's determination.

29 Sec. 9. If the court determines that the person is an individual
 30 with a serious mental illness, the part of the state's charging
 31 instrument filed under IC 35-50-2-9 that seeks a death sentence
 32 against the person shall be dismissed. This section does not
 33 preclude the state from seeking a sentence of life imprisonment
 34 without parole under IC 35-50-2-9.

35 Sec. 10. (a) This section applies to a person who:

36 (1) is alleged to have committed an offense before July 1,
 37 2017, for which the state seeks a death sentence under
 38 IC 35-50-2-9; and

39 (2) has not been sentenced.

40 (b) The following apply to a petition filed by a person to whom
 41 this section applies:

42 (1) If the person's trial has not commenced and the person is



1 reasonably able to file a petition by not later than twenty (20)
 2 days before the omnibus date, the person shall file the petition
 3 not later than twenty (20) days before the omnibus date.

4 (2) If the person's trial has not commenced and the person is
 5 not reasonably able to file a petition by not later than twenty
 6 (20) days before the omnibus date, the court shall grant the
 7 person a reasonable time to file a petition under this chapter.

8 (3) If the person's trial has commenced, the court shall grant
 9 the person a reasonable time to file a petition under this
 10 chapter. A court may not impose a death sentence on the
 11 person until the court has ruled on a petition filed under this
 12 subdivision.

13 Sec. 11. (a) This section applies to a person who is sentenced to
 14 death before July 1, 2017.

15 (b) If a person to whom this section applies has not completed
 16 state postconviction proceedings, the person may include in the
 17 petition for postconviction relief an allegation that the person is an
 18 individual with a serious mental illness. If the postconviction court
 19 determines that the person is an individual with a serious mental
 20 illness, the court shall vacate the petitioner's death sentence and
 21 impose a sentence of life imprisonment without parole. This
 22 subsection does not preclude the court from granting the person
 23 any additional relief to which the person may be entitled based on
 24 the merits of the person's additional postconviction claims.

25 (c) If a person to whom this section applies has completed state
 26 postconviction proceedings, the person may request permission to
 27 file a successive petition for postconviction relief in accordance
 28 with the Indiana rules of postconviction procedure, alleging that
 29 the petitioner is an individual with a serious mental illness. A
 30 request under this subsection must be filed not later than July 1,
 31 2018. If the successive petition is authorized, the postconviction
 32 court shall proceed under the Indiana rules of postconviction relief.
 33 If the postconviction court determines that the petitioner is an
 34 individual with a serious mental illness, it shall vacate the
 35 petitioner's death sentence and impose a sentence of life
 36 imprisonment without parole. This subsection does not preclude
 37 the postconviction court from granting the person any additional
 38 relief to which the person may be entitled based on the merits of
 39 the person's additional postconviction claims.

40 SECTION 2. IC 35-50-2-3, AS AMENDED BY P.L.117-2015,
 41 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2017]: 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), **and except as provided in subsection (c)**, 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.

(c) A court may not impose a death sentence on a person determined under IC 35-36-13 to be an individual with a serious mental illness.

SECTION 3. IC 35-50-2-9, AS AMENDED BY P.L.65-2016, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 9. (a) **Subject to section 3 of this chapter**, 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 section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with an intellectual disability.

(b) The aggravating circumstances are as follows:

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

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

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

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

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

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



- 1 (F) Rape (IC 35-42-4-1).
- 2 (G) Robbery (IC 35-42-5-1).
- 3 (H) Carjacking (IC 35-42-5-2) (before its repeal).
- 4 (I) Criminal organization activity (IC 35-45-9-3).
- 5 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 6 (K) Criminal confinement (IC 35-42-3-3).
- 7 (2) The defendant committed the murder by the unlawful
- 8 detonation of an explosive with intent to injure a person or
- 9 damage property.
- 10 (3) The defendant committed the murder by lying in wait.
- 11 (4) The defendant who committed the murder was hired to kill.
- 12 (5) The defendant committed the murder by hiring another person
- 13 to kill.
- 14 (6) The victim of the murder was a corrections employee,
- 15 probation officer, parole officer, community corrections worker,
- 16 home detention officer, ~~fireman~~, **firefighter**, judge, or law
- 17 enforcement officer, and either:
- 18 (A) the victim was acting in the course of duty; or
- 19 (B) the murder was motivated by an act the victim performed
- 20 while acting in the course of duty.
- 21 (7) The defendant has been convicted of another murder.
- 22 (8) The defendant has committed another murder, at any time,
- 23 regardless of whether the defendant has been convicted of that
- 24 other murder.
- 25 (9) The defendant was:
- 26 (A) under the custody of the department of correction;
- 27 (B) under the custody of a county sheriff;
- 28 (C) on probation after receiving a sentence for the commission
- 29 of a felony; or
- 30 (D) on parole;
- 31 at the time the murder was committed.
- 32 (10) The defendant dismembered the victim.
- 33 (11) The defendant:
- 34 (A) burned, mutilated, or tortured the victim; or
- 35 (B) decapitated or attempted to decapitate the victim;
- 36 while the victim was alive.
- 37 (12) The victim of the murder was less than twelve (12) years of
- 38 age.
- 39 (13) The victim was a victim of any of the following offenses for
- 40 which the defendant was convicted:
- 41 (A) A battery offense included in IC 35-42-2 committed before
- 42 July 1, 2014, as a Class D felony or as a Class C felony, or a



- 1 battery offense included in IC 35-42-2 committed after June
- 2 30, 2014, as a Level 6 felony, a Level 5 felony, a Level 4
- 3 felony, or a Level 3 felony.
- 4 (B) Kidnapping (IC 35-42-3-2).
- 5 (C) Criminal confinement (IC 35-42-3-3).
- 6 (D) A sex crime under IC 35-42-4.
- 7 (14) The victim of the murder was listed by the state or known by
- 8 the defendant to be a witness against the defendant and the
- 9 defendant committed the murder with the intent to prevent the
- 10 person from testifying.
- 11 (15) The defendant committed the murder by intentionally
- 12 discharging a firearm (as defined in IC 35-47-1-5):
- 13 (A) into an inhabited dwelling; or
- 14 (B) from a vehicle.
- 15 (16) The victim of the murder was pregnant and the murder
- 16 resulted in the intentional killing of a fetus that has attained
- 17 viability (as defined in IC 16-18-2-365).
- 18 (17) The defendant knowingly or intentionally:
- 19 (A) committed the murder:
- 20 (i) in a building primarily used for an educational purpose;
- 21 (ii) on school property; and
- 22 (iii) when students are present; or
- 23 (B) committed the murder:
- 24 (i) in a building or other structure owned or rented by a state
- 25 educational institution or any other public or private
- 26 postsecondary educational institution and primarily used for
- 27 an educational purpose; and
- 28 (ii) at a time when classes are in session.
- 29 (18) The murder is committed:
- 30 (A) in a building that is primarily used for religious worship;
- 31 and
- 32 (B) at a time when persons are present for religious worship or
- 33 education.
- 34 (c) The mitigating circumstances that may be considered under this
- 35 section are as follows:
- 36 (1) The defendant has no significant history of prior criminal
- 37 conduct.
- 38 (2) The defendant was under the influence of extreme mental or
- 39 emotional disturbance when the murder was committed.
- 40 (3) The victim was a participant in or consented to the defendant's
- 41 conduct.
- 42 (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 or **IC 35-36-13**, 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



1 impact statement may be submitted in writing or given orally by the
 2 representative. The statement shall be given in the presence of the
 3 defendant.

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

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

9 (1) sentence the defendant to death; or

10 (2) impose a term of life imprisonment without parole;
 11 only if it makes the findings described in subsection (l).

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

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

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

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

39 (A) Constitution of the State of Indiana; or

40 (B) Constitution of the United States;

41 (2) sentencing court was without jurisdiction to impose a
 42 sentence; and



1 (3) sentence:

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

3 (B) is otherwise erroneous.

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

8 (k) A person who has been sentenced to death and who has
9 completed state ~~post-conviction~~ **postconviction** review proceedings
10 may file a written petition with the supreme court seeking to present
11 new evidence challenging the person's guilt or the appropriateness of
12 the death sentence if the person serves notice on the attorney general.
13 The supreme court shall determine, with or without a hearing, whether
14 the person has presented previously undiscovered evidence that
15 undermines confidence in the conviction or the death sentence. If
16 necessary, the supreme court may remand the case to the trial court for
17 an evidentiary hearing to consider the new evidence and its effect on
18 the person's conviction and death sentence. The supreme court may not
19 make a determination in the person's favor nor make a decision to
20 remand the case to the trial court for an evidentiary hearing without
21 first providing the attorney general with an opportunity to be heard on
22 the matter.

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

26 (1) the state has proved beyond a reasonable doubt that at least
27 one (1) of the aggravating circumstances listed in subsection (b)
28 exists; and

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

