# INDIANA CODE AND RULE PROVISIONS RELATING TO THE DEATH PENALTY

Indiana Code 35-50-2-3 Murder Penalties
Indiana Code 35-50-2-9 Death Sentence
Indiana Code 35-38-6 Death Penalty Procedure
Indiana Code 35-36-9 Pretrial Determination of Mental Retardation
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## IC 35-50-2-3 MURDER PENALTIES

(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 mentally retardation.

[As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.116; P.L.332-1987, SEC.1; P.L.250-1993, SEC.1; P.L.164-1994, SEC.2; P.L.158-1994, SEC.5; P.L.2-1995, SEC.128; P.L.148-1995, SEC.4.; P.L.117-2002, SEC.1; P.L.71-2005, SEC.6, effective April 25, 2005; P.L. 99-2007, SEC. 212]

**Summary:** Murder is punishable by a fixed term of 45-65 years imprisonment, with an advisory sentence of 55 years, and up to a $10,000 fine. Alternatively, if at least 16 years of age at the time of the murder, the defendant may be sentenced to life without parole, and if at least 18 years of age at the time of the murder, may be sentenced to death, unless found to be mentally retarded.

**2007 - P.L. 99-2007, § 212 (effective May 2, 2007)**

- Makes minor change in wording of statute, changing “a mentally retarded individual” to an individual with mental retardation.”

**2005 - P.L. 71-2005, § 6 (effective April 25, 2005)**

- Eliminates “presumptive” sentences, instead making 55 years imprisonment an “advisory” sentence, all in an effort to bypass Blakely v. Washington so that a sentence greater than the “advisory” sentence can be given without a jury determination of aggravating circumstances.

**2002 - P.L. 117-2002, § 1 (effective July 1, 2002)**

- Amends (b) raising the minimum age for he death penalty from 16 to 18 years of age at the time of the murder. Retains 16 years of age as the minimum age for life without parole.

**1995 - P.L. 2-1995, § 128 (Approved May 5, effective July 1, 1995)**

- Resolves the conflicting versions of the statutes by adopting 1994 changes from both P.L.164-1994,§ 2 and P.L.158-1994, § 5.
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**1995 - P.L. 148-1995, § 4 (effective July 1, 1995)**

- Changes the penalty for murder from 40-60 years imprisonment with a presumptive sentence of 50 years, to 45-65 years imprisonment, with a presumptive sentence of 55 years.

**1994 - P.L.164-1994, § 2 (Approved March 11, 1994, effective July 1, 1994)**

- Changes the penalty for murder from 30-60 years imprisonment with a presumptive sentence of 40 years, to 40-60 years imprisonment, with a presumptive sentence of 50 years.

**1994 - P.L.158-1994, § 5 (Approved March 15, 1994, effective July 1, 1994)**

- Adds a provision exempting mentally retarded individuals from a death sentence or life without parole.

- Note that this statute was passed without incorporating the changes of P.L. 164-1994 § 2, which was approved 4 days earlier. The Indiana Supreme Court held in Smith v. State, 675 N.E.2d 693 (Ind. 1996) that the subsequently passed statute prevails.

**1993 - P.L. 250-1993, § 1 (effective July 1, 1993)**

- Amends (b) allowing life without parole as an option in murder cases, also with a minimum age of 16.
- Applies only to murders committed after June 30, 1993.

**1987 - P.L. 332-1987, § 1 (effective July 1, 1987)**

- Amends (b) making the minimum age for the death penalty 16 years of age at the time of the murder. (Prior to this time, the only Indiana statute relating to minimum age was the juvenile waiver statutes, which allowed waiver to adult court in some cases for the crime of murder committed by a 10 year old.)
- Not applicable to death sentences imposed before September 1, 1987.

## IC 35-50-2-9 DEATH SENTENCE

(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 section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with mentally retardation.

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

(F) Rape (IC 35-42-4-1).
(G) Robbery (IC 35-42-5-1).
(H) Carjacking (IC 35-42-5-2).
(I) Criminal Gang Activity (IC 35-45-9-3).
(J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

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

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

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

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

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

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

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

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

(8) The defendant has committed another murder, at any time, regardless of 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 burned, mutilated, or tortured 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) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.

(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 by 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).

(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 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;

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

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

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

and

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

[As added by Acts 1977, P.L.340, § 122; Amended by P.L.336-1983, § 1; P.L.212-1986, § 1; P.L.332-1987, § 2; P.L.320-1987, § 2; P.L.296-1989, § 2; P.L.138-1989, § 6; P.L.1- 1990, § 354; P.L.230-1993, § 5; P.L.250-1993, § 2; P.L.158-1994, § 7; P.L.306-1995, § 1; P.L. 216-1996, § 25; P.L. 228-1996, §1; P.L. 261-1997, § 7; P.L. 80-2002, §1; P.L. 117-2002, § 2; P.L. 1-2003, § 97; P.L. 147-2003, § 1; P.L. 99-2007, SEC. 213]

[Formerly: IC 35-13-4-1; IC 35-21-4-3; Acts 1941, P.L.148, § 1.]

**Summary:** (Trial Procedures; Aggravating/Mitigating Circumstances; Appeals) Murder is the only crime for which a death sentence may be imposed. At the discretion of the Prosecuting Attorney, the State may seek a death sentence (or Life Without Parole) by allegations on a separate page of the Indictment or Information. Upon request of the defendant, it is required that the jury be sequestered (not separated even at night) during the trial. A bifurcated (two-stage) hearing is required. In the first stage, the guilt or innocence of the defendant on the charge of murder is determined. If found guilty, the same jury reconvenes for the second (sentencing) phase of the trial. The State must allege and prove beyond a reasonable doubt at least 1 of 16 aggravating circumstances listed in the statute. The most common is intentional murder while committing another serious felony. A special verdict form is provided for each aggravating circumstance alleged. Mitigating Circumstances can also be raised. While not limited by statute, they often include the young age of the defendant, the lack of a prior criminal record, and mental illness. All evidence presented at the first phase of the trial may be considered. The jury of 12 is given 3 verdicts to choose from: death penalty, life imprisonment without parole, or neither. Any verdict must be unanimous. Any verdict is binding and the trial judge must sentence in accordance with the verdict. The jury is advised as to the statutory penalties for murder and any available good time credit or clemency. If the jury cannot reach a unanimous verdict, the trial Judge alone shall determine the sentence. In order to return a verdict for the death penalty or life without parole, the State must prove beyond a reasonable doubt the existence of an aggravating circumstance, and that any mitigating circumstances are outweighed by the aggravating circumstance(s). If neither, the defendant is sentenced to a determinate term of between 45 and 65 years of imprisonment. The trial Judge may receive victim impact evidence at sentencing. There is an automatic expedited appeal of a death sentence to the Indiana Supreme Court.

**2007 - P.L. 99-2007, § 213 (effective May 2, 2007)**

- Makes minor change in wording of statute, changing “a mentally retarded individual” to an individual with mental retardation” in Subsection (a).

**2006 - P.L. 1, § 550 (effective March 24, 2006)**

- Under subsection (d), changed reference from subsection (k) to subsection (l), to be consistent with 2003 change moving the former subsection (k) to subsection (l).

**2003 - P.L. 147, § 1 (effective July 1, 2003)**

- Added new subsection (k), authorizing the defendant, after state post-conviction review, to file a petition directly to the Indiana Supreme Court challenging guilt or death sentence based upon "new evidence."

**2002 - P.L. 80, § 1 (effective upon passage)**

- Allows for victim impact statement "after a court pronounces sentence." (Applies to any murder conviction obtained after passage)
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**2002 - P.L. 117, § 1, § 2 (effective July 1, 2002)**

- Increases the minimum age of eligibility for a death sentence from 16 to 18 years "at the time the murder was committed." Minimum age for Life Without Parole remains at 18 years. (Amending IC 35-50-2-3)
- Requires a special verdict form for each aggravating circumstance alleged.
- Eliminates judicial override; requires the court to sentence in accordance with jury verdict. (Applies to any sentencing after June 30, 2002)

**1997 - P.L. 261, § 7 (effective Jan 22, 1998)**
(Vetoed by Governor O'Bannon May 12, 1997 - Passed over veto January 22, 1998)

- Added intentional killing of a viable fetus carried by murder victim as an aggravating circumstance under (b) (16).

**1996 - P.L. 216, § 25 (effective July 1, 1996)**

- Allows the court to receive victim impact evidence after jury recommendation.

**1996 - P.L. 228, §1 (effective July 1, 1996)**

- Added burning, mutilation, or torture of the victim while alive as aggravating circumstance under (b) (11).
- Renumbers b (11) (Victim < 12 years old) to b (12).
- Renumbers b (12) (Victim was prior victim of defendant convicted of felony battery, kidnapping, confinement, or sex crime) to b (13).
- Renumbers b (13) (Victim was witness against defendant) to b (14).
- Renumbers b (14) (Drive-By shootings) to b (15).

**1995 - P.L.306, § 1 (effective July 1, 1995)**

- Added provisions requiring execution within 1 year and a day after sentencing, which can only be stayed by the Indiana Supreme Court.
- Added provisions commanding the Attorney General to answer PCR petitions on behalf of state. Prosecutor must assist if requested.
- Requires trial court to set hearing on PCR within 90 days after Petition filed; and must rule on PCR within 90 days after hearing.
- Requires the Indiana Supreme Court to consider all possible claims of error on direct appeal.
- See also P.L. 294-1995; § 1 (amending IC 35-38-6-1) Changes the method of execution from electrocution to lethal injection.

**1994 - P.L. 158, § 7**

- Added provisions allowing State to seek Life Without Parole without seeking a death sentence, but with the same procedures and burdens.

- Added Criminal Gang Activity to the list of crimes eligible under (b) (1).
- Added provisions prohibiting State from seeking death sentence where defendant is mentally retarded.
- Added drive-by shootings as aggravating circumstance under (b) (14).

**1993 - P.L. 250, § 2, § 3, § 5**

- Added probation officer, parole officer, community corrections officer, and home detention officer to list of victims under (b) (6) aggravating circumstance.
- Added requirement under (d) that jury be instructed as to full range of possible penalties for murder, including consecutive sentences, good time, and clemency.
- Added jury option of recommending Life Without Parole under same standards as required for recommendation of death.
- Added Carjacking to the list of crimes eligible under (b) (1).
- "IC 35-50-2-3 and IC 35-50-2-9, as amended by this act, only apply to murders committed after June 30, 1993."

**1990 - P.L. 1, § 354 (effective March 20, 1990)**

- Corrected statutory citations for Kidnapping and Confinement under (b) (12).

**1989 - P.L. 138, § 6**

- Amended statute without apparent change.

**1989 - P.L. 296, § 2, § 3**

- Added Dealing in Cocaine or Narcotic Drug to the list of crimes eligible under (b) (1).
- Added statutory citations to crimes listed under (b) (1).
- Repealed the former (b) (9) and (b) (10) relating to murders committed while in prison, and added a new aggravating circumstance under (b) (9) relating to murders committed while imprisoned, on probation, or on parole.
- Renumbers (b)(11) (dismemberment) as (b) (10).
- Renumbers (b) (12) victim less than 12 years as (b) (11).
- Added aggravating circumstance under (b) (12) where the defendant is convicted of Battery, Kidnapping, Confinement, or a sex crime upon the murder victim.
- "This act does not apply to an offense that is committed before July 1, 1989."

**1987 - P.L. 320, § 2**

- Added aggravating circumstance under (b) (12) where victim is less than 12 years of age.

**1987 - P.L. 332, § 2, § 3**

- Corrected statute to make gender-neutral.
- Added mitigating circumstance under (c)(7) if the defendant is less than 18 years of age.
- "This act does not apply to a case in which a death sentence has been imposed before September 1, 1987."

**1986 - P.L. 212, § 1**

- Added aggravating circumstance under (b) (11) where the murder victim is dismembered.

**1983 - P.L. 336, § 1, § 2**

- Added aggravating circumstance under (b) (10) where murder committed while the defendant is imprisoned with 20 or more years remaining on sentence to serve.
- "This act takes effect June 1, 1983."

**1977 - P.L. 340, § 122**

- Established new death sentence statute, in compliance with recent decisions of U.S. Supreme Court, enumerating aggravating circumstances and requiring the State to prove at least one aggravating circumstance beyond a reasonable doubt, and that any mitigating circumstances are outweighed by the aggravating circumstance(s).
- Repeals the former IC 35-13-4-1.

**1973 - P.L. 328, § 1**

- Established mandatory death sentence upon conviction of First Degree Murder where aggravating circumstances exist.

**1971 - P.L. 454, § 1**

- Established life imprisonment or a death sentence as jury penalty options upon conviction of First Degree Murder, where explosives used or underlying Rape, Arson, Burglary or Robbery committed.

# IC 35-38-6 DEATH PENALTY PROCEDURE

**IC 35-38-6-1**

(a) The punishment of death shall be inflicted by intravenous injection of a lethal substance or substances into the convicted person:

(1) in a quantity sufficient to cause the death of the convicted person; and

(2) until the convicted person is dead.

(b) The death penalty shall be inflicted before the hour of sunrise on a date fixed by the sentencing court. However, the execution must not occur until at least one hundred (100) days after the conviction.

(c) The superintendent of the state prison, or persons designated by the superintendent, shall designate the person who is to serve as the executioner.

(d) The department of correction may adopt rules under IC 4-22-2 necessary to implement subsection(a).

[As added by P.L.311-1983, SEC.3. Amended by P.L.294-1995, SEC.1; P.L.20-2002, SEC.1.]

**IC 35-38-6-2**

The court in which a death sentence is ordered shall issue a warrant to the sheriff within fourteen (14) days of the sentence:

(1) that is under the seal of the court;

(2) that contains notice of the conviction and the sentence;

(3) that is directed to the superintendent of the state prison; and

(4) that orders the superintendent to execute the convicted person at a specified time and date in the state prison.

[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.2]

**IC 35-38-6-3**

A sheriff who receives a warrant under section 2 or section 7 of this chapter shall immediately:

(1) transport the person to the state prison;

(2) deliver the person and the warrant to the superintendent of the prison;

(3) obtain a receipt for the delivery of the person; and

(4) deliver the receipt to the clerk of the sentencing court.

[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.3]

**IC 35-38-6-4**

(a) The convicted person shall be confined in the state prison until the date of the convicted person's execution. The convicted person may temporarily be held in a maximum security facility for security purposes or during renovation of the state prison. A convicted female shall be confined in a maximum security women's prison until not more than thirty (30) days before the date of her execution. A convicted female shall be segregated from the male prisoners after her transfer from the women's prison.

(b) The convicted person's:

(1) attorney;

(2) physician;

(3) relatives;

(4) friends; and

(5) spiritual advisor;

may visit the convicted person while the convicted person is confined. The department of correction shall adopt rules, under IC 4-22-2, governing such visits.

[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.4]

**IC 35-38-6-5**

The execution must take place inside the walls of the state prison in a room arranged for that purpose. The department of correction shall provide the necessary room and appliances to carry out the execution as provided in this chapter. [As added by P.L.311-1983, SEC.3. Amended by P.L.294-1995, SEC.2.]

**IC 35-38-6-6**

(a) Only the following persons may be present at the execution:

(1) The superintendent of the state prison.

(2) The person designated by the superintendent of the state prison and any assistants who are necessary to assist in the execution.

(3) The prison physician.

(4) One (1) other physician.

(5) The spiritual advisor of the convicted person.

(6) The prison chaplain.

(7) Not more than five (5) friends or relatives of the convicted person who are invited by the convicted person to attend.

(8) Except as provided in subsection (b), not more than eight (8) of the following members of the victim's immediate family who are at least eighteen (18) years of age:

(A) The victim's spouse.

(B) One (1) or more of the victim's children.

(C) One (1) or more of the victim's parents.

(D) One (1) or more of the victim's grandparents.

(E) One (1) or more of the victim's siblings.

(b) If there is more than one (1) victim, not more than eight (8) persons who are members of the victims' immediate families may be present at the execution. The department shall determine which persons may be present in accordance with procedures adopted under subsection (c).

(c) The department shall develop procedures to determine which family members of a victim may be present at the execution if more than eight (8) family members of a victim desire to be present or if there is more than one (1) victim. Upon the request of a family member of a victim, the department shall establish a support room for the use of:

(1) an immediate family member of the victim described in subsection (a)(8) who is not selected to be present at the execution; and

(2) a person invited by an immediate family member of the victim described in subsection (a)(8) to offer support to the immediate family member.

(d) The superintendent of the state prison may exclude a person from viewing the execution if the superintendent determines that the presence of the person would threaten the safety or security of the state prison and sets forth this determination in writing.

(e) The department of correction:

(1) shall keep confidential the identities of persons who assist the superintendent of the state prison in an execution; and (2) may: (A)classify as confidential; and withhold from the public; any part of a document relating to an execution that would reveal the identity of a person who assists the superintendent in the execution.

[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.5; P.L. 56-2006, SEC. 1]

**IC 35-38-6-7**

(a) If the convicted person:

(1) escapes from custody before the date set for execution; and

(2) is recaptured before the date set for execution;

the convicted person shall be confined and executed according to the terms of the warrant.

(b) If the convicted person:

(1) escapes from custody before delivery to the superintendent of the state prison; and

(2) is recaptured after the date set for execution;

any person may arrest and commit the convicted person to the jail of the county in which the convicted person was sentenced. The sheriff shall notify the sentencing court of the recapture, and the court shall fix a new date for the execution. The new execution date must not be less than thirty (30) nor more than sixty (60) days after the recapture of the person. The court shall issue a new warrant in the form prescribed by section 2 of this chapter.

(c) If the convicted person:
(1) escapes from confinement; and
(2) is recaptured after the date set for his execution;
any person may arrest and commit the convicted person to the department of correction. When the convicted person is returned to the department of correction or a facility or place designated by the department of correction, the department shall notify the sentencing court, and the court shall fix a new date for the execution. The new execution date must not be less than thirty (30) nor more than sixty (60) days after the recapture of the person. The court shall issue a warrant to the department of correction directing the superintendent of the state prison to execute the convicted person at a specified time and date in the state prison.
[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.6, Effective March 14, 2002]

**IC 35-38-6-8**

(a) If the execution of the death sentence is suspended, the department of correction shall note the reason for the delay on the warrant but shall proceed with the execution when the period of suspension ends.
(b) The warrant shall be returned to the clerk of the sentencing court after:
(1) the convicted person is executed;
(2) the convicted person has been pardoned;
(3) the convicted person's judgment has been reversed;
(4) the convicted person's sentence has been commuted; or
(5) the convicted person dies before his execution;
with a statement concerning the completion of the execution or the reason why the person was not executed.
[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.7]

**IC 35-38-6-9**

The provisions of this chapter in relation to the infliction of the death penalty extend equally, so far as applicable, to the case of any woman convicted and sentenced to death.
[As added by P.L.311-1983, SEC.3.]

**IC 35-38-6-10**

If the physician of the state prison and one (1) other physician certify in writing to the superintendent of the state prison and the sentencing court that a condemned woman is pregnant, the superintendent shall suspend the execution of the sentence. When the state prison physician and one (1) other physician certify in writing to the superintendent of the state prison and the sentencing court that the woman is no longer pregnant, the sentencing court shall immediately fix a new execution date.
[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.8]

**Summary:** The prescribed method of execution is by lethal injection, to be carried out at the Indiana State Prison in Michigan City, before sunrise by the Indiana Department of Corrections. Witnesses are limited to the warden and assistants, the prison physician and chaplain, 5 guests and spiritual advisor of the inmate, and up to 8 members of the victim's immediate family. If the inmate is pregnant, the execution is suspended until no longer pregnant.

**2006 - P.L. 56, § 1 (Effective March 13, 2006)**

- Reduces from 10 to 5 the number of the inmate's friends or relatives who may attend execution.
- For first time, allows up to 8 members of victim's immediate family to attend execution.
- Allows other members of victim's immediate family and guests to use "support room."
- Authorizes DOC to adopt rules for selection when more than 1 victim or more than 8 family members.

**2002 - P.L. 20-2002, § 1-8 (Effective March 14, 2002)**

- Substitutes "superintendent" for "warden" and authorizes superintendent to designate an “executioner.”
- Authorizes death row prisoners to be held in maximum security outside the Indiana State Prison for security or during renovations.
- Mandates female death row prisoners to be held at a maximum security women’s prison.
- Mandates female death row prisoners to be segregated from male prisoners after transfer to Indiana State Prison, which must be not more than 30 days before execution.
- Allows Superintendent to exclude execution witnesses for security reasons, if done so in writing.
- Requires DOC to keep the identities of those assisting in execution confidential.
- Made changes to reflect gender-neutral language.

**1995 - P.L. 294-1995, § 1-2 (Effective July 1, 1995)**

- Amended IC 35-38-6-1 changing the method of execution from electrocution to lethal injection.
- Prior to this time, the statute provided: “The punishment of death shall be inflicted by causing to pass through the body of the convicted person a current of electricity of sufficient intensity to cause death. The application of the current must continue until the person is dead.”
- Empowers the Department of Correction to implement rules to carry out executions.

**Formerly:**

IC 35-1-46-9.
Acts 1913, c. 315, § 1.
- Changed method of execution from hanging to electrocution.

Acts 1905, c. 169, § 310.

# IC 35-36-9 PRETRIAL DETERMINATION OF MENTAL RETARDATION

**IC 35-36-9-1**
This chapter applies when a defendant is charged with a murder for which the state seeks a death sentence under IC 35-50-2-9.
[As added by P.L.158-1994, SEC.3. Amended by P.L.2-1996, SEC.283.]

**IC 35-36-9-2**
As used in this chapter, "individual with mental retardation" 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.
[As added by P.L.158-1994, SEC.3; P.L. 99-2007, SEC. 201.]

**IC 35-36-9-3**
(a) The defendant may file a petition alleging that the defendant is an individual with mental retardation.
(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.
[As added by P.L.158-1994, SEC.3 ; P.L. 99-2007, SEC. 202.]

**IC 35-36-9-4**
(a) The court shall conduct a hearing on the petition under this chapter.
(b) At the hearing, the defendant must prove by clear and convincing evidence that the defendant is an individual with mental retardation.
[As added by P.L.158-1994, SEC.3; P.L. 99-2007, SEC. 203.]

**IC 35-36-9-5**
Not later than ten (10) days before the initial trial date, the court shall determine whether the defendant is an individual with mental retardation based on the evidence set forth at the hearing under section 4 of this chapter. The court shall articulate findings supporting the court's determination under this section.
[As added by P.L.158-1994, SEC.3; P.L. 99-2007, SEC. 204.]

**IC 35-36-9-6**
If the court determines that the defendant is an individual with mental retardation under section 5 of this chapter, the part of the state's charging instrument filed under IC 35-50-2-9(a) that seeks a death sentence against the defendant shall be dismissed. [As added by P.L.158-1994, SEC.3; P.L. 99-2007, SEC. 205.]

**IC 35-36-9-7**
If a defendant who is determined to be an individual with mental retardation under this chapter is convicted of murder, the court shall sentence the defendant under IC 35-50-2-3(a). [As added by P.L.158-1994, SEC.3; P.L. 99-2007, SEC. 207.]

**Summary:** (Exempting Mentally Retarded from Execution) Allows a capital defendant to file a petition 20 days before Omnibus Date alleging that he is mentally retarded. Upon filing, the court orders a mental evaluation, and a hearing is held. The burden of proof is on the defendant to show by clear and convincing evidence that he is mentally retarded. If this burden is met, the death penalty allegations must be dismissed. "Mentally Retarded" is defined as one who, before 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.

# Indiana Criminal Rule 24 - Capital Cases

(A) Supreme Court Cause Number. Whenever a prosecuting attorney seeks the death sentence by filing a request pursuant to Ind. Code § 35-50-2-9, the prosecuting attorney shall file that request with the trial court and with the Court Administrator, Indiana Supreme Court, 315 State House, Indianapolis, Indiana 46204. Upon receipt of same, the Court Administrator shall open a cause number in the Supreme Court and notify counsel.

(B) Appointment of Qualified Trial Counsel. Upon a finding of indigence, it shall be the duty of the judge presiding in a capital case to enter a written order specifically naming two (2) qualified attorneys to represent an individual in a trial proceeding where a death sentence is sought. The provisions for the appointment of counsel set forth in this section do not apply in cases wherein counsel is employed at the expense of the defendant.

(1) Lead Counsel; Qualifications. One (1) of the attorneys appointed by the court shall be designated as lead counsel. To be eligible to serve as lead counsel, an attorney shall:

(a) be an experienced and active trial practitioner with at least five (5) years of criminal litigation experience;

(b) have prior experience as lead or co-counsel in no fewer than five (5) felony jury trials which were tried to completion;

(c) have prior experience as lead or co-counsel in at least one (1) case in which the death penalty was sought; and

(d) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(2) Co-Counsel, Qualifications. The remaining attorney shall be designated as co-counsel. To be eligible to serve as co-counsel, an attorney shall:

(a) be an experienced and active trial practitioner with at least three (3) years of criminal litigation experience;

(b) have prior experience as lead or co-counsel in no fewer than three (3) felony jury trials which were tried to completion; and

(c) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(3) Workload of Appointed and Salaried Capital Counsel. In the appointment of counsel, the nature and volume of the workload of appointed counsel must be considered to assure that counsel can direct sufficient attention to the defense of a capital case.

(a) Attorneys accepting appointments pursuant to this rule shall provide each client with quality representation in accordance with constitutional and professional standards. Appointed counsel shall not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

(b) A judge shall not make an appointment of counsel in a capital case without assessing the impact of the appointment on the attorney's workload, including the administrative duties of a chief or managing public defender.

(c) Salaried or contractual public defenders may be appointed as trial counsel in a capital case, if:

(i) the public defender's caseload will not exceed twenty (20) open felony cases while the capital case is pending in the trial court;

(ii) no new cases will be assigned to the public defender within thirty (30) days of the trial setting in the capital case;

(iii) none of the public defender's cases will be set for trial within fifteen (15) days of the trial setting in the capital case; and

(iv) compensation is provided as specified in paragraph (C).

(d) The workload of full-time salaried capital public defenders will be limited consistent with subsection (B)(3)(a) of this rule. The head of the local public defender agency or office, or in the event there is no agency or office, the trial judge, shall not make an appointment of a full-time capital public defender in a capital case without assessing the impact of the appointment on the

attorney's workload, including the administrative duties of a chief or managing public defender. In assessing an attorney's workload, the head of the local public defender agency or office, or in the event there is no agency or office, the trial judge shall be guided by Standard J of the Standards for Indigent Defense Services in Non-Capital cases as adopted by the Indiana Public Defender Commission, effective January 1, 1995, and shall treat each capital case as the equivalent of forty (40) felonies under the Commission's "all felonies" category. Appointment of counsel shall also be subject to subsections (B)(3)(c)(ii), (iii) and (iv) of this rule.

(C) Compensation of Appointed Trial Counsel. All hourly rate trial defense counsel appointed in a capital case shall be compensated under subsection (1) of this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Hourly rate counsel shall submit periodic billings not less than once every thirty (30) days after the date of appointment by the trial court. All salaried capital public defenders compensated under subsection (4) of this provision shall present a monthly report detailing the date, activity, and time duration of services rendered after the date of appointment. Periodic payment during the course of counsel's representation shall be made.

(1) Hours and Hourly Rate. Defense counsel appointed at an hourly rate in capital cases filed or remanded after appeal on or after January 1, 2001, shall be compensated for time and services performed at the hourly rate of ninety dollars ($90.00) only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination shall be made within thirty (30) days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, ex parte, for specific activities or expenditures of counsel's time.

The hourly rate set forth in this rule shall be subject to review and adjustment on a biennial basis by the Executive Director of the Division of State Court Administration. Beginning July 1, 2002, and July 1st of each even year thereafter, the Executive Director shall announce the hourly rate for defense counsel appointed in capital cases filed or remanded after appeal on or after January 1, of the years following the announcement. The hourly rate will be calculated using the Gross Domestic Product Implicit Price Deflator, as announced by the United States Department of Commerce in its May report, for the last two years ending December 31st preceding the announcement. The calculation by the Executive Director shall be rounded to the next closest whole dollar.

In the event the appointing judge determines that the rate of compensation is not representative of practice in the community, the appointing judge may request the Executive Director of the Division of State Court Administration to authorize payment of a different hourly rate of compensation in a specific case.

(2) Support Services and Incidental Expenses. Counsel appointed at an hourly rate in a capital case shall be provided, upon an ex parte showing to the trial court of reasonableness and necessity, with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase. In addition to the hourly rate provided in this rule, all counsel shall be reimbursed for reasonable and necessary incidental expenses approved by the trial judge. Counsel may seek advance authorization from the trial judge, ex parte, for specific incidental expenses.

Full-time salaried capital public defenders shall be provided with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase, as determined by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge as set forth above.

(3) Contract Employees. In the event counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty case to reflect the limitations of case assignment established by this rule.

(4) Salaried Capital Public Defenders. In those counties having adopted a Comprehensive Plan as set forth in I.C. 33-9-15 et. seq., which has been approved by the Indiana Public Defender Commission, and who are in compliance with Commission standards authorized by I.C. 33-9-13-3(2), a full-time salaried capital public defender meeting the requirements of this rule may be assigned in a capital case by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge. Salaried capital public defenders may be designated as either lead counsel or co-counsel. Salaried capital lead counsel and co-counsel must be paid salary and benefits

equivalent to the average of the salary and benefits paid to lead prosecuting attorneys and prosecuting attorneys serving as co-counsel, respectively, assigned to capital cases in the county.

Each year, by July 1, those counties wishing to utilize full-time salaried capital public defenders for capital cases shall submit to the Executive Director of the Division of State Court Administration the salary and benefits proposed to be paid the capital public defenders for the upcoming year along with the salaries and benefits paid to lead prosecutors and prosecutors serving as co-counsel assigned capital cases in the county in the thirty-six (36) months prior to July 1, or a certification that no such prosecutor assignments were made. The Executive Director shall verify and confirm to the Indiana Public Defender Commission and the requesting county that the proposed salary and benefits are in compliance with this rule. In the event a county determines that the rate of compensation set forth herein is not representative of practice in the community, the county may request the Executive Director to authorize a different salary for a specific year.

(D) Transcription of Capital Cases. The trial or post-conviction court in which a capital case is pending shall provide for stenographic reporting with computer-aided transcription of any and all oral testimony, argument, or other matters required to be reported under Criminal Rule 5.

(E) Imposition of Sentence. Whenever a court sentences a defendant to death, the court shall pronounce said sentence and issue its order to the Department of Correction for the defendant to be held in an appropriate facility. A copy of the order of conviction, order sentencing the defendant to death, and order committing the death-sentence inmate to the Department of Correction shall be forwarded by the court imposing sentence to the Indiana Supreme Court Administrator's Office. When a trial court imposes a death sentence, it shall, on the same day sentence is imposed, order the court reporter and clerk to begin immediate preparation of the record on appeal.

(F) Setting of Initial Execution Date--Notice. In the sentencing order, the trial court shall set an execution date one (1) year from the date of judgment of conviction. Copies of said order shall be sent by the trial court to:

(i) the prosecuting attorney of record;
(ii) the defendant;
(iii) the defendant's attorney of record;
(iv) the appellate counsel, if such has been appointed;
(v) the Attorney General;
(vi) the Commissioner of the Department of Correction;
(vii) the Warden of the institution where the defendant is confined; and
(viii) the State Public Defender.

Contemporaneously with the service of the order setting the date of execution to the parties listed in this section, the trial court shall forward to the Supreme Court Administrator's Office a copy of the order, with a certification by the clerk of the court that the parties listed in this section were served a copy of the order setting the date of execution.

(G) Stay of Execution Date. This section governs the stay of execution for defendants sentenced to death.

(1) Stay of Execution--General. The Supreme Court shall have exclusive jurisdiction to stay the execution of a death sentence. In the event the Supreme Court stays the execution of a death sentence, the Supreme Court shall order the new execution date when the stay is lifted. A copy of an order to stay an execution or set a new date for execution will be sent to the persons set forth in section (F) of this rule.

(2) Stay of Initial Execution Date. Upon petition or on its own motion, the Supreme Court shall stay the initial execution date set by the trial court. On the thirtieth (30th) day following completion of rehearing, the Supreme Court shall enter an order setting an execution date, unless counsel has appeared and requested a stay in accordance with section (H) of this rule. A copy of any order entered under this provision will be sent to the persons set forth in section (F) of this rule.

(H) Post-Conviction Relief--Stay--Duty of Counsel. Within thirty (30) days following completion of rehearing, private counsel retained by the inmate or the State Public Defender (by deputy or by special assistant in the event of a conflict of interest) shall enter an appearance in the trial court, advise the trial court of the intent to petition for post-conviction relief, and request the Supreme Court to extend the stay of execution of the death sentence. A copy of said appearance and notice of intent to file a petition for post-conviction relief shall be served by counsel on the Supreme Court Administrator. When the request to extend the stay is received, the Supreme Court will direct the trial court to submit a case management schedule

consistent with Ind. Code § 35-50-2-9(i) for approval. On the thirtieth (30th) day following completion of any appellate review of the decision in the post-conviction proceeding, the Supreme Court shall enter an order setting the execution date. It shall be the duty of counsel of record to provide notice to the Supreme Court Administrator of any action filed with or decision rendered by a federal court that relate to defendants sentenced to death by a court in Indiana.

(I) Initiation of Appeal. When a trial court imposes a death sentence, it shall on the same day sentence is imposed order the court reporter and clerk to begin immediate preparation of the record on appeal.

(J) Appointment of Appellate Counsel. Upon a finding of indigence, the trial court imposing a sentence of death shall immediately enter a written order specifically naming counsel under this provision for appeal. If qualified to serve as appellate counsel under this rule, trial counsel shall be appointed as sole or co-counsel for appeal.

(1) Qualifications of Appellate Counsel. An attorney appointed to serve as appellate counsel for an individual sentenced to die, shall:

(a) be an experienced and active trial or appellate practitioner with at least three (3) years experience in criminal litigation;

(b) have prior experience within the last five (5) years as appellate counsel in no fewer than three (3) felony convictions in federal or state court; and

(c) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(2) Workload of Appointed Appellate Counsel. In the appointment of Appellate Counsel, the judge shall assess the nature and volume of the workload of appointed appellate counsel to assure that counsel can direct sufficient attention to the appeal of the capital case. In the event the appointed appellate counsel is under a contract to perform other defense or appellate services for the court of appointment, no new cases for appeal shall be assigned to such counsel until the Appellant's Brief in the death penalty case is filed.

(K) Compensation of Appellate Counsel. Appellate counsel appointed to represent an individual sentenced to die shall be compensated under this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Counsel shall submit periodic billings not less than once every thirty (30) days after the date of appointment. Attorneys employed by appellate counsel for consultation shall be compensated at the same rate as appellate counsel.

(1) Hours and Hourly rate. Appellate defense counsel appointed on or after January 1, 2001, to represent an individual sentenced to die shall be compensated for time and services performed at the hourly rate of ninety dollars only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination shall be made within thirty (30) days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, ex parte, for specific activities or expenditures of counsel's time. The hourly rate set forth above shall be subject to review and adjustment as set forth in section (C)(1) of this rule. In the event the appointing judge determines that this rate of compensation is not representative of practice in the community, the appointing judge may request the Executive Director of the Division of State Court Administration to authorize payment of a different hourly rate of compensation in a specific case.

(2) Contract Employees. In the event appointed appellate counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty appeal to reflect the limitations of case assignment established by this rule.

(3) Salaried Capital Public Defenders. In the event appointed appellate counsel is a salaried capital public defender, as described in section (C)(4) of this rule, the county must comply with, and counsel shall be compensated according to, the requirements of section (C)(4).

(4) Incidental Expenses. In addition to the hourly rate or salary provided in this rule, appellate counsel shall be reimbursed for reasonable incidental expenses as approved by the court of appointment.

(L) Briefing on Appeal. In capital cases, counsel may place the verbatim judgment of the trial court and verbatim instructions and the verbatim objections thereto required by Appellate Rule 50B in an Addendum to Brief, and these documents shall not count against the word limit of the brief.

**Summary:** (Minimum Qualifications, Caseloads and Compensation of Trial and Appellate Counsel; Ex Parte Experts and Services; Execution Dates; Transcripts) When a Prosecuting Attorney files a request for a death sentence, the request must also be filed with the Indiana Supreme Court Administrator. When a Public Defender is appointed, the trial court must appoint 2 qualified attorneys. Lead counsel must have 5 years criminal litigation experience, with at least 5 felony jury trials and 1 death penalty case as lead or co-counsel. Co-counsel must have 3 years criminal litigation experience, with at least 3 felony jury trials as lead or co-counsel. Additionally, both attorneys must have completed 12 hours of training in capital cases in the last 2 years. The caseload of either attorney may not exceed 20 open felony cases, with no new cases assigned within 30 days of trial. No other cases can be set for trial within 15 days of capital trial. Counsel shall be paid at an hourly rate of $90 per hour, with no limitation on the number of hours. The trial court shall provide adequate funds for investigators, experts, and other services reasonable and necessary upon an ex parte showing by counsel. Counties can receive 50% reimbursement from the state of all expenses in a capital case. Computer-aided transcription is required in all cases. The trial court shall set an execution date one year from conviction, which may be stayed pending appeal, but only by the Indiana Supreme Court. Appointed appellate counsel must have 3 years criminal litigation experience, with at least 3 felony appeals within the last 5 years, with 12 hours of training in capital cases in the last 2 years. Compensation is also set at $90 per hour with no limitation on the number of hours.

[Adopted Nov. 30, 1989, effective Jan. 1, 1990; amended Oct. 21, 1991, effective Jan. 1, 1992; amended Jan. 22, 1993, effective Feb. 1, 1993; amended effective March 28, 1996; amended Feb. 4, 2000, effective Jan. 1, 2001; amended Dec. 22, 2000, effective Jan. 1, 2001; amended effective March 5, 2001; amended December 21, 2001, effective April 1, 2002; amended May 29, 2013, effective May 29, 2013.]

**Amended 05-29-13 (effective 05-29-13)**

- Mandates that the Court take into account the administrative workload of a Local Public Defender before appointment in a capital case.

**Amended 12-21-01 (effective 04-01-02)**

- Makes minor changes in wording to mirror new wording of Indiana Appellate Rules.

**Amended 03-05-01 (effective 03-05-01)**

- Rewrote subsection (K), increasing the hourly rate for compensation to APPELLATE defense counsel from $70 to $90, and authorizing ex parte requests by APPELLATE defense counsel for authorization of specific activities or expenditures of counsel's time. Requires at least monthly claims.

**Amended 12-22-00 (effective 01-01-01)**

- Added subsection (B) (3) (d), requiring the local PD to take into account caseload when assigning a capital case, with guidance from Standards for Indigent Defense adopted by Public Defender Commission.
- Added subsection (C) (4), requiring that salaried public defenders who are assigned capital cases for trial must be paid salary and benefits equal to prosecutors.
- Rewrote subsection (C) (1), increasing the hourly rate for compensation to TRIAL defense counsel from $70 to $90, and authorizing ex parte requests by TRIAL defense counsel for authorization of specific activities or expenditures of counsel's time.

**Amended 02-04-00 (effective (01-01-01)**

- In subsection (A), substituted "315" for "312" in state House address of Supreme Court Administrator.
- In subsection (E), added the final sentence requiring the trial court to order immediate preparation of the record following sentencing.

- In subsection (L), substituted "shall" for "may", "50B" for "8(A)", and "attachment" for "appendix" relating to appellate briefs.

**Amended 03-28-96 (effective 03-28-96)**

- Rewrote subsections (E), (F), & (G), requiring that an execution date be set within one year from judgment of conviction, and giving Indiana Supreme Court exclusive jurisdiction to issue stay.
- Rewrote subsection (H), requiring PCR counsel to enter appearance within 30 days of completion of direct appeal and to file notice of intent to file Petition; and upon completion of PCR appeal to notify Supreme Court Administrator of any federal court action.

**Amended 01-22-93 (effective 02-01-93)**

- Rewrote subsection (G), to require that no execution date be set until final decision of Indiana Supreme Court.

**Amended 10-21-91 ((effective 01-01-92)**

- Added subsections (B), (C), and (K), and rewrote subsection (J).
- Added subsection (B) (1) & (2), requiring that two attorneys be appointed for defendant at trial, with lead counsel having at least 5 years in criminal litigation, 5 felony jury trials, 1 prior death penalty case, and 12 hours of training; co-counsel to have 3 years in criminal litigation, 3 felony jury trials, and 12 hours of training.
- Added subsection (B) (3), limiting the caseload of appointed trial attorney public defender to 20 open felony cases, with no new cases assigned within 30 days of trial, and no other trial settings within 15 days of trial.
- Added subsection (C), setting the hourly rate of $70 for appointed trial counsel, with no limits; requiring adequate funds for investigators and experts, with no limits.
- Added subsection (K), setting similar compensation for appellate counsel.
- Rewrote subsection (J), setting minimum qualifications for appointed appellate counsel, requiring 3 years in criminal litigation, 3 cases as appellate counsel on felony conviction, and 12 hours of training.

**Adopted 11-30-89 (effective 01-01-90)**

- Prosecutor required to notify Supreme Court Administrator of death penalty filing.
- Trial or PCR Court required to use computer-aided transcription.
- Specific duties given to trial court and parties on the setting of execution dates.
- Trial defense counsel must be appointed sole or co-counsel for appeal.