



February 20, 2004

**ENGROSSED
HOUSE BILL No. 1300**

DIGEST OF HB 1300 (Updated February 19, 2004 10:59 am - DI 106)

Citations Affected: IC 12-26; IC 35-36.

Synopsis: Insanity defense. Requires notice to be given to certain persons before a defendant who was found not responsible for a crime by reason of insanity and committed to a mental health facility: (1) is allowed outside the facility while not restrained and in custody; (2) is given a new security classification; (3) is transferred to another facility; or (4) is discharged. Provides for the provision of competency restoration services by the division of mental health and addiction or by a third party. Requires notice to be given as soon as practicable after the committed individual escapes. Provides that a defendant who interposes a defense of insanity may not introduce evidence from a medical witness with whom the defendant cooperated unless: (1) after being ordered to do so by the court, the defendant cooperates with medical witnesses appointed by the court; or (2) the defendant shows by a preponderance of the evidence that the defendant's failure to cooperate with medical witnesses appointed by the court was caused by the defendant's mental illness.

Effective: July 1, 2004.

Bottorff, Thomas

(SENATE SPONSORS — LONG, BRODEN, SIPES)

January 15, 2004, read first time and referred to Committee on Courts and Criminal Code.
January 29, 2004, reported — Do Pass.
February 4, 2004, read second time, amended, ordered engrossed.
February 5, 2004, engrossed. Read third time, passed. Yeas 93, nays 1.

SENATE ACTION

February 9, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.
February 19, 2004, amended, reported favorably — Do Pass.

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EH 1300—LS 6704/DI 69+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

**ENGROSSED
HOUSE BILL No. 1300**



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 12-26-7-2 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) This section does
- 3 not apply to the commitment of an individual if the individual has
- 4 previously been committed under IC 12-26-6.
- 5 (b) A proceeding for the commitment of an individual who appears
- 6 to be suffering from a chronic mental illness may be begun by filing
- 7 with a court having jurisdiction a written petition by any of the
- 8 following:
- 9 (1) A health officer.
- 10 (2) A police officer.
- 11 (3) A friend of the individual.
- 12 (4) A relative of the individual.
- 13 (5) The spouse of the individual.
- 14 (6) A guardian of the individual.
- 15 (7) The superintendent of a facility where the individual is
- 16 present.
- 17 (8) A prosecuting attorney in accordance with IC 35-36-2-4.

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EH 1300—LS 6704/DI 69+



1 (9) A prosecuting attorney or the attorney for a county office if
2 civil commitment proceedings are initiated under IC 31-34-19-3
3 or IC 31-37-18-3.

4 **(10) A third party that contracts with the division of mental**
5 **health and addiction to provide competency restoration**
6 **services to a defendant under IC 35-36-3-3 or IC 35-36-3-4.**

7 SECTION 2. IC 12-26-17 IS ADDED TO THE INDIANA CODE
8 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2004]:

10 **Chapter 17. Committed Individuals Found Not Responsible by**
11 **Reason of Insanity**

12 **Sec. 1. If a court orders an individual to be committed under**
13 **IC 35-36-2-4 and this article following a verdict of not responsible**
14 **by reason of insanity at the time of the crime, the superintendent**
15 **of the facility to which the individual is committed or the attending**
16 **physician shall provide written notice to the prosecuting attorney**
17 **who filed the petition under IC 35-36-2-4 and to any other person**
18 **designated by the court:**

- 19 (1) at least twenty (20) days before:
 - 20 (A) the committed individual is allowed outside the facility
 - 21 or grounds of the facility while the individual is not
 - 22 restrained and in custody;
 - 23 (B) the security classification of the committed individual
 - 24 is changed;
 - 25 (C) the committed individual is transferred to another
 - 26 facility; or
 - 27 (D) the committed individual is discharged or the
 - 28 individual's commitment is otherwise terminated; and
- 29 (2) as soon as practicable after the committed individual
- 30 escapes.

31 **Sec. 2. A commitment order issued by a court under**
32 **IC 35-36-2-4 and this article must include the following:**

- 33 (1) The mailing address, electronic mail address, facsimile
- 34 number, and telephone number of the following:
 - 35 (A) The prosecuting attorney who filed the petition under
 - 36 IC 35-36-2-4.
 - 37 (B) Any other person designated by the court.
- 38 (2) The notice requirements set forth in section 1 of this
- 39 chapter.

40 **Sec. 3. If an individual is committed to a facility by a court as**
41 **described in section 1 of this chapter, the superintendent of the**
42 **facility or the attending physician shall forward a copy of the**

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1 review of the committed individual's care and treatment that is
2 required to be filed with the court under IC 12-26-15-1 to the
3 following:

4 (1) The prosecuting attorney who filed the petition under
5 IC 35-36-2-4.

6 (2) Any other person designated by the court.

7 Sec. 4. If an individual who is committed to a facility by a court
8 as described in section 1 of this chapter was on trial for committing
9 a crime under IC 35-42, any notices, documents, or other
10 information provided under this chapter to the prosecuting
11 attorney who filed the petition under IC 35-36-2-4 may be
12 distributed by the prosecuting attorney to any of the following:

13 (1) The victim of the crime.

14 (2) The family of the victim.

15 SECTION 3. IC 35-36-2-2 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) At the trial of a
17 criminal case in which the defendant intends to interpose the defense
18 of insanity, evidence may be introduced to prove the defendant's sanity
19 or insanity at the time at which the defendant is alleged to have
20 committed the offense charged in the indictment or information.

21 (b) When notice of an insanity defense is filed, the court shall
22 appoint two (2) or three (3) competent disinterested psychiatrists,
23 psychologists endorsed by the state psychology board as health service
24 providers in psychology, or physicians, at least one (1) of whom must
25 be a psychiatrist, to examine the defendant and to testify at the trial.
26 This testimony shall follow the presentation of the evidence for the
27 prosecution and for the defense, including testimony of any medical
28 experts employed by the state or by the defense.

29 (c) If a defendant does not adequately communicate, participate,
30 and cooperate with the medical witnesses appointed by the court,
31 after being ordered to do so by the court, the defendant may not
32 present as evidence the testimony of any other medical 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 medical witnesses appointed by the court was
40 caused by the defendant's mental illness.

41 (d) The medical witnesses appointed by the court may be
42 cross-examined by both the prosecution and the defense, and each side

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1 may introduce evidence in rebuttal to the testimony of such a medical
2 witness.

3 SECTION 4. IC 35-36-2-4 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) Whenever a
5 defendant is found not responsible by reason of insanity at the time of
6 the crime, the prosecuting attorney shall file a written petition with the
7 court under IC 12-26-6-2(a)(3) or under IC 12-26-7. If a petition is filed
8 under IC 12-26-6-2(a)(3), the court shall hold a commitment hearing
9 under IC 12-26-6. If a petition is filed under IC 12-26-7, the court shall
10 hold a commitment hearing under IC 12-26-7.

11 (b) The hearing shall be conducted at the earliest opportunity after
12 the finding of not responsible by reason of insanity at the time of the
13 crime, and the defendant shall be detained in custody until the
14 completion of the hearing. The court may take judicial notice of
15 evidence introduced during the trial of the defendant and may call the
16 physicians appointed by the court to testify concerning whether the
17 defendant is currently mentally ill and dangerous or currently mentally
18 ill and gravely disabled, as those terms are defined by IC 12-7-2-96 and
19 ~~IC 12-7-2-130(a)(1)~~. **IC 12-7-2-130(1)**. The court may subpoena any
20 other persons with knowledge concerning the issues presented at the
21 hearing.

22 (c) The defendant has all the rights provided by the provisions of
23 IC 12-26 under which the petition against the defendant was filed. The
24 prosecuting attorney may cross-examine the witnesses and present
25 relevant evidence concerning the issues presented at the hearing.

26 (d) **If a court orders an individual to be committed under
27 IC 12-26-6 or IC 12-26-7 following a verdict of not responsible by
28 reason of insanity at the time of the crime, the superintendent of
29 the facility to which the individual is committed and the attending
30 physician are subject to the requirements of IC 12-26-17.**

31 SECTION 5. IC 35-36-3-1, AS AMENDED BY P.L.215-2001,
32 SECTION 109, IS AMENDED TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) If at any time before the final
34 submission of any criminal case to the court or the jury trying the case,
35 the court has reasonable grounds for believing that the defendant lacks
36 the ability to understand the proceedings and assist in the preparation
37 of his a defense, the court shall immediately fix a time for a hearing to
38 determine whether the defendant has that ability. The court shall
39 appoint two (2) or three (3) competent, disinterested:

- 40 (1) psychiatrists; or
41 (2) psychologists endorsed by the Indiana state board of
42 examiners in psychology as health service providers in

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1 psychology. ~~or physicians;~~
 2 At least one (1) of ~~whom the individuals appointed under this~~
 3 **subsection** must be a psychiatrist. ~~who~~ **However, none may be an**
 4 **employee or a contractor of a state institution (as defined in**
 5 **IC 12-7-2-184).** The individuals who are appointed shall examine
 6 the defendant and testify at the hearing as to whether the defendant can
 7 understand the proceedings and assist in the preparation of the
 8 defendant's defense.

9 (b) At the hearing, other evidence relevant to whether the defendant
 10 has the ability to understand the proceedings and assist in the
 11 preparation of the defendant's defense may be introduced. If the court
 12 finds that the defendant has the ability to understand the proceedings
 13 and assist in the preparation of the defendant's defense, the trial shall
 14 proceed. If the court finds that the defendant lacks this ability, it shall
 15 delay or continue the trial and order the defendant committed to the
 16 division of mental health and addiction. ~~to be confined by the division~~
 17 ~~in an appropriate psychiatric institution.~~ **The division of mental health**
 18 **and addiction shall provide competency restoration services or**
 19 **enter into a contract for the provision of competency restoration**
 20 **services by a third party in the:**

- 21 (1) location where the defendant currently resides; or
- 22 (2) least restrictive setting appropriate to the needs of the
- 23 defendant and the safety of the defendant and others.

24 **However, if the defendant is serving an unrelated executed**
 25 **sentence in the department of correction at the time the defendant**
 26 **is committed to the division of mental health and addiction under**
 27 **this section, the division of mental health and addiction shall**
 28 **provide competency restoration services or enter into a contract**
 29 **for the provision of competency restoration services by a third**
 30 **party at a department of correction facility agreed upon by the**
 31 **division of mental health and addiction or the third party**
 32 **contractor and the department of correction.**

33 SECTION 6. IC 35-36-3-2, AS AMENDED BY P.L.215-2001,
 34 SECTION 110, IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2004]: Sec. 2. Whenever the defendant attains
 36 the ability to understand the proceedings and assist in the preparation
 37 of the defendant's defense:

- 38 (1) ~~the division of mental health and addiction, through the~~
 39 superintendent of the appropriate psychiatric institution;
 40 superintendent of the state institution (as defined in
- 41 **IC 12-7-2-184); or**
- 42 (2) if the division of mental health and addiction entered into

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a contract for the provision of competency restoration services, the director or medical director of the third party contractor;

shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant. The court ~~may~~ **shall** enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of the defendant's defense. Upon the return to court of any defendant committed under section 1 of this chapter, the court shall hold the trial as if no delay or postponement had occurred.

SECTION 7. IC 35-36-3-3, AS AMENDED BY P.L.215-2001, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. **(a)** Within ninety (90) days after:

- (1) a defendant's admittance to a psychiatric institution; the superintendent of the psychiatric institution admission to a state institution (as defined in IC 12-7-2-184); or**
- (2) the initiation of competency restoration services to a defendant by a third party contractor;**

the superintendent of the state institution (as defined in IC 12-7-2-184) or the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, the ~~division of mental health and addiction state institution (as defined in IC 12-7-2-184) or the third party contractor~~ shall initiate regular commitment proceedings under IC 12-26. If a substantial probability does exist, the ~~division of mental health and addiction state institution (as defined in IC 12-7-2-184) or third party contractor~~ shall retain the defendant:

- (1) until the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense and is returned to the proper court for trial; or
- (2) for six (6) months from the date of the:
 - (A) defendant's admittance admission to a state institution (as defined in IC 12-7-2-184); or**
 - (B) initiation of competency restoration services by a third party contractor;**

whichever first occurs.

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1 SECTION 8. IC 35-36-3-4, AS AMENDED BY P.L.215-2001,
 2 SECTION 112, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2004]: Sec. 4. If a defendant who was found
 4 under section 3 of this chapter to have had a substantial probability of
 5 attaining the ability to understand the proceedings and assist in the
 6 preparation of the defendant's defense has not attained that ability
 7 within six (6) months after the date of the:
 8 (1) defendant's ~~admittance to a psychiatric institution; the division~~
 9 ~~of mental health and addiction~~ **admission to a state institution**
 10 **(as defined in IC 12-7-2-184); or**
 11 **(2) initiation of competency restoration services by a third**
 12 **party contractor;**
 13 **the state institution (as defined in IC 12-7-2-184) or the third party**
 14 **contractor, if the division of mental health and addiction has**
 15 **entered into a contract for the provision of competency restoration**
 16 **services by a third party, shall institute regular commitment**
 17 **proceedings under IC 12-26.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1300, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

DVORAK, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1300 be amended to read as follows:

Page 3, line 7, after "court," insert "**after being ordered to do so by the court,**".

(Reference is to HB 1300 as printed January 30, 2004.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred House Bill No. 1300, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 12-26-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) This section does not apply to the commitment of an individual if the individual has previously been committed under IC 12-26-6.

(b) A proceeding for the commitment of an individual who appears to be suffering from a chronic mental illness may be begun by filing with a court having jurisdiction a written petition by any of the following:

- (1) A health officer.
- (2) A police officer.
- (3) A friend of the individual.
- (4) A relative of the individual.
- (5) The spouse of the individual.
- (6) A guardian of the individual.
- (7) The superintendent of a facility where the individual is present.
- (8) A prosecuting attorney in accordance with IC 35-36-2-4.
- (9) A prosecuting attorney or the attorney for a county office if civil commitment proceedings are initiated under IC 31-34-19-3 or IC 31-37-18-3.
- (10) A third party that contracts with the division of mental health and addiction to provide competency restoration services to a defendant under IC 35-36-3-3 or IC 35-36-3-4."**

Page 4, after line 7, begin a new paragraph and insert:

"SECTION 5. IC 35-36-3-1, AS AMENDED BY P.L.215-2001, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of his a defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

- (1) psychiatrists; or**

EH 1300—LS 6704/DI 69+

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(2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology. ~~or physicians;~~

At least one (1) of ~~whom~~ **the individuals appointed under this subsection** must be a psychiatrist. ~~who~~ **However, none may be an employee or a contractor of a state institution (as defined in IC 12-7-2-184). The individuals who are appointed** shall examine the defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. ~~to be confined by the division in an appropriate psychiatric institution.~~ **The division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party in the:**

- (1) location where the defendant currently resides; or
- (2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

SECTION 6. IC 35-36-3-2, AS AMENDED BY P.L.215-2001, SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense:

- (1) ~~the division of mental health and addiction; through the superintendent of the appropriate psychiatric institution;~~ **superintendent of the state institution (as defined in**

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IC 12-7-2-184); or

(2) if the division of mental health and addiction entered into a contract for the provision of competency restoration services, the director or medical director of the third party contractor;

shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant. The court ~~may~~ **shall** enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of the defendant's defense. Upon the return to court of any defendant committed under section 1 of this chapter, the court shall hold the trial as if no delay or postponement had occurred.

SECTION 7. IC 35-36-3-3, AS AMENDED BY P.L.215-2001, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Within ninety (90) days after:

(1) a defendant's ~~admittance to a psychiatric institution; the superintendent of the psychiatric institution~~ **admission to a state institution (as defined in IC 12-7-2-184); or**

(2) the initiation of competency restoration services to a defendant by a third party contractor;

the superintendent of the state institution (as defined in IC 12-7-2-184) or the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, the ~~division of mental health and addiction state institution (as defined in IC 12-7-2-184) or the third party contractor~~ shall initiate regular commitment proceedings under IC 12-26. If a substantial probability does exist, the ~~division of mental health and addiction state institution (as defined in IC 12-7-2-184) or third party contractor~~ shall retain the defendant:

(1) until the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense and is returned to the proper court for trial; or

(2) for six (6) months from the date of the:

(A) defendant's ~~admittance~~ admission to a state institution (as defined in IC 12-7-2-184); or

(B) initiation of competency restoration services by a third

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party contractor;

whichever first occurs.

SECTION 8. IC 35-36-3-4, AS AMENDED BY P.L.215-2001, SECTION 112, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. If a defendant who was found under section 3 of this chapter to have had a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense has not attained that ability within six (6) months after the date of the:

(1) defendant's admittance to a psychiatric institution, the division of mental health and addiction admission to a state institution (as defined in IC 12-7-2-184); or

(2) initiation of competency restoration services by a third party contractor;

the state institution (as defined in IC 12-7-2-184) or the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall institute regular commitment proceedings under IC 12-26."

Page 3, line 14, delete "clear and convincing" and insert "a preponderance of the".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1300 as reprinted February 5, 2004.)

LONG, Chairperson

Committee Vote: Yeas 7, Nays 3.

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