



February 18, 2011

SENATE BILL No. 262

DIGEST OF SB 262 (Updated February 15, 2011 12:53 pm - DI 106)

Citations Affected: IC 35-36.

Synopsis: Psychiatrist examination requirement for insanity defense. Removes the requirement that at least one of the persons appointed by a court to examine a defendant who raises an insanity defense or incompetency claim must be a psychiatrist, and no longer permits a physician to be appointed to determine a defendant's sanity. Requires that a psychologist appointed to examine a defendant have expertise in criminal behavioral disorders.

Effective: July 1, 2011.

Steele, Bray, Taylor

January 6, 2011, read first time and referred to Committee on Rules and Legislative Procedure.

January 18, 2011, amended; reassigned to Committee on Corrections, Criminal, and Civil Matters.

February 17, 2011, amended, reported favorably — Do Pass.

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February 18, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 262



A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-36-2-2 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) At the trial of a
- 3 criminal case in which the defendant intends to interpose the defense
- 4 of insanity, evidence may be introduced to prove the defendant's sanity
- 5 or insanity at the time at which the defendant is alleged to have
- 6 committed the offense charged in the indictment or information.
- 7 (b) When notice of an insanity defense is filed, the court shall
- 8 appoint two (2) or three (3) competent disinterested psychiatrists **or**
- 9 psychologists ~~endorsed by the state psychology board as health service~~
- 10 ~~providers in psychology; or physicians at least one (1) of whom must~~
- 11 **be a psychiatrist, who have expertise in criminal behavioral**
- 12 **disorders**, to examine the defendant and to testify at the trial. This
- 13 testimony shall follow the presentation of the evidence for the
- 14 prosecution and for the defense, including testimony of any medical
- 15 experts employed by the state or by the defense.
- 16 (c) If a defendant does not adequately communicate, participate, and
- 17 cooperate with the medical witnesses appointed by the court, after

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1 being ordered to do so by the court, the defendant may not present as
2 evidence the testimony of any other medical witness:

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

5 (2) whose opinion is based upon examinations of the defendant;
6 unless the defendant shows by a preponderance of the evidence that the
7 defendant's failure to communicate, participate, or cooperate with the
8 medical witnesses appointed by the court was caused by the defendant's
9 mental illness.

10 (d) The medical witnesses appointed by the court may be
11 cross-examined by both the prosecution and the defense, and each side
12 may introduce evidence in rebuttal to the testimony of such a medical
13 witness.

14 SECTION 2. IC 35-36-3-1, AS AMENDED BY P.L.110-2009,
15 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2011]: Sec. 1. (a) If at any time before the final submission of
17 any criminal case to the court or the jury trying the case, the court has
18 reasonable grounds for believing that the defendant lacks the ability to
19 understand the proceedings and assist in the preparation of a defense,
20 the court shall immediately fix a time for a hearing to determine
21 whether the defendant has that ability. The court shall appoint two (2)
22 or three (3) competent, disinterested:

- 23 (1) psychiatrists; or
- 24 (2) psychologists **who have expertise in criminal behavioral**
25 **disorders. endorsed by the Indiana state board of examiners in**
26 **psychology as health service providers in psychology.**

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

33 (b) At the hearing, other evidence relevant to whether the defendant
34 has the ability to understand the proceedings and assist in the
35 preparation of the defendant's defense may be introduced. If the court
36 finds that the defendant has the ability to understand the proceedings
37 and assist in the preparation of the defendant's defense, the trial shall
38 proceed. If the court finds that the defendant lacks this ability, it shall
39 delay or continue the trial and order the defendant committed to the
40 division of mental health and addiction. The division of mental health
41 and addiction shall provide competency restoration services or enter
42 into a contract for the provision of competency restoration services by

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1 a third party in the:
2 (1) location where the defendant currently resides; or
3 (2) least restrictive setting appropriate to the needs of the
4 defendant and the safety of the defendant and others.
5 However, if the defendant is serving an unrelated executed sentence in
6 the department of correction at the time the defendant is committed to
7 the division of mental health and addiction under this section, the
8 division of mental health and addiction shall provide competency
9 restoration services or enter into a contract for the provision of
10 competency restoration services by a third party at a department of
11 correction facility agreed upon by the division of mental health and
12 addiction or the third party contractor and the department of correction.
13 (c) If the court makes a finding under subsection (b), the court shall
14 transmit any information required by the division of state court
15 administration to the division of state court administration for
16 transmission to the NICS (as defined in IC 35-47-2.5-2.5) in
17 accordance with IC 33-24-6-3.

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 262, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Corrections, Criminal, and Civil Matters.

(Reference is to SB 262 as introduced.)

LONG, Chairperson

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 262, 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, line 8, after "psychiatrists" delete "," and insert "**or**".

Page 1, line 9, strike "endorsed by the state psychology board as health service" and insert "**who have expertise in criminal behavioral disorders,**"

Page 1, line 10, strike "providers in psychology, or physicians".

Page 2, after line 12, begin a new paragraph and insert:

"SECTION 2. IC 35-36-3-1, AS AMENDED BY P.L.110-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 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)

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or three (3) competent, disinterested:

- (1) psychiatrists; or
- (2) psychologists **who have expertise in criminal behavioral disorders. endorsed by the Indiana state board of examiners in psychology as health service providers in psychology.**

At least one (1) of the individuals appointed under this subsection must be a psychiatrist. 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. 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.

(c) If the court makes a finding under subsection (b), the court shall

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transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3."

and when so amended that said bill do pass.

(Reference is to SB 262 as printed January 19, 2011.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 1.

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