



Reprinted
February 22, 2011

SENATE BILL No. 262

DIGEST OF SB 262 (Updated February 21, 2011 4:50 pm - DI 106)

Citations Affected: IC 35-36.

Synopsis: Competency examination. Removes the requirement that at least one of the persons appointed by a court to examine a defendant who raises an incompetency claim must be a psychiatrist. Permits a physician to examine a defendant who raises an incompetency claim. Requires that a psychologist, psychiatrist, or physician appointed to examine a defendant have expertise in determining competency.

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.

February 21, 2011, read second time, amended, ordered engrossed.

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SB 262—LS 6066/DI 13+



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 35-36-3-1, AS AMENDED BY P.L.110-2009,
2 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 1. (a) If at any time before the final submission of
4 any criminal case to the court or the jury trying the case, the court has
5 reasonable grounds for believing that the defendant lacks the ability to
6 understand the proceedings and assist in the preparation of a defense,
7 the court shall immediately fix a time for a hearing to determine
8 whether the defendant has that ability. The court shall appoint two (2)
9 or three (3) competent, disinterested:
10 (1) psychiatrists; or
11 (2) psychologists **endorsed by the Indiana state board of**
12 **examiners in psychology as health service providers in**
13 **psychology; or**
14 (3) physicians;
15 **who have expertise in determining competency. endorsed by the**
16 **Indiana state board of examiners in psychology as health service**
17 **providers in psychology.**

SB 262—LS 6066/DI 13+



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

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

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

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

29 (c) If the court makes a finding under subsection (b), the court shall
30 transmit any information required by the division of state court
31 administration to the division of state court administration for
32 transmission to the NICS (as defined in IC 35-47-2.5-2.5) in
33 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.

SENATE MOTION

Madam President: I move that Senate Bill 262 be amended to read as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 13.

Page 2, line 23, strike "or".

Page 2, line 24, after "psychologists" insert "**endorsed by the Indiana state board of examiners in psychology as health service providers in psychology; or**

(3) physicians; who have expertise in determining competency.".

Page 2, line 24, delete "who have expertise in criminal behavioral".

Page 2, line 25, delete "disorders."

Re-number all SECTIONS consecutively.

(Reference is to SB 262 as printed February 18, 2011.)

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