HOUSE BILL No. 1320

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-36.

Synopsis: Insanity defense. Provides that at least one psychiatrist or psychologist must be appointed by a court to examine a defendant who raises the defense of insanity. (Current law requires that at least one psychiatrist must be appointed.) Provides a court appointed psychiatrist, psychologist, or physician appointed to examine a defendant who raises the defense of insanity must have expertise in determining insanity. Corrects a reference to the state psychology board.

Effective: July 1, 2012.

DeLaney, McMillin

January 11, 2012, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1320

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:

SECTION 1. IC 35-36-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) At the trial of a criminal case in which the defendant intends to interpose the defense of insanity, evidence may be introduced to prove the defendant's sanity or insanity at the time at which the defendant is alleged to have committed the offense charged in the indictment or information.

(b) When notice of an insanity defense is filed, the court shall appoint two (2) or three (3) competent disinterested:

(1) psychiatrists;

(2) psychologists endorsed by the state psychology board as health service providers in psychology; or

(3) physicians;

who have expertise in determining insanity. At least one (1) of whom must be a psychiatrist **or psychologist** to examine the defendant and to testify at the trial. This testimony shall follow the presentation of the evidence for the prosecution and for the defense, including testimony of any medical experts employed by the state or by the

defense.

(c) If a defendant does not adequately communicate, participate, and cooperate with the medical witnesses appointed by the court, after being ordered to do so by the court, the defendant may not present as evidence the testimony of any other medical witness:

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

(2) whose opinion is based upon examinations of the defendant;

unless the defendant shows by a preponderance of the evidence that the defendant's failure to communicate, participate, or cooperate with the medical witnesses appointed by the court was caused by the defendant's mental illness.

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

SECTION 2. IC 35-36-3-1, AS AMENDED BY P.L.151-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: 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) or three (3) competent, disinterested:

(1) psychiatrists;

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

(3) physicians;

who have expertise in determining competency. At least one (1) of the individuals appointed under this subsection must be a psychiatrist or psychologist. 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

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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 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.

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