
SENATE BILL No. 435

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 that 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, 2013.

Alting

January 10, 2013, read first time and referred to Committee on Corrections & Criminal Law.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 435



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 35-36-2-2 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2013]: 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:
 9 (1) psychiatrists;
 10 (2) psychologists endorsed by the state psychology board as
 11 health service providers in psychology; or
 12 (3) physicians;
 13 **who have expertise in determining insanity.** At least one (1) of
 14 ~~whom the individuals appointed under this subsection~~ must be a
 15 psychiatrist **or psychologist.** ~~to~~ **The individuals who are appointed**
 16 **shall** examine the defendant and ~~to~~ testify at the trial. This testimony
 17 shall follow the presentation of the evidence for the prosecution and for



1 the defense, including testimony of any medical experts employed by
2 the state or by the defense.

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

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

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

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

18 SECTION 2. IC 35-36-3-1, AS AMENDED BY P.L.151-2011,
19 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2013]: Sec. 1. (a) If at any time before the final submission of
21 any criminal case to the court or the jury trying the case, the court has
22 reasonable grounds for believing that the defendant lacks the ability to
23 understand the proceedings and assist in the preparation of a defense,
24 the court shall immediately fix a time for a hearing to determine
25 whether the defendant has that ability. The court shall appoint two (2)
26 or three (3) competent, disinterested:

27 (1) psychiatrists;

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

31 (3) physicians;

32 who have expertise in determining competency. At least one (1) of the
33 individuals appointed under this subsection must be a psychiatrist or
34 psychologist. However, none may be an employee or a contractor of a
35 state institution (as defined in IC 12-7-2-184). The individuals who are
36 appointed shall examine the defendant and testify at the hearing as to
37 whether the defendant can understand the proceedings and assist in the
38 preparation of the defendant's defense.

39 (b) At the hearing, other evidence relevant to whether the defendant
40 has the ability to understand the proceedings and assist in the
41 preparation of the defendant's defense may be introduced. If the court
42 finds that the defendant has the ability to understand the proceedings



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1 and assist in the preparation of the defendant's defense, the trial shall
2 proceed. If the court finds that the defendant lacks this ability, it shall
3 delay or continue the trial and order the defendant committed to the
4 division of mental health and addiction. The division of mental health
5 and addiction shall provide competency restoration services or enter
6 into a contract for the provision of competency restoration services by
7 a third party in the:

8 (1) location where the defendant currently resides; or

9 (2) least restrictive setting appropriate to the needs of the
10 defendant and the safety of the defendant and others.

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

19 (c) If the court makes a finding under subsection (b), the court shall
20 transmit any information required by the division of state court
21 administration to the division of state court administration for
22 transmission to the NICS (as defined in IC 35-47-2.5-2.5) in
23 accordance with IC 33-24-6-3.

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