

IC 35-36-3

Chapter 3. Comprehension to Stand Trial

IC 35-36-3-1

Hearing; psychiatric examination; delay or continuance of trial; confinement in psychiatric institution; competency restoration services; transmittal of information to NICS

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 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 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.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.321-1983, SEC.3; P.L.19-1986, SEC.60; P.L.2-1992, SEC.871; P.L.215-2001, SEC.109; P.L.77-2004, SEC.5; P.L.110-2009, SEC.15; P.L.151-2011, SEC.1.

IC 35-36-3-2

Attainment of ability to stand trial; certification; return to court; order; trial

Sec. 2. Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense:

(1) the superintendent of the state institution (as defined in 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 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.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.2-1992, SEC.872; P.L.215-2001, SEC.110; P.L.77-2004, SEC.6.

IC 35-36-3-3

Substantial probability of attainment of comprehension to stand trial; certification; commitment proceedings; duration of retention

Sec. 3. (a) Within ninety (90) days after:

(1) a defendant's 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 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 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 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.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.2-1992, SEC.873; P.L.215-2001, SEC.111; P.L.77-2004, SEC.7.

IC 35-36-3-4

Inability to attain comprehension to stand trial; commitment proceedings

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 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.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.2-1992, SEC.874; P.L.215-2001, SEC.112; P.L.77-2004, SEC.8.