

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1238

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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 12-21-5-1.5, AS AMENDED BY P.L.162-2023, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 1.5. (a) The division shall do the following:

- (1) Adopt rules under IC 4-22-2 to establish and maintain criteria to determine patient eligibility and priority for publicly supported mental health and addiction services. The rules must include criteria for patient eligibility and priority based on the following:
  - (A) A patient's income.
  - (B) A patient's level of daily functioning.
  - (C) A patient's prognosis.
- (2) Within the limits of appropriated funds, contract with a network of providers to provide services in an appropriate setting that is the least restrictive to individuals who qualify for the services.
- (3) Require the providers of services funded directly by the division to be in good standing with an appropriate accrediting body as required by rules adopted under IC 4-22-2 by the division.
- (4) Develop a provider profile that must be used to evaluate the performance of a provider. A provider's profile must include input from consumers, citizens, and representatives of the mental health

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ombudsman program (IC 12-27-9) regarding the provider's:

- (A) information provided to the patient on patient rights before treatment;
  - (B) accessibility, acceptability, and continuity of services provided or requested; and
  - (C) total cost of care per individual, using state administered funds.
- (5) Ensure compliance with all other performance criteria set forth in a provider contract. In addition to the requirements set forth in IC 12-21-2-7, a provider contract must include the following:
- (A) A requirement that the standards and criteria used in the evaluation of care plans be available and accessible to the patient.
  - (B) A requirement that the provider involve the patient in the choice of and preparation of the treatment plan to the greatest extent feasible.
  - (C) A provision encouraging the provider to intervene in a patient's situation as early as possible, balancing the patient's right to liberty with the need for treatment.
  - (D) A requirement that the provider set up and implement an internal appeal process for the patient.
- (6) Establish a toll free telephone number that operates during normal business hours for individuals to make comments to the division in a confidential manner regarding services or service providers.
- (7) Develop a confidential system to evaluate complaints and patient appeals received by the division of mental health and addiction and to take appropriate action regarding the results of an investigation. A provider is entitled to request and to have a hearing before information derived from the investigation is incorporated into the provider's profile. Information contained within the provider profile is subject to inspection and copying under IC 5-14-3-3.
- (8) Ensure that providers of services of residential care and supported housing for chronic addiction, when used as a recovery residence that receives reimbursement from the office, acquire and maintain the certification required in IC 12-21-2-3(14).
- (9) Establish and maintain a help line:
- (A) to provide confidential emotional support and referrals to behavioral health resources to individuals who call the help line; and



(B) that is accessible by calling a toll free telephone number.  
**(10) In consultation with the medical licensing board, a forensic psychiatrist, and a forensic psychologist holding a doctorate, establish a training program to certify:**

**(A) an advanced practice registered nurse with a certification as a psychiatric mental health nurse practitioner; or**

**(B) a physician assistant who specializes in psychiatry or mental health;**

**as a competency evaluator who may assist a criminal or juvenile court in determining competency to stand trial or appear at a juvenile adjudication. The training program must consist of at least forty (40) hours of instruction. The division may adopt rules under IC 4-22-2 to implement this subdivision.**

(b) The division may adopt rules under IC 4-22-2 to establish standards for residential care and supported housing for chronic addiction when used as a recovery residence.

SECTION 2. IC 12-23-19-2, AS AMENDED BY P.L.114-2022, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 2. (a) An individual is eligible for mental health and addiction forensic treatment services if:

(1) subject to subsection (d), the individual:

(A) is a member of a household with an annual income that does not exceed two hundred percent (200%) of the federal income poverty level;

(B) is a resident of Indiana;

(C) is:

(i) at least eighteen (18) years of age; or

(ii) subject to the approval of the Indiana commission to combat substance use disorder, less than eighteen (18) years of age and the individual is a defendant whose case is either waived from juvenile court to adult court or directly filed in adult court; and

(D) has entered the criminal justice system as a felon or with a prior felony conviction or is ordered to be committed for competency restoration services as described in ~~IC 35-36-3-1(b)~~; **IC 35-36-3-1(f)**; and

(2) subject to subsection (b), reimbursement for the service is not available to the individual through any of the following:

(A) A policy of accident and sickness insurance (IC 27-8-5).

(B) A health maintenance organization contract (IC 27-13).



(C) The Medicaid program (IC 12-15), excluding the Medicaid rehabilitation program and the Behavioral and Primary Health Coordination Program under Section 1915(i) of the Social Security Act.

(D) The federal Medicare program or any other federal assistance program.

(b) If an individual is not entitled to reimbursement from the sources described in subsection (a)(2) of the full amount of the cost of the mental health and addiction forensic treatment services, grants and vouchers under this chapter may be used to provide those services to the extent that the costs of those services exceed the reimbursement the individual is entitled to receive from the sources described in subsection (a)(2), excluding any copayment or deductible that the individual is required to pay.

(c) The division shall determine the extent to which an individual who is provided mental health and addiction forensic treatment services under this chapter is entitled to receive reimbursement from the sources described in subsection (a)(2).

(d) Notwithstanding subsection (a)(1)(D), subject to available funding and on the recommendation of the justice reinvestment advisory council (established by IC 33-38-9.5-2), the division may operate a pilot program applying the eligibility criteria in this section to individuals who are charged with a misdemeanor. If the division operates a pilot program under this subsection, the division shall issue annual reports to the justice reinvestment advisory council.

SECTION 3. IC 35-36-3-1, AS AMENDED BY P.L.74-2022, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: 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.

**(b) This subsection applies to a defendant charged with murder or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony. When a court sets a hearing under subsection (a), the court shall appoint two (2) or three (3) individuals to determine the defendant's competency. Each of the appointed individuals must be a psychiatrist, or a psychologist endorsed by the Indiana state board of examiners in psychology as a health service provider in psychology. An individual appointed under this subsection must be competent and disinterested.**



(c) **This subsection applies to a defendant charged with a misdemeanor or a Level 6 felony. When a court sets a hearing under subsection (a), the court shall appoint ~~two (2) or three (3)~~ competent, disinterested: one (1) individual who:**

~~(1)~~ psychiatrists;

**(1) is a:**

**(A) psychiatrist; or**

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

~~(3)~~ physicians;

**(2) is competent and disinterested; and**

**(3) has expertise in determining competency.**

~~who have expertise in determining competency.~~

**(d) In addition to the psychiatrist or psychologist appointed under subsection (c), the court may appoint not more than two (2) additional individuals to assist the court in determining competency. Upon request of either party, the court shall appoint at least one (1), but not more than two (2), additional individuals to assist the court in determining competency. An individual appointed under this subsection may be an individual:**

**(1) described in subsection (c); or**

**(2) who is competent and disinterested, has expertise in determining competency, and is:**

**(A) licensed:**

**(i) under IC 25-23 as an advanced practice registered nurse (APRN) with a certification as a psychiatric mental health nurse practitioner;**

**(ii) under IC 25-27.5 as a physician assistant who specializes in psychiatry or mental health; or**

**(iii) under IC 25-22.5 as a physician who specializes in psychiatry or mental health; and**

**(B) certified by the division of mental health and addiction as a competency evaluator.**

**(e) At least one ~~(1)~~ of the individuals appointed under this subsection must be a psychiatrist or psychologist. However, none An individual appointed under this section may not 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)~~ **(f) 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. A contract entered into with a third party under this subsection may confer to the third party all authority the division would have in providing competency restoration services to the defendant at a state institution (as defined in IC 12-7-2-184).

~~(e)~~ **(g)** If the court makes a finding under subsection ~~(b)~~; **(f)**, the court shall transmit any information required by the office of judicial administration to the office of judicial administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

SECTION 4. IC 35-36-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: 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 party files a motion to dismiss, the court may dismiss the charges against the defendant without prejudice if the:**

**(1) defendant has been diagnosed with:**

**(A) dementia;**

**(B) Alzheimer's disease; or**

**(C) a traumatic brain injury;**

**(2) defendant's diagnosis substantially impacts the defendant's ability to understand the proceedings and assist in the preparation of the defendant's defense within the foreseeable future; and**

**(3) defendant is charged with a misdemeanor or a Level 6 felony.**

~~(b)~~ **(c) If a defendant's charges are not dismissed under subsection (b) and** 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.

SECTION 5. IC 35-36-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: 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:

**(1) has not attained that ability within six (6) months after the date of the:**

~~(1)~~ **(A) defendant's admission to a state institution (as defined in IC 12-7-2-184); or**

~~(2)~~ **(B) initiation of competency restoration services by a third party contractor; or**

**(2) has not had the criminal charges dismissed under section**



**3(b) of this chapter;**

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.





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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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