



February 24, 2014

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## ENGROSSED SENATE BILL No. 88

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DIGEST OF SB 88 (Updated February 24, 2014 12:37 pm - DI 69)

**Citations Affected:** IC 35-36.

**Synopsis:** Mental health witnesses in criminal cases. Provides that when notice of an insanity defense is filed in a case in which the defendant is not charged with a homicide offense, the court shall appoint two or three 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 of whom must be a psychiatrist or psychologist. Provides that when notice of an insanity defense is filed in a case in which the defendant is charged with a homicide offense, the court shall appoint two or three 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 of whom must be a psychiatrist and at least one of whom must be a psychologist.

**Effective:** July 1, 2014.

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### Alting, Lanane, Becker

(HOUSE SPONSORS — BACON, BROWN C)

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January 7, 2014, read first time and referred to Committee on Rules and Legislative Procedure.

January 14, 2014, amended; reassigned to Committee on Judiciary.

January 23, 2014, reassigned to Committee on Public Policy.

January 30, 2014, amended, reported favorably — Do Pass.

February 3, 2014, read second time, ordered engrossed. Engrossed.

February 4, 2014, read third time, passed. Yeas 48, nays 0.

#### HOUSE ACTION

February 10, 2014, read first time and referred to Committee on Courts and Criminal Code.

February 24, 2014, amended, reported — Do Pass.

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ES 88—LS 6151/DI 13





February 24, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## ENGROSSED SENATE BILL No. 88

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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, 2014]: 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 **in a case in which**  
8 **the defendant is not charged with a homicide offense under**  
9 **IC 35-42-1**, the court shall appoint two (2) or three (3) competent  
10 disinterested:  
11 (1) psychiatrists;  
12 (2) psychologists endorsed by the state psychology board as  
13 health service providers in psychology; or  
14 (3) physicians;  
15 **who have expertise in determining insanity.** At least one (1) of  
16 **whom the individuals appointed under this subsection** must be a

ES 88—LS 6151/DI 13



1        psychiatrist ~~to~~ or psychologist. **The individuals appointed under this**  
 2        **subsection shall** examine the defendant and ~~to~~ testify at the trial. This  
 3        testimony shall follow the presentation of the evidence for the  
 4        prosecution and for the defense, including **the** testimony of any  
 5        ~~medical~~ **mental health** experts employed by the state or by the defense.

6        **(c) When notice of an insanity defense is filed in a case in which**  
 7        **the defendant is charged with a homicide offense under IC 35-42-1,**  
 8        **the court shall 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)**  
 14        **individual appointed under this subsection must be a psychiatrist**  
 15        **and at least one (1) individual appointed under this subsection**  
 16        **must be a psychologist. The individuals appointed under this**  
 17        **subsection shall examine the defendant and testify at the trial. This**  
 18        **testimony must follow the presentation of the evidence for the**  
 19        **prosecution and for the defense, including the testimony of any**  
 20        **mental health experts employed by the state or by the defense.**

21        ~~(e)~~ **(d)** If a defendant does not adequately communicate, participate,  
 22        and cooperate with the ~~medical~~ **mental health** witnesses appointed by  
 23        the court after being ordered to do so by the court, the defendant may  
 24        not present as evidence the testimony of any other ~~medical~~ **mental**  
 25        **health** witness:

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

28              (2) whose opinion is based upon examinations of the defendant;  
 29        unless the defendant shows by a preponderance of the evidence that the  
 30        defendant's failure to communicate, participate, or cooperate with the  
 31        ~~medical~~ **mental health** witnesses appointed by the court was caused by  
 32        the defendant's mental illness.

33        ~~(d)~~ **(e)** The ~~medical~~ **mental health** witnesses appointed by the court  
 34        may be cross-examined by both the prosecution and the defense, and  
 35        each side may introduce evidence in rebuttal to the testimony of ~~such~~  
 36        a ~~medical~~ **mental health** witness.



COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 88, 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 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 Judiciary.

(Reference is to SB 88 as introduced.)

LONG, Chairperson

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Report of the President  
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that Senate Bill 88, currently assigned to the Committee on Judiciary, be reassigned to the Committee on Public Policy.

LONG

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COMMITTEE REPORT

Madam President: The Senate Committee on Public Policy, to which was referred Senate Bill No. 88, 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 14, delete "." and insert "  
**who have expertise in determining insanity.**"

and when so amended that said bill do pass.

(Reference is to SB 88 as printed January 15, 2014.)

ALTING, Chairperson

Committee Vote: Yeas 9, Nays 0.

ES 88—LS 6151/DI 13



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 88, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 7 through 16, begin a new paragraph and insert:

"(b) When notice of an insanity defense is filed **in a case in which the defendant is not charged with a homicide offense under IC 35-42-1**, 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~~ **the individuals appointed under this subsection** must be a psychiatrist ~~to~~ **or psychologist. The individuals appointed under this subsection shall** 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 ~~the~~ testimony of any ~~medical~~ **mental health** experts employed by the state or by the defense.

(c) When notice of an insanity defense is filed **in a case in which the defendant is charged with a homicide offense under IC 35-42-1**, 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) **individual appointed under this subsection must be a psychiatrist and at least one (1) individual appointed under this subsection must be a psychologist. The individuals appointed under this subsection shall** examine the defendant and testify at the trial. This testimony must follow the presentation of the evidence for the prosecution and for the defense, including the testimony of any **mental health** experts employed by the state or by the defense."



Page 2, delete lines 1 through 21.  
and when so amended that said bill do pass.

(Reference is to SB 88 as printed January 31, 2014.)

MCMILLIN, Chair

Committee Vote: yeas 9, nays 0.

