

# SENATE BILL No. 217

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-36-3-1.

**Synopsis:** Determination of competency to stand trial. Provides that a competency examination must be conducted by a psychiatrist or psychologist, requires that the person who conducts the competency examination file a report with the court, and allows the court to order a second competency examination under certain circumstances. (Under current law, a competency examination must be conducted by two or three qualified persons, and one or more physicians who are not psychologists or psychiatrists may conduct or participate in the examination.)

**Effective:** July 1, 2021.

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## Sandlin

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January 7, 2021, read first time and referred to Committee on Corrections and Criminal Law.

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First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## SENATE BILL No. 217

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 35-36-3-1, AS AMENDED BY P.L.161-2018,  
2 SECTION 120, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2021]: Sec. 1. (a) If at any time before the final  
4 submission of any criminal case to the court or the jury trying the case,  
5 the court has reasonable grounds for believing that the defendant lacks  
6 the ability to understand the proceedings and assist in the preparation  
7 of a defense, the court shall immediately fix a time for a hearing to  
8 determine whether the defendant has that ability. The court shall  
9 appoint ~~two (2) or three (3)~~ **one (1)** competent, disinterested:  
10 (1) ~~psychiatrists;~~ **psychiatrist;** or  
11 (2) ~~psychologists~~ **psychologist** endorsed by the Indiana state  
12 board of examiners in psychology as ~~a health service providers~~  
13 **provider** in psychology; or  
14 (3) ~~physicians;~~  
15 who ~~have has~~ expertise in determining competency. ~~At least one (1) of~~  
16 ~~the individuals appointed under this subsection must be a psychiatrist~~  
17 ~~or psychologist. However, none~~ **An individual appointed under this**



1 **section** may **not** be an employee or a contractor of a state institution (as  
 2 defined in IC 12-7-2-184). The ~~individuals~~ **individual** who ~~are~~ **is**  
 3 appointed shall examine the defendant and testify at the hearing as to  
 4 whether the defendant can understand the proceedings and assist in the  
 5 preparation of the defendant's defense.

6 **(b) The individual appointed to examine the defendant shall**  
 7 **prepare a written report containing the individual's professional**  
 8 **evaluation and findings, using a template approved by the division**  
 9 **of mental health and addiction.**

10 **(c) If the court disagrees with the report prepared under**  
 11 **subsection (b), the court may order a second examination of the**  
 12 **defendant to be conducted by a different individual.**

13 **(d) If a party disagrees with the report prepared under**  
 14 **subsection (b), the party may request that the court order a second**  
 15 **examination of the defendant, to be conducted by a different**  
 16 **individual. If the court finds good cause for the request, the court**  
 17 **shall order a second examination of the defendant.**

18 **(e) A second examination ordered under subsection (c) or (d)**  
 19 **must be conducted in accordance with subsections (a) and (b).**

20 ~~(b)~~ **(f)** At the hearing, other evidence relevant to whether the  
 21 defendant has the ability to understand the proceedings and assist in the  
 22 preparation of the defendant's defense may be introduced. If the court  
 23 finds that the defendant has the ability to understand the proceedings  
 24 and assist in the preparation of the defendant's defense, the trial shall  
 25 proceed. If the court finds that the defendant lacks this ability, it shall  
 26 delay or continue the trial and order the defendant committed to the  
 27 division of mental health and addiction. The division of mental health  
 28 and addiction shall provide competency restoration services or enter  
 29 into a contract for the provision of **some or all** competency restoration  
 30 services by a third party in the:

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

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

34 However, if the defendant is serving an unrelated executed sentence in  
 35 the department of correction at the time the defendant is committed to  
 36 the division of mental health and addiction under this section, the  
 37 division of mental health and addiction shall provide competency  
 38 restoration services or enter into a contract for the provision of **some**  
 39 **or all** competency restoration services by a third party at a department  
 40 of correction facility agreed upon by the division of mental health and  
 41 addiction or the third party contractor and the department of correction.

42 ~~(e)~~ **(g)** If the court makes a finding under ~~subsection (b)~~; **subsection**



1       **(f)**, the court shall transmit any information required by the office of  
2       judicial administration to the office of judicial administration for  
3       transmission to the NICS (as defined in IC 35-47-2.5-2.5) in  
4       accordance with IC 33-24-6-3.

