



February 3, 2023

SENATE BILL No. 405

DIGEST OF SB 405 (Updated February 1, 2023 4:34 pm - DI 140)

Citations Affected: IC 33-24; IC 35-36.

Synopsis: Funding for defendant examinations. Requires the office of judicial administration to establish and administer a program to provide a regional pool of mental health examiners who are available for appointment upon request by a court to conduct: (1) a competency examination of a defendant; and (2) mental health evaluations following a notice of an insanity defense; in a criminal case. Amends current law concerning the number of individuals who a court is required to appoint in these circumstances (except in the case of a notice of an insanity defense in a homicide case, which remains unchanged). Provides that the establishment of the program is subject to appropriation by the general assembly.

Effective: July 1, 2023.

Walker G

January 19, 2023, read first time and referred to Committee on Judiciary.
February 2, 2023, reported favorably — Do Pass; reassigned to Committee on Appropriations.

SB 405—LS 7425/DI 120



February 3, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE BILL No. 405

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 33-24-6-3, AS AMENDED BY P.L.178-2022(ts),
2 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 3. (a) The office of judicial administration shall
4 do the following:
5 (1) Examine the administrative and business methods and systems
6 employed in the offices of the clerks of court and other offices
7 related to and serving the courts and make recommendations for
8 necessary improvement.
9 (2) Collect and compile statistical data and other information on
10 the judicial work of the courts in Indiana. All justices of the
11 supreme court, judges of the court of appeals, judges of all trial
12 courts, and any city or town courts, whether having general or
13 special jurisdiction, court clerks, court reporters, and other
14 officers and employees of the courts shall, upon notice by the
15 chief administrative officer and in compliance with procedures
16 prescribed by the chief administrative officer, furnish the chief
17 administrative officer the information as is requested concerning

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1 the nature and volume of judicial business. The information must
2 include the following:

3 (A) The volume, condition, and type of business conducted by
4 the courts.

5 (B) The methods of procedure in the courts.

6 (C) The work accomplished by the courts.

7 (D) The receipt and expenditure of public money by and for
8 the operation of the courts.

9 (E) The methods of disposition or termination of cases.

10 (3) Prepare and publish reports, not less than one (1) or more than
11 two (2) times per year, on the nature and volume of judicial work
12 performed by the courts as determined by the information
13 required in subdivision (2).

14 (4) Serve the judicial nominating commission and the judicial
15 qualifications commission in the performance by the commissions
16 of their statutory and constitutional functions.

17 (5) Administer the civil legal aid fund as required by IC 33-24-12.

18 (6) Administer the court technology fund established by section
19 12 of this chapter.

20 (7) By December 31, 2013, develop and implement a standard
21 protocol for sending and receiving court data:

22 (A) between the protective order registry, established by
23 IC 5-2-9-5.5, and county court case management systems;

24 (B) at the option of the county prosecuting attorney, for:

25 (i) a prosecuting attorney's case management system;

26 (ii) a county court case management system; and

27 (iii) a county court case management system developed and
28 operated by the office of judicial administration;

29 to interface with the electronic traffic tickets, as defined by
30 IC 9-30-3-2.5; and

31 (C) between county court case management systems and the
32 case management system developed and operated by the office
33 of judicial administration.

34 The standard protocol developed and implemented under this
35 subdivision shall permit private sector vendors, including vendors
36 providing service to a local system and vendors accessing the
37 system for information, to send and receive court information on
38 an equitable basis and at an equitable cost, and for a case
39 management system developed and operated by the office of
40 judicial administration, must include a searchable field for the
41 name and bail agent license number, if applicable, of the bail
42 agent or a person authorized by the surety that pays bail for an



- 1 individual as described in IC 35-33-8-3.2.
- 2 (8) Establish and administer an electronic system for receiving
 3 information that relates to certain individuals who may be
 4 prohibited from possessing a firearm for the purpose of:
- 5 (A) transmitting this information to the Federal Bureau of
 6 Investigation for inclusion in the NICS; and
 7 (B) beginning July 1, 2021, compiling and publishing certain
 8 statistics related to the confiscation and retention of firearms
 9 as described under section 14 of this chapter.
- 10 (9) Establish and administer an electronic system for receiving
 11 drug related felony conviction information from courts. The office
 12 of judicial administration shall notify NPLeX of each drug related
 13 felony entered after June 30, 2012, and do the following:
- 14 (A) Provide NPLeX with the following information:
- 15 (i) The convicted individual's full name.
 16 (ii) The convicted individual's date of birth.
 17 (iii) The convicted individual's driver's license number, state
 18 personal identification number, or other unique number, if
 19 available.
 20 (iv) The date the individual was convicted of the felony.
- 21 Upon receipt of the information from the office of judicial
 22 administration, a stop sale alert must be generated through
 23 NPLeX for each individual reported under this clause.
- 24 (B) Notify NPLeX if the felony of an individual reported under
 25 clause (A) has been:
- 26 (i) set aside;
 27 (ii) reversed;
 28 (iii) expunged; or
 29 (iv) vacated.
- 30 Upon receipt of information under this clause, NPLeX shall
 31 remove the stop sale alert issued under clause (A) for the
 32 individual.
- 33 (10) After July 1, 2018, establish and administer an electronic
 34 system for receiving from courts felony or misdemeanor
 35 conviction information for each felony or misdemeanor described
 36 in IC 20-28-5-8(c). The office of judicial administration shall
 37 notify the department of education at least one (1) time each week
 38 of each felony or misdemeanor described in IC 20-28-5-8(c)
 39 entered after July 1, 2018, and do the following:
- 40 (A) Provide the department of education with the following
 41 information:
- 42 (i) The convicted individual's full name.



- 1 (ii) The convicted individual's date of birth.
 2 (iii) The convicted individual's driver's license number, state
 3 personal identification number, or other unique number, if
 4 available.
 5 (iv) The date the individual was convicted of the felony or
 6 misdemeanor.
 7 (B) Notify the department of education if the felony or
 8 misdemeanor of an individual reported under clause (A) has
 9 been:
 10 (i) set aside;
 11 (ii) reversed; or
 12 (iii) vacated.
 13 **(11) Establish and administer a program to provide state
 14 funded qualified mental health examiners who are available
 15 to perform criminal court ordered mental health
 16 examinations in each region of the state as described in
 17 IC 33-24-14.**
 18 ~~(11)~~ **(12)** Perform legal and administrative duties for the justices
 19 as determined by the justices.
 20 ~~(12)~~ **(13)** Provide staff support for the judicial conference of
 21 Indiana established in IC 33-38-9.
 22 ~~(13)~~ **(14)** Work with the United States Department of Veterans
 23 Affairs to identify and address the needs of veterans in the court
 24 system.
 25 ~~(14)~~ **(15)** If necessary for purposes of IC 35-47-16-1, issue a
 26 retired judicial officer an identification card identifying the retired
 27 judicial officer as a retired judicial officer.
 28 ~~(15)~~ **(16)** Establish and administer the statewide juvenile justice
 29 data aggregation plan established under section 12.5 of this
 30 chapter.
 31 (b) All forms to be used in gathering data must be approved by the
 32 supreme court and shall be distributed to all judges and clerks before
 33 the start of each period for which reports are required.
 34 (c) The office of judicial administration may adopt rules to
 35 implement this section.
 36 SECTION 2. IC 33-24-14 IS ADDED TO THE INDIANA CODE
 37 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2023]:
 39 **Chapter 14. Program to Provide State Funded Mental Health
 40 Examiners for Competency Examinations**
 41 **Sec. 1. As used in this chapter, "mental health examiner" means**
 42 **a psychiatrist, psychologist, or physician who is qualified and has**



1 the expertise to conduct examinations of defendants in criminal
 2 cases as set forth in IC 35-36-3-1 (competency for trial) and
 3 IC 35-36-2-2 (insanity defense).

4 **Sec. 2. Beginning after June 30, 2023, and if funds are**
 5 **appropriated by the general assembly for the purposes of this**
 6 **chapter, the office of judicial administration shall establish and**
 7 **administer a program to provide a regional pool of mental health**
 8 **examiners who are available for appointment upon request by a**
 9 **court to:**

10 (1) **conduct a competency examination of a defendant in a**
 11 **criminal case under IC 35-36-3-1 when the court has**
 12 **reasonable grounds to believe that the defendant lacks the**
 13 **ability to understand the proceedings and assist in the**
 14 **preparation of a defense; and**

15 (2) **conduct an insanity examination of a defendant in a**
 16 **criminal case under IC 35-36-2-2 when notice of an insanity**
 17 **defense is filed in the case.**

18 **Sec. 3. The office of judicial administration shall employ mental**
 19 **health examiners on a regional basis under the program and**
 20 **ensure that a sufficient number of mental health examiners are**
 21 **available for appointment in each trial court district under**
 22 **IC 33-24-6-10.**

23 **Sec. 4. A mental health examiner who is included in the**
 24 **program for appointment by a court may be a state employee or a**
 25 **private practitioner who is under contract with the office of**
 26 **judicial administration for purposes of the program.**

27 **Sec. 5. The office of judicial administration shall use money**
 28 **appropriated for the program to fund the services of mental health**
 29 **providers who are appointed by a court to conduct an examination**
 30 **and provide testimony at a hearing or trial under the program.**

31 **SECTION 3. IC 35-36-2-2, AS AMENDED BY P.L.54-2014,**
 32 **SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
 33 **JULY 1, 2023]: Sec. 2. (a) At the trial of a criminal case in which the**
 34 **defendant intends to interpose the defense of insanity, evidence may be**
 35 **introduced to prove the defendant's sanity or insanity at the time at**
 36 **which the defendant is alleged to have committed the offense charged**
 37 **in the indictment or information.**

38 (b) **When notice of an insanity defense is filed in a case in which the**
 39 **defendant is not charged with a homicide offense under IC 35-42-1, the**
 40 **court shall appoint ~~two (2)~~ or ~~three (3)~~ a competent disinterested:**

41 (1) ~~psychiatrists;~~ **psychiatrist; or**

42 (2) ~~psychologists~~ **psychologist** endorsed by the state psychology



1 board as a health service providers ~~providers~~ **provider** in psychology; or
 2 ~~(3) physicians;~~
 3 who ~~have~~ **has** expertise in determining insanity. ~~At least one (1) of the~~
 4 ~~individuals appointed under this subsection must be a psychiatrist or~~
 5 ~~psychologist. However, if not later than thirty (30) days after the~~
 6 ~~appointment of the individual initially appointed under this~~
 7 ~~subsection, a party objects and requests additional examiners, the~~
 8 ~~court shall appoint at least one (1) but not more than two (2)~~
 9 ~~additional individuals who meet the requirements for appointment~~
 10 ~~under this subsection, except that the additional individuals~~
 11 ~~appointed may be a physician and need not be a psychiatrist or~~
 12 ~~psychologist. The individual or~~ individuals appointed under this
 13 subsection shall examine the defendant and testify at the trial. This
 14 testimony shall follow the presentation of the evidence for the
 15 prosecution and for the defense, including the testimony of any mental
 16 health experts employed by the state or by the defense.

17 (c) When notice of an insanity defense is filed in a case in which the
 18 defendant is charged with a homicide offense under IC 35-42-1, the
 19 court shall appoint two (2) or three (3) competent disinterested:

- 20 (1) psychiatrists;
- 21 (2) psychologists endorsed by the state psychology board as
- 22 health service providers in psychology; or
- 23 (3) physicians;

24 who have expertise in determining insanity. At least one (1) individual
 25 appointed under this subsection must be a psychiatrist and at least one
 26 (1) individual appointed under this subsection must be a psychologist.
 27 The individuals appointed under this subsection shall examine the
 28 defendant and testify at the trial. This testimony must follow the
 29 presentation of the evidence for the prosecution and for the defense,
 30 including the testimony of any mental health experts employed by the
 31 state or by the defense.

32 (d) If a defendant does not adequately communicate, participate, and
 33 cooperate with the mental health witnesses appointed by the court after
 34 being ordered to do so by the court, the defendant may not present as
 35 evidence the testimony of any other mental health witness:

- 36 (1) with whom the defendant adequately communicated,
- 37 participated, and cooperated; and
- 38 (2) whose opinion is based upon examinations of the defendant;
- 39 unless the defendant shows by a preponderance of the evidence that the
- 40 defendant's failure to communicate, participate, or cooperate with the
- 41 mental health witnesses appointed by the court was caused by the
- 42 defendant's mental illness.



1 (e) The mental health witnesses appointed by the court may be
 2 cross-examined by both the prosecution and the defense, and each side
 3 may introduce evidence in rebuttal to the testimony of a mental health
 4 witness.

5 SECTION 4. IC 35-36-3-1, AS AMENDED BY P.L.74-2022,
 6 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2023]: Sec. 1. (a) If at any time before the final submission of
 8 any criminal case to the court or the jury trying the case, the court has
 9 reasonable grounds for believing that the defendant lacks the ability to
 10 understand the proceedings and assist in the preparation of a defense,
 11 the court shall immediately fix a time for a hearing to determine
 12 whether the defendant has that ability. The court shall appoint ~~two (2)~~
 13 ~~or three (3)~~ a competent, disinterested:

14 (1) ~~psychiatrists;~~ **psychiatrist; or**

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

18 (3) ~~physicians;~~

19 who ~~have~~ **has** expertise in determining competency. ~~At least one (1) of~~
 20 ~~the individuals appointed under this subsection must be a psychiatrist~~
 21 ~~or psychologist. However, if not later than thirty (30) days after the~~
 22 ~~appointment of the individual initially appointed under this~~
 23 ~~subsection, a party objects and requests additional examiners, the~~
 24 ~~court shall appoint at least one (1) but not more than two (2)~~
 25 ~~additional individuals who meet the requirements for appointment~~
 26 ~~under this subsection, except that the additional individuals~~
 27 ~~appointed may be a physician and need not be a psychiatrist or~~
 28 ~~psychologist. However, None of the individuals appointed may be an~~
 29 ~~employee or a contractor of a state institution (as defined in~~
 30 ~~IC 12-7-2-184). The individual or individuals who are appointed shall~~
 31 ~~examine the defendant and testify at the hearing as to whether the~~
 32 ~~defendant can understand the proceedings and assist in the preparation~~
 33 ~~of the defendant's defense.~~

34 (b) At the hearing, other evidence relevant to whether the defendant
 35 has the ability to understand the proceedings and assist in the
 36 preparation of the defendant's defense may be introduced. If the court
 37 finds that the defendant has the ability to understand the proceedings
 38 and assist in the preparation of the defendant's defense, the trial shall
 39 proceed. If the court finds that the defendant lacks this ability, it shall
 40 delay or continue the trial and order the defendant committed to the
 41 division of mental health and addiction. The division of mental health
 42 and addiction shall provide competency restoration services or enter



1 into a contract for the provision of competency restoration services by
2 a third party in the:
3 (1) location where the defendant currently resides; or
4 (2) least restrictive setting appropriate to the needs of the
5 defendant and the safety of the defendant and others.
6 However, if the defendant is serving an unrelated executed sentence in
7 the department of correction at the time the defendant is committed to
8 the division of mental health and addiction under this section, the
9 division of mental health and addiction shall provide competency
10 restoration services or enter into a contract for the provision of
11 competency restoration services by a third party at a department of
12 correction facility agreed upon by the division of mental health and
13 addiction or the third party contractor and the department of correction.
14 A contract entered into with a third party under this subsection may
15 confer to the third party all authority the division would have in
16 providing competency restoration services to the defendant at a state
17 institution (as defined in IC 12-7-2-184).
18 (c) If the court makes a finding under subsection (b), the court shall
19 transmit any information required by the office of judicial
20 administration to the office of judicial administration for transmission
21 to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with
22 IC 33-24-6-3.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 405, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS and be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 405 as introduced.)

BROWN L, Chairperson

Committee Vote: Yeas 10, Nays 0

