



February 2, 2023

HOUSE BILL No. 1194

DIGEST OF HB 1194 (Updated February 1, 2023 3:02 pm - DI 140)

Citations Affected: IC 12-23; IC 35-36.

Synopsis: Competency to stand trial. Provides that certain licensed individuals may examine a defendant and testify as to whether the defendant can understand the criminal proceedings and assist in the preparation of the defendant's defense. Allows a court to dismiss criminal charges, without prejudice, upon motion by either party, if: (1) a substantial probability does not exist that a defendant will attain competency restoration or if the defendant has not attained competency restoration after six months of restoration services; (2) the defendant has a certain diagnosis; and (3) the defendant is charged with a misdemeanor or Level 6 felony. Makes conforming changes.

Effective: July 1, 2023.

**McNamara, Meltzer, Gore,
Ledbetter**

January 10, 2023, read first time and referred to Committee on Courts and Criminal Code.
January 26, 2023, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.
February 2, 2023, reported — Do Pass.

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February 2, 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.

HOUSE BILL No. 1194

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

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

1 SECTION 1. IC 12-23-19-2, AS AMENDED BY P.L.114-2022,
2 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 2. (a) An individual is eligible for mental health
4 and addiction forensic treatment services if:

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

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

9 (B) is a resident of Indiana;

10 (C) is:

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

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

17 (D) has entered the criminal justice system as a felon or with

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- 1 a prior felony conviction or is ordered to be committed for
 2 competency restoration services as described in
 3 ~~IC 35-36-3-1(b);~~ **IC 35-36-3-1(f);** and
 4 (2) subject to subsection (b), reimbursement for the service is not
 5 available to the individual through any of the following:
 6 (A) A policy of accident and sickness insurance (IC 27-8-5).
 7 (B) A health maintenance organization contract (IC 27-13).
 8 (C) The Medicaid program (IC 12-15), excluding the Medicaid
 9 rehabilitation program and the Behavioral and Primary Health
 10 Coordination Program under Section 1915(i) of the Social
 11 Security Act.
 12 (D) The federal Medicare program or any other federal
 13 assistance program.
- 14 (b) If an individual is not entitled to reimbursement from the sources
 15 described in subsection (a)(2) of the full amount of the cost of the
 16 mental health and addiction forensic treatment services, grants and
 17 vouchers under this chapter may be used to provide those services to
 18 the extent that the costs of those services exceed the reimbursement the
 19 individual is entitled to receive from the sources described in
 20 subsection (a)(2), excluding any copayment or deductible that the
 21 individual is required to pay.
- 22 (c) The division shall determine the extent to which an individual
 23 who is provided mental health and addiction forensic treatment
 24 services under this chapter is entitled to receive reimbursement from
 25 the sources described in subsection (a)(2).
- 26 (d) Notwithstanding subsection (a)(1)(D), subject to available
 27 funding and on the recommendation of the justice reinvestment
 28 advisory council (established by IC 33-38-9.5-2), the division may
 29 operate a pilot program applying the eligibility criteria in this section
 30 to individuals who are charged with a misdemeanor. If the division
 31 operates a pilot program under this subsection, the division shall issue
 32 annual reports to the justice reinvestment advisory council.
- 33 SECTION 2. IC 35-36-3-1, AS AMENDED BY P.L.74-2022,
 34 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2023]: Sec. 1. (a) If at any time before the final submission of
 36 any criminal case to the court or the jury trying the case, the court has
 37 reasonable grounds for believing that the defendant lacks the ability to
 38 understand the proceedings and assist in the preparation of a defense,
 39 the court shall immediately fix a time for a hearing to determine
 40 whether the defendant has that ability.
- 41 **(b) When a court sets a hearing under subsection (a), the court**
 42 **shall appoint two (2) or three (3) individuals who:**



- 1 (1) are competent and disinterested;
 2 (2) have expertise in determining competency; and
 3 (3) are licensed in any of the following professions:

4 ~~(1) (A) psychiatrists; Psychiatrist.~~

5 ~~(2) (B) psychologists~~ **Psychologist** endorsed by the Indiana
 6 state board of examiners in psychology as health service
 7 providers in psychology. ~~or~~

8 ~~(3) (C) physicians; Physician.~~

9 who have expertise in determining competency.

10 (c) Beginning July 1, 2024, when a court sets a hearing under
 11 subsection (a), the court shall appoint two (2) or three (3)
 12 individuals who:

13 (1) meet the criteria of subsection (b); or

14 (2) are competent, are disinterested, have expertise in
 15 determining competency, and are:

16 (A) licensed:

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

20 (ii) under IC 25-27.5 as a physician assistant specialized
 21 in psychiatry and mental health; and

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

24 (d) If both parties agree, only one (1) evaluation is required.
 25 However, either party may reserve the right to one (1) or more
 26 additional evaluations in further court proceedings.

27 (e) At least one (1) of the individuals appointed under this
 28 subsection (b) or (c) must be a licensed psychiatrist or psychologist.
 29 However, none may be an employee or a contractor of a state
 30 institution (as defined in IC 12-7-2-184). The individuals who are
 31 appointed shall examine the defendant and testify at the hearing as to
 32 whether the defendant can understand the proceedings and assist in the
 33 preparation of the defendant's defense.

34 ~~(b) (f)~~ (f) At the hearing, other evidence relevant to whether the
 35 defendant 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 ~~(e)~~ **(g)** If the court makes a finding under subsection ~~(b)~~; **(f)**, the
19 court shall 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.

23 SECTION 3. IC 35-36-3-3 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) Within ninety
25 (90) days after:

- 26 (1) a defendant's admission to a state institution (as defined in
27 IC 12-7-2-184); or
- 28 (2) the initiation of competency restoration services to a defendant
29 by a third party contractor;

30 the superintendent of the state institution (as defined in IC 12-7-2-184)
31 or the director or medical director of the third party contractor, if the
32 division of mental health and addiction has entered into a contract for
33 the provision of competency restoration services by a third party, shall
34 certify to the proper court whether the defendant has a substantial
35 probability of attaining the ability to understand the proceedings and
36 assist in the preparation of the defendant's defense within the
37 foreseeable future.

38 **(b) If:**

- 39 **(1) a substantial probability does not exist under subsection**
40 **(a); or**
- 41 **(2) the defendant has received competency restoration**
42 **services for more than six (6) months and has not been**



1 restored to competency;
2 then either party may file a motion to dismiss the charges without
3 prejudice.

4 (c) If a motion to dismiss is filed under subsection (b), the court
5 may grant the motion and dismiss the charges against the
6 defendant without prejudice if:

7 (1) the defendant has been diagnosed with:

8 (A) dementia;

9 (B) Alzheimer's disease;

10 (C) a traumatic brain injury; or

11 (D) an intellectual or developmental disability;

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

16 (3) the defendant is charged with a misdemeanor or a Level 6
17 felony.

18 ~~(b)~~ (d) If a defendant's charges are not dismissed under
19 subsection (c) and a substantial probability does not exist, the state
20 institution (as defined in IC 12-7-2-184) or the third party contractor
21 shall initiate regular commitment proceedings under IC 12-26. If a
22 substantial probability does exist, the state institution (as defined in
23 IC 12-7-2-184) or third party contractor shall retain the defendant:

24 (1) until the defendant attains the ability to understand the
25 proceedings and assist in the preparation of the defendant's
26 defense and is returned to the proper court for trial; or

27 (2) for six (6) months from the date of the:

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

30 (B) initiation of competency restoration services by a third
31 party contractor;

32 whichever first occurs.

33 SECTION 4. IC 35-36-3-4 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. If a defendant who
35 was found under section 3 of this chapter to have had a substantial
36 probability of attaining the ability to understand the proceedings and
37 assist in the preparation of the defendant's defense:

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

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

42 ~~(2)~~ (B) initiation of competency restoration services by a third



1 party contractor; **or**
2 **(2) has not had the criminal charges dismissed under section**
3 **3(c) of this chapter;**
4 the state institution (as defined in IC 12-7-2-184) or the third party
5 contractor, if the division of mental health and addiction has entered
6 into a contract for the provision of competency restoration services by
7 a third party, shall institute regular commitment proceedings under
8 IC 12-26.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1194, 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 2, line 3, delete "IC 35-36-3-1(e);" and insert "**IC 35-36-3-1(f);**".

Page 3, line 11, delete "appoint:" and insert "**appoint**".

Page 3, line 12, delete "(1)".

Page 3, line 12, delete "who meet the following" and insert "**who:**".

Page 3, run in lines 11 through 12.

Page 3, delete line 13.

Page 3, delete lines 14 through 23, begin a new line block indented and insert:

"(1) meet the criteria of subsection (b); or

(2) are competent, are disinterested, have expertise in determining competency, and are:

(A) licensed:

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

(ii) under IC 25-27.5 as a physician assistant specialized in psychiatry and mental health; and

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

(d) If both parties agree, only one (1) evaluation is required. However, either party may reserve the right to one (1) or more additional evaluations in further court proceedings."

Page 3, line 24, delete "(d)" and insert "(e)".

Page 3, line 31, delete "(e)" and insert "(f)".

Page 4, line 15, delete "(f)" and insert "(g)".

Page 4, line 15, delete "(e)," and insert "(f),".

and when so amended that said bill do pass.

(Reference is to HB 1194 as introduced.)

MCNAMARA

Committee Vote: yeas 13, nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1194, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1194 as printed January 26, 2023.)

THOMPSON

Committee Vote: Yeas 15, Nays 1

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