

IC 35-36-3-1

Chapter 3. Comprehension to Stand Trial

Hearing; psychiatric examination; delay or continuance of trial; confinement in psychiatric institution; competency restoration services; transmittal of information to NICS

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. The court shall appoint one ~~two (2) or three (3)~~ competent, disinterested:

- (1) psychiatrists; ~~or~~
- (2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology; ~~or~~
- (~~3~~) physicians;

Who ~~has~~ have expertise in determining competency. ~~At least one (1) of the individuals appointed under this subsection must be a psychiatrist or psychologist. However, none~~ The evaluator 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) The evaluator shall prepare a written report of their evaluation and findings using a template approved by the division of mental health and addiction.

(c) If after submission of the report the court or any party disagrees with its content, a second evaluation by a qualified evaluator may be requested. If the court finds good cause, a second evaluation by a different qualified evaluator shall be ordered.

~~(b)~~ (d) 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 some or all 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 some or all 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.

~~(e)~~ (e) If the court makes a finding under subsection ~~(b)~~ (d), 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.