

IC 35-36-2

Chapter 2. Affirmative Defense of Insanity or Mental Illness; Pleadings, Orders, and Findings

IC 35-36-2-1

Time of filing

Sec. 1. When the defendant in a criminal case intends to interpose the defense of insanity, he must file a notice of that intent with the trial court no later than:

- (1) twenty (20) days if the defendant is charged with a felony;
or
- (2) ten (10) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date. However, in the interest of justice and upon a showing of good cause, the court may permit the filing to be made at any time before commencement of the trial.

As added by Acts 1981, P.L.298, SEC.5. Amended by Acts 1982, P.L.204, SEC.29.

IC 35-36-2-2

Insanity defense; appointment of psychiatrists, psychologists, and physicians; admissibility of evidence

Sec. 2. (a) At the trial of a criminal case in which the defendant intends to interpose the defense of insanity, evidence may be introduced to prove the defendant's sanity or insanity at the time at which the defendant is alleged to have committed the offense charged in the indictment or information.

(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 the individuals appointed under this subsection must be a psychiatrist or psychologist. The individuals appointed under this subsection shall examine the defendant and 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 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.

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

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

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

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

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.321-1983, SEC.2; P.L.19-1986, SEC.59; P.L.149-1987, SEC.119; P.L.77-2004, SEC.3; P.L.54-2014, SEC.1.

IC 35-36-2-3

Finding of jury

Sec. 3. In all cases in which the defense of insanity is interposed, the jury (or the court if tried by it) shall find whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not responsible by reason of insanity at the time of the crime; or

(4) guilty but mentally ill at the time of the crime.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-2-4

Finding of nonresponsibility by reason of insanity; commitment procedures; requirements of the superintendent and attending physician; transmittal of information to NICS

Sec. 4. (a) Whenever a defendant is found not responsible by reason of insanity at the time of the crime, the prosecuting attorney shall file a written petition with the court under IC 12-26-6-2(a)(3) or under IC 12-26-7. If a petition is filed under IC 12-26-6-2(a)(3), the court shall hold a commitment hearing under IC 12-26-6. If a petition

is filed under IC 12-26-7, the court shall hold a commitment hearing under IC 12-26-7.

(b) The hearing shall be conducted at the earliest opportunity after the finding of not responsible by reason of insanity at the time of the crime, and the defendant shall be detained in custody until the completion of the hearing. The court may take judicial notice of evidence introduced during the trial of the defendant and may call the physicians appointed by the court to testify concerning whether the defendant is currently mentally ill and dangerous or currently mentally ill and gravely disabled, as those terms are defined by IC 12-7-2-96 and IC 12-7-2-130(1). The court may subpoena any other persons with knowledge concerning the issues presented at the hearing.

(c) The defendant has all the rights provided by the provisions of IC 12-26 under which the petition against the defendant was filed. The prosecuting attorney may cross-examine the witnesses and present relevant evidence concerning the issues presented at the hearing.

(d) If a court orders an individual to be committed under IC 12-26-6 or IC 12-26-7 following a verdict of not responsible by reason of insanity at the time of the crime, the superintendent of the facility to which the individual is committed and the attending physician are subject to the requirements of IC 12-26-15-1.

(e) If a defendant is found not responsible by reason of insanity, the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.200-1983, SEC.4; P.L.2-1992, SEC.869; P.L.77-2004, SEC.4; P.L.110-2009, SEC.13.

IC 35-36-2-5

Finding or plea of guilty but mentally ill; evaluation; sentence; treatment; transmittal of information to NICS

Sec. 5. (a) Except as provided by subsection (e), whenever a defendant is found guilty but mentally ill at the time of the crime or enters a plea to that effect that is accepted by the court, the court shall sentence the defendant in the same manner as a defendant found guilty of the offense.

(b) Before sentencing the defendant under subsection (a), the court shall require the defendant to be evaluated by a physician licensed under IC 25-22.5 who practices psychiatric medicine, a licensed psychologist, or a community mental health center (as defined in IC 12-7-2-38). However, the court may waive this requirement if the defendant was evaluated by a physician licensed under IC 25-22.5 who practices psychiatric medicine, a licensed psychologist, or a community mental health center and the evaluation is contained in the record of the defendant's trial or plea agreement hearing.

(c) If a defendant who is found guilty but mentally ill at the time of the crime is committed to the department of correction, the defendant shall be further evaluated and then treated in such a manner as is psychiatrically indicated for the defendant's mental illness. Treatment may be provided by:

- (1) the department of correction; or
- (2) the division of mental health and addiction after transfer under IC 11-10-4.

(d) If a defendant who is found guilty but mentally ill at the time of the crime is placed on probation, the court may, in accordance with IC 35-38-2-2.3, require that the defendant undergo treatment.

(e) As used in this subsection, "individual with an intellectual disability" means an individual who, before becoming twenty-two (22) years of age, manifests:

- (1) significantly subaverage intellectual functioning; and
- (2) substantial impairment of adaptive behavior;

that is documented in a court ordered evaluative report. If a court determines under IC 35-36-9 that a defendant who is charged with a murder for which the state seeks a death sentence is an individual with an intellectual disability, the court shall sentence the defendant under IC 35-50-2-3(a).

(f) If a defendant is found guilty but mentally ill, the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.320-1983, SEC.21; P.L.1-1991, SEC.191; P.L.2-1992, SEC.870; P.L.1-1993, SEC.239; P.L.158-1994, SEC.2; P.L.121-1996, SEC.3; P.L.215-2001, SEC.108; P.L.99-2007, SEC.200; P.L.110-2009, SEC.14; P.L.114-2012, SEC.75; P.L.117-2015, SEC.47.