

PROPOSED AMENDMENT

HB 1432 # 1

DIGEST

Intellectual disability. Establishes a procedure to determine if the defendant in a capital case has an intellectual disability.

1 Delete everything after the enacting clause and insert the following:

2 SECTION 1. IC 35-36-9-2.5 IS ADDED TO THE INDIANA CODE

3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

4 1, 2026]: **Sec. 2.5. (a) After the state has filed the charging**

5 **instrument under IC 35-50-2-9(a) that seeks a death sentence, the**

6 **court shall appoint two (2) or three (3) competent disinterested:**

7 **(1) psychiatrists;**

8 **(2) psychologists endorsed by the state psychology board as**

9 **health service providers in psychology; or**

10 **(3) physicians;**

11 **who have expertise in diagnosing and treating intellectual**

12 **disabilities. At least one (1) person appointed under this subsection**

13 **must be a psychiatrist and at least one (1) person appointed under**

14 **this subsection must be a psychologist.**

15 **(b) The persons appointed under subsection (a) shall examine**

16 **the defendant and each shall prepare a separate written evaluation**

17 **for the purpose of providing evidence of the following:**

18 **(1) Whether the defendant has a significantly subaverage level**

19 **of intellectual functioning.**

20 **(2) Whether the defendant's adaptive behavior is substantially**

21 **impaired.**

22 **(3) Whether the conditions described in subdivisions (1) and**

23 **(2) existed before the defendant became twenty-two (22) years**

24 **of age.**

25 **(c) After all written evaluations have been completed, each**

26 **person appointed under subsection (a) shall:**

27 **(1) transmit a copy their evaluation to the defendant; and**

3 SECTION 2. IC 35-36-9-3, AS AMENDED BY P.L.117-2015,
4 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2026]: Sec. 3. (a) The defendant may file a petition alleging
6 that the defendant is an individual with an intellectual disability **not**
7 **later than thirty (30) days after receipt of all evaluations described**
8 **in section 2.5 of this chapter.**

14 (1) Whether the defendant has a significantly subaverage level of
15 intellectual functioning.

16 (2) Whether the defendant's adaptive behavior is substantially
17 impaired.

25 (c) If the defendant files a petition alleging that the defendant is
26 an individual with a disability the court shall:

27 (1) order the persons who conducted the examinations of the
28 defendant under section 2.5 of this chapter to transmit a copy
29 of their evaluations to the court and to the appropriate
30 prosecuting attorney; and

31 (2) set the matter for hearing.

32 SECTION 3. IC 35-36-9-4, AS AMENDED BY P.L.117-2015,
33 SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2026]: Sec. 4. (a) ~~The court shall conduct a~~ **The persons who**
35 **examined the defendant under section 2.5 of this chapter shall**
36 **testify at the hearing on the a petition filed** under this chapter

37 (b) At the hearing, the defendant must prove by clear and
38 convincing evidence that the defendant is an individual with an
39 intellectual disability.

40 SECTION 4. IC 35-36-9-5, AS AMENDED BY P.L.117-2015,

1 SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2026]: Sec. 5. ~~Not later than ten (10) days before the initial~~
3 ~~trial date,~~ The court shall determine **before trial** whether the defendant
4 is an individual with an intellectual disability based on the evidence set
5 forth at the hearing under section 4 of this chapter. The court shall
6 articulate findings supporting the court's determination under this
7 section.

(Reference is to HB 1432 as introduced.)