

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**

(2) notify the court that they have transmitted a copy of their evaluation to the defendant.

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

(b) The petition must be filed not later than twenty (20) days before the omnibus date.

(c) Whenever the defendant files a petition under this section, the court shall order an evaluation of the defendant for the purpose of providing evidence of the following:

(1) Whether the defendant has a significantly subaverage level of intellectual functioning;

(2) Whether the defendant's adaptive behavior is substantially impaired;

(3) Whether the conditions described in subdivisions (1) and (2) existed before the defendant became twenty-two (22) years of age.

(b) If the defendant elects not to file a petition alleging that the defendant is an individual with a disability, the intellectual disability evaluations and any other evidence produced as a result of the examination of the defendant are privileged and inadmissible at trial by either party for any purpose.

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

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

(2) set the matter for hearing.

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

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

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.)