[CAPTION]

NOTICE OF DEFENSE OF MENTAL DISEASE OR DEFECT

The Defendant, by counsel, gives notice pursuant to I.C. 35-36-2-1 that the Defendant intends to interpose the defense of mental disease or defect as set out in I.C. 35-41-3-6, and hereby moves the Court to appoint three two (2) or three (3) competent, disinterested psychiatrists or psychologists endorsed by the State Psychology Board, at least one (1) of whom must be a psychiatrist, to examine the Defendant, and to notify counsel of the time and place of said examinations in advance so that counsel may be present at said examinations, and for all other relief just and proper in the premises.

(Signature)

NOTE

Notice of Insanity must be filed no later than 20 days prior to omnibus date for a felony, or 10 days if defendant charged with only 1 or more misdemeanors. A belated notice may be filed upon a showing of good cause.

REFERENCES **CASEBANK L.1.b; L.1.c**

I.C. 35-36-2-1 (notice of insanity defense; time of filing)

I.C. 35-41-3-6 (defense of mental disease or defect)

I.C. 35-36-2-2 (admissibility of evidence; psychiatrists, psychologists or physicians)

CASE LAW

Higgins v. State, 601 N.E.2d 342 (Ind. 1992) (mental illness is not a defense to a crime unless illness is so severe as to render the Defendant unable to appreciate wrongfulness of criminal act).

Eveler v. State, 524 N.E.2d 9 (Ind. 1988) (this section required the Defendant to file his notice of intent to plead insanity as defense 20 days before omnibus date, and after such date, trial court's discretion controlled whether to allow the Defendant to plead insanity).

Clay v. State, 572 N.E.2d 1362 (Ind.Ct.App. 1991) (the Defendant is presumed *compos mentis*, and unsoundness of mind must be affirmatively pleaded to become an issue).

Benefiel v. State, 578 N.E.2d 338 (Ind. 1991) (insanity plea opens the door to all evidence relating to the Defendant and his environment).

Watson v. State, 658 N.E.2d 579 (Ind. 1995) (trial court did not deny Defendant fair trial and equal protection when it denied Defendant's pre-trial motion for further psychological testing).

Galloway v. State, 938 N.E.2d 699 (Ind. 2010) (because there was no probative evidence from which an inference of sanity could be drawn, evidence was insufficient to support trial court's rejection of the insanity defense; evidence led only to conclusion that Defendant was legally insane at time he killed his grandmother).

Barcroft v. State, 111 N.E.3d 997 (Ind. 2018) (When experts are unanimous in their opinion that a defendant was insane at the time of the crime, the factfinder may discredit their testimony -- or disregard it altogether -- and rely instead on other probative evidence from which to infer the defendant's sanity. This evidence may include demeanor evidence. Justice Goff, joined by Justice Slaughter, dissenting, believe the majority decision erodes Indiana's insanity defense by loosening the limitations previously placed on demeanor evidence in Galloway. In that case, the Court held that "demeanor evidence must be considered as a whole in relation to all the other evidence. To allow otherwise would give carte blanche to the trier of fact and make appellate review virtually impossible." The dissent asserted that by contrast to the unanimous expert testimony, there is very little demeanor evidence. Furthermore, that demeanor testimony was wholly consistent with the experts' unanimous conclusions).

Payne v. State 144 N.E.3d 706 (Ind. 2020) (Because the State presented insufficient demeanor evidence with which to rebut both the unanimous expert opinion and Defendant's long, well-documented history of

mental illness, Court reversed his guilty but mentally ill conviction for arson and found him not guilty by reason of insanity. Massa, joined by Slaughter, JJ., disenting, believe majority opinion "fundamentally [misapplies] the time-honored standard of review this Court recently reaffirmed in Barcroft).

Mayes v. State, 440 N.E.2d 678 (Ind. 1982) (standard of review regarding sufficiency of evidence on question of insanity does not differ from standard employed in other sufficiency claims; case contains discussion of presumptions and burden or proof regarding insanity).

Barany v. State, 658 N.E.2d 60 (Ind. 1995) (the jury is free to disregard testimony and unanimous opinion of experts that the Defendant was insane at time of the crime, and rely on testimony of lay witnesses re: the Defendant's normal demeanor before and after crime).

State v. Berryman, 801 N.E.2d 170 (Ind.Ct.App. 2003) (trial court erred in allowing defense counsel to attend court appointed psychiatric evaluations where his sole purpose was to advise Defendant not to cooperate; Defendant has no right to counsel at examination conducted by court appointed expert because such examination is not a critical stage of the proceeding; had there been an order compelling Defendant's cooperation and a hearing advising him that testimony of his experts could be excluded if he failed to cooperate with court-appointed experts, the State would have prevailed on that issue).

Moler v. State, 782 N.E.2d 454 (Ind.Ct.App. 2003). It was proper for the jury to believe lay witness testimony re Defendant's normal demeanor both before and after the crime over psychiatrists' expert opinions that Defendant was insane.

Taylor v. State, 659 N.E.2d 535 (Ind. 1995) (though not law enforcement officers, psychiatrists must give Miranda warnings if the Defendant is ordered to talk with them and is in custody during the interrogation. However, Miranda warnings are not required before a psychiatrist retained by the State can interview a Defendant if the Defendant causes the interview to occur by raising the insanity defense).

Sims v. State, 601 N.E.2d 344 (Ind. 1992) (where the Defendant was compelled to seek sex offender treatment from counselor as condition of probation, information given to counselor was privileged and could not be used against him at trial).

Wainwright v. Greenfield, 474 U.S. 284, 106 S.Ct. 634, 88 L.Ed.2d 623 (1986) (raising the insanity defense does not open the door to testimony obtained in violation of the Defendant's Miranda rights; the Defendant's post-arrest and post-Miranda silence cannot be used as evidence of sanity); see also Robinette v. State, 741 N.E.2d 1162 (Ind. 2001).

Lynch v. State, 632 N.E.2d 341 (Ind. 1994) (invocation of right to counsel is inadmissible to rebut insanity).

Wilson v. State, 514 N.E.2d 282 (Ind. 1987) (Defendant's statement that he wouldn't answer any more questions was inadmissible to demonstrate sanity; fundamental error found).

Crawford v. State, 770 N.E.2d 775 (Ind. 2002) (in murder prosecution, trial court erred by allowing expert witnesses it appointed to examine the Defendant to be called out of order at trial; the statute clearly requires that court-appointed mental health professionals be called following all evidence presented by State and by the Defendant).

Caldwell v. State, 722 N.E.2d 814 (Ind. 2000) (because prosecutor created erroneous impression of what would happen to the Defendant if he was found not responsible by reason of insanity, trial court's failure

to either admonish jury or give tendered instructions on consequences of verdicts GBMI and not responsible by reason of insanity was reversible error).

Georgopolus v. State, 735 N.E.2d 1138 (Ind. 2000) (when verdict options before jury include not responsible by reason of insanity or GBMI, and the Defendant requests jury instruction on penal consequences of these verdicts, trial court is required to give appropriate instruction or instructions as case may be).

Satterfield v. State, 33 N.E.3d 344 (Ind. 2015) (jury's rejection of Defendant's insanity or guilty but mentally ill defense was not contrary to law, where evidence conflicted as to his mental health diagnosis and insanity, and the non-expert evidence contradicted his defense).

Myers v. State, 27 N.E.3d 1069 (Ind. 2015) (distinguishing Galloway, Court found sufficient evidence to support GBMI verdict; although experts unanimously agreed that Defendant was insane at time of offense and he had suffered from schizophrenia since early adulthood, sanity could be inferred from facts of offense).
Berry v. State, 969 N.E.2d 35 (Ind. 2012) (although a person who has abused intoxicants to the point where it has produced mental disease such that he is unable to appreciate the wrongfulness of his conduct may be found insane, a person who is temporarily insane due to voluntary intoxication cannot; here, evidence of insanity was conflicting because one expert testified that Defendant's psychosis was caused by voluntary alcohol use, i.e., either intoxication or withdrawal).

Lawson v. State, 966 N.E.2d 1273 (Ind.Ct.App. 2012) (an expert's opinion that Defendant could appreciate right from wrong was sufficient to sustain D's convictions for murder, neglect and battery; although the expert's reasoning that Defendant's delusion made her think she was helping, not hurting her son is arguably inconsistent with his opinion that she was sane, which necessarily implies that she knew that what she was doing was wrong when she killed her son, it was within the jury's province to believe him over the other expert);

Carson v. State, 963 N.E.2d 670 (Ind.Ct.App. 2012) (the fact that Defendant ran from police, dropped his knife when told to do so and claimed that he could not kill a baby like he was supposed to do constituted sufficient demeanor evidence upon which to reject his insanity defense, although all experts agreed he was insane at the time and Defendant's statements during and after the crime show that he was in a psychotic state believing that he was in the bible and was supposed to commit certain acts).

DIMISHED CAPACITY

Brown v. State, 448 N.E.2d 10 (Ind. 1983) (low mental capacity is not proper subject of expert testimony where insanity defense is not raised; here, trial court did not err in granting state's motion in limine to bar psychological evidence regarding Defendant=s low IQ).

Neaveill v. State, 474 N.E.2d 1045 (Ind.Ct.App. 1985) (the trial court did not err in refusing the Defendant's tendered instruction re: diminished capacity; mental condition may be offered to negate capacity to form criminal intent).

EFFECT OF BATTERY

Marley v. State, 747 N.E.2d 1123 (Ind. 2001) (the trial court did not err in requiring the Defendant to raise her defense of dissociative state resulting from battered women's syndrome only within confines of Effects of Battery statute, I.C. 35-41-1-3.3 and I.C. 35-41-3-11, which requires filing notice of insanity defense; effects of battery applies to the Defendant who either raises insanity defense or claims self

defense, and, in conjunction with either, raises issue that the Defendant was at time of alleged offense suffering from effects of battery as result of past course of conduct of individual who is victim of alleged crime; the statute also requires victim of crime to be . . . abused individual's cohabitant or former cohabitant).

Odom v. State, 711 N.E.2d 71 (Ind.Ct.App. 1999) (fact that victim testified as to why she recanted statement prior to trial did not make expert testimony on battered woman=s syndrome irrelevant; although expert testimony explaining why victim recanted is usually admissible, expert testimony must also be based upon some fact presented in hypothetical or some reasonable inference drawn there from; here, expert's suggestion that victim might have recanted because she had learned to forgive her assailant was not based on hypothetical because there was no evidence that the Defendant had apologized to victim or that victim had forgiven him).

MISCELLANEOUS DEFENSES

McClain v. State, 678 N.E.2d 104 (Ind. 1997) (where the Defendant claimed he was unable to form criminal intent on night of offense due to automatistic state of mind that precluded voluntary behavior, he was entitled to present evidence of dissociative state resulting from sleep deprivation to show whether he acted voluntarily; the Defendant's evidence of automatism as pleaded should not be classified as mental disease or defect within meaning of IC 35-41-3-6 and need not be presented under insanity defense).

Reed v. State, 693 N.E.2d 988 (Ind.Ct.App. 1999) (evidence that transient ischemic attacks placed the Defendant in a state of confusion and disorientation was not evidence of diminished capacity but rather evidence of negating intent).

Schlatter v. State, 891 N.E.2d 1139 (Ind.Ct.App. 2008) (because Defendant acted voluntarily in becoming intoxicated, he cannot claim that his actions which resulted from his intoxication were involuntary, and because he cannot claim that his actions were involuntary, the automatism defense was unavailable to him).

JURY INSTRUCTIONS

Georgopolus v. State, 735 N.E.2d 1138 (Ind. 2000) (acknowledging potential for confusion in cases where jury is faced with option of finding D not responsible by reason of insanity or GBMI, Ct. adopted following procedure for cases tried after date this opinion is certified. When verdict options before jury include not responsible by reason of insanity or GBMI, & D requests jury instruction on penal consequences of these verdicts, trial court is required to give appropriate instruction or instructions as case may be. Although not binding, trial court may consider following as appropriate instructions:

> Whenever a D is found GBMI at the time of the crime, the Ct. shall sentence the D in the same manner as a D found guilty of the offense. At the Department of Correction, the D found guilty but mentally ill shall be further evaluated & treated as is psychiatrically indicated for his illness. See Ind.Code 35-36-2-5.
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> Whenever a D is found not responsible by reason of insanity at the time of the crime, the prosecuting attorney shall file a written petition for mental health commitment with the Ct. The Ct. shall hold a mental health commitment hearing at the earliest opportunity after the finding of not responsible by reason of insanity at the time of the crime, & the D shall be detained in custody until the completion of the hearing. If, upon the completion of the hearing, the Ct. finds that the D is mentally ill & either dangerous or gravely

disabled, then the Ct. may order the D to be committed to an appropriate facility, or enter an outpatient treatment program of not more than ninety (90) days.See Ind.Code 35-36-2-4; Ind.Code 12-26-6-8.

Here, trial court did not err in refusing defendant's tendered instruction concerning consequences of verdict of GBMI, because jury did not have erroneous impression of law about potential post-trial depositions).

Passwater v. State, 989 N.E.2d 766 (Ind. 2013) (Indiana Pattern Criminal Jury Instruction 11.20 (2013) represents an improvement over the instruction found appropriate in Georgopulos, thus Court endorsed and approved its use).

Alexander v. State, 819 N.E.2d 533 (Ind. Ct. App. 2004) (Tr.Ct. erred in not providing an instruction on the penal consequences of a "not guilty by reason of insanity" verdict; even if a defendant's instruction may be an incorrect statement of the law, he is entitled to a proper instruction, thus trial court must substitute the proper instruction on its own).