

[CAPTION]

**MOTION FOR PSYCHIATRIC EXAMINATION TO DETERMINE  
COMPETENCE TO STAND TRIAL**

The Defendant, by counsel, respectfully requests this Court, pursuant to I.C. 35-36-3-1, to appoint two (2) or three (3) competent, disinterested psychiatrists, psychologists endorsed by the Indiana State Board of Examiners, or physicians to examine the Defendant, and testify at a hearing on his/her competence to stand trial. Reasonable grounds for a hearing exist: [specify reasons for believing that Defendant lacks ability to understand the proceedings and assist in the preparation of his defense; see below]

WHEREFORE, the Defendant, by counsel, respectfully moves this Court to appoint two (2) or three (3) competent psychiatrists, psychologists, or physicians to examine the Defendant and report on his/her competence to stand trial, and for all other relief just and proper in the premises.

(Signature)

## NOTE

### POSSIBLE GROUNDS

1. That the Defendant has attempted to commit suicide.
2. That the Defendant is unable to remember any of the events connected with this charge.
3. That in the meetings that this attorney has had with the Defendant, the Defendant has been unable to clearly communicate with this attorney so that said attorney could adequately prepare for this case.
4. That because of the above actions of the Defendant, and further based upon the Defendant's own request that he receive psychiatric assistance it is felt by the undersigned that a psychiatric evaluation is necessary in order to determine the Defendant's competency to stand trial and assist with determining his mental stability.

### REFERENCES

### CASEBANK M.3.c; O.5.a.2

I.C. 35-36-3-1 (hearing; psychiatric examination; delay or continuance of trial; confinement in psychiatric competency restoration services)

### CASE LAW

Indiana v. Edwards, 128 S.Ct. 2379 (2008) (the United States Constitution allowed the State to limit respondent's self-representation right by insisting upon representation by counsel at trial because respondent lacked the mental capacity to conduct his trial defense unless represented).

Wisehart v. State, 693 N.E.2d 23 (Ind. 1998) (standard for deciding competency for trial is whether or not the Defendant currently possesses the ability to consult rationally with counsel and factually comprehend the proceedings against him or her).

Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966) (when doubt exists, judge has duty to have a hearing; no waiver on facts).

Beesley v. State, 533 N.E.2d 112, 113 (Ind. 1989) (hearing required only when there is evidence before the court that creates a reasonable and *bona fide* doubt as to the Defendant's competency to stand trial).

Timmons v. State, 500 N.E.2d 1212, 1217 (Ind. 1986) (judge can observe demeanor and determine the Defendant to be competent to stand trial).

Ferry v. State, 453 N.E.2d 207, 212 (Ind. 1983) (test of competency to stand trial is whether the Defendant has ability to assist in preparation of his defense and to understand nature of the proceedings).

Riggins v. Nevada, 504 U.S. 127, 112 S.Ct. 1810, 118 L.Ed.2d 479 (1992) (absent a finding of necessity and medical appropriateness, the compelled use of anti-psychotic drugs on a defendant violated his constitutionally protected trial rights by possibly altering his appearance, content of his testimony and his communication with counsel; question of right to have jury see him in non-drugged state not raised).

In re K.G., 808 N.E.2d 631 (Ind. 2004) (although juveniles alleged to be delinquent have the constitutional right to have their competency determined prior to delinquency proceedings, Indiana's adult competency statute is not applicable to this determination; I.C. 31-32-12-1, which authorizes mental or physical examinations and treatment under certain circumstances when a physician determines them appropriate and consistent with the statute, is the proper vehicle to accomplish a competency finding in a juvenile proceeding).

Mast v. State, 914 N.E.2d 851 (Ind.Ct.App. 2009) (Defendant received ineffective assistance of counsel where counsel advised him to plead guilty without waiting for results of two competency evaluations).

State v. Davis, 898 N.E.2d 281 (Ind. 2008) (it was a violation of basic notions of fundamental fairness as embodied in Due Process Clause of Fourteenth Amendment to hold criminal charges over head of incompetent Defendant who will never be able to stand trial); *Cf. Habibzadah v. State*, 904 N.E.2d 367 (Ind.Ct.App. 2009) (trial court properly denied motion to dismiss attempted murder charges against incompetent Defendant because it is possible that Defendant may be restored to competency and he has not been confined for longer than potential maximum sentence he faces).

Thomas v. Murphy, 918 N.E.2d 656 (Ind.Ct.App. 2009) (noting “deficient” statutory framework for treatment of developmentally disabled and mentally ill in criminal courts of Indiana, Court suggested “an earlier and intervening procedure to determine competency retroactively to the time of the alleged crime. Perhaps we as a society need to consider the concept of a defendant being *unchargeable* because of mental illness, and not just guilty but mentally ill. The commitment proceedings would protect society and best care of the defendant involved. In limited circumstances, the pendency of criminal charges might also be dispensed with.”)

Armour v. State, 948 N.E.2d 810 (Ind.Ct.App. 2011) (where Defendant had been committed by another court and was receiving psychiatric treatment for an extended period, there were reasonable grounds to believe that Defendant lacks the ability to understand and assist in the preparation of a defense; trial court abused discretion by denying request for evaluation).