

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 648

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO JUDGMENT; AMENDING SECTION 19-2522, IDAHO CODE, TO REVISE PRO-
2 VISIONS RELATING TO AN EXAMINATION OF DEFENDANT FOR EVIDENCE OF MENTAL
3 CONDITION; AMENDING SECTION 19-2524, IDAHO CODE, TO PROVIDE THAT CER-
4 TAIN EXPENSES SHALL BE BORNE BY THE DEPARTMENT OF CORRECTION, TO GRANT
5 THE DEPARTMENT OF CORRECTION CERTAIN RULEMAKING AUTHORITY AND TO RE-
6 VISE PROVISIONS RELATING TO CERTAIN EXPENSES BORNE BY THE DEPARTMENT
7 OF HEALTH AND WELFARE; AMENDING SECTION 19-2524, IDAHO CODE, TO REMOVE
8 PROVISIONS RELATING TO SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT AND
9 TO ESTABLISH PROVISIONS RELATING TO CONSIDERATION OF COMMUNITY-BASED
10 TREATMENT TO MEET BEHAVIORAL HEALTH NEEDS IN SENTENCING AND POST-SEN-
11 TENCING PROCEEDINGS; PROVIDING A SUNSET DATE AND PROVIDING AN EFFECTIVE
12 DATE.
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Section 19-2522, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 19-2522. EXAMINATION OF DEFENDANT FOR EVIDENCE OF MENTAL CONDITION
18 -- APPOINTMENT OF PSYCHIATRISTS OR LICENSED PSYCHOLOGISTS -- HOSPITALIZA-
19 TION -- REPORTS. (1) If there is reason to believe the mental condition of
20 the defendant will be a significant factor at sentencing and for good cause
21 shown, the court shall appoint at least one (1) psychiatrist or licensed psy-
22 chologist to examine and report upon the mental condition of the defendant.
23 The costs of examination shall be paid by the defendant if he is financially
24 able. The determination of ability to pay shall be made in accordance with
25 chapter 8, title 19, Idaho Code. The order appointing or requesting the des-
26 ignation of a psychiatrist or licensed psychologist shall specify the issues
27 to be resolved for which the examiner is appointed or designated.

28 (2) In making such examination, any method may be employed which is ac-
29 cepted by the examiner's profession for the examination of those alleged to
30 be suffering from a mental illness or defect.

31 (3) The report of the examination shall include the following:

32 (a) A description of the nature of the examination;

33 (b) A diagnosis, evaluation or prognosis of the mental condition of the
34 defendant;

35 (c) An analysis of the degree of the defendant's illness or defect and
36 level of functional impairment;

37 (d) A consideration of whether treatment is available for the defen-
38 dant's mental condition;

39 (e) An analysis of the relative risks and benefits of treatment or non-
40 treatment;

41 (f) A consideration of the risk of danger which the defendant may create
42 for the public if at large.

1 (4) The report of the examination shall be filed in triplicate with the
2 clerk of the court, who shall cause copies to be delivered to the prosecuting
3 attorney and to counsel for the defendant.

4 (5) When the defendant wishes to be examined by an expert of his own
5 choice, such examiner shall be permitted to have reasonable access to the de-
6 fendant for the purpose of examination.

7 (6) If a mental health examination of the defendant has previously been
8 conducted, whether pursuant to section 19-2524, Idaho Code, or for any other
9 purpose, and a report of such examination has been submitted to the court,
10 and if the court determines that such examination and report provide the nec-
11 essary information required by this section, including all of the informa-
12 tion specified in subsection (3) of this section, and the examination is suf-
13 ficiently recent to reflect the defendant's present mental condition, then
14 the court may consider such prior examination and report as the examination
15 and report required by this section and need not order an additional examina-
16 tion of the defendant's mental condition. The provisions of this subsection
17 shall not apply to examinations and reports performed or prepared pursuant
18 to section 18-211 or 18-212, Idaho Code, for the purpose of determining the
19 defendant's fitness to proceed, unless the defendant knowingly, voluntar-
20 ily and intelligently consents to having such examination and report used at
21 sentencing.

22 (7) Nothing in this section is intended to limit the consideration of
23 other evidence relevant to the imposition of sentence.

24 SECTION 2. That Section 19-2524, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 19-2524. SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT. (1) When a de-
27 fendant has pled guilty to or been found guilty of a felony, or when a defen-
28 dant who has been convicted of a felony has admitted to or been found to have
29 committed a violation of a condition of probation, the court, prior to the
30 sentencing hearing or the hearing on revocation of probation, may order the
31 defendant to undergo a substance abuse assessment and/or a mental health ex-
32 amination.

33 (2) If a substance abuse assessment ordered pursuant to this section
34 indicates that the defendant is a drug addict or alcoholic, as those terms
35 are defined in section 39-302, Idaho Code, then the assessment submitted to
36 the court shall also include a plan of treatment. If the court concludes at
37 sentencing that the defendant is a drug addict or alcoholic, as those terms
38 are defined in section 39-302, Idaho Code, and if the court places the defen-
39 dant on probation, the court may order the defendant, as a condition of pro-
40 bation, to undergo treatment consistent with the plan of treatment, subject
41 to modification of the plan of treatment by the court.

42 (3) (a) If a mental health examination is ordered pursuant to this sec-
43 tion, the report of the mental health examination shall include the fol-
44 lowing:

45 (i) A description of the nature of the examination;

46 (ii) A diagnosis, evaluation or prognosis of the mental condition
47 of the defendant;

48 (iii) An analysis of the degree of the defendant's illness or de-
49 fect and level of functional impairment;

1 (iv) A consideration of whether treatment is available for the de-
2 fendant's mental condition;

3 (v) An analysis of the relative risks and benefits of treatment or
4 nontreatment;

5 (vi) A consideration of the risk of danger which the defendant may
6 create for the public if at large; and

7 (vii) A plan of treatment if the mental health examination indi-
8 cates that:

9 1. The defendant suffers from a severe and reliably diagnos-
10 able mental illness or defect;

11 2. Without treatment, the immediate prognosis is for major
12 distress resulting in serious mental or physical deteriora-
13 tion of the defendant;

14 3. Treatment is available for such illness or defect; and

15 4. The relative risks and benefits of treatment or non-
16 treatment are such that a reasonable person would consent to
17 treatment.

18 (b) If the court, after receiving the mental health assessment and plan
19 of treatment, determines that additional information is necessary to
20 determine whether the factors listed above in subsection (3) (a) are
21 present, or to determine an appropriate plan of treatment, the court
22 may order an evaluation and/or recommendations for treatment to be fur-
23 nished by a psychiatrist, licensed physician or licensed psychologist.

24 (c) If the court concludes at sentencing that all of the factors listed
25 above in subsection (3) (a) are present, and if the court places the
26 defendant on probation, then the court may order as a condition of pro-
27 bation that the defendant undergo treatment consistent with the plan
28 of treatment, subject to modification of the plan of treatment by the
29 court.

30 (4) Where the court has ordered either a substance abuse assessment or
31 mental health examination of the defendant pursuant to this section, the
32 court shall also order a criminogenic risk assessment of the defendant if
33 such an assessment is not provided in the presentence report. Any substance
34 abuse assessment or report of mental health examination shall, in addition
35 to the criminogenic risk assessment, be delivered to the court, the defen-
36 dant and the prosecuting attorney prior to the sentencing or the hearing on
37 revocation of probation.

38 (5) If the defendant is sentenced to the custody of the board of cor-
39 rection, then any substance abuse assessment, report of mental examination,
40 plan of treatment or criminogenic risk assessment shall be sent to the de-
41 partment of correction along with the presentence report.

42 (6) The expenses of all screenings and assessments for substance use
43 disorder provided or ordered under this section shall be borne by the depart-
44 ment of correction. The expenses for treatment provided or ordered under
45 this section shall be borne by the department of correction unless the defen-
46 dant is placed in a treatment program that is funded by an alternate source.
47 The department of correction shall be entitled to any payment received by the
48 defendant or to which he may be entitled from any public or private source
49 available to the department of correction for the service provided to the de-
50 fendant. The department of correction may promulgate rules for a schedule of

1 fees to be charged to defendants for the substance use disorder assessments
 2 and treatments provided to the defendants based upon the actual costs of such
 3 services and the ability of a defendant to pay. The department of correction
 4 shall use the state approved financial eligibility form and reimbursement
 5 schedule as set forth in IDAPA 16.07.01.

6 ~~(7) The expenses of the assessments and all mental health examinations,~~
 7 ~~including any evaluation or recommendations for treatment ordered under~~
 8 ~~subsection (3) (a) of this section, and any treatment provided or ordered by~~
 9 ~~the court pursuant to this section shall be borne by the department of health~~
 10 ~~and welfare. The department of health and welfare shall be entitled to any~~
 11 ~~payment received by the defendant or to which he may be entitled for the~~
 12 ~~assessments, examinations and treatment, and to any payment from any public~~
 13 ~~or private source available to the department of health and welfare because~~
 14 ~~of the assessments, examinations and treatment provided to the defendant.~~
 15 ~~The department of health and welfare is authorized to promulgate rules for~~
 16 ~~a schedule of fees to be charged to defendants for the assessments, evalua-~~
 17 ~~tions~~ mental health examinations and treatments provided to the defendants
 18 based upon the costs of such services and the ability of the defendants to
 19 pay. The department of health and welfare shall use the state approved fi-
 20 ancial eligibility form and reimbursement schedule as set forth in IDAPA
 21 16.07.01.

22 SECTION 3. That Section 19-2524, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 19-2524. ~~SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT CONSIDERATION OF~~
 25 ~~COMMUNITY-BASED TREATMENT TO MEET BEHAVIORAL HEALTH NEEDS IN SENTENCING AND~~
 26 ~~POST-SENTENCING PROCEEDINGS. (1) When~~ After a defendant has pled guilty to
 27 or been found guilty of a felony, or when a defendant who has been convicted
 28 of a felony has admitted to or been found to have committed a violation of
 29 a condition of probation, the court, prior to the sentencing hearing or the
 30 hearing on revocation of probation, may order the defendant to undergo a sub-
 31 stance abuse assessment and/or a mental health examination and at any time
 32 thereafter while the court exercises jurisdiction over the defendant, be-
 33 havioral health needs determinations shall be conducted when, and as pro-
 34 vided by, this section.

35 (a) As part of the presentence process, a screening to determine
 36 whether a defendant is in need of a substance use disorder assessment
 37 and/or a mental health examination shall be made in every felony case
 38 unless the court waives the requirement for a screening. The screening
 39 shall be performed within seven (7) days after the plea of guilty or
 40 finding of guilt.

41 (b) At any time after sentencing while the court exercises jurisdiction
 42 over the defendant, the court may order such a screening to be performed
 43 by individuals authorized or approved by the department of correction
 44 if the court determines that one is indicated. The screening shall be
 45 performed within seven (7) days after the order of the court requiring
 46 such screening.

47 ~~(2) If a substance abuse assessment ordered pursuant to this section~~
 48 ~~indicates that the defendant is a drug addict or alcoholic, as those terms~~
 49 ~~are defined in section 39-302, Idaho Code, then the assessment submitted to~~

1 ~~the court shall also include a plan of treatment. If the court concludes at~~
2 ~~sentencing that the defendant is a drug addict or alcoholic, as those terms~~
3 ~~are defined in section 39-302, Idaho Code, and if the court places the defen-~~
4 ~~dant on probation, the court may order the defendant, as a condition of pro-~~
5 ~~bation, to undergo treatment consistent with the plan of treatment, subject~~
6 ~~to modification of the plan of treatment by the court~~ Substance use disorder
7 provisions.

8 (a) Should a screening indicate the need for further assessment of a
9 substance use disorder, the necessary assessment shall be timely per-
10 formed so as to avoid any unnecessary delay in the criminal proceeding
11 and not later than thirty-five (35) days after a plea of guilty or find-
12 ing of guilt or other order of the court requiring such screening. The
13 assessment may be performed by qualified employees of the department of
14 correction or by private providers approved by the department of health
15 and welfare. If the screening or assessment is not timely completed,
16 the court may order that the screening be performed by another qualified
17 provider.

18 (b) Following completion of the assessment, the results of the assess-
19 ment, including a determination of whether the defendant meets diagnos-
20 tic criteria for a substance use disorder and the recommended level of
21 care, shall be submitted to the court as part of the presentence inves-
22 tigation report or other department of correction report to the court.

23 (c) Following the entry of a plea of guilty or a finding of guilt, the
24 court may order, as a condition of the defendant's continued release on
25 bail or on the defendant's own recognizance, that if the assessment re-
26 fects that the defendant meets diagnostic criteria for a substance use
27 disorder, the defendant shall promptly, and prior to sentencing, begin
28 treatment at the recommended level of care.

29 (d) If the court concludes at sentencing, or at any time after sentenc-
30 ing while the court exercises jurisdiction over the defendant, that the
31 defendant meets diagnostic criteria for a substance use disorder, and
32 if the court places the defendant on probation, the court may order the
33 defendant, as a condition of probation, to undergo treatment at the rec-
34 ommended level of care, subject to modification of the level of care by
35 the court. If substance use disorder treatment is ordered, all treat-
36 ment shall be performed by a qualified private provider approved by the
37 department of health and welfare. The court may order that if the level
38 of care placement or the treatment plan is modified in any material
39 term, the department of correction shall notify the court stating the
40 reason for the modifications and informing the court as to the clinical
41 alternatives available to the defendant.

42 (e) In no event shall the persons or facility doing the assessment be
43 the person or facility that provides the treatment unless this require-
44 ment is waived by the court or where the assessment and treatment are
45 provided by or through a federally recognized Indian tribe or federal
46 military installation, where diagnosis and treatment are appropriate
47 and available.

48 (f) Defendants who have completed department of correction institu-
49 tional programs may receive after care services from qualified employ-
50 ees of the department of correction.

1 (g) The expenses of all screenings and assessments for substance use
 2 disorder provided or ordered under this section shall be borne by the
 3 department of correction. The expenses for treatment provided or or-
 4 dered under this section shall be borne by the department of correction
 5 unless the defendant is placed in a treatment program which is funded by
 6 an alternate source. The department of correction shall be entitled to
 7 any payment received by the defendant or to which he may be entitled from
 8 any public or private source available to the department of correction
 9 for the service provided to the defendant. The department of correction
 10 may promulgate rules for a schedule of fees to be charged to defendants
 11 for the substance use disorder assessments and treatments provided
 12 to the defendants based upon the actual costs of such services and the
 13 ability of a defendant to pay. The department of correction shall use
 14 the state approved financial eligibility form and reimbursement sched-
 15 ule as set forth in IDAPA 16.07.01.

16 ~~(3) (a) If a mental health examination is ordered pursuant to this sec-~~
 17 ~~tion, the report of the mental health examination shall include the follow-~~
 18 ~~ing: provisions.~~

19 (a) Should the mental health screening indicate that a serious mental
 20 illness may be present, then the department of correction shall refer
 21 the defendant to the department of health and welfare for further exam-
 22 ination. The examination shall be timely performed so as to avoid any
 23 unnecessary delay in the criminal proceeding and not later than thirty-
 24 five (35) days after a plea of guilty or finding of guilt or other order
 25 of the court requiring such screening.

26 (b) The examination may be performed by qualified department of health
 27 and welfare employees or by private providers under contract with the
 28 department of health and welfare, provided that such examination shall
 29 at a minimum include an in-depth evaluation of the following:

30 (i) A description of the nature of the examination Mental health
 31 concerns;

32 (ii) A diagnosis, evaluation or prognosis of the mental condition
 33 of the defendant Psychosocial risk factors;

34 (iii) An analysis of the degree of the defendant's illness or de-
 35 fect and level of functional impairment Medical, psychiatric, de-
 36 velopmental and other relevant history;

37 (iv) A consideration of whether treatment is available for the de-
 38 fendant's mental condition Functional impairments;

39 (v) An analysis of the relative risks and benefits of treatment or
 40 nontreatment Mental status examination;

41 (vi) A consideration of the risk of danger which the defendant may
 42 create for the public if at large Multiaxial diagnoses; and

43 (vii) A plan of treatment if the mental health examination indi-
 44 icates that: Any other examinations necessary to provide the court
 45 with the information set forth in paragraph (c) of this subsec-
 46 tion.

47 1. The defendant suffers from a severe and reliably diagnos-
 48 able mental illness or defect;

1 2. ~~Without treatment, the immediate prognosis is for major~~
 2 ~~distress resulting in serious mental or physical deteriora-~~
 3 ~~tion of the defendant;~~

4 3. ~~Treatment is available for such illness or defect; and~~

5 4. ~~The relative risks and benefits of treatment or non-~~
 6 ~~treatment are such that a reasonable person would consent to~~
 7 ~~treatment.~~

8 ~~(b) If the court, after receiving the mental health assessment and plan~~
 9 ~~of treatment, determines that additional information is necessary to~~
 10 ~~determine whether the factors listed above in subsection (3) (a) are~~
 11 ~~present, or to determine an appropriate plan of treatment, the court~~
 12 ~~may order an evaluation and/or recommendations for treatment to be fur-~~
 13 ~~nished by a psychiatrist, licensed physician or licensed psychologist.~~

14 ~~(c) If the court concludes at sentencing that all of the factors listed~~
 15 ~~above in subsection (3) (a) are present, and if the court places the~~
 16 ~~defendant on probation, then the court may order as a condition of pro-~~
 17 ~~bation that the defendant undergo treatment consistent with the plan~~
 18 ~~of treatment, subject to modification of the plan of treatment by the~~
 19 ~~court. Upon completion of the mental health examination, the court~~
 20 ~~shall be provided, as part of the presentence report or other department~~
 21 ~~of health and welfare report to the court, a copy of the mental health~~
 22 ~~assessment along with a summary report. The summary report shall in-~~
 23 ~~clude the following:~~

24 (i) Description and nature of the examination;

25 (ii) Multiaxial diagnoses;

26 (iii) Description of the defendant's diagnosis and if the defen-
 27 ~~27 dant suffers from a serious mental illness (SMI) as that term is~~
 28 ~~28 now defined, or is hereafter amended, in IDAPA 16.07.33.010, to~~
 29 ~~29 also include post-traumatic stress disorder;~~

30 (iv) An analysis of the degree of impairment due to the defen-
 31 ~~31 dant's diagnosis;~~

32 (v) Consideration of the risk of danger the defendant may create
 33 ~~33 for the public; and~~

34 (vi) If the defendant suffers from a serious mental illness the
 35 ~~35 report shall also include a plan of treatment that addresses the~~
 36 ~~36 following:~~

37 1. An analysis of the relative risks and benefits of treat-
 38 ~~38 ment versus nontreatment;~~

39 2. Types of treatment appropriate for the defendant; and

40 3. Beneficial services to be provided.

41 ~~(d) If the court, after receiving a mental health examination and plan~~
 42 ~~of treatment, determines that additional information is needed regard-~~
 43 ~~ing the mental condition of the defendant or the risk of danger such con-~~
 44 ~~dition may create for the public, the court may order additional evalua-~~
 45 ~~tions and/or recommendations for treatment to be furnished by a psychi-~~
 46 ~~atrist, licensed physician or licensed psychologist.~~

47 ~~(e) If the court concludes that the defendant suffers from a serious~~
 48 ~~mental illness as defined in paragraph (c) (iii) of this subsection and~~
 49 ~~treatment is available for such serious mental illness, then the~~
 50 ~~court may order, as a condition of the defendant's release on bail or on~~

1 the defendant's own recognizance or as a condition of probation, that
2 the defendant undergo treatment consistent with the plan of treatment,
3 subject to modification of the plan of treatment by the court. If the
4 plan of treatment is modified in any material term, the department of
5 health and welfare shall notify the court in a timely manner stating the
6 reasons for the modification and informing the court as to the clinical
7 alternatives available to the defendant.

8 (f) If treatment is ordered, all treatment shall be performed by a
9 provider approved by the department of health and welfare.

10 (g) The expenses of all mental health examinations and/or treatment
11 provided or ordered under this section shall be borne by the department
12 of health and welfare. The department of health and welfare shall be
13 entitled to any payment received by the defendant or to which he may be
14 entitled from any public or private source available to the department
15 of health and welfare for the service provided to the defendant. The
16 department of health and welfare is authorized to promulgate rules for
17 a schedule of fees to be charged to defendants for the mental health
18 examinations and treatments provided to the defendants based upon the
19 actual costs of such services and the ability of a defendant to pay. The
20 department of health and welfare shall use the state approved finan-
21 cial eligibility form and reimbursement schedule as set forth in IDAPA
22 16.07.01.

23 ~~(4) Where the court has ordered either a substance abuse assessment or~~
24 ~~mental health examination of the defendant pursuant to this section, the~~
25 ~~court shall also order a criminogenic risk assessment of the defendant if~~
26 ~~such an assessment is not provided in the presentence report. Any substance~~
27 ~~abuse assessment or report of mental health examination shall, in addition~~
28 ~~to the criminogenic risk assessment, be delivered to the court, the defen-~~
29 ~~dant and the prosecuting attorney prior to the sentencing or the hearing~~
30 ~~on revocation of probation. Unless otherwise ordered by the court, if the~~
31 ~~defendant is in treatment for a substance use disorder or mental illness,~~
32 ~~any substance use disorder assessment required under subsection (2) of this~~
33 ~~section or mental health examination required under subsection (3) of this~~
34 ~~section need not be performed while the defendant is in such treatment. In~~
35 ~~such circumstances, the court may make such order as it finds appropriate to~~
36 ~~facilitate the completion of the sentencing process or other proceeding be-~~
37 ~~fore the court, including providing for the assessment and treatment records~~
38 ~~to be included in the presentence investigation report or other report to the~~
39 ~~court.~~

40 ~~(5) If the defendant is sentenced to the custody of the board of cor-~~
41 ~~rection, then any substance abuse assessment, report of mental examination,~~
42 ~~plan of treatment or criminogenic risk assessment shall be sent to the de-~~
43 ~~partment of correction along with the presentence report. Any substance use~~
44 ~~disorder assessment including any recommended level of care or mental health~~
45 ~~examination including any plan of treatment shall be delivered to the court,~~
46 ~~the defendant and the prosecuting attorney prior to any sentencing hearing~~
47 ~~or probation revocation hearing.~~

48 ~~(6) The expenses of the assessments and examinations, including any~~
49 ~~evaluation or recommendations for treatment ordered under subsection (3) (a)-~~
50 ~~of this section, and any treatment ordered by the court pursuant to this~~

1 ~~section shall be borne by the department of health and welfare. The depart-~~
2 ~~ment of health and welfare shall be entitled to any payment received by the~~
3 ~~defendant or to which he may be entitled for the assessments, examinations~~
4 ~~and treatment, and to any payment from any public or private source available~~
5 ~~to the department of health and welfare because of the assessments, exami-~~
6 ~~nations and treatment provided to the defendant. The department of health~~
7 ~~and welfare is authorized to promulgate rules for a schedule of fees to be~~
8 ~~charged to defendants for the assessments, evaluations and treatments pro-~~
9 ~~vided to the defendants based upon the costs of such services and the ability~~
10 ~~of the defendants to pay A substance use disorder assessment prepared pur-~~
11 ~~suant to the provisions of this section shall satisfy the requirement of an~~
12 ~~alcohol evaluation prior to sentencing set forth in section 18-8005(11),~~
13 ~~Idaho Code, and shall also satisfy the requirement of a substance abuse eval-~~
14 ~~uation prior to sentencing set forth in section 37-2738, Idaho Code.~~

15 (7) If the defendant is sentenced to the custody of the board of correc-
16 tion, then any substance use disorder assessment, mental health examination
17 or plan of treatment shall be sent to the department of correction along with
18 the presentence report.

19 SECTION 4. The provisions of Section 2 of this act shall be null, void
20 and of no force and effect on and after March 1, 2013, and Section 3 of this
21 act shall be in full force and effect on and after March 1, 2013.