

**Sharon Pennington**

3-15-2019

**From:** Kelly Kumm <kummlaw1@gmail.com>  
**Sent:** Friday, March 15, 2019 10:41 AM  
**To:** Sharon Pennington  
**Subject:** HB 30

Ms. Pennington:

Below are my thoughts on this particular bill set for hearing this afternoon. You asked me to submit an email rather than to sign up to testify by phone. I trust my comments will be forwarded to the committee for their consideration.

I am a defense attorney and a member of the Legislative Committee for the Idaho Association of Criminal Defense Lawyers. I am a past president of that organization and DisAbility Rights Idaho. In that capacity, I am keenly interested in legislation which may impact the procedures and rights for criminal defendants who suffer from a mental illness or disability.

I started following H. B. 30 when it arrived in the House committee earlier this year. I have discussed the bill with the legal director of DisAbility Rights. I heard comments from members of the committee earlier in the session which seemed to signal a need for more input on this bill. Consequently, I submit the following.

We have three main concerns with this bill as written:

- 1) The amendment is redundant. Section 9 of the statute already provides that, in the event a defendant is suspected of being developmentally disabled (DD), the examination SHALL be conducted by an evaluation committee, as defined in subsection (7) of section 66-402 of the Idaho Code. The Statement of Purpose for the bill incorrectly states that the court has an option of appointing a committee if the court suspects a DD.
- 2) The motivation of the Department of Health & Welfare for bringing this bill is unclear. As Idaho Code Sec. 66-402(7) states, the director of the department, or his designee, appoints the evaluation committee members. The criminal defense bar has concerns that the director may "stack" the committee with members who seek to find the defendant competent, thereby avoiding the need house a defendant who is found to be incompetent. See Sec. 18-212(2). It's my understanding that the Department is responsible for the costs of this confinement.
- 3) The Fiscal Note is vague and doesn't allow the reader to accurately identify how many potential defendants will be affected by this bill. If the fiscal impact on the courts is \$13,000 to pay physicians, is that impact for one defendant, or more? Why is the impact on the Department only \$1,950? If the impact is as small as claimed, is there any real necessity for the amendment?

The reach of this bill is very limited and it remains to be seen if the effect on defendants would be positive or negative. The criminal defense bar does know that this issue is litigated and often pits the Department against a finding of incompetency. It is a difficult decision for the courts. An example of such a struggle can be found at State v. Hamlin, a 2014 case from the Court of Appeals. In that case, no evaluation committee was appointed and there were numerous arguments between the private and public experts, with the Department's experts claiming greater expertise when dealing with issues of competency.

Since this bill does nothing to improve on existing law, we urge the committee to reject this bill. Thank you for your time.

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