

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 429

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTION 37-2738, IDAHO CODE, TO  
2 PROVIDE THAT CERTAIN REQUIREMENTS FOR GRANTING OF A WITHHELD JUDGMENT  
3 SHALL NOT APPLY TO CERTAIN DEFENDANTS AND TO MAKE A TECHNICAL CORREC-  
4 TION.  
5

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

7 SECTION 1. That Section 37-2738, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 37-2738. SENTENCING CRITERIA IN DRUG CASES. (1) Any person who pleads  
10 guilty to, is found guilty of or has a judgment of conviction entered upon  
11 a violation of the provisions of subsection (a), (b), (c) or (e) of section  
12 37-2732, Idaho Code, shall be sentenced according to the criteria set forth  
13 herein.

14 (2) Prior to sentencing for a violation enumerated in subsection (1) of  
15 this section, the defendant shall undergo, at his own expense (or at county  
16 expense through the procedures set forth in chapters 34 and 35, title 31,  
17 Idaho Code), a substance abuse evaluation at a facility approved by the Idaho  
18 department of health and welfare. Provided however, if the defendant has no  
19 prior or pending charges under the provisions of subsection (a), (b), (c) or  
20 (e) of section 37-2732, Idaho Code, and the court does not have any reason to  
21 believe that the defendant regularly abuses drugs and is in need of treat-  
22 ment, the court may, in its discretion, waive the evaluation with respect  
23 to sentencing for a violation of subsection (b), (c) (3), or (e) of section  
24 37-2732, Idaho Code, and proceed to sentence the defendant. The court may  
25 also, in its discretion, waive the requirement of a substance abuse evalua-  
26 tion with respect to a defendant's violation of the provisions of subsection  
27 (a), (b), (c) or (e) of section 37-2732, Idaho Code, and proceed to sentence  
28 the defendant if the court has a presentence investigation report, substance  
29 abuse assessment, criminogenic risk assessment, or similar assessment which  
30 has evaluated the defendant's need for substance abuse treatment conducted  
31 within twelve (12) months preceding the date of the defendant's sentencing.

32 (3) In the event a substance abuse evaluation indicates the need for  
33 substance abuse treatment, the evaluation shall recommend an appropriate  
34 treatment program, together with the estimated costs thereof, and recommen-  
35 dations for other suitable alternative treatment programs, together with  
36 the estimated costs thereof. The person shall request that a copy of the  
37 completed evaluation be forwarded to the court. The court shall take the  
38 evaluation into consideration to determine an appropriate sentence. If a  
39 copy of the completed evaluation has not been provided to the court, the  
40 court may proceed to sentence the defendant; however, in such event it shall  
41 be presumed that substance abuse treatment is needed unless it is shown by a  
42 preponderance of evidence that treatment is not required. If the defendant

1 has not made a good faith effort to provide the completed copy of the eval-  
2 uation to the court, the court may consider the failure of the defendant to  
3 provide or report an aggravating circumstance in determining an appropri-  
4 ate sentence. If treatment is ordered, the person or facility performing  
5 the evaluation shall not be the person or facility that provides the treat-  
6 ment, unless this requirement is waived by the sentencing court, and with  
7 the exception of federally recognized Indian tribes or federal military  
8 installations where diagnoses and treatment are appropriate and available.  
9 Nothing herein contained shall preclude the use of funds authorized pursuant  
10 to the provisions of chapter 3, title 39, Idaho Code, for court ordered sub-  
11 stance abuse treatment for indigent defendants.

12 (4) When sentencing an individual for the crimes enumerated in  
13 subsection (1) of this section, the court shall not enter a withheld judgment  
14 unless it finds by a preponderance of the evidence that:

15 (a) The defendant has no prior finding of guilt for any felony, any vi-  
16 olation of chapter 80, title 18, Idaho Code, or subsection (a), (b), (c)  
17 or (e) of section 37-2732, Idaho Code, whatsoever; and

18 (b) The sentencing court has an abiding conviction that the defendant  
19 will successfully complete the terms of probation; and

20 (c) The defendant has satisfactorily cooperated with law enforcement  
21 authorities in the prosecution of drug related crimes of which the de-  
22 fendant has previously had involvement.

23 The requirements for the granting of a withheld judgment pursuant to this  
24 subsection shall not apply to a defendant who has been admitted to a problem  
25 solving court program approved by the drug court and mental health court co-  
26 ordinating committee and is participating in, or about to begin participat-  
27 ing in, such a program, or who participated in such a problem solving court  
28 program in connection with the pending case and who successfully graduated  
29 from such a program prior to sentencing.

30 (5) Any person who pleads guilty to or is found guilty of a violation of  
31 the provisions of the Idaho Code identified in subsection (1) of this sec-  
32 tion shall, when granted a probationary period of any sort whatsoever, be re-  
33 quired by the court to complete a period of not less than one hundred (100)  
34 hours of community service work.