

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 538

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-211, IDAHO CODE, TO  
2 REVISE A PROVISION REGARDING THE FILING OF A REPORT OF EXAMINATION AND  
3 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-212, IDAHO CODE, TO  
4 REVISE A PROVISION REGARDING THE FILING OF A CERTAIN REPORT AND TO MAKE  
5 TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EF-  
6 FECTIVE DATE.  
7

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

9 SECTION 1. That Section 18-211, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 18-211. EXAMINATION OF DEFENDANT -- APPOINTMENT OF PSYCHIATRISTS AND  
12 LICENSED PSYCHOLOGISTS -- HOSPITALIZATION -- REPORT. (1) Whenever there  
13 is reason to doubt the defendant's fitness to proceed as set forth in sec-  
14 tion 18-210, Idaho Code, the court shall appoint at least one (1) qualified  
15 psychiatrist or licensed psychologist or shall request the director of the  
16 department of health and welfare to designate at least one (1) qualified  
17 psychiatrist or licensed psychologist to examine and report upon the mental  
18 condition of the defendant to assist counsel with defense or understand the  
19 proceedings. The appointed examiner shall also evaluate whether the defen-  
20 dant lacks capacity to make informed decisions about treatment. The costs  
21 of examination shall be paid by the defendant if he is financially able. The  
22 determination of ability to pay shall be made in accordance with chapter 8,  
23 title 19, Idaho Code.

24 (2) Within three (3) days, excluding Saturdays, Sundays and legal hol-  
25 idays, of the appointment or designation, the examiner shall determine the  
26 best location for the examination. If practical, the examination shall be  
27 conducted locally on an outpatient basis.

28 (3) If the examiner determines that confinement is necessary for pur-  
29 poses of the examination, the court may order the defendant to be confined to  
30 a jail, a hospital, or other suitable facility for that purpose for a period  
31 not exceeding thirty (30) days. The order of confinement shall require the  
32 county sheriff to transport the defendant to and from the facility and shall  
33 notify the facility of any known medical, behavioral, or security require-  
34 ments of the defendant. The court, upon request, may make available to the  
35 examiner any court records relating to the defendant.

36 (4) In such examination, any method may be employed that is accepted by  
37 the examiner's profession for the examination of those alleged not to be com-  
38 petent to assist counsel in their defense.

39 (5) Upon completion of the examination, a report shall be submitted to  
40 the court and shall include the following:

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

42 (b) A diagnosis or evaluation of the mental condition of the defendant;

1 (c) An opinion as to the defendant's capacity to understand the pro-  
2 ceedings against him and to assist in his own defense;

3 (d) An opinion whether the defendant lacks the capacity to make in-  
4 formed decisions about treatment. "Lack of capacity to make informed  
5 decisions about treatment" means the defendant's inability, by reason  
6 of his mental condition, to achieve a rudimentary understanding of the  
7 purpose, nature, and possible significant risks and benefits of treat-  
8 ment, after conscientious efforts at explanation.

9 (6) If the examination cannot be conducted by reason of the unwilling-  
10 ness of the defendant to participate therein, the report shall so state and  
11 shall include, if possible, an opinion as to whether such unwillingness of  
12 the defendant was the result of mental disease or defect.

13 (7) The report of the examination shall be filed ~~in triplicate~~ with the  
14 clerk of the court, who shall cause copies to be delivered to the prosecuting  
15 attorney and to counsel for the defendant.

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

19 (9) In the event a defendant is suspected of being developmentally dis-  
20 abled, the examination shall proceed with those experts set out in subsec-  
21 tion (7) of section 66-402, Idaho Code.

22 (10) In addition to the psychiatrist, licensed psychologist, or evalua-  
23 tion committee, the court may appoint additional experts to examine the de-  
24 fendant.

25 (11) If, at any time during the examination process, the examiner has  
26 reason to believe that the defendant's alleged incompetency may be the re-  
27 sult of a developmental disability and the matter has not already been re-  
28 ferred to an evaluation committee for review, the examiner shall immediately  
29 notify the court. The court shall then appoint an evaluation committee or  
30 shall order the department of health and welfare to designate, within two (2)  
31 business days, an evaluation committee consistent with section 66-402(7),  
32 Idaho Code.

33 (12) If the defendant lacks capacity to make informed decisions about  
34 treatment, as defined in section 66-317, Idaho Code, the court may authorize  
35 consent to be given pursuant to section 66-322, Idaho Code. If the defen-  
36 dant lacks capacity to make informed decisions as defined in subsection (9)  
37 of section 66-402, Idaho Code, the court may authorize consent to be given  
38 pursuant to sections 66-404 and 66-405, Idaho Code.

39 (13) If the defendant was confined solely for the purpose of examina-  
40 tion, he shall be released from the facility within three (3) days, excluding  
41 Saturdays, Sundays and legal holidays, following notification of completion  
42 of the examination.

43 SECTION 2. That Section 18-212, Idaho Code, be, and the same is hereby  
44 amended to read as follows:

45 18-212. DETERMINATION OF FITNESS OF DEFENDANT TO PROCEED -- SUSPEN-  
46 SION OF PROCEEDING AND COMMITMENT OF DEFENDANT -- POSTCOMMITMENT HEAR-  
47 ING. (1) When the defendant's fitness to proceed is drawn in question, the  
48 issue shall be determined by the court. The court shall also determine,  
49 based on the examiner's findings, whether the defendant lacks capacity to

1 make informed decisions about treatment. If neither the prosecuting attorney  
2 nor counsel for the defendant contests the finding of the report filed  
3 pursuant to section 18-211, Idaho Code, the court may make the determination  
4 on the basis of such report. If the finding is contested, the court shall  
5 hold a hearing on the issue. If the report is received in evidence upon such  
6 hearing, the party who contests the finding thereof shall have the right to  
7 summon and to cross-examine the psychiatrist or licensed psychologist who  
8 submitted the report and to offer evidence upon the issue.

9 (2) If the court determines that the defendant lacks fitness to proceed,  
10 the proceeding against him shall be suspended, except as provided in  
11 subsections (5) and (6) of this section, and the court shall commit him to the  
12 custody of the director of the department of health and welfare, for a period  
13 not exceeding ninety (90) days, for care and treatment at an appropriate facility  
14 of the department of health and welfare or, if the defendant is found  
15 to be dangerously mentally ill as defined in section 66-1305, Idaho Code,  
16 to the department of correction for a period not exceeding ninety (90) days.  
17 The order of commitment shall include the finding by the court whether the  
18 defendant lacks capacity to make informed decisions about treatment. For  
19 purposes of this section, "facility" shall mean a state hospital, institution,  
20 mental health center, or those facilities enumerated in subsection (8)  
21 of section 66-402, Idaho Code, equipped to evaluate or rehabilitate such defendants.  
22 The order of commitment shall require the county sheriff to transport the defendant  
23 to and from the facility and require an evaluation of the defendant's mental  
24 condition at the time of admission to the facility, and a progress report on the  
25 defendant's mental condition. The progress report shall include an opinion whether  
26 the defendant is fit to proceed, or if not, whether there is a substantial probability  
27 the defendant will be fit to proceed within the foreseeable future. If the report  
28 concludes that there is a substantial probability that the defendant will be fit  
29 to proceed in the foreseeable future, the court may order the continued commitment  
30 of the defendant for an additional one hundred eighty (180) days. If at any time  
31 the director of the facility to which the defendant is committed determines that  
32 the defendant is fit to proceed, such determination shall be reported to the  
33 court.

34 (3) If during a commitment under this section a defendant who has the  
35 capacity to make informed decisions about treatment refuses any and all  
36 treatment, or the only treatment available to restore competency for trial,  
37 the court shall, within seven (7) days, excluding weekends and holidays,  
38 of receiving notice of the defendant's refusal from the facility, conduct  
39 a hearing on whether to order involuntary treatment or order such other  
40 terms and conditions as may be determined appropriate. The burden shall be  
41 on the state to demonstrate grounds for involuntary treatment including,  
42 but not limited to: the prescribed treatment is essential to restore the  
43 defendant's competency, the medical necessity and appropriateness of the  
44 prescribed treatment, no less intrusive treatment alternative exists to  
45 render the defendant competent for trial, and other relevant information.  
46 If each of these findings is made by the court, treatment shall be ordered  
47 consistent with the findings.

48 (4) Each report shall be filed ~~in triplicate~~ with the clerk of the  
49 court, who shall cause copies to be delivered to the prosecuting attorney  
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1 and to counsel for the defendant. Upon receipt of a report, the court shall  
2 determine, after a hearing if a hearing is requested, the disposition of the  
3 defendant and the proceedings against him. If the court determines that the  
4 defendant is fit to proceed, the proceeding shall be resumed. If at the end  
5 of the initial ninety (90) days the court determines that the defendant is  
6 unfit and there is not a substantial probability the defendant will be fit to  
7 proceed within the foreseeable future or if the defendant is not fit to pro-  
8 ceed after the expiration of the additional one hundred eighty (180) days,  
9 involuntary commitment proceedings shall be instituted pursuant to either  
10 section 66-329 or 66-406, Idaho Code, in the court in which the criminal  
11 charge is pending.

12 (5) In its review of commitments pursuant to section 66-337, Idaho  
13 Code, the department of health and welfare shall determine whether the de-  
14 fendant is fit to proceed with trial. The department of health and welfare  
15 shall review its commitments pursuant to chapter 4, title 66, Idaho Code,  
16 and may recommend that the defendant is fit to proceed with trial. If the  
17 district court which committed the defendant pursuant to section 66-406,  
18 Idaho Code, agrees with the department's recommendation and finds the condi-  
19 tions which justified the order pursuant to section 66-406, Idaho Code, do  
20 not continue to exist, criminal proceedings may resume. If the defendant is  
21 fit to proceed, the court in which the criminal charge is pending shall be  
22 notified and the criminal proceedings may resume. If, however, the court is  
23 of the view that so much time has elapsed, excluding any time spent free from  
24 custody by reason of the escape of the defendant, since the commitment of  
25 the defendant that it would be unjust to resume the criminal proceeding, the  
26 court may dismiss the charge.

27 (6) If a defendant escapes from custody during his confinement, the  
28 director shall immediately notify the court from which committed, the pros-  
29 ecuting attorney and the sheriff of the county from which committed. The  
30 court shall forthwith issue an order authorizing any health officer, peace  
31 officer, or the director of the institution from which the defendant es-  
32 caped, to take the defendant into custody and immediately return him to his  
33 place of confinement.

34 SECTION 3. An emergency existing therefor, which emergency is hereby  
35 declared to exist, this act shall be in full force and effect on and after  
36 July 1, 2022.