

# House Bill 30 Fact Sheet

3-15-2019

## House Bill 30 Amends §18-211:

HB30 would assure if an individual is suspected to be incompetent to stand trial due to a developmental disability (DD), the evaluation to determine competency must be performed by an Evaluation Committee consisting of a Psychologist, Physician, and a Social Worker. This change matches several other DD related statutes that require an evaluation committee.

## §18-211(9) is Ambiguous:

18-211(9) In addition to the psychiatrist or licensed psychologist, the court may appoint additional experts to examine the defendant. In the event a defendant is suspected of being developmentally disabled, the examination shall proceed with those experts set out in §66-402(7).

In SFY 2018, 13 Idaho courts chose to utilize a psychologist to examine an individual with a developmental disability, pursuant to 18-211(9); while 45 Idaho courts chose an Evaluation Committee to examine individuals with developmental disabilities.

## Issues:

Courts have occasionally (13 in SFY 2018) utilized a psychologist working alone rather than an Evaluation Committee to perform developmental disabilities competency evaluations. A small number of these evaluations have significant issues:

- Malingering (faking incompetency) is more difficult to assess by a single practitioner.
- History is often not accounted for; a developmental disability must occur prior to age 21.
- Psychologists utilized with little DD experience and little competency experience.
- Testing instruments used that are not meant for DD clients.

## Poor Results:

Clients have been wrongly declared incompetent (clients faking disability or poor recommendation). Almost invariably, months or years later, these clients are found competent either through proof of malingering or restoration efforts. Clients then go to trial. Placement with a false negative causes several issues:

- *Victimization*: Higher functioning malingering clients have been placed with individuals with significant disabilities, creating a high risk of victimization.
- *Delay in Justice*: Higher functioning clients placed in restrictive placement (24-hour oversight, ankle monitors) with DHW oversight. Competency is eventually established, and client is adjudicated. Minor offenders may be in restrictive DHW custody and placement far longer than the criminal penalty (jail time) would have been if they had been convicted for the crime.

- *Criminal Elopement*: Higher functioning clients evade unlocked DD systems and abscond.

**Evaluation Committee Composition:**

Social Worker, Psychologist, and Doctor with specialized training in developmental disabilities and competency assessment. Committee members are vetted by DHW Director and licensed in their profession with oversight of their respective Boards. Evaluations Committees are available in every part of Idaho. If the defendant does need restoration by DHW, the Evaluation Committee involvement ensures an adequate assessment of risk prior to placement in least restrictive setting.

**Evaluation Committees Required in Other DD Statutes:**

Requiring the Committee for 18-211 creates consistency in Idaho statutes as the following actions require an Evaluation Committee.

- **§20-519A**: DD Competency evaluation for children.
- **§66-404**: DD Guardian or Conservator evaluation.
- **§66-406**: DD Civil Commitment.

**DD Competency Evaluation Statistics:**

State Fiscal Year	Evaluation Committee Competency Reviews
2019 (YTD)	20
2018*	45
2017	33
2016	30
2015	13
2014	12

\*13 DD Competency Evaluations occurred without an Evaluation Committee in SFY 2018.

**Court Processes and Competency Evaluation:**

Prosecutors and Defense Attorneys can and do utilize psychologists and other experts outside of evaluation committees to testify regarding competency.

**Fiscal Impact:**

Under HB30, counties would have the additional expense of utilizing a physician for each evaluation, estimated at \$1,000 for each evaluation. Last year 13 evaluations would have had this additional expense if HB30 were in effect resulting in a total cost of \$13,000 in Idaho.