

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 140, As Amended in the Senate

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING CHAPTER 5, TITLE 20,
2 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-519A, IDAHO CODE, TO PRO-
3 VIDE FOR A CERTAIN EXAMINATION TO DETERMINE COMPETENCY TO PROCEED, TO
4 PROVIDE FOR THE APPOINTMENT OF PSYCHIATRISTS, PSYCHOLOGISTS AND EVALU-
5 ATION COMMITTEES, TO PROVIDE FOR HOSPITALIZATION AND TO REQUIRE CERTAIN
6 REPORTS; AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A
7 NEW SECTION 20-519B, IDAHO CODE, TO PROVIDE FOR A HEARING TO DETERMINE
8 WHETHER A JUVENILE IS COMPETENT TO PROCEED, TO PROVIDE FOR THE SUSPEN-
9 SION OF PROCEEDINGS, TO PROVIDE FOR CERTAIN COURT ORDERS AND TO PROVIDE
10 A PROCESS TO RESTORE COMPETENCY TO PROCEED; AMENDING CHAPTER 5, TITLE
11 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-519C, IDAHO CODE,
12 TO REQUIRE THAT CERTAIN REPORTS BE FILED WITHIN SPECIFIED TIME FRAMES
13 AND TO REQUIRE A CERTAIN REVIEW HEARING BE HELD WITHIN A SPECIFIED TIME
14 FRAME; AND AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A
15 NEW SECTION 20-519D, IDAHO CODE, TO PROVIDE THAT CERTAIN STATEMENTS ARE
16 NOT ADMISSIBLE IN CERTAIN PROCEEDINGS AND TO PROVIDE AN EXCEPTION.
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18 Be It Enacted by the Legislature of the State of Idaho:

19 SECTION 1. That Chapter 5, Title 20, Idaho Code, be, and the same is
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
21 ignated as Section 20-519A, Idaho Code, and to read as follows:

22 20-519A. EXAMINATION OF JUVENILE -- COMPETENCY -- APPOINTMENT OF PSY-
23 CHIATRISTS, LICENSED PSYCHOLOGISTS OR EVALUATION COMMITTEE -- HOSPITALIZA-
24 TION -- REPORT. (1) At any time after the filing of a delinquency petition, a
25 party may request in writing, or the court on its own motion may order, that
26 the juvenile be examined to determine if the juvenile is competent to pro-
27 ceed. The request shall state the facts in support of the request for a com-
28 petency examination. If, based upon the provisions of subsection (2) of this
29 section, the court determines that there is good cause to believe that the
30 juvenile is incompetent to proceed, then the court shall stay all proceed-
31 ings and appoint at least one (1) examiner who shall be a qualified psychia-
32 trist or licensed psychologist, or shall order the department of health and
33 welfare to designate, within two (2) business days, at least one (1) exam-
34 iner who shall be a qualified psychiatrist or licensed psychologist, to ex-
35 amine and report upon the mental condition of the juvenile. If there is rea-
36 son to believe the basis for the juvenile's incompetency is due to a devel-
37 opmental disability, the court shall appoint an evaluation committee as de-
38 fined in section 66-402, Idaho Code, or shall order the department of health
39 and welfare to designate, within two (2) business days, an evaluation com-
40 mittee, to examine and report upon the mental condition of the juvenile. The
41 county shall be responsible for the cost of such evaluation subject to any
42 reimbursement by the parents or other legal guardian of the juvenile. The

1 court may order the parents or other legal guardian of the juvenile, unless
2 indigent, to contribute to the costs of such examination in an amount to be
3 set by the court after due notice to the parent or other legal guardian and
4 the opportunity to be heard.

5 (2) A juvenile is competent to proceed if he or she has:

6 (a) A sufficient present ability to consult with his or her lawyer with
7 a reasonable degree of rational understanding;

8 (b) A rational and factual understanding of the proceedings against him
9 or her; and

10 (c) The capacity to assist in preparing his or her defense.

11 (3) Within three (3) business days of the appointment or designation of
12 an examiner or an evaluation committee pursuant to the provisions of subsec-
13 tion (1) of this section, the examiner or evaluation committee shall deter-
14 mine the best location for the examination. The examination shall be con-
15 ducted on an outpatient basis unless the court specifically finds that hos-
16 pitalization or confinement of the juvenile for evaluation of competency is
17 necessary, the juvenile is currently hospitalized in a psychiatric hospital
18 or the juvenile is detained. The court may order the juvenile be confined
19 to a hospital or other suitable facility, including detention as defined in
20 section 20-502, Idaho Code, after a hearing to determine whether such con-
21 finement is necessary. Any such confinement shall be for the purpose of ex-
22 amination and shall be for a period not exceeding ten (10) days from the date
23 of admission to the hospital or other suitable facility. The court, upon re-
24 quest, may make available to the examiner or the evaluation committee any
25 court records relating to the juvenile.

26 (4) The examiner or evaluation committee may employ any method of exam-
27 ination that is accepted by the examiner's profession for the examination of
28 juveniles alleged not to be competent, provided that such examination shall,
29 at a minimum, include formal assessments of the juvenile in each of the fol-
30 lowing domains:

31 (a) Cognitive functioning;

32 (b) Adaptive functioning;

33 (c) Clinical functioning;

34 (d) Comprehension of relevant forensic issues; and

35 (e) Genuineness of effort.

36 (5) If at any time during the examination process, the examiner has rea-
37 son to believe that the juvenile's alleged incompetency may be the result of
38 a developmental disability and the matter has not already been referred to
39 an evaluation committee for review, the examiner shall immediately notify
40 the court. The court shall appoint an evaluation committee, or shall order
41 the department of health and welfare to designate, within two (2) business
42 days, an evaluation committee, to examine and report upon the mental con-
43 dition of the juvenile. Conversely, if at any time during the examination
44 process an evaluation committee has reason to believe the juvenile's alleged
45 incompetency is not the result of a developmental disability, the evaluation
46 committee shall immediately notify the court so the examination can be com-
47 pleted by a qualified psychiatrist or licensed psychologist as set forth in
48 subsection (1) of this section. The new examination and report shall be con-
49 ducted within the time frames set forth in subsection (6) of this section.

1 (6) The examiner or evaluation committee shall submit a written report
2 to the court within thirty (30) days of receipt of the appointment or design-
3 nation. The report shall address the factors set forth in section 20-519B,
4 Idaho Code. If the examiner or evaluation committee determines that the ju-
5 venile is incompetent to proceed, the report shall also include the follow-
6 ing:

7 (a) The nature of the mental disease, defect, disability or other con-
8 dition including chronological age that is the cause of the juvenile's
9 incompetency;

10 (b) The juvenile's prognosis;

11 (c) Whether the examiner or evaluation committee believes the juvenile
12 may be restored to competency and an estimated time period in which com-
13 petence could be restored with treatment;

14 (d) If the juvenile may be restored to competency, the recommendations
15 for restoration shall be the least restrictive alternative that is con-
16 sistent with public safety;

17 (e) If the juvenile is not competent and there is no substantial prob-
18 ability that the juvenile can be restored to competency within six (6)
19 months, a recommendation as to whether the juvenile meets the criteria
20 set forth in section 16-2418, 66-329(11) or 66-406(11), Idaho Code, and
21 identification of any other services recommended for the juvenile that
22 are the least restrictive, community based and consistent with public
23 safety; and

24 (f) No statements of the juvenile relating to the alleged offense shall
25 be included in the report unless such statements are relevant to the ex-
26 aminer or evaluation committee's opinion regarding competency.

27 (7) The court, upon a finding of good cause, may alter the time frames
28 for the designation of an examiner or evaluation committee, the completion
29 of the examination or the completion of the report but shall ensure that the
30 examination and competency determination occur as expeditiously as possi-
31 ble. The court may, upon a finding of good cause, vacate or continue the
32 ninety (90) day restoration review hearing set forth in section 20-519C,
33 Idaho Code.

34 (8) The report of the examination shall be filed in triplicate with the
35 clerk of the court, who shall cause copies to be delivered to the prosecuting
36 attorney and to counsel for the juvenile.

37 (9) If the examination cannot be conducted by reason of the unwilling-
38 ness of the juvenile to participate, the report shall so state and shall in-
39 clude, if possible, an opinion as to whether such unwillingness of the juve-
40 nile was the result of age, mental disease, defect or disability and whether
41 the examiner recommends that a second examiner be appointed to examine the
42 juvenile.

43 SECTION 2. That Chapter 5, Title 20, Idaho Code, be, and the same is
44 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
45 ignated as Section 20-519B, Idaho Code, and to read as follows:

46 20-519B. DETERMINATION OF COMPETENCY OF JUVENILE TO PROCEED -- SUS-
47 PENSION OF PROCEEDINGS -- RESTORATION ORDER -- COMMITMENT. (1) The court
48 shall hold a hearing no later than thirty (30) days after the report of the
49 examiner or evaluation committee is filed pursuant to the provisions of sec-

1 tion 20-519A, Idaho Code. At the hearing, the court may receive as evidence
2 the report of the examiner or evaluation committee. In considering whether
3 the juvenile is competent to proceed, the court shall consider the follow-
4 ing:

5 (a) A description of the nature, content, extent and results of the ex-
6 amination and any test that was conducted;

7 (b) The juvenile's capacity to understand the charges or allegations
8 against the juvenile;

9 (c) The juvenile's capacity to understand the range and nature of pos-
10 sible penalties that may be imposed in the proceedings;

11 (d) The juvenile's capacity to understand the adversarial nature of the
12 legal process;

13 (e) The juvenile's capacity to disclose to counsel facts pertinent to
14 the proceedings at issue;

15 (f) Whether the juvenile is able to display appropriate courtroom be-
16 havior;

17 (g) Whether the juvenile is able to receive accurate impressions of the
18 facts about which he or she is examined, is able to appreciate the mean-
19 ing of an oath to tell the truth and has an understanding of the poten-
20 tial consequences of not telling the truth;

21 (h) The examiner's opinion as to the competency of the juvenile as de-
22 fined in subsection (2) of section 20-519A, Idaho Code.

23 (2) The weight to be given to each of the factors listed in subsection
24 (1) of this section is discretionary with the court and a determination that
25 the juvenile is or is not competent to proceed may be based on any one (1) or
26 a combination of such factors, which shall be recited in the court's order
27 regarding competency.

28 (3) If neither the prosecuting attorney nor counsel for the juvenile
29 contests the findings of the report of the examiner or evaluation committee,
30 the court may make the determination on the basis of such report. If a party
31 contests the findings of such report, they shall have the right to cross-ex-
32 amine the qualified psychiatrist or licensed psychologist who prepared and
33 submitted the report and to offer evidence upon this issue. A finding of in-
34 competency shall be based upon a preponderance of the evidence.

35 (4) If the court finds the juvenile is competent to proceed, the pro-
36 ceedings shall continue without delay.

37 (5) If the court initially finds that the juvenile is incompetent and
38 there is not a substantial probability that the juvenile will be restored to
39 competency within six (6) months, the court may stay or dismiss the matter.
40 In determining whether to stay or dismiss the matter, the court shall con-
41 sider all relevant factors including, but not limited to, the seriousness of
42 the alleged offense, resources available to the juvenile and any issues of
43 public safety. Prior to a stay or dismissal of the matter, the court may con-
44 vene a screening team consisting of representatives from the department of
45 health and welfare, county probation, local school officials, and/or other
46 agencies or persons designated by the court to develop a treatment plan for
47 the juvenile. In developing such treatment plan, the recommendations con-
48 tained in the competency examination shall be considered to ensure neces-
49 sary services for the juvenile are put into place. Parents and guardians of
50 the juvenile, if available, shall be included in the screening team and con-

1 sulted with regard to the plan of treatment. If appropriate, the court may
2 hold a hearing to determine whether proceedings under chapter 24, title 16,
3 or chapter 3 or 4, title 66, Idaho Code, should be instituted. If such pro-
4 ceedings are initiated, the juvenile court may retain jurisdiction over said
5 proceedings.

6 (6) If the court determines that the juvenile is incompetent to pro-
7 ceed, but may be restored to competency within six (6) months, the court
8 shall order a plan of treatment to be developed by the department of health
9 and welfare for the juvenile to undergo efforts at restoration to compe-
10 tency. The court may:

11 (a) Convene a restoration treatment team to make recommendations on a
12 plan of treatment;

13 (b) Order any agencies that have treated or had custody of the juve-
14 nile to release any pertinent information or records to the department
15 of health and welfare to be used in the development and implementation
16 of the juvenile's restoration plan;

17 (c) Order the department of health and welfare, county probation,
18 school officials and the department of juvenile corrections to release
19 all pertinent information regarding the juvenile to the court, the de-
20 partment of health and welfare and any restoration treatment team to be
21 used in the development and implementation of the juvenile's restora-
22 tion plan;

23 (d) Require the parents or guardians of the juvenile, and where ap-
24 propriate require the juvenile, to allow information pertinent to the
25 restoration treatment plan be released to the department of health and
26 welfare, the court and any restoration treatment team.

27 (7) If the court determines that the juvenile is incompetent to pro-
28 ceed, but may be restored to competency, the court may order a juvenile to
29 participate in the competency restoration program as developed by the de-
30 partment of health and welfare. The purpose of the treatment or training is
31 the restoration of the juvenile's competency to proceed. In determining the
32 type and location of the competency restoration program and in designating
33 a restoration provider, the department of health and welfare shall identify
34 the least restrictive alternative that is consistent with public safety and
35 consider whether inpatient treatment, residential care or secure confine-
36 ment is necessary for program participation.

37 (a) An inpatient or residential or secure detention facility is only
38 appropriate if all available less restrictive alternatives in commu-
39 nity settings which would offer an opportunity for improvement of the
40 juvenile's condition are inappropriate. If the department of health
41 and welfare's plan of restoration requires the juvenile be placed in an
42 inpatient, residential or secure detention facility, the court shall
43 hold a hearing on whether to order such placement unless the hearing is
44 waived by the juvenile and the juvenile's parents or guardians. Juve-
45 niles charged with only a status offense or multiple status offenses
46 shall not be held in a secure confinement or detention facility for
47 restoration purposes.

48 (b) The department of health and welfare is responsible for determining
49 the competency restoration program and services. All costs associated
50 with restoration services shall be the responsibility of the parents of

1 the juvenile according to their ability to pay based upon the sliding
 2 fee scale established pursuant to section 16-2433, Idaho Code. The fi-
 3 nancial obligation of the parents shall be determined after considera-
 4 tion of all available payment and funding sources including title XIX of
 5 the social security act, as amended, all available third party sources
 6 including funding available to the juvenile from other programs, grants
 7 or agencies and parent resources according to any order for child sup-
 8 port under chapter 10, title 32, Idaho Code. Services shall not be con-
 9 ditioned upon transfer of custody of parental rights.

10 (8) If a juvenile is determined to be incompetent to proceed but may be
 11 restored to competency, the court shall retain jurisdiction of the juvenile
 12 for up to six (6) months. A restoration order issued pursuant to this section
 13 is valid for six (6) months from the date of the initial finding of incompe-
 14 tency or until one (1) of the following, whichever occurs first:

15 (a) The restoration program submits a report that the juvenile has be-
 16 come competent to proceed or that there is no substantial probability
 17 that the juvenile will regain competency within the period the order is
 18 valid;

19 (b) The charges are dismissed; or

20 (c) The juvenile reaches twenty-one (21) years of age.

21 (9) The court may extend the restoration order beyond six (6) months
 22 upon a showing of good cause. If the juvenile reaches twenty-one (21) years
 23 of age, the matter shall be dismissed. If the court concludes that there is
 24 no substantial probability that the juvenile will regain competency within
 25 the period the order is valid, then the provisions of subsection (5) of this
 26 section shall apply.

27 SECTION 3. That Chapter 5, Title 20, Idaho Code, be, and the same is
 28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 29 ignated as Section 20-519C, Idaho Code, and to read as follows:

30 20-519C. RESTORATION REPORTS -- HEARINGS. (1) A report shall be filed
 31 by the restoration provider at least every ninety (90) days or whenever the
 32 restoration provider believes the juvenile is competent to proceed or when-
 33 ever the restoration provider believes there is no substantial probability
 34 that the juvenile will regain competency before the expiration of the order
 35 to participate in a competency restoration program or fourteen (14) days be-
 36 fore expiration of the restoration order.

37 (2) The court shall hold a review hearing regarding the progress
 38 towards competency at least every ninety (90) days while the juvenile par-
 39 ticipates in a restoration program. The court may consider the restoration
 40 provider's report at the review hearing to assess the juvenile's progress
 41 and to determine whether restoration services should continue.

42 SECTION 4. That Chapter 5, Title 20, Idaho Code, be, and the same is
 43 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 44 ignated as Section 20-519D, Idaho Code, and to read as follows:

45 20-519D. ADMISSIBILITY OF STATEMENTS BY EXAMINED OR TREATED JUVE-
 46 NILE. A statement made by a juvenile subject to a competency examination or
 47 restoration treatment pursuant to section 20-519A or 20-519B, Idaho Code,

1 for the purposes of such examination or treatment shall not be admissible
2 in evidence in any delinquency or criminal proceeding against the juvenile
3 on any issue other than the juvenile's ability to assist counsel at trial or
4 to form any specific intent which is an element of the crime charged, except
5 that such statements of a juvenile to the examiner, evaluation committee
6 or restoration provider as are relevant for impeachment purposes may be
7 received subject to the usual rules of evidence governing matters of im-
8 peachment.